

US EPA ARCHIVE DOCUMENT

**ADDENDUM TO THE WEST VIRGINIA  
OFFICE OF LEGAL SERVICES STATEMENT  
FOR FINAL AUTHORIZATION,  
INCLUDING CHANGES TO THE  
FEDERAL RCRA PROGRAM  
FOR REVISION CHECKLISTS 163, 167A-F AND 168**

I hereby certify, pursuant to my authority as 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 of DEP 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 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. These authorities and certification supplement previously certified authorities described in the Chief of the Office of Legal Services's Statement dated November 8, 1999.

**I. IDENTIFICATION AND LISTING**

- OO. State statutes and regulations provide for secondary materials from mineral processing to be co-processed with normal raw materials in beneficiation operations which generate Bevill exempt wastes, without changing the exempt status of the resulting Bevill waste, provided certain conditions are met as indicated in Revision Checklist 167 E.*

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

**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); §22-18-6(a); §22-18-23

W. Va. Hazardous Waste Management Rule (HWMR), 33 CSR 20, effective July 1, 1999:  
§33-20-1.6; §33-20-3.1; §33-20-3.5.

**Remarks of the Chief of the Office of Legal Services**

At §§33-20-1.6, 3.1 and 3.5, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR 261.4(b)(7), as amended and finalized in 63 Federal Register 28556 (May 26, 1998). 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.

*PP. State statutes and regulations contain clarifying amendments to requirements regarding exclusion of mixtures under 261.4(b)(7) involving Bevill waste, as indicated in Revision Checklist 167 E.*

Federal Authority: RCRA §§3001; 40 CFR 261.3(a)(2)(i)&(iii) as amended May 26, 1998 (63 FR 28556).

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; §33-20-3.1; §33-20-3.5.

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6, 3.1 and 3.5, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR 261.3(a)(2)(i)&(iii), as amended and finalized in 63 Federal Register 28556 (May 26, 1998). 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.

**II. DEFINITION OF SOLID WASTE**

*D. State statutes and regulations provide for a conditional exclusion from the definition of solid wastes for mineral processing secondary materials as indicated in Revision Checklist 167 D.*

Federal Authority: RCRA §§3001; 40 CFR 261.2(c)(3), 261.2(c)(4) Table 1, 261.2(e)(1)(iii) and 261.4(a)(16) as amended May 26, 1998 (63 FR 28556).

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; §33-20-3.1; §33-20-3.5.

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6, 3.1 and 3.5, West Virginia has incorporated by reference the July 1, 1997 version of 40 CFR 261.2 and 261.4, as amended and finalized in 63 Federal Register 28556 (May 26, 1998). 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.

*E. State statutes and regulations provide for an exclusion from the definition of solid waste for certain materials generated and recycled by the wood preserving industry as indicated in Revision Checklist 167 F.*

Federal Authority: RCRA §§3001; 40 CFR 261.4(a)(9)(iii) as amended May 26, 1998 (63 FR 28556).

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:  
§33-20-3.5.

Remarks of the Chief of the Office of Legal Services

At §§33-20-1.6, 3.1 and 3.5, West Virginia has adopted the 40 CFR 261.4(a)(9)(iii) provision, as amended and finalized in 63 Federal Register 28556 (May 26, 1998). 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.

*F. State statutes and regulations exclude from the definition of solid waste fuels which are produced from a hazardous waste, but which are comparable to some currently used fossil fuels, as indicated in Revision Checklist 168.*

Federal Authority: RCRA §§1004, 1006, and 3001; 40 CFR 261.4(a)(16)<sup>1</sup> and 261.38, as amended June 19, 1998 (63 FR 33782).

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:  
§33-20-3.6

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:  
§45-25-6.3

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<sup>1</sup> 63 FR 33782 contains a typographical error. The rule indicates that it is adding 261.4(a)(16), which was previously added by 63 FR 28556 (see Revision Checklist 167). The correct numbering of the added paragraph should be 261.4(a)(17).

Remarks of the Chief of the Office of Legal Services

At §§33-20-3.6 and 45-25-6.3, West Virginia has incorporated by reference the provisions of 40 CFR 261.4 and 261.38 regarding the exclusion of comparable fuels from being considered a solid waste, as amended and finalized in 63 Federal Register 33782 (June 19, 1998). 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.

**XV. STANDARDS FOR FACILITIES**

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

Federal Authority: RCRA § 3004(n); 40 CFR 60 Appendix A, 260, 261, 262, 264, 265, and 270 as amended December 6, 1994 (59 FR 62896); May 19, 1995 (60 FR 26828); September 29, 1995 (60 FR 50426); November 13, 1995 (60 FR 56952); February 9, 1996 (61 FR 4903); June 5, 1996 (61 FR 28508); November 25, 1996 (61 FR 59932); and December 8, 1997 (62 FR 64636)

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

W. Va. Hazardous Waste Management Rule (HWMR), 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; §33-20-11.1

45 CSR 25, effective June 1, 1999:

§45-25-1.1.a; §45-25-1.1.b; §45-25-1.5.a; §45-25-1.5.c; §45-25-3.2 (Items 6, 8 and 10)

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, 33-20-7.8, 33-20-8.1, 33-20-8.6, 33-20-11.1, 45-25-1.5 and 45-25-3.2 (Items 6, 8 and 10), the State adopts and incorporates by reference, without changes, the July 1, 1997 40 CFR Parts 260, 261, 262, 264, 265 and 270 air emission control provisions, as amended on December 8, 1997, at 62 Federal Register 64636. W. Va. Code §22-1-3(c) provides the State with the authority to adopt 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.

**XVI. REQUIREMENTS FOR PERMITS**

**BB. State statutes and regulations include requirements for hazardous waste combustion facility permit modifications to meet 40 CFR part 63 MACT standards, as indicated in Revision Checklist 168. State statutes and regulations also address such changes during interim status.**

Federal Authority: RCRA §§ 1006, 3004, 3005, and 7004; 40 CFR 270.42(j), 270.42 Appendix I, and 270.72(b)(8), as amended June 19, 1998 (63 FR 33782).

Citation of Laws and Regulations: Date of Enactment and Adoption

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

HWMR, 33 CSR 20, effective July 1, 1999:  
§33-20-11.9.d

45 CSR 25, effective June 1, 1999:  
§45-25-5.5.d.

Remarks of the Chief of the Office of Legal Services

West Virginia has broad statutory authority under §§22-18-6(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 at §33-20-11.9.d and §45-25-5.5.d, the State adopts and incorporates by reference, without changes, 40 CFR 270.42(j) and 270.42, Appendix I. W. Va. Code §22-1-3(c) provides the State with the authority to adopt 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.

**XXI. LAND DISPOSAL RESTRICTIONS**

**DD. State statutes and regulations include prohibitions and treatment standards for metal constituents in all hazardous wastes including the toxic characteristic wastes as indicated in Revision Checklist 167 A.**

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

Citation of Laws and Regulations: Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:  
§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; §33-20-10.6

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 the checklists at §§33-20-1.6, 33-20-10.1 and §33-20-10.6. W. Va. Code §22-1-3(c) provides the State with the authority to adopt 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.

***EE. State statutes and regulations include treatment standards for mineral processing wastes as indicated in Revision Checklist 167 A.***

Federal Authority: RCRA §§3004(g)(4) and (m); 40 CFR 268.40 and 268.48 as amended May 26, 1998 (63 FR 28556).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:  
§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; §33-20-10.6.

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 the checklists at §§33-20-1.6, 33-20-10.1 and §33-20-10.6. W. Va. Code §22-1-3(c) provides the State with the authority to adopt 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.

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

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

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:  
§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; §33-20-10.6.

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 the checklists at §§33-20-1.6, 33-20-10.1 and §33-20-10.6. W. Va. Code §22-1-3(c) provides the State with the authority to adopt 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.

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

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

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement:

§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; §33-20-10.6.

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 the checklists at §§33-20-1.6, 33-20-10.1 and §33-20-10.6. W. Va. Code §22-1-3(c) provides the State with the authority to adopt 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.