

US EPA ARCHIVE DOCUMENT

**WEST VIRGINIA
CONSOLIDATED OFFICE OF LEGAL SERVICES'
STATEMENT**

**DIVISION OF ENVIRONMENTAL PROTECTION
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Charleston, WV 25301-1401**

**WEST VIRGINIA CONSOLIDATED OFFICE OF LEGAL SERVICES' STATEMENT
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WEST VIRGINIA
CONSOLIDATED OFFICE OF LEGAL SERVICES' STATEMENT
FOR FINAL AUTHORIZATION,
INCLUDING CHANGES TO THE
FEDERAL RCRA PROGRAM
THROUGH JULY 1, 1997

I hereby certify, pursuant to my authority as the Chief of the Office of Legal Services of the Division of Environmental Protection in the State of West Virginia 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, and 40 CFR 271 that in my opinion the laws of the State of West Virginia provide adequate authority to carry out the program set forth in the "Program Description" submitted by the West Virginia Division of Environmental Protection (DEP). West Virginia (W. Va.) Code § 22-1-6(d)(7) (1996 Cumulative Supplement) authorizes the Director to "employ in-house counsel to perform all legal services for the director and division, including, but not limited to, representing the director, any chief, the division or any office thereof in any administrative proceeding or in any proceeding in state or federal court." The Director has the legal discretion to agree that he will not call upon the Attorney General for legal assistance and representations in all matters related to the authorized hazardous waste management program. As noted in the enclosed March 27, 1997 letter from the previous Chief of this office, incorporated herein by reference, the Attorney General is generally requested to provide legal representation only on personnel and other non-environmental matters.

No provision of the Voluntary Remediation and Redevelopment Act (Chapter 22, Article 22 of the West Virginia Code) or regulations promulgated pursuant thereto can serve to relieve any person of the responsibility to comply with any otherwise applicable portion of the authorized hazardous waste program or prevent the Division of Environmental Protection from exercising the full extent of its authority corresponding to the state program approval requirements found in 40 CFR 271.16 ("Requirements for enforcement authority"), in any matter.

The specific authorities provided are contained in statutes (W. Va. Code, 1994 Cumulative Supplement) or regulations lawfully adopted at the time this Statement is signed and which shall be fully effective at the time the program is approved, as specified below. The statutory provisions have not changed since 1994. The statutory authorities for the State are documented on the State Legislation Checklist and HSWA Statutory Checklist, herein incorporated by reference. These authorities and certification supersede previously certified authorities described in the Chief of the Office of Legal Services's Statements dated May 17, 1985, October 28, 1985 and April 18, 1986.

In March of 1981, the West Virginia Legislature enacted into law, Article 5E of Chapter 20 of the West Virginia Code to ensure the safe management of hazardous waste both within the State and to and from the State. In addition to requiring the safe handling, storage, treatment and disposal of hazardous waste, one of the purposes of Article 5E was to enable the State to assume primacy of the base RCRA Subtitle C program. West Virginia received authorization for the base RCRA Subtitle C Program from EPA in 1985. In July, 1994, the West Virginia Legislature enacted into law Article 18 of Chapter 22 of the West Virginia Code which has replaced Article 5E as the State Hazardous Waste Management Act. During the time period between 1981 and 1998, the West Virginia Legislature, has made numerous amendments to the Hazardous Waste Management Act (HWMA) and the regulations promulgated thereunder to attempt to remain consistent with, and equivalent to, RCRA Subtitle C.

West Virginia has revised the format of its hazardous waste regulations from one of adoption and incorporation of the full text of the Federal regulatory language, with modifications made as necessary, to "incorporation by reference". The incorporation by reference is authorized by W. Va. Code §22-1-3(c) which states "if the director determines that the rule should be the same in substance as a counterpart regulation, then to the greatest degree practical, such proposed rule shall incorporate by reference the counterpart federal regulation." Under W. Va. Code §22-18-5(a), 22-18-6(a) and 22-18-23, the State rules must be consistent with, but no more expansive in coverage nor stringent than, the rules and regulations promulgated by the U.S. Environmental Protection Agency pursuant to RCRA, as amended. However, W. Va. §22-1-3a states that in the absence of a Federal rule, the adoption of a State rule shall not be construed to be more stringent than a Federal rule, unless the absence of a Federal rule is the result of a specific Federal exemption.

This Consolidated Office of Legal Services' Statement addresses West Virginia's revised hazardous waste program and West Virginia's implementation of it, as well as the State's implementation of revised Federal requirements addressing final rules promulgated through RCRA Cluster VII except as otherwise noted in this paragraph, corresponding to the Federal regulations in effect as of July 1, 1997. West Virginia is not seeking authorization for corrective action (Revision Checklists 17L, 44A, 44B, 44C and 121, delisting (Revision Checklist 17B), requirements for existing and newly regulated surface impoundments provided in RCRA §3005(j)(1) & (6) (Non-checklist item SR1), the variances from surface impoundment requirements provided in RCRA §3005(j)(2)-(9) and (13) (Non-checklist item SR2), and authority to regulate the radioactive component of radioactive mixed waste (Non-checklist item MW).

I. DEFINITION OF TERMS, REFERENCES AND TEST METHODS

A. State statutes and regulations contain definition of terms and a list of publications (as in 40 CFR 260.11) which have applicability throughout the statutes and regulations as indicated in Consolidated Checklist C1 which includes the revisions made by Revision Checklists 5, 11, 13, 23, 24, 28, 34, 35, 39, 45, 49, 52, 67, 71, 73, 82, 85, 99, 100, 109, 111, 112, 118, 121, 125, 126, 128, 132, 139, 141, 142A, 142B, 142C, 142D, 154, 156 and 158.

Federal Authority: RCRA §§2002(a), 3001 through 3007, 3010, 3014, 3015, 3017 through 3019 and 7004; 40 CFR 260.10 and 260.11, as amended March 20, 1984 (49 FR 10490), December 4, 1984 (49 FR 47390), January 4, 1985 (50 FR 614), March 24, 1986 (51 FR 10146), May 2, 1986 (51 FR 16422), July 14, 1986 (51 FR 25422), November 7, 1986 (51 FR 40572), March 16, 1987 (52 FR 8072), July 8, 1987 (52 FR 25760), October 27, 1987 (52 FR 41295), December 10, 1987 (52 FR 46946), July 19, 1988 (53 FR 27290), September 2, 1988 (53 FR 34079), September 29, 1989 (54 FR 40260), January 23, 1990 (55 FR 2322), March 9, 1990 (55 FR 8948), June 21, 1990 (55 FR 25454), December 6, 1990 (55 FR 50450), February 21, 1991 (56 FR 7134), December 23, 1991 (56 FR 66365), January 29, 1992 (57 FR 3462), August 18, 1992 (57 FR 37194), August 25, 1992 (57 FR 38558), September 10, 1992 (57 FR 41566), November 18, 1992 (57 FR 54452), February 16, 1993 (58 FR 8658), July 20, 1993 (58 FR 38816), August 31, 1993 (58 FR 46040), January 4, 1994 (59 FR 458), June 2, 1994 (59 FR 28484), December 6, 1994 (59 FR 62896), January 13, 1995 (60 FR 3089), April 4, 1995 (60 FR 17001), May 11, 1995 (60 FR 25492), and June 13, 1997 (62 FR 32452).

Citation of Laws and Regulations: Date of Enactment and Adoption

West Virginia Hazardous Waste Management Act, W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-3; §22-18-5(a); §22-18-6(a); §22-18-23

W. Va. Hazardous Waste Management Rule (HWMR), 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-2.1; §33-20-2.1.a; §33-20-2.1.a.1; §33-20-2.1.a.3

W. Va. Rules and Regulations Governing the Transportation of Hazardous Waste By Rail, 150 CSR 11, effective November 8, 1999:

§150-11-1.5

Transportation of Hazardous Wastes Upon the Roads and Highways, 157 CSR 7, effective April 28, 1999:

§157-7-2

W. Va. Legislative Rules to Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities, 45 CSR 25, effective June 1, 1999:

§45-25-2; §45-25-3.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §22-18-6(a) provides the Director with the overall responsibility for the promulgation of rules under the State's Hazardous Waste Management Act in a manner that is consistent with but no more expansive in coverage nor more stringent in effect than the rules and regulations promulgated by the Federal Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act (RCRA). Under W. Va. Code §22-18-5(a), the Director has the authority to perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of RCRA. Further, W. Va. Code 22-18-23 requires the program for the management of hazardous waste to be equivalent to and consistent with the Federal program.

At W. Va. Code §22-18-3, West Virginia has defined terms which are used in the State's Hazardous Waste Management Act. With the exception of W. Va. §§22-18-3(1) and (3), which define the State terms "Director" and "Division", all the terms are consistent with and equivalent to Federal definitions. The definition of "person" in W. Va. Code §22-18-3(11) does not narrow the universe to whom the definition applies, when compared to the Federal definition. It is true that the State definition of "person" lists county commission rather than just commission. The State is confident that if a commission exists other than a county commission, then for the purposes of Article 18, such commission would fall within one of the other terms listed in the definition, e.g., government corporation, association, etc. Thus, if need be, the State would have the authority to regulate or proceed against a commission other than a county commission.

At HWMR §§33-20-1.6 and 33-20-2.1 and 33-20-2.1.a, the State of West Virginia adopts and incorporates by reference the Federal definitions at 40 CFR 260.10 and the references at 40 CFR 260.11, which were in effect on July 1, 1997. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference. West Virginia has also included a definition for "full regulation" at §33-20-2.1.a.1. This definition is consistent with the Federal definition in the comment after 40 CFR 261.5(e)(2). At §33-20-2.1.a.2, the State has added a definition of "Mercury containing lamp" and revised the definition of "Universal waste" at §33-20-2.1.a.3. to include mercury containing lamps. West Virginia is not seeking authorization for its requirements for mercury containing lamps .

At §33-20-1.6.a, West Virginia clarifies that in applying the Federal requirements incorporated by reference, certain exceptions or substitutions apply, unless the context clearly requires otherwise or the referenced rule cannot be delegated to the State. The State also includes, at §§33-20-1.6.a.1 & a.2, the State's substitution of terms used in the Federal regulations.

The Office of Air Quality, and the other rule-making agencies under the State Act--the Public Service Commission and the Division of Highways--have essentially incorporated the definitions in the Hazardous

Waste Management Rule. For example, §§45-25-2.17 and 45-25-3.1 of the Office of Air Quality adopt the definitions from 33 CSR 20. The Division of Highways, in section 157-7.2.1, provides that "other than those terms defined in the following section, the terms in these regulations shall have the meaning ascribed to them in the regulations promulgated by the Director of the Division of Environmental Protection pursuant to the State Hazardous Waste Management Act." Also, The Public Service Commission, at §150-11-1.5, adopts by reference the definitions of the Hazardous Waste Management Act.

Sections 45-25-2.1 through 2.16 include additional definitions of terms that are used in the Office of Air Quality regulations. Similarly, §§157-7-2.1.1 through 2.1.11 of the Division of Highways regulations include additional definitions. These definitions cover State terms, terms found in the Federal code, as well as terms needed to understand the State's regulations.

B. State statutes and regulations allow petitions for equivalent testing or analytical methods as specified in 40 CFR 260.21 and as indicated in Consolidated Checklist C1 which includes the requirements indicated in Revision Checklist 11.

Federal Authority: RCRA §§2002(a), 3001 and 3004; 40 CFR 260.21 as amended December 4, 1984 (49 FR 47390).

Citation of Laws and Regulations; Date of Enactment and Adoption

West Virginia Hazardous Waste Management Act, W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(D); §22-18-23

W. Va. Hazardous Waste Management Rule (HWMR), 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1; §33-20-2.3

Remarks of the Chief of the Office of Legal Services

West Virginia incorporates by reference the July 1, 1997 version of 40 CFR Part 260 (except 260.21(d)) at §§33-20-1.6, 33-20-2.1 and §33-20-2.3. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a) and 22-18-23 give West Virginia the authority to adopt rules that are consistent with and equivalent to the Federal code. Finally, W. Va. Code §22-18-6(a)(12)(D) gives the Director the specific authority to promulgate rules that include variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA Subtitle C.

West Virginia has adopted 40 CFR 260.21(a)-(c); thus, the State allows the regulated community to petition for alternate testing methods. However, the State has not adopted 40 CFR 260.21(d) which states that if the Administrator amends the Federal regulations to permit the use of a new testing method, the method will be incorporated in "Test Methods for the Evaluation of Solid Waste." West Virginia has not adopted the 40 CFR 260.21(d) provision because it is the Administrator, not the State, who can incorporate a new test in the EPA publication.

C. Specific provisions amending 40 CFR 260.10, 260.11 and 260.21 since January 1, 1983, which are included in State statutes and regulations, and listed below.

- (1) **State statutes and regulations amend the definition of "manifest" and "manifest document number" as indicated in Revision Checklist 5 and included in Consolidated Checklist C1.**

Federal Authority: RCRA §§2002(a) and 3001; 40 CFR 260.10 as amended March 20, 1984 (49 FR 10490).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-3(10)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At W. Va. Code §22-18-3(10) (1994 Cumulative Supplement), West Virginia's definition of "manifest" is identical to the Federal definition at RCRA §1004(12). In addition, at HWMR §§33-20-1.6 and 2.1, the State incorporates by reference the July 1, 1997 version of 40 CFR Part 260 which includes the Federal definitions of "manifest" and "manifest document number". W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference.

- (2) *State statutes and regulations incorporate the most recent edition and updates to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846) as indicated in Revision Checklists 11, 35, 126, 128, 132, 139 and 141 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§2002(a) and 3001; 40 CFR 260.11 as amended December 4, 1984 (49 FR 47390), March 16, 1987 (52 FR 8072), August 31, 1993 (58 FR 46040), January 4, 1994 (59 FR 458), June 2, 1994 (59 FR 28484), January 13, 1995 (60 FR 3089) and April 4, 1995 (60 FR 17001).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 & 2.1, West Virginia incorporates 40 CFR Part 260 by reference, including the references at 40 CFR 260.11. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (3) *State statutes and regulations include definitions of "boiler" and "industrial furnace" and revise the definition of "incinerator" as indicated in Revision Checklist 13 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§2002(a) and 3004; 40 CFR 260.10 as amended January 4, 1985 (50 FR 614).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

Under §§22-18-(6)(a) and 22-18-23, West Virginia has broad authority to adopt rules that are equivalent to and consistent with the Federal regulations. At §§33-20-1.6 and 2.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the Federal definitions of "boiler", "industrial furnace" and "incinerator". W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference.

- (4) *State statutes and regulations revise the definition of "designated facility" as indicated in Revision Checklists 13 and 71 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§2002(a) and 3004; 40 CFR 260.10 as amended January 4, 1985 (50 FR 614) and January 23, 1990 (55 FR 2322).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the Federal definition of "designated facility" at 40 CFR 260.10. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. Under §§22-18-(6)(a) and 22-18-23, West Virginia has broad authority to adopt rules that are equivalent to and consistent with the Federal regulations.

- (5) *State statutes and regulations define "small quantity generator" as indicated in Revision Checklist 23 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§2002(a), 3001 and 3002; 40 CFR 260.10, as amended March 24, 1986 (51 FR 10146).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the Federal definition of "small quantity generator" at 40 CFR 260.10. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. Under §§22-18-(6)(a) and 22-18-23, West Virginia has broad authority to adopt rules that are equivalent to and consistent with the Federal regulations.

- (6) *State statutes and regulations define "active life," "final closure," "hazardous waste management unit," and "partial closure" as indicated in Revision Checklist 24 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§2002(a) and 3004; 40 CFR 260.10 as amended May 2, 1986 (51 FR 16422).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-6(a); §22-18-23

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the Federal definitions of "active life," "final closure," "hazardous waste management unit," and "partial closure" at 40 CFR 260.10. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 (1994 Cumulative Supplement) require the State's rules to be consistent with and equivalent to the Federal program.

- (7) *State statutes and regulations define "above ground tank," "ancillary equipment," "component," "corrosion expert," "existing tank system" or "existing component," "inground tank," "installation inspector," "leak-detection system," "new tank system" or "new tank component," "on ground tank," "sump," "tank system," "underground tank," "unfit-for-use tank system" and "zone of engineering control" as indicated in Revision Checklist 28 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§2002(a), 3004 and 3005; 40 CFR 260.10 as amended July 14, 1986 (51 FR 25422).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the Federal definitions that are part of the tank regulations at 40 CFR 260.10. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (8) *State statutes and regulations include the definitions at 40 CFR 260.10 and the references at 40 CFR 260.11(a) as applying to the land disposal restrictions (40 CFR Part 268) as indicated in Revision Checklists 34 and 39 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§2002(a) and 3004; 40 CFR 260.10 and 260.11(a) as amended November 7, 1986 (51 FR 40572), July 8, 1987 (52 FR 25760) and October 27, 1987 (52 FR 41295).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the 40 CFR 260.10 and 260.11 for "miscellaneous units" and "landfills" provisions. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (9) *State statutes and regulations include the definition of "miscellaneous unit" and revise the definition of "landfill" as indicated in Revision Checklist 45 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§2002(a), 3004 and 3005; 40 CFR 260.10 as amended December 10, 1987 (52 FR 46946).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the 40 CFR 260.10 definitions and references for the land disposal restrictions provisions. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (10) *State statutes and regulations define "treatability study" as indicated in Revision Checklist 49 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§2002(a), 3001, 3004 and 3005; 40 CFR 260.10 as amended July 19, 1988 (53 FR 27290).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-6(a); §22-18-23

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the 40 CFR 260.10 definition of "treatability study". W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (11) *State statutes and regulations revise the definitions of "elementary neutralization unit" and "wastewater treatment unit" as indicated in Revision Checklist 52 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§2002(a), 3001, 3004 and 3005; 40 CFR 260.10 as amended September 2, 1988 (53 FR 34079).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the 40 CFR 260.10 definitions of "elementary neutralization unit" and "wastewater treatment unit". W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (12) *State statutes and regulations incorporate 47 new testing methods as approved methods for use in meeting the regulatory requirements under Subtitle C of RCRA as indicated in Revision Checklists 67 and 73 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§3001, 3004, 3005 and 3006; 40 CFR 260.11 as amended September 29, 1989 (54 FR 40260) and March 9, 1990 (55 FR 8948).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the testing methods listed at 40 CFR 260.11. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (13) *State statutes and regulations incorporate eight new testing methods to the section of regulations that incorporates these methods by reference as indicated in Revision Checklist 79 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§3001, 3004, 3005 and 3006; 40 CFR 260.11(a), as amended June 21, 1990 (55 FR 25454).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the testing methods listed at 40 CFR 260.11. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

(14) State statutes and regulations define "drip pad" as indicated in Revision Checklist 82 and included in Consolidated Checklist C1.

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 260.10 as amended December 6, 1990 (55 FR 50450).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the 40 CFR 260.10 definition of "drip pad". W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

(15) State statutes and regulations make revisions to "incinerator" and "industrial furnace" and define "carbon regeneration unit," "infrared incinerator," "plasma arc incinerator," and "sludge dryer" as indicated in Revision Checklists 85 and 111 and included in Consolidated Checklist C1.

Federal Authority: RCRA §§2002(a), 3001, 3004 and 3005; 40 CFR 260.10 as amended February 21, 1991 (56 FR 7134) and August 25, 1992 (57 FR 38558).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-6(a); §22-18-23

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia adopts and incorporates by reference 40 CFR Part 260, including, without changes, the 40 CFR 260.10 definitions. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (16) *State statutes and regulations include the reference listing of the U.S. EPA, "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources" as indicated in Revision Checklists 85 and 125 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§2002(a), 3001, 3004 and 3005; 40 CFR 260.11(a) as amended February 21, 1991 (56 FR 7134) and July 20, 1993 (58 FR 38816).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the 40 CFR 260.11 list of references. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (17) *State statutes and regulations define "qualified groundwater scientist" as indicated in Revision Checklist 99 and included in Consolidated Checklist C1.*

Federal Authority: §§2002(a), 3001, 3004 and 3005; 40 CFR 260.10 as amended December 23, 1991 (56 FR 66635).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the 40 CFR 260.10 definition of "qualified groundwater scientist". W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (18) State statutes and regulations define "replacement unit" and revise the definition of "sump" as indicated in Revision Checklist 100 and included in Consolidated Checklist C1.**

Federal Authority: §§2002(a), 3001, 3004 and 3005; 40 CFR 260.10 as amended January 29, 1992 (57 FR 3462).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the 40 CFR 260.10 definitions of "replacement unit" and "sump". W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (19) State statutes and regulations include the definition of "containment building" and revise the definitions of "miscellaneous unit" and "pile" as indicated in Revision Checklist 109 and included in Consolidated Checklist C1.**

Federal Authority: RCRA §3004; 40 CFR 260.10 as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the 40 CFR 260.10 definitions. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

(20) State statutes and regulations include the definition of "used oil" as indicated in Revision Checklist 112 and included in Consolidated Checklist C1.

Federal Authority: RCRA §§1004, 1006, 2002, 3001, 3014 and 7004; 40 CFR 260.10 as amended September 10, 1992 (57 FR 41556).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the 40 CFR 260.10 definition of "used oil". W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

(21) State statutes and regulations define "sorberent" as indicated in Revision Checklist 118 and included in Consolidated Checklist C1.

Federal Authority: RCRA §3004(c); 40 CFR 260.10 as amended November 18, 1992 (57 FR 54452).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the 40 CFR 260.10 definition of "sorberent". W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (22) *State statutes and regulations define "corrective action management unit" and "remediation waste" and revise the definitions for "disposal facility", "facility", "landfill" and "miscellaneous unit" as indicated in Revision Checklist 121 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§1006, 2002(a), 3004(u), 3004(v), 3005(c), 3007, and 3008(h); 40 CFR 260.10 as amended February 16, 1993 (58 FR 8658).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the 40 CFR 260.10 definitions. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program. However, because the State's regulations do not include all the requirements for corrective action, West Virginia is not seeking authorization for Revision Checklist 121.

- (23) *State statutes and regulations incorporate by reference "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, the Third Edition (November 1986), as amended by Updates I, II, IIA, and IIB as indicated in Revision Checklists 126, 128, 132, 139, and 141, and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§2002(a), 3001(b), and 3001(e)(1); 40 CFR 260.11(a), as amended August 31, 1993 (58 FR 46040), January 4, 1994 (59 FR 458), June 2, 1994 (59 FR 28484), January 13, 1995 (60 FR 3089), and April 4, 1995 (60 FR 17001).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the testing methods listed at 40 CFR 260.11. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (24) *State statutes and regulations include definitions for the hazardous waste management standards for the collection and management of certain widely generated wastes determined "universal wastes" as indicated in Revision Checklist 142A and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§2002, 3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 260.10, as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1; §33-20-2.1.a.3

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has incorporated by reference the July 1, 1997 version of the 40 CFR 260.10 definitions, including the definition of "universal waste". W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. At §33-20-2.1.a.2, the State has added a definition of "Mercury containing lamp" and revised the definition of "Universal waste" at §33-20-2.1.a.3. to include mercury containing lamps. West Virginia is not seeking authorization for its requirements for mercury containing lamps.

- (25) *State statutes and regulations include definitions related to hazardous waste batteries as a universal waste as indicated in Revision Checklist 142B and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 260.10, as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1.a.3

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-2.1.a.3, West Virginia has adopted an analog to the July 1, 1997 version of the 40 CFR 260.10 definition which includes hazardous waste batteries as a universal waste. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference and §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (26) *State statutes and regulations include definitions associated with including hazardous waste pesticides that are either recalled or collected in waste pesticide collection programs as a universal waste as indicated in Revision Checklist 142C and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 260.10, as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1.a.3

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-2.1.a.3, West Virginia has adopted an analog to the July 1, 1997 version of the 40 CFR 260.10 definition which includes certain hazardous waste pesticides as a universal waste. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. W. Va. Code §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (27) *State statutes and regulations include definitions associated with including hazardous waste thermostats as a universal waste as indicated in Revision Checklist 142D and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 260.10, as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1.a.3

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-2.1 a.3, West Virginia has adopted an analog to the July 1, 1997 version of the 40 CFR 260.10 definition which includes hazardous waste thermostats as a universal waste. Note that at §33-20-2.1 a.2, the State has added a definition of "Mercury containing lamp" and revised the definition of "Universal waste" at §33-20-2.1 a.3. to include mercury containing lamps. West Virginia is not seeking authorization for its requirements for mercury containing lamps. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. W. Va. Code §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (28) *State statutes and regulations incorporate API Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating Roof Tanks" and ASTM Standard Test Method for Vapor Pressure – Temperature Relationship and Initial Decomposition Temperature of Liquids by Isotenoscope and update the address of the Federal Register as indicated in Revision Checklist 154 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §3004(n); 40 CFR 260.11(a) and (b), as amended December 6, 1994 (59 FR 62896).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 & 2.1, West Virginia incorporates 40 CFR Part 260 by reference, including the references at 40 CFR 260.11. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. W. Va. Code §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

- (29) *State statutes and regulations define "explosives or military emergency", "explosives or munitions emergency response", "explosives or emergency response specialist", and "military munitions" as indicated in Revision Checklist 156 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §2002(a), 3001, 3004(y); 40 CFR 260.10, as amended February 12, 1997 (62 FR 6622).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

Under §§22-18-(6)(a) and 22-18-23, West Virginia has broad authority to adopt rules that are equivalent to and consistent with the Federal regulations. At §§33-20-1.6 and 2.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the Federal definitions of "explosives or military emergency", "explosives or munitions emergency response", "explosives or emergency response specialist", and "military munitions". W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference.

- (30) *State statutes and regulations include required test methods in EPA Publication SW-846 and Third Edition of the EPA approved Test Methods Manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" through Update III and include amendments as indicated in Revision Checklist 158 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §§1006, 2002(a), 3001-3007, 3010, 3013-3018, and 7004; and 40 CFR 260.11, as amended June 13, 1997 (62 FR 32452).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 & 2.1, West Virginia incorporates 40 CFR Part 260 by reference, including the references at 40 CFR 260.11. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. W. Va. Code §§22-18-6(a) and 22-18-23 require the State's rules to be consistent with and equivalent to the Federal program.

II. IDENTIFICATION AND LISTING

Federal Authority: Statutory Authorization RCRA §3001; 40 CFR 271.9 as amended September 22, 1986 (51 FR 33712).

- A. *State statutes and regulations contain a list of hazardous wastes and characteristics for identifying hazardous waste which encompasses all wastes controlled under 40 CFR Part 261 as indicated in Consolidated Checklist C2 (formerly Checklists I B and I C), which includes the changes made by Revision Checklists 4, 7, 13, 14, 17 J, 18, 20, 21, 22, 23, 26, 29, 33, 34, 37, 41, 46, 53, 56, 57, 67, 68, 69, 72, 73, 74, 75, 76, 78, 81, 82, 83, 86, 88, 89, 91, 92, 110, 115, 119, 120, 126, 128, 134, 140 and 159, the specific provisions of which are detailed further in other subsections of this Office of Legal Services' Statement.*

Federal Authority: RCRA §3001(b); 40 CFR 261.10 through 261.35 and applicable appendices as amended February 10, 1984 (49 FR 5308), May 10, 1984 (49 FR 19922), January 4, 1985 (50 FR 614), January 14, 1985 (50 FR 1978), April 11, 1985 (50 FR 14216), July 15, 1985 (50 FR 28702), October 23, 1985 (50 FR 42936), December 31, 1985 (50 FR 53315), February 13, 1986 (51 FR 5327), February 25, 1986 (51 FR 6537), March 24, 1986 (51 FR 10146), May 28, 1986 (51 FR 19320), August 6, 1986 (51 FR 28296), October 24, 1986 (51 FR 37725), November 7, 1986 (51 FR 40572), June 5, 1987 (52 FR 21306), July 10, 1987 (52 FR 26012), April 22, 1988 (53 FR 13382), September 13, 1988 (53 FR 35412), October 31, 1988 (53 FR 43878), October 31, 1988 (53 FR 43881), September 29, 1989 (54 FR 40260), October 6, 1989 (54 FR 41402), December 11, 1989 (54 FR 50968), February 14, 1990 (55 FR 5340), March 9, 1990 (55 FR 8948), March 29, 1990 (55 FR 11798), May 2, 1990 (55 FR 18496), May 4, 1990 (55 FR 18726), June 1, 1990 (55 FR 22520), June 29, 1990 (55 FR 26986), November 2, 1990 (55 FR 46354), December 6, 1990 (55 FR 50450), December 17, 1990 (55 FR 51707), January 31, 1991 (56 FR 3864), February 25, 1991 (56 FR 7567), May 1, 1991 (56 FR 19951), May 13, 1991 (56 FR 21955), June 13, 1991 (56 FR 27332), July 1, 1991 (56 FR 30192), August 18, 1992 (57 FR 37284), October 15, 1992 (57 FR 47376), November 24, 1992 (57 FR 55114), December 24, 1992 (57 FR 61492), February 2, 1993 (58 FR 6854), August 31, 1993 (58 FR 46040), January 4, 1994 (59 FR 458), June 20, 1994 (59 FR 31551), February 9, 1995 (60 FR 7824), April 17, 1995 (60 FR 19165), May 12, 1995 (60 FR 25619) and June 17, 1997 (62 FR 32974).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(2); §22-18-5(a); §22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261 at HWMR §§33-20-1.6 and 33-20-3.1. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). Under W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23, the rules must be consistent with, but no more expansive in coverage nor more stringent than, the rules and regulations promulgated by the Federal Environmental Protection Agency pursuant to RCRA, as amended.

- B. State statute and regulations define solid and hazardous waste so as to control all hazardous waste controlled under 40 CFR Part 261, as indicated in Consolidated Checklist C2 (formerly Checklist I A) which includes the changes made by Revision Checklists 8, 9, 13, 17 C, 19, 23, 28, 34, 49, 65, 71, 74, 80, 82, 83, 84, 85, 90, 92, 94, 95, 96, 104, 105, 107, 108, 109, 110, 111, 112, 117 A, 117 B, 122, 129, 135, 137, 140, 150, 156 and 157.***

Federal Authority: RCRA §3001; 40 CFR 261.1 through 261.4 as amended June 5, 1984 (49 FR 23284), November 13, 1984 (49 FR 44978), January 4, 1985 (50 FR 614), April 11, 1985 (50 FR 14216), August 20, 1985 (50 FR 33541), July 15, 1985 (50 FR 28702), November 29, 1985 (50 FR 49164), November 19, 1986 (51 FR 41900), April 13, 1987 (52 FR 11819), March 24, 1986 (51 FR 10146), July 14, 1986 (51 FR 25422), November 7, 1986 (51 FR 40572), September 1, 1989 (54 FR 36592), January 23, 1990 (55 FR 2322), March 29, 1990 (55 FR 11798), June 29, 1990 (55 FR 26986), October 5, 1990 (55 FR 40834), December 6, 1990 (55 FR 50450), January 31, 1991 (56 FR 3864), February 1, 1991 (56 FR 3978),

February 13, 1991 (56 FR 5910), February 21, 1991 (56 FR 7134), April 2, 1991 (56 FR 13406), June 13, 1991 (56 FR 27300), July 1, 1991 (56 FR 30192), July 17, 1991 (56 FR 32688), August 19, 1991 (56 FR 41164), August 27, 1991 (56 FR 42504), May 20, 1992 (57 FR 21524), June 22, 1992 (57 FR 27880), July 1, 1992 (57 FR 29220), July 10, 1992 (57 FR 30657), August 18, 1992 (57 FR 37194), August 18, 1992 (57 FR 37284), August 25, 1992 (57 FR 38558), September 10, 1992 (57 FR 41566), March 3, 1992 (57 FR 7628), June 1, 1992 (57 FR 23062), October 30, 1992 (57 FR 49278), May 3, 1993 (58 FR 26420), June 17, 1993 (58 FR 33341), February 18, 1994 (59 FR 8362), July 28, 1994 (59 FR 38536), September 19, 1994 (59 FR 47982), January 3, 1995 (60 FR 242), February 9, 1995 (60 FR 7824), April 17, 1995 (60 FR 19165), May 12, 1995 (60 FR 25619), March 26, 1996 (61 FR 13103), February 12, 1997 (62 FR 6622), and May 12, 1997 (62 FR 25998)..

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-3(6)&(16); §22-18-6(a); §22-18-6(a)(2); §22-18-6(a)(12); §22-1-3(a); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1; §33-20-3.1.a

45 CSR 25, effective June 1, 1999:

§45-25-6.1; §45-25-4.15

150 CSR 11, effective November 8, 1999:

§150-11-1.5

157 CSR 7, effective April 28, 1999:

§157-7-2.1

Remarks of the Chief of the Office of Legal Services

West Virginia's definitions of solid waste and hazardous waste at §22-18-3(16) and §22-18-3(6) respectively, are equivalent to the Federal definitions at RCRA §§1004(16) and 1004(5). Sections 22-18-6(a) and 22-18-6(a)(12) give the Director of the Division of Environmental Protection the authority to regulate the recycling and reuse of hazardous waste in a manner that is at least as stringent as the Federal program. West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261 at HWMR §§33-20-1.6 and 33-20-3.1, except that, at §33-20-3.1.a, West Virginia has inserted requirements in addition to those at 40 CFR 261.3(a)(2)(iv). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act.

The State's provisions are more stringent in that there are more requirements to satisfy in order to qualify for an exemption for an owner or operator of a wastewater treatment facility receiving mixtures of wastes. The State requires that such an owner or operator must notify the chief of the receipt on a form prescribed by the chief and to submit, annually, a list of hazardous wastes that are expected to be present in the waste to be exempted.

Under §22-18-6(a)(12), the State has the authority to grant exemptions. Section 22-18-6(a) of the State statutes requires State rules to be consistent with, but not more stringent than, Federal rules. The additional criteria required for an exemption make West Virginia more stringent than the Federal regulations; however,

§22-1-3(a) specifies that in the absence of a Federal rule, the adoption of a State rule shall not be construed to be more stringent than a Federal rule, unless the absence of a Federal rule is the result of a specific Federal exemption. The State is broader in scope to the extent that the facilities not regulated by EPA, because of fewer criteria to be satisfied under the Federal program, are regulated under the West Virginia requirements.

The Public Service Commission and the Division of Highways--at §§157-7-2.1 and 150-11-1.5, respectively, have adopted the definitions for solid and hazardous waste as found in the Hazardous Waste Management Rule at 33 CSR 20. Section 45-25-6.1 of the Office of Air Quality regulations also excludes from regulation, any wastes and/or materials excluded in 33 CSR 20. However, mixtures of domestic or industrial sewage and hazardous wastes which pass through a sewer system to a privately owned or publicly owned treatment works are subject to the air regulations. Similarly, under §45-25-4.15, mixtures of infectious wastes and hazardous wastes are considered hazardous and subject to the air regulations when incinerated.

- C. *State statutes and regulations provide: 1) exemption from regulations for hazardous waste as specified at 40 CFR 261.5, 261.6, 261.7, 260.40 and 260.41, 2) variance from classification as a solid waste as specified at 260.30, 260.31 and 260.33, 3) variance to be classified as a boiler as specified at 260.32 and 260.33, 4) regulation as a universal waste as specified in 261.9, or 5) capability to add a hazardous waste as a universal waste as specified at 260.23 as indicated in Consolidated Checklists C1 and C2 (formerly Checklist I A) which include the changes made by Revision Checklists 13, 14, 17 A, 17 J, 19, 23, 31, 34, 47, 79, 112, 135, 137, 142A, 142B, 142C, 142D, 142E, 153, 154 and 157.*

Federal Authority: RCRA §3001; 40 CFR 260.23, 260.30 through 260.41, and 261.5 through 261.9 as amended January 4, 1985 (50 FR 614), January 14, 1985 (50 FR 1978), April 11, 1985 (50 FR 14216), August 20, 1985 (50 FR 33541), July 15, 1985 (50 FR 28702), November 29, 1985 (50 FR 49164), August 8, 1986 (51 FR 28664), November 7, 1986 (51 FR 40572), November 19, 1986 (51 FR 41900), April 13, 1987 (52 FR 11819), September 10, 1992 (57 FR 41566), July 28, 1994 (59 FR 38536), September 19, 1994 (59 FR 47982), January 3, 1995 (60 FR 242) and May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(2); §22-18-6(a)(12)(C); §22-18-6(a)(13)(C); §22-18-6(a)(12)(D); §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20.2.1; §33-20.2.3; §33-20.2.5; §33-20-3.1; §33-20-3.2; §33-20-4.2.b

45 CSR 25, effective June 1, 1999:

§45-25-6.2

Remarks of the Chief of the Office of Legal Services

West Virginia's W. Va. Code §22-18-6(a)(12)(D) gives the State Director the authority to promulgate rules that include variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA Subtitle C. At 33 CSR 20, §§33-20-1.6, 33-20-2.1 and 33-20-3.1, the State has adopted by reference the Federal exemptions from regulations for hazardous waste as found in the July 1, 1997 CFR. However, unlike the Federal code, West Virginia's §33-20-3.2 and §33-20-4.2.b require any person exempted from the Federal notification requirements as specified in 40 CFR 261.5 and 261.6 to be subject to the State's notification requirements, thus making the State more stringent. Under §45-25-6.2, hazardous wastes that are stored prior to recycling are subject to regulation. At §33-20-2.3, West Virginia has excepted 40 CFR 260.23 from its incorporation by reference of the Federal regulations. The State's analogous provisions which are found at §33-20-2.5, are more stringent in that the State requires persons desiring to include a waste as a universal waste to petition the chief for such an inclusion after having received approval from the Administrator of EPA. Specific information must be submitted to the chief who may approve or deny the petition. Finally, note that at §33-20-3.3, West Virginia has revised the provision at 40 CFR 261.9(c) to include "mercury containing lamps". The State is not seeking authorization for its requirements for mercury containing lamps. The State's authority to adopt Federal regulations by reference is provided by W. Va. Code §22-1-3(c).

- D. State statutes and regulations for delisting hazardous wastes include public notice and opportunity for comment before requests are granted or denied as indicated in Consolidated Checklist C1 which includes the changes made by Revision Checklists 17 B, 34, 111, 126 and 142E. The specific provisions of these revision checklists are detailed further in this Office of Legal Services' Statement.*

Federal Authority: RCRA §§2002(a) and 3001; 40 CFR 260.20 and 260.22 as amended July 15, 1985 (50 FR 28702), November 7, 1986 (51 FR 40572), June 27, 1989 (54 FR 27114) August 25, 1992 (57 FR 38558), August 31, 1993 (58 FR 46040) and May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W.Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(D); §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20.2.1; §33-20-2.4

150 CSR 11, effective April 28, 1999:

§150-11-7

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code §§22-18-5(a), 22-18-6(a) and 22-18-23, the State has a broad authority to adopt rules that are consistent with but no more expansive in coverage nor more stringent in effect than the Federal regulations. However, West Virginia does not have its own delisting program. At §33-20-2.4, the State has left the authority for delisting with EPA but reserves the authority to deny a petition approved by the EPA Administrator if scientifically supportable reasons for such a denial are advanced which had not been presented to the EPA Administrator. West Virginia is more stringent at §§33-20-2.4.a through 33-20-2.4.c, because it has additional requirements for persons who have petitioned EPA to exclude a waste at a particular generating facility. The State requires persons desiring to exclude a waste to petition the chief for such an

exclusion after having received approval from the Administrator of EPA. Specific information must be submitted to the chief and West Virginia may approve or deny the petition.

E. *Specific provisions amending 40 CFR Part 261 and relevant portions of 40 CFR Part 260 since January 1, 1983, that are included in State statutes and requirements are as follows:*

- (1) *State statutes and regulations contain lists of hazardous waste which encompass all wastes controlled under the following Federal regulations as indicated in the designated Revision Checklists and included in Consolidated Checklist C2:***
 - (a) Chlorinated aliphatic hydrocarbons, 40 CFR 261.31, as amended February 10, 1984 [49 FR 5308], Revision Checklist 4.
 - (b) Warfarin and zinc phosphide listing, 40 CFR 261.33(e) and (f), as amended May 10, 1984 [49 FR 19923], Revision Checklist 7.
 - (c) Dioxin wastes are listed and otherwise identified as hazardous wastes so as to encompass all such wastes controlled under 40 CFR 261.5(e), 261.7(b), 261.30(d), 261.31, and 261.33(f), as amended January 14, 1985 [50 FR 1978], Revision Checklist 14.
 - (d) TDI, DNT and TDA wastes, 40 CFR 261.32 and 261.33(f), as amended October 23, 1985 [50 FR 42936], Revision Checklist 18.
 - (e) Spent solvents, 40 CFR 261.31, as amended December 31, 1985 [50 FR 53319] and January 21, 1986 [51 FR 2702], Revision Checklist 20.
 - (f) EDB wastes, 40 CFR 261.32, as amended February 13, 1986 [51 FR 5330], Revision Checklist 21.
 - (g) Four spent solvents, 40 CFR 261.31 and 261.33(f), as amended February 25, 1986 [51 FR 6541], Revision Checklist 22.
 - (h) Listing of spent pickle liquor from steel finishing operations, 40 CFR 261.32, as amended May 28, 1986 [51 FR 19320] and September 22, 1986 [51 FR 33612], Revision Checklist 26.
 - (i) Listing of commercial chemical products and Appendix VIII constituents, 40 CFR 261.33 and 261 Appendix VIII, as amended August 6, 1986 [51 FR 28296], Revision Checklist 29; as amended July 10, 1987 [52 FR 26012], Revision Checklist 41; and as amended April 22, 1988 [53 FR 13382], Revision Checklist 46.
 - (j) EBDC wastes, 40 CFR 261.32, as amended on October 24, 1986 [51 FR 37725], Revision Checklist 33.
 - (k) Listing of spent potliners from aluminum reduction (K088), 40 CFR 261.32 and 261 Appendix VII as amended September 13, 1988 [53 FR 35412] as indicated in Revision Checklist 53.

- (l) Generic delisting of iron dextran (CAS No. 9004-66-4), 40 CFR 261.33(f) and 261, Appendix VIII, as amended October 31, 1988 [53 FR 43878], Revision Checklist 56.
- (m) Generic delisting of strontium sulfide (CAS No. 1314-96-1), 40 CFR 261.33(e) and 261 Appendix VIII, as amended October 31, 1988 [53 FR 43881], and February 25, 1991 [56 FR 7567], Revision Checklists 57 and 86.
- (n) Listing of two wastes (K131 and K132) generated during the production of methyl bromide, 40 CFR 261.32 and 261 Appendices III and VII, as amended October 6, 1989 [54 FR 41402], Revision Checklist 68.
- (o) Listing of one generic category (F025) of waste generated during the manufacture of chlorinated aliphatic hydrocarbons by free radical catalyzed processes and amending F024, 40 CFR 261.31 and 261 Appendix VII; adding one toxicant to 261 Appendix VIII; as amended December 11, 1989 [54 FR 50968], Revision Checklist 69.
- (p) Amendments to the F019 hazardous waste listing to exclude wastewater treatment sludges from zirconium phosphating in aluminum can washing, when such phosphating is an exclusive conversion coating process, 40 CFR 261.31, as amended February 14, 1990 [55 FR 5340], Revision Checklist 72.
- (q) Listing of four wastes (K107 through K110) generated during the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides, 40 CFR 261.31 and 261 Appendices III and VII, as amended May 2, 1990 [55 FR 18496], Revision Checklist 75.
- (r) Listing of one waste (F039), 40 CFR 261.31 and 261 Appendix VII, as amended June 1, 1990 [55 FR 22520] and January 31, 1991 [56 FR 3864], Revision Checklists 78 and 83.
- (s) Listing of two wastes (F037 and F038) generated in the separation of oil/water/solids from petroleum refinery process wastewaters and oily cooling wastewaters, 40 CFR 261.31 and Part 261 Appendix VII, as amended November 2, 1990 [55 FR 46354] and December 17, 1990 [55 FR 51707], Revision Checklist 81.
- (t) Listing of three wastes (F032, F034 and F035) from wood preserving operations that use chlorophenolic, creosote and/or inorganic (arsenical and chromium) preservatives, 40 CFR 261.31, and 261 Appendices III, VII and VIII, as amended December 6, 1990 [55 FR 50450], Revision Checklist 82.
- (u) Administrative stay removing, from the K069 listing, slurries generated from air pollution control devices that are intended to capture acid gases and are not dedicated chiefly to control particulate air emissions, 40 CFR 261.32, as amended May 1, 1991 [56 FR 19951], Revision Checklist 88.
- (v) Redefinition of F037 and F038 listings to exclude 1) sludges from non-contact once-through cooling waters from both listings and 2) floats generated in aggressive biological treatment units from the F038 listing, 40 CFR 261.31 as amended May 13, 1991 [56 FR 21955], Revision Checklist 89.
- (w) Administrative stay, from June 13, 1991 to December 24, 1992, of F032, F034 and F035 listings regarding 1) wastewaters that have not come into contact with process

contaminants and 2) plants that have previously used chlorophenolic formulations, 40 CFR 261.31 as amended June 13, 1991 [56 FR 27332] and December 24, 1992 [57 FR 61492], Revision Checklists 91 and 120.

Remarks by Chief of the Office of Legal Services:

The administrative stay was terminated by Revision Checklist 120 and is no longer in the Code of Federal Regulations, as of July 1, 1997. Therefore, this entry does not apply to West Virginia.

- (x) Listing of seven wastes (K141, K142, K143, K144, K145, K147, and K148) generated during the production, recovery and refining of coke by-products produced from coal, 40 CFR 261.32, and Part 261 Appendix VII as amended August 18, 1992 [57 FR 37284], Revision Checklist 110.
- (y) Listing of three wastes (K149, K150, and K151) from the production of chlorinated toluenes, 40 CFR 261.32 and Part 261 Appendix VII, as amended October 15, 1992 [57 FR 47376], Revision Checklist 115.
- (z) Exceptions to listings of F032, F034, and F035 for wastewaters that have not come into contact with process contaminants, 40 CFR 261.31 as amended December 24, 1992 [57 FR 61492], Revision Checklist 120.
- (aa) Exception to listing of F032 for potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not reserve or initiate the use of chlorophenolic formulations, 40 CFR 261.31 as amended December 24, 1992 [57 FR 61492], Revision Checklist 120.
- (bb) Listing of three chemicals from wood surface protection processes, 40 CFR 261 Appendix VIII, as amended January 4, 1994 [59 FR 458], Revision Checklist 128.
- (cc) Listing of Beryllium (P015) is amended to read "Beryllium powder," 40 CFR 261.33 and Part 261 Appendix VIII, as amended June 20, 1994 [59 FR 31551], Revision Checklist 134.
- (dd) Listing of five wastes generated during the production of carbamate chemicals (except to the extent that K156, K157 and K158 include IPBC), plus the listing of 34 commercial chemical products, 40 CFR 261.32, 261.33(e), 261.33(f), Part 261, Appendix VII and Part 261, Appendix VIII, as amended February 9, 1995 (60 FR 7824), April 17, 1995 (60 FR 19165), and May 12, 1995 (60 FR 25619) and affected by Dithiocarbamate Task Force v. EPA, 98 F.3d 1394 (D.C. Cir. 1996), as indicated in Revision Checklist 140, and included in Consolidated Checklist C2.

Federal Authority: RCRA §3001(b).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a); §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference, without changes, the July 1, 1997 version of Federal lists of hazardous waste in 40 CFR Part 261. The State's authority to adopt Federal rules by reference is provided under W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. Under W. Va. Code 22-18-6(a), the rules must be consistent with, but no more expansive in coverage nor more stringent, than the rules and regulations promulgated by the Federal Environmental Protection Agency pursuant to the RCRA Act.

- (2) *State statutes and regulations define hazardous waste so as to exclude waste pickle liquor sludge generated by lime stabilization, but only to the extent that such waste is excluded by 40 CFR 261.3(c)(2) as indicated in Revision Checklist 8 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001; 40 CFR 261.3(c) as amended June 5, 1984 (49 FR 23284).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

Under the authority granted under W. Va. Code §22-1-3(c), at §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference, without changes, the Federal exclusion. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. Under W. Va. Code 22-18-6(a)(12)(D), the State may grant exemptions and exclusions in a manner that is consistent with the Federal regulations.

- (3) *State statutes and regulations define hazardous waste so as to not exclude household waste other than those household wastes excluded in 40 CFR 261.4(b)(1) and as indicated in Revision Checklists 9 and 17 C and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001; 40 CFR 261.4(b)(1) as amended November 13, 1984 (49 FR 44980) and July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6
§33-20-3.1

Remarks of the Chief of the Office of Legal Services

Under the authority granted under W. Va. Code §22-1-3(c), at 33 CSR 20, §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference, without changes, the Federal exclusion. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. Under W. Va. Code 22-18-6(a)(12)(D), the State may grant exemptions and exclusions in a manner that is consistent with the Federal regulations.

- (4) *State statutes and regulations define hazardous waste standards so as to control all the hazardous waste controlled under 40 CFR Part 261 as indicated in Revision Checklists 13 and 37 and included in Consolidated Checklist C1.*

Federal Authority: RCRA §3001; 40 CFR Part 261 as amended January 4, 1985 (50 FR 614), April 11, 1985 (50 FR 14216), August 20, 1985 (50 FR 33541), and June 5, 1987 (52 FR 21306).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

West Virginia has adopted by reference the July 1, 1997 version of the 40 CFR Part 261 provision addressed by Revision Checklists 13 and 37 at HWMR §§33-20-1.6 and 33-20-3.1, except that, at §33-20-3.1 a, West Virginia has inserted requirements in addition to those at 40 CFR 261.3(a)(2)(iv). The State's provisions are more stringent in that there are more requirements to satisfy in order to qualify for an exemption for an owner or operator of a wastewater treatment facility receiving mixtures of wastes. The State requires that such an owner or operator must notify the chief of the receipt on a form prescribed by the chief and to submit, annually, a list of hazardous wastes that are expected to be present in the waste to be exempted. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act.

- (5) *State statutes and regulations regulate the wastes of generators generating 100 kg or less per month of hazardous waste and 1 kg or less per month of acutely hazardous waste as specified in 40 CFR 261.5 and as indicated in Revision Checklists 23 (supercedes prior amendments by Revision Checklist 17 A), 31 (amends Revision Checklist 23), 47 (provides technical corrections to Checklist 23) and 112. These requirements are included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001(d); 40 CFR 261.5, as amended March 24, 1986 (51 FR 10146), August 8, 1986 (51 FR 28664), July 19, 1988 (53 FR 27162), and September 10, 1992 (57 FR 41566).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(2); §22-18-6(a)(3); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1; §33-20-3.2; §33-20-4.2.b

Remarks of the Chief of the Office of Legal Services

Under the authority granted under W. Va. Code §22-1-3(c), at 33 CSR 20, §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the conditionally exempt small quantity generator (CESQG) requirements at 40 CFR 261.5, except for 40 CFR 261.5(f)(3)(iv)&(v) and 261.5(g)(3)(iv)&(v). The State subjects such generators to the notification requirements at §33-20-4. The State is also more stringent because unlike the Federal provisions at 40 CFR 261.5(f)(3)(iv)&(v) and 261.5(g)(3)(iv)&(v), the State does not allow CESQGs to deliver hazardous wastes to facilities that are permitted, licensed or registered to manage municipal solid waste or non-municipal non-hazardous waste. W. Va. Code §22-18-6(a)(3) gives the State the authority to regulate generators of hazardous waste. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act.

- (6) *State statutes and regulations provide authority to delist hazardous waste as indicated in Revision Checklist 17 B and included in Consolidated Checklist C1.*
- (a) State statutes and regulations require that before deciding to delist a waste, the State must consider whether any listing factor (including additional constituents) other than those for which the waste was listed would cause the waste to be hazardous.
- (b) State statutes and regulations require that there be no new temporary delistings without prior notice and comment. All temporary delistings received before November 18, 1984, without the opportunity for public comment and full consideration of such comment, shall lapse if not made final by November 8, 1986.

Federal Authority: RCRA §3001(f)(1)&(2); 40 CFR 260.20(d) and 260.22 as amended July 15, 1985 (50 FR 28702) and June 27, 1989 (54 FR 27114).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(D); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-2.1; §33-20-2.4

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 2.1, West Virginia has adopted the federal provisions at 40 CFR 260.20 and 260.22 addressed by Revision Checklist 17 B. However, at §33-20-2.4, the State has left the authority for delisting with EPA but reserves the authority to deny a petition approved by the EPA Administrator if scientifically supportable reasons for such a denial are advanced which had not been presented to the EPA Administrator. West Virginia is more stringent at §§33-20-2.4.a through 33-20-2.4.c, because it has additional requirements for persons who have petitioned EPA to exclude a waste at a particular generating facility. The State requires persons desiring to exclude a waste to petition the chief for such an exclusion after having received approval from the Administrator of EPA. Specific information must be submitted to the chief and West Virginia may approve or deny the petition. The State's authority to adopt the federal regulations by reference and to adopt rules that include variances are provided by W.Va. §§22-1-3(c) and 22-18-6(a)(12), respectively.

- (7) *State statutes and regulations include as hazardous wastes those materials specified in 40 CFR 261.33 if and when they are discarded or intended to be discarded, when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment or when, in lieu of their original intended use, they are otherwise applied to the land, they are contained in products applied to the land, they are produced for use as (or component of) a fuel, distributed for use as a fuel, or burned as a fuel as indicated in Revision Checklists 17 J and 37 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §§3001 and 3014(a); 40 CFR 261.33 as amended July 15, 1985 (50 FR 28702) and June 5, 1987 (52 FR 21306).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(2); §22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

Under the authority granted under W. Va. Code §22-1-3(c), West Virginia has adopted by reference, without changes, the Federal requirement. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. Under W. Va. Code §§22-18-5(a) and 22-18-23, the State's rules must be consistent with the Federal regulations.

- (8) State statutes and regulations identify waste fuels and used oil fuels as solid wastes so as to encompass all such wastes as controlled under 40 CFR 261.3, 261.5 and 261.6 as indicated in Revision Checklist 19 and included in Consolidated Checklist C2.**

Federal Authority: RCRA §§3001 and 3014(a); 40 CFR Part 261 as amended November 29, 1985 (50 FR 49164), November 19, 1986 (51 FR 41900), and April 13, 1987 (52 FR 11819).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At 33 CSR 20, §§33-20-1.6 and 33-20-3.1, under the authority granted under W. Va. Code §22-1-3(c), West Virginia has adopted by reference, without changes, the Federal provision addressed by this checklist. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. The State also has broad authorities under §22-18-5(a) and 22-18-23 to adopt rules that are equivalent to the Federal regulations.

- (9) State statutes and regulations exclude from regulation secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process, provided they meet the requirements specified at 40 CFR 261.4(a)(8)(i)-(iv) as indicated in Revision Checklist 28 and included in Consolidated Checklist C2.**

Federal Authority: RCRA §3001; 40 CFR 261.4 as amended July 14, 1986 (51 FR 25422).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D) ; §22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At 33 CSR 20, §§33-20-1.6 and 33-20-3.1, under the authority granted under W. Va. Code §22-1-3(c), West Virginia has adopted by reference, without changes, the Federal exclusion. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. Under W. Va. Code 22-18-6(a)(12)(D), the State may grant exemptions and exclusions in a manner that is consistent with the Federal regulations. W. Va. Code §§22-18-5(a) and 22-18-23 provide broad authorities to develop a hazardous waste program.

- (10) *State statutes and regulations require that spent industrial ethyl alcohol, which is exported for reclamation, must be either covered by an international agreement specified in 40 CFR 262.58 or the person initiating its shipment and its transporters are subject to the requirements specified in 40 CFR 261.6(a)(3)(i)(A)&(B) as indicated in Revision Checklist 31 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3017; 40 CFR 261.6(a)(3)(i), as amended August 8, 1986 (51 FR 28664).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Attorney General

At 33 CSR 20, §§33-20-1.6 and 33-20-3.1, under the authority granted under W. Va. Code §22-1-3(c), West Virginia has adopted by reference, without changes, the Federal provision addressed by this checklist. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. The State also has broad authorities under §22-18-5(a) and 22-18-23 to adopt rules that are equivalent to the Federal regulations.

- (11) *State statutes and requirements include reference to the land disposal restrictions (as specified at 40 CFR Part 268) so as to appropriately indicate that the hazardous waste, identified and defined as specified in 40 CFR Part 261, is also subject to this restriction as specified in Revision Checklist 34 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3004(d)-(k)&(m); 40 CFR Part 261 as amended November 7, 1986 (51 FR 40572).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261 at HWMR §§33-20-1.6 and 33-20-3.1. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (12) State statutes and regulations exempt (with certain limitations) waste samples used in small scale treatability studies from Subtitle C regulation as indicated in Revision Checklist 49 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001; 40 CFR 261.4(e)&(f) as amended July 19, 1988 (53 FR 27290).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At 33 CSR 20, §§33-20-1.6 and 33-20-3.1, under the authority granted under W. Va. Code §22-1-3(c), West Virginia adopts and incorporates by reference, without changes, the Federal exclusion. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. Under W. Va. Code 22-18-6(a)(12)(D), the State may grant exemptions and exclusions in a manner that is consistent with the Federal regulations.

- (13) State statutes and regulations exclude from the mining waste exemption the six wastes at 40 CFR 261.4(b)(7)(i) through 261.4(b)(7)(vi), as indicated in Revision Checklist 53 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001(b); 40 CFR 261.4(b)(7) as amended September 13, 1988 (53 FR 34512).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At 33 CSR 20, §§33-20-1.6 and 33-20-3.1, under the authority granted under W. Va. Code §22-1-3(c), West Virginia adopts and incorporates by reference, without changes, the Federal exclusion. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. Under W. Va. Code 22-18-6(a)(12)(D), the State may grant exemptions and exclusions in a manner that is consistent with the Federal regulations.

(14) State statutes and regulations:

- (a) provide final criteria to define Bevill-excluded mineral processing wastes, finalize the Bevill status of nine mineral processing waste streams, and list those mineral processing wastes subject to conditional retention as indicated in Revision Checklist 65 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001(b); 40 CFR 261.3 and 261.4 as amended September 1, 1989 (54 FR 36592).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At 33 CSR 20, §§33-20-1.6 and 33-20-3.1, under the authority granted under W. Va. Code §22-1-3(c), West Virginia adopts and incorporates by reference, without changes, the Federal exclusion. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. Under W. Va. Code 22-18-6(a)(12)(D), the State may grant exemptions and exclusions in a manner that is consistent with the Federal regulations.

- (b) remove five conditionally retained mineral processing wastes from the exemption from hazardous waste regulation under the Bevill exclusion, and amend the definitions of "beneficiation" and "designated facility" as indicated in Revision Checklists 71 and 90 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001(b)(3)(A)(ii); 40 CFR 260.10 and 261.4(b)(7) as amended January 23, 1990 (55 FR 2372) and June 13, 1991 (56 FR 27300).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-2.1; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At 33 CSR 20, §§33-20-1.6, 33-20-2.1, and 33-20-3.1, under the authority granted under W. Va. Code §22-1-3(c), West Virginia adopts and incorporates by reference, without changes, the Federal definitions and exclusion. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. Under W. Va. Code 22-18-6(a)(12)(D), the State may grant exemptions and exclusions in a manner that is consistent with the Federal regulations.

- (15) *State statutes and regulations replace first edition SW-846 information with third edition information as indicated in Revision Checklists 67 and 73 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001; 40 CFR 261 Appendix III as amended September 29, 1989 (54 FR 40260) and March 9, 1990 (55 FR 8948).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At 33 CSR 20, §§33-20-1.6 and 33-20-3.1, under the authority granted under W. Va. Code §22-1-3(c), West Virginia adopts and incorporates by reference, without changes, the Federal test method. Under W. Va. Code §§22-18-6(a) and 22-18-23, the State has the authority to adopt rules that are consistent with and equivalent to the Federal regulations.

- (16) *State statutes and regulations revise the existing toxicity characteristic by replacing the Extraction Procedure (EP) leach test with the Toxicity Characteristic Leaching Procedure (TCLP) for identifying wastes that are defined as hazardous and subject to regulation under Subtitle C of RCRA as indicated in Revision Checklist 74, 108 and 117 B and included in Consolidated Checklist C2. State statutes and regulations also provide for the addition of 25*

organic chemicals and their regulatory levels to the list of toxic constituents of concern as indicated in Revision Checklist 74 and included in Consolidated Checklist C2.

Federal Authority: RCRA §§1006, 2002(a), 3001, 3002 and 3006; 40 CFR Part 261 as amended March 29, 1990 (55 FR 11798), June 29, 1990 (55 FR 26986), June 1, 1992 (57 FR 23062), and July 10, 1992 (57 FR 30657).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(2); §22-18-23; §22-1-3(c); 22-18-6(a)(12)(D)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At 33 CSR 20, §§33-20-1.6 and 33-20-3.1, under the authority granted under W. Va. Code §22-1-3(c), West Virginia has adopted by reference, without changes, the Toxicity Characteristics requirements found in the July 1, 1997 version of 40 CFR Part 261. Under W. Va. Code §22-18-6(a)(2) and 22-18-23, the State has the authority to adopt rules addressing the listing of hazardous waste which are consistent with the Federal regulations. Section 22-18-6(a)(12)(D) gives the State the authority to promulgate rules as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste program under RCRA.

(17) *State statutes and regulations contain language to result in consistent interpretation of the criteria for listing wastes as hazardous under RCRA as indicated in Revision Checklist 76 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001(a); 40 CFR 261.11(a)(3) as amended May 4, 1990 (55 FR 18726).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(2); §22-18-6(a); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the 40 CFR 261.11(a)(3) requirement at HWMR §§33-20-1.6 and 33-20-3.1. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). Under W. Va. Code 22-18-6(a), the rules must be consistent with, but no more expansive in coverage nor more stringent than, the rules and regulations promulgated by the Federal Environmental Protection Agency pursuant to RCRA, as amended.

- (18) State statutes and regulations include language making the characteristic of hazardous waste requirements and the requirements regarding container residues and inner liners consistent with the Third Third Land Disposal Restrictions as indicated in Revision Checklist 78 and included in Consolidated Checklist C2.**

Federal Authority: RCRA §§3001 and 3004(d)-(k)&(m); 40 CFR 261.20, 261.21, 261.22, 261.23, 261.24, and 261.33(c) as amended June 1, 1990 (55 FR 22520).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(2); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. W. Va. Code §22-18-6(a)(2) also gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including 40 CFR 261.20, 261.21, 261.22, 261.23, 261.24, and 261.33(c), without changes. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (19) State statutes and regulations include requirements for recyclable materials addressing the organic air emission standards for process vents and equipment leaks as indicated in Revision Checklist 79 and included in Consolidated Checklist C2.**

Federal Authority: RCRA §3001; 40 CFR 261.6(c)&(d), as amended June 21, 1990 (55 FR 25454).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(13); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §22-18-6(a)(13) gives the State the authority to establish air pollution performance standards. At §§33-20-1.6 and 3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 260 and has adopted, without changes, the Federal provisions at 40 CFR 261.6(c)&(d). W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference.

- (20) *State statutes and regulations extend until January 25, 1993 the compliance date for the Toxicity Characteristic requirements for produced ground-water from free phase hydrocarbon recovery operations at certain petroleum industry sites (refineries, marketing terminals and bulk plants) as indicated in Revision Checklist 80 and included in Consolidated Checklist C2. The extension for infiltration galleries at such operations ends October 2, 1991.*

Federal Authority: 5 U.S.C. §§553 and 705; RCRA §3001; 40 CFR 261.4(b)(11), as amended October 5, 1990 (55 FR 40834), February 1, 1991 (56 FR 3978) and April 2, 1991 (56 FR 13406).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

West Virginia has adopted by reference 40 CFR Part 261 at HWMR §§33-20-1.6 and 33-20-3.1, including the Federal provision at 40 CFR 264.1(b)(11). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. In addition, W. Va. Code §22-18-6(a)(12)(D) gives West Virginia the authority to grant variances and exemptions. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (21) *State statutes and regulations include definitions of oil/water/solids and aggressive biological treatment units and a statement concerning the point of generation for F037 and F038 sludges as indicated on revision Checklist 81 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001; 40 CFR 261.31(b), as amended November 2, 1990 (55 FR 46454) and December 17, 1990 (55 FR 51707).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provision 261.31(b). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (22) *State statutes and regulations exclude from being a solid waste spent wood preserving solutions that have been used and are reclaimed and reused for their original intended purpose as indicated in Revision Checklists 82 and 92, and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001; 40 CFR 261.4(a)(9), as amended December 6, 1990 (55 FR 50450) and July 1, 1991 (56 FR 30192).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provision 261.4(a)(9). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. W. Va. Code §22-18-6(a)(12)(D) gives the State the authority to promulgate rules that include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

- (23) *State statutes and regulations allow deletion of certain hazardous waste codes following equipment cleaning and replacement, provided that the requirements of 40 CFR 261.35 are*

met, as indicated in Revision Checklists 82 and 92, and included in Consolidated Checklist C2.

Federal Authority: RCRA §3001; 40 CFR 261.35, as amended December 6, 1990 (55 FR 50450) and July 1, 1991 (56 FR 30192).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provision 261.35. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act.

(24) *State statutes and regulations provide that a solid waste may still be subject to the 40 CFR Part 268 requirements, even if that waste no longer exhibits a characteristic at the point of land disposal as indicated in Revision Checklist 83 and included in Consolidated Checklist C2. State statutes and regulations also contain the other corrections to 40 CFR Part 261 requirements, as indicated in these checklists.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 261.3(d)(1) and 261.20, as amended January 31, 1991 (56 FR 3864).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261 at HWMR §§33-20-1.6 and 33-20-3.1. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (25) *State statutes and regulations exclude from being hazardous used chlorofluorocarbon (CFC) refrigerants from totally enclosed transfer equipment (including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems) that use chlorofluorocarbons as the heat transfer fluid in the refrigeration cycle, provided the refrigerant is reclaimed for further use as indicated in revision Checklist 84 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001; 40 CFR 261.4(b)(12), as amended February 13, 1991 (56 FR 5910).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provision 261.4(b)(12). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. W. Va. Code §22-18-6(a)(12)(D) gives the State the authority to promulgate rules that include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

- (26) *State statutes and regulations include as solid waste secondary materials, fed to a halogen acid furnace, that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste in 40 CFR 261, Subparts C and D as indicated in Revision Checklists 85, 94, 96, and 111 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001; 40 CFR Part 261.2(d)(2) and (e)(2)(iv), as amended February 21, 1991 (56 FR 7134), August 27, 1991 (56 FR 42504) and August 25, 1992 (57 FR 38558).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provisions at 40 CFR 261.2(d)(2) and (e)(2)(iv). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the

characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (27) *State statutes and regulations exclude from being a solid waste coke and coal tar from the iron and steel industry that contains or is produced from decanter tank tar sludge, EPA hazardous waste K087, when used as a fuel as indicated in Revision Checklists 85 and 94, and included in Consolidated Checklist C2. The process producing the coke and coal tar from such decanter tank tar sludge in a coke oven is also excluded from regulation.*

Federal Authority: RCRA §3001; 40 CFR 261.3(c)(2)(ii)(B), 261.4(a)(10) and 261.6(a)(3)(vii)-(viii), as amended February 21, 1991 (56 FR 7134) and July 17, 1991 (56 FR 32688).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal exclusions at 40 CFR 261.3(c)(2)(ii)(B), 261.4(a)(10) and 261.6(a)(3)(vii)-(viii). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. W. Va. Code §22-18-6(a)(12)(D) gives the State the authority to promulgate rules that include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

- (28) *State statutes and regulations do not exclude residues, derived from the burning or processing of hazardous waste in a boiler or industrial furnace, from the definition of a hazardous waste under 40 CFR 261.4(b)(4), (7) or (8) if the owner or operator meets the requirements of 40 CFR 266.112 as indicated in Revision Checklist 85 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001; 40 CFR 261.4(b)(4), 261.4(b)(7), 261.4(b)(8) and 266.112, as amended February 21, 1991 (56 FR 7134).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1; §33-20.9

45 CSR 25, effective June 1, 1999:
§45-25-3.2

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provision 261.4(b)(4), (7) and (8). Also, at §33-20-7 and 45-25-3.2, the State has adopted, without changes 40 CFR 264.112. West Virginia's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act.

- (29) *State statutes and regulations exclude from being a hazardous waste, certain nonwastewater residues resulting from high temperature metals recovery of K061, K062 or F006 provided the conditions in 261.3(c)(2)(ii)(C) are met as indicated in Revision Checklists 95 and 109 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001, 3004(d)-(k) and (m); 40 CFR 261.3(c)(2)(ii)(C), as amended August 19, 1991 (56 FR 41164) and August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the exclusion at 40 CFR 261.3(c)(2)(ii)(C). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §§22-18-6(a)(12)(D) provides the State with the authority to promulgate rules that include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

- (30) *State statutes and regulations exclude from being a solid waste, nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units provided the requirements of 261.4(a)(11) are met as indicated in Revision Checklist 95 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001, 3004(d)-(k) and (m); 40 CFR 261.3(c)(2)(ii)(C), as amended August 19, 1991 (56 FR 41164).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the exclusion at 40 CFR 261.3(c)(2)(ii)(C). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §§22-18-6(a)(12)(D) provides the State with the authority to promulgate rules that include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

- (31) *State statutes and regulations exempt, from the definition of hazardous, used oil filters meeting the 40 CFR 261.4(b)(13) criteria as indicated in Revision Checklists 104 and 107 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §§1004, 1006, 2002, 3001 and 3014; 40 CFR 261.4(b)(13) [in the July 1, 1996 CFR], as amended May 20, 1992 (57 FR 21524) and July 1, 1992 (57 FR 29220).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the exclusion at 40 CFR 261.4(b)(13). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §§22-18-6(a)(2) and 22-18-6(a)(12)(D) provide the State with the authority to promulgate rules for the identification and listing of hazardous waste and to include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA. The State does not have a specific statutory provision addressing used oil filters. However, W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the authority to perform any and all acts necessary to carry out the purposes of the requirements of RCRA Subtitle C and to adopt rules that are consistent with and equivalent to the Federal code.

- (32) *State statutes and regulations exclude from being a solid waste K060, K087, K141, K142, K143, K144, K145, K147 and K148, and those coke by-product residues that are hazardous only because they exhibit the Toxicity Characteristic when, subsequent to generation, these*

wastes are recycled by being returned to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar as specified in Revision Checklists 105 and 110 and included in Consolidated Checklist C2.

Federal Authority: RCRA §§3001(e)(2) and (h); 40 CFR 261.4(a)(10), as amended June 22, 1992 (57 FR 27880) and August 18, 1992 (57 FR 37284).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the exclusion at 40 CFR 261.4(a)(10). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §§22-18-6(a)(12)(D) provides the State with the authority to promulgate rules that include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

(33) *State statutes and regulations include a clarification that non-wastewaters are still subject to the requirements of Part 268, even if they no longer exhibit a characteristic at the point of land disposal, as indicated in Revision Checklist 109 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 261.3(a)(2)(iii), as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provision at 40 CFR 261.3(a)(2)(iii), at HWMR §§33-20-1.6 and 33-20-3.1. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (34) *State statutes and regulations include requirements addressing when debris are not subject to regulation under 40 CFR Parts 260, 261 to 266, 268 or 270 as indicated in Revision Checklist 109 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 261.3(f), as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provision at 40 CFR 261.3(f). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions.

- (35) *State statutes and regulations provide that used oil containing >1000 p.m. total halogens is presumed to be hazardous waste (unless it is one specified at 261.3(a)(2)(v)(A)&(B)) and that the presumption may be rebutted by demonstrating the used oil does not contain hazardous waste as specified in Revision Checklist 112 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §§3001 and 3014; 40 CFR 261.3(a)(2)(v), as amended September 10, 1992 (57 FR 41566).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(2); §22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provision at 40 CFR 261.3(a)(2)(v). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) provides the State with the authority to promulgate rules for the identification and listing of hazardous waste. W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the authority to perform any and all acts necessary to carry out the purposes of the requirements of RCRA Subtitle C and to adopt rules that are consistent with and equivalent to the Federal code.

- (36) *State statutes and regulations subject used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic to the Part 279 requirements as indicated in Revision Checklist 112 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001 and 3014; 40 CFR 261.6(a), as amended September 10, 1992 (57 FR 41566).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(2); §22-18-6(a)(14); §22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provision at 40 CFR 261.6(a). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) provides the State with the authority to promulgate rules for the identification and listing of hazardous waste, while §22-18-6(a)(14) provides the authority for used oil rule. W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the authority to perform any and all acts necessary to carry out the purposes of the requirements of RCRA Subtitle C and to adopt rules that are consistent with and equivalent to the Federal code.

- (37) *State statutes and regulations contain reissued mixture and derived-from rules as indicated in Revision Checklist 117 A and included on Consolidated Checklist C2.*

Federal Authority: RCRA §§1006, 2002(a), and 3001-3005; 40 CFR 261.3, as amended March 3, 1992 (57 FR 7628), June 1, 1992 (57 FR 23062) and October 30, 1992 (57 FR 49278).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(2); §22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provision at 261.3. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. W. Va. Code §22-18-5(a) gives the State the authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C. W. Va. Code §22-18-23 requires the State's hazardous waste program to be consistent with the Federal program.

- (38) *State statutes and regulations do not require the use of the spike recovery correction as part of the Toxicity Characteristic Leaching Procedure as indicated in Revision Checklist 119 and included on Consolidated Checklist C2.*

Federal Authority: RCRA §§1006, 2002, 3001, 3002 and 3006; 40 CFR 261, Appendix II, as amended November 24, 1992 (57 FR 55114) and February 2, 1993 (58 FR 6854).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-6(a)(2); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provision Part 261, Appendix II. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (39) *State statutes and regulations exclude from regulation used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt produces as indicated in Revision Checklist 122 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001; 40 CFR 261.4, as amended May 3, 1993 (58 FR 26420).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal exclusions at 261.4. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. W. Va. Code §22-18-6(a)(12)(D) gives the State the authority to promulgate rules that include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

(40) State statutes and regulations directly refer to test methods as they are found in "Test Methods for Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as indicated in Revision Checklist 126 and included in Consolidated Checklists C1 and C2.

Federal Authority: RCRA §§1006; 2002, 3001, 3002, 3004, 3005, 3006, 3010, and 3014; 40 CFR 260.22(d)(1)(i); 261.22(a)(1)&(2); 261.24(a); and 261 Appendices II, III, and X, as amended August 31, 1993 (58 FR 46040).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including references to the Federal test methods. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-5(a) gives the State the authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C. W. Va. Code §22-18-23 requires the State's hazardous waste program to be consistent with the Federal program.

(41) State statutes and regulations increase the quantity and time limits for contaminated media used in treatability studies, as indicated in Revision Checklist 129 and included in Consolidated Checklist C2.

Federal Authority: RCRA §3001; 40 CFR 261.4(e)(2)(i)&(ii), (e)(3), (f)(3), (f)(4), and (f)(5), as amended February 18, 1994 (59 FR 8362).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provisions. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. W. Va. Code §22-18-6(a)(12)(D) gives the State the authority to promulgate rules that include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

(42) State statutes and regulations exclude recovered oil meeting the 40 CFR 261.4(a)(12) criteria from being a solid waste, as indicated in Revision Checklist 135, and included in Consolidated Checklist C2.

Federal Authority: RCRA §3001; 40 CFR 261.3(c)(2)(ii)(B), 261.4(a)(12) and 261.6(a)(3)(iv)-(vi), as amended July 28, 1994, (59 FR 38536).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal exclusions at 40 CFR 261.3(c)(2)(ii)(B), 261.4(a)(12) and 261.6(a)(3)(iv)-(vi). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. W. Va. Code §22-18-6(a)(12)(D) gives the State the authority to promulgate rules that include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

- (43) State statutes and regulations allow secondary materials that are recycled back into the secondary production process from which they were generated to be excluded from the definition of solid waste as per 261.2(e)(1)(iii), as indicated in Revision Checklist 137 and included in Consolidated Checklists C1 and C2.**

Federal Authority: RCRA §§3001 and 3004; 40 CFR 260.30, 260.30(b), 260.31(a)&(b), 260.32, 260.33, 260.33(a)&(b), 261.2(e)(1)(iii), as amended September 19, 1994 (59 FR 47982).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal exemption at 40 CFR 261.2(e)(1)(iii). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste, while W. Va. Code §22-18-6(a)(12)(D) gives the State the authority to promulgate rules that include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

- (44) State statutes and regulations exclude from being hazardous certain wastewaters from the production of carbamates and carbamoyl oximes of K157 provided the conditions in 261.3(a)(2)(iv)(F) are met as indicated in Revision Checklist 140 and included in Consolidated Checklist C2.**

Federal Authority: RCRA §§2002(a), 3001(b) and (e)(1); 40 CFR 261.3(a)(2)(iv)(E)&(F), as amended February 9, 1995 (60 FR 7824).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal exclusions at 40 CFR 261.3(a)(2)(iv)(F). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous

Waste Management Act. W. Va. Code §22-18-6(a)(12)(D) gives the State the authority to promulgate rules that include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

- (45) *State statutes and regulations exclude from being hazardous certain wastewaters derived from the treatment of one or more wastes listed in 261.32, organic waste from the production of carbamates and carbamoyl oximes of K156, provided the conditions in 261.3(a)(2)(iv)(G) are met as indicated in Revision Checklist 140 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §§2002(a), 3001(b) and (e)(1); 40 CFR 261.3(a)(2)(iv)(G), as amended February 9, 1995 (60 FR 7824).

Citation of Laws and Regulations, Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal exclusions at 40 CFR 261.3(a)(2)(iv)(G). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. W. Va. Code §22-18-6(a)(12)(D) gives the State the authority to promulgate rules that include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

- (46) *State statutes and regulations exclude from being hazardous biological treatment sludge from the treatment of organic wastes from the production of carbamates and carbamoyl oximes of K156 and wastewaters from the production of carbamates and carbamoyl oximes of K157 as indicated in Revision Checklist 140 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §§2002(a), 3001(b) and (e)(1); 40 CFR 261.3(c)(2)(ii)(D), as amended February 9, 1995 (60 FR 7824).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(2); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal exclusions at 40 CFR 261.3(c)(2)(ii)(D). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. W. Va. Code §22-18-6(a)(12)(D) gives the State the authority to promulgate rules that include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

- (47) *State statutes and regulations include universal waste requirements for conditionally exempt small quantity generators and define the relationship between Part 273 and the rest of the hazardous waste standards as indicated in Revision Checklist 142A and included in Consolidated Checklist C2.*

Federal Authority: RCRA §§2002, 3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 261.5(c), 261.5(f)(3)(vi), 261.5(g)(3)(vi), 261.9 intro, as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia adopts and incorporates by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provisions addressed by Revision Checklist 142A. W. Va. Code §22-1-3(c) provides the State with the authority to adopt the Federal regulations by reference.

- (48) *State statutes and regulations remove the used battery exemption at 261.6(a)(3)(ii) and add batteries to the list of universal wastes at 261.9, as indicated in Revision Checklist 142B and included in Consolidated Checklist C2.*

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 261.6(a)(3), 261.9(a), as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia adopts and incorporates by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provisions addressed by Revision Checklist 142B. W. Va. Code §22-1-3(c) provides the State with the authority to adopt the Federal regulations by reference.

- (49) *State statutes and regulations add pesticides that are either recalled or collected in waste pesticide collection programs to the list of universal wastes at 261.9 as indicated in Revision Checklist 142C and included in Consolidated Checklist C2.*

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 261.9(b), as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia adopts and incorporates by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provisions addressed by Revision Checklist 142C. W. Va. Code §22-1-3(c) provides the State with the authority to adopt the Federal regulations by reference.

- (50) *State statutes and regulations add hazardous waste thermostats to the list of universal wastes at 261.9 as indicated in Revision Checklist 142D and included in Consolidated Checklist C2.*

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 261.9(c), as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia adopts and incorporates by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provisions addressed by Revision Checklist 142D. W. Va. Code §22-1-3(c) provides the State with the authority to adopt the Federal regulations by reference. Note that at §33-20-3.3, West Virginia has modified the Federal provision at 40 CFR 261.9(c) to include "mercury containing lamps". Per EPA guidance, the State is not seeking authorization for its requirements for mercury containing lamps.

- (51) *State statutes and regulations allow petitions to include other wastes as universal wastes as indicated in Revision Checklist 142E and included in Consolidated Checklist C1.*

Federal Authority: RCRA §3001, 3002, 3003, 3004, 3005, 3010, and 3013; 40 CFR 260.23(a)-(d), as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-2.3; §33-20-2.5

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At §33-20-2.3, West Virginia has excepted 40 CFR 260.23 from its incorporation by reference of the Federal regulations. The State's analogous provisions, which are found at §33-20-2.5, are more stringent in that the State requires persons desiring to include a waste as a universal waste to petition the chief for such an inclusion after having received approval from the Administrator of EPA. Specific information must be submitted to the chief who may approve or deny the petition.

- (52) *State statutes and regulations provide that recovered oil excluded from the definition of hazardous waste at 40 CFR 261.4(a)(12) be inserted into the petroleum refining process at*

or before a point where contaminants are removed as indicated in Revision Checklist 150, and included in Consolidated Checklist C2.

Federal Authority: RCRA §§2002 and 3001; 40 CFR 261.4(a)(12), as amended March 26, 1996 (61 FR 13103).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-23; §22-1-3(c); §22-18-6(a)(2); §22-18-6(a)(12)(D)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. Under the authority granted under W. Va. Code §22-1-3(c), at 33 CSR 20, §§33-20-1.6 and 33-20-3.1, West Virginia has adopted by reference, without changes, the Federal exclusion under the conditions specified in the Federal regulations. W. Va. Code §22-18-6(a)(2) gives the State the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. Under W. Va. Code 22-18-6(a)(12)(D), the State may grant exemptions and exclusions in a manner that is consistent with the Federal regulations.

(53) *State statutes and regulations require that when wastes generated by conditionally exempt small quantity generators are sent to a State permitted, licensed or registered facility, that facility must be subject to 40 CFR Part 258 or §§ 257.5 through 257.30 as indicated in Revision Checklist 153 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001(d)(4); 40 CFR 261.5(f)(3)&(g)(3), as amended July 1, 1996 (61 FR 34252).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1; §33-20-3.2

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. Under the authority granted under W. Va. Code §22-1-3(c), at 33 CSR 20, §§33-20-1.6, 33-20-3.1 and 33-20-3.2, West Virginia has adopted by reference 40 CFR 261.5(f)(3) and (g)(3), except for 261.5(f)(3)(iv)&(v) and (g)(3)(iv)&(v). At §33-20-3.2, West Virginia subjects conditionally exempt small quantity generators (CESQGs) to the notification requirements at §33-20-4, thus making the State more stringent. West Virginia is also more stringent than the Federal code because unlike the Federal provisions at 40 CFR 261.5(f)(3)(iv)&(v) and (g)(3)(iv)&(v), the State does not allow CESQGs to deliver hazardous wastes to facilities that are permitted, licensed or registered to manage municipal solid waste or non-municipal non-hazardous waste.

- (54) *State statutes and regulations subject facilities that store recyclable materials, before they are recycled, to the organic air emissions standards for tanks, surface impoundments, and containers as indicated in Revision Checklist 154 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3004(n); 40 CFR 261.6(c)(1), as amended November 25, 1996 (61 FR 59932).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia adopts and incorporates by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provisions addressed by Revision Checklist 154. W. Va. Code §22-1-3(c) provides the State with the authority to adopt the Federal regulations by reference.

- (55) *State statutes and regulations identify when conventional and chemical military munitions become a hazardous waste under RCRA as indicated in Revision Checklist 156 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §§2002, 3001, 3004(y); 40 CFR 261.2(a)(2)(iii) and (iv), as amended February 12, 1997 (62 FR 6622)

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia adopts and incorporates by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provisions addressed by Revision Checklist 156. W. Va. Code §22-1-3(c) provides the State with the authority to adopt the Federal regulations by reference.

- (56) *State statutes and regulations include revisions to the exclusion of scrap metal and circuit boards from RCRA regulation as indicated in Revision Checklist 157 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001; 40 CFR 261.1(c)(9)-(12), 261.2(c)/Table 1, 261.4(a)(13) and (14), 261.6(a)(3)(ii) as amended May 12, 1997 (62 FR 25998).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia adopts and incorporates by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provisions addressed by Revision Checklist 157. W. Va. Code §22-1-3(c) provides the State with the authority to adopt the Federal regulations by reference.

- (57) *State statutes and regulations include revisions designed to conform with the Federal appeals court ruling (98 F.3d 1394 (D.C. Cir. 1996)) which invalidated, in part, certain EPA regulations listing certain carbamate wastes as hazardous as indicated in Revision Checklist 159 and included in Consolidated Checklist C2.*

Federal Authority: RCRA §3001 and 3004; 40 CFR 261.32, 261.33(f), Part 261 Appendix VII and Appendix VIII as amended June 17, 1997 (62 FR 32974).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At HWMR §§33-20-1.6 and 33-20-3.1, West Virginia adopts and incorporates by reference the July 1, 1997 version of 40 CFR Part 261, including the Federal provisions addressed by Revision Checklist 159. W. Va. Code §22-1-3(c) provides the State with the authority to adopt the Federal regulations by reference. Note that the West Virginia provision at §33-20-3.4 simply recognizes the federal appeals court ruling 198 F.3d 1394 (D.C. Cir. 1996). With the adoption of the federal provision addressed by Revision Checklist 159, §33-20-3.4 is no longer needed and will be deleted from the State's regulations.

III. STANDARDS FOR GENERATORS

Federal Authority: RCRA §3002; 40 CFR 271.10, as amended April 1, 1983 (48 FR 14146), June 30, 1983 (48 FR 30113), March 20, 1984 (49 FR 10490), March 26, 1984 (49 FR 11180), August 8, 1986 (51 FR 28664), and September 22, 1986 (51 FR 33712).

A. State statutes and regulations provide coverage of all generators covered by 40 CFR Part 262 and include requirements for EPA identification number, reporting and recordkeeping, accumulation of hazardous waste for short time periods, waste placed in containment buildings, packaging, labeling, marking, placarding, international shipments, manifesting of hazardous waste for off-site shipment, notification procedures for interstate shipments as indicated in Consolidated Checklist C3 (formerly Checklist II) which includes the revisions represented by Revision Checklists 1, 5, 12, 17 D, 17 R, 23, 28, 31, 32, 34, 39, 42, 48, 71, 78, 82, 83, 92, 97, 109, 142A, 154, and 156.

Federal Authority: RCRA §3002; 40 CFR Part 262 as amended January 28, 1983 (48 FR 3977), March 20, 1984 (49 FR 10490), December 20, 1984 (49 FR 49568), July 15, 1985 (50 FR 28702), March 24, 1986 (51 FR 10146), July 14, 1986 (51 FR 25422), August 8, 1986 (51 FR 28664), October 1, 1986 (51 FR 35190), November 7, 1986 (51 FR 40572), July 8, 1987 (52 FR 25760), September 23, 1987 (52 FR 35894), July 19, 1988 (53 FR 27164), January 23, 1990 (55 FR 2322), June 1, 1990 (55 FR 22520), December 6, 1990 (55 FR 50450), January 31, 1991 (56 FR 3864), July 1, 1991 (56 FR 30192), September 4, 1991 (56 FR 43704), August 18, 1992 (57 FR 37194), December 6, 1994 (59 FR 62896), May 11, 1995 (60 FR 25492), February 9, 1996 (61 FR 4903), November 25, 1996 (61 FR 59932), and February 12, 1997 (62 FR 6622).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a); §22-18-6(a)(3); §22-18-6(a)(12)(D); §22-18-6(a)(15); §22-18-6(a)(9); §22-18-7(a)-(c); §22-18-5(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-5.1; §33-20-5.2; §33-20-5.2.a.; §33-20-5.2.b; §33-20-5.3; §33-20-5.4; §33-20-4

45 CSR 25, effective June 1, 1999:

§45-25-1.1.b.A

157 CSR 7, effective April 28, 1999:
§157-7-3

Remarks of the Chief of the Office of Legal Services

The statutory language of W. Va. Code §22-18-6(a)(3) pertaining to generators is equivalent to, and consistent with, the Federal provisions at RCRA §3002. W. Va. Code §22-18-6(a)(3) does not specifically address the authority of the director to promulgate rules addressing waste minimization; however, under W. Va. Code §§22-18-6(a), 22-18-6(a)(15) and 22-18-23, the director has the authority to adopt rules that are consistent with, and equivalent to the Federal requirements under Subtitle C of RCRA. In addition, Va. Code §22-18-5(a) gives the director the authority to "perform any and all acts necessary to carry out the purposes of the requirements of Subtitle C of the Resource Conservation and Recover Act." W. Va. 22-1-3(c) gives West Virginia the authority to adopt Federal regulations by reference.

At §33-20-1.6 and §33-20-5 of the West Virginia Hazardous Waste Management Rule, the State has adopted by reference, the July 1, 1997 version of 40 CFR Part 262 provisions as addressed by the above-listed checklists, with the exception of 40 CFR 262.10(g). Instead of 40 CFR 262.10(g), West Virginia has a State analog at §33-20-5.2.a and b which makes it clear that the exception does not, in any way, abrogate the enforcement authority of RCRA §3008.

The State's provision at §33-20-4 subjects generators to the State's notification requirements for hazardous waste activities.

At §§33-20-1.6, 33-20-5.3 and 33-20-5.4, West Virginia has adopted 40 CFR Part 262, Subparts E and H. However, the State makes it clear that the Subparts E and H provisions remain the provenance of the EPA. In addition to the requirements of 40 CFR Part 262, Subparts E and H, West Virginia requires copies of the manifests and other documents to be sent to the State, thus making the State more stringent.

Further, §45-25-1.1.b.A of the Office of Air Quality regulations extend the coverage of those regulations to generators storing on site for periods of less than ninety (90) days, making them subject to the air regulations. This is consistent with the Federal regulations which subject generators to 40 CFR Parts 264/265, Subparts AA, BB and CC.

Title 157, Article 7 of the DOH regulations addresses requirements for highway transportation which could affect generators who transport. Specifically, §157-7-3 makes it clear that generators offering hazardous waste for off-site treatment, storage, or disposal facilities are subject to the manifest requirements. This requirement is consistent with 40 CFR 262.20, which West Virginia adopts by reference. The rail regulations do not include requirements for generators; however, at §150-11-2.1, the State makes it clear that a rail transporter may not accept hazardous waste from a generator, unless it is accompanied by a manifest signed by a generator.

B. *Specific provisions amending 40 CFR Part 262 since January 1, 1983 that are included in State statutes and requirements are as follows:*

- (1) *State statutes and regulations require that generators submit a biennial report and that the biennial report contain the information in 40 CFR 262.41(a) as indicated in Revision Checklist 1 and included in Consolidated Checklist C3.***

Federal Authority: RCRA §3002; 40 CFR Part 262, as amended January 28, 1983 (48 FR 3977).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(3)(F); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

The wording of W. Va. §22-18-6(a)(3)(F) is consistent with RCRA §3002(a)(6)(A)&(B) and gives the director the authority to establish rules establishing reporting requirements. At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.41 without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference.

- (2) *State statutes and regulations require generators to use the national uniform manifest as indicated in Revision Checklists 5, 17 D and 32 and included in Consolidated Checklist C3.*

Federal Authority: RCRA §§2002, 3002 and 3003; 40 CFR Part 262, as amended March 20, 1984 (49 FR 10490), July 15, 1985 (50 FR 28702), and October 1, 1986 (51 FR 35190).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(3)(E); §22-18-7(a)-(c); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-5.1

157 CSR 7, effective April 28, 1999:
§157-7-3

Remarks of the Chief of the Office of Legal Services

The wording of W. Va. §22-18-6(a)(3)(E) is consistent with RCRA §3002(a)(5) and gives the director the authority to require the use of a manifest system. At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR Part 262 manifest requirements without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference. In addition, §157-7-3 addresses the use of the uniform manifest system as required by 40 CFR Part 262. The State's authority for highway transportation is provided by §22-18-7(a) and (c). The rail regulations do not address generators.

- (3) *State statutes and regulations allow generators to accumulate at the site of generation, without a permit or interim status, as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste provided that the generator complies with the requirements*

specified in 40 CFR 262.34(c) as indicated in Revision Checklist 12 and included in Consolidated Checklist C3.

Federal Authority: RCRA §§2002, 3002, 3004 and 3005; 40 CFR 262.34(c), as amended December 20, 1984 (49 FR 49568).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-6(a)(15); §22-18-23; §22-1-3(c)

HWMR 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

Under W. Va. §§22-18-6(a), 22-18-6(a)(15) and 22-18-23, West Virginia has the authority to promulgate rules that are consistent with and equivalent to the Federal regulations. At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.34(c) without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference.

- (4) *State statutes and regulations require generators to submit as part of a Biennial Report a description and certification regarding efforts taken to minimize the amounts and toxicity of wastes as indicated in Revision Checklist 17 D and included in Consolidated Checklist C3.*

Federal Authority: RCRA §3002(a)(6)&(b); 40 CFR 262.41(a)(6)-(8), as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a)(12)(D); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

Under W. Va. §§22-18-5(a), 22-18-6(a)(12)(D) and 22-18-23, West Virginia has the authority to perform any acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to promulgate rules that are consistent with and equivalent to the Federal regulations. §22-18-6(a)(12)(D) specifically addresses the consistency of the State program with the HSWA amendments under whose authority the rule addressed by Revision Checklist 17D was promulgated. At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.41(a)(6)-(8) without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference.

- (5) *State statutes and regulations require generators (including small quantity generators of between 100 and 1000 kg/mo) to certify to a good faith effort to minimize hazardous waste as specified in Revision Checklists 17 D and 32 and included in Consolidated Checklist C3.*

Federal Authority: RCRA §3002(a)(6)&(b); 40 CFR Part 262 Appendix - Uniform Hazardous Waste Manifest Form, as amended July 15, 1985 (50 FR 28702) and October 1, 1986 (51 FR 35190).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a)(12)(D); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code §§22-18-5(a), 22-18-6(a)(12)(D) and 22-18-23, West Virginia has the authority to perform any acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to promulgate rules that are consistent with and equivalent to the Federal regulations. §22-18-6(a)(12)(D) specifically addresses the consistency of the program with the HSWA amendments under whose authority the rule addressed by CL 17D was promulgated. At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of the certification statement in Appendix I of 40 CFR Part 262, addressing waste minimization, without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference.

- (6) *State statutes and regulations require generators and transporters of hazardous waste destined for export outside the United States to comply with standards equivalent to those as indicated in Revision Checklists 17 R, 31, 48 and 97 (with Checklists 48 and 97 providing technical corrections to Checklist 31) and included in Consolidated Checklists C3, C5, C6 and C9.*

Federal Authority: RCRA §3017; 40 CFR 262.50-262.58, 264.1, 265.1, and 270.1(c)(2)(ii), as amended July 15, 1985 (50 FR 28702), August 8, 1986 (51 FR 28664), July 19, 1988 (53 FR 27164) and September 4, 1991 (56 FR 43704).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(3)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-5.3

Remarks of the Chief of the Office of Legal Services

§22-18-6(a)(3) gives the State the authority to adopt standards for generators of hazardous waste. However, West Virginia has adopted the 40 CFR 262.50 through 262.58 provisions. At 33-20-5.3, the State clarifies that such provisions remain the provenance of EPA. The State is more stringent in that it requires

persons subject to 40 CFR Part 262, Subpart E to file copies of all documentation, manifests, reports, etc. with the State.

- (7) *State statutes and regulations provide for special generator requirements for hazardous waste produced by small quantity generators of between 100 and 1000 kilograms/month as indicated in Revision Checklist 23 and included in Consolidated Checklist C3.*

Federal Authority: RCRA §3001(d); 40 CFR Part 262, as amended March 24, 1986 (51 FR 10146).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(3); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of the small quantity generator requirements at 40 CFR Part 262 without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference. The State's authority to promulgate rules affecting generators is provided by W. Va. §22-18-6(a)(3).

- (8) *State statutes and regulations require that generators who accumulate hazardous waste on site in containers or tanks must comply with certain sections of 40 CFR Part 265 as indicated in Revision Checklist 28 and included in Consolidated Checklist C3.*

Federal Authority: RCRA §§1006, 2002, 3001, and 3002; 40 CFR 262.34, as amended on July 14, 1986 (51 FR 25422).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(3); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-5.1; §33-20-4

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.34 without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference. The State's authority to promulgate rules affecting generators is provided by W. Va. §22-18-6(a)(3).

- (9) *State statutes and regulations require that, if a waste is determined to be hazardous, the generator must refer to the requirements specified in 40 CFR Parts 264, 265 and 268 for possible exclusions or restrictions pertaining to management of his specific waste as indicated in Revision Checklist 34 and included in Consolidated Checklist C3.*

Federal Authority: §3004(d)-(k) and (m); 40 CFR 262.11(d), as amended November 7, 1986 (51 FR 40572).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(3); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.11(d) without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference. The State's authority to promulgate rules affecting generators is provided by W. Va. Code §22-18-6(a)(3). W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) give West Virginia the authority to promulgate rules addressing land disposal restrictions.

- (10) *State statutes and requirements provide that a farmer disposing of waste pesticide from his own use in accordance with the requirements specified at 40 CFR 262.70 is not subject to the land disposal restrictions as indicated in Revision Checklist 39 and included in Consolidated Checklist C3.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 262.70, as amended July 8, 1987 (52 FR 25760) and July 19, 1988 (53 FR 27164).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(3); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.70 without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference. The State's authority to promulgate rules affecting generators is provided by W. Va. Code §22-18-6(a)(3).

W. VA code §22-18-6(a)(12)(D) gives the State the authority to allow exemptions and variances as appropriate to allow the State to assume primacy for RCRA and the HSWA amendments.

- (11) *State statutes and regulations require that generators, of between 100 and 1000 kg/mo of hazardous waste, file an exception report in those instances where the generator does not receive confirmation of delivery of his hazardous waste to the designated facility as indicated in Revision Checklist 42 and included in Consolidated Checklist C3.*

Federal Authority: RCRA §§3001(d) and 3002(a)(5); 40 CFR Parts 262.42 and 262.44, as amended September 23, 1987 (52 FR 35894).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(3); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.42 and 262.44 without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference. The State's authority to promulgate rules affecting generators is provided by W. Va. §22-18-6(a)(3).

- (12) *State statutes and regulations require that generators who ship hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility, as indicated in Revision Checklist 71 and included in Consolidated Checklist C3.*

Federal Authority: RCRA §§2002, 3002 and 3003; 40 CFR 262.23(e), as amended January 23, 1990 (55 FR 2322).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a) & (a)(3); §22-18-5(a); §22-18-7(a)-(c); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.42 and 262.23(e) without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference. W. Va. Code §22-18-6(a)(3), the State's analog to RCRA §3002, gives the director the authority to promulgate rules affecting generators. W. Va. Code §22-18-7(a)-(c) provides the authority to regulate rail and highway transporters. W. Va. Code §§22-18-6(a), 22-18-5(a) and 22-18-23 provide the State with the authority to regulate transportation of hazardous waste by all other means..

- (13) *State statutes and regulations provide for generator requirements as necessitated by the Third Third land disposal restrictions as indicated in Revision Checklist 78 and included in Consolidated Checklist C3.*

Federal Authority: RCRA §§3002 and 3004(d)-(k) and (m); 40 CFR 262.11(c) and 262.34(a), as amended June 1, 1990 (55 FR 22520).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(3); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-5.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR 262.11(c) and 262.34(a) without changes. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(3) gives the State the authority to promulgate regulations for hazardous waste generators and §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions.

- (14) *State statutes and regulations allow 90 days or less accumulation without a permit for wastes placed on a drip pad, provided the generator meets the requirements in 40 CFR 262.34(a)(2) as indicated in Revision Checklists 82 and 92 and included in Consolidated Checklist C3.*

Federal Authority: RCRA §§3002, 2002(a) and 3001(b)&(e)(1); 40 CFR 262.34(a)(2)-(5), as amended December 6, 1990 (55 FR 50450) and July 1, 1991 (56 FR 30192).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
 §22-18-6(a)(3); §22-18-6(a)(12)(D); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
 §33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.34(a)(2) without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference. The State's authority to promulgate rules affecting generators is provided by W. Va. §22-18-6(a)(3). In addition, W. Va. Code §§22-18-6(a)(12)(D) provides the State with the authority to grant exemptions and variances in a manner necessary to allow the State to assume primacy for the administration of the Federal program under Subtitle C, and to adopt rules that are consistent with, but no more expansive in coverage nor more stringent in effect than, rules and regulations promulgated under RCRA Subtitle C, and the HSWA amendments, the authority under which the rule addressed by Revision Checklist 82 was adopted.

- (15) *State statutes and regulations require that generators of greater than 100 but less than 1,000 kg/calendar month, who accumulate hazardous waste on site for 180 days or less without a permit, to comply with 40 CFR 268.7(a)(4) as indicated in Revision Checklist 83 and Consolidated Checklist C3. State statutes and regulations contain the other corrections to the generator requirements as indicated in these checklists.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 262.11(c) and 262.34(d)(4), as amended January 31, 1991 (56 FR 3864).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
 §22-18-6(a)(3); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
 §33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.11(c) and 262.34(d)(4) without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference. The State's authority to promulgate rules affecting generators is provided by W. Va. §22-18-6(a)(3).

- (16) *State statutes and regulations allow 90 days or less accumulation without a permit for wastes placed in containment buildings, provided the generator complies with the Part 265 Subpart DD and professional engineer certification requirements, and meets the other requirements in 40 CFR 262.34(a)(1)(iv) and (a)(2)-(4) as indicated in Revision Checklist 109 and included in Consolidated Checklist C3.*

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 262.34, as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(3); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.34(a)(1)(v) and (a)(2)-(4) without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference. The State's authority to promulgate rules affecting generators is provided by W. Va. Code §22-18-6(a)(3). W. Va. Code §§22-18-6(a)(12)(A), (B) and (D), the State's analogs to RCRA §3004(d)-(k) and (m), give West Virginia the authority to promulgate rules addressing land disposal restrictions.

- (17) State statutes and regulations include amendments to the generator requirements regarding universal wastes including a provision stating that 261.5(c)&(d) must be used to determine the applicability of Part 262 for those provisions dependent on a quantity determination as indicated in Revision Checklist 142A and included in Consolidated Checklist C3.**

Federal Authority: RCRA §§2002, 3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 262.10(b), 262.11(d), as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(3); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.10(b) and 262.11(d) without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference. The State's authority to promulgate rules affecting generators is provided by W. Va. §22-18-6(a)(3).

- (18) State statutes and regulations contain revisions to the generator accumulation time requirements as indicated in Revision Checklist 154 and included in Consolidated Checklist C3.**

Federal Authority: RCRA §3004(n); 40 CFR 262.34(d)(2), as amended December 6, 1994 (59 FR 62896).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(3); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.34(d)(2) without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference. The State's authority to promulgate rules affecting generators is provided by W. Va. §22-18-6(a)(3).

- (19) *State statutes and regulations provide for an exemption from the generator requirements for persons responding to an explosives or munitions emergency in accordance with 40 CFR 264.1(g)(8)(i)(D) or (iv) or 265.1(c)(11)(i)(D) or (iv), and 270.1(c)(3)(i)(D) or (iii) as indicated in Revision Checklist 156 and included in Consolidated Checklist C3.*

Federal Authority: RCRA §3002, 3004(y); 40 CFR 262.10(i), as amended February 12, 1997 (62 FR 6622).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(3); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.10(i) without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference. The State's authority to promulgate rules affecting generators is provided by W. Va. Code §22-18-6(a)(3). W. Va. code §22-18-6(a)(12)(D) gives the State the authority to allow exemptions and variances as appropriate to allow the State to assume primacy for RCRA and the HSWA amendments.

- (20) *State statutes and regulations provide that generators and transporters of hazardous waste are exempt from the RCRA manifest system requirements for the transportation of hazardous waste on public or private right-of-ways on or along the border of contiguous properties, under the control of the same person, regardless of whether the contiguous properties are divided by right-of-ways, as indicated in Revision Checklist 156 and included in Consolidated Checklist C3.*

Federal Authority: RCRA §3002, 3003 and 3004(y); 40 CFR 262.20(f), as amended February 12, 1997 (62 FR 6622).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(3); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-5.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6 and 33-20-5.1, West Virginia has adopted the July 1, 1997 version of 40 CFR 262.20(f) without any changes. W. Va. Code §22-1-3(c) gives West Virginia the authority to adopt the Federal regulations by reference. The State's authority to promulgate rules affecting generators is provided by W. Va. Code §22-18-6(a)(3). W. VA code §22-18-6(a)(12)(D) gives the State the authority to allow exemptions and variances as appropriate to allow the State to assume primacy for RCRA and the HSWA amendments.

IV. STANDARDS FOR TRANSPORTERS

Federal Authority: RCRA §3003; 40 CFR 271.11, as amended April 1, 1983 (48 FR 14146), August 8, 1986 (51 FR 28664), and September 22, 1986 (51 FR 33712).

A. State statutes and regulations provide coverage of all the transporters covered by 40 CFR Part 263 and include requirements for EPA identification number, recordkeeping, manifesting, and actions regarding hazardous waste discharged during transit, as indicated in Consolidated Checklist C4 (formerly Checklist III) which includes the changes made by Revision Checklists 23, 31, 34 and 156.

Federal Authority: RCRA §3003; 40 CFR Part 263, as amended March 24, 1986 (51 FR 10146), August 8, 1986 (51 FR 28664), November 7, 1986 (51 FR 40572), and February 12, 1997 (62 FR 6622).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a)(9); §22-18-6(a)(12)(D); §22-18-6(a)(15); §22-18-7(a)-(c);
§22-18-23; §22-1-3(c); §22-18-2(b)(2)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-6.1 and 6.2; §33-20-4

150 CSR 11, effective November 8, 1999:
§§150-11-1 through 150-11-6 [§§150-11-1.8, 1.11, 2.1.1 and 2.6.2 are to be revised;
§§150-11-2.6.1.d and 2.8 are to be adopted]

157 CSR 7, effective April 28, 1999:
§§157-7-1 through 157-7-6

Remarks of the Chief of the Office of Legal Services

One of the purposes of the West Virginia Hazardous Waste Management Act as set out in W. Va. Code §22-18-2(b)(2), is to "establish a program of regulation over the ... transportation ... of hazardous waste." To accomplish this purpose, three different state agencies are empowered under Article 18 to promulgate rules and regulations concerning such transportation.

W. Va. Code §22-18-7(a) authorizes and requires the commissioner of the Division of Highways (DOH), in consultation with the Director of the Division of Environmental Protection, to promulgate regulations governing the transportation of hazardous wastes by vehicle upon roads and highways of West Virginia. W. Va. Code §22-18-7(b) authorizes and requires the Public Service Commission (PSC), in consultation with the Director of the Division of Environmental Protection, to promulgate regulations governing the transportation of hazardous wastes by rail. Such regulations have been promulgated by both the DOH and PSC and will be in full force and effect at the time the State's hazardous waste program is approved. Additionally, W. Va. Code 22-18-7(c) is consistent with and equivalent to RCRA §3003(a).

Note that the DOH promulgated an Emergency Rule effective April 28, 1999, which contained changes to the rules that are required for authorization. The Emergency Rule will expire on July 28, 2000, or when the DOH submits a Final Rule Filing with the Secretary of State. An Emergency Rule was promulgated instead of a Legislative Rule because the proposed changes were not included in the rule making bills before the 1999 Legislature. The filing of an Emergency Rule was necessary to incorporate changes to Federal statutes and regulations so that West Virginia can receive final authorization for such changes. Without the Emergency Rule, the DOH rules would reference obsolete versions of the statutes and the hazardous waste management rules at 33 CSR 20 which were changed with the passage of House Bill #2533 effective July 1, 1999. When the Emergency Rule expires, the former rules, lacking subsequent action, would be reinstated. However, the changes addressed by the Emergency Rule will be undertaken by the 2000 Legislature as part of the proposed Legislative Rule submitted with this application. The proposed Legislative Rule will make permanent the version of the DOH rules currently found in the Emergency Rule. The only additional changes are the change in the date of the CFR that is incorporated by reference from "July 1, 1997" to "July 1, 1998" and the change in the effective date of West Virginia statutes and regulations referenced in the rules from "July 1, 1998" to "July 1, 1999". The additional changes are consistent with proposed changes to the hazardous waste management rules. Following bill passage and signature by the Governor of the proposed Legislative Rule, DOH will file the Final Rule with the Secretary of State with an effective date of July 1, 1999, to coincide with the effective date of state statutes incorporated by reference in Section 1.6 of 157 CSR 7. Therefore, the changes made by the Emergency Rule and submitted with this application will not lapse subsequent to authorization.

The scope of regulatory authority of the DOH and PSC is quite limited and does not extend to transportation of hazardous waste by air and water. In contrast to the PSC and DOH, the Director of the

Division of Environmental Protection, under West Virginia Code § 22-18-5(a), has been given broad regulatory authority and is empowered and required to "perform an and all acts necessary to carry out the purposes and requirements of Subtitle C of Resources Conservation and Recovery Act." West Virginia Code § 22-18-6(a)(12)(D) requires the Director to promulgate whatever regulations are necessary to assume primacy for the administration of the federal hazardous waste management program. Thus, the Division has the statutory authority to promulgate regulations for all other modes of hazardous waste transportation, other than transportation by rail and by vehicle upon state roads and highways; the Division has adopted and incorporated by reference federal regulations relative to the transportation of hazardous waste by air and water.

It should be noted that transportation inspection and enforcement authority of the PSC over hazardous waste transportation by rail and the DOH's authority over hazardous waste transportation on the roads and highways is not exclusive. West Virginia Code § 22-18-7(a) & (b) provides that the PSC and the commissioner of the DOH have "same enforcement and inspection powers as those granted under the HWMA to the Director or authorized representative or agent or any authorized employee or agent of the division." This parallel inspection and enforcement authority under the HWMA allows the Division to take enforcement action against transportation violations noted by the PSC and the DOH. Memoranda of Understanding (MOUs) between the Division and the DOH and between the Division and the PSC are hereby incorporated by reference. These documents outline the delineation of responsibilities among the three regulatory agencies in the implementation of the Hazardous Waste Management Act as it applies to transportation by rail or over roads and highways.

At HWMA §§ 33-20-1.6 and 33-20.6.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Part 263 as it relates to hazardous waste transportation of hazardous waste by air and water. The State's authority to adopt Federal regulations by reference is provided by W. Va. Code § 22-1-3(c). The regulations of hazardous waste transportation by roads/highways and railroads are addressed in 157 CSR 7 and 150 CSR 11, respectively. The State's regulations, like the Federal regulations, do not include definitions for "road" and "highway". However, under § 22-18-7(a), the State's regulations under the Division of Highways must be consistent with the Federal DOT requirements. Therefore, the DOH regulations are interpreted as applying to all persons transporting hazardous waste by any vehicle subject to the Federal DOT requirements, as set forth in 49 CFR Parts 171 through 173, 177 through 179, 387 and 390 through 397, and as incorporated by reference at 157-7-5.1. In addition, road/highway transporters are subject to all applicable regulations of 40 CFR Parts 262 and 263 in effect as of July 1, 1997 and as incorporated by reference at §§ 157-7-1.6 and 157-7-5.1. Section 150-11-1.8 also requires all rail transporters to comply with all applicable standards for generators of hazardous waste contained in Section 5 (the State's analog to 40 CFR Part 262) of 33 CSR 20. Like the West Virginia Division of Environmental Protection, which incorporates the Federal regulations by reference, the DOH (at § 157-7-3) and PSC (at § 150-11-2) subject transporters to manifest requirements that are equivalent to the Federal regulations at 40 CFR 263.20 and 263.21. All transporters of hazardous waste are required to obtain EPA identification numbers. In addition, transporters must comply with the State's notification requirements at § 33-20-4.

The State's reporting requirements for transporters are more stringent as outlined below:

(1) With respect to the spill notification and reporting requirements, rail transporters, at § 150-11-5.3.1 and 2, must also notify the Railroad Safety Division of the Public Service Commission and the West Virginia Division of Environmental Protection, Environmental Enforcement. Highway transporters, at § 157-7-6.3.1 & 6.3.2, must also notify the West Virginia Division of Highways and the Division of Environmental Protection, Office of Waste Management.

(2) West Virginia has included some of the language of 49 CFR 171.15 to more clearly specify when notice is required to the National Response Center. West Virginia, at §150-11-5.3.2 and at §157-7-6.3.4 details the information that must be provided in the notice. The Federal regulations are not this specific.

(3) West Virginia, at §157-7-6.4.1 requires that a report also be submitted to the State Division of Highways, the West Virginia Division of Environmental Protection and the U. S. Department of Transportation. The State is also more stringent at these citations in that it requires that the written report be submitted within 15 calendar days of the date of discovery of the discharge, whereas the Federal code, under 49 CFR 171.16, allows the report to be submitted within 30 days of the date of discharge.

(4) At 157-7-6.4.2, West Virginia outlines the information that must be included in the report. The Federal requirements are not this specific. West Virginia specifies a time frame of 15 days. The Federal regulations do not.

B. Specific provisions amending 40 CFR Part 263 since January 1, 1983 that are included in State statutes and requirements are as follows:

- (1) *State statutes and regulations provide that transporters transporting hazardous waste from a generator who generates greater than 100 kg but less than 1000 kg of hazardous waste in a calendar month need not comply with the manifest and recordkeeping system requirements specified in 40 CFR 263.20 and 263.22 provided the requirements specified in 40 CFR 263.20(h)(1)-(4) are complied with as indicated in Revision Checklist 23 and included in Consolidated Checklist C4.*

Federal Authority: RCRA §3001(d); 40 CFR Part 263, as amended March 24, 1986 (51 FR 10146).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); 22-18-7(a)-(c); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-6.1

150 CSR 11, effective November 8, 1999:
§§150-11-2.8 through 2.8.4

157 CSR 7, effective April 28, 1999:
§157-7-3.3 through 157-7-3.3.8

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-6.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 263, including the Federal provision at 40 CFR 263.20(h). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). The State also has equivalent provisions at §§150-11-2.8 through 2.8.4 in the PSC regulations and at §§157-7-3.3 through 157-7-3.3.8 in the DOH regulations. §§22-18-5(a) and 22-18-7(a)-(c) provide the State with the authority to promulgate rules for transporters.

- (2) *State statutes and regulations prohibit transporters from accepting wastes from an exporter unless an EPA Acknowledgment of Consent is attached to the manifest (except for transport by rail and water which must comply with the requirements specified at 263.20(e)(2)&(f)(2)). Both documents must accompany the waste en route. The transporter is required to deliver a copy of the manifest to a U.S. Customs Official at the point where the waste leaves the U.S., and the transporter must refuse a waste for export if he knows the waste does not conform to the Acknowledgment of Consent. These requirements are indicated in Revision Checklist 31 and are included in Consolidated Checklist C4.*

Federal Authority: RCRA §3017; 40 CFR 263.20, as amended August 8, 1986 (51 FR 28664).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§§22-18-5(a); 22-18-7(b)&(c); 22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§§33-20-1.6; 33-20-6.1; 33-20-6.2

150 CSR 11, effective November 8, 1999:

§§150-11-2.1.1 (to be revised); 150-11-2.3; 150-11-2.7.3; 150-11-2.7.4

157 CSR 7, effective April 28, 1999:

§§157-7-3.1.1; 157-7-3.1.3; 157-7-3.4.3; 157-7-3.4.4

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-6.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 263.20, as addressed by Revision Checklist 31. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). The State's provision at HWMR §33-20-6.2 subjects rail transporters and roads/highway transporters to the regulations in 150 CSR 11 and 157 CSR 7, respectively. The State has equivalent provisions at §§150-11-2.1.1, 150-11-2.3, 150-11-2.7.3, and 150-11-2.7.4 in the PSC regulations; and at §§157-7-3.1.1, 157-7-3.1.3, 157-7-3.4.3 and 157-7-3.4.4 in the DOH regulations. §§22-18-5(a) and 22-18-7(b)&(c) provide the State with the authority to promulgate rules for transporters.

- (3) *State statutes and regulations exempt, from the land disposal requirements, transporters who store hazardous waste shipments at transfer facilities meeting the requirements specified in 263.12, as indicated in Revision Checklist 34 and included in Consolidated Checklist C4.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 263.12, as amended November 7, 1986 (51 FR 40572).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-6.1

157 CSR 7, effective April 28, 1999:

§157-7-5.1; §157-7-1.6

150 CSR 11, effective November 8, 1999:

§150-11-1.11

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-6.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 263, including the Federal provision at 40 CFR 263.12. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. At §§157-7-1.6 and 157-7-5.1, the State subjects road/highway transporters to all applicable provisions of 40 CFR 263. West Virginia has also adopted an analog to 40 CFR 263.12 at §150-11-1.11 in the PSC regulations.

- (4) *State statutes and regulations provide an exemption from the transporter requirements for transportation during an explosives or munitions emergency response and identify how the transporter requirements apply to military munitions classified as solid waste as indicated in Revision Checklist 156 and included in Consolidated Checklist C4.*

Federal Authority: RCRA §3001, 3003, 3004(y); 40 CFR 263.10(e)&(f), as amended February 12, 1997 (62 FR 6622).

W. Va. Code, 1994 Cumulative Supplement:
§§22-18-5(a); 22-18-7(a)-(c); 22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§§33-20-1.6; 33-20-6.1

150 CSR 11, effective November 8, 1999:
§§150-11-1.13.1 & 1.13.2

157 CSR 7, effective April 28, 1999:
§§157-7-1.6 & 5.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6 and 33-20-6.1 and §§157-7-1.6 and 157-7-5.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 263, including the Federal provision at 40 CFR 263.10(e)&(f). The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). The State also has equivalent provisions at §§150-11-1.13.1 and 150-11-1.13.2 in the PSC regulations. §§22-18-5(a) and 22-18-7(a)-(c) provide the State with the authority to promulgate rules for transporters.

V. STANDARDS FOR FACILITIES

Federal Authority: RCRA §§3004 and 3004(e); 40 CFR 271.12 and 271.13(a), as amended on April 1, 1983 (48 FR 14146) and September 22, 1986 (51 FR 33712).

A. State statutes and regulations provide standards for hazardous waste management facilities equivalent to 40 CFR Parts 264 and 266 including: 1) technical standards for tanks, containers, waste piles, incineration, chemical, physical and biological treatment facilities, surface impoundments, landfills, land treatment facilities, boilers and industrial furnaces, containment buildings, corrective action management units and temporary units 2) financial responsibility during facility operation, 3) preparedness for and prevention of discharges or releases of hazardous waste, 4) contingency plans and emergency procedures, 5) closure and post-closure requirements, including financial requirements ensuring that money will be available during these periods for monitoring and maintenance, 6) ground-water monitoring, 7) security to prevent unauthorized access to the facility, 8) facility personnel training, 9) inspections, monitoring, recordkeeping and reporting; 10) manifest requirements, and 11) other requirements to the extent they are included in 40 CFR Parts 264 and 266. These standards for hazardous waste management facilities are as indicated in Consolidated Checklists C5 (formerly Checklist IV A) and C7 which include the changes made by Revision Checklists 1, 13, 14, 16, 17 D, 17 E, 17 F, 17 G, 17 H, 17 I, 17 J, 17 K, 17 L, 19, 24, 27, 28, 30, 34, 37, 39, 40, 43, 44 B, 45, 48, 50, 52, 54, 55, 64, 66, 74, 77, 78, 79, 82, 85, 87, 91, 92, 94, 96, 98, 100, 101, 102, 105, 109, 111, 112, 113, 114, 118, 120, 121, 122, 124, 125, 126, 127, 131, 133, 135, 136, 137, 142A, 142B, 142C, 142D, 145, 154, 156, and 158.

Federal Authority: RCRA §3004; 40 CFR Parts 264 and 266, as amended January 28, 1983 (48 FR 3977), January 4, 1985 (50 FR 614), January 14, 1985 (50 FR 1978), April 11, 1985 (50 FR 14216), April 30, 1985 (50 FR 18370), July 15, 1985 (50 FR 28702), August 20, 1985 (50 FR 33541), November 29, 1985

(50 FR 49164), May 2, 1986 (51 FR 16422), July 11, 1986 (51 FR 25350), July 14, 1986 (51 FR 25422), August 15, 1986 (51 FR 29430), August 8, 1986 (51 FR 28556), November 7, 1986 (51 FR 40572), November 19, 1986 (51 FR 41900), April 13, 1987 (52 FR 11819), June 4, 1987 (52 FR 21010), June 5, 1987 (52 FR 21306), July 8, 1987 (52 FR 25760), July 9, 1987 (52 FR 25942), November 18, 1987 (52 FR 44314), December 1, 1987 (52 FR 45788), December 10, 1987 (52 FR 46946), July 19, 1988 (53 FR 27164), August 17, 1988 (53 FR 31138), September 1, 1988 (53 FR 33938), September 2, 1988 (53 FR 34079), September 28, 1988 (53 FR 37912), October 11, 1988 (53 FR 39720), August 14, 1989 (54 FR 33376), September 6, 1989 (54 FR 36967), March 29, 1990 (55 FR 11798), May 9, 1990 (55 FR 19262), June 1, 1990 (55 FR 22520), December 6, 1990 (55 FR 50450), February 21, 1991 (56 FR 7134), June 13, 1991 (56 FR 27332), July 1, 1991 (56 FR 30192), July 1, 1991 (56 FR 30200), July 17, 1991 (56 FR 32688), August 27, 1991 (56 FR 42504), September 5, 1991 (56 FR 43874), January 29, 1992 (57 FR 3462), February 18, 1992 (57 FR 5859), March 6, 1992 (57 FR 8086), June 22, 1992 (57 FR 27880), August 18, 1992 (57 FR 37194), August 25, 1992 (57 FR 38558), July 1, 1991 (56 FR 30200), September 10, 1992 (57 FR 41566), September 16, 1992 (57 FR 42832), September 30, 1992 (57 FR 44999), November 18, 1992 (57 FR 54452), December 24, 1992 (57 FR 61492), February 16, 1993 (58 FR 8658), May 3, 1993 (58 FR 26420), May 24, 1993 (58 FR 29860), June 17, 1993 (58 FR 33341), July 20, 1993 (58 FR 38816), August 31, 1993 (58 FR 46040), November 9, 1993 (59 FR 59598), March 24, 1994 (59 FR 13891), June 10, 1994 (59 FR 29958), July 28, 1994 (59 FR 38536), August 24, 1994 (59 FR 43496), September 19, 1994 (59 FR 47982), December 6, 1994 (59 FR 62896), January 3, 1995 (60 FR 242), and May 11, 1995 (60 FR 25492), May 19, 1995 (60 FR 26828), July 11, 1995 (60 FR 35703), 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), February 12, 1997 (62 FR 6622), and June 13, 1997 (62 FR 32452).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(4); §22-18-6(a)(12)-(15); §22-18-7(e); §22-18-23; §22-18-25(1); §22-1-3(c); §22-5-1; §22B-3-4; §22-12-4; §22-18-5(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.1 through 7.8; §33-20-9; §33-20-4

45 CSR 25, effective June 1, 1999:

§45-25-4

W. Va. Environmental Quality Board, Legislation Rules, 46 CSR 12, effective July 1, 1998:

Remarks of the Chief of the Office of Legal Services

West Virginia Code §22-18-6(a)(4) requires the Director of the Division of Environmental Protection (DEP) to promulgate regulations establishing performance standards for new treatment, storage and disposal (TSD) facilities. Those regulations are applicable to owners and operators of such facilities. The language of §22-18-6(a)(4) is largely equivalent to that found in RCRA §3004(a). In addition, under §22-18-25(1), the State has the authority to require the use of specific financial mechanisms. At §22-18-6(a)(4)(F), West Virginia includes language which provides, in pertinent part, "however, no private entity may be precluded by reason of criteria established under this subsection from the ownership or operation of facilities providing hazardous waste treatment, storage or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree of duration of risks associated with the treatment, storage or disposal of specified hazardous waste. . ." This wording is identical to RCRA §

3004(a)(6) and the second sentence at RCRA § 3004(a)(7). Thus, the statutory authority of DEP to regulate TSD facilities and require financial assurance is in accordance with the authority of EPA as set out in RCRA.

Additional authorities are provided by W. Va. Code §§22-18-6(a)(12)-(15) to promulgate rules and regulations for a wide range of activities including, but not limited to, land disposal restrictions, hazardous waste fuels, air pollution, used oil and other rules as are necessary to effectuate the purposes of the Hazardous Waste Management Act. Under 22-18-5(a), 22-18-6(a) and 22-18-23, the State has the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are consistent with, but no more expansive in coverage nor more stringent in effect than the Federal regulations. Finally, §22-18-6(a)(12)(D) provides the State with the authority to grant exemptions and variances and to promulgate regulations to allow the State to assume primacy for the administration of the Federal hazardous waste management program, in particular, the HSWA amendments.

At W. Va. Code §22-18-25(2)-(4), West Virginia has authority that is analogous to RCRA §3004(t)(2)-(4) regarding direct action against guarantors of closure and post-closure care. West Virginia is not seeking authorization for these provisions because they are not delegable to States (see the June 15, 1992 Guidance document addressing "Statutory (Nonchecklisted) Provisions" in the State Authorization Manual (SAM)).

As with transportation, there are certain phases or portions of the regulation of TSD facilities that fall within the authority of several different State entities. The regulation of facilities falls within the jurisdiction of two Offices within the Division of Environmental Protection (DEP) and within the jurisdiction of the Environmental Quality Board. The Office of Waste Management within the DEP has rulemaking, permitting and enforcement authority for treatment, storage and disposal facilities other than incinerators. The Office of Air Quality, also within DEP, has such authority for incinerators and is tasked, under W. Va. Code §§22-18-6(a)(13)(A) and 22-5-1, with preventing air pollution and protecting air quality as well as having jurisdiction and responsibility over performance standards and treatment devices regarding air emissions from all hazardous waste facilities. The Environmental Quality Board, under its authority at §§22B-3-4 and 22-12-4, has rulemaking authority for both the State's Water Pollution Control Act and setting water quality standards for all hazardous waste facilities.

The State's hazardous waste regulations reflect the division of responsibilities between the Office of Waste Management and the Office of Air Quality. At §33-20-4, the State has notification requirements for any person that engages in a hazardous waste activity and at §§33-20-1.6 and 33-20-7.2, West Virginia's Office of Waste Management has incorporated by reference, the July 1, 1997 version of 40 CFR Part 264, except for:

- (1) the groundwater quality standards requirements at 40 CFR 264.92, 264.94 and 264.99(g);
- (2) the incinerator requirements at 40 CFR 264.341, 264.342, 264.343, 264.344, 264.345 and 264.347;
- (3) the air emission standards at 40 CFR Part 264, Subparts AA, BB and CC; and
- (4) at §33-20-7.4, West Virginia indicates that the provisions of 40 CFR 264.12(a)(1) and (2) are retained by EPA, but the State requires that the Chief of the Office of Waste Management receive identical notification. This difference makes the State more stringent.

The State has also adopted the 40 CFR Part 266 standards by reference. However, the rules of the Office of Air Quality applies as it relates to the State's analog to 40 CFR Part 264, Subpart H. The State's authority to adopt the Federal regulations by reference is provided by 22-1-3(c).

With respect to the 40 CFR 264.94 groundwater monitoring standards, West Virginia, at 33-20-7.5.b, subjects owners and operators to the groundwater protection standards at 46 CSR 12. W. Va. Code §22-12-4 gives the Environmental Quality Board “the sole and exclusive authority to promulgate standards of purity and quality for groundwater of the state . . .” W. Va. Code §22-18-6(a) requires the State’s regulations to be equivalent to and no more stringent than the Federal regulations. Therefore, the State’s provision at §46-12-4.1 provides that “Nothing in [the West Virginia] rule prohibits the Office of Waste Management , acting in accordance with federal regulations, from using criteria other than the standards specified in [46 CSR 12] for purposes of determining the need for corrective action at hazardous waste treatment, storage or disposal facilities, as provided in 40 C.F.R. Parts 264 and 265, Subpart F.” Therefore, in any instance where the 46 CSR 12 standard is less stringent than the Federal requirements, the 40 CFR 264.94 standards apply.

Instead of the Federal requirements at 40 CFR 264.99(g), West Virginia, at §33-20-7.5.c, requires that the Chief of the Office of Waste Management specify in the facility permit the frequencies for collecting samples required under 40 CFR 264.99(g). The State also requires that the frequency be no less than once every five years. The Federal regulation at 40 CFR 264.99(g) does not specify that the sample collection frequency be written into the facility permit. Rather, owners and operators are required to collect samples at least once annually. West Virginia does not consider its requirements to be less stringent than the Federal requirements. Under 40 CFR 270.32(a), the Regional Administrator has the authority to establish permit conditions for monitoring, as required on a case-by-case basis. Under the State’s regulations, it is the chief who specifies the frequency of sample collection and specifies that frequency in the facility permit. The frequency of sample collection is determined on a case-by-case basis by the chief to allow him to require sampling more frequently than once a year if required. In the Memorandum of Agreement with EPA, West Virginia has agreed to require sample collection at least annually. Therefore, under no situation will the frequency be less than what would be required under the Federal program. W. Va. Code §22-18-5(c) gives the Director the authority and the discretion to enter agreements with other agencies, including EPA, as necessary to implement the provisions of the State’s Hazardous Waste Management Act.

Under its authority at W. Va. Code 22-18-6(a)(13)(A) and 22-5-1, the Office of Air Quality has requirements in 45 CSR 25 for owners and operators who burn hazardous wastes in incinerators, boilers and industrial furnaces, owners and operators of wastewater treatment units, and all owners and waste treatment, storage and disposal facilities regarding air emissions from such facilities. As under the Federal code, an owner and operator of a pathological waste is not subject to the air regulations (§45-25-4.15); however, mixtures of infectious waste and hazardous waste listed in 40 CFR 261, Subpart D are considered to be hazardous waste and are subject to the air regulations when incinerated. At §§45-25-1.5, 45-25-3.2 and in Table 25-A of 45 CSR 25, the State incorporates by reference, the July 1, 1997 40 CFR Part 264, Subparts O, AA BB and CC and Part 264, Subpart X. Thus, the State’s regulations regarding air emissions are equivalent to the Federal regulations.

Sections 45-25-4.2 through 45-25-4.11 have additional requirements designed to ensure the protection of public health and the environment. For example, 45-25-4.11 requires all landfills, surface impoundments, and land treatment facilities to locate, design, construct, operate, maintain and close in a manner that will assure protection of human health and the environment. Per discussion with EPA, West Virginia is not seeking authorization for the Office of Air Quality provision at §45-25-4.12 which requires owners and operators of hazardous waste treatment, storage and disposal facilities to use best available control technology (BACT) to limit the discharge of hazardous waste constituents to the atmosphere.

- B. State statutes and regulations provide for interim status and include interim status standards for hazardous waste management facilities covered by 40 CFR Part 265 as indicated in Consolidated Checklist C6 (formerly Checklist IV B) which includes the changes made by*

Revision Checklists 1, 3, 10, 13, 14, 15, 16, 17 E, 17 F, 17 H, 19, 24, 25, 27, 28, 30, 34, 36, 39, 43, 44 C, 48, 50, 52, 54, 64, 74, 78, 79, 82, 85, 87, 91, 92, 94, 96, 99, 100, 101, 102, 108, 109, 111, 113, 118, 120, 121, 122, 124, 126, 131, 137, 142A, 142B, 142C, 142D, 145, 154, 156 and 158. Specific requirements are as follows:

- (1) State statutes and regulations authorize owners and operators of hazardous waste management facilities that would qualify for interim status under the federal program to remain in operation until a final decision is made on the permit application;*
- (2) State law and regulations authorize continued operation of hazardous waste management facilities provided that owners and operators of such facilities comply with standards at least as stringent as EPA's interim status standards at 40 CFR Part 265; and*
- (3) State law and regulations assure that any facility qualifying for State interim status continues to qualify for Federal interim status.*

Federal Authority: RCRA §3005(e); 40 CFR Part 265, as amended January 28, 1983 (48 FR 3977), November 22, 1983 (48 FR 52718), November 21, 1984 (49 FR 46094), January 4, 1985 (50 FR 614), January 14, 1985 (50 FR 1978), April 23, 1985 (50 FR 16044), April 30, 1985 (50 FR 18370), July 15, 1985 (50 FR 28702), November 29, 1985 (50 FR 49164), November 19, 1986 (51 FR 41900), May 2, 1986 (51 FR 16422), May 28, 1986 (51 FR 19176), July 11, 1986 (51 FR 25350), July 14, 1986 (51 FR 25422), August 15, 1986 (51 FR 29430), August 8, 1986 (51 FR 28556), November 7, 1986 (51 FR 40572), March 19, 1987 (52 FR 8704), July 8, 1987 (52 FR 25760), November 18, 1987 (52 FR 44314), December 1, 1987 (52 FR 45788), July 19, 1988 (53 FR 27164), August 17, 1988 (53 FR 31138), September 1, 1988 (53 FR 33938), September 2, 1988 (53 FR 34079), September 28, 1988 (53 FR 37912), August 14, 1989 (54 FR 33376), March 29, 1990 (55 FR 11798), June 1, 1990 (55 FR 22520), June 21, 1990 (55 FR 25454), December 6, 1990 (55 FR 50450), February 21, 1991 (56 FR 7134), April 26, 1991 (56 FR 19290), June 13, 1991 (56 FR 27332), July 1, 1991 (56 FR 30192), July 1, 1991 (56 FR 30200), July 17, 1991 (56 FR 32688), August 27, 1991 (56 FR 42504), December 23, 1991 (56 FR 66365), January 29, 1992 (56 FR 3462), February 18, 1992 (56 FR 5859), March 6, 1992 (57 FR 8086), July 10, 1992 (57 FR 30657), August 18, 1992 (57 FR 37194), August 25, 1992 (57 FR 38558), September 16, 1992 (57 FR 42832), November 18, 1992 (57 FR 54452), December 24, 1992 (57 FR 61492), February 16, 1993 (58 FR 8658), May 3, 1993 (58 FR 26420), May 24, 1993 (58 FR 29860), June 17, 1993 (58 FR 33341), August 31, 1993 (58 FR 46040), March 4, 1994 (59 FR 13891), September 19, 1994 (59 FR 47982), December 6, 1994 (59 FR 62896), January 3, 1995 (60 FR 242), and May 11, 1995 (60 FR 25492), May 19, 1995 (60 FR 26828), July 11, 1995 (60 FR 35703), 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), February 12, 1997 (62 FR 6622), and June 13, 1997 (62 FR 32452).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-11; §22-18-5(a); §22-18-23; §22-1-3(c); §22-18-6(a)(4)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-8.1 through 8.6

45 CSR 25, effective June 1, 1999:

§45-25-3.2; §45-25-1; §45-25-4

Remarks of the Chief of the Office of Legal Services

Pursuant to W. Va. Code §22-18-11, any owner or operator of a facility required to have a permit under Article 18, will be treated as having been issued such permit until a final administrative disposition is made of an application for the required permit. However, to be eligible for this interim status, the facility must have been in existence on July 9, 1981 (the effective date of the State's hazardous waste regulations) and must have been operating and continue to operate in compliance with the interim status requirements of the Federal government that have been established pursuant to RCRA §3005. The facility must also operate so as to "not cause or create a substantial risk of a health hazard or public nuisance or a significant adverse effect upon the environment." The owner or operator of the facility must also apply for a permit in accordance with appropriate rules, regulations and statutory requirements. The transition program in West Virginia is equivalent to the RCRA interim status scheme. No facility can qualify for interim status in West Virginia unless it likewise does so at the Federal level. Thus, a state facility must be in existence on November 19, 1980, in order to qualify as an interim status facility.

The State's statutory provision at Va. §22-18-11 does not specifically address newly regulated facilities. However, under §§22-18-5(a) and 22-18-23, West Virginia has the broad authority to adopt rules necessary to carry out the purposes and requirements of RCRA Subtitle C and to ensure that the State's regulations are consistent with and equivalent to the Federal code. Thus, the State has the authority to promulgate interim status regulations for newly-regulated facilities. W. Va. Code §22-18-6(a)(4) requires the Director of DEP to promulgate regulations establishing performance standards for existing treatment, storage and disposal facilities. Further, §§33-20-1.6 and 33-20-8 of the hazardous waste regulations adopt by reference, the July 1, 1997 version of 40 CFR Part 265. Sections 45-25-1.5, 45-25-3.2 and Table 25-A of the Office of Air Quality regulations also incorporates by reference, Subparts O, P, AA, BB and CC of the July 1, 1997 version of 40 CFR Part 265. The State also subjects facilities to the requirements at 45-25-4.2 through 45-25-4.11. The authority for West Virginia to incorporate the Federal regulations by reference is provided by W. Va. Code §22-1-3(c).

- C. *Specific provisions amending 40 CFR Parts 264, 265 and 266 since January 1, 1983 which are included in State statutes and requirements are listed below. Also included are specific State statutes and regulations regarding 1) criminal penalties for waste fuel and used oil fuel requirement violators, and 2) exceptions to burning and blending of hazardous waste as specified in RCRA §§3004(q)(2)(A) and 3004(r)(2)&(3). These latter provisions are not addressed by a Revision Checklist.*
- (1) *State statutes and requirements provide for the requirements regarding the biennial report, unmanifested waste report and additional reporting as indicated in Revision Checklist 1 and included in Consolidated Checklists C5 and C6. As also indicated in these same checklists, facilities must also submit ground-water monitoring data annually to the State Director as specified in 40 CFR 265.94.*

Federal Authority: RCRA §3004; 40 CFR Parts 264 and 265, as amended January 28, 1983 (48 FR 3977).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-5(a); §22-18-6(a)&4(b),(6); §22-18-23

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

At §33-20-1.6, §33-20-7.2 and §33-20-8.1, West Virginia incorporates by reference the July 1, 1997 version of 40 CFR Parts 264 and 265 which includes the provisions addressed by the listed checklists. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are consistent with, but no more expansive in coverage nor more stringent in effect than, the Federal regulations. §22-18-6(a)(4)(B) and (a)(6) provide specific authorities to assure adequate reporting.

- (2) *State statutes and regulations contain requirements in which interim status standards apply to facilities identified in 40 CFR 265.1(b) and as specified in 40 CFR 265.1(a) as indicated in Revision Checklists 3 and 10 and included in Consolidated Checklist C6.*

Federal Authority: RCRA §3004; 40 CFR Part 265, as amended November 22, 1983 (48 FR 52718) and November 21, 1984 (49 FR 46095).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-5(a); §22-18-6(a); §22-18-11; §22-18-23

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-8.1; §33-20-8.2

Remarks of the Chief of the Office of Legal Services

At §33-20-1.6 and §33-20-8.1, West Virginia incorporates by reference, the July 1, 1997 version of 40 CFR Part 265 which includes the provisions addressed by the listed checklists. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are consistent with, but no more expansive in coverage nor more stringent in effect than, the Federal regulations.

- (3) *State statutes and regulations define hazardous waste and impose management standards so as to control all the hazardous waste controlled under 40 CFR Parts 261, 264, 265 and 266 as indicated in Revision Checklists 13 and 37 and included in Consolidated Checklists C5, C6 and C7.*

Federal Authority: RCRA §§3001 and 3004; 40 CFR Parts 261, 264, 265 and 266, as amended January 4, 1985 (50 FR 614), April 11, 1985 (50 FR 14216), August 20, 1985 (50 FR 33541), and June 5, 1987 (52 FR 21306).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a); §22-18-6(a)(2); §22-18-6(a)(4); §22-18-6(a)(12)-(15)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-3.1; §33-20-7.2; §33-20-8.1; §33-20-9.1

45 CSR 25, effective June 1, 1999:

§45-25-3.1; §45-25-3.2.

Remarks of the Chief of the Office of Legal Services

As discussed earlier in the section on "Identification and Listing", West Virginia has the required authority under W. Va. Code §22-18-6(a)(2) to define hazardous waste, and has adopted by reference the Federal definition in its hazardous waste and Office of Air Quality regulations. The State's authority to promulgate rules for hazardous waste management is provided by W. Va. §§22-18-6(a), 22-18-6(a)(4) and 22-18-6(a)(12)-(15). At §§33-20-1.6, 33-20-3.1, 33-20-7.2, 33-20-8.1 and 33-20-9.1, West Virginia incorporates by reference, the July 1, 1997 version of 40 CFR Parts 261, 264, 265 and 266, which include the provisions addressed by the listed checklists. W. Va. Code §22-1-3(c) gives the State the authority to incorporate Federal regulations by reference.

- (4) *State statutes and regulations contain special management standards for facilities managing dioxin wastes and prohibitions applicable to permitted and interim status facilities as provided in 40 CFR Parts 264 and 265 and indicated in Revision Checklist 14. These requirements are also included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §3004; 40 CFR Parts 264 and 265, as amended January 14, 1985 (50 FR 1978).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a); §22-18-6(a)(4); §22-18-6(a)(12)-(15)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

45 CSR 25, effective June 1, 1999:

§45-24-3.1; §45-25-3.2

Remarks of the Chief of the Office of Legal Services

The State's authority to promulgate rules for hazardous waste management is provided by W. Va. §§22-18-6(a), 22-18-6(a)(4) and 22-18-6(a)(12)-(15). At §§33-20-1.6, 33-20-7.2 and 33-20-8.1, West Virginia adopts and incorporates by reference, the July 1, 1997 version of 40 CFR Parts 264 and 265 which include the provisions addressed by the listed checklists. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (5) *State statutes and regulations require that closure and post-closure requirements and special requirements for containers apply to interim status landfills as indicated in Revision Checklist 15 and included in Consolidated Checklist C6.*

Federal Authority: RCRA §3004; 40 CFR 265.310 and 265.315, as amended April 23, 1985 (50 FR 16044).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a); §22-18-6(a)(4); §22-18-6(a)(13)(A)&(B); §22-18-6(a)(15); §22-18-11; §22-18-5(a); §22-18-23; §22-18-8(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-8.1

45 CSR 25, effective June 1, 1999:

§45-25-4.11

Remarks of the Chief of the Office of Legal Services

The State has the requisite authority to promulgate rules addressing closure and post-closure requirements for containers as per §§22-18-6(a)(4), 22-18-6(a)(13)(A) and (B), 22-18-6(a)(15), and 22-18-8(c). At §33-20-1.6 and 33-20-8.1, West Virginia adopts and incorporates by reference, without changes, the July 1, 1997 version of the Federal provisions at 40 CFR 265.310 and 265.315. W. Va. Code §22-1-3(c) gives the State the authority to incorporate Federal regulations by reference. In addition, §45-25-4.11 of the Office of Air Quality regulations specifies that "all landfills, surface impoundments, and land treatment facilities shall be ... closed in a manner that will assure protection of human health and the environment."

- (6) *State statutes and regulations allow a variance to the two-foot freeboard requirement for surface impoundments, allow a variance for placement of ignitable or reactive wastes in surface impoundments and clarify the allowable treatment mechanisms at land treatment units as indicated in Revision Checklist 15 and included in Consolidated Checklist C6.*

Federal Authority: RCRA §3004; 40 CFR 265.222, 265.229 and 265.272, as amended April 23, 1985 (50 FR 16044).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); 22-18-6(a)(12)(D); §22-18-5(a); §22-18-23; §22-18-6(a)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia's W. Va. Code §22-18-6(a)(12)(D) gives the State Director the authority to promulgate rules that include variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA. Under W. Va. Code §22-1-3(c), the State has the authority to adopt Federal regulations by reference. At §§33-20-1.6 and 33-20-8.1, West Virginia has adopted by reference, without changes, the July 1, 1997 version of the 40 CFR Part 265 requirements addressed by the checklists. Further, the Office of Air Quality regulations, at §45-25-4.11, requires land treatment facilities to be located, designed, constructed, operated, and maintained in a manner that ensures protection of human health and the environment.

- (7) *State statutes and regulations require the use of a paint filter test to determine the absence or presence of free liquids in either a containerized or bulk waste as indicated in Revision Checklists 16, 17 F and 25 and included in Consolidated Checklists C5, C6 and C9.*

Federal Authority: RCRA §§3004 and 3005; 40 CFR Parts 264, 265 and 270, as amended April 30, 1985 (50 FR 18370), July 15, 1985 (50 FR 28702), and May 28, 1986 (51 FR 19176).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a)(12)(D); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

At the 33 CSR 20 citations listed above, West Virginia adopts and incorporates by reference, without changes, the Federal provisions addressed by the checklists. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's statutory provisions at W. Va. Code §§22-18-5(a), 22-18-6(a)(12)(D) and 22-18-23 provide the State with the broad authority to promulgate rules addressing the Federal requirements in a manner that is consistent with and equivalent to the Federal regulations that are necessary to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA Subtitle C.

- (8) *State statutes and regulations require that the permittee, no less often than annually, certify in the operating record 1) the existence of a program to minimize the amount and toxicity of the generated wastes and 2) that the proposed method of treatment, storage or disposal minimizes present and future threat to human health and the environment as indicated in Revision Checklist 17 D and included in Consolidated Checklist C5.*

Federal Authority: RCRA §§3004 and 3005(h); 40 CFR 264.70 and 264.73, as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a)(12)(D); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

At the 33 CSR 20 citations listed above, West Virginia has incorporated by reference, without changes, the Federal provisions addressed by the checklists. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's statutory provisions at W. Va. Code §§22-18-5(a), 22-18-6(a)(12)(D) and 22-18-23 provide the State with the broad authority to promulgate rules addressing the Federal requirements in a manner that is consistent with and equivalent to the Federal regulations that are necessary to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA Subtitle C.

- (9) *State statutes and regulations prohibit the land disposal of hazardous waste prohibited under 40 CFR Parts 264 and 265 as indicated in Revision Checklist 17 E and included in Consolidated Checklists C5 and C6. Land disposal includes, but is not limited to, placement in landfills, surface impoundments, waste piles, deep injection wells, land treatment facilities, salt dome and bed formations and underground mines or caves. "Deep injection well" means a well used for the underground injection of hazardous wastes other than a well to which RCRA §3020 applies.*

Federal Authority: RCRA §§3004(b)-(q); 40 CFR 264.18, and 265.18, as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a)(12)(A), (B) & (D); §22-18-23; §22-18-6(a); §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

At §33-20-1.6, 33-20-7.2 and 33-20-8.1, West Virginia adopts and incorporates by reference, without changes, the 40 CFR 264.18 and 265.18 provisions. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The statutory provisions at W. Va. Code §§22-18-6(a)(12)(A) and (B) give the State the authority to establish standards and prohibitions relating to the management of hazardous waste by land disposal methods. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a)(12)(D) and 22-18-23 provide the State with the broad authority to promulgate rules addressing the Federal requirements in a manner that is consistent with and equivalent to the Federal regulations that are necessary to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA Subtitle C, in particular the HSWA amendments.

- (10) *Effective November 8, 1984 State statutes and regulations prohibit the placement of any non-containerized or bulk liquid hazardous waste in any salt dome or salt bed formation, any underground mine or cave except as provided in 40 CFR 264.18(c) and 40 CFR 265.18(c) as indicated in Revision Checklist 17 E and included in Consolidated Checklists C5 and C6. Furthermore, State statutes and regulations prohibit the placement of any other hazardous waste in such formations until a permit is issued.*

Federal Authority: RCRA §3004(b); 40 CFR 264.18 and 265.18, as amended July 15, 1985 (50 FR 28702); 40 CFR 264.600 *et seq.*, December 10, 1987 (52 FR 46946).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

At §33-20-1.6, 33-20-7.2 and 33-20-8.1, West Virginia adopts and incorporates by reference, without changes, 40 CFR 264.18 and 265.18 provisions. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The statutory provision at W. Va. Code §22-18-6(a)(12)(B) specifically gives the State the authority to establish standards and prohibitions relating to the land disposal of liquid hazardous wastes or free liquids wastes. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a)(12)(D) and 22-18-23 provide the State with the broad authority to promulgate rules addressing the Federal requirements in a manner that is consistent with and equivalent to the Federal regulations that are necessary to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA Subtitle C, in particular the HSWA amendments.

(11) *State statutes and regulations contain the following requirements regarding liquids in landfills as indicated in Revision Checklists 17 F and 25 and included in Consolidated Checklists C5, C6 and C9:*

- (a) *Effective May 8, 1985, there is a ban on the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids in any landfill pursuant to 40 CFR 264.314 and 265.314, as amended July 15, 1985 and May 28, 1986.*
- (b) *Effective November 8, 1985, there is a ban on the placement of non-hazardous liquids in landfills unless the owner or operator satisfies the criteria set forth in 40 CFR 264.314(e), 265.314(e), as amended July 15, 1985 and May 28, 1986.*
- (c) *Bulk or non-containerized liquid wastes or wastes containing free liquids may be placed in a landfill prior to May 8, 1985, only if the requirements of 40 CFR 264.314(a) and 265.314(a) are met.*

Federal Authority: RCRA §3004(c); 40 CFR 264.314, 265.314 and 270.21(h), as amended July 15, 1985 (50 FR 28702) and May 28, 1986 (51 FR 19176).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-18-23; §22-1-3(c); §22-18-6(a)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

At the §33-20-1.6, 33-20-7.2, 33-20-8.1 and 33-20-11.1, West Virginia adopts and incorporates by reference, without changes, the 40 CFR 264.314, 265.314 and 270.21(h) provisions. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The statutory provision at W. Va. Code §22-18-6(a)(12)(B) specifically gives the State the authority to establish standards and prohibitions relating to the land disposal of liquid hazardous wastes or free liquid wastes. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a)(12)(D) and 22-18-23 provide the State with the broad authority to promulgate rules addressing the Federal requirements in a manner that is consistent with and equivalent to the Federal regulations that are necessary to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA Subtitle C, and in particular the HSWA amendments.

(12) *State statutes and regulations prohibit the use of waste oil or other materials contaminated with hazardous wastes (except ignitable wastes) as a dust suppressant as indicated in Revision Checklist 17 G and as included in Consolidated Checklist C7.*

Federal Authority: RCRA §3004(1); 40 CFR 266.23, as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(14); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-9

Remarks of the Chief of the Office of Legal Services

At the §33-20-1.6, 33-20-9, West Virginia adopts and incorporates by reference, without changes, the 40 CFR 266.23 provision. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The statutory provision at W. Va. Code §22-18-6(a)(14) specifically gives the State authority to promulgate rules as may be necessary to protect public health and the environment from any hazard associated with the management of used oil and recycled oil. In addition, W. Va. Code §22-18-23 provides the State with the broad authority to promulgate rules that are consistent with and equivalent to the Federal regulations.

- (13) *State statutes and regulations require that new units, expansions and replacements of interim status waste piles meet the requirements for a single liner and leachate collection system in regulations applicable to permitted waste piles as indicated in the Revision Checklist 17 H and included in Consolidated Checklist C6.*

Federal Authority: RCRA §3015(a); 40 CFR 265.254.

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-5(a); §22-18-6(a)(4)(D); §22-18-23; §22-18-6(a)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes 40 CFR 265.254 at §§33-20-1.6 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The statutory provision at W. Va. Code §22-18-6(a)(4)(D) provides the State with the authority to promulgate rules establishing performance standards for the location, design and construction of hazardous waste treatment, storage and disposal interim status facilities and §22-18-23 requires the State's program to be equivalent to and consistent with the Federal program.

- (14) *State statutes and regulations require that:*
- (a) *New units, expansions and replacement units at interim status landfills and surface impoundments and permitted landfills and surface impoundments meet the requirements for double liners and leachate collection systems applicable to new permitted landfills and surface impoundments in 40 CFR 264.221 and 264.301 and in*

40 CFR 265.221 and 265.301 as indicated in Revision Checklists 17 H and 77 and included in Consolidated Checklists C5 and C6.

- (b) Facilities which comply in good faith need not retrofit at permit issuance unless the liner is leaking as provided in 40 CFR 264.221, 264.301, 265.221 and 265.301 as indicated in Revision Checklist 17 H and included in Consolidated Checklist C6.*
- (c) Variances from the above requirements are optional. However, the availability of such variances is restricted as provided in 40 CFR 264.221, 264.301, 265.221 and 265.301 as indicated in Revision Checklist 17 H and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §3015(b); 40 CFR 264.221, 264.301, 265.221 and 265.301, as amended July 15, 1985 (50 FR 28702) and May 9, 1990 (55 FR 19262).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-5(a); §22-18-6(a)(4)(D); §22-18-6(a)(12)(D); §22-18-23; §22-18-6(a)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

45 CSR 25, effective June 1, 1999:

§45-25-4.11; §45-25-4.7; §45-25-4.10

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, 40 CFR 264.221, 264.301, 265.221 and 265.301 at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference and §22-18-23 requires the State's program to be equivalent to and consistent with the Federal program. The statutory provision at W. Va. Code §22-18-6(a)(4)(D) provides the State with the authority to promulgate rules establishing performance standards for the location, design and construction of hazardous waste treatment, storage and disposal at permitted and interim status facilities. The Office of Air Quality's regulations include provisions that are consistent with the Federal requirements. W. Va. Code §45-25-4.7 requires compliance with applicable air emission standards in 40 CFR Parts 264 and 265. W. Va. Code §45-25-4.10 requires landfills to be covered to prevent wind dispersal, and §45-25-4.11 also requires that all landfills, surface impoundments, and land treatment facilities shall be "located, designed, constructed ... in a manner that will assure protection of human health and the environment." W. Va. Code §22-18-6(a)(12)(D) gives the State the authority to promulgate rules that include variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

- (15) State statutes and regulations provide that the RCRA §3004 ground-water monitoring requirements applicable to surface impoundments, waste piles, land treatment units and landfills shall apply whether or not such units are located above the seasonal high water table, have two liners and a leachate collection system or have liners that are periodically inspected, as indicated in Revision Checklist 17 I and included in Consolidated Checklist C5.*

Federal Authority: RCRA §3004(p); 40 CFR 264.222, 264.252, 264.253, and 264.302, as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a)(4)(C); §22-18-23; §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, 40 CFR 264.222, 264.252, 264.253 and 264.302 at §§33-20-1.6 and 33-20-7.2. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference and §22-18-23 requires the State's program to be equivalent to and consistent with the Federal program. The statutory provision at W. Va. Code §22-18-6(a)(4)(C) & (a)(12)(D) provides the State with the authority to promulgate rules establishing performance standards for the treatment, storage or disposal of all wastes received by the facility pursuant to such operating methods, techniques and practices as may be satisfactory to the Director and assures primacy for the Federal program including HSWA.

- (16) *State statutes and regulations may allow variances from the ground-water monitoring requirements as provided in RCRA §3004(p). However, those variances must be restricted as provided in RCRA §3004(p) as indicated in Revision Checklist 17 I and included in Consolidated Checklist C5.*

Federal Authority: RCRA §3004(p); 40 CFR 264.90(b), as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a)(12)(D); §22-18-23

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, 40 CFR 264.90(b) at §§33-20-1.6 and 33-20-7.2. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference, and §22-18-23 requires the State's program to be equivalent to and consistent with the Federal program. W. Va. Code §22-18-6(a)(12)(D) gives the State the authority to promulgate rules that include variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

(17) State statutes and regulations provide the following requirements:

- (a) The burning of fuel containing hazardous waste in a cement kiln is prohibited except as specified in 40 CFR 266.31 and Revision Checklist 17 J and included in Consolidated Checklist C7.*

Federal Authority: RCRA §3004(q); 40 CFR 266.31, as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption
Remarks of the Chief of the Office of Legal Services

The provisions addressed at 40 CFR 266.31 have been superseded by Revision Checklist 85. The State's authorities and regulatory provisions for Revision Checklist 85 are provided in the entries for that checklist in Section V.C(40).

- (b) Fuels containing hazardous waste and all persons who produce, distribute and market fuel containing hazardous wastes must be regulated as indicated in Revision Checklists 17 J and 17 K and included in Consolidated Checklist C7.*

Federal Authority: RCRA §§3004(q)-(s); 40 CFR 266.31 and 266.34, as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Chief of the Office of Legal Services

The provisions addressed at 40 CFR 266.31 have been superseded by Revision Checklist 85. The State's authorities and regulatory provisions for Revision Checklist 85 are provided in the entries for that checklist in Section V.C(40).

- (18) State statutes and regulations provide exceptions to the burning and blending of hazardous waste as specified in RCRA §§3004(q)(2)(A) and 3004(r)(2)&(3).*

Federal Authority: RCRA §§3004(q)(2)(A) and 3004(r)(2)&(3).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(12)(D); §22-18-5(a)

Remarks of the Chief of the Office of Legal Services

The State's authority at W. Va. §22-18-6(a)(12)(D) provides the State with the authority to establish rules and grant exemptions and variances in a manner which allows the State to assume primacy for the administration of the Federal program under Subtitle C and to adopt rules that are consistent with, but no more expansive in coverage nor more stringent in effect than, rules and regulations promulgated under RCRA Subtitle C. In addition, at W. Va. §22-18-5(a), the State provides the Director with the authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C. However, the State has not adopted regulations nor does it have statutory provisions that specifically address the provisions of RCRA §§3004(q)(2)(A) and 3004(r)(2)&(3).

(19) *State statutes and regulations contain the following corrective action requirements as indicated in Revision Checklist 17 L and included in Consolidated Checklist C5:*

(a) *Corrective action is required for releases of hazardous waste or constituents from any solid waste management unit at a facility seeking a permit, regardless of when the waste was placed in the unit, in all permits issued after November 8, 1984.*

Federal Authority: RCRA §3004(u); 40 CFR 264.90 and 264.101, as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-9(a); §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the July 1, 1997 version of 40 CFR 264.90 and 264.101 requirements at §§33-20-1.6 and 33-20-7.2; thus, the State is equivalent to the Federal code. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. W. Va. §22-18-9(a) provides the State with an authority that is equivalent to RCRA §3004(u). However, because the State's regulations do not include all the provisions required for corrective action, West Virginia is not seeking authorization for Revision Checklist 17L.

(b) *Corrective action is required beyond a facility's boundary, in accordance with RCRA §3004(v).*

Federal Authority: RCRA §3004(v)(1).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-9(b)(1)

Remarks of the Chief of the Office of Legal Services

W. Va. Code §22-18-9(b)(1) provides the State with an authority that is equivalent to RCRA §3004(v)(1). In addition, the State has adopted the provisions addressed by Revision Checklist 44 B, which requires corrective action beyond a facility's boundary (see Section V.C(26)). However, because the State's regulations do not include all the provisions required for corrective action, West Virginia is not seeking authorization for Revision Checklist 44 B.

- (c) *Corrective action is required beyond a facility's boundary in accordance with RCRA §3004(v) for all landfills, surface impoundments and waste pile units (including any new units, replacements of existing units or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.*

Federal Authority: RCRA §3004(v)(2).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-9(b)(2)

Remarks of the Chief of the Office of Legal Services

W. Va. Code §22-18-9(b)(2) provides the State with an authority that is equivalent to RCRA §3004(v)(2). In addition, the State has adopted the provisions addressed by Revision Checklist 44 B (see Section V.C(26)), which requires corrective action beyond a facility's boundary. However, because the State's regulations do not include all the provisions required for corrective action, West Virginia is not seeking authorization for corrective action at this time.

- (d) *There is evidence of financial responsibility for the completion of corrective action on- and off-site.*

Federal Authority: RCRA §§3004(a)(6)&(u); 40 CFR 264.90 and 264.101, as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-6(a)(4)(F); §22-18-9(a); §22-18-25(1)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-7.5

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, 40 CFR 264.90 and 264.101 at §§33-20-1.6 and 33-20-7.2. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. Under §§22-18-6(a)(4)(F) and 22-18-25(1), West Virginia has the authority to require owners and operators of hazardous waste treatment, storage and disposal facilities to show evidence of financial responsibility using specific financial mechanisms. Although §22-18-6(a)(4)(F) is worded like RCRA §3004(a)(6), it does not include the parenthetical phrase "(including financial responsibility for corrective action)". However, W. Va. §22-18-9(a) requires assurances of financial responsibility for corrective action and is equivalent to RCRA §3004(u). West Virginia's regulations do not include all the provisions required for corrective action; therefore, the State is not seeking authorization for corrective action at this time.

- (20) *State statutes and regulations require landfills, surface impoundments, land treatment units, and waste piles that received waste after July 26, 1982 and which qualify for interim status to comply with the ground-water monitoring, unsaturated zone monitoring, and corrective action requirements applicable to new units at the time of permitting as indicated in Revision Checklist 17 L and included in Consolidated Checklist C5.*

Federal Authority: RCRA §3005(i); 40 CFR 264.90(a), as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(4)(C); §22-18-6(a)(4)(G); §22-18-7(e); §22-18-9(b)(2); §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, 40 CFR 264.90(a) at §§33-20-1.6 and 33-20-7.2. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's statutory authorities at §§22-18-6(a)(4)(C), 22-18-6(a)(4)(G), 22-18-7(e) and 22-18-9(b)(2) provide the necessary authority and have similar scope to that provided by RCRA §3005(i). The State's W. Va. Code §22-18-7(e) specifically addresses the authority of the environmental quality board, in consultation with the director, to promulgate water quality standards governing discharges into the waters, including ground water, of the State. West Virginia's regulations do not include all the provisions required for corrective action; therefore, the State is not seeking authorization for Revision Checklist 17L at this time.

- (21) *State statutes and regulations contain special management standards for generators, transporters, marketers and burners of hazardous waste and used oil burned for energy recovery in boilers, and industrial furnaces, as provided in 40 CFR 264.340, 265.340, 266.30 through 35 and 266.40 through 45 as indicated in Revision Checklist 19 and included in Consolidated Checklists C5, C6 and C7.*

Federal Authority: RCRA §§3001, 3004 and 3014(a); 40 CFR Parts 264, 265 and 266, as amended November 29, 1985 (50 FR 49164), November 19, 1986 (51 FR 41900), and April 13, 1987 (52 FR 11819).

Citation of Laws and Regulations; Date of Enactment and Adoption
Remarks of the Chief of the Office of Legal Services

The provisions addressed at the listed Federal citations above for Revision Checklist 19 have been superseded by Revision Checklists 85 and 112. The State's authorities and regulatory provisions for Revision Checklists 85 and 112 are provided in the entries for these checklists in Sections V.C(40) and VIII, respectively.

- (22) *State statutes and regulations provide the authority to obtain criminal penalties for violations of the waste fuel and used oil fuel requirements, as provided in 40 CFR 266.40 through 45.*

Federal Authority: RCRA §§3006(h), 3008(d) and 3014; 40 CFR 271.16.

Citation of Laws and Regulations; Date of Enactment and Adoption
Remarks of the Chief of the Office of Legal Services

This entry addresses regulations which no longer exist in the Federal regulations. The Federal requirement for criminal penalties for used oil is now addressed by 40 CFR 271.16(a)(3)(ii).

- (23) *State statutes and regulations require compliance with closure/post-closure and financial responsibility requirements applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, as indicated in Revision Checklists 24, 36 and 45 and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§3004 and 3005; 40 CFR Parts 264 and 265, as amended May 2, 1986 (51 FR 16422), March 19, 1987 (52 FR 8704), and December 10, 1987 (52 FR 46946).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a); §22-18-6(a)(4)(F); §22-18-23; §22-1-3(c); §22-18-25(1)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, 40 CFR Parts 264 and 265 financial requirements at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's statutory authority at §22-18-6(a)(4)(F) specifically gives the State the authority to promulgate rules for financial assurance. §22-18-25(1) provides specific authority relative to the types of instruments. The list of financial mechanisms provided at §22-18-25(1) does not specifically include the use of a trust fund; however, the State has adopted by reference the Federal financial requirements which include the use of a trust fund. In addition, the State's

provisions at §§22-18-6(a) and 22-18-23 require that the State's rules be consistent with, not more expansive nor more stringent than, the Federal rules. Thus, the omission of trust fund from the list of financial mechanisms at §22-18-25(1) is not intended to limit the financial options. W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations.

- (24) *State statutes and regulations allow qualified companies that treat, store or dispose of hazardous waste to use a corporate guarantee to satisfy liability assurance requirements as indicated in Revision Checklists 27 and 43 and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§2002, 3004 and 3005; 40 CFR 264.147, 264.151 and 265.147, as amended July 11, 1986 (51 FR 25350) and November 18, 1987 (52 FR 44314).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a)(4)(F); §22-18-6(a)(12)(D); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, 40 CFR Parts 264 and 265 financial requirements at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's statutory authority at §22-18-6(a)(4)(F) specifically gives the State the authority to promulgate rules for financial assurance. W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to promulgate rules that include variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

- (25) *State statutes and regulations require owners/operators of facilities that generate, treat or store hazardous waste in tank systems to comply with tank system standards equivalent to those indicated in Revision Checklists 28 and 52 and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§1006, 2002, 3001-3007, 3010, 3014, 3017-3019 and 7004; 40 CFR Parts 264 and 265, as amended July 14, 1986 (51 FR 25422), August 15, 1986 (51 FR 29430), and September 2, 1988 (53 FR 34079).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(4)(C); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-8.1

45 CSR 25, effective June 1, 1999:
§45-25-4.6

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, 40 CFR Parts 264 and 265 tank requirements at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The Office of Air Quality regulations at §§45-25-4.6 also subject owners and operators to the air emission standard requirements in 40 CFR Parts 264 and 265. §22-18-6(a)(4)(C) gives the Director the authority to promulgate rules relative to the storage of all hazardous wastes received by the facility to such operating methods, techniques and practices as may be satisfactory. §22-18-(6)(a) provides authority relative to establishing performance standards for the storage of hazardous wastes. Code §§22-18-5(a), 22-18-6(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations.

- (26) *State statutes and regulations require facilities that generate waste to provide information in their biennial reports regarding efforts taken to minimize the amount and toxicity of wastes and the results of such efforts as specified in 40 CFR 264.75(h)-(j) and 265.75(h)-(j). These requirements are indicated in Revision Checklist 30 and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §3004; 40 CFR 264.75 and 265.75, as amended August 8, 1986 (51 FR 28556).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(4)(B); §22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, 40 CFR Parts 264.75 and 265.75 biennial reporting requirements at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The wording at W. Va. Code §22-18-6(a)(4)(B) is the same as RCRA §3004(a)(2) and gives the State the authority to promulgate rules for satisfactory reporting practices. W. Va. Code §§22-18-6(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations.

- (27) *State statutes and regulations provide hazardous waste facility requirements regarding land disposal restrictions as indicated in Revision Checklists 34, 39, 50, 66, 78, 102 and 124 and included in Consolidated Checklists C5, C6 and C7.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Parts 264, 265 and 266, as amended November 7, 1986 (51 FR 40572), June 4, 1987 (52 FR 21010), July 8, 1987 (52 FR 25760), August 17, 1988 (53 FR 31138), September 6, 1989 (54 FR 36967), June 1, 1990 (55 FR 22520), March 6, 1992 (57 FR 8086) and May 24, 1993 (58 FR 29860).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-18-6(a)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-9; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. At HWMR §§33-20-1.6, 33-20-7.2, 33-20-8.1 and 33-20-9, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Parts 264, 265 and 266 addressing land disposal restriction requirements. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (28) *State statutes and regulations provide that with regard to ground-water monitoring, all land-based hazardous waste treatment, storage and disposal facilities analyze for a specified core list (Part 264, Appendix IX) of chemicals plus those chemicals specified by the Regional Administrator on a site-specific basis as indicated in Revision Checklist 40 and included in Consolidated Checklists C5 and C9.*

Federal Authority: RCRA §§1006, 2002(a), 3001, 3004, and 3005; 40 CFR 264.98, 264.99 and Appendix IX of Part 264, and 270.14, as amended July 9, 1987 (52 FR 25942).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(6); §22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, 40 CFR Parts 264.98, 264.99 and 270.14 at §§33-20-1.6, 33-20-7.2 and 33-20-11.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's statutory authority at §22-18-6(a)(6) specifically gives the State the authority to promulgate rules for the taking of samples and performing of tests and analyses as may be necessary to achieve the purposes of the State's hazardous waste program. W. Va. Code §§22-18-6(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations.

- (29) *State statutes and regulations require that owners and operators of hazardous waste treatment, storage and disposal facilities (including permit-by-rule facilities subject to 40 CFR 264.101) institute corrective action beyond the facility boundary to protect human health and the environment, unless the owner/operator is denied access to adjacent lands despite the owner/operator's best efforts, as indicated in Revision Checklist 44 B and included in Consolidated Checklist C5.*

Federal Authority: RCRA §3004(v); 40 CFR 264.100(e) and 264.101(c), as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-9(b); §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference 40 CFR 264.100(e) and 264.101(c) requirements at §§33-20-1.6 and 33-20-7.2. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. W. Va. §22-18-9(b)(1)&(2) provide the State with an authority that is equivalent to RCRA §3004(v)(1)&(2). West Virginia's regulations do not include all the provisions required for corrective action; therefore, the State is not seeking authorization for Revision Checklist 44B at this time.

- (30) *State statutes and regulations do not exempt underground injection wells from interim status requirements if the only permit issued for these wells was a permit issued under either the Safe Drinking Water Act or the Underground Injection Control Program, as indicated in Revision Checklist 44 C and included in Consolidated Checklist C6.*

Federal Authority: RCRA §3004(u); 40 CFR 265.1(c)(2), as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-9(a); §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference 40 CFR 265.1(c)(2) requirements at §§33-20-1.6 and 33-20-8.1. 40 CFR 265.1(c)(2) is currently reserved; thus, the State is equivalent to the Federal code. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. W. Va. §22-18-9(a) provides the State with an authority that is equivalent to RCRA §3004(u) addressing corrective action. However, the State is not seeking authorization for corrective action at this time.

- (31) *State statutes and regulations require that the following be recorded, as it becomes available, and maintained in the operating record until facility closure, as indicated in Revision Checklist 45: monitoring, testing or analytical data and corrective action where required by Subpart F and 40 CFR 264.226, 264.253, 264.254, 264.276, 264.278, 264.280, 264.303, 264.309, 264.347, and 264.602. These requirements are also included in Consolidated Checklist C5.*

Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.73(b), as amended December 10, 1987 (52 FR 46946).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(4)(A); §22-18-6(a)(6); §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference 40 CFR 264.73(b) at §§33-20-1.6 and 33-20-7.2. W. Va. Code §22-18-6(a)(4)(A) specifically gives the Director the authority to promulgate rules establishing record keeping practices. The wording is the same as RCRA §3004(a)(1). W. Va. Code §22-18-6(a)(6) provides the State with additional authority to promulgate rules for the establishment and maintenance of records.

- (32) *State statutes and regulations require that miscellaneous units comply with Subpart F regulations regarding releases from solid waste management units when necessary to comply with 40 CFR 264.601-264.603 as indicated in Revision Checklist 45 and included in Consolidated Checklist C5.*

Federal Authority: RCRA §3004(u); 40 CFR 264.90(d), as amended December 10, 1987 (52 FR 46946).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-9(a); §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-7.5

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference 40 CFR 264.90(d) at §§33-20-1.6, 33-20-7.2 and 33-20-7.5. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. W. Va. §22-18-9(a) provides the State with an authority that is equivalent to RCRA §3004(u).

(33) State statutes and regulations require environmental performance standards; monitoring, testing, analytical data, inspection, response and reporting procedures; and post-closure care for miscellaneous units as indicated in Revision Checklist 45 and included in Consolidated Checklist C5.

Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.600, 264.601, 264.602, and 264.603, as amended December 10, 1987 (52 FR 46946).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(4)(B); §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2

45 CSR 25, effective June 1, 1999:

§45-25-4.8

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference 40 CFR 264.600, 264.601, 264.602, and 264.603 requirements at §§33-20-1.6 and 33-20-7.2. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The Office of Air Quality regulation at §45-25-4.8 also subjects miscellaneous units to the applicable air pollution standards of 40 CFR 264. W. Va. Code §22-18-6(a)(4)(B), cited on the checklist, specifically gives the Director the authority to promulgate rules for establishing monitoring, inspection and reporting practices. The wording is the same as RCRA §3004(a)(2).

- (34) *State statutes and regulations include changes to facility requirements regarding permit modifications relative to the requirements specified in 40 CFR 264.54, 264.112(c), 264.118(d), 265.112(c) and 265.118(d) as indicated in Revision Checklist 54 and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.54, 264.112(c), 264.118(d), 265.112(c) and 265.118(d), as amended September 28, 1988 (53 FR 37912).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(5); §22-1-3(c); §22-18-5(a); §22-18-6(a); §22-18-23

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, the Federal requirements for this checklist at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. W. Va. Code §22-18-6(a)(5) specifically gives the State the authority to modify any permits under the State's Hazardous Waste Management Act.

- (35) *State statutes and regulations specify statistical methods, sampling procedures and performance standards that can be used in ground-water monitoring procedures to detect ground-water contamination at permitted hazardous waste facilities as indicated in Revision Checklist 55 and included in Consolidated Checklist C5.*

Federal Authority: RCRA §§1006, 2002(a), 3004 and 3005; 40 CFR 264.91, 264.92, 264.97, 264.98 and 264.99, as amended October 11, 1988 (53 FR 39720).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a)(4)(B); §22-18-6(a)(6); §22-12-4; §22-18-23; §22-1-3(c); §22B-3-4; §22-18-5(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-7.5; §33-20-7.5.c.

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, 40 CFR 264.91, 264.92, 264.97, 264.98 and 264.99 (except 264.99(g)) at §§33-20-1.6, 33-20-7.2, 33-20-7.5. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State has broad authorities under §§22-18-5(a), and 22-18-23 to promulgate this rule. Specifically, under W. Va. Code 22-18-6(a)(4)(B), the State has the authority to promulgate rules addressing monitoring and §22-18-6(a)(6) provides the State with the authority to promulgate rules for the taking of samples and the performing of tests and analyses.

Under §§22B-3-4 and 22-12-4, the Environmental Quality Board has specific authority to set groundwater protection standards. West Virginia's analog to 40 CFR 264.99(g) requires the chief to specify in the facility permit the frequency of sample collection rather than leaving it up to the owner to sample at least annually. The chief determines the frequency of sample collection on a case-by-case basis so that he can require sampling more frequently than once a year if necessary. Under the State's regulations, the frequency of sample collection must be no less than once every five years. However, in the Memorandum of Agreement with EPA, West Virginia has agreed to require sample collection at least annually. Therefore, under no situation will the frequency be less than what would be required under the Federal program. W. Va. Code §22-18-5(c) gives the Director the authority to enter agreements with other agencies, including EPA, as necessary to implement the provisions of the State's Hazardous Waste Management Act.

- (36) State statutes and regulations allow owners and operators of landfills, surface impoundments or land treatment units, under limited circumstances, to remain open after the final receipt of hazardous wastes in order to receive non-hazardous wastes in that unit as indicated in Revision Checklist 64 and included in Consolidated Checklists C5 and C6.**

Federal Authority: RCRA §§1006, 2002(a), 3004, 3005, and 3006; 40 CFR 264.13, 264.112, 264.113, 264.142, 265.13, 265.112, 265.113, and 265.142, as amended August 14, 1989 (54 FR 33376).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a)(12)(D); §22-18-23; §22-1-3(c); §22-18-6(a)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, the 40 CFR Parts 264 and 265 provisions addressed by this checklist at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's W. Va. Code §§22-18-5(a), 22-18-6(a)(12)(D) and 22-18-23 provide the State the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C, to adopt rules that are equivalent to the Federal regulations and include variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA Subtitle C.

- (37) State statutes and regulations provide hazardous waste facility requirements regarding the Toxicity Characteristics provisions as indicated in Revision Checklists 74 and 108 and included in Consolidated Checklists C5 and C6.**

Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.301, 265.221, 265.273 and 265.301, as amended March 29, 1990 (55 FR 11798) and July 10, 1992 (57 FR 30657).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
 §22-18-5(a); §22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
 §33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, the 40 CFR Parts 264 and 265 provisions addressed by this checklist at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's W. Va. Code §§22-18-5(a), 22-18-6(a) and 22-18-23 provide the State the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations.

- (38) *State statutes and regulations require new and existing hazardous waste treatment, storage or disposal facilities to control organic air emissions from process vents and equipment leaks as indicated in Revision Checklists 79 and 87 and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§1006, 2002, 3004, 3005, 3010, 3014, and 7004; 40 CFR Parts 264 and 265, as amended June 21, 1990 (55 FR 25454) and April 26, 1991 (56 FR 19290).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
 §22-1-3(c); §22-5-1; §22-18-6(a)(13)(A)&(B)

33 CSR 20, effective July 1, 1999:
 §33-20-1.6; §33-20-7.2; §33-20-7.8; §33-80-8.1; §33-20-8.6

45 CSR 25, effective June 1, 1999:
 §45-25-1.1.a; §45-25-1.1.b; §45-25-1.5; §45-25-3.2 (Items 6, 8 and 10); §45-25-4

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code §§22-18-6(a)(13)(A) and 22-5-1, the Office of Air Quality is tasked with preventing air pollution and protecting air quality as well as having jurisdiction and responsibility over performance standards and treatment devices regarding air emissions from all hazardous waste facilities. W. Va. Code §22-18-6(a)(13)(B) gives the Director the authority to establish rules for the monitoring and control of air emissions at hazardous waste treatment, storage and disposal facilities, including, but not limited to, open tanks, surface impoundments and landfills, as may be necessary to protect human health and the environment. At §§33-20-1.6, 33-20-7.2, 33-20-8.1, 33-20-8.6, 45-25-1.5 and 45-25-3.2 (Items 6, 8 and 10), the State adopts and incorporates by reference, without changes, the 40 CFR Parts 264 and 265 air emission control provisions. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. Further, the Office of Air Quality regulations at §§45-25-1.1.a and 45-25-1.1.b specifically extend

the air emissions standards requirements to owners and operators who burn hazardous wastes in boilers and industrial furnaces. Section 45-25-4 of the Office of Air Quality regulations includes specific air emission control requirements for all facilities.

- (39) *State statutes and regulations contain design, operating, inspection and closure requirements for drip pads and associated tanks, sumps and other devices used to assist in the collection of treated wood drippage as indicated in Revision Checklists 82, 92 and 120 and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.190, 264.570, 264.571, 264.572, 264.573, 264.574, 264.575, 265.190, 265.440, 265.441, 265.442, 265.443, 265.444, and 265.445, as amended December 6, 1990 (55 FR 50450) and July 1, 1991 (56 FR 30192), and December 24, 1992 (57 FR 61492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-5(a); §22-18-6(a); §22-18-23

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, the 40 CFR Parts 264 and 265 provisions addressed by this checklist at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. This requirement, while not specifically stated in the Federal regulations, is consistent with the intent of the Federal code. The State's W. Va. Code §§22-18-5(a), 22-18-6(a) and 22-18-23 provide the State the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations.

- (40) *State statutes and regulations include control standards for emissions of toxic organic compounds, toxic metals, hydrogen chloride, chlorine gas and particulate matter from boilers and industrial furnaces burning hazardous waste, and require owners and operators of such facilities to comply with the general facility standards applicable to hazardous waste treatment, storage and disposal facilities, as indicated in Revision Checklists 85, 94, 96, 111 and 114, and included in Consolidated Checklists C5, C6 and C7. Hazardous waste storage units at regulated burners are subject to 40 CFR 264 requirements.*

Federal Authority: RCRA §§1006, 2002, 3001 through 3007, 3010 and 7004; 40 CFR 260.10 (intro), 264.112, 264.340, 265.112, 265.113, 265.340, 265.370, 266 Subpart H and Appendices I through X, as amended February 21, 1991 (56 FR 7134), July 17, 1991 (56 FR 32688), August 27, 1991 (56 FR 42504), August 25, 1992 (57 FR 38558) and September 30, 1992 (57 FR 44999).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a); §22-18-6(a)(13)(B); §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.1; §33-20-7.1(a); §33-20-7.2; §33-20-8.1; §33-20-9

45 CSR 25, effective June 1, 1999:

§45-25-1.1.a; §45-25-1.1.b; §45-25-1.5; §45-25-3.2; §45-25-4

Remarks of the Chief of the Office of Legal Services

W. Va. Code §22-18-6(a)(13)(B) gives the Director the authority to establish rules for the monitoring and control of air emissions at hazardous waste treatment, storage and disposal facilities, including, but not limited to, open tanks, surface impoundments and landfills, as may be necessary to protect human health and the environment. At §§33-20-1.6, 33-20-7.2, 33-20-8.1, 45-25-1.5 and 45-25-3.2, the State adopts and incorporates by reference, without changes, the 40 CFR Parts 264 and 265 air emission control provisions as well as the 40 CFR Part 266, Subpart H requirements. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. Further, the Office of Air Quality regulations at §§45-25-1.1.a and 45-25-1.1.b specifically extends the air emissions standards requirements to owners and operators who burn hazardous wastes in boilers and industrial furnaces. Section 45-25-4 of the Office of Air Quality regulations includes specific air emission control requirements for all facilities, including boilers and industrial furnaces.

- (41) State statutes and regulations do not contain the withdrawn Revision Checklist 91 administrative stay for the requirement that new drip pads be impermeable. The administrative stay ended on December 24, 1992, as indicated in Revision Checklist 120 and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.572(a)(4), and 265.443(a)(4), as amended June 13, 1991 (56 FR 27332) and December 24, 1992 (57 FR 61492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-5(a); §22-18-6(a); §22-18-23

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by the checklists at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's statutes do not specifically address the State's authority for administrative stays. However, W. Va. Code §§22-18-5(a), 22-18-6(a) and 22-18-23 provide the State with the broad authorities to adopt rules that are consistent with and equivalent to the Federal regulations. The administrative stay was terminated by Revision Checklist 120 and is no longer in the Code of Federal Regulations, as of July 1, 1997. Therefore, this entry does not apply to West Virginia.

- (42) *State statutes and regulations do not contain the Revision Checklist 98 administrative stay of the permitting standards for boilers and industrial furnaces as they apply to coke ovens burning certain hazardous wastes from the coke by-products recovery process. The administrative stay ended on June 22, 1992, as indicated in Revision Checklist 105 and included in Consolidated Checklist C7.*

Federal Authority: 5 U.S.C. 705; RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 266.100(a), as amended September 5, 1991 (56 FR 43874) and June 22, 1992 (57 FR 27880).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-5(a); §22-18-6(a); §22-18-23

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-9

45 CSR 25, effective June 1, 1999:
§45-25-3.2; §45-25-1.1.a

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by the checklists at §§33-20-1.6, 33-20-9 and 45-25-3.2. The Office of Air Quality's §45-25-1.1.a subjects owners and operators who burn hazardous waste in boilers and industrial furnaces to the air regulations. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's statutes do not specifically address the State's authority for administrative stays. However, W. Va. Code §§22-18-5(a), 22-18-6(a) and 22-18-23 provide the State with the broad authorities to adopt rules that are consistent with and equivalent to the Federal regulations.

- (43) *State statutes and regulations allow owners and operators to demonstrate that an alternate hydraulically downgradient monitoring well location will meet 40 CFR 265.91(a)(3)(i)-(iii) criteria as indicated in Revision Checklist 99 and included in Consolidated Checklist C6.*

Federal Authority: RCRA §§1006, 2002(a), 3001, 3004, 3005 and 3015; 40 CFR 260.10 and 265.91(a)(3), as amended December 23, 1991 (56 FR 66365).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by the checklists at §§33-20-1.6 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal

regulations by reference. Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules including exemptions and variances as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA.

- (44) *State statutes and regulations require owners and operators of new units, expansions, and replacement units at surface impoundments, waste piles, and landfills to meet the monitoring and inspection Construction Quality Assurance (CQA) program, double liner, leachate collection and removal systems, leak detection systems, action leakage, response action plan and closure/post-closure care requirements as indicated in Revision Checklist 100 and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§3004, 3005, 3006 and 3015; 40 CFR 264.19, 264.221-223, 264.226, 264.228, 264.251-264.254, 264.301-264.304, 264.310, 265.19, 265.221-265.223, 265.226-265.228, 265.254, 265.255, 265.259, 265.260, 265.301-265.304 and 265.310, as amended January 29, 1992 (57 FR 3462).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(4)(B); §22-18-5(a); §22-18-6(a)(13)(B); §22-18-6(a); §22-18-23; §22-1-3(c); §22-18-11

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

45 CSR 25, effective June 1, 1999:

§45-25-3.2; §45-25-4.10; §45-25-4.11

Remarks of the Chief of the Office of Legal Services

W. Va. Code §22-18-6(a)(4)(B) specifically gives the Director the authority to promulgate rules establishing monitoring and inspection practices. The wording is the same as RCRA §3004(a)(2). In addition §22-18-6(a)(13)(B) provides the Office of Air Quality the authority over air emissions. W. Va. Code §§22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices. West Virginia adopts and incorporates by reference 40 CFR Parts 264 and 265 monitoring and inspection requirements at §§33-20-1.6, 33-20-7.2, 33-20-8.1 and 45-25-3.2. §§45-25-4.10 through 4.11 provide clarification of operating requirements found in the Federal requirements incorporated by reference. West Virginia's provision at §45-25-4.10, requiring hazardous waste landfills to be covered or otherwise managed to prevent wind dispersal, is analogous to 40 CFR 264.301(j) and 265.301(i). The provisions addressed by West Virginia at §45-25-4.11 are consistent with, and equivalent to, the Federal code. At §45-25-4.11, the State requires that all landfills, surface impoundments, and land treatment facilities shall be located, designed, constructed, operated, maintained, and closed in a manner that will assure protection of human health and the environment. Such a requirement is throughout the Federal code (e.g. 264.15, 264.17(b), 264.18(b), 264.31, 264.51, 264.91(b), 264.101(c), and 264.111(b)). W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

- (45) *State statutes and regulations do not contain the withdrawn Revision Checklist 101 administrative stay for the requirement that existing drip pads be impermeable, as indicated in Revision Checklist 120.*

Federal Authority: 5 U.S.C. 705; RCRA §§2002(a) and 3001(b) & (e)(1); 40 CFR 264.573(a)(4), and 265.443(a)(4) as amended February 18, 1992 (57 FR 5859) and December 24, 1992 (57 FR 61492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-5(a); §22-18-6(a); §22-18-23

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by the checklists at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's statutes do not specifically address the State's authority for administrative stays. However, W. Va. Code §§22-18-5(a), 22-18-6(a) and 22-18-23 provide the State with the broad authorities to adopt rules that are consistent with and equivalent to the Federal regulations.

- (46) *State statutes and regulations require that, at a minimum, the waste analysis must contain all the information which must be known to treat, store or dispose of the waste in accordance with 40 CFR Parts 264 and 268 as indicated in Revision Checklist 102 and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 264.13(a)(1), and 265.13(a)(1), as amended March 6, 1992 (57 FR 8086).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-6(a)(6)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provisions addressed by the checklist at §§33-20-1.6, 33-20-7.2 and 33-20-8.2. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. Under W. Va. Code §22-18-6(a)(6), the State has the authority to promulgate rules for performing tests and analyses.

- (47) *State statutes and regulations include requirements for owners or operators who store or treat hazardous waste in containment buildings as indicated in Revision Checklist 109 and included on Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§3004(d)-(k) and (m); 264.110, 264.111, 264.112, 264.140, 264.142, 264 Subpart DD, 265.110, 265.111, 265.112, 265.140, 265.142, 265.221, 265 Subpart DD, as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c); §22-18-6(a); §22-18-23; §22-18-5(a)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia has adopted by reference, without changes, the provisions for containment buildings at HWMR §§33-20-1.6, 33-20-7.2 and 33-20-8.1. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (48) *State statutes and regulations subject used oil burned for recovery that is also a hazardous waste solely because it exhibits a hazardous characteristic to the Part 279 requirements as indicated in Revision Checklists 112 and 122, and included in Consolidated Checklist C7.*

Federal Authority: RCRA §3001 and 3014; 40 CFR 264.11(g)(2) and 266.100(b)(1), as amended September 10, 1992 (57 FR 41566) and May 3, 1993 (58 FR 26420).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(2); §22-18-6(a)(14); §22-18-6(a)(15); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-9

45 CSR 25, effective June 1, 1999:
§45-25-1.1.a; §45-25-3.2

Remarks of the Chief of the Office of Legal Services.

Under W. Va. Code §22-18-6(a)(2), the State has the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste. W. Va. Code §§22-18-6(a)(14) and (15) specifically provide the State with the authority to promulgate rules for the management of used oil and recycled oil as necessary to effectuate the purposes of the State's Hazardous Waste Management Act. West Virginia has adopted by reference the Federal used oil provisions addressed by the checklists at HWMR §§33-20-1.6, 33-20-7.2 and 33-20-9 and at the Office of Air Quality's §45-25-3.2. and §45-25-1.1.a describe the purpose and application of the air regulations. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (49) State statutes and regulations allow the use of additional financial instruments (letter of credit, a surety bond, a guarantee, trust fund, and purchase of insurance by other firms) to meet the liability coverage requirements as specified in Revision Checklist 113 and included on Revision Checklists C5 and C6.**

Federal Authority: RCRA §§2002(a), 3004 and 3005; 40 CFR 264.141, 264.147, 264.151, 265.141, 265.147 and 265.151, as amended September 1, 1988 (53 FR 33938), July 1, 1991 (56 FR 30200), and September 16, 1992 (57 FR 42832).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a)(4)(F); §22-18-6(a)(12)(D); §22-18-23; §22-1-3(c); §22-18-6(a); §22-18-25(1)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, 40 CFR Parts 264 and 265 financial requirements at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's statutory authority at §22-18-6(a)(4)(F) specifically gives the State the authority to promulgate rules for financial assurance. §22-18-25(1) provides specific authority relative to the types of instruments. W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to adopt rules that are consistent with and equivalent to the Federal regulations. Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to promulgate rules that include variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

- (50) State statutes and regulations include conforming changes to 264.147(f)(6) and 265.147(f)(6) to expand the instruments available to owners and operators that no longer meet the requirements of the financial test for liability coverage as indicated in Revision Checklist 113 and included on Consolidated Checklists C5 and C6.**

Federal Authority: RCRA §3004; 40 CFR 264.147(f)(6) and 265.147(f)(6), as amended September 16, 1992 (57 FR 42832).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a)(4)(F); §22-18-6(a)(12)(D); §22-18-23; §22-1-3(c); §22-18-6(a); §22-18-25(1)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, 40 CFR Parts 264 and 265 financial requirements at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's statutory authority at §22-18-6(a)(4)(F) specifically gives the State the authority to promulgate rules for financial assurance. §22-18-25(1) provides specific authority relative to the financial instruments. W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to adopt rules that are consistent with and equivalent to the Federal regulations. Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to promulgate rules that include variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

- (51) *State statutes and regulations require reporting of third-party claims against an owner's or operator's liability coverage as indicated by Revision Checklist 113 and included on Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§2002(a), 3004 and 3005; 40 CFR 264.147(a)(7)&(b)(7) and 265.147(a)(7)&(b)(7), as amended September 1, 1988 (53 FR 33938) and September 16, 1992 (57 FR 42832).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a)(4)(F); §22-18-23; §22-1-3(c); §22-18-6(a)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, 40 CFR Parts 264 and 265 financial requirements at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's statutory authority at §22-18-6(a)(4)(F) specifically gives the State the authority to promulgate rules for financial assurance. W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to adopt rules that are consistent with and equivalent to the Federal regulations.

- (52) *State statutes and regulations prohibit the disposal, in hazardous waste landfills, of liquids that have been absorbed in materials that are biodegradable or that release liquids during routine landfill operations, as indicated in Revision Checklist 118 and included on Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §3004(c); 40 CFR 264.13, 264.314, 264.316, 265.13, 265.314, and 265.316, as amended November 18, 1992 (57 FR 54452).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-18-23; §22-1-3(c); §22-18-6(a)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

At the §33-20-1.6, 33-20-7.2 and 33-20-8.1, West Virginia adopts and incorporates by reference, without changes, the Federal provisions. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The statutory provision at W. Va. Code §22-18-6(a)(12)(B) specifically gives the State the authority to establish standards and prohibitions relating to the land disposal of liquid hazardous wastes or free liquid wastes. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a)(12)(D) and 22-18-23 provide the State with the broad authority to promulgate rules that are consistent with and equivalent to the Federal regulations.

- (53) *State statutes and regulations require owners or operators of new drip pads to have either 1) a surface protection system meeting the hydraulic conductivity, material chemical compatibility, and assessment requirements of 264.573(a)(4) or 265.443(a)(4), or 2) a liner and leak detection system below the pad as well as a leak collection system as specified in Revision Checklist 120 and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.572, 264.573, 265.442 and 265.443, as amended December 24, 1992 (57 FR 61492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-5(a); §22-18-6(a)(4); §22-18-23; §22-18-11

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by the checklist at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. Under W. Va. Code §22-18-6(a)(4), the State has the authority to

adopt rules for the management of hazardous waste at treatment, storage and disposal facilities. W. Va. Code §§22-18-5(a) and 22-18-23 provide the State with the broad authorities to adopt rules that are consistent with and equivalent to the Federal regulations.

- (54) *State statutes and regulations require owners or operators of existing drip pads to meet the hydraulic conductivity, material chemical compatibility, and assessment requirements of 264.573(a)(4) or 265.443(a)(4), as specified in Revision Checklist 120 and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.571, 264.573, 265.441 and 265.443, as amended December 24, 1992 (57 FR 61492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-5(a); §22-18-6(a)(4); §22-18-23; §22-18-11

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by the checklist at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. Under W. Va. Code §22-18-6(a)(4), the State has the authority to adopt rules for the management of hazardous waste at treatment, storage and disposal facilities. W. Va. Code §§22-18-5(a) and 22-18-23 provide the State with the broad authorities to adopt rules that are consistent with and equivalent to the Federal regulations.

- (55) *State statutes and regulations contain requirements for the management of infrequent and incidental drippage in storage yards as indicated in Revision Checklist 120 and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§2002(a) and 3001(b)&(e)(1); 40 CFR 264.570(c) and 265.440(c), as amended December 24, 1992 (57 FR 61492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-5(a); §22-18-6(a)(4); §22-18-23

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by the checklist at §§33-20-1.6, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. Under W. Va. Code §22-18-6(a)(4), the State has the authority to adopt rules for the management of hazardous waste at treatment, storage and disposal facilities. W. Va. Code §§22-18-5(a) and 22-18-23 provide the State with the broad authorities to adopt rules that are consistent with and equivalent to the Federal regulations.

(56) State statutes and regulations contain remediation waste management provisions for corrective action management units (CAMUs) and temporary units (TUs) at RCRA facilities, as indicated in Revision Checklist 121 and included in Consolidated Checklists C5 and C6.

Federal Authority: RCRA §§1006, 2002(a), 3004(u), 3004(v), 3005(c), 3007, and 3008(h); 40 CFR 260.10, 264.3, 264.101(b), 264.552, 264.553 and 265.1(b), as amended February 16, 1993 (58 FR 8658).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-9

33 CSR 20, effective July 1, 1999; §33-20-1.6; §33-20-2.1; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference, without changes, the Federal 40 CFR part 264 and 265 provisions addressed by this checklist at §§33-20-1.6, 33-20-2.1, 33-20-7.2 and 33-20-8.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's authority for corrective action is provided by W. Va. §22-18-9. It provides authority similar to RCRA §3004(u) & (v). West Virginia's regulations do not include all the provisions required for corrective action; therefore, the State is not seeking authorization for Revision Checklist 121 at this time.

(57) State statutes and regulations are amended such that the procedures for conducting air quality modeling and screening for boilers and industrial furnaces burning hazardous wastes reference the method recommended in Appendix W of 40 CFR Part 51. State regulations and statutes also incorporate by reference the October 1992 edition of "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources" as indicated in Revision Checklist 125 and included in Consolidated Checklist C7.

Federal Authority: §§1006, 2002, 3001 through 3007, 3010 and 7004; 40 CFR 266.104(e)(3), 266.106(h) and Part 266 Appendix X, as amended July 20, 1993 (58 FR 38816).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
 §22-18-6(a)(13)(A); §22-1-3(c)

33 CSR 20, effective July 1, 1999:
 §33-20-1.6; §33-20-9

45 CSR 25, effective June 1, 1999:
 §45-25-3.2

Remarks of the Chief of the Office of Legal Services

W. Va. Code §22-18-6(a)(13)(A) gives the Director the authority to establish air pollution standards and procedures as necessary to comply with the requirements of the State's Hazardous Management Act. The State adopts and incorporates by reference, without changes, the 40 CFR Part 266 air emission control provisions at §§33-20-1.6, 33-20-9 and §45-25-3.2. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

(58) State statutes and regulations directly refer to test methods as they are found in "Test Methods for Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as indicated in Revision Checklist 126 and included in Consolidated Checklists C5 and C6.

Federal Authority: RCRA §§1006; 2002, 3001, 3002, 3004, 3005, 3006, 3010, and 3014; 40 CFR 264.190(a); 264.314(c); 265.190(a); and 265.314(d), as amended August 31, 1993 (58 FR 46040).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
 §22-18-6(a)
 §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999::; §33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia incorporates by reference 40 CFR Parts 264 and 265 references to the SW-846 Test Methods. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. The State's W. Va. Code §§22-18-6(a) and 22-18-23 give the State the broad authority to adopt rules that are consistent with and equivalent to the Federal regulations.

(59) State statutes and regulations contain an administrative stay, until further administrative action is taken, that replaces the current limits needed to qualify for the Beville exemption under test number 2 with the land disposal restriction limits for underlying constituents as indicated in Revision Checklist 127 and included in Consolidated Checklist C7.

Federal Authority: 5 U.S.C. 705; RCRA §§2002(a), and 3001(b)&(e)(1); 40 CFR 266.112(b)(2)(i) and Part 266 Appendix VII, as amended November 9, 1993 (58 FR 59598).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-5(a); §22-18-6(a); §22-18-23

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-9

45 CSR 25, effective June 1, 1999:
§45-25-3.2

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by the checklist at §§33-20-1.6, 33-20-9 and 45-25-3.2. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. The State's statutes do not specifically address the State's authority for administrative stays. However, W. Va. Code §§22-18-5(a), 22-18-6(a) and 22-18-23 provide the State with the broad authorities to adopt rules that are consistent with and equivalent to the Federal regulations.

(60) State statutes and regulations incorporate updates to the recordkeeping instructions so that the codes used by hazardous waste treatment, storage and disposal facilities to maintain records on-site match the codes used by these facilities on the Part A Permit Application Form as indicated on Revision Checklist 131 and included on Consolidated Checklists C5 and C6. The new handling codes for Miscellaneous Units and Boilers and Industrial Furnaces, addressed by Checklist 131 and included in Consolidated Checklists C5 and C6, are also incorporated into the statutes and regulations.

Federal Authority: RCRA §§ 3004 and 3005; 40 CFR 264 Appendix I, 265 Appendix I, as amended March 24, 1994 (59 FR 13891).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(4)(A); §22-18-6(a)(6); §22-1-3(c); §22-18-6(a)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference 40 CFR Parts 264/265 Appendix 1 at §§33-20-1.6, 33-20-7.2, and 33-20-8.1. W. Va. Code §22-18-6(a)(4)(A) specifically gives the Director the authority to promulgate rules establishing record keeping practices. The wording is the same as RCRA §3004(a)(1). W. Va. Code §22-18-6(a)(6) provides the State with additional authority to promulgate rules for the establishment and maintenance of records.

(61) State statutes and regulations indicate that the "Uniform Customs and Practice for Documentary Credits" is a copyrighted document of the International Chamber of Commerce as indicated in Revision Checklist 133 and included in Consolidated Checklist C5.

Federal Authority: RCRA 2002(a), 3004, 3005, and 3006; 40 CFR 264.151(d)&(k), as amended June 10, 1994 (59 FR 29958).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-5(a); §22-18-6(a); §22-18-23

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2

Remarks of the Chief of the Office of Legal Services

West Virginia has the broad authority under W. Va. Code §§22-18-5(a), 22-18-6(a) and 22-18-23 to adopt rules that are consistent with and equivalent to the Federal regulations. West Virginia adopts and incorporates by reference the Federal provision addressed by the checklist at §§33-20-1.6 and 33-20-7.2. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

- (62) *State statutes and regulations remove from the 266.20(b) exemption anti-skid/deicing uses of slags from high temperature metals recovery (HTMR) processing of hazardous wastes K061, K062, and F006 as indicated in Revision Checklist 136 and included in Consolidated Checklist C7.*

Federal Authority: RCRA §3004; 40 CFR Parts 266.20(c) , as amended August 24, 1994 (59 FR 43496).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-5(a); §22-18-6(a); §22-18-23

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-9

Remarks of the Chief of the Office of Legal Services

West Virginia has the broad authority under W. Va. Code §§22-18-5(a), 22-18-6(a) and 22-18-23 to adopt rules that are consistent with and equivalent to the Federal regulations. West Virginia adopts and incorporates by reference the Federal provision addressed by the checklist at §§33-20-1.6 and 33-20-9. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

- (63) *State statutes and regulations include changes that conform with the Universal Treatment Standards as indicated in Revision Checklist 137, and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 264.1(g)(6) and 265.1(c)(10), as amended September 19, 1994 (59 FR 47982) and January 3, 1995 (60 FR 242).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

At HWMR §§33-20-1.6, 33-20-7.2 and 33-20-8.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Parts 264 and 265, including the changes addressed by Revision Checklist 137. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). W. Va. Code §22-18-6(a)(12)(D) provides the State with the authority to promulgate rules that include exemptions and variances as appropriate to allow the State to assume primacy for the administration of the Federal hazardous waste management program under RCRA.

(64) *State statutes and regulations require compliance with the requirements in 40 CFR 268 applicable to users of materials that are used in a manner constituting disposal, as indicated in Revision Checklist 137, and included in Consolidated Checklist C7.*

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 266.23(a), as amended September 19, 1994 (59 FR 47982).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-9

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 266 at HWMR §§33-20-1.6 and 33-20-9. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

(65) *State statutes and regulations exempt certain mercury recovery furnaces from the requirements of 40 CFR 266.102 through 266.111, as indicated in Revision Checklist 137, and included in Consolidated Checklist C7.*

Federal Authority: RCRA §§2002 and 3004; 40 CFR 266.100(c)(1); 266.100(c)(3); and 266/Appendix XIII, as amended September 19, 1994 (59 FR 47982).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-9

45 CSR 25, effective June 1, 1999:
§45-25-3.2/Table 25-A, Item 13

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 266, Subpart H and the 266 Appendices at HWMR §§33-20-1.6 and 33-20-9, and the Office of Air Quality rule §45-25-3.2/Table 25-A, Item 13. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (66) *State statutes and regulations subject universal waste handlers and transporters handling listed universal wastes to Part 273 requirements rather than Part 264 or 265 requirements as indicated in Revision Checklist 142A and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§2002, 3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 264.1(g)(11) and 265.1(c)(14), as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At §§33-20-1.6, 7.2, and 8.1, West Virginia adopts and incorporates by reference the Federal provisions for the regulation of universal wastes addressed by Revision Checklist 142 A. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

- (67) *State statutes and regulations subject batteries to the Part 273 requirements rather than the Part 264 or 265 requirements as indicated in Revision Checklist 142B and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 264.1(g)(11)(i) and 265.1(c)(14)(i), as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At §§33-20-1.6, 7.2, and 8.1, West Virginia adopts and incorporates by reference the Federal provisions for the regulation of universal wastes addressed by Revision Checklist 142 B. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

(68) State statutes and regulations include the universal waste amendments to 266.80 as indicated in Revision Checklist 142B and included in Consolidated Checklist C7.

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 266.80(a)&(b), as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-9

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At §§30-20-1.6 and 30-20-9, West Virginia adopts and incorporates by reference the Federal provisions for the regulation of universal wastes addressed by Revision Checklist 142 B. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

(69) State statutes and regulations subject pesticides, which are either recalled or collected in waste pesticide collection programs, to the Part 273 requirements rather than the Part 264 or 265 requirements as indicated in Revision Checklist 142C and included in Consolidated Checklists C5 and C6.

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 264.1(g)(11)(ii) and 265.1(c)(14)(ii), as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At §§33-20-1.6, 7.2, and 8.2, West Virginia adopts and incorporates by reference the Federal provisions for the regulation of universal wastes addressed by Revision Checklist 142 C. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

- (70) *State statutes and regulations subject hazardous waste thermostats to the Part 273 requirements rather than the Part 264 or 265 requirements as indicated in Revision Checklist 142D and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 264.1(g)(11)(iii) and 265.1(c)(14)(iii), as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-7.3; §33-20-8.1; §33-20-8.2

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At §§33-20-1.6, 7.2, and 8.1, West Virginia adopts and incorporates by reference the Federal provisions for the regulation of universal wastes addressed by Revision Checklist 142 D. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. At §§33-20-7.3 and 33-20-8.2, West Virginia has revised the Federal provision at 40 CFR 264.1(g)(11)(iii) and 265.1(c)(14)(iii) to include mercury containing lamps. West Virginia is not seeking authorization for the requirements for mercury containing lamps.

- (71) *State statutes and regulations provide that OECD 301B (Modified Sturm Test) may also be used to demonstrate that a sorbent is non-biodegradable as indicated in Revision Checklist 145, and included in Consolidated Checklists C5 and C6.*

Federal Authority: RCRA §3004(c), 42 U.S.C. 6924(c); 40 CFR 264.314(e)(2)(ii)&(iii), and 265.314(e)(2)(ii)&(iii), as amended July 11, 1995 (60 FR 35703).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-8.1

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6, 7.2 and 8.1, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR Parts 264 and 265 which include 40 CFR 264.314(e)(2)(ii)&(iii), and 265.314(e)(2)(ii)&(iii). W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purpose and requirements of RCRA Subtitle C.

(72) 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 indicated in Revision Checklist 154, and included in Consolidated Checklists C5 and C6.

Federal Authority: RCRA §3004(n); 40 CFR 60 Appendix A and 40 CFR Parts 264 and 265 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).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-5-1; §22-18-6(a); §22-18-6(a)(13)(A)&(B); §22-18-23

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-7.8; §33-20-8.1; §33-20-8.6

45 CSR 25, effective June 1, 1999:

§45-25-1.1.a; §45-25-1.1.b; §45-25-1.5.a; §45-25-3.2 (Items 6, 8 and 10); §§45-25-4.5 through 4.8

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code §§22-18-6(a)(13)(A) and 22-5-1, the Office of Air Quality is tasked with preventing air pollution and protecting air quality as well as having jurisdiction and responsibility over performance standards and treatment devices regarding air emissions from all hazardous waste facilities. W. Va. Code §22-18-6(a)(13)(B) gives the Director the authority to establish rules for the monitoring and control of air emissions at hazardous waste treatment, storage and disposal facilities, including, but not limited to, open tanks, surface impoundments and landfills, as may be necessary to protect human health and the environment. At §§33-20-1.6, 33-20-7.2, 33-20-8.1, 33-20-8.6, 45-25-1.5.a and 45-25-3.2 (Items 6, 8 and 10), the State adopts and incorporates by reference, without changes, the 40 CFR Parts 264 and 265 air emission control provisions. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. Section 45-25-4 of the Office of Air Quality regulations includes specific air emission control requirements for all facilities.

- (73) *State statutes and regulations provide for the safe storage and transport of military munitions, provide design and operating standards and closure and post-closure care for facilities storing munitions and explosive hazardous wastes, define when military munition is a solid waste, subject explosives and military munitions to certain listed requirements, and require the treatment and disposal of hazardous waste military munitions subject to Parts 260 through 270 as indicated in Revision Checklist 156 and included in Consolidated Checklists C5, C6, and C7. These statutes and regulations also clarify that emergency responses involving both military and non-military munitions are considered an immediate response to a discharge or imminent and substantial threat of a discharge of a hazardous waste.*

Federal Authority: RCRA §§3001, 3004; 40 CFR 264.1(g)(8)(i)(D), 264.1(g)(8)(iv), 264.1(i), 264.70, 264 Subpart EE, 265.1(c)(11)(i)(D), 265.1(c)(11)(iv), 265.1(f), 265.70, Part 265 Subpart EE, and Part 266 Subpart M, as amended February 12, 1997 (62 FR 6622).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a); §22-18-23

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-8.1; §33-20-9

150 CSR 11, effective November 8, 1999:

§150-11-1.1; §150-11-1.5 (to be revised); §150-11-10.1 through 10.5 (to be adopted)

157 CSR 7, effective April 28, 1999:
§157-7-1.1; §157-7-1.6; §157-7-5.1

Remarks of the Chief of the Office of Legal Services

Under §§22-18-(6)(a) and 22-18-23, West Virginia has broad authority to adopt rules that are equivalent to and consistent with the Federal regulations. At §§33-20-1.6, 33-20-7.2, 33-20-8.1 and 33-20-9, West Virginia has adopted by reference the Federal provisions addressed by Revision Checklist 156. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. In addition, in the DOH and PSC regulations, the State subjects road/highway and rail transporters of military munitions to requirements that are equivalent to the Federal provisions.

(74) State statutes and regulations provide for a manifest exemption for off-site shipment of unused waste munitions from one military installation to another as indicated in Revision Checklist 156 and included in Consolidated Checklist C7.

Federal Authority: RCRA §§3001, 3003, 3004(y); 40 CFR 266.203, as amended February 12, 1997 (62 FR 6622).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-6(a); §22-18-6(a)(12); §22-18-23

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-9

150 CSR 11, effective November 8, 1999:
§§150-11-10.2 through 150-11-10.4 (to be adopted)

157 CSR 7, effective April 28, 1999:
§157-7-1.1; §157-7-1.6; §157-7-5.1

Remarks of the Chief of the Office of Legal Services

Under §§22-18-(6)(a) and 22-18-23, West Virginia has broad authority to adopt rules that are equivalent to and consistent with the Federal regulations. Under §22-18-6(a)(12), the State has the authority to grant exemptions. At §§33-20-1.6 and 33-20-9, West Virginia has adopted by reference the 40 CFR 266.203 provision, as addressed by Revision Checklist 156. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. In addition, in the DOH and PSC regulations, the State subjects road/highway and rail transporters of military munitions to requirements that are equivalent to the Federal provisions.

(75) State statutes and regulations provide for a conditional exemption for waste munitions storage as indicated in Revision Checklist 156 and included in Consolidated Checklist C7.

Federal Authority: RCRA §§3001, 3003, 3004(y); 40 CFR 266.205, as amended February 12, 1996 (62 FR 6622).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a); §22-18-6(a)(12); §22-18-23

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-9

Remarks of the Chief of the Office of Legal Services

Under §§22-18-(6)(a) and 22-18-23, West Virginia has broad authority to adopt rules that are equivalent to and consistent with the Federal regulations. Under §22-18-6(a)(12), the State has the authority to grant exemptions. At §§33-20-1.6 and 33-20-9, West Virginia has adopted by reference the 40 CFR 266.205 provision, as addressed by Revision Checklist 156. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference.

(76) State statutes and regulations include required test methods in EPA Publication SW-846 and Third Edition of the EPA Approved Test Methods Manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" through Update III and include amendments as indicated in Revision Checklist 158 and included in Consolidated Checklists C5, C6, and C7.

Federal Authority: RCRA §§1006, 2002(a), 3004-3007, 3010, 3013-3018, and 7004; 40 CFR 264.1034(d)(1)(iii), 264.1034(f), 264.1063(d)(2), Part 264 Appendix IX, 265.1034(d)(1)(iii), 265.1034(f), 265.1063(d)(2), 266.104(e)(1), 266.106(g)(1)&(2), 266.107(f), and 266 Appendix IX, as amended June 13, 1997 (62 FR 32452).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-7.2; §33-20-7.8; §33-20-8.6; §33-20-9

45 CSR 25, effective June 1, 1999:

§45-25-3.2 (Items 6, 8 and 13)

Remarks of the Chief of the Office of Legal Services

West Virginia incorporates by reference the test methods addressed by Revision Checklist 158. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. Under §§22-18-(6)(a) and 22-18-23, West Virginia has broad authority to adopt rules that are equivalent to and consistent with the Federal regulations.

VI. LAND DISPOSAL RESTRICTIONS

Federal Authority: RCRA §§1006, 2002(a), 3001 and 3004

- A. *State statutes and regulations restrict the land disposal of hazardous wastes as specified in 40 CFR Part 268 and indicated in Consolidated Checklist C8 which includes the provisions of Revision Checklists 34, 39, 50, 62, 63, 66, 74, 78, 83, 95, 102, 103, 106, 109, 116, 121, 123, 124, 126, 134, 136, 137, 142A, 142B, 142C, 142D, 151, 155, 157 and 159.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Part 268, as amended November 7, 1986 (51 FR 40572), June 4, 1987 (52 FR 21010), July 8, 1987 (52 FR 25760), October 27, 1987 (52 FR 41295), August 17, 1988 (53 FR 31138), February 27, 1989 (54 FR 8264), May 2, 1989 (54 FR 18836), June 23, 1989 (54 FR 26594), September 6, 1989 (54 FR 36967), June 13, 1990 (55 FR 23935), March 29, 1990 (55 FR 11798), June 1, 1990 (55 FR 22520), January 31, 1991 (56 FR 3864), August 19, 1991 (56 FR 41164), March 6, 1992 (57 FR 8086), May 15, 1992 (57 FR 20766), June 26, 1992 (57 FR 28628), August 18, 1992 (57 FR 37194), October 20, 1992 (57 FR 47772), February 16, 1993 (58 FR 8658), May 14, 1993 (58 FR 28506), May 24, 1993 (58 FR 29860), August 31, 1993 (58 FR 46040), June 20, 1994 (59 FR 31551), August 24, 1994 (59 FR 43496), September 19, 1994 (59 FR 47980), September 19, 1994 (59 FR 47982), January 3, 1995 (60 FR 242), May 11, 1995 (60 FR 25492), April 8, 1996 (61 FR 15566 and 61 FR 15660), April 30, 1996 (61 FR 19117), June 28, 1996 (61 FR 33680), July 10, 1996 (61 FR 36419), August 26, 1996 (61 FR 43924), January 14, 1997 (62 FR 1992), February 19, 1997 (62 FR 7502), May 12, 1997 (62 FR 25998) and June 17, 1997 (62 FR 32974).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-18-23; §22-1-3(c); §22-18-6(a)(2)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. Specifically, W. Va. Code §22-18(a)(12)(A) gives the Director the authority to establish standards and prohibitions relating to the management of hazardous waste by land disposal methods, while W. Va. Code §22-18-6(a)(12)(B) provides the authority to establish standards and prohibitions relating to the land disposal of liquid hazardous wastes or free liquids contained in hazardous wastes and any other liquids which are not hazardous wastes. Specific authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act is provided by W. Va. Code §22-18-6(a)(2). In addition, at W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23, West Virginia has the broad authority to adopt rules that are consistent with and equivalent to the Federal regulations.

At HWMR §§33-20-1.6 and 33-20-10.1, West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 268, except that at §33-20-10.3, the State exempts 40 CFR 268.5, 268.6 and 268.42(b) from the incorporation by reference. In addition, at §33-20-10.4, the State makes it clear that the

definition of "Administrator" at 40 CFR 268.40(b) has the same meaning as defined in 40 CFR 260.10. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c). The Federal provisions that West Virginia excepts from the incorporation by reference address regulations which are under the sole responsibility of the EPA Administrator. These Federal provisions are not delegable to States because of the national concerns which must be examined when decisions are made relative to them.

B. Specific provisions affecting 40 CFR Part 268 that are included in State statutes and regulations are listed below:

- (1) *State statutes and regulations provide for the restrictions of the land disposal of certain spent solvents and dioxin-containing hazardous wastes as indicated in Revision Checklists 34, 39 and 50 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Part 268, as amended November 7, 1986 (51 FR 40572), June 4, 1987 (52 FR 21010), July 8, 1987 (52 FR 25760), and August 17, 1988 (53 FR 31138).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklists 34, 39, and 50 at §§33-20-1.6 and 33-20-10. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (2) *State statutes and regulations restrict the disposal of certain California list wastes, including liquid hazardous waste containing polychlorinated biphenyls (PCBs) above specified concentrations, and hazardous waste containing halogenated organic compounds (HOCs) above specified concentrations as indicated in Revision Checklists 39, 50, and 66 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Part 268, as amended July 8, 1987 (52 FR 25760), October 27, 1987 (52 FR 41295), August 17, 1988 (53 FR 31138), and September 6, 1989 (54 FR 36967).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-10

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklists 39, 50, and 66 at §§33-20-1.6 and 33-20-10. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (3) *State statutes and regulations for specific treatment standards and effective dates for certain wastes from the "First Third" of the schedule of restricted wastes listed in 40 CFR 268.10 as well as land disposal restrictions for those First Third wastes for which a treatment standard is not established as indicated in Revision Checklists 50, 62 and 66 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §3004 (d)-(k) and (m); 40 CFR Part 268, as amended on August 17, 1988 (53 FR 31138), February 27, 1989 (54 FR 8264), May 2, 1989 (54 FR 18836), September 6, 1989 (54 FR 36967), and June 13, 1990 (55 FR 23935).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-10

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklists 50, 62, and 66 at §§33-20-1.6 and 33-20-10. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (4) *State statutes and regulations for certain treatment standards and prohibition effective dates for certain Second Third wastes and for imposing the "soft hammer" provisions of 40 CFR 268.8 on Second Third wastes for which the Agency is not establishing treatment standards as indicated in Revision Checklist 63 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Part 268, as amended June 23, 1989 (54 FR 26594).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 63 at §§33-20-1.6 and 33-20-10. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (5) *State statutes and standards for treatment standards and effective dates for certain First Third "soft hammer" wastes as well as for certain wastes originally contained in the Third Third of the schedule as indicated in Revision Checklist 63 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Part 268, as amended June 23, 1989 (54 FR 26594).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 63 at §§33-20-1.6 and 33-20-10. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (6) *State statutes and regulations provide specific treatment standards and effective dates for the "Third Third" wastes, "soft hammer" First and Second Third wastes, five newly listed wastes, four wastes that fall into the F002 and F005 (spent solvent) waste codes, F025, mixed radioactive/hazardous wastes, characteristic wastes, and multi-source leachate, as well as establish revised treatment standards for petroleum refining hazardous wastes*

(K048-K052) as indicated in Revision Checklists 78, 83 and 102 and included in Consolidated Checklist C8.

Federal Authority: RCRA §§3001 and 3004 (d)-(k) and (m); 40 CFR 261, 262, 264, 265, 268, and 270, as amended June 1, 1990 (55 FR 22520), January 31, 1991 (56 FR 3864) and March 6, 1992 (57 FR 8086).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklists 78, 83, and 102 at §§33-20-1.6 and 33-20-10. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (7) ***State statutes and regulations provide for alternate treatment standards for lab packs meeting certain criteria as indicated in Revision Checklists 78 and 83 and included in Consolidated Checklist C8.***

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 264.316(f), 265.316(f), 268.7(a)(7), 268.7(a)(8), 268.42(c), 268.42(c)(1)-(4), and 268 Appendices IV and V, as amended June 1, 1990 (55 FR 22520) and January 31, 1991 (56 FR 3864).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-8.1; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

The State's authority to adopt rules for the land disposal restrictions is provided by W. Va. Code §§22-18-6(a)(12)(A), (B) and (D). Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules including exemptions and variances as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA. West Virginia adopts and incorporates by reference the Federal provision addressed by the checklists at §§33-20-1.6, 33-20-7.2, 33-20-8.1 and 33-20-10.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

- (8) *State statutes and regulations contain treatment standards under the land disposal restrictions program for K061 as indicated in Revision Checklist 95 and included in Consolidated Checklist C8.*

Federal Authority: RCRA 3004(d)-(k) and (m); 40 CFR 268.41 and 268.42, as amended August 19, 1991 (56 FR 41164).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-10

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 95 at §§33-20-1.6 and 33-20-10. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (9) *State statutes and regulations provide an extension of the land disposal restriction effective date for hazardous waste debris until May 8, 1993, as indicated in Revision Checklists 103, 116 and 123 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §3004(h)(3); 40 CFR 268.35(c)-(e), as amended May 15, 1992 (57 FR 20766), October 20, 1992 (57 FR 47772) and May 14, 1993 (58 FR 28506).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

The State's authority to adopt rules for the land disposal restrictions is provided by W. Va. Code §§22-18-6(a)(12)(A), (B) and (D). Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules including exemptions and variances as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA. West Virginia adopts and incorporates by reference the Federal provision addressed by the checklists at §§33-20-1.6 and 33-20-10.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

- (10) *State statutes and regulations provide an extension of the land disposal restriction effective date, until May 8, 1993, for D008 lead-bearing hazardous materials stored before secondary smelting, provided the owner/operator meets the requirements specified at 40 CFR 268.35(k), as indicated in Revision Checklist 106 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §3004(h)(3); 40 CFR 268.35(c) and (k), as amended June 26, 1992 (57 FR 28628).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

The State's authority to adopt rules for the land disposal restrictions is provided by W. Va. Code §§22-18-6(a)(12)(A), (B) and (D). Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules including exemptions and variances as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA. West Virginia adopts and incorporates by reference the Federal provision addressed by the checklists at §§33-20-1.6 and 33-20-10.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

- (11) *State statutes and regulations provide land disposal treatment standards for certain hazardous wastes listed after November 8, 1984 as well as treatment standards for debris contaminated with listed hazardous wastes or debris that exhibit certain hazardous waste characteristics as indicated in Revision Checklist 109 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 268.2, 268.5, 268.7, 268.14, 268.36, 268.40, 268.41, 268.42, 268.43, 268.45, as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 109 at §§33-20-1.6 and 33-20-10. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (12) *State statutes and regulations include revisions to existing land disposal restrictions including revision of F001-F005 spent solvents treatment standards, conversion of wastewater standards for twenty-four "F" and "K" water codes based on scrubber standards; revisions to K061, K062 and F006 treatment standards; and change of recordkeeping requirements as indicated in Revision Checklist 109 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 268.9, 268.41, 268.42, 268.43 and 268.46, as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 109 at §§33-20-1.6 and 33-20-10. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (13) *State statutes and regulations provide a case-by-case extension of the land disposal effective date until May 8, 1994 for Third Third hazardous soils whose best demonstrated available technology (BDAT) was incineration, retorting or vitrification, as well as for Third Third soils contaminated with radioactive mixed waste as indicated in Revision Checklists 116 and 123 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §3004(h)(3); 40 CFR 268.35(c)-(e), as amended October 20, 1992 (57 FR 47772) and May 14, 1993 (57 FR 28506).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

The State's authority to adopt rules for the land disposal restrictions is provided by W. Va. Code §§22-18-6(a)(12)(A), (B) and (D). Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules including exemptions and variances as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA. West Virginia adopts and incorporates by reference the Federal provision addressed by the checklists at §§33-20-1.6 and 33-20-10.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

- (14) *State statutes and regulations exclude from the definition of "land disposal" placement of waste in a corrective action management unit, as indicated in Revision Checklist 121 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §§2002(a), 3004(u), 3004(v), 3005(c), 3007, and 3008(h); 40 CFR 268.2(c), as amended February 16, 1993 (58 FR 8658).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-9; §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

The State's authority to promulgate rules for corrective action is provided by W. Va. §22-18-9. Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules including exemptions and variances as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA. West Virginia adopts and incorporates by reference the Federal provision addressed by the checklists at §§33-20-1.6 and 33-20-10.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. However, West Virginia's regulations do not include all the provisions required for corrective action; therefore, the State is not seeking authorization for corrective action at this time.

- (15) *State statutes and regulations include land disposal restrictions and treatment standards for certain ignitable and corrosive characteristic wastes whose treatment standards were vacated, as indicated in Revision Checklist 124 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §3004(d),(e)&(g); 40 CFR 268.37, 268.40(b), 268.41, 268.42(a) and 268.43, as amended on May 24, 1993 (58 FR 29860).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 124 at §§33-20-1.6 and 33-20-10. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (16) *State statutes and regulations directly refer to test methods as they are found in "Test Methods for Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as indicated in Revision Checklist 126 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §§1006; 2002, 3001, 3002, 3004, 3005, 3006, 3010, and 3014; 40 CFR 268.7(a); 268.40(a); 268.41; and 268 Appendices I & IX, as amended August 31, 1993 (58 FR 46040) and September 19, 1994 (59 FR 47980).

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tation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

West Virginia incorporates by reference 40 CFR Parts 264 and 265 references to the SW-846 Test Methods. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. The State's W. Va. Code §§22-18-6(a) and 22-18-23 give the State the broad authority to adopt rules that are consistent with and equivalent to the Federal regulations.

- (17) *State statutes and regulations include a revision to P015 listing in the land disposal restrictions technology-based treatment standards as indicated in Revision Checklist 134 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 268.42(a)/Table 2 (NOTE: Due to Revision Checklist 137 changes, this table does not exist in the July 1, 1997 CFR), as amended June 20, 1994 (59 FR 31551).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 134 at §§33-20-1.6 and 33-20-10.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (18) *State statutes and regulations include changes to the land disposal restrictions conforming to the removal from the 266.20(b) exemption anti-skid/deicing uses of slags from high temperature metals recovery (HTMR) processing of hazardous wastes K061, K062, and F006 as indicated in Revision Checklist 136 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §3004; 40 CFR Part 268.41(a), as amended August 24, 1994 (59 FR 43496).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 136 at §§33-20-1.6 and 33-20-10.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (19) *State statutes and regulations contain treatment standards for certain newly identified organic toxicity wastes and for newly listed coke product and chlorotoluene production wastes as well as dilution prohibitions for high total organic content (TOC) ignitable and toxicity characteristic pesticides as indicated in Revision Checklist 137 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 268, as amended September 19, 1994 (59 FR 47982) and January 3, 1995 (60 FR 242).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 137 at §§33-20-1.6 and 33-20-10.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (20) *State statutes and regulations contain modifications to the land disposal restrictions which simplify and provide consistency including the Universal Treatment Standards, treatment standards from three tables consolidated into one table, reduced information on notification*

forms, and simplified regulations for lab pack treatment as indicated in Revision Checklist 137 and included in Consolidated Checklist C8.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 268, as amended September 19, 1994 (59 FR 47982) and January 3, 1995 (60 FR 242).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 137 at §§33-20-1.6 and 33-20-10.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (21) ***State statutes and regulations contain modifications to the land disposal restrictions which simplify and provide consistency including the Universal Treatment Standards, treatment standards from three tables consolidated into one table, reduced information on notification forms, and simplified regulations for lab pack treatment as indicated in Revision Checklist 137 and included in Consolidated Checklist C8.***

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 268, as amended September 19, 1994 (59 FR 47982) and January 3, 1995 (60 FR 242).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 137 at §§33-20-1.6 and 33-20-10.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code

§§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (22) *State statutes and regulations exempt universal waste handlers and transporters handling listed universal wastes from the 268.7 and 268.50 requirements, subjecting them instead to the Part 273 requirements, as indicated in Revision Checklist 142A and included in Consolidated Checklist C8.*

Federal Authority: RCRA §§2002, 3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 268.1(f), as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

West Virginia has the necessary authority for the land disposal restrictions and has adopted and incorporated by reference the Federal provisions addressed by Revision Checklist 142 A. Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules including exemptions and variances as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA.

- (23) *State statutes and regulations exempt batteries from the 268.7 and 268.50 requirements, subjecting them instead to the Part 273 requirements, as indicated in Revision Checklist 142B and included in Consolidated Checklist C8.*

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 268.1(f)(1), as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

West Virginia has the necessary authority for the land disposal restrictions and has adopted and incorporated by reference the Federal provisions addressed by Revision Checklist 142 B. Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules including exemptions and variances as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA.

- (24) *State statutes and regulations exempt pesticides, which are either recalled or collected in waste pesticide collection programs, from the 268.7 and 268.50 requirements, subjecting*

them instead to the Part 273 requirements, as indicated in Revision Checklist 142C and included in Consolidated Checklist C8.

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 268.1(f)(2), as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

West Virginia has the necessary authority for the land disposal restrictions and has adopted and incorporated by reference 40 CFR 268.1(f)(2). Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules including exemptions and variances as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA.

(25) State statutes and regulations exempt hazardous waste thermostats from the 268.7 and 268.50 requirements subjecting them instead to the Part 273 requirements, as indicated in Revision Checklist 142D and included in Consolidated Checklist C8.

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 268.1(f)(3), as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1; §33-20-10.2

Remarks of the Chief of the Office of Legal Services

West Virginia has the necessary authority for the land disposal restrictions and has adopted and incorporated by reference the Federal provisions addressed by Revision Checklist 142 D. Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules including exemptions and variances as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA. Note that at §33-20-10.2, West Virginia has modified its analog to 40 CFR 268.1(f)(3) to include mercury containing lamps. The State is not seeking authorization for the mercury containing lamps provisions.

(26) State statutes and regulations provide a six (6) month extension of the current 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 July 8, 1997 as indicated in Revision Checklist 155, and included in Consolidated Checklist C8.

Federal Authority: RCRA §§ 3004(d) through (k), and 3004(m); 40 CFR 268.39(c) as amended January 14, 1997 (62 FR 1992).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

West Virginia has the necessary authority for the land disposal restrictions and has adopted and incorporated by reference the Federal provisions addressed by Revision Checklist 155. Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules including exemptions and variances as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA.

- (27) *State statutes and regulations prohibit the land disposal of the wood preserving waste F032, F034 and F035 by August 11, 1997, and also prohibit any soil and debris and radioactive waste mixed with above chemicals from land disposal effective May 12, 1999. In between these effective dates, mixtures may only be land disposed if the facilities follow certain procedures included in State statutes and regulations as indicated in Revision Checklist 157, and included in Consolidated Checklist C8.*

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 268.30(a)-(e) and 268.40 as amended May 12, 1997 (62 FR 25998).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

West Virginia has the necessary authority for the land disposal restrictions and has adopted and incorporated by reference the Federal provisions addressed by Revision Checklist 157. The statutory provisions at W. Va. Code §§22-18-6(a)(12)(A) and (B) give the State the authority to establish standards and prohibitions relating to the management of hazardous waste by land disposal methods.

- (28) *State statutes and regulations include revisions of record keeping and paperwork requirements indicated in Revision Checklist 157. State statutes and regulations also include revisions to update the land disposal restrictions to better reflect the current program, as indicated in Revision Checklist 157, and included in Consolidated Checklist C8.*

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 268.4(a)(2)(iv), 268.4(a)(4), 268.7(a)-(c)(2), 268.9(a), 268.9(d)(1)(ii), 268.32, 268.34-268.37, 268.44(o), and Part 268 Appendices I-III, VI, VIII and X, as amended May 12, 1997 (62 FR 25998).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

West Virginia has the necessary authority for the land disposal restrictions and has adopted and incorporated by reference the Federal provisions addressed by Revision Checklist 157. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (29) *State statutes and regulations include revisions introducing polymerization as an alternative treatment method as indicated in Revision Checklist 157, and included in Consolidated Checklist C8.*

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 268.42 table 1 as amended May 12, 1997 (62 FR 25998).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 157 at §§33-20-1.6 and 33-20-10.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (30) *State statutes and regulations include revisions which indicate that the de minimis provision applies to minor losses of characteristic wastes as indicated in Revision Checklist 157, and included in Consolidated Checklist C8.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 268.1(e)(4) as amended May 12, 1997 (62 FR 25998).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 157 at §§33-20-1.6 and 33-20-10.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

- (31) *State statutes and regulations include revisions designed to conform with the Federal appeals court ruling (98 F.3d 1394 (D.C. Cir. 1996)) which invalidated, in part, certain EPA regulations including the land disposal restrictions and treatment standards for the vacated carbamate wastes as indicated in Revision Checklist 159 and included in Consolidated Checklist C8.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 268.39(a), 268.39(d), and 268.40 as amended June 17, 1997 (62 FR 32974).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D);
§22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-10.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 159 at §§33-20-1.6 and 33-20-10.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, W. Va. Code §§22-18-5(a), 22-18-6(a), and 22-18-23 provide the State with the authority to adopt rules that are consistent with and equivalent to the federal regulations.

VII. REQUIREMENTS FOR PERMITS

Federal Authority: RCRA §§3005 and 7004; 40 CFR 271.13 and 271.14, as amended April 1, 1983 (48 FR 14146), June 30, 1983 (48 FR 30113), and September 22, 1986 (51 FR 33712).

- A. State statutes and regulations provide permit requirements consistent with the specifications of 40 CFR 271.13 and 271.14 as indicated in Consolidated Checklist C9 (formerly Checklist V) which includes the amendments of Revision Checklists 1, 2, 6, 11, 14, 17 D, 17 F, 17 L, 17 M, 17 N, 17 O, 17 P, 17 Q, 17 S, 23, 24, 28, 34, 35, 38, 39, 40, 44 A, 44 C, 44 D, 44 E, 44 F, 44 G, 45, 48, 52, 54, 59, 60, 61, 64, 70, 78, 79, 82, 83, 85, 87, 92, 94, 100, 109, 121, 124, 126, 142A, 142B, 142C, 142D, 148, 154 and 156.*

Federal Authority: RCRA §§3005 and 7004; 40 CFR Parts 124 and 270, as amended January 28, 1983 (48 FR 3977), April 1, 1983 (48 FR 14146), June 30, 1983 (48 FR 30113), September 1, 1983 (48 FR 39611), April 24, 1984 (49 FR 17716), December 4, 1984 (49 FR 47390), January 14, 1985 (50 FR 1978), July 15, 1985 (50 FR 28702), March 24, 1986 (51 FR 10146), May 2, 1986 (51 FR 16422), July 14, 1986 (51 FR 25422), August 15, 1986 (51 FR 29430), November 7, 1986 (51 FR 40572), March 16, 1987 (52 FR 8072), June 22, 1987 (52 FR 23447), September 9, 1987 (52 FR 33936), July 8, 1987 (52 FR 25760), July 9, 1987 (52 FR 25942), December 1, 1987 (52 FR 45788), December 10, 1987 (52 FR 46946), July 26, 1988 (53 FR 28118), September 2, 1988 (53 FR 34079), September 26, 1988 (53 FR 37396), September 28, 1988 (53 FR 37912), October 24, 1988 (53 FR 41649), January 4, 1989 (54 FR 246), January 9, 1989 (54 FR 615), January 30, 1989 (54 FR 4286), March 7, 1989 (54 FR 9596), August 14, 1989 (54 FR 33376), June 1, 1990 (55 FR 22520), December 6, 1990 (55 FR 50450), January 31, 1991 (56 FR 3864), February 21, 1991 (56 FR 7134), July 1, 1991 (56 FR 30192), July 17, 1991 (56 FR 32688), January 29, 1992 (57 FR 3462), August 18, 1992 (57 FR 37194), February 16, 1993 (58 FR 8658), May 24, 1993 (58 FR 28506), August 31, 1993 (58 FR 46040), December 6, 1994 (59 FR 62896), May 11, 1995 (60 FR 25492), December 11, 1995 (60 FR 63417), February 9, 1996 (61 FR 4903), November 25, 1996 (61 FR 59932), and February 12, 1997 (62 FR 6622).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-8; §22-18-6(a)(4)(G); §22-18-6(a)(5); §22-18-6(a)(8); §22-18-6(a)(11);
§22-18-6(a)(13)(A),(B),&(C); §22-18-10; §22-18-11; §22-18-5(a); §22-18-23; §22-1-3(c);
§22-18-12

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-11

45 CSR 25, effective June 1, 1999:

§45-25-1.1(e); §45-25-1.5; §45-25-2.16; §45-25-3.2/Table 25-A (items 2, 3, 5, 7, 9, 11, 14, 15,
18 and 19); §45-25-4.13; §45-25-5

Remarks of the Chief of the Office of Legal Services

State law and regulations require permits for owners and operators of all hazardous waste facilities required to obtain a permit under 40 CFR Part 270, and prohibits the operation of any hazardous waste management facility without such a permit. W. Va. Code §22-18-6(a)(4)(G) specifically gives the Director the authority to promulgate rules in compliance with the requirements of W. Va. Code §22-18-8(a) respecting permits for treatment, storage or disposal. Under the requirements of §22-18-8(a) no person may own, construct, modify, operate or close any facility or site for the treatment, storage or disposal of a hazardous waste without first obtaining a permit. W. Code §22-18-8(a), also requires persons to also obtain "all other permits as required by law". TSD facility closure and post-closure permits are treated as permitting actions and are subject to the permitting procedures. However, pursuant to Pursuant to W. Va. Code §22-18-11, a facility which was in existence on July 9, 1981 which qualifies for interim status under the Federal program may remain in operation until a final decision is made on the facility's permit application. Such facilities must, at a minimum, continue to operate under standards at least as stringent as those of the Federal government under 40 CFR Part 265. The transition program in West Virginia is equivalent to the RCRA interim status scheme. No facility can qualify for interim status in West Virginia unless it likewise does so at the Federal level. Thus, a state facility must be in existence on November 19, 1980, in order to qualify as an interim status facility.

New hazardous waste management facilities must obtain an EPA identification number in accordance with EPA procedures. Further, W. Va. Code §22-18-8(a) prohibits the issuance of a permit for a TSD facility unless it is established that the issuance of the permit will not result in the violation of any of the provisions of Article 18 or any of the State's hazardous waste rules and regulations. Thus, the issuance of a permit to a TSD facility will require that facility to comply with all applicable requirements of the State program.

W. Va. Code §22-18-8(f) exempts from the requirement to have a hazardous waste permit, "any surface coal mining and reclamation operation that has a permit covering coal mining wastes or overburden which has been issued or approved under article three [§22-3-1- *et seq.*] . . ." Such an operation is considered to have all necessary permits issued under the Hazardous Waste Management Act with respect to the treatment, storage, or disposal of such wastes or overburden. This is because the State of West Virginia has assumed primacy for the regulation of surface mining in the State. The State's provision is consistent with and equivalent to the Federal provision at RCRA §3005(f).

In W. Va. Code §22-18-6(a)(5), authority is given for the development of regulations specifying the terms and conditions under which the Director shall issue, modify, suspend, revoke or deny such permits as may be required by Article 18. Under W. Va. Code §22-18-6(a)(13)(A), the director has the authority to establish permit requirements and procedures as may be necessary to comply with the requirements of the

State's hazardous Waste Management Act and the Air Pollution Control requirements under §22-5-1 et seq. The statutory provision requires that such an air permit shall be in addition to those permits required by W. Va. Code §22-18-8.

West Virginia has adopted and incorporated by reference the Federal provisions in 40 CFR Part 270, except for the following; the State's authority to adopt Federal regulations by reference is provided by W. Va. Code §22-1-3(c):

- 40 CFR 270.2 definition of "RCRA permit": At §33-20-11.3.a and §45-25-2.16, the State defines "RCRA permit" to mean "West Virginia hazardous waste management permit"
- 40 CFR 270.12 (Confidentiality of information): West Virginia's provisions for availability of information are largely controlled by the provisions of W. Va. Code §22-18-12 and HWMR §33-20-11.19. Under W. Va. Code §22-18-12 any information obtained by any agency under Article 18 shall be available to the public unless the Director certifies such information to be confidential. The Director may make such certification where a person shows, to the satisfaction of the Director, that the information or parts thereof, if made public, would divulge methods, processes or activities entitled to protection as trade secrets.

West Virginia's regulatory provisions addressing the availability of information and procedures for requesting information are at HWMR §33-20-11.19. Under §33-20-11.19.b, the person claiming any information as confidential must clearly mark each page containing such information with the word "CONFIDENTIAL" and to submit an affidavit that such person believes the information is entitled to protection. In addition, under §33-20-11.19.c, the State requires that any document submitted which contains information for which claim of confidential information is made should also include cross-references to "data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential." Under §33-20-11.19.d, no information shall be protected as confidential unless it is submitted in accordance with the provisions of §33-20-11.19.c.

§33-20-11.19.e requires that information which fails to meet the criteria of §33-20-11.19.d must be returned to the person submitting the information. However, the Chief of the Office of Waste Management is required to retain a copy of such information. Thus, if a person fails to assert a claim of business confidentiality at the first opportunity provided by the State, the State can release the information without further notice to the business. This includes any information submitted in connection with a permit, a permit application, or interim status under the State's hazardous waste regulations. Under §33-20-11.19.a, names and addresses of permit applicants and permittees will always be made public. These provisions are consistent with the Federal requirements at 40 CFR 2.201(e) and 2.208. *Any information obtained by the State regarding facilities and sites for the treatment, storage and disposal of hazardous waste is available through the Chief, Office of Waste Management, DEP upon request. No such information is exclusively maintained by the DOH or the PSC.*

- 40 CFR 270.24 (Specific Part B information requirements for process vents): At §33-20-11.21, West Virginia exempts 40 CFR 270.24 from the incorporation by reference and refers to the rules of the air quality board regarding emissions from process vents. Section 45-25-

3.2/Table 25-A, Item 6 incorporates by reference the Federal provisions at 40 CFR 270.24; therefore, the State's regulations are identical to the Federal provisions.

- At §33-20-11.22, the States excepts 40 CFR 270.60(b) and 270.64 from its incorporation by reference. Underground injection wells that inject hazardous waste must be permitted pursuant to the State UIC Program and are subject to the rules of the Environmental Quality Board.

At §45-25-3.2/Table 25-A, the State has also incorporated by reference the Office of Air Quality regulations, the permit requirements for air emissions addressed at the following Federal citations: 40 CFR 270.1(c)(viii)(C), 270.14(b)(5)&(b)(22), 270.19, 270.22, 270.23, 270.24, 270.25, 270.62 and 270.66. Under §45-25-4.13 the Director may, on a case-by-case basis, establish additional performance standards for air emissions, and require the permit applicant to submit additional data. These requirements are consistent with the Federal part 270 requirements.

West Virginia has not adopted by reference the 40 CFR Part 124 provisions. Rather, the State has its own provisions in the Hazardous Waste Management Regulations at §§33-20-11.8 through 11.14 and 33-20-11.16, and in the Office of Air Quality regulations at §§45-25-5.4 through 5.10 and 45-25-5.13. The State's provisions are equivalent to the Federal provisions required for authorization. In addition to the Federal 40 CFR Part 124 provisions required for State authorization, West Virginia has also adopted equivalent analogs to the following Federal provisions which are not required for authorization:

<u>Federal Citation</u>	<u>State Analog</u>
124.3(c) through (g)	§§ 33-20-11.8.b - 8.f and 45-25-5.4.b - 5.4.f
124.5(b)	§§ 33-20-11.9.b and 45-25-5.5.b
124.6(b)	§§ 33-20-11.10.b and 45-25-5.6.b
124.9	§§ 33-20-11.18 and 45-25-5.14
124.10(a)(2)	§§ 33-20-11.12.b and 45-25-5.8.b
124.12(b) through (d)	§§ 33-20-11.14.e - 11.14.g and 45-25-5.10.e - 5.10.g
124.14	§§ 33-20-11.15 and 45-25-5.11
124.15	§§ 33-20-11.16 and 45-25-5.12
124.18	§§ 33-20-11.18 and 45-25-5.14

The Division of Environmental Protection, through the Hazardous Waste Management Section (HWMS) of the Office of Waste Management and the Office of Air Quality (OAQ), issues permits for all treatment, storage and disposal facilities. HWMS's permit covers all regulated components of TSD facilities, except those which are technical, and the permitting requirements of the OAQ (i.e., those TSD facilities that have air emissions). Permits for hazardous waste combustion units and those TSD facilities that have air emissions are issued by OAQ.

The OAQ permitting process generally follows the same sequence as the HWMS. Under 45-25-1.1(e), permit applications filed under the air regulations must be processed in accordance with the permitting procedures set forth in the State's Hazardous Waste Management Act, W. Va. Code §22-18-1 et seq. and 33 CSR 20. The most significant differences between the OAQ and HWMS permitting processes are: (1) the requirement that trial-burns for existing incinerators must be completed prior to issuance of an operating permit; and (2) OAQ requires two facility permits, one for facility construction and one for operation. The construction permit requirement is consistent with the Federal regulations which, under 40 CFR 270, requires that an owner and operator obtain all necessary Federal, State and local permits or licenses necessary to begin

construction. The Office of Air Quality's construction permits specify conditions to ensure that new facilities are built in a manner to assure protection of public health and the environment.

The Office of Waste Management and the Office of Air Quality coordinate the issuance of two permits regulating the same unit. The permit issued by the Office of Waste Management is a complete RCRA permit which normally includes a waste analysis plan, a training plan, inspection schedules, a contingency plan including security, closure and post-closure (if applicable) plans, and requirements for financial assurance and liability coverage. Groundwater monitoring and protection requirements are also included in the permit. The Environmental Quality Board has no role in issuing permits, except that it establishes the ground-water protection standard that the permit conditions reflect. The permit issued by the Office of Waste Management references all of the operating conditions issued by or included in the permit issued by the Office of Air Quality. §22-18-6(a)(13)(A),(B), and (C) contain the authority for delegating the air pollution portion of this permit. Note that under §45-25-5, the Office of Air Quality uses the same permit procedures as found in the hazardous waste management rule in §33-20-11, including the public participation requirements.

The State's authority at W. Va. Code §22-18-6(a)(11) and the regulations at HWMR §33-20-11.4 and the Office of Air Quality regulations at §45-25-7, regarding permit application fees, are broader in scope than the Federal program.

B. Specific provisions amending 40 CFR Parts 124 and 270 since January 1, 1983 that are included in State statutes and requirements are indicated below. Also included are requirements for surface impoundments regarding RCRA §§3005(j)(6)(A), 3005(j)(2)-(9) and 3005(j)(11). These latter requirements are not covered by a checklist.

(1) State statutes and regulations require 1) that the Director prepare on a biennial basis summary information on the quantities and types of hazardous waste generated, transported, treated, stored and disposed during the preceding odd-numbered year, and 2) that the biennial report must be submitted as specified in the permit and must cover facility activities during odd-numbered calendar years. These requirements are indicated in Revision Checklist 1 and included in Consolidated Checklist C9.

Federal Authority: RCRA §§3002 and 3004; 40 CFR 270.5 and 270.30, as amended January 28, 1983 (48 FR 3977).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(3)(F); §22-18-6(a)(4)(B); §22-18-5(a); §22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(3)(F) and 22-18-6(a)(4)(B) specifically give the Director the authority to promulgate rules for satisfactory reporting practices for generators and owners and operators of hazardous waste management facilities. The wording of §§22-18-6(a)(3)(F) and 22-18-6(a)(4)(B) is similar to RCRA §§3002(a)(6)(A)&(B) and 3004(a)(2), respectively. Under W. Va. Code §§22-18-5(a), 22-18-6(a) and 22-18-23, the State has the authority to adopt rules that are consistent with and equivalent to the Federal regulations. West Virginia's provisions are identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.5 and 270.30. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (2) *State statutes and regulations require the permittee to take steps to minimize releases to the environment in accordance with 40 CFR 270.30(d) as indicated in Revision Checklist 2 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005(c); 40 CFR Part 270, as amended September 1, 1983 (48 FR 39611).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a), 22-18-6(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's provisions are identical to the Federal code because at §§33-20-1.6 and 33-20-11.1 the State adopts and incorporates by reference, without changes, 40 CFR 270.30. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (3) *Facility owners or operators are given the opportunity to cure deficient Part A applications in accordance with 40 CFR 270.70(b) before failing to qualify for interim status as indicated in Revision Checklist 6 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005; 40 CFR Part 270, as amended April 24, 1984 (49 FR 17716).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a), 22-18-6(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's provisions are identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.70. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (4) *State statutes and regulations incorporate corrections to the EPA manual "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" as indicated by Revision Checklists 11, 35 and 126 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §§2002 and 3001; 40 CFR 270.6(a), as amended December 4, 1984 (49 FR 47390) and March 16, 1987 (52 FR 8072), and August 31, 1993 (58 FR 46040).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a), 22-18-6(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's provisions are identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.6. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (5) *State statutes and regulations require special permitting standards for facilities managing dioxin wastes as indicated in Revision Checklist 14 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §§3001 and 3005; 40 CFR 270.14, 270.16, 270.18, and 270.21, as amended January 14, 1985 (50 FR 1978).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia does not have a specific statutory provision addressing permit standards. However, West Virginia has broad statutory authority under §§22-18-5(a), 22-18-6(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's provisions are identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.14, 270.16, 270.18, and 270.21. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (6) *State statutes and regulations 1) address record retention, 2) treat as having interim status those existing facilities that become subject to RCRA due to a statutory or regulatory change, and 3) restrict interim status from any facilities previously denied a hazardous waste permit or that had their authority to operate a facility under RCRA terminated as indicated in Revision Checklist 17 D and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005; 40 CFR 270.30(j)(2) and 270.70(a)&(c), as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(4)(A); §22-18-5(a); §22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §22-18-6(a)(4)(A) specifically gives the Director the authority to promulgate rules establishing recordkeeping practices. West Virginia does not have a statutory provision which subjects newly-regulated facilities to the interim status requirements, nor does it have a statutory provision which directly prohibits a facility from qualifying for interim status if it has been previously denied a permit or if it had its authority to operate a RCRA facility terminated. However, West Virginia has broad statutory authority under §§22-18-5(a), 22-18-6(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provisions are identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.30(j)(2) and 270.70(a)&(c). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (7) *State statutes and regulations require that if bulk or non-containerized waste or wastes containing free liquids is to be landfilled prior to May 8, 1985, an explanation of how the requirements of 40 CFR 264.314(a) will be complied with will be submitted with the Part B information as indicated in Revision Checklist 17 F and included in Consolidated Checklist C9.*

Federal Authority: RCRA §§3004 and 3005; 40 CFR 270.21(h), as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-8(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a), 22-18-6(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. In addition, W. Va. Code §22-18-8(a) grants the Director the authority to prescribe a form of application for all permits issues. West Virginia's provisions are identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.21(h). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (8) *State statutes and regulations require that in regard to permits by rule, UIC and NPDES permits issued after November 8, 1984, must comply with the requirements specified in 40 CFR 264.101 as specified in Revision Checklist 17 L and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3004; 40 CFR 270.60, as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-5(a); §22-18-6(a); §22-18-6(a)(4); §22-18-23; §22-1-3(c); §22-18-9

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-11.1; §33-20-11.17

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a), 22-18-6(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. In addition, W. Va. Code §22-18-6(a)(4) grants the Director the authority to establish performance standards for hazardous waste treatment, storage and disposal facilities. Corrective action authority is provided by §22-18-9. At §§33-20-1.6, 33-20-11.1 and 33-20-11.7, West Virginia adopts and incorporates 40 CFR 270.60, except for 270.60(b) regarding underground injection. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference. Underground injection wells that inject hazardous waste must be permitted pursuant to the State UIC Program. West Virginia's UIC regulations do not contain the Federal provision required under 40 CFR 270.60(b). The State's provisions do not meet the requirements for Federal corrective action; therefore the State is not seeking authorization for corrective action, including Revision Checklist 17 L.

- (9) *State statutes and regulations allow a facility 1) to construct an approved TSCA facility for burning PCBs without first obtaining a RCRA permit and 2) to subsequently apply for a*

RCRA permit in accordance with Revision Checklist 17 M and included in Consolidated Checklist C9.

Federal Authority: RCRA §3005(a); 40 CFR 270.10(f)(3), as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.10(f)(3). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (10) *State statutes and regulations require review of land disposal permits every five years and modification of such permits as necessary to assure compliance with the requirements in Parts 124, 260 through 266, and 270, as indicated in Revision Checklist 17 N and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005(c)(3); 40 CFR 270.41 and 270.50, as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a)(5); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. Under W. Va. Code §22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the director shall issue, modify, suspend, revoke or deny a permit. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.41 and 270.50. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (11) *State statutes and regulations require permits to contain any conditions necessary to protect human health and the environment in addition to any conditions required by regulations as indicated in Revision Checklist 17 O and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005(c)(3); 40 CFR 270.32(b), as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.32(b). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (12) *State statutes and regulations require that:*

- (a) *For land disposal facilities granted interim status prior to November 8, 1984, interim status terminates November 8, 1985 unless a Part B application and certification of compliance with applicable ground-water monitoring and financial responsibility requirements are submitted by November 8, 1985, as indicated in Revision Checklist 17 P and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005(e); 40 CFR 270.73(c), as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.73(c). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference. Note that Section 22-18-20 allows any person aggrieved or adversely affected by an order of the director to appeal to the environmental quality board, in accordance to 22B-1-1 *et seq.* However, 22-18-5(a) and the State's regulations ensure compliance with the dates for termination of interim status as specified in the Federal code.

- (b) *For a land disposal facility in existence on the effective date of statutory or regulatory changes under this Act that render the facility subject to the requirement to have a permit and which is granted interim status, interim status terminates 12 months after the date the facility first becomes subject to such permit requirement unless a Part B application and certification of compliance with applicable ground-water monitoring and financial responsibility requirements are submitted by that date as indicated in Revision Checklist 17 P and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005(e); 40 CFR 270.73(d), as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.73(f). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (d) *Interim status terminates for any facility other than a land disposal or an incineration facility by November 8, 1992 unless the owner/operator submits a Part B application by November 8, 1988 as indicated in Revision Checklist 17 P and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005(c)(2)(C); 40 CFR 270.73(f) (NOTE: This is 40 CFR 270.73(g) in the July 1, 1997 CFR), as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.73(g). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (13) *State statutes and regulations allow facilities to qualify for interim status if they 1) are in existence on the effective date of statutory or regulatory changes that render the facility subject to the requirement to have a permit and 2) comply with 40 CFR 270.70(a) as indicated in Revision Checklist 17 P and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005(e); 40 CFR 270.70(a), as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a), 22-18-6(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provisions are identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.70(a). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (14) *State statutes and regulations provide that facilities may not qualify for interim status under the State's analogue to RCRA §3005(e) if they were previously denied a RCRA §3005(c) permit or if authority to operate the facility has been terminated as indicated in Revision Checklist 17 P and Consolidated Checklist C9.*

Federal Authority: RCRA §3005(c)(3); 40 CFR 270.70(c), as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a), 22-18-6(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provisions are identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.70(c). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (15) *State statutes and regulations allow the issuance of a one-year research, development and demonstration permit (renewable 3 times) for any hazardous waste treatment facility which proposes an innovative and experimental hazardous waste treatment technology or process not yet regulated as indicated in Revision Checklist 17 Q and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005(g); 40 CFR 270.65, as amended July 15, 1985 (50 FR 28702)

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a)(1); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by the checklists at §§33-20-1.6 and 33-20-11.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. West Virginia does not have a specific provision that addresses its authority to issue, modify and terminate research, development and demonstration permits for a facility which proposes an innovative and hazardous waste treatment technology or process not yet regulated. W. Va. Code §22-18-5(a) gives West Virginia the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C. Section 22-18-6(a)(1) gives the State the authority to promulgate rules establishing a plan for the safe and effective management of hazardous waste. The two citations, together with §22-18-23, would provide the State with adequate authority to meet the requirements addressed.

(16) State statutes and regulations do not require:

- (a) Surface impoundments in existence on November 8, 1984 [or subsequently becoming subject to RCRA pursuant to §3005(j)(6)(A) or (B)] to comply with the double liner, leachate collection and ground-water monitoring requirements applicable to new units by November 8, 1988 [or the date specified in RCRA §3005(j)(6)(A) or (B)] or to stop treating, receiving, or storing hazardous waste, unless the surface impoundment qualifies for a special exemption under RCRA §3005(j).**

Federal Authority: RCRA §3005(j)(6)(A).

- (b) Surface impoundments to comply with the double liner, leachate collection and ground-water monitoring requirements if the Agency allows a hazardous waste prohibited from land disposal under RCRA §3004(d), (e) or (g) to be placed in such impoundments.**

Federal Authority: RCRA §3005(j)(11).

- (c) State statutes and regulations may allow variances from the above requirements as provided in RCRA §3005(j)(2-9) and (13). However, the availability of such variances must be restricted as provided in RCRA §3005(j).**

Federal Authority: RCRA §3005(j)(2-9).

Citation of Laws and Regulations; Date of Enactment and Adoption
Remarks of the Attorney General

The State has not adopted in its statutes or regulations, the Federal RCRA §3005(j) provisions addressed by the Non-Checklist Items SR1 and SR2. Therefore, West Virginia is not seeking authorization for SR1 and SR2.

- (17) State statutes and regulations require permit applicants for landfills or surface impoundments to submit exposure information as indicated in Revision Checklist 17 S and included in Consolidated Checklist C9.**

Federal Authority: RCRA §3019(a); 40 CFR 270.10(j), as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
 §22-18-8(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
 §33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-8(a) and 22-18-23 to require specific supporting information as part of the permit application and to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.10(j). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (18) *State statutes and regulations require that generators, generating greater than 100 kg but less than 1000 kg of hazardous waste in a calendar month, who treat, store or dispose of these wastes on-site must submit their Part A application no later than March 24, 1987, as indicated in Revision Checklist 23 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3001(d); 40 CFR Part 270, as amended March 24, 1986 (51 FR 10146).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
 §22-18-5(a); §22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
 §33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia's authority to regulate generators is found at §22-18-6(a)(3). West Virginia has broad statutory authority under §§22-18-5(a), 22-18-6(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's provisions are identical to the Federal code because the State adopts and incorporates by reference, without changes, the provision addressed by Revision Checklist 23. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (19) *State statutes and regulations require the following as indicated in Revision Checklist 24 and included in Consolidated Checklist C9.*
 - (a) *Documentation in the Part B application that the notice in the deed required under 40 CFR 264.119 has been filed for facilities with hazardous waste disposal units closed prior to the submission of the application.*
 - (b) *Demonstration of financial assurance must be included with the submission of the Part B application, or at least 60 days prior to the initial receipt of hazardous waste, whichever is later.*

- (c) *When there is a change in ownership or control of a facility, the new owner or operator must demonstrate financial assurance within six months of the ownership transfer. The old owner or operator is responsible for financial assurance obligations if the new owner or operator fails to meet his obligations.*

Federal Authority: RCRA §3005; 40 CFR 270.14(b)(14),(15)&(16), 270.42(d) and 270.72(a)(4), as amended May 2, 1986 (51 FR 16422).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-8(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-8(a) and 22-18-23 to require specific supporting information as part of the permit application and to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal provisions because the State adopts and incorporates by reference, without changes, 40 CFR 270.14(b)(14),(15)&(16), 270.42(d) and 270.72(a)(4). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (20) *State statutes and regulations require general and specific Part B information requirements as indicated in Revision Checklist 28 and included in Consolidated Checklist C9. Additionally, as indicated in these checklists, changes, made solely to comply with 40 CFR 265.193 for tanks and containers during interim status, do not constitute reconstruction as specified in 40 CFR 270.72.*

Federal Authority: RCRA §3005; 40 CFR 270.14, 270.16 and 270.72, as amended July 14, 1986 (51 FR 25422) and August 15, 1986 (51 FR 29430).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-8(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-8(a) and 22-18-23 to require specific supporting information as part of the permit application and to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal provisions because the State adopts and incorporates by reference, without changes, 40 CFR 270.14, 270.16 and 270.72. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (21) *State statutes and regulations make the following requirements: 1) a copy of the notice of approval must be submitted in the Part B application for disposal facilities subject to a case-by-case extension under 40 CFR 268.5 or for which a petition has been approved under 40 CFR 268.6, and 2) allow, as a minor permit modification, treatment of hazardous wastes not previously specified in the permit under four specified situations. These requirements are indicated in Revision Checklist 34 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Part 270, as amended November 7, 1986 (51 FR 40572).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c); §22-18-8(a)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-8(a), 22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to require permits and promulgate regulations for the land disposal restrictions. West Virginia has adopted by reference the July 1, 1997 version of 40 CFR Part 270 at HWMR §§33-20-1.6 and 33-20-11. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (22) *State statutes and regulations provide for additional information and engineering feasibility plan requirements regarding ground-water contamination detected at the time of Part B permit application as indicated in Checklist 38 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §§3004 and 3005; 40 CFR 270.14, as amended June 22, 1987 (52 FR 23447) and September 9, 1987 (52 FR 33936).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-8(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-8(a) and 22-18-23 to require specific supporting information as part of the permit application and to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal provisions because the State adopts and incorporates by reference, without changes, 40 CFR 270.14, as addressed by Revision Checklist 38. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

(23) State statutes and regulations allow owners or operators to use the minor modification process for changes made to treat or store restricted wastes in tanks or containers to comply with the 40 CFR Part 268 land disposal restrictions provided the requirements of 40 CFR 270.42 are met as indicated in Revision Checklist 39 and included in Checklist C9.

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 270.42(o)&(p), as amended July 8, 1987 (52 FR 25760).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference 40 CFR 270.42 at HWMR §§33-20-1.6 and 33-20-11.1. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

(24) State statutes and regulations provide for changes during interim status to treat or store in containers, tanks or containment buildings hazardous waste subject to land disposal restrictions when specified conditions are met as indicated in Revision Checklists 39 and 109 and included in Consolidated Checklist C9.

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 270.42(e)(3)(ii)(B) and 270.72, as amended July 8, 1987 (52 FR 25760) and August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia adopts and incorporates by reference 40 CFR 270.42(e)(3)(ii)(B) and 270.72 at HWMR §§33-20-1.6 and 33-20-11.1. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (25) *State statutes and regulations require owners and operators of facilities seeking permits to provide descriptive information on the solid waste management units and all available information pertaining to any releases from the units as indicated in Revision Checklist 44 A and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3004(u); 40 CFR 270.14, as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-1-3(c); §22-18-9(a)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

W. Va. §22-18-9(a) provides the necessary authority and is analogous and equivalent to RCRA §3004(u). West Virginia's regulatory provision is identical to the Federal provisions because the State adopts and incorporates by reference, without changes, 40 CFR 270.14, as addressed by Revision Checklist 44 A. However, the State is not seeking authorization for corrective action at this time.

- (26) *State statutes and regulations require UIC facility owners/operators to submit information related to corrective action with their UIC applications as indicated in Revision Checklist 44 C and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3004(u); 40 CFR 270.60(b)(3), as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-9(a)

33 CSR 20, effective July 1, 1999:
No State analog; see §33-20-11.22

Remarks of the Chief of the Office of Legal Services

Corrective action authority is provided by §22-18-9. At §33-20-11.22, West Virginia excepts from the incorporation by reference 40 CFR 270.60(b) regarding underground injection. Underground injection wells that inject hazardous waste must be permitted pursuant to the State UIC Program. The State's regulations do not currently include the requirement addressed by Revision Checklist 44C; therefore, the State is not seeking authorization for corrective action.

- (27) *State statutes and regulations allow the permit granting agency to initiate modifications to a permit without first receiving a request from the permittee, in cases where statutory changes or new or amended regulatory standards or judicial decisions affect the basis of the permit as indicated in Revision Checklists 44 D and 54 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005(c); 40 CFR 270.41(a)(3), as amended December 1, 1987 (52 FR 45788) and September 28, 1988 (53 FR 37912).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a)(5); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. Under W. Va. Code §22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the director shall issue, modify, suspend, revoke or deny a permit. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.41(a)(3). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (28) *State statutes and regulations require that permittees must comply with new requirements imposed by the land disposal restrictions promulgated under Part 268 even when there are contrary permit conditions, as indicated in Revision Checklist 44 E and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3006(g); 40 CFR 270.4(a), as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision at 40 CFR 270.4(a) at §§33-20-1.6 and 33-20-11.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA.

- (29) *State statutes and regulations require information from permit applicants concerning permit conditions necessary to protect human health and the environment as indicated in Revision Checklist 44 F and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005(c); 40 CFR 270.10(k), as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.10(k). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (30) *State statutes and regulations require post-closure permits for all landfills, surface impoundments, waste piles and land treatment units receiving hazardous waste after July 26, 1982, unless closure by removal as provided under 40 CFR 270.1(c)(5) and (6) can be demonstrated as indicated in Revision Checklist 44 G and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005(i); 40 CFR 270.1(c), as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(4)(C); §22-18-6(a)(4)(G); §22-18-7(e); §22-18-9(b)(2); §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.1(c). W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference. W. Va. Code §§22-18-6(a)(4)(C)& (G), 22-18-7(e) and 22-18-9(b)(2) provide the State with the necessary authority for these provisions. Under W. Va. Code §22-18-6(a)(4)(C), the Director has the authority to promulgate rules establishing performance standards for the "treatment, storage or disposal of hazardous waste pursuant to operating methods, techniques and practices as may be satisfactory to the Director." In addition, the Director has the authority, under W. Va. Code §22-18-6(a)(4)(G) to require compliance with the permit requirements at §22-18-8 and corrective action under §22-18-9(b)(2) for any hazardous waste facility. Finally, the State's W. Va. Code §22-18-7(e) addresses the authority of the environmental quality board, in consultation with the director, to promulgate water quality standards governing discharges into the waters of the State.

- (31) State statutes and regulations require that all owners and operators of units that treat, store or dispose of hazardous waste in miscellaneous units must comply with the general application requirements (including Part A permit requirements), the Part B general application requirements of 40 CFR 270.14, and specific Part B information requirements for miscellaneous units as indicated in Revision Checklists 45 and 59 and included in Consolidated Checklist C9.**

Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.600, 270.14 and 270.23, as amended December 10, 1987 (52 FR 46946) and January 9, 1989 (54 FR 615).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(4); §22-18-8(a); §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-7.2; §33-20-11.1

45 CSR 25, effective June 1, 1999:
§45-25-3.2/Table 25-A, Item 11

Remarks of the Chief of the Office of Legal Services

West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 264.600, 270.14 and 270.23. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference. W. Va. Code §§22-18-6(a)(4) and 22-18-8(a) provide the State with the necessary authority to promulgate rules establishing performance standards for treatment, storage or disposal facilities and comply with the permit requirements at §22-18-8(a).

- (32) State statutes and regulations incorporate the revisions to the definition of "elementary neutralization unit" and "wastewater treatment unit" as indicated in Revision Checklist 52 and included in Consolidated Checklist C9.**

Federal Authority: RCRA §3005; 40 CFR 270.2 as amended September 2, 1988 (53 FR 34079).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.2. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (33) *State statutes and regulations provide owners and operators more flexibility to change specified permit conditions, to expand public notification and participation opportunities, and to allow for expedited approval if no public concern exists for a proposed permit modification. Owner/operator requested permit modifications are categorized into three classes with administrative procedures for approving modifications established in each class. These changes are as indicated in Revision Checklists 54, 78, 83, 109, 121 and 124 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §§2002(a), 3004, 3005, and 3006; 40 CFR Parts 124 and 270 as amended September 28, 1988 (53 FR 37912), October 24, 1988 (53 FR 41649), June 1, 1990 (55 FR 22520), January 31, 1991 (56 FR 3864), August 18, 1992 (57 FR 37194), February 16, 1993 (58 FR 8658), and May 24, 1993 (58 FR 29860).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a)(5); §22-18-6(a)(8); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1; §33-20-11.12; §33-20-11.12; §33-20-11.13

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. Under W. Va. Code §22-18-6(a)(5), the Director has the authority to promulgate rules specifying terms and conditions "under which the Director shall ... modify ... permits." The State's authority to promulgate rules for public participation is provided by W. Va. Code §22-18-6(a)(8). West Virginia adopts the 40 CFR Part 270 requirements by reference under its authority at W. Va. Code §22-1-3(c). The State also has analogs to the 40 CFR Part 124 provisions required for authorization. The State's regulatory provisions addressed by Revision Checklists 54, 78, 83, 109, 121, and 124 are equivalent to the Federal provisions. Note that West Virginia is not seeking authorization for Revision Checklist 121 at this time.

- (34) State statutes and regulations require that existing incinerator facilities must either conduct a trial burn or submit other information as specified in 40 CFR 270.19(a) or (c) before a permit can be issued for that facility as indicated in Revision Checklist 60 and included in Consolidated Checklist C9.**

Federal Authority: RCRA §3005; 40 CFR Part 270 as amended January 30, 1989 [54 FR 4286].

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-8(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

45 CSR 25, effective June 1, 1999:
§45-25-3.2/Table 25-A, Item 3

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-8(a) and 22-18-23 to require specific supporting information as part of the permit application and to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.62(d) as addressed by Revision Checklist 60. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- 35) State statutes and regulations allow greater flexibility to interim status facilities to make changes during interim status following Director approval, as indicated in Revision Checklist 61 and included in Consolidated Checklist C9.**

Federal Authority: RCRA §§2002(a), 3004, 3005 and 3006; 40 CFR 270.72 as amended March 7, 1989 (54 FR 9596).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by the checklists at §§33-20-1.6 and 33-20-11.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules including exemptions and variances as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA.

- (36) *State statutes and regulations lift the reconstruction limit for changes to certain interim status units 1) necessary to comply with Federal, State or local requirements; 2) necessary to allow continued handling of newly listed or identified hazardous waste; 3) made in accordance with an approved closure plan; and 4) made pursuant to a corrective action order as indicated in Revision Checklist 61 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §§2002(a), 3004, 3005, and 3006; 40 CFR 270.72 as amended March 7, 1989 (54 FR 9596).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-6(a)(12)(D)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by the checklists at §§33-20-1.6 and 33-20-11.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules including exemptions and variances as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA.

- (37) *State statutes and regulations provide that a permit can be denied for the active life of a facility while a decision on post-closure permitting is pending as indicated in Revision Checklist 61 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §§2002(a), 3004, 3005, and 3006; 40 CFR 270.1, 270.10 and 270.29 as amended March 7, 1989 (54 FR 9596).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a)(5); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. Under W. Va. Code §22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the director shall issue, modify, suspend, revoke or deny a permit. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, the Federal provisions for permit denial. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (38) *State statutes and regulations classify as Class 1 certain permit modifications requested by the owner/operator necessary to enable permitted facilities to comply with the land disposal restrictions as indicated in Revision Checklist 61 and included in Consolidated Checklist C9. Specifically these modifications include 1) adding restricted wastes treated to meet applicable 40 CFR Part 268 treatment standards or adding residues from treating "soft hammer" wastes, 2) adding certain wastewater treatment residues and incinerator ash, 3) adding new wastes for treatment in tanks or containers under certain limited conditions, and 4) adding new treatment processes that are necessary to treat restricted wastes to meet treatment standards as long as the treatment processes are to take place in tanks or containers.*

Federal Authority: RCRA §§2002(a), 3004, 3005 and 3006; 40 CFR 270.42 as amended March 7, 1989 (54 FR 9596).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a)(5); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. Under W. Va. Code §22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the director shall issue, modify, suspend, revoke or deny a permit. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.42. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (39) *State statutes and regulations include in the Permit Modification List as a Class 2 modification the extension of the closure period to allow a landfill, surface impoundment or land treatment unit to receive nonhazardous wastes after final receipt of hazardous wastes as indicated in Revision Checklist 64 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005; 40 CFR 270.42, Appendix I as amended August 14, 1989 (54 FR 33376).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-6(a)(5); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. Under W. Va. Code §22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the director shall issue, modify, suspend, revoke or deny a permit. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, permit modification provisions. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (40) *State statutes and regulations incorporate updates to 40 CFR Part 124 as indicated in Revision Checklist 70 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §§6901 and 6902; 40 CFR 124.3, 124.5, 124.6, 124.10 and 124.12 as amended April 1, 1983 (48 FR 14146), June 30, 1983 (48 FR 30113), July 26, 1988 (53 FR 28118), September 26, 1988 (53 FR 37396), and January 4, 1989 (54 FR 246).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23

33 CSR 20, effective July 1, 1999:
§33-20-11.8; §33-20-11.9; §33-20-11.10; §33-20-11.12; §33-20-11.14

45 CSR 25, effective June 1, 1999:
§45-25-5.4; §45-25-5.5; §45-25-5.6; §45-25-5.8; §45-25-5.10

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are

equivalent to the Federal regulations. West Virginia has adopted the Federal provisions in its analogs to 40 CFR Part 124 provisions, as addressed by Revision Checklist 70. West Virginia has equivalent procedural requirements as found in 40 CFR Part 124.

- (41) *State statutes and regulations include changes to the Permit Modification List necessitated by the Third Third Land Disposal Restrictions as indicated in Revision Checklist 78 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §§3004(d)-(k) and (m) and 3005; 40 CFR 270.42, Appendix I as amended June 1, 1990 (55 FR 22520).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(12)(A); §22-18-6(a)(12)(B); §22-18-6(a)(12)(D); §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-6(a)(12)(A), (B) and (D) provide the State with the authority to promulgate regulations for the land disposal restrictions. West Virginia has adopted by reference the 40 CFR 270.42 provisions at HWMR §§33-20-1.6 and 33-20-11.1. The State's authority to adopt Federal rules by reference is provided by W. Va. Code §22-1-3(c).

- (42) *State statutes and regulations provide for Part B general content requirements and specific Part B information requirements for process vents and equipment as indicated in Revision Checklists 79 and 87, and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005; 40 CFR 270.14(b), 270.24, and 270.25 as amended June 21, 1990 (55 FR 25454) and April 26, 1991 (56 FR 19290).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-8(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-11.1; §33-20-11.21

45 CSR 25, effective June 1, 1999:

§45-25-3.2/Table 25-A, Items 7, 9, 11 and 18

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-8(a) and 22-18-23 to require specific supporting information as part of the permit application and to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal code

because the State adopts and incorporates by reference, without changes, the provisions addressed by 40 CFR 270.14(b), 270.24 and 270.25. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (43) *State statutes and regulations contain Special Part B information requirements for drip pads as indicated in Revision Checklists 82 and 92, and included in Consolidated Checklist C9.*

Federal Authority: RCRA §2002(a) and 3001(b)&(e)(1); 40 CFR 270.26 as amended December 6, 1990 (55 FR 50450) and July 1, 1991 (56 FR 30192).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-8(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-8(a) and 22-18-23 to require specific supporting information as part of the permit application and to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, 40 CFR 270.26. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (44) *State statutes and regulations include permitting requirements for boilers and industrial furnaces burning hazardous waste as indicated in Revision Checklists 85 and 94, and included in Consolidated Checklist C9.*

Federal Authority: RCRA §§1006, 2002, and 3001 through 3007; 40 CFR 270.22, 270.42(c)&(g), 270.42 Appendix I, 270.66, 270.72(a)(6)&(b)(7) and 270.73(f)&(g) as amended February 21, 1991 (56 FR 7134) and July 17, 1991 (56 FR 32688).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c); §22-18-8(a)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

45 CSR 25, effective June 1, 1999:
§45-25-3.2/Table 25-A, Items 14 and 15

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. W. Va. Code §22-18-8(a) grants authority to require supporting information with the permit application. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates the Federal provisions by reference without changes. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (45) *State statutes and regulations include specific Part B information requirements for surface impoundments, waste piles and landfills regarding liners; leachate collection, detection, and removal systems; and the construction quality assurance program requirements as indicated in Revision Checklist 100 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §§3004, 3005, 3006 and 3015; 40 CFR 270.4(a), 270.17(b)&(c), 270.18(c)&(d), and 270.21(b)&(c) as amended January 29, 1992 (57 FR 3462).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-8(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-8(a) and 22-18-23 to require specific supporting information as part of the permit application and to promulgate rules that are consistent with and equivalent to the Federal regulations. §22-18-8(a) provides authority to require specific supporting information as part of the permit application. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates the Federal provisions by reference, without changes. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (46) *State statutes and regulations require owners and operators to comply with the information requirements for hazardous debris in the Part A and Part B RCRA application as indicated in Revision Checklist 109 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005; 40 CFR 270.13(n) and 270.14(b)(2), as amended August 18, 1992 (57 FR 37194).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-8(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-8(a) and 22-18-23 to require specific supporting information as part of the permit application and to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates the Federal provisions by reference, without changes. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (47) *State statutes and regulations include a definition for corrective action management unit, and exclude corrective action management unit into which remediation wastes are placed, from the disposal facility definition as indicated in Revision Checklist 121 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3005; 40 CFR 270.2 as amended February 16, 1993 (58 FR 8658).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-3(c); §22-18-6(a)(12)(D); §22-18-9

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by the checklists at §§33-20-1.6 and 33-20-11.1. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. Under W. Va. Code §22-18-6(a)(12)(D), the State has the authority to adopt rules including exemptions and variances as necessary to allow the State to assume primacy for the administration of the Federal program under RCRA. W. Va. Code §22-18-9 grants specific authority for corrective action. However, West Virginia's regulations do not include all the provisions required for corrective action; therefore, the State is not seeking authorization for corrective action at this time.

- (48) *State statutes and regulations directly refer to test methods as they are found in "Test Methods for Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as indicated in Revision Checklist 126 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §§1006; 2002, 3001, 3002, 3004, 3005, 3006, 3010, and 3014; 40 CFR 270.19(c)(1)(iii)&(iv); 270.62(b)(2)(i)(C)&(D); and 270.66(c)(2)(i)&(ii) as amended August 31, 1993 (58 FR 46040).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

45 CSR 25, effective June 1, 1999:
§45-25-3.2/Table 25-A, Items 2, 3 and 15

Remarks of the Chief of the Office of Legal Services

West Virginia incorporates by reference 40 CFR Part 270 references to the SW-846 Test Methods. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. The State's W. Va. Code §§22-18-6(a) and 22-18-23 give the State the broad authority to adopt rules that are consistent with and equivalent to the Federal regulations.

(49) State statutes and regulations subject universal waste handlers and transporters handling the listed universal waste to Part 273 rather than Part 270 as indicated in Revision Checklist 142 A and included in Consolidated Checklists C9.

Federal Authority: RCRA §§2002, 3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 270.1(c)(2)(viii) as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by the checklists at §§33-20-1.6 and 33-20-11.1. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. The State's W. Va. Code §§22-18-6(a) and 22-18-23 give the State the broad authority to adopt rules that are consistent with and equivalent to the Federal regulations.

(50) State statutes and regulations subject batteries to the Part 273 requirements rather than the Part 270 requirements as indicated in Revision Checklist 142 B and included in Consolidated Checklists C9.

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 305, 3010, 3013, 3017, and 7004; 40 CFR 270.1(c)(2)(viii)(A) as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 142 B at §§33-20-1.6 and 33-20-11.1. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. The State's W. Va. Code §§22-18-6(a) and 22-18-23 give the State the broad authority to adopt rules that are consistent with and equivalent to the Federal regulations.

- (51) *State statutes and regulations subject pesticides, which are either recalled or collected in waste pesticide collection programs, to the Part 273 requirements rather than the Part 270 requirements as indicated in Revision Checklist 142 C and included in Consolidated Checklists C9.*

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 270.1(c)(2)(viii)(B) as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 142C at §§33-20-1.6 and 33-20-11.1. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. The State's W. Va. Code §§22-18-6(a) and 22-18-23 give the State the broad authority to adopt rules that are consistent with and equivalent to the Federal regulations.

- (52) *State statutes and regulations subject hazardous waste thermostats to the Part 273 requirements rather than the Part 273 requirements as indicated in Revision Checklist 142 D and included in Consolidated Checklists C9.*

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 270.1(c)(2)(viii)(C) as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

HWMR, 33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1; §33-20-11.2

Remarks of the Chief of the Office of Legal Services

West Virginia adopts and incorporates by reference the Federal provision addressed by Revision Checklist 142 D at §§33-20-1.6 and 33-20-11.1. W. Va. Code §22-1-3(c) gives the State the authority to adopt the Federal regulations by reference. The State's W. Va. Code §§22-18-6(a) and 22-18-23 give the State the broad authority to adopt rules that are consistent with and equivalent to the Federal regulations. At §33-20-11.2, West Virginia has added a reference to "mercury containing lamps" to the provision at 40 CFR 270.1(c)(2)(viii)(C) because the State regulates those materials as universal waste. Per guidance from EPA, West Virginia is not seeking authorization for the requirements for mercury containing lamps.

(53) State statutes and regulations provide for opportunities for earlier public involvement in the permitting process and expand public access to information throughout the permitting process and the operational lives of facilities as indicated in Revision Checklist 148, and included in Consolidated Checklist C9.

Federal Authority: RCRA §§2002, 3004, 3005, and 7004(b), 40 CFR 124.31, 124.32, 124.33, 270.2, 270.14(b)(22), 270.30(m), 270.61(b)(5), 270.62(b)(6), 270.62(d), 270.66(d)(3), and 270.66(g), as amended December 11, 1995 (60 FR 63417).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c); §22-18-6(a)(8)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1; §33-20-11.2; §33-20-11.5 through 11.7

45 CSR 25, effective June 1, 1999:
§45-25-3.2/Table 25-A, Items 3, 15; 18, 19; §45-25-4.14; §45-25-5.1 through 5.3

Remarks of the Chief of the Office of Legal Services

The State has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations, and the State's authority to promulgate rules for public participation is provided by W. Va. Code §22-18-6(a)(8). West Virginia adopts and incorporates by reference the Federal Part 270 provisions addressed by Revision Checklist 148. Under §22-1-3(c), West Virginia has the authority to adopt Federal regulations by reference. The State has also adopted, verbatim, the Federal Part 124 provisions required by Revision Checklist 148 at W. Va. Code §§33-20-11.5 through 11.7 and §45-25-5.1 through 5.3.

- (54) *State statutes and regulations provide that compliance with a RCRA permit does not constitute compliance with the requirements promulgated under part 265, Subpart CC limiting air emissions and include organic air emission permit information requirements as indicated in Revision Checklist 154 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §3004(n); 40 CFR 270.4(a)(2)-(4), 270.14(b)(5), 270.15(e), 270.16(k), 270.17(j), and 270.27 as amended December 6, 1994 (59 FR 62896), February 9, 1996 (61 FR 4903), and November 25, 1996 (61 FR 59932).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-8(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

45 CSR 25, effective June 1, 1999:
§45-25-3.2/Table 25-A, Item 11

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-8(a) and 22-18-23 to require specific supporting information as part of the permit application and to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, the provisions addressed by Revision Checklist 154. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

- (55) *State statutes and regulations provide that a person is not required to obtain a RCRA permit for treatment or containment activities taken during a response to the immediate threat to public health or safety from the known or suspected presence of military munitions, other explosive material or an explosive device as determined by an explosives or munitions emergency response specialist, and that a permittee may accept military munitions even when barred from accepting off-site wastes if certain conditions are met as indicated in Revision Checklist 156 and included in Consolidated Checklist C9.*

Federal Authority: RCRA §§3004(y) and 7004; 40 CFR 270.1(c)(3)(i)(D), 270.1(c)(3)(iii), 270.42(h) and (i) as amended February 12, 1997 (62 FR 6622).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a)(12); §22-18-5(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-11.1

Remarks of the Chief of the Office of Legal Services

Under §22-18-6(a)(12), the State has the authority to grant exemptions. West Virginia also has broad statutory authority under §§22-18-5(a) and 22-18-23 to promulgate rules that are consistent with and equivalent to the Federal regulations. West Virginia's regulatory provision is identical to the Federal code because the State adopts and incorporates by reference, without changes, the provisions addressed by Revision Checklist 156. W. Va. Code §22-1-3(c) gives the State the authority to adopt Federal regulations by reference.

VIII. REQUIREMENTS FOR USED OIL MANAGEMENT

Federal Authority: RCRA §§1004, 1006, 2002, 3001, 3014 and 7004; 40 CFR 271.26 as amended on September 10, 1992 (57 FR 41566) and May 3, 1993 (58 FR 26420).

- A. *State statutes and regulations provide used oil management standards equivalent to 40 CFR Part 279 for: 1) used oil generators, 2) used oil collection centers and aggregation points, 3) used oil transporters and transfer facilities, 4) used oil processors and re-refiners, 5) used oil burners who burn off-specification used oil for energy recovery, 6) used oil fuel marketers; 7) standards for use as a dust suppressant and disposal of used oil, and 8) other requirements to the extent they are included in 40 CFR Part 279. These standards for used oil management are as indicated in Consolidated Checklist C10 which includes changes made by Revision Checklists 112, 122, and 130.***

Federal Authority: RCRA §§1004, 1006, 2002, 3001, 3014 and 7004; 40 CFR Part 279 as amended September 10, 1992 (57 FR 41566), May 3, 1993 (58 FR 26420), June 17, 1993 (58 FR 33341), and March 4, 1994 (59 FR 10550).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(14); §22-18-6(a)(15); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-14.1; §33-20-14.2; §33-20-14.3

45 CSR 25, effective June 1, 1999:

§45-25-3.2/Table 25-A, Items 16 and 17

150 CSR 11, effective November 8, 1999:

§150-11-1.1 (To be revised); §150-11-1.12 (To be adopted); §§150-11-9.1 through 9.9 (To be adopted)

157 CSR 7, effective April 28, 1999:

§157-7-1.1; §157-7-1.6; §157-7-5.1

Remarks of the Chief of the Office of Legal Services

West Virginia Code §22-18-6(a)(14) requires the Director of the Division of Environmental Protection (DEP) to promulgate regulations "establishing performance standards and other requirements as may be necessary to protect public health and the environment from any hazard associated with the management of used oil and recycled oil." Under W. Va. Code §22-18-6(a)(15), the Director also has the authority to promulgate such other rules as necessary to effectuate the purposes of the State's Hazardous Waste

Management Act. The State's regulations are identical to the Federal regulations because at §§33-20-1.6, 33-20-14 and 45-25-3.2/Table 25-A (Items 16 and 17), it has adopted and incorporated by reference the Federal used oil provisions. The State's authority to adopt Federal regulations by reference is provided by W. Va. Code §22-1-3(c). In addition, the State has adopted used oil transporter requirements that are equivalent to the Federal regulations.

B. Specific provisions affecting 40 CFR Part 279 that are included in State statutes and regulations are listed below:

- (1) *State statutes and regulations provide used oil management standards for used oil generators, transporters, processors, re-refiners, burners, and marketers as indicated in Revision Checklists 112 and 122, and included in Consolidated Checklist C10.*

Federal Authority: RCRA §§1004, 1006, 2002, 3001, 3014 and 7004; 40 CFR Part 279 as amended September 10, 1992 (57 FR 41566), May 3, 1993 (58 FR 26420) and June 17, 1993 (58 FR 33341).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§22-18-6(a)(14); §22-18-6(a)(15); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:

§33-20-1.6; §33-20-14.1; §33-20-14.2; §33-20-14.3

45 CSR 25, effective June 1, 1999:

§45-25-3.2/Table 25-A, Items 16 and 17

150 CSR 11, effective November 8, 1999:

§150-11-1.1 (To be revised); §150-11-1.12 (To be adopted); §§150-11-9.1 through 9.9 (To be adopted)

157 CSR 7, effective April 28, 1999:

§157-7-1.1; §157-7-1.6; §157-7-5.1

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code §22-18-6(a)(14), West Virginia has the authority to establish "performance standards and other requirements as may be necessary to protect public health and the environment from any hazard associated with the management of used oil and recycled oil." Under W. Va. Code §22-18-6(a)(15), the Director also has the authority to promulgate such other rules as necessary to effectuate the purposes of the State's Hazardous Waste Management Act. The State has adopted used oil regulations that are equivalent to the Federal regulations.

IX. DELETED LEGALLY OBSOLETE RULES

- A. *State statutes and regulations include changes to remove legally obsolete rules as indicated by Revision Checklist 144 and included in Consolidated Checklists C1, C2, C7 and C9.***

Federal Authority: See the Preamble for Rule; 40 CFR 261.31(a), 266.103(c)(5), 266.104(f)-(h), 270.2, 270.10(e)(4), 270.10(f)(2), 270.10(g)(1) as amended June 29, 1995 (60 FR 33912).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-3.1; §33-20-9; §33-20-11.1

45 CSR 25, effective June 1, 1999:
§45-25-3.2/Table 25-A, Item 13

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. West Virginia adopts and incorporates by reference the Federal provision addressed by the checklist. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

X. UNIVERSAL WASTES

- A. *State statutes and regulations provide universal waste standards equivalent to 40 CFR Part 273 for: 1) small quantity generators, 2) large quantity handlers, 3) transporters 4) destination facilities, 5) imports of universal wastes, and 6) petitions to include other wastes under the Part 273 requirements. These standards for universal waste management are as indicated in Consolidated Checklist C11 which includes changes made by Revision Checklists 142A-142E.***

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR Part 273 as amended May 11, 1995 (60 FR 25492).

- B. *Specific provisions affecting 40 CFR Part 273 that are included in State statutes and regulations are listed below:***

(1) *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 Checklist 142 A and included in Consolidated Checklist C11.*

Federal Authority: RCRA §§2002, 3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 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).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-13.1; §33-20-13.5; §33-20-13.6; §33-20-13.7

150 CSR 11, effective November 8, 1999:
§150-11-1.1; §150-11-8.1 through 8.7 (To be adopted)

157 CSR 7, effective April 28, 1999:
§157-7-1.1; §157-7-1.6; §157-7-5.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. At §§33-20-1.6, 33-20-13, 157-7-1.1, 157-7-1.6 and §157-7-5.1, West Virginia adopts and incorporates by reference the Federal provisions addressed by the checklist. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. In addition, at §150-11-1.1 and §150-11-8 of the PSC regulations, the State subjects rail transporters of universal waste to requirements that are equivalent to the Federal provisions.

Note that at §§33-20-13.2 and 13.5, West Virginia has included mercury containing lamps as part of the universal wastes. States are allowed to add State-only universal wastes; however, per guidance from EPA, West Virginia is not seeking authorization for its requirements for mercury containing lamps.

At §33-20-13.6, the State has adopted the Federal export requirements at 40 CFR 273.20, 273.40 and 273.56. However, the State has clarified that EPA remains the regulatory agency for exports. West Virginia is more stringent in that persons subject to the Federal export provisions must file with the Chief of the Office of Waste Management copies of all records submitted to EPA. Finally, at §33-20-13.7, West Virginia rules only apply to waste import activities within the State of West Virginia.

(2) State statutes and regulations include hazardous waste batteries as a universal waste as indicated in Revision Checklist 142 B and included in Consolidated Checklist C11.

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 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).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-13.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. West Virginia adopts and incorporates by reference the Federal provision addressed by the checklist. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

(3) State statutes and regulations include hazardous waste pesticides that are either recalled or collected in waste pesticide collection programs as a universal waste as indicated in Revision Checklist 142 C and included in Consolidated Checklist C11.

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 273.1(a)(2), 273.3, 273.6, 273.13(b), 273.14(b)&(c), 273.32(a)(3), 273.33(b), and 273.34(b)&(c) as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-13.1

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. West Virginia adopts and incorporates by reference the Federal provision addressed by the checklist. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

(4) State statutes and regulations include hazardous waste thermostats as a universal waste as indicated in Revision Checklist 142 D and included in Consolidated Checklist C11.

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 273.1(a)(3), 273.4, 273.6, 273.13(c), 273.14(d), 273.33(c), and 273.34(d) as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-1.6; §33-20-13.1; §33-20-13.4

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. West Virginia adopts and incorporates by reference the Federal provision addressed by the checklist. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. At §§33-20-13.4 and 13.5, the State has amended its incorporation by reference of 40 CFR 273.4 and 273.6 to expand the definition of "mercury thermostats" and "thermostats" to include mercury containing lamps. Per guidance from EPA, West Virginia is not seeking authorization for its requirements for mercury containing lamps.

(5) State statutes and regulations allow petitions to include other wastes as universal wastes as indicated in Revision Checklist 142E and included in Consolidated Checklist C11.

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, and 3013; 40 CFR 273.80, and 273.81, as amended May 11, 1995 (60 FR 25492).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-6(a); §22-18-23; §22-1-3(c)

33 CSR 20, effective July 1, 1999:
§33-20-2.5.d; §33-20-1.6; §33-20-13.1; §33-20-13.8

Remarks of the Chief of the Office of Legal Services

W. Va. Code §§22-18-5(a) and 22-18-23 give the Director the broad authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C and to adopt rules that are equivalent to the Federal regulations. West Virginia adopts and incorporates by reference the Federal provision addressed by the checklist. W. Va. Code §22-1-3(c) provides the State with the authority to adopt Federal regulations by reference.

XI. INSPECTIONS

State 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 State program including compliance with permit terms and conditions and other program requirements. (States whose law requires a search warrant prior to entry conform with this requirement.)

Federal Authority: RCRA §3007; 40 CFR 271.15.

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-5(a); §22-18-7(a); §22-18-7(b); §22-18-7(f); §22-18-13

Remarks of the Chief of the Office of Legal Services

W. Va. Code §22-18-13 gives a broad authority to the Director with regard to inspections. Subsections (a) and (c) are especially so. Pursuant to subsection (a), the Director or his authorized designee may enter essentially anywhere or any place where hazardous wastes are being or have been generated, treated, stored, disposed of or transported. This entry is authorized for the purpose of making an investigation to determine compliance with the State's Hazardous Waste Management Act or the rules promulgated by the Director or permits issued by the Director. These requirements are equivalent to those found in RCRA §3007. An investigation may also include the inspection and copying of records in possession of the owner, operator or agent in charge. W. Va. Code §§22-18-13(e) grants the Director the authority to inspect and copy an document relating to the "generation, transportation, storage, treatment or disposal of hazardous wastes in the possession of any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled such waste." All hazardous waste is either generated, transported, stored, treated or disposed of. Therefore, it is the opinion of the Chief of the Office of Legal Services that the Director has the authority to inspect and copy any document relative to an investigation undertaken pursuant to W. Va. Code §22-18-13(a).

The same authority for sampling and inspecting documents granted the Director under W. Va. Code §22-18-13(a) also applies to an inspection carried out pursuant to W. Va. Code §22-18-13(c). Consequently, when the Director has "cause to believe" that a violation of a permit or a violation of Article 18 has occurred or is occurring, he may sample and inspect documents in the same manner as is discussed above.

The Commissioner of the Division of Highways (DOH) and the Public Service Commission (PSC) also have the same inspection authority as does the Director of Environmental Protection. W. Va. Code §§22-18-7(a) and (b) state that the Commissioner of DOH and PSC have "the same ... inspection powers as those granted to the Director, or authorized representative or agent, or any authorized employee or agent of the division, as the case may be, under ... section(s) ... thirteen ... of this article."

W. Va. Code §22-18-13 must be read as a whole. Its subsections are not mutually exclusive. By reading the section *in pari materia*, the full effect and extent of Section 13 is realized. For both permitted and unpermitted places and facilities, the Director has the authority to sample, inspect and copy the records necessary to determine compliance with the Hazardous Waste Management Act. The State's program is equivalent to that of the Federal government, in the opinion of the Chief of the Office of Legal Services.

XII. ENFORCEMENT REMEDIES

State statutes and regulations provide the following:

- A. *Authority to restrain immediately by order or by suit in State court any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment.*

Federal Authority: RCRA §§3006, 3008; 40 CFR 271.16(a)(1).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-15; §22-18-18; §22-18-7(a); §22-18-7(b)

Remarks of the Chief of the Office of Legal Services

It is the opinion of the Chief of the Office of Legal Services that an unauthorized activity under Article 18 is also a violation of that same Article. Since the Director, under W. Va. Code §22-18-15(a)(1), can issue an order to cease and desist from a violation of Article 18, he can therefore issue an order to immediately restrain an activity not authorized. Under W. Va. Code §22-18-15(a)(2), the Director has the authority to seek an injunction if he discovers or learns of a violation of the State's Hazardous Waste Management Act. Section 22-18-18(a)(1) gives the Director the authority to "request the Chief of the Office of Legal Services or the appropriate prosecuting attorney to commence an action in the circuit court of the county in which the hazardous condition exists to immediately restrain any person contributing to such handling, storage, transportation, treatment or disposal to stop such handling, storage, transportation, treatment or disposal" of any hazardous waste that may present an imminent and substantial endangerment to the public health, safety or the environment.

The Commissioner of the Division of Highways (DOH) and the Public Service Commission (PSC) also have similar authority pursuant to W. Va. Code §§22-18-7(a) and (b) which state that the Commissioner of DOH and PSC have "the same enforcement ... powers as those granted to the Director, or authorized representative or agent, or any authorized employee or agent of the division, as the case may be, under ... section(s) ... fifteen (and) sixteen."

- 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.*

Federal Authority: RCRA §3006; 40 CFR 271.16(a)(2).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-17; §22-18-14(f); §22-18-7(a); §22-18-7(b)

Remarks of the Chief of the Office of Legal Services

State statutory authority to institute civil action is similar to that of the Federal government. Pursuant to RCRA §3008(a), the Administrator may institute a civil action for a violation of RCRA Subtitle C. Section 3008 does not mention threatened violations. Likewise, W. Va. Code §22-18-17 grants the Director the authority to institute a civil action for a violation of Article 18. Under W. Va. Code 22-18-17(c), the Director may seek an injunction or institute a civil action against any person in violation of any provisions of Article 18 or any permit, rule or order without posting bond or alleging or proving at any stage that irreparable damage will occur if the injunction is not ordered. In addition, W. Va. Code §22-18-14(f) gives the Director the authority to commence civil action against any person who fails or refuses to comply with any order issued under W. Va. Code §22-18-14 regarding monitoring, analysis and testing. As with RCRA, threatened violations are not mentioned.

The West Virginia Division of Environmental Protection has the authority to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement. See West Virginia 22-18-15(a) in conjunction with the following State and Federal case law: Blackwelde Furniture Co. v. Seilig Mfg. Co., 550 F.2d 189, 189, 193-96 (4th Cir. 1977); Jefferson County Board of Education v. Jefferson County Education Association, 183 W. Va. 15, 393 S.E.2d 653 (W. Va. 1990); Palumbo, et al. v. Waste Technologies Inc. et al., 37 F.3d 1495 (4th Cir. W.Va.).

Furthermore, injunctive relief is available without any prior revocation of a permit. W. Va. Code §22-18-17(c) provides that "an application for injunctive relief ... may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought." (Emphasis supplied.)

The Commissioner of the Division of Highways (DOH) and the Public Service Commission (PSC) also have similar authority pursuant to W. Va. Code §§22-18-7(a) and (b).

- 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.*

Federal Authority: RCRA §3006; 40 CFR 271.16(a)(3)(i).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-17(b)

Remarks of the Chief of the Office of Legal Services

For any violation of any requirement of Article 18, a civil penalty not to exceed \$25,000 per day per violation may be sought under W. Va. Code 22-18-17(b). The State's authority in this regard exceeds the minimum required under RCRA §3006 and 40 CFR 271.16(a)(3)(i).

- 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; who knowingly transports, treats, stores, disposes, recycles, causes to be transported, or otherwise handles any used oil regulated by EPA under Section 3014 of RCRA that is not listed or identified as a hazardous waste under the state's hazardous waste program in violation of standards or regulations for management of such used oil; 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 (including compliance with any standards or regulations for used oil regulated by EPA under section 3014 of RCRA that is not listed or identified as hazardous waste.*

Federal Authority: RCRA §3006; 40 CFR 271.16(a)(3)(ii).

Citation of Laws and Regulations: Date of Enactment and Adoption

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code §22-18-16(a), (analogous to RCRA § 3008(d)(1)&(2)), any person convicted of knowingly transporting hazardous waste to an unpermitted facility, or who treats, stores, or disposes of such waste without a permit or, in knowing violation of a material condition or requirement of a permit, is guilty of a felony and (1) is subject to a fine not to exceed \$50,000 for each day of violation, or (2) is subject to imprisonment for not less than one nor more than two years, or (3), in the discretion of the court, may be imprisoned for not more than one year in addition to the above fine. Thus, the State can impose both a fine and imprisonment for each criminal violation. West Virginia's level of fine and length of imprisonment are more stringent than those required under 40 CFR 271.16(a)(3)(ii) for State authorization. For State authorization, the criminal penalty must be at least \$10,000/day for each violation plus imprisonment of at least six months.

Under W. Va. Code §22-18-16(b), (analogous to RCRA § 3008(d)(3)), any person convicted of knowingly making a false statement or representation in any application, label, manifest, record, permit or other document filed, maintained or used for purposes of compliance with Article 18 is guilty of a misdemeanor and subject to a fine not to exceed \$25,000 or imprisonment for a period not to exceed one year, or may be both fined and imprisoned for each violation. Also, any person convicted of knowing destruction, alteration or concealment of any record relevant to the generation, storage, treatment, transportation, disposal or other handling of any hazardous waste (whether such activity took place before or after the effective date of Article 18), when such a record is required to be maintained under the Article, is guilty of a misdemeanor and subject to a fine not to exceed \$25,000, or imprisonment for a period not to exceed one year, or may be both fined and imprisoned for each violation.

Any person convicted of a second or subsequent offense under either Section 16(a) or (b) is guilty of a felony under W. Va. §22-18-16(c), (analogous to RCRA § 3008(d)(7)(B)), and is subject to a fine not to exceed \$50,000 for each day of violation, imprisonment for not less than one or more than three years, or both fine and imprisonment.

Under §22-18-16(d), West Virginia has additional criminal penalties regarding knowingly transporting, treating, storing or disposing of any waste in violation of §22-18-16(a); failing to include in the permit application any material information; or failing to comply with applicable interim status requirements. This makes the State more stringent than required for State authorization. As required under 40 CFR 271.16(b)(2), the burden of proof and degree of knowledge or intent for establishing violations shall not be greater than the burden of proof or degree of knowledge or intent required by EPA.

The enforcement procedures and remedies of Article 18 are fully available, as a minimum, to all hazardous waste facilities in the State. Any other procedures or remedies that may be available for any such facility under any other State law may be used to supplement Article 18. At W. Va. Code §22-18-3(6), West Virginia defines "hazardous waste" as "a waste or combination of wastes, which because of its quantity, concentration or physical, chemical or infectious characteristics, may: (A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or (B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed." This definition is interpreted as including "used oil". Thus, the State's criminal penalties provisions also apply to violators of the used oil management standards.

The definition of "person" in W. Va. Code §22-18-3(11) does not narrow the universe to whom the definition applies, when compared to the Federal definition. It is true that the State definition of "person" lists county commission rather than just commission. The State is confident that if a commission exists other than a county commission, then for the purposes of Article 18, such commission would fall within one of the other terms listed in the definition, e.g.: government corporation, association, etc. Thus, if need be, the State would have the authority to regulate or proceed against a commission other than a county commission.

XIII. PUBLIC PARTICIPATION IN THE STATE ENFORCEMENT PROCESS

State laws and regulations provide for public participation in the State enforcement process by providing: Authority to allow intervention as of right in any civil or administrative action to obtain the remedies specified in Section VII A, B and C above by any citizen having an interest which is or may be adversely affected.

Federal Authority: RCRA §7004; 40 CFR 271.16(d).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-19

Remarks of the Chief of the Office of Legal Services

W. Va. Code §22-18-19 addresses the State's provisions for citizen suits. Under W. Va. Code §22-18-19(a), any person may commence a civil action on his or her own behalf against any person who is alleged to be in violation of any provision of Article 18 or any condition of a permit issued or rules promulgated under the Article. Furthermore, W. Va. Code §22-18-19(g) states that "any person may intervene as a matter of right in any civil action or administrative action instituted under this article."

XIV. AUTHORITY TO SHARE INFORMATION WITH EPA

State statutes and regulations provide authority for any information obtained or used in the administration of the State program to be available to EPA upon request without restriction.

Federal Authority: RCRA §3007(b); 40 CFR 271.17.

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-6(c); §22-18-12

33 CSR 20, effective July 1, 1999:
§33-20-11.19

Remarks of the Chief of the Office of Legal Services

W. Va. Code §22-1-6(c) provides the State with the authority to assure that appropriate officers and employees of the Division of Environmental Protection consult with individuals responsible for making

policy relating to environmental issues in the Federal government. The State's authority covers the Federal requirement. Under W. Va. Code §22-18-12 and HWMR §33-20-11.19, any information obtained by any agency under Article 18 shall be available to the public unless the Director certifies such information to be confidential. As specified at §33-20-11.19.g, nothing in the State's §33-20-11.19 may be construed as limiting the disclosure of information by the Division to any officer, employee or authorized representative of the State or Federal government concerned with effecting the purposes of Article 18.

XV. AUTHORITY OVER INDIAN LANDS

Federal Authority: 40 CFR 271.7(b).

Citation of Laws and Regulations; Date of Enactment and Adoption **Remarks of the Chief of the Office of Legal Services**

West Virginia does not seek authority over Indian lands.

XVI. EXPOSURE ASSESSMENTS

- A. *State laws and regulations allow the State to make assessment information available to the Agency for Toxic Substances and Disease Registry. [See CERCLA §104(i).]*

Federal Authority: RCRA §3019(b).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-1-6(c)

Remarks of the Chief of the Office of Legal Services

W. Va. Code §22-1-6(c) provides the State with the authority to assure that appropriate officers and employees of the division consult with individuals responsible for making policy relating to environmental issues in the Federal government. The State's authority covers the Federal requirement.

XVII. RADIOACTIVE MIXED WASTES

- A. *State statutes and regulations define solid wastes to include the hazardous components of radioactive mixed wastes, July 3, 1986 [51 FR 24504]. See State Program Advisory (SPA) #2.*

Federal Authority: RCRA §§1004(27) and 3001(b).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-3(16)
§22-18-6(a)(2)

Remarks of the Chief of the Office of Legal Services

West Virginia's definition of solid waste at W. Va. Code §22-18-3(16) is the same as the Federal definition at RCRA §1004(27). W. Va. Code §22-18-6(a)(2) provides the State with the authority to establish criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. However, West Virginia is not seeking authorization for the regulation of radioactive mixed wastes.

XVIII. AVAILABILITY OF INFORMATION

A. *State statutes and regulations provide that:*

- (1) *All records shall be available to the public unless they are exempt from the disclosure requirements of the Federal FOIA, 5 U.S.C. 552;*
- (2) *All nonexempt records will be available to the public upon request regardless of whether any justification or need for such records has been shown by the requestor;*
- (3) *The same types of records would be available to the public from the State as would be available from EPA.*
- (4) *Information is provided to the public in substantially the same manner as EPA as indicated in 40 CFR Part 2 and the Revision Checklist in Appendix N of the State Authorization Manual.*
- (5) *The State statutes and regulations protect Confidential Business Information (CBI) to the same degree as indicated in 40 CFR Part 2 and the Revision Checklist in Appendix N of the State Authorization Manual.*

Federal Authority: RCRA §3006(f); 40 CFR §271.17(c).

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:
§22-18-12

The West Virginia Freedom of Information Act, W. Va. Code Chapter 29B, 1994 Supplement
§29B-1-1 *et seq.*

33 CSR 20, effective July 1, 1999:
§33-20-11.19

Title 46, Series 8 (46 CSR 8), Regulations on Requests for Information, effective February 18, 1996:
§46-8-1 through 46-8-11

Remarks of the Chief of the Office of Legal Services

West Virginia's authorities and regulations for the "Availability of Information" requirements under RCRA §3006(f) are documented on the State's "Availability of Information" Checklist, herein

incorporated by reference. Under the State's Freedom of Information Act (West Virginia Code §29B-1-1 et seq.), every person has a right to inspect or copy any public record of a public body in the State, except as otherwise provided in West Virginia Code § 29B-1-4. "Public body" is defined to include the Division of Environmental Protection, the Public Service Commission, the Division of Highways, and the Environmental Quality Board (West Virginia Code § 29B-1-2(3)). The State allows confidentiality of information for those trade secrets which have "commercial value, and which gives its users an opportunity to obtain business advantage over competitors" (W. Va. Code 29B-1-4(1)). Under the Hazardous Waste Management Act (West Virginia Code § 22-18-12) any information obtained by any agency under Article 18 shall be available to the public for inspection and copying unless the Director certifies such information to be confidential. The Director may make such certification where a person shows, to the satisfaction of the Director, that the information or parts thereof, if made public, would divulge methods, processes or activities entitled to protection as trade secrets. Agencies operating under authority of the Hazardous Waste Management Act (West Virginia Code §22-18-1 et seq.) include the Division of Environmental Protection, the Public Service Commission, the Division of Highways, and the Environmental Quality Board. The Director is given authority to process all claims of confidential information obtained by any of these agencies pursuant to the Act or otherwise delegate this duty pursuant to West Virginia Code §22-18-6. As indicated in West Virginia §22-18-12, nothing in West Virginia Code §22-18-12 may be construed as limiting the disclosure of information by the Director to any officer, employee or authorized representative of the State or Federal government concerned with effecting the purposes of Article 18.

W. Va. Code §22-18-12 must be considered as in *pari materia* with the State Freedom of Information Act (FOIA) (W. Va. Code §29B-1-1, *et seq.*), since both statutes govern the agencies' disclosure of information to the public and the protection of trade secrets. The term "person" under the FOIA relates to who may request information and is defined as "any natural person, corporation, partnership, firm or association." Governmental agencies such as EPA are not included in this definition, which is no broader than with the Act's purpose to protect the public's right to know. Construing the provisions of W. Va. Code §22-18-12 and W. Va. Code §29B-1-1 et seq. together, and considering the purposes of both acts, the Chief of the Office of Legal Services concludes that the agencies implementing and administering the State program may transmit all information to EPA regardless of confidentiality claims. The term "trade secrets" is defined by the Environmental Quality Board and is no more broad in the State Program than the term as it is applied in the Federal Program.

W. Va. Code §29B-1-4(4) specifically addresses exemption from disclosure relative to "records of law-enforcement agencies that deal with the detection of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement." This State provision is no broader than the Federal provision at 40 CFR 2.118(a)(7) which also exempts from disclosure records or information compiled for law enforcement purposes. The Federal provisions at 2.118(a)(7)(A)-(E) outline specific conditions under which the exemption applies, including the situations in which disclosure could (1) interfere with the enforcement proceedings; (2) deprive a person of a right to a fair trial; (3) constitute unwarranted personal invasion; (4) disclose the identity of a confidential source; (5) disclose techniques and procedures for law enforcement investigations; or (6) endanger the life or physical safety of any individual. The West Virginia provision does not exclude any of the Federal conditions; thus, information compiled for law enforcement purposes that are exempt from disclosure under Federal law would also be exempt under West Virginia law.

West Virginia's regulatory provisions addressing the availability of information and procedures for requesting information are covered by HWMR §33-20-11.19 and the legislative rule, Title 46, Series 8. Under §33-20-11.19.b, the person claiming any information as confidential must clearly mark each page containing such information with the word "CONFIDENTIAL" and submit an affidavit that such person believes the information is entitled to protection. In addition, under §33-20-11.19.c, the State requires that

documents submitted which contain information for which claim of confidential information applies should be organized in a manner that includes cross-references to "data, words, phrases, paragraphs, or pages and appropriate affidavits containing or relating to information which is claimed to be confidential."

Under §33-20-11.19.d, no information shall be protected as confidential unless it is submitted in accordance with the provisions of §33-20-11.19.c. Section 33-20-11.19.e requires that information which fails to meet the criteria of §33-20-11.19.d must be returned to the person submitting the information. However, the chief is required to retain a copy of such information. Thus, if a person fails to assert a claim of business confidentiality at the first opportunity provided by the State, the State can release the information without further notice to the business. This includes any information submitted in connection with a permit, a permit application, or interim status under the State's hazardous waste regulations. Under §33-20-11.19.a, names and addresses of permit applicants and permittees will always be made public. The State's exemption for confidential information is no broader than the Federal requirements at 40 CFR 2.201(e) and 2.208.

Detailed comments regarding West Virginia's provisions for "availability of information" are found in the State's RCRA §3006(f) checklist. As indicated on that checklist, West Virginia meets the requirements for that checklist, except that the State does not have a provision which specifically addresses the requirements of 40 CFR 2.112(f). Under 2.112(f), a requestor may commence action in a Federal district court in the event of EPA's failure to issue a determination within the specified period. However, failure of the Director, or such other person to whom the Director has delegated this duty, to respond within the required times may be interpreted as constituting being "denied the right to inspect the public record". Therefore, under §29B-1-5(1), such a person is allowed to seek injunctive or declaratory relief under this provision when the State fails to respond within the required 5-day period.

XVIX. MEMORANDUM OF AGREEMENT (MOA)

In the MOA, West Virginia has agreed to implement specific procedural requirements.

- (1) The State has the authority to enter into the agreement,
- (2) The State has the authority to carry out the agreement, and
- (3) No applicable State statute (including the State Administrative Procedure Act) requires that the procedure be promulgated as a rule in order to be binding.]

W. Va. Code §22-18-5(c) gives the director the authority to enter into agreements with other state agencies, other organizations and individuals as necessary to implement the provisions of the State's Hazardous Waste Management Act. In addition, W. Va. Code §22-18-5(d) gives the director the authority to cooperate with and may receive and expend money from the Federal government. Finally, under W. Va. Code §22-18-5(a), the director shall perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of RCRA.

Seal of Office

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Signature

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US EPA ARCHIVE DOCUMENT