

US EPA ARCHIVE DOCUMENT

**ADDENDUM**

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

**(February 27, 2003)**

**DEPARTMENT OF ENVIRONMENTAL PROTECTION  
1356 Hansford Street  
Charleston, WV 25301-1401**

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**ADDENDUM**  
**WEST VIRGINIA OFFICE OF LEGAL SERVICES' STATEMENTS**  
**FOR FINAL AUTHORIZATION INCLUDING CHANGES TO THE**  
**FEDERAL RCRA PROGRAM FOR**  
**REVISION CHECKLISTS 17B, 17L, 44A-C, 121, 160, 161, 164, 166,**  
**169-180, 182, 184, RADIOACTIVE MIXED WASTE, AND PROJECT XL**  
**RULEMAKING FOR OSI SPECIALTIES, INC.**

I hereby certify, pursuant to my authority as Chief of the Office of Legal Services of the Department 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 Department of Environmental Protection (DEP). West Virginia (W. Va.) Code § 22-1-6(d)(7) (1996 Cumulative Supplement) authorizes the Secretary of DEP to "employ in-house counsel to perform all legal services for the secretary and department, 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." These authorities and certification supplement previously certified authorities described in the Chief of the Office of Legal Services' Statement and its accompanying Addendum dated January 13, 2000 [Includes final rules promulgated through RCRA Cluster VII (except for Corrective Action), plus RCRA Cluster VIII Revision Checklists 163, 167A-F and 168].

West Virginia's 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. Under W. Va. Code §§ 22-18-5(a), 22-18-6(a), and 22-18-23, the Secretary has the authority to promulgate rules that are 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. The State's authority to adopt and incorporate Federal rules by reference is provided by W. Va. Code § 22-1-3(c). The regulations are contained in the following Legislative Rules: 33 Code of State Regulations 20 (33CSR20), "Hazardous Waste Management Rule" effective [July 1, 2001], 45CSR25, "To Prevent and Control Air Pollution from Hazardous Waste Treatment, Storage, or Disposal Facilities", effective July 1, 2001 and 47CSR13 "Underground Injection Control" effective June 1, 2002.

The checklists for which West Virginia is seeking authorization are (1) Revision Checklist 17 B (as documented in the Consolidated Delisting Checklist); (2) Corrective Action Revision Checklists 17L, 44A, 44B, 44C and 121; (3) RCRA Cluster VIII Revision Checklists 160, 161, 164, 165, 166; (4) RCRA Cluster IX Revision Checklists 169 through 180; (5) RCRA Cluster X Revision Checklists 182 and 184; (6) the

Radioactive Mixed Waste requirements, and Project XL Rulemaking for Osi Specialties, Inc., Sinterville, WV (aka Crompton Corporation).

## **I. IDENTIFICATION AND LISTING**

***A. State statutes and regulations contain lists of hazardous wastes which encompass all wastes controlled under the following Federal regulations as indicated in the designated Revision Checklists:***

- (30) State statutes and regulations DO NOT contain listing of one waste type (K140) from the floor sweeping, off-specification product and spent filter media from the production of 2,4,6-tribromophenol, as well as the listing of 2,4,6-tribromophenol as U408, 40 CFR 261.32, 261.33(f), Part 261 Appendix VII, and Part 261 Appendix VIII, as amended May 4, 1998 [63 FR 24596], and June 29, 1998 [63 FR 35147]***

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

On April 9, 1999, the United States Court of Appeals for the District of Columbia in Great Lakes Chemical Corporation versus EPA (Docket No. 98-1312), granted the U.S. Government's motion for a voluntary vacatur of the rule addressed by Revision Checklist 165. Consequently, in its adoption of the July 1, 1999 version of the CFR, West Virginia, at § 33-20-10.4, has excluded the provisions addressed by withdrawn Revision Checklist 165.

- (31) Listing of four wastes (K169-K172) generated during petroleum refining process, 40 CFR 261.32, Part 261 Appendix VII as amended August 6, 1998 [63 FR 42110], Revision Checklist 169.***

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), 22-1-3(c), 22-18-5(a), 22-18-6(a)

and 22-18-23

33 CSR 20, §§33-20-1.6 and 33-20-3.1

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

W. Va. Code § 22-18-6(a)(2) gives the Secretary of the Department of Environmental Protection (Secretary) 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. Pursuant to this authority and the

State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 169.

**C. State statutes and regulations provide authority to delist hazardous waste as indicated in the Consolidated Delisting Checklist which includes the changes made by Revision Checklists 17 B, 34, 111, 126 and 142E.**

- (1) ***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.***

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

- (2) ***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 §§ 2002(a) and 3001(f)(2); 40 CFR 260.20 and 260.22, as amended July 15, 1985 (50 FR 28702), November 7, 1986 (51 FR 40572), 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, §§ 22-18-6(a)(12), 22-1-3(c), 22-18-5(a),  
22-18-6(a) and 22-18-23  
33 CSR 20, §§ 33-20-1.6, 33-20.2.1 and 33-20-2.4

Remarks of the Chief of the Office of Legal Services

In addition to West Virginia's authorities at W. Va. Code §§ 22-1-3(c), 22-18-5(a), 22-18-6(a), and 22-18-23, under W. Va. Code § 22-18-6(a)(12), the State has the authority to adopt regulations that include variances. Pursuant to these authorities, at §§ 33-20-1.6, 2.1 and 2.4.a, West Virginia has adopted and incorporated by reference the hazardous waste delisting provisions.

The State is more stringent in that for those facilities that have been granted delisting petitions by EPA, West Virginia has a provision at § 33-20-2.4.c which allows the State to accept the EPA approval on the conditions that (1) the petitioner submits a copy of the petition submitted to the EPA administrator, including all demonstrative information, and a copy of the administrator's



approval granting the exclusion pursuant to 40 CFR 260.20(e); and (2) no scientifically supportable reasons for denying the petition are advanced which had not been presented to the EPA administrator.

The State also has a broader in scope provision at § 33-20-2.4.c which requires petitioners to pay an initial non-refundable application fee of \$1000 with the petition. The petitioner must also execute an agreement with the director providing for the recovery of all reasonable costs attributable to the review and investigation of the petition in excess of the initial fee. A petitioner is not held liable for costs incurred in excess of the initial application fee if the petition is withdrawn in compliance with the procedures outlined at § 33-20-2.4.b.3. The Federal code does not require application fees to be submitted with delisting petitions.

***G. State statutes and regulations define solid wastes to include the hazardous components of radioactive mixed wastes, July 3, 1986 [51 FR 24504].***

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) and 22-18-6(a)(2)  
33 CSR 20, §§ 33-20-1.6 and 33-20-3.1

Remarks of the Chief of the Office of Legal Services

West Virginia's statutes and regulations provide adequate authority to regulate the hazardous component of wastes containing both hazardous and radioactive wastes. 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. At W. Va. Code § 22-18-3(16), the State has a definition for "solid waste" that is identical to the Federal definition at RCRA §1004(27). At W. Va. Code § 22-18-3(16), West Virginia, like Federal, excludes from the definition of solid waste, "source, special nuclear or by-product material as defined by the federal Atomic Energy Act of 1954, as amended." The State also incorporates by reference, the Federal exclusion at 40 CFR 261.4(a)(4) relative to radioactive wastes. This exclusion applies only to the radioactive component of wastes. The hazardous waste component of any mixed waste is subject to the State's regulatory authority under its Hazardous Waste Management Act.

***NN. State statutes and regulations include an exemption from regulation under RCRA for condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e), as indicated in Revision Checklist 164. This exclusion is limited to combustion at mills generating the condensate.***



Federal Authority: RCRA §3001; 40 CFR 261.4(a)(15), as amended April 15, 1998 (63 FR 18504).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a), (a)(2)&(12), 22-1-3(c), 22-18-5(a),  
and 22-18-23  
33 CSR 20, §§ 33-20-1.6 and 33-20-3.1  
45 CSR 25, § 45-25-1.5.a (Table 25-A, Item 20)

Remarks of the Chief of the Office of Legal Services

W. Va. Code § 22-18-6(a)(2) requires the Secretary 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, under § 22-18-6(a)(12), the Secretary has the authority to grant exemptions. Pursuant to these authorities and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has incorporated by reference the provisions addressed by Revision Checklist 164.

***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 Checklists 167 E and 179.***

Federal Authority: RCRA §3001; 40 CFR 261.4(b)(7) as amended May 26, 1998 (63 FR 28556) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a), (a)(2)&(12), 22-1-3(c), 22-18-5(a),  
and 22-18-23  
33 CSR 20, §§ 33-20-1.6 and 33-20-3.1  
45 CSR 25, § 45-25-1.5.a (Table 25-A, Item 20)

Remarks of the Chief of the Office of Legal Services

W. Va. Code § 22-18-6(a)(2) requires the Secretary to promulgate rules establishing criteria for the identification and listing of hazardous waste. In addition, under § 22-18-6(a)(12), the Secretary has the authority to grant exemptions. Pursuant to these authorities and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and

22-18-23, West Virginia has incorporated by reference the provisions addressed by Revision Checklists 167E and 179.

***QQ. State statutes and regulations include revisions that expand the headworks exemption to include waste generated during petroleum refining process (K169-K172), as indicated in Revision Checklist 169.***

Federal Authority: RCRA §§ 2002(a) and 3001, 40 CFR 261.3(a)(2)(iv)(C) as amended August 6, 1998 (63 FR 42110).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a), (a)(2)&(12), 22-1-3(c), 22-18-5(a),  
and 22-18-23  
33 CSR 20, §§33-20-1.6, 33-20-3.1 and 33-20-3.1.a through 3.1.a.3

Remarks of the Chief of the Office of Legal Services

W. Va. Code § 22-18-6(a)(2) requires the Secretary to promulgate rules establishing criteria for the identification and listing of hazardous waste. In addition, under § 22-18-6(a)(12), the Secretary has the authority to grant exemptions. Pursuant to these authorities and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has incorporated by reference the provisions addressed by Revision Checklist 169.

***RR. State statutes and regulations include an exemption for catalyst support media as indicated in Revision Checklist 169.***

Federal Authority: RCRA §§ 2002(a) and 3001, 40 CFR 261.3(c)(2)(ii)(E), as amended August 6, 1998 (63 FR 42110).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a), (a)(2)&(12), 22-1-3(c), 22-18-5(a),  
and 22-18-23  
33 CSR 20, §§33-20-1.6 and 33-20-3.1

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code §§ 22-18-6(a)(2) and 22-18-6(a)(12), the Secretary has the authority to promulgate rules establishing criteria for the identification and listing of hazardous waste and to grant exemptions. Pursuant to these authorities and the State's

authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has incorporated by reference the provisions addressed by Revision Checklist 169.

***SS. State statutes and regulations exclude dredged material from regulation as a hazardous waste provided the material is subject to the requirements of a permit issued under §404 of the Federal Water Pollution Control Act or §103 of the Marine Protection, Research, and Sanctuaries Act as indicated in Revision Checklist 175.***

Federal Authority: RCRA §§ 1006(b), 2002(a) and 3001; 40 CFR 261.4(g), as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a), (a)(2)&(12), 22-1-3(c), 22-18-5(a),  
and 22-18-23  
33 CSR 20, §§33-20-1.6 and 33-20-3.1  
45 CSR 25, §45-25-1.5.a (Table 25-A, Item 20)

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code §§ 22-18-6(a)(2) and 22-18-6(a)(12), the Secretary has the authority to promulgate rules establishing criteria for the identification and listing of hazardous waste and to grant exemptions. Pursuant to these authorities and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklists 175.

***TT. State statutes and regulations exempt, from regulation as a hazardous waste, landfill leachate and gas condensate derived from previously disposed petroleum refinery wastes (K169-K172), as indicated in Revision Checklist 178.***

Federal Authority: RCRA §§ 2002(a) and 3001(a), (b), and (e)(2), 3004(g) and (m), 40 CFR 261.4(b)(15), as amended February 11, 1999 (64 FR 6806).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a), (a)(2)&(12), 22-1-3(c), 22-18-5(a),  
and 22-18-23  
33 CSR 20, §§33-20-1.6 and 33-20-3.1  
45 CSR 25, §45-25-1.5.a (Table 25-A, Item 20)

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code §§ 22-18-6(a)(2) and 22-18-6(a)(12), the Secretary has the authority to promulgate rules establishing criteria for the identification and listing of hazardous waste and to grant exemptions. Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 178.

***UU. State statutes and regulations (1) incorporate the third edition and updates to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846), the Third edition (November 1986), as amended through Update IIIA (April 1998); and (2) include Method 1664, Revision A, N-Hexane Extractable Material (HEM; Oil and Grease) and Silica Gel Treated N-Hexane Extractable Material (SGT-HEM; Non-polar Material) by Extraction and Gravimetry, as indicated in Revision Checklist 180.***

Federal Authority: RCRA §§1006, 2002(a), 3001-3007, 3010, 3013-3018, and 7004; 40 CFR 260.11(a)(11) and 260.11(a)(16), as amended May 14, 1999 (64 FR 26315).

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) and 22-18-23

33 CSR 20, §§33-20-1.6 and 33-20-2.1

Remarks of the Chief of the Office of Legal Services

Pursuant to the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has incorporated by reference the provisions addressed by Revision Checklist 180.

**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 Checklists 167 D and 179.***

Federal Authority: RCRA §3001; 40 CFR 261.2(c)(3), 261.2(c)(4) Table 1, 261.2(e)(1)(iii), 261.4(a)(16), and 261.4(a)(17) as amended May 26, 1998 (63 FR 28556) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

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

22-18-6(a) and 22-18-23  
 33 CSR 20, §§33-20-1.6 and 33-20-3.1  
 45 CSR 25, §45-25-1.5.a (Table 25-A, Item 20)

Remarks of the Chief of the Office of Legal Services

West Virginia is not seeking authorization for the changes to 40 CFR 261.4(a)(16) and 261.4(a)(17) addressed by Revision Checklist 179. The State is authorized for Revision Checklist 167D. However, an April 21, 2000 court decision (U.S. DC Circuit Court of Appeals, *Association of Battery Recyclers, Inc. v. US EPA*, 208 F.3d 1047 (D.C. Cir. 2000)) vacated the part of the Phase IV LDR rule addressed by Revision Checklist 167D (63 FR 28556-28753; May 26, 1998), regarding secondary materials reclaimed by the mineral processing industry. Because of this vacatur, EPA has withdrawn Revision Checklist 167D and EPA advises States not to adopt or seek authorization for the provisions in the rule that are in Revision Checklist 167D, and by extension, the amendments to the Revision Checklist 167D changes addressed by Revision Checklist 179.

***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 Checklists 168 and 182.***

Federal Authority: RCRA §§1004, 1006, and 3001; 40 CFR 261.4(a)(16)<sup>1</sup>, 261.38, and 261.38 Table 1, as amended June 19, 1998 (63 FR 33782), September 30, 1999 (64 FR 52828), and November 19, 1999 (64 FR 63209).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a), (a)(2)&(12), 22-1-3(c), 22-18-5(a), and 22-18-23  
 33 CSR 20, §§ 33-20-1.6, 33-20-3.1 and 33-20-1.10  
 45 CSR 25, §§ 45-25-1.5.a (Table 25-A, Item 20) and 1.5.c

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code §§ 22-18-6(a)(2) and 22-18-6(a)(12), the Secretary has the authority to promulgate rules establishing criteria for the identification and listing of hazardous waste and to grant exemptions. Pursuant to these authorities and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the amendments addressed by Revision Checklist 182.

***G. State statutes and regulations include revisions to the exclusion for certain oil-bearing hazardous secondary materials, as well as new exclusions for petrochemical recovered oil, and spent caustic solutions from petroleum refining processes, and the related revisions to the references to these exclusions as indicated in Revision Checklist 169.***

<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).



Federal Authority: RCRA § 3001; 40 CFR 261.3(c)(2)(ii)(B), 261.4(a)(12), 261.4(a)(18) & (19), 261.6(a)(3)(iv)(C), 261.6(a)(3)(v), 261.31(a), and 266.100(b)(3), as amended August 6, 1998 (63 FR 42110).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a), (a)(2)&(12), 22-1-3(c), 22-18-5(a), and 22-18-23  
33 CSR 20, §§33-20-1.6, 33-20-3.1 and 33-20-9  
45 CSR 25, §45-25-1.5.a (Table 25-A, Item 20)

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code §§ 22-18-6(a)(2) and 22-18-6(a)(12), the Secretary has the authority to promulgate rules establishing criteria for the identification and listing of hazardous waste and to grant exemptions. Pursuant to these authorities and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 169.

**IV. ACCUMULATION**

*B. State statutes and regulations allow generators who generate 1,000 kilograms or more of hazardous waste per calendar month who also generate wastewater treatment sludges from electroplating operations that meet the F006 listing description, to accumulate F006 waste on-site for up to 180 days (or 270 days in certain circumstances) without a permit or interim status as indicated in Revision Checklist 184.*

Federal Authority: RCRA §§ 2002 and 3002; 40 CFR 262.34(g) - (i), as amended March 8, 2000 (65 FR 12378).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a)&(a)(3), 22-1-3(c), 22-18-5(a), and 22-18-23  
33 CSR 20, §33-20-5.5

Remarks of the Chief of the Office of Legal Services

W. Va. Code § 22-18-6(a)(3) gives the Secretary the authority to promulgate regulations and establish standards for generators of hazardous waste. Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklists 184.

**XIII. CORRECTIVE ACTION**

*A. State statutes and regulations contain the following corrective action requirements as indicated in Revision Checklist 17 L:*



- (1) ***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, 264.101 and 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, §§ 22-18-9(a) and § 22-1-3(c)  
33 CSR 20, §§ 33-20-1.6, 33-20-7.2, 33-20-11.1 and 33-20-11.23

Remarks of the Chief of the Office of Legal Services

W. Va. § 22-18-9(a) provides the State with an authority that is equivalent to RCRA §3004(u). In addition, W. Va. Code § 22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. Pursuant to these authorities, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 17 L.

- (2) ***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 require corrective action beyond a facility's boundary.

- (3) ***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, which require corrective action beyond a facility's boundary.

**(4) *There is evidence of financial responsibility for 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) and 22-18-25(1)  
33 CSR 20, §§ 33-20-1.6, and 33-20-7.2

Remarks of the Chief of the Office of Legal Services

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. In addition, W. Va. § 22-18-9(a) requires assurances of financial responsibility for corrective action and is equivalent to RCRA § 3004(u). Pursuant to these authorities, and the State's provision at W. Va. Code § 22-1-3(c) which gives the State the authority to adopt Federal regulations by reference, West Virginia has adopted and incorporated by reference 40 CFR 264.90 and 264.101.

***C. State statutes and regulations require owners and operators of facilities seeking permits to provide descriptive information on the solid waste management units themselves and all available information pertaining to any releases from the units as indicated in Revision Checklist 44 A.***

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

23 W. Va. Code, 1994 Cumulative Supplement, §§ 22-1-3(c), 22-18-8(a), 22-18-9(a) and 22-18-33 CSR 20, §§ 33-20-1.6 and 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 also has 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 has adopted and incorporated by reference the provisions addressed by Revision Checklist 44 A. W. Va. Code § 22-1-3(c) gives the State the authority to adopt and incorporate the Federal regulations by reference.

***D. State statutes and regulations require that owners and operators of hazardous waste treatment, storage and disposal facilities (including permit-by-rule facilities subject to 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.***

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) and 22-1-3(c)  
33 CSR 20, §§ 33-20-1.6 and 33-20-7.2

Remarks of the Chief of the Office of Legal Services

W. Va. § 22-18-9(b)(1)&(2) provide the State with an authority that is equivalent to RCRA § 3004(v)(1)&(2). In addition, W. Va. Code § 22-1-3(c) provides the State with the authority to adopt Federal regulations by reference. Pursuant to these authorities, West Virginia has incorporated by reference the provisions addressed by Revision Checklist 44 B.

***E. State statutes and regulations do not contain the corrective action requirements listed under (1) and (2) below for injection wells as indicated in Revision Checklist 44 C.***

- (1) ***Hazardous waste injection wells now operating under RCRA interim status may retain interim status after issuance of a UIC permit. Until a RCRA permit or a RCRA "rider" to a UIC permit, which addresses Section 3004(u) corrective action, is issued, the well must comply with applicable interim status requirements imposed by §265.430, Parts 144.146 and 147, and any UIC permit requirements.***

Federal Authority: RCRA §3004(u); 40 CFR 144.1(h) 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)  
47 CSR 13, § Interim Status for Class I RCRA Injection wells (47 CSR 13 § 7.3 (a-h))

Remarks of the Chief of the Office of Legal Services

W. Va. § 22-18-9(a) provides the State with an authority that is equivalent to RCRA §3004(u). Pursuant to this authority, West Virginia has adopted the Federal provisions as addressed by Revision Checklist 44 C. The State's provisions are equivalent to the Federal requirements.

- (2) ***As part of the UIC permit process, available information regarding operating history and condition of the injection well must be submitted as well as any available information on known releases from the well or injection zone.***

Federal Authority: RCRA §3004(u); 40 CFR 144.31(g) as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-8(a) and 22-18-9(a)  
47 CSR 13, § Class I RCRA Injection wells prohibited without a permit (47 CSR 13 § 13.3)

Remarks of the Chief of the Office of Legal Services

W. Va. § 22-18-9(a) provides the State with an authority that is equivalent to RCRA §3004(u). West Virginia also has statutory authority under §§ 22-18-8(a) to require specific supporting information as part of the permit application. Pursuant to this authority, West Virginia has adopted the Federal provisions as addressed by Revision Checklist 44 C. The State's provisions are equivalent to the Federal requirements.

**(3) *UIC facility owners/operators must submit certain information related to corrective action with their UIC applications.***

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, §§ 22-18-8(a), 22-18-9(a) and 22-18-23  
33 CSR 20, §§ 33-20-1.6 and 33-20-11.23

Remarks of the Chief of the Office of Legal Services

W. Va. § 22-18-9(a) provides the State with an authority that is equivalent to RCRA §3004(u). West Virginia also 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. Pursuant to these authorities, West Virginia has adopted the 40 CFR 270.60(b)(3) provision addressed by Revision Checklist 44 C.

***G. 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.***

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, 265.1(b), 268.2(c), 270.2 and Appendix I to 270.42, as amended February 16, 1993 (58 FR 8658).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-9, 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23  
33 CSR 20, §§ 33-20-1.6, 33-20-2.1, 33-20-7.2, 33-20-8.1, 33-20-10.1 and 33-20-11.1

Remarks of the Chief of the Office of Legal Services

The State's authority for corrective action is provided by W. Va. § 22-18-9. It provides authority similar to RCRA §3004(u) & (v). Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 121.

***H. State statutes and regulations contain provisions exempting cleanup only remediation waste management sites from 40 CFR 264.101 facility-wide corrective action as indicated in Revision Checklist 175.***

Federal Authority: §§ 2002(a) and 3004; 40 CFR 264.1(j) intro, 264.101(d), and 270.230 as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a)&(a)(12), 22-18-9, 22-1-3(c), 22-18-5(a), and 22-18-23  
33 CSR 20, §§ 33-20-1.6, 33-20-7.2 and 33-20-11.1

Remarks of the Chief of the Office of Legal Services

The State's authority for corrective action is provided by W. Va. § 22-18-9. It provides authority similar to RCRA §3004(u) & (v). W. Va. Code § 22-18-6(a)(12) also provides the Secretary with the authority to grant exemptions. Pursuant to these authorities and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 175.

**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, 163 and 177.*

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); December 8, 1997 (62 FR 64636); and January 21, 1999 (64 FR 3382).

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) and 22-18-23  
33 CSR 20, §§ 33-20-1.6, 33-20-3.1, 33-20-5.1, 33-20-7.1, 33-20-7.2, 33-20-7.8, 33-20-8.1, 33-20-8.6 and 33-20-11.1  
45 CSR 25, §§ 45-25-1.1.a, 45-25-1.1.b, 45-25-1.5.a (Table 25-A, Items 6,7, 8, 9,10,11 and 21)

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 Secretary 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. In addition, 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. Pursuant to these authorities, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist.

***AA. State statutes and regulations remove requirements to issue post-closure permits at each facility and allow post-closure care requirements to be imposed at interim status facilities using either permits or approved alternate authorities as indicated in Revision Checklist 174.***

Federal Authority: RCRA §§ 2002(a), 3005 and 3006; 40 CFR 264.90(e), 265.110(c), 265.118(c)(4), 265.121 and 270.1(c) as amended October 22, 1998 (63 FR 56710).

Citation of Laws and Regulations; Date of Enactment and Adoption

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

33 CSR 20, §§ 33-20-1.6, 33-20-7.2, 33-20-8.1 and 33-20-11.1

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code § 22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the secretary shall issue, modify, suspend, revoke or deny a permit. Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 174.

***BB. State statutes and regulations give discretion to the State Secretary to impose requirements developed for corrective action in lieu of Subparts F, G, and H at certain regulated facilities, either permitted or interim status, that appear to have released to the environment, if nearby SWMUs also appear to have contributed to the same release as indicated in Revision Checklist 174.***

Federal Authority: RCRA §§ 2002(a), 3004, 3005 and 3006; 40 CFR 264.90(f), 264.110(c), 264.112(b)&(c), 264.118(b)&(d), 264.140(d), 265.90(f), 265.110(d), 265.112(b)&(c), 265.118(c)(5)&(d)(1)(iii), and 265.140(d) as amended October 22, 1998 (63 FR 56710).

Citation of Laws and Regulations; Date of Enactment and Adoption

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

33 CSR 20, §§ 33-20-1.6, 33-20-7.2 and 33-20-8.1

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code § 22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the secretary shall issue, modify, suspend, revoke or deny a permit. Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 174.



***CC. State statutes and regulations provide reduced 40 CFR Part 264, Subparts B, C, and D requirements for remediation waste management sites as indicated in Revision Checklist 175.***

Federal Authority: RCRA §§ 2002(a), 3004, and 3007; 40 CFR 260.10, 264.1(j), and 264.73(b)(17) as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a)&(a)(5), 22-1-3(c), 22-18-5(a),  
and 22-18-23  
33 CSR 20, §§ 33-20-1.6, 33-20-2.1 and 33-20-7.2

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code § 22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the secretary shall issue, modify, suspend, revoke or deny a permit. Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 175.

***DD. State statutes and regulations contain design criteria as well as management and operating standards for the use of staging piles in storing remediation wastes, as indicated in Revision Checklist 175.***

Federal Authority: RCRA §§ 2002(a), 3004, 3005, and 7004; 40 CFR 260.10, 264.554, 265.1(b), 268.2(c), and 268.50(g), as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a)&(a)(5), 22-1-3(c), 22-18-5(a),  
and 22-18-23  
33 CSR 20, §§ 33-20-1.6, 33-20-2.1, 33-20-7.2, 33-20-8.1 and 33-20-10.1

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code § 22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the secretary shall issue, modify, suspend, revoke or deny a permit. Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 175.

***EE. State statutes and regulations expand the use of Corrective Action Management Units (CAMUs) and Temporary Units to include implementing remedies at permitted facilities which are not subject to 40 CFR 264.101 as indicated in Revision Checklist 175.***

Federal Authority: RCRA §§ 2002(a), 3004, and 3005; 40 CFR 260.10, 264.552(a) and 264.553(a), as amended November 30, 1998 (63 FR 65874).

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) and 22-18-23  
33 CSR 20, §§ 33-20-1.6, 33-20-2.1 and 33-20-7.2

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code § 22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the secretary shall issue, modify, suspend, revoke or deny a permit. Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 175.

***FF. State statutes and regulations include an exemption for hazardous waste burning incinerators from the RCRA national stack emission standards when owners or operators demonstrate compliance with the MACT requirements of 40 CFR part 63 subpart EEE by conducting a comprehensive performance test and submitting a Notification of Compliance as indicated in Revision Checklist 182. However, after this demonstration, RCRA permit conditions will remain in effect until the permit is modified, terminated, or revoked, unless the permit expressly provides otherwise.***

Federal Authority: RCRA §§ 1006(b), 3004(a), and 3005(c)(3); 40 CFR 264.340(b)-(e), 265.340(b)-(c), 270.19 intro, 270.19(e), and 270.62 intro, as amended September 30, 1999 (64 FR 52828).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a), (a)(5)&(12), 22-1-3(c),  
22-18-5(a), and 22-18-23  
33 CSR 20, § 33-20-1.10  
45 CSR 25, § 45-25-1.5.c

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code § 22-18-6(a)(12), the Secretary has the authority to grant exemptions. In addition, W. Va. Code § 22-18-6(a)(5) gives the State has the authority to promulgate rules specifying conditions under which the secretary shall issue, modify, suspend, revoke or deny a permit. Pursuant to these authorities, and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 182.

***GG. State statutes and regulations require that permits for miscellaneous units include appropriate terms and conditions from the part 63, subpart EEE standards as indicated in Revision Checklist 182.***

Federal Authority: RCRA §§ 1006(b), 3004(a), and 3005(c)(3); 40 CFR 264.601 intro, as amended September 30, 1999 (64 FR 52828).

Citation of Laws and Regulations; Date of Enactment and Adoption

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

33 CSR 20, §§ 33-20-1.10

45 CSR 25, § 45-25-1.5.c

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code § 22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the secretary shall issue, modify, suspend, revoke or deny a permit. Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 182.

**XVI. REQUIREMENTS FOR PERMITS**

***H. 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 groundwater monitoring, unsaturated zone monitoring, and corrective action requirements applicable to new units at the time of permitting as indicated in Revision Checklist 17 L.***

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, §§ 22-1-3(c), 22-18-6(a)(4)(C)&(G), 22-18-7(e) and 22-8-9(b)(2)

33 CSR 20, §§ 33-20-1.6 and 33-20-7.2

Remarks of the Chief of the Office of Legal Services

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 secretary, to promulgate water quality standards governing discharges into the waters, including ground water, of the State. Pursuant to these authorities and the State's provision at § 22-1-3(c) which gives the State the authority to adopt the Federal regulations by reference, West Virginia has incorporated by reference the provisions addressed by Revision Checklist 17 L.

***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 Checklists 168 and 182. 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 (L(9)), and 270.72(b)(8), as amended June 19, 1998 (63 FR 33782) and September 30, 1999 (64 FR 52828).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Suppl., §§ 22-18-6(a)&(a)(5), 22-1-3(c), 22-18-5(a),  
and 22-18-23  
33 CSR 20, § 33-20-1.10  
45 CSR 25, § 45-25-1.5.c

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code § 22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the secretary shall issue, modify, suspend, revoke or deny a permit. Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a), and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 182.

***CC. State statutes and regulations require that owners and operators seeking a post-closure permit have to submit only that information required by 40 CFR 270.28 as indicated in Revision Checklist 174.***

Federal Authority: RCRA §3006; 40 CFR 270.14 and 270.28 as amended October 22, 1998 (63 FR 56710).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Suppl., §§ 22-18-6(a)&(a)(5), 22-1-3(c), 22-18-5(a),  
and 22-18-23  
33 CSR 20, §§ 33-20-1.6 and 33-20-11.1

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code § 22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the secretary shall issue, modify, suspend, revoke or deny a permit. Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a), and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 174.

***DD. State statutes and regulations provide for Remedial Action Plans (RAPs) as a special form of RCRA permit for treatment, storage or disposal of hazardous remediation waste at remediation waste management sites, as indicated in Revision Checklist 175.***

Federal Authority: RCRA §§ 2002(a), 3005, 3007, and 7004; 40 CFR 270.2, 270.11(d), 270.42, 270.68, 270.73(a), and 270.79-270.230, as amended November 30, 1998 (63 FR 65874).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Suppl., §§ 22-18-6(a)&(a)(5), 22-1-3(c), 22-18-5(a),  
and 22-18-23 and 22-18-20  
33 CSR 20, §§ 33-20-1.6, 33-20-11.1

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code § 22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the secretary shall issue, modify, suspend, revoke or deny a permit. Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a), and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 175. See 33 CSR 20, § 11.22. That rule modifies 40 CFR 270.155 to provide for an administrative appeal of a decision to approve or deny a Remedial Action Plan application. Any RAP commentor or participant may appeal the Director's decision to the Environmental Quality Board, pursuant to W. Va. Code 22-18-20.

***EE. State statutes and regulations include requirements for permit modifications to remove permit conditions that are no longer applicable as indicated in Revision Checklist 182.***

Federal Authority: RCRA §§ 1006(b), 3004(a), and 3005(c)(3); 40 CFR 270.42 Appendix I (A(8)), as amended September 30, 1999 (64 FR 52828).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a)&(a)(5), 22-1-3(c), 22-18-5(a), and 22-18-23  
33 CSR 20, § 33-20-1.10  
45 CSR 25, § 45-25-1.5.c

Remarks of the Chief of the Office of Legal Services

Under W. Va. Code § 22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the secretary shall issue, modify, suspend, revoke or deny a permit. Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a), and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 182.

**XX. STANDARDS FOR THE MANAGEMENT OF WASTE FUEL AND USED OIL AND FOR THE BURNING OF THESE MATERIALS IN BOILERS AND INDUSTRIAL FURNACES**

***E. 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, 122, 130, and 166.***

Federal Authority: RCRA §§1004, 1006, 2002, 3001-3007, 3010, 3014 and 7004; 40 CFR Parts 260, 261, 266 and 279 as amended September 10, 1992 (57 FR 41566), May 3, 1993 (58 FR 26420), June 17, 1993 (58 FR 33341), March 4, 1994 (59 FR 10550), May 6, 1998 (63 FR 24963), and July 14, 1998 (63 FR 37780).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Suppl., §§ 22-18-6(a)(14), 22-18-6(a)(15) and 22-1-3(c)  
33 CSR 20, § 33-20-1.6, 33-20-3.1 and 33-20-14.1

Remarks of the Chief of the Office of Legal Services



West Virginia Code § 22-18-6(a)(14) requires the Secretary of the Department 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 Secretary also has the authority to promulgate such other rules as necessary to effectuate the purposes of the State's Hazardous Waste Management Act. Pursuant to these authorities and the State's authority at W. Va. Code § 22-1-3(c) to adopt the Federal regulations by reference, West Virginia has adopted and incorporated by reference the changes to the used oil requirements made by the final rule addressed by Revision Checklist 166.

***I. State statutes and regulations include requirements related to the MACT standards limiting emissions of chlorinated dioxins, furans, other toxic organic compounds, toxic metals, hydrochloric acid, chlorine gas, and particulate matter as indicated in Revision Checklist 182.***

Federal Authority: RCRA §1006(b), 3004(a) and 3005(c)(3); 40 CFR 260.10, 266.105(c), 266.112(b) and 266, Appendix VIII as amended September 30, 1999 (64 FR 52828) and November 19, 1999 (64 FR 63209).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a)&(a)(13), 22-1-3(c), 22-18-5(a), and 22-18-23  
33 CSR 20, § 33-20-1.10  
45 CSR 25, § 45-25-1.5.c

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. Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a), and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 182.

***J. State statutes and regulations include an exemption for hazardous waste burning cement kilns or aggregate kilns from the RCRA national stack emission standards when owners or operators demonstrate compliance with the MACT requirements of 40 CFR part 63 subpart EEE by conducting a comprehensive performance test and submitting a Notification of Compliance as indicated in Revision Checklist 182. However, after this demonstration, RCRA permit conditions will remain in effect until the permit is modified, terminated, or revoked, unless the permit expressly provides otherwise.***

Federal Authority: RCRA §§ 1006(b), 3004(a), and 3005(c)(3); 40 CFR 266.100(b), 270.22 intro, and 270.66 intro, as amended September 30, 1999 (64 FR 52828).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a), (a)(5)&(13), 22-1-3(c), 22-18-5(a), and 22-18-23  
33 CSR 20, § 33-20-1.10  
45 CSR 25, § 45-25-1.5.c

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 and under W. Va. Code § 22-18-6(a)(5), the State has the authority to promulgate rules specifying conditions under which the secretary shall issue, modify, suspend, revoke or deny a permit. Pursuant to these authorities and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a), and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 182.

***K. State statutes and regulations include an exemption for secondary lead smelters from all provisions of the boilers and industrial furnaces (BIFs) requirements except for 266.101, as indicated in Revision Checklist 182. The smelter must provide a one-time notice to the State identifying each hazardous waste burned and stating that the facility claims an exemption from other BIF requirements. Those secondary lead smelters who have already provided notice pursuant to 266.100(c) do not have to renotify.***

Federal Authority: RCRA §§ 1006, 3004, and 3005; 40 CFR 266.100(d)(1) intro, 266.100(d)(3) intro, and 266.100(h), as amended September 30, 1999 (64 FR 52828).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a)&(a)(13), 22-1-3(c), 22-18-5(a),  
and 22-18-23  
33 CSR 20, § 33-20-1.10  
45 CSR 25, § 45-25-1.5.c

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. Pursuant to this authority and the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a), and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 182.

***L. State statutes and regulations clarify that fuel blending activities that are conducted in units other than 90-day tanks or containers are also subject to regulation as indicated in Revision Checklist 182.***

Federal Authority: RCRA §§ 3004 and 3005; 40 CFR 266.101(c) intro and 266.101(c)(1) as amended as amended September 30, 1999 (64 FR 52828).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a)&(a)(13), 22-1-3(c) 22-18-5(a),  
and 22-18-23  
33 CSR 20, § 33-20-1.10  
45 CSR 25, § 45-25-1.5.c

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. Pursuant to this authority and the State's authorities under §§ 22-1-

3(c), 22-18-5(a), 22-18-6(a), and 22-18-23, West Virginia has adopted and incorporated by reference the provisions addressed by Revision Checklist 182.

## **XXI. LAND DISPOSAL RESTRICTIONS**

***K. 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 Checklists 109 and 179.***

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 261.3(f), 268.2, 268.5, 268.7, 268.14, 268.36, 268.40, 268.41, 268.42, 268.43, 268.45, 270.13 and 270.14, as amended August 18, 1992 (57 FR 37194) and May 11, 1999 (54 FR 25408).

### **Citation of Laws and Regulations; Date of Enactment and Adoption**

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a)&(a)(12)(A), (B),  
(D), 22-18-5(a), 22-18-23 and 22-1-3(c)  
33 CSR 20, §§ 33-20-1.6 and 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. Pursuant to these authorities and the State's authorities under §§ 22-18-5(a), 22-18-6(a), 22-18-23 and 22-1-3(c), West Virginia has adopted the amendments addressed by Revision Checklist 179.

**U. State statutes and regulations provide for an extension of the 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 September 21, 1988, as indicated in Revision Checklists 155, 160, and 173.**

Federal Authority: RCRA §3004(d)-(k), and (m), 40 CFR 268.39(c) as amended January 14, 1997 (62 FR 1992), July 14, 1997 (62 FR 37694), and September 24, 1998 (63 FR 51254).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-5(a), 22-18-6(a), (a)(12)(A), (B), (D), 22-18-23 and 22-1-3(c)  
33 CSR 20, §§ 33-20-1.6 and 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. Specifically, W. Va. Code § 22-18-6(a)(12)(A) gives the Secretary 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. Pursuant to these authorities and the State's authorities under §§ 22-18-5(a), 22-18-6(a), 22-18-23 and 22-1-3(c), West Virginia has adopted the amendments addressed by Revision Checklists 160 and 173.

**W. State statutes and regulations include revisions of record keeping and paperwork requirements indicated in Revision Checklists 157, 167 C, and 179.**

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 262.34(d)(4), 268.4(a)(4), 268.7(a)-(b)(6), 268.7(c)(1), 268.9(d)(2) intro, and 268.9(d)(2)(i) as amended May 12, 1997 (62 FR 25998), May 26, 1998 (63 FR 28556), and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a)B,(a)(12)(A), (B), (D), 22-18-5(a), 22-18-23 and 22-1-3(c)  
33 CSR 20, §§ 33-20-1.6, 33-20-5.1 and 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. Pursuant to these authorities and the State's authorities under §§ 22-18-5(a), 22-18-6(a), 22-18-23 and 22-1-3(c), West Virginia has adopted the amendments addressed by Revision Checklist 179.

**AA. State statutes and regulations provide an extension until August 26, 1998, the time that alternate carbamate treatment standards are in place as indicated in Revision Checklist 161.**

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR 268.40(g) and 268.48(a) as amended on August 28, 1997 (62 FR 45568).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-5(a), 22-18-6(a), (a)(12)(A), (B), (D), 22-18-23 and 22-1-3(c)  
33 CSR 20, §§ 33-20-1.6 and 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. Pursuant to these authorities and the State's authorities under §§ 22-18-5(a), 22-18-6(a), 22-18-23 and 22-1-3(c), West Virginia has adopted the provisions addressed by Revision Checklist 161.

***CC. State statutes and regulations DO NOT include a waste-specific prohibition and treatment standards for K140 and U408 wastes under the land disposal restrictions program, as indicated in WITHDRAWN Revision Checklist 165.***

Federal Authority: RCRA §3004 (d)-(k) and (m); 40 CFR 268.33, 268.40, and 268.48(a)/Table, as amended May 4, 1998 (63 FR 24596), and June 29, 1998 (63 FR 35147)

Remarks of the Chief of the Office of Legal Services

On April 9, 1999, the United States Court of Appeals for the District of Columbia in Great Lakes Chemical Corporation versus EPA (Docket No. 98-1312), granted the U.S. Government's motion for a voluntary vacatur of the rule addressed by Revision Checklist 165. Consequently, in its adoption of the July 1, 1999 version of the CFR, West Virginia, at § 33-20-10.4, has excluded the provisions addressed by withdrawn Revision Checklist 165.

***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 Checklists 167 A and 179.***

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) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-5(a), 22-18-6(a), (a)(12)(A), (B), (D), 22-18-23 and 22-1-3(c)  
33 CSR 20, §§ 33-20-1.6 and 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. Pursuant to these authorities and the State's authorities under §§ 22-18-6(a), 22-18-23 and 22-1-3(c), West Virginia has adopted the amendments addressed by Revision Checklist 179.

***FF. State statutes and regulations include treatment standards for contaminated soils as indicated in Revision Checklists 167 B and 179.***

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 262.34(d)(4), 268.2(h), 268.2(k), 268.7(a)(1)-(6), 268.7(b)(1)-(3), 268.7(b)(4) intro & (b)(iv), 268.9(d)(2) intro, 268.9(d)(2)(i), 268.7(e), 268.44(h)(3)-(5), and 268.49 as amended May 26, 1998 (63 FR 28556) and May 11, 1999 (64 FR 25408)

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-5(a), 22-18-6(a), (a)(12)(A), (B), (D), 22-18-23 and 22-1-3(c)  
33 CSR 20, §§ 33-20-1.6, 33-20-3.1, and 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. Pursuant to these authorities and the State's authorities under §§ 22-18-6(a), 22-18-23 and 22-1-3(c), West Virginia has adopted the amendments addressed by Revision Checklist 179.

***GG. State statutes and regulations include corrections and clarifications to the land disposal restrictions as indicated in Revision Checklists 167 C and 179.***

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), June 8, 1998 (63 FR 31266) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-5(a), 22-18-6(a), (a)(12)(A), (B), (D), 22-18-23 and 22-1-3(c)  
33 CSR 20, §§ 33-20-1.6 and 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. Pursuant to these authorities and the State's authorities under §§ 22-18-5(a), 22-18-6(a), 22-18-23 and 22-1-3(c), West Virginia has adopted and incorporated by reference the amendments addressed by Revision Checklist 179.

***HH. State statutes and regulations include a waste-specific prohibition and treatment standards for K169-K172 wastes under the land disposal restriction program, as indicated in Revision Checklist 169.***

Federal Authority: RCRA § 3004(g) and (m); 268.35 and 268.40, as amended August 6, 1998 (63 FR 42110).



Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-5(a), 22-18-6(a), (a)(12)(A), (B), (D), 22-18-23 and 22-1-3(c)  
33 CSR 20, §§ 33-20-1.6 and 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. Pursuant to these authorities and the State's authorities under §§ 22-18-5(a), 22-18-6(a), 22-18-23 and 22-1-3(c), West Virginia has adopted and incorporated by reference the amendments addressed by Revision Checklist 169.

***II. State statutes and regulations stay the May 26, 1998 Phase IV Land Disposal Restriction treatment standards for metal-bearing hazardous wastes which exhibit the characteristic of toxicity, until EPA develops more consistent and comprehensive regulations for hazardous waste-derived fertilizers. In the interim, affected fertilizers are subject to the treatment standards that previously existed for toxic metals as specified on Revision Checklists 170 and 179.***

Federal Authority: RCRA §§3001 and 3004(d), 40 CFR 268.40(i), as amended August 31, 1998 (63 FR 46332) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-5(a), 22-18-6(a), (a)(12)(A), (B), (D), 22-18-23 and 22-1-3(c)  
33 CSR 20, §§ 33-20-1.6 and 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. Pursuant to these authorities and the State's authorities under §§ 22-18-5(a), 22-18-6(a), 22-18-23 and 22-1-3(c), West Virginia has adopted and incorporated by reference the amendments addressed by Revision Checklist 170 and 179.

***JJ. State statutes and regulations provide revised treatment standards for seven carbamate wastes and extend indefinitely the temporary treatment standards; remove the treatment standard for one carbamate waste; delete certain carbamate wastes as underlying hazardous constituents; and extend for six months the temporary alternative treatment standards for the other 32 carbamate wastes as indicated in Revision Checklists 171 and 179.***

Federal Authority: RCRA § 3004(d)-(k) and (m); 40 CFR 268.40(g)-(j), 268.40/Table, and 268.48(a)/Table as amended September 4, 1998 (63 FR 47410) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-5(a), 22-18-6(a), (a)(12)(A), (B), (D), 22-18-23 and 22-1-3(c)  
33 CSR 20, §§ 33-20-1.6 and 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. Pursuant to these authorities and the State's authorities under §§ 22-18-5(a), 22-18-6(a), 22-18-23 and 22-1-3(c), West Virginia has adopted and incorporated by reference the amendments addressed by Revision Checklists 171 and 179.

***KK. State statutes and regulations provide for an extension of the compliance date until November 26, 1998, for treatment standards for secondary lead slags that exhibit the toxicity characteristic for metals as indicated in Revision Checklist 172.***

Federal Authority: RCRA § 3004(d)-(k) and (m); 40 CFR 268.34(b) as amended September 9, 1998 (63 FR 48124).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-5(a), 22-18-6(a), (a)(12)(A), (B)&(D), 22-18-23 and 22-1-3(c), 33 CSR 20, §§ 33-20-1.6 and 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. Pursuant to these authorities and the State's authorities under §§ 22-18-5(a), 22-18-6(a), 22-18-23 and 22-1-3(c), West Virginia has adopted and incorporated by reference the amendments addressed by Revision Checklists 172.

***LL. State statutes and regulations provide for interim replacement standards for spent potliners from primary aluminum reduction (EPA hazardous waste K088) as indicated in Revision Checklists 173 and 179.***

Federal Authority: RCRA §3004(d)-(k), and (m); 40 CFR 268.40, as amended September 24, 1998 (63 FR 51254) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-6(a)&(a)(12)(A), (B)&(D), 22-18-5(a), 22-18-23 and 22-1-3(c)  
33 CSR 20, §§ 33-20-1.6 and 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. Pursuant to these authorities and the State's authorities under §§ 22-18-5(a), 22-18-6(a), 22-18-23 and 22-1-3(c), West Virginia has adopted and incorporated by reference the amendments addressed by Revision Checklists 173 and 179.

**XXIII. UNIVERSAL WASTES**

***A. 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 Checklists 142 A and 176.***

Federal Authority: RCRA §§ 2002, 3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 260.10, 261.5(c), 261.5(f)(3)(vi), 261.5(g)(3)(vi), 261.9 intro, 262.10(b), 262.11(d), 264.1(g)(11) intro, 265.1(c)(14) intro, 268.1(f) intro, 270.1(c)(2)(viii) intro, 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) and December 24, 1998 (63 FR 71225).

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) and 22-18-23  
33 CSR 20, §§33-20-1.6 and 33-20-13.1

Remarks of the Chief of the Office of Legal Services

Pursuant to the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has incorporated by reference the amendments to the universal waste requirements as addressed by Revision Checklist 176.

***B. State statutes and regulations include hazardous waste batteries as a universal waste as indicated in Revision Checklists 142 B and 176.***

Federal Authority: RCRA §§3001, 3002, 3003, 3004, 3005, 3010, 3013, 3017, and 7004; 40 CFR 260.10, 261.9(a), 264.1(g)(11)(i), 265.1(c)(14)(i), 266.80(a), 266.80(b), 268.1(f)(1), 270.1(c)(2)(viii)(A), 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) and December 24, 1998 (63 FR 71225).

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) and 22-18-23  
33 CSR 20, §§33-20-1.6, **33-20-9** and 33-20-13.1

Remarks of the Chief of the Office of Legal Services

Pursuant to the State's authorities under §§ 22-1-3(c), 22-18-5(a), 22-18-6(a) and 22-18-23, West Virginia has incorporated by reference the amendments to the universal waste requirements as addressed by Revision Checklist 176.

**XXVI. ADDITIONAL ENFORCEMENT REMEDIES**

***A. State statutes and regulations provide authority for enforcement of documents issued in lieu of post-closure permits as provided in 40 CFR 270.1(c)(7), or as a source of alternative requirements for regulated units, as provided under 40 CFR 264.90(f), 264.110(c), 264.140(d), 265.90(d), 265.110(d), and 265.140(d), 40 CFR 270.28 as outlined in 40 CFR 271.16(e).***

Federal Authority: RCRA §3006; 40 CFR 271.16(e) as amended October 22, 1998 (63 FR 56710).

Citation of Laws and Regulations; Date of Enactment and Adoption

W. Va. Code, 1994 Cumulative Supplement, §§ 22-18-14(f), 22-18-15 and 22-18-17(c)

Remarks of the Chief of the Office of Legal Services

West Virginia's authority for enforcement orders is provided by W. Va. Code § 22-18-15.

The West Virginia Department 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.)

Under W. Va. Code § 22-18-15(a)(1), the Secretary can issue an order requiring compliance with any provision under its Hazardous Waste Management Act. As addressed in § 22-18-15(a)(1), an enforcement order includes, but is not limited to, any or all of the following: Orders suspending, revoking or modifying permits, orders requiring a person to take remedial action or cease and desist orders. Under W. Va. Code § 22-18-15(a)(2) and (3), the Secretary has the authority to seek an injunction if he discovers or learns of a violation of the State's Hazardous Waste Management Act and to institute a civil action in accordance with § 22-18-17(c). In addition, W. Va. Code § 22-18-14(f) gives the Secretary 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.

**XXVII. PROJECT XL SITE-SPECIFIC RULEMAKING**

*A. State statutes and regulations include site-specific regulatory deferral from the Resource Conservation and Recovery Act (RCRA) organic air emission standards (RCRA Subpart CC) for two existing hazardous waste surface impoundments at the Osi Specialty, Inc. Plant, a wholly owned subsidiary of Witco Corporation, aka Crompton Corporation) located near Sisterville, West Virginia, as provided 40 CFR 264.1080(f)&(g) and 265.1080(f)&(g).*

Federal Authority: RCRA §§ 1006, 2002, 3001-3007, 3010, and 7004; 40 CFR 264.1080 (f), 264.1080(g), 265.1080(f) and 265.1080(g), as amended September 15, 1998 (63 FR 49384) and October 7, 1998 (63 FR 53844).

Citation of Laws and Regulations; Date of Enactment and Adoption

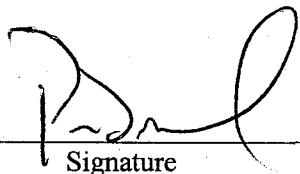
W. Va. Code, 1994 Cumulative Supplement, §§ 22-1-3(c), 22-5-1, 22-18-6(a), (a)(12), and (a) (13)(A)&(B)

45 CSR 25, §§ 45-25-1.5.a (Table 25-A, Item 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 Secretary 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.

In addition, under W. Va. Code § 22-18-6(a)(12), the State has the authority to adopt regulations that include variances. Pursuant to these authorities and the State's authority under W. Va. Code § 22-1-3(c) to adopt the Federal regulations by reference, West Virginia has adopted and incorporated by reference the Project XL site-specific provisions addressed in the final rule published on September 15, 1998 (63 FR 39384), and the associated technical correction published on October 7, 1998 (63 FR 53844).



Signature

PETER D. MCDANIEL

Name

CHIEF, OFFICE OF LEGAL SERVICES

Title

5-9-03

Date