

US EPA ARCHIVE DOCUMENT

Hazardous and Solid Waste Amendments of 1984
Enacted: November 8, 1984
Public Law 98-616

West Virginia HSWA Statutory Checklist

Title of Legislation: West Virginia Hazardous Waste Management Act, W. Va. Code, 1994 Cumulative Supplement.

Prepared By: _____

Date : _____

Reviewed By: _____

Date : _____

Federal Statutory Element	RCRA (HSWA) Cite	Coverage Y/N	State Citation	Comment
1,2. Authority to regulate the generation, transportation, treatment, storage and disposal of hazardous waste produced by (1) generators of between 100-1000 kg/month, and (2) generators of less than 100 kg/month	§3001(d)	Yes	22-18-6(a)(3) 22-18-6(a)(12) 22-18-5(a) 22-18-23 22-18-7(a)-(c)	West Virginia's §§ 22-18-6(a)(3) and 22-18-6(a)(12) address the RCRA statutory provisions, except that, unlike RCRA §3001(d)(2), the State does not specifically address standards applicable to the legitimate use, reuse, recycling and reclamation of hazardous waste, nor does it specify that the standards for SQGs and CESQGs may vary from those for larger quantity generators. However, West Virginia's §§ 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 Subtitle C of RCRA and to adopt rules that are equivalent to and consistent with the Federal program. Sections 22-18-7(a)-(c) address the authority of the Commissioner of the Division of Highways and the Public Service Commission, in consultation with the Director, to promulgate rules governing the transportation of hazardous waste on roads, highways and railroads.

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West Virginia HSWA Statutory Checklist (cont'd)

Federal Statutory Element	RCRA (HSWA) Cite	Coverage Y/N	State Citation	Comment
3. Authority to allow SQGs to store hazardous waste on site for up to 180 days or 270 days on site without a permit or interim status	§3001(d)	Yes	22-18-5(a) 22-18-6(a)(3) 22-18-6(a)(12)(D) 22-18-23	Section 22-18-23 requires the State program to be consistent with and equivalent to the Federal program, and § 22-18-6(a)(12)(D) gives the Director the authority to adopt rules that allow the State to assume primacy for the HSWA portion of the Federal hazardous waste program.
4,5. Delisting mechanisms	§3001(f)(1)&(2)	No	No State analog	West Virginia does not have a delisting program. At 47-35-2.4 of its rules, 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.
6. Authority to require generators to reduce the volume and toxicity of wastes generated	§3002	Yes	22-18-5(a) 22-18-6(a)(12)(D) 22-18-23	The specific RCRA authority is §3002(b). The State's statutory provisions at 22-18-5(a), 22-18-6(a)(12)(D) and 22-18-23 provide coverage.
7. Authority to promulgate rules requiring evidence of financial responsibility for corrective action on and off-site	§3004(a)(6)	Yes	22-18-6(a)(4)(F) 22-18-25(1) 22-18-9(b)	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, § 22-18-9(b) specifically gives the Director the authority to amend the standards of 22-18-6(a)(4) to include corrective action.

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West Virginia HSWA Statutory Checklist (cont'd)

Federal Statutory Element	RCRA (HSWA) Cite	Coverage Y/N	State Citation	Comment
8. Authority to prohibit land disposal of any hazardous waste; authority to waive prohibition on land disposal	§3004(b)-(g)	Yes	22-18-6(a)(12)(A) 22-18-6(a)(12)(B) 22-18-6(a)(12)(D) 22C-5-4(c)	Sections 22-18-6(a)(12)(A), (B) and (D) provide authority for land disposal prohibitions. The State's statutory provisions at §§ 22-18-6(a)(12)(A) and (B) are broad enough to meet EPA's requirements because they address prohibitions relating to the management of hazardous waste by land disposal methods, prohibitions relating to liquid hazardous wastes or free liquids contained in hazardous wastes and any other liquids which are not hazardous wastes. Section 22-18-6(a)(12)(D) gives the State the authority to adopt related rules that are consistent with, but no more expansive in coverage nor more stringent in effect than, rules and regulations promulgated by the Federal Environmental Protection Agency under RCRA Subtitle C. Sections 22-18-6(a)(12)(A), (B) & (D) and 22C-5-4(c) provide the necessary authorities for RCRA §3004(b)-(g).
9. Authority to waive until November 8, 1987 a prohibition on land disposal of certain hazardous wastes that might otherwise apply to the disposal of contaminated soil or debris from CERCLA §104 or §106 actions or RCRA corrective actions.	§3004	Yes	22-18-6(a)(12)(D)	Section 22-18-6(a)(12)(D) gives the Director the authority to adopt rules, including exemptions and variances, as are otherwise necessary to allow the State to assume primacy for the administration of the Federal program under HSWA. The State has adopted by reference the regulatory analog to this waiver which is found at 40 CFR 268.32.

West Virginia HSWA Statutory Checklist (cont'd)

Federal Statutory Element	RCRA (HSWA) Cite	Coverage Y/N	State Citation	Comment
10. Authority to prohibit liquids in Subtitle C landfills unless (1) the only reasonable alternative is disposal in a landfill or unlined impoundment, whether or not subject to Subtitle C, that contains or may contain hazardous waste and (2) disposal will not endanger an underground source of drinking water	§3004(c)(3)	Yes	22-18-6(a)(12)(B)	This authority is covered by § 22-18-6(a)(12)(B) which gives the Director 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 waste.
11. Authority to prohibit the storage of hazardous waste prohibited from land disposal	§3004(j)	Yes	22-18-5(a) 22-18-6(a)(12)(A) 22-18-23	Sections 22-18-5(a), 22-18-6(a)(12)(A) and 22-18-23 provide broad authorities which allow the State to adopt rules prohibiting the storage of hazardous wastes prohibited from land disposal. The regulatory counterpart to this statutory provision is found at 40 CFR 268.50 which West Virginia has incorporated by reference.
12. Authority to prohibit the use of waste oil or other materials contaminated with hazardous wastes (except ignitable wastes) as a dust suppressant	§3004(l)	Yes	22-18-6(a)(14) 22-18-23	The State's § 22-18-6(a)(14) is broad enough to address this authority because it provides 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. Section 22-18-23 specifies that the State's hazardous waste program must be equivalent to and consistent with the Federal program.
13. Authority to promulgate standards specifying levels or methods of treatment which substantially diminish the toxicity of the waste or reduce the likelihood of migration; authority to grant exemption from the standards	§3004(m)	Yes	22-18-6(a)(12)(A) 22-18-23	Section 22-18-6(a)(12)(A) covers the provisions of this RCRA citation because it gives the Director the authority to promulgate rules, including exemptions and variances, establishing standards and prohibitions relating to the management of hazardous waste by land disposal methods. Section 22-18-23 requires that the State's program is consistent with and equivalent to the Federal program.

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West Virginia HSWA State Checklist (cont'd)

Federal Statutory Element	RCRA (HSWA) Cite	Coverage Y/N	State Citation	Comment
14. Authority to promulgate rules for monitoring and controlling air emission at treatment, storage, and disposal facilities	§3004(n)	Yes	22-18-6(a)(13)(B)	Section 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.
15. Authority to regulate fuel containing hazardous waste and all persons who produce, burn, distribute and market fuel containing hazardous wastes	§3004(q)-(s)	Yes	22-18-6(a)(13)(C) 22-18-6(a)(12)(C) 22-18-6(a)(12)(D)	The State's authority at § 22-18-6(a)(13)(C) is limited to persons who burn fuel containing hazardous wastes. Section 22-18-6(a)(12)(C) addresses the authority to establish standards applicable to producers, distributors or marketers of hazardous waste fuels, and § 22-18-6(a)(12)(D) specifies that the State's program must be consistent with, but no more expansive in coverage nor more stringent in effect than, rules and regulations promulgated under RCRA Subtitle C. Section 22-18-6(a)(12)(D) also gives the Director the authority to adopt rules necessary to allow the state to assume primacy for the administration of the HSWA amendments.
16. Authority to exempt certain petroleum coke from regulation if it is to be burned for energy recovery	§3004(q)(2)(A)	Yes	22-18-6(a)(12)(D)	Section 22-18-6(a)(12)(D) addresses 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.
17. Authority to allow direct action against the insurer or corporate guarantor if an owner/operator is in bankruptcy or reorganization	§3004(t)	Yes	22-18-25(2) 22-18-25(3)	West Virginia has authority that is analogous to RCRA §3004(t). This authority creates a parallel cause of action viable in State courts, but the cause of action does not limit the availability of the Federal action.

West Virginia HSWA Statutory Checklist (cont'd)

Federal Statutory Element	RCRA (HSWA) Cite	Coverage Y/N	State Citation	Comment
18. Authority to assure that permits issued after 11/8/84 require corrective action for releases of hazardous waste or constituents from any solid waste management unit	§3004(u)	Yes	22-18-9(a)	The State's authority sufficiently covers the Federal requirement.
19. Authority to require corrective action beyond a facility's boundary	§3004(v)	Yes	22-18-9(b)	West Virginia's authority sufficiently covers the Federal requirement.
20. Authority to assure that permitting standards for underground storage tanks, at a minimum, satisfy RCRA §9003, Subtitle I	§3004(w)	Yes	22-18-5(a) 22-18-6(a)	Section 22-18-5(a) gives the Director the authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C. Section 22-18-6(a) provides the Director with the authority to promulgate rules that are consistent with and equivalent to the Federal rules and regulations.
21. Authority to allow facility to construct an approved TSCA facility for burning PCBs without first obtaining a RCRA permit	§3005(a)	Yes	22-18-5(a) 22-18-23	Sections 22-18-5(a) and 22-18-23 are sufficient to address this authority.
22. Authority to review land disposal permits every five years and to modify them as necessary	§3005(c)(3)	Yes	22-18-5(a) 22-18-6(a)(5) 22-18-23	Sections 22-18-5(a), 22-18-6(a)(5), and 22-18-23 are sufficient to address this authority.
23. Authority to issue permits containing any conditions necessary to protect human health and environment	§3005(c)(3)	Yes	22-18-5(a) 22-18-23	Section 22-18-5(a) gives the Director the authority to perform any and all acts necessary to carry out the purposes and requirements of RCRA Subtitle C, and § 22-18-23 requires the State's program to be equivalent to and consistent with the Federal program.

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West Virginia HSWA State Checklist (cont'd)

Federal Statutory Element	RCRA (HSWA) Cite	Coverage Y/N	State Citation	Comment
24. Authority to terminate interim status	§3005(c)&(e)	Yes	22-18-5(a) 22-18-23	The State's provisions at §§ 22-18-5(a) and 22-18-23 provide the State with the broad authority to terminate interim status under the conditions that are equivalent to and consistent with the Federal program.
25. Authority to allow facilities to qualify for interim status	§3005(e)	Yes	22-18-11 22-18-5(a) 22-18-23	The State's provision at § 22-18-11 applies to a facility in existence on July 1, 1981. The provision does not include newly-regulated facilities, although West Virginia has adopted the Federal provision at 40 CFR 270.70(a) which grants interim status to newly regulated facilities. The State's provisions at §§ 22-18-5(a) and 22-18-23 are broad enough to give the State the authority to grant interim status to newly regulated facilities. See Section V.B of the Office of Legal Services Statement for additional discussion.
26. Authority to require that facilities may not qualify for interim status if they were previously denied a permit or for which authority to operate has been terminated	§3005(c)&(e)	Yes	22-18-5(a) 22-18-23	Sections 22-18-5(a) and 22-18-23 give the State this authority.
27. Authority to issue, modify and terminate research, development and demonstration permits	§3005(g)	Yes	22-18-5(a) 22-18-6(a)(1) 22-18-23	Section 22-18-5(a) gives the State 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, provide the State with adequate authority to meet the requirements addressed.

West Virginia HSWA Statutory Checklist (cont'd)

Federal Statutory Element	RCRA (HSWA) Cite	Coverage Y/N	State Citation	Comment
28. Authority to require interim status landfills, surface impoundments, land treatment units and piles that received wastes after July 26, 1982 to comply with the groundwater monitoring, unsaturated zone monitoring and corrective action requirements applicable to new units	§3005(i)	Yes	22-18-6(a)(4)(C) 22-18-6(a)(4)(G) 22-18-7(e) 22-18-9(b)(2)	Sections 22-18-6(a)(4)(C) & (G), 22-18-7(e) and 22-18-9(b)(2) provide the necessary authority. The State's § 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.
29. Authority to require interim status impoundments to comply with the double liner, leachate collection and groundwater monitoring requirements applicable to new units or stop treating, receiving or storing hazardous wastes	§3005(j)	Yes	22-18-6(a) 22-18-6(a)(4)(D) 22-18-7(e)	Section 22-18-6(a) provides the Director with the authority to promulgate rules that are consistent with and equivalent to the Federal rules and regulations; 22-18-6(a)(4)(D) provides the Director with the authority to promulgate standards for the location, design and construction of existing facilities; and 22-18-7(e) provides the authority for promulgating water quality standards governing discharges into waters of the State.
30. Authority to impose any necessary requirements on an existing surface impoundment to protect health and the environment after determining that hazardous constituents are likely to migrate into groundwater	§3005(j)	Yes	22-18-6(a) 22-18-6(a)(4)(D)	The specific RCRA citation is § 3005(j)(7)(B). The provisions at §§ 22-18-6(a) and 22-18-6(a)(4)(D) provide broad authority to meet this Federal requirement.

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West Virginia HSWA Secondary Checklist (cont'd)

Federal Statutory Element	RCRA (HSWA) Cite	Coverage Y/N	State Citation	Comment
31. Authority to modify the double liner, leachate collection and groundwater monitoring requirements for impoundments in §3005(j)(1) if prior to October 1, 1984, the owner/operator has entered into a consent decree which requires corrective action	§3005(j)(13)	Yes	22-18-6(a)(4)(D) 22-18-5(a) 22-18-23	The State's broad authorities at §§ 22-18-5(a) and 22-18-23 provide coverage. Section 22-18-6(a)(4)(D) specifically gives the Director the authority to promulgate rules addressing the design and construction of hazardous waste facilities.
32. Authority to make information obtained on treatment, storage, and disposal facilities available to the public in substantially the same manner and to the same degree as if EPA were running the program	§3006(f)	Yes	22-18-12 47-35-11.7 29B-1-1 <i>et seq.</i> 46 CSR 8	West Virginia's provisions for availability of information are found in the following documents: (1) § 29B-1-1 <i>et seq.</i> (Freedom of Information Act); (2) W.Va. Code § 22-18-12 (Confidentiality of Information); (3) 46 CSR 8 (Rules on Requests for Information); and (4) 47 CSR, § 47-35-11.7 (Public Access to Information). Under § 29B-1-5(1), failure of the Division and the Board to respond within the required times constitutes being "denied the right to inspect the public record". See the "Availability of Information Checklist § 3006(f)" for a detailed analysis of the State's provisions.
Authority to issue an order requiring corrective action or such other response measures necessary to protect human health or the environment; authority to commence civil action for appropriate relief, including temporary or permanent injunction	§3008(h)	Yes	22-18-18(2) 22-18-17(b) 22-18-23	The State's authorities at § 22-18-18(2) and 22-18-17(b) provide equivalent coverage. Section 22-18-18(2) provides that upon receipt of information or upon observation that a hazardous waste management activity may present an imminent and substantial danger, the Director has the authority to take action, including issuing orders as may be necessary to protect public health and the environment. Under § 22-18-23, the State's program must be equivalent to the Federal program. Finally, § 22-18-17(b) requires a civil penalty of up to \$25K per day for a violation of any order issued.

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West Virginia HSWA Statutory Checklist (cont'd)

Federal Statutory Element	RCRA (HSWA) Cite	Coverage Y/N	State Citation	Comment
33. Authority to promulgate special generator and transporter standards for recycled hazardous used oil	§3014(c)	Yes	22-18-6(a)(14) 22-18-6(a)(15)	The State's provisions at §§ 22-18-6(a)(14) and 22-18-6(a)(15) provide the Director with the authority to promulgate such rules as are necessary.
34. Authority to deem hazardous waste used oil recycling facilities to have a permit if they comply with the State's analogue to §3004	§3014	Yes	22-18-5(a) 22-18-23	The specific RCRA citation is §3014(d)(1). The authorities granted by §§ 22-18-5(a) and 22-18-23 are broad enough to provide coverage.
35. Authority to require new units, expansions and replacements of interim status waste piles, landfills and surface impoundments to meet the liner and leachate collection requirements for new permitted units	§3015(a)&(b)	Yes	22-18-6(a)(4)(D) 22-18-23	Section 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.
37. Authority to regulate listed or identified wastes which pass through a sewer system to a POTW as necessary to adequately protect human health	§3018(b)	Yes	22-18-6(a)(1) 22-18-23	The provisions at 22-18-6(a)(1) and 22-18-23 are broad enough to provide this authority.
38. Authority to require permit applicants for landfills or surface impoundments to submit exposure information	§3019(a)	Yes	22-18-8(a) 22-18-23	The State's authority at §§ 22-18-8(a) and 22-18-23 provide the necessary coverage.

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West Virginia HSWA St Checklist (cont'd)

Federal Statutory Element	RCRA (HSWA) Cite	Coverage Y/N	State Citation	Comment
39. Authority to make exposure and health assessment information available to the Agency for Toxic Substances and Diseases	§3019(b)(1)	Yes	22-1-6(c)	West Virginia's § 22-1-6(c) provides the Director 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.
40. Authority to grant variances and exemptions that are no less stringent than allowed by Subtitle C of RCRA	§§7002 and 7003	Yes	22-18-6(a)(12)(D) 22-18-23	Section 22-18-6(a)(12)(D) gives the Director 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. Section 22-18-23 requires the State's program to be equivalent to and consistent with the Federal program.
41. Neither the State nor citizens may bring action against common carriers for imminent hazards arising after delivery of the shipment to the consignee, provided the carrier exercised due care when handling the work	§§7002(g), 7003(a)	Yes	22-18-5(a)	Section 22-18-5(a) provides the necessary coverage.
42. Authority to regulate hazardous waste that is radioactive except to the extent that the waste is source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended.	§1004(27)	Yes	22-18-3(16)	West Virginia has an equivalent definition at § 22-18-3(16).