

US EPA ARCHIVE DOCUMENT

WEST VIRGINIA LEGISLATION CHECKLIST

State: WEST VIRGINIA

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

Reviewed By: \_\_\_\_\_

Date: \_\_\_\_\_

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
<b>DEFINITIONS</b>			
Disposal	22-18-3(2)	Yes	Equivalent.
Generator	22-18-6(a)&(a)(3) 22-18-23	Yes	The State does not have a definition of generator in its statutes, but under § 22-18-6(a), the Director has the authority to promulgate provisions that are consistent with regulations promulgated pursuant to the Resource Conservation and Recovery Act (RCRA). Section 22-18-23 states that the program developed pursuant to the State's Hazardous Waste Management Act shall be both equivalent to and consistent with Subtitle C of RCRA. Under § 22-18-6(a)(3), the Director has the authority to establish standards applicable to generators with hazardous waste.
Hazardous waste	22-18-3(6)	Yes	Equivalent.
Manifest	22-18-3(10)	Yes	Equivalent.
Person	22-18-3(11)	Yes	Equivalent.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
Storage	22-18-3(13)	Yes	Equivalent.
Transport	22-18-6(a) 22-18-6(a)(9)&(15) 22-18-7(a)-(c) 22-18-23	Yes	Like RCRA, the West Virginia statutes do not contain a definition for transport; therefore, the State does not have a direct analog. However, § 22-18-6(a) gives the Director the authority to promulgate requirements consistent with regulations promulgated pursuant to RCRA. In addition, § 22-18-23 states that the program developed pursuant to the Hazardous Waste Management Act shall be both equivalent to and consistent with the Federal program developed pursuant to Subtitle C of RCRA. Section 22-18-6(a)(9) gives the Director the specific authority to establish procedures and requirements for the use of a manifest during the transport of hazardous waste. Additionally, § 22-18-6(a)(15) gives the Director the authority to promulgate "such other rules as are necessary to effectuate the purpose of this article." Section 22-18-7(a) addresses the relationship between the Director and the Commissioner of the Division of Highways and requires the Commissioner to promulgate rules that are consistent with both the DOT requirements and the Hazardous Waste Management Act. Section 22-18-7(b) addresses analogous authorities for the Public Service Commission relative to transport by rail. Section 22-18-7(c) addresses specific transporter requirements that are consistent with RCRA. Both the Public Service Commission and the Commissioner of the Division of Highways also have the authority to define transport.
Treatment	22-18-3(15)	Yes	Equivalent.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
Treatment, Storage or Disposal facility	22-18-6(a) 22-18-6(a)(4) 22-18-23	Yes	Like RCRA, the West Virginia statutes do not contain a definition for treatment, storage or disposal facility. However, § 22-18-6(a) gives the Director the authority to promulgate requirements consistent with regulations promulgated pursuant to RCRA. Section 22-18-6(a)(4) specifically gives the Director the authority to promulgate performance standards applicable to owners and operators of facilities for the treatment, storage or disposal of hazardous waste. This would include the authority to define such facilities. Finally, § 22-18-23 states that the program developed pursuant to the Hazardous Waste Management Act shall be both equivalent to and consistent with the Federal program developed pursuant to Subtitle C of RCRA.
Waste (solid)	22-18-3(16)	Yes	Equivalent.

**HAZARDOUS WASTE IDENTIFICATION AND LISTING (40 CFR 271.9)**

HW characteristics	22-18-6(a)(2)	Yes	Section 22-18-6(a)(2) gives the Director the authority to promulgate rules establishing criteria for identifying the characteristics of hazardous waste.
HW list	22-18-6(a)(2)	Yes	Section 22-18-6(a)(2) gives the Director the authority to promulgate rules listing particular hazardous wastes that are subject to the Hazardous Waste Management Act.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
<b>STANDARDS FOR GENERATORS (40 CFR 271.10)</b>			
Coverage for all generators regulated by 40 CFR 262	22-18-6(a) 22-18-5(a) 22-18-6(a)(3) 22-18-23	Yes	Section 22-18-6(a) gives the Director the authority to promulgate rules that are consistent with regulations promulgated under RCRA. The coverage must be no more expansive nor more stringent than Federal regulations promulgated pursuant to RCRA. In addition, § 22-18-5(a) gives the Director the authority to perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of RCRA. Section 22-18-6(a)(3) addresses specific authorities relative to generators. Finally, § 22-18-23 states that the program developed pursuant to the Hazardous Waste Management Act shall be both equivalent to and consistent with the Federal program established pursuant to Subtitle C of RCRA.
I.D. numbers	22-18-6(a) 22-18-6(a)(3) 22-18-23	Yes	West Virginia does not have a specific provision covering the authority to require identification numbers, but the authorities granted by §§ 22-18-6(a)&(a)(3) and by § 22-18-23 are broad enough to provide such authority.
Requiring generator to determine whether waste is hazardous	22-18-6(a) 22-18-6(a)(3) 22-18-23 22-18-5(a)	Yes	West Virginia does not have a specific provision covering the authority to require a hazardous waste determination, but the authorities granted by §§ 22-18-6(a)&(a)(3) and § 22-18-23 are broad enough to cover this requirement. The broad authorities under § 22-18-5(a) apply as well.
Recordkeeping practices	22-18-6(a)(3)(A) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(3)(A) specifically gives the Director the authority to promulgate rules establishing record keeping practices. The wording is the same as RCRA § 3002(a)(1). Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
Packaging, labeling, marking and placarding practices	22-18-6(a)(3)(B) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(3)(B) specifically gives the Director the authority to promulgate rules establishing labeling practices. The wording is the same as RCRA § 3002(a)(2). Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices.
Use of appropriate containers	22-18-6(a)(3)(C) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(3)(C) specifically gives the Director the authority to promulgate rules requiring use of appropriate containers. The wording is the same as RCRA § 3002(a)(3). Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal program.
Furnishing information	22-18-6(a)(3)(D) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(3)(D) specifically gives the Director the authority to promulgate rules establishing requirements for furnishing information on the waste. The wording is the same as RCRA § 3002(a)(4). Sections 22-18-6(a) and 22-18-23 require the rules to be consistent with and equivalent to the Federal practices.
Use of manifest consistent with DOT and EPA	22-18-6(a)(3)(E) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(3)(E) specifically gives the Director the authority to promulgate rules establishing requirements for the use of a manifest. The wording is consistent with RCRA § 3002(a)(5). Sections 22-18-6(a) and 22-18-23 require the rules to be consistent with and equivalent to the Federal practices, which would include the DOT requirements.
International shipments	22-18-6(a) 22-18-6(a)(3)&(15) 22-18-23	Yes	West Virginia does not have a specific provision covering the authority addressing international shipments, but the authorities granted by §§ 22-18-6(a), (a)(3) & (15) and by § 22-18-23 are broad enough to provide such authority.

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**WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)**

<b>Federal Statutory Element</b>	<b>State Citation</b>	<b>Coverage Yes/No</b>	<b>Comment</b>
Designation of and delivery to permitted facilities	22-18-6(a)(3)(E) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(3)(E) specifically gives the Director the authority to promulgate rules establishing requirements that assure that hazardous waste generated is designated for treatment, storage or disposal in and arrives at permitted treatment, storage or disposal facilities. The wording is consistent with RCRA § 3002(a)(5). In addition, § 22-18-6(a) and § 22-18-23 require the rules to be consistent with and equivalent to Federal practices.
Investigation of unreturned shipments	22-18-6(a)(3)(F) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(3)(F) specifically gives the Director the authority to promulgate rules establishing reporting requirements that account for the disposition of hazardous waste generated. This includes investigating unreturned shipments so that their disposition can be reported. The wording is similar to RCRA § 3002(a)(6)(A)&(B). In addition, §§ 22-18-6(a) and 22-18-23 require the rules to be consistent with and equivalent to the Federal requirements.
Submission of reports	22-18-6(a)(3)(F) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(3)(F) specifically gives the Director the authority to promulgate rules establishing reporting requirements. The wording is similar to RCRA § 3002(a)(6)(A)&(B). In addition, §§ 22-18-6(a) and 22-18-23 require the rules to be consistent with and equivalent to the Federal requirements.

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WEST VIRGINIA LEGIS.      N CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
<b>STANDARDS FOR TRANSPORTERS (40 CFR 271.11)</b>			
Coverage for all transporters covered by 40 CFR Part 263	22-18-6(a) 22-18-5(a) 22-18-7(a)-(c) 22-18-23	Yes	Section 22-18-6(a) gives the Director the authority to promulgate requirements consistent with, but no more expansive in coverage nor more stringent than, regulations promulgated pursuant to RCRA. In addition, § 22-18-5(a) gives the Director the authority to perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of RCRA. Section 22-18-23 states that the program developed pursuant to the Hazardous Waste Management Act must be both equivalent to and consistent with Subtitle C of RCRA. Section 22-18-7(a) addresses the relationship between the Director and the Commissioner of the Division of Highways and requires that Commissioner to promulgate rules that are consistent with both the DOT requirements and the Hazardous Waste Management Act. The Commissioner has the same enforcement and inspection powers as granted to the Director as per the transport of hazardous waste. Section 22-18-7(b) addresses analogous authorities for the Public Service Commission relative to transport by rail. Section 22-18-7(c) addresses specific highway/rail transporter requirements and these are consistent with RCRA. The § 22-18-6(a) provisions cover all non-rail, non-highway transporters.
I.D. numbers	22-18-7(a)-(c) 22-18-6(a) 22-18-6(a)(9) 22-18-23	Yes	West Virginia does not have a specific provision covering the authority to require identification numbers, but the authorities granted by §§ 22-18-6(a), 22-18-7(a)-(c) and 22-18-23 are broad enough to provide such authority. Additionally, § 22-18-6(a)(9), regarding use of the manifest during transport implicitly, includes the use of I.D. numbers.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
Recordkeeping	22-18-7(c)(A) 22-18-6(a)&(a)(15) 22-18-23 22-18-7(a)&(b)	Yes	Section 22-18-7(c)(A) specifically gives the Public Service Commission and the Commissioner of the Division of Highways the authority to promulgate rules establishing recordkeeping practices. The wording is the same as RCRA § 3003(a)(1). The authorities of §§ 22-18-6(a)&(a)(15) are broad enough to provide the Director with the authority to promulgate rules to cover these requirements for non-rail, non-highway transporters. Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices, and §§ 22-18-7(a)&(b) require the rules promulgated by the Public Service Commission and by the Commissioner of the Division of Highways to be consistent with DOT requirements and the Hazardous Waste Management Act.
Labeling	22-18-7(c)(B) 22-18-6(a)&(a)(15) 22-18-23 22-18-7(a)&(b)	Yes	Section 22-18-7(c)(B) specifically gives the Public Service Commission and the Commissioner of the Division of Highways the authority to promulgate rules establishing labeling practices. The wording is the same as RCRA § 3003(a)(2). The authorities of §§ 22-18-6(a)&(a)(15) are broad enough to provide the Director with the authority to promulgate rules to cover these requirements for non-rail, non-highway transporters. Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to Federal practices, and §§ 22-18-7(a)&(b) require that the rules promulgated by the Public Service Commission and by the Commissioner of the Division of Highways be consistent with DOT requirements and the Hazardous Waste Management Act.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
Compliance with manifest system	22-18-7(c)(C) 22-18-6(a) 22-18-6(a)(9)&(a)(15) 22-18-23 22-18-7(a)&(b)	Yes	Section 22-18-7(c)(C) specifically gives the Public Service Commission and the Commissioner of the Division of Highways the authority to promulgate rules requiring compliance with the manifest. The wording is the same as RCRA § 3003(a)(3). Sections 22-18-6(a)(9) and (a)(15) provide the Director with the authority to promulgate rules to establish procedures and requirements for the use of a manifest system during the transport of hazardous waste, covering all types of transporters. Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to Federal practices, and §§ 22-18-7(a)&(b) require that the rules promulgated by the Public Service Commission and by the Commissioner of the Division of Highways be consistent with DOT requirements and with the Hazardous Waste Management Act.
Spill notification	22-18-7(a)-(c) 22-18-6(a) 22-18-6(a)(15) 22-18-23	Yes	The authority to promulgate rules for spill notification is not specifically addressed in West Virginia's statutes, but the authority to promulgate rules consistent with the Federal requirements and protective of public health, safety and the environment at §§ 22-18-6(a), 22-18-6(a)(15), 22-18-7(a)-(c) and 22-18-23 are broad enough to provide the authority for the promulgation of rules for spill notification.
Spill clean-up	22-18-7(a)-(c) 22-18-6(a) 22-18-6(a)(15) 22-18-23	Yes	Coverage for the same reasons given for spill notification.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
Transportation to permitted facility	22-18-7(c)(D) 22-18-6(a) 22-18-6(a)(3)(E) 22-18-6(a)(15) 22-18-23 22-18-7(a)&(b)	Yes	Section 22-18-7(c)(D) specifically gives the Public Service Commission and the Commissioner of the Division of Highways the authority to promulgate rules requiring the transport of waste to the facility designated on the manifest. As per § 22-18-6(a)(3)(E), the facility must be a permitted facility. The wording of § 22-18-7(c)(D) is the same as RCRA § 3003(a)(4). In addition, the authorities of §§ 22-18-6(a)&(a)(15) are broad enough to provide the Director with the authority to promulgate rules to cover these requirements for non-rail, non-highway transporters. Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices and §§ 22-18-7(a)&(b) require that the rules promulgated by the Public Service Commission and by the Commissioner of the Division of Highways be consistent with DOT requirements and with the Hazardous Waste Management Act.
Consistency with DOT requirements	22-18-7(a)&(b) 22-18-6(a) 22-18-23	Yes	Sections 22-18-7(a)&(b) require the rules promulgated by the Public Service Commission and by the Commissioner of the Division of Highways to be consistent with DOT requirements. Finally, §§ 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
<b>STANDARDS FOR HW STORAGE, TREATMENT, AND DISPOSAL FACILITIES (40 CFR 271.12)</b>			
Coverage for all TSD facilities which EPA regulates	22-18-6(a) 22-18-5(a) 22-18-6(a)(4) 22-18-23	Yes	Section 22-18-6(a) gives the Director the authority to promulgate rules that are consistent with regulations promulgated under RCRA. The coverage must be no more expansive nor more stringent than Federal regulation promulgated pursuant to RCRA. In addition, § 22-18-5(a) gives the Director the authority to perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of RCRA. Section 22-18-6(a)(4) addresses specific authorities relative to TSDs. Section 22-18-23 states that the program developed pursuant to the Hazardous Waste Management Act shall be both equivalent to and consistent with the Federal program established pursuant to Subtitle C of RCRA.
I.D. numbers	22-18-5(a) 22-18-6(a)&(a)(4) 22-18-23	Yes	West Virginia does not have a specific provision covering the authority to require identification numbers, but the authorities granted by §§ 22-18-5(a), 22-18-6(a)&(a)(4) and 22-18-23 are broad enough to provide such authority.
Recordkeeping	22-18-6(a)(4)(A) 22-18-6(a) 22-18-23	Yes	Section 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). Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices.
Reporting	22-18-6(a)(4)(B) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(4)(B) specifically gives the Director the authority to promulgate rules for satisfactory reporting practices. The wording is the same as RCRA § 3004(a)(2). Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
Monitoring and inspecting	22-18-6(a)(4)(B) 22-18-6(a) 22-18-23	Yes	Section 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). Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices.
Compliance with the manifest system	22-18-6(a)(4)(B) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(4)(B) specifically gives the Director the authority to promulgate rules establishing compliance with the manifest system. The wording is the same as RCRA § 3004(a)(2). Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices.
Operating methods	22-18-6(a)(4)(C) 22-18-6(a) 22-18-23 22-18-6(a)(13)(A) &(B)	Yes	Section 22-18-6(a)(4)(C) specifically gives the Director the authority to promulgate rules establishing compliance with such operating methods, techniques, and practices as may be satisfactory to the Director. The wording is the same as RCRA § 3004(a)(3). Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices. Sections 22-18-6(a)(13)(A)&(B) provide authority to promulgate rules establishing air pollution performance standards and permit requirements, as well as rules for the monitoring and control of emissions at TSD facilities.
Location, design, construction	22-18-6(a)(4)(D) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(4)(D) specifically gives the Director the authority to promulgate rules addressing the location, design and construction of TSDs. The wording is the same as RCRA § 3004(a)(4). Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
Contingency plans	22-18-6(a)(4)(E) 22-18-6(a) 22-18-23 22-18-6(a)(13)(A) & (B)	Yes	Section 22-18-6(a)(4)(E) specifically gives the Director the authority to promulgate rules requiring contingency plans for effective action to minimize unanticipated damage from any treatment, storage or disposal of hazardous waste. The wording is the same as RCRA § 3004(a)(5). Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices. Sections 22-18-6(a)(13)(A)&(B) provide authority to promulgate rules establishing air pollution performance standards and permit requirements, as well as rules for the monitoring and control of emissions at TSD facilities.
Training	22-18-6(a)(4)(F) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(4)(F) specifically gives the Director the authority to promulgate rules requiring training for personnel. The wording is similar to RCRA § 3004(a)(6). Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices.
Ownership	22-18-6(a)(4)(F) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(4)(F) specifically gives the Director the authority to promulgate rules requiring additional qualifications as to ownership. The wording is similar to RCRA § 3004(a)(6). Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices.
Closure and post-closure activities	22-18-8(c) 22-18-6(a) 22-18-23	Yes	Section 22-18-8(c) provides the Director with the discretion to require a plan for closure. Sections 22-18-6(a) and 22-18-23 require him to establish rules that are both consistent with and equivalent to the Federal program developed under RCRA.
Continuity of Operation	22-18-6(a)(4)(F) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(4)(F) specifically gives the Director the authority to promulgate rules addressing continuity of operation. The wording is similar to RCRA § 3004(a)(6). Sections 22-18-6(a) and 22-18-23 require that the rules be consistent with and equivalent to the Federal practices.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
Financial responsibility	22-18-6(a)(4)(F) 22-18-25(1) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a)(4)(F), along with § 22-18-25(1), gives the Director the authority to require owners and operators to show evidence of financial responsibility using specific financial mechanisms. The § 22-18-6(a)(4)(F) wording is consistent with RCRA § 3004(a)(6). 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. See the discussion under VA of the Office of Legal Services' Statement.
General conditions (see 40 CFR 270.30)	22-18-5(a) 22-18-6(a) 22-18-23	Yes	West Virginia does not have a specific provision addressing authority relative to the requirements at 270.30. However, § 22-18-5(a) gives the Director the authority to "perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of the Resource Conservation and Recovery Act." Sections 22-18-6(a) and 22-18-23 require any rules promulgated by the Director to be consistent with and equivalent to the Federal program established under RCRA.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
<b>PERMITS FOR HW STORAGE, TREATMENT AND DISPOSAL FACILITIES (40 CFR 271.13)</b>			
Require permits for owners and operators of all TSD facilities	22-18-8(a) 22-18-11 22-18-6(a)(13) 22-18-5(a) 22-18-23	Yes	Section 22-18-8(a) specifically requires that no person shall own, construct, modify, operate or close any facility or site for the treatment, storage or disposal of hazardous waste identified or listed under the State's Hazardous Waste Management Act without obtaining a permit. Similarly, any person who treats, stores, or disposes of any such waste must also obtain a permit. Per § 22-18-6(a)(13), a separate air permit is required. Section 22-18-11 provides the authority to allow operation under interim status. Section 22-18-11 does not specifically address newly regulated existing facilities; however, the broad authorities under §§ 22-18-5(a) and 22-18-23 provide the necessary authority to promulgate interim status regulations for newly regulated facilities. West Virginia has also incorporated by reference 270.10(e) which applies to newly regulated existing facilities. See Section V.B of the Office of Legal Services' Statement for additional discussion.
Impose construction ban	22-18-8(a)	Yes	Section 22-18-8(a) precludes construction of a hazardous waste facility without a permit.
Prohibit operation of facilities without permits	22-18-8(a) 22-18-11 22-18-5(a) 22-18-23	Yes	Section 22-18-8(a) specifically prohibits operation of a facility without a permit. Sections 22-18-11, 22-18-5(a) and 22-18-23 provide the authority to allow operation under interim status. See Section V.B of the Office of Legal Services' Statement for further discussion.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
Require permit application information	22-18-8(b) 22-18-23	Yes	Section 22-18-8(b) gives the Director the authority to prescribe the form of application for all permits issued by the Director. In addition, § 22-18-23 requires that the program for the management of hazardous waste pursuant to the State's Hazardous Waste Management Act be equivalent to and consistent with the Federal program established pursuant to Subtitle C of RCRA. The Director has the authority to require all of the information required by the Federal program.
Require permits to contain all technical and administrative standards	22-18-6(a)(4) 22-18-23 22-18-5(a)	Yes	Section 22-18-6(a)(4) addresses the authority of the Director to establish performance standards for TSDs. Section 22-18-5(a) requires the Director to carry out any and all acts necessary to carry out the purposes and requirements of Subtitle C of RCRA. Section 22-18-23 includes the authority to require that permits contain all technical and administrative standards because this provision gives authority to the Director to develop a state hazardous waste program that is consistent with and equivalent to the Federal program developed under Subtitle C of RCRA.
Provide for permit modification and termination (revocation)	22-18-6(a)(5)	Yes	Section 22-18-6(a)(5) specifically gives the Director the authority to issue, modify, revoke or deny any permits under the State's Hazardous Waste Management Act. Although the permit addressing air emissions must be a separate permit, the authority at § 22-18-6(a)(5) also applies to such a permit.

WEST VIRGINIA LEGIS.      IN CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
Allow public disclosure of name and address of permit applicant and permittees	22-18-12 22-18-5(a) 22-18-23	Yes	Under § 22-18-12, the Director has the authority to make available to the public, any information obtained, unless the Director certifies such information to be confidential. The type of information that may be claimed as confidential does not include the name and address of the permit applicant or permittee. In addition, § 22-18-5(a) gives the Director the authority to perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of RCRA, and § 22-18-23 states that the program developed pursuant to the Hazardous Waste Management Act shall be both equivalent to and consistent with the Federal program established pursuant to Subtitle C of RCRA.

**PUBLIC PARTICIPATION**

Draft permit, fact sheet, etc.	22-18-6(a)(8) 22-18-10 22-18-23	Yes	Section 22-18-6(a)(8) gives the Director the authority to promulgate rules for public participation in the implementation of the State's Hazardous Waste Management Act. In addition, § 22-18-10 requires the Director or other permit issuing authority to comply with specific public participation procedures. Finally, § 22-18-23 requires that the program developed pursuant to the State's Hazardous Waste Management Act be equivalent to and consistent with the Federal program established pursuant to Subtitle C of RCRA. Because the Federal program requires provision of a draft permit, fact sheet, etc., the Director has the authority to provide them.
Notice of all draft permits by radio broadcasts and notices in newspapers, etc.	22-18-6(a)(8) 22-18-10(a) 22-18-23	Yes	Section 22-18-10(a) requires notice by radio and in the newspapers. In addition, § 22-18-6(a)(8) gives the Director the authority to promulgate rules for public participation and § 22-18-23 requires State rules to be equivalent to the Federal rules.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
45-day public comment period on all draft permits	22-18-6(a)(8) 22-18-10(b) 22-18-23	Yes	Section 22-18-10(b) requires a 45-day public comment period. In addition, § 22-18-6(a)(8) gives the Director the authority to promulgate rules for public participation and § 22-18-23 requires State rules to be equivalent to the Federal rules.
Informal hearing with notice of opposition	22-18-6(a)(8) 22-18-10(b) 22-18-23	Yes	Section 22-18-10(b) requires the Director or other permit issuing authority to hold a public hearing if written notice of opposition is received. In addition, § 22-18-6(a)(8) gives the Director the authority to promulgate rules for public participation and § 22-18-23 requires State rules to be equivalent to the Federal rules.
Consideration of and response to public comments	22-18-6(a)(8) 22-18-23	Yes	Section 22-18-6(a)(8) gives the Director the authority to promulgate rules for public participation, and § 22-18-23 requires State rules to be equivalent to the Federal rules.

**INSPECTIONS**

Right to enter, inspect and obtain samples (at all regulated premises and where records are kept)	22-18-13	Yes	Section 22-18-13 gives the Director or any authorized representative employee or agent of the Division (i.e., the Division of Environmental Protection) the right of entry, for inspections and to take samples.
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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
<b>ENFORCEMENT (40 CFR 271.16)</b>			
Immediately restrain unauthorized activity	22-18-15(a)(2) 22-18-18(a)(1)	Yes	Section 22-18-15(a)(2) gives the Director 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 Attorney General or the appropriate prosecuting attorney authority to commence action in circuit court to immediately restrain any person contributing to the 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.
Sue to enjoin any threatened or continuing program violation without prior revocation of permit	22-18-17(c)	Yes	Section 22-18-17(c) allows the Director to seek an injunction or institute a civil action against any person in violation of any provisions of the State's Hazardous Waste Management Act or any permit rule or order without posting bond nor alleging or proving at any stage that irreparable damage will occur if the injunction is not ordered. Furthermore, injunctive relief is available without any prior revocation of a permit. See the discussion under Section XI.B of the Office of Legal Services' Statement.
Obtain civil penalties for any violation (maximum no less than \$10K per day)	22-18-17(b)	Yes	The civil penalty limit is set at no more than \$25,000 per day per violation. This is more than the minimum for the maximum (\$10,000 per day per violation) required.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
Obtain criminal penalties for specific violations (maximum no less than \$10K per day and imprisonment with maximum no less than 6 months); burden of proof no greater than under Federal law	22-18-16	Yes	40 CFR 271.16(a)(3)(ii) requires States to have the authority to obtain criminal penalties for specific violations in the amount of <u>at least \$10,000 per day for each violation and imprisonment for at least six months</u> . This requirement for State authorization is different than the criminal penalties under RCRA § 3008(d). The West Virginia provisions are patterned after the Federal requirements at RCRA § 3008(d) rather than the 40 CFR 271.16(a)(3)(ii) requirements for State authorization. Differences between the State's provisions and the Federal provisions are addressed under Section XI.D of the Office of Legal Services' Statement.
Allow intervention (See 40 CFR 271.16)	22-18-19(f)&(g)	Yes	Section 22-18-19(g) specifically allows any person to intervene as a matter of right in any civil action or administrative action instituted under the State's Hazardous Waste Management Act. Section 22-18-19(f) allows any enforcement, permit issuing, or rule-making authority to intervene as a matter of right in any suit brought under § 22-18-19.

**MISCELLANEOUS**

Authority to share all information with EPA	22-1-6(c)	Yes	Section 22-1-6(c) gives the Director the responsibility 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.
Variance and waiver provisions	22-18-6(a)(12)	Yes	Section 22-18-6(a)(12) provides the Director with 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.

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WEST VIRGINIA LEGISLATION CHECKLIST (cont'd)

Federal Statutory Element	State Citation	Coverage Yes/No	Comment
Importation ban	22-18-5(a) 22-18-6(a) 22-18-23	Yes	Section 22-18-6(a) gives the Director the authority to promulgate rules that are consistent with regulations promulgated under RCRA. The coverage must be no more expansive nor more stringent than Federal regulations promulgated pursuant to RCRA. In addition, § 22-18-5(a) gives the Director the authority to perform any and all acts necessary to carry out the purposes and requirements of Subtitle C of RCRA. Finally, § 22-18-23 states that the program developed pursuant to the Hazardous Waste Management Act shall be both equivalent to and consistent with the Federal program established pursuant to Subtitle C of RCRA.
Exemptions	22-18-6(a)(12)	Yes	Section 22-18-6(a)(12) provides the Director with 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.
Siting	22C-5-4	Yes	The State has a commercial hazardous waste management facility siting board.