

US EPA ARCHIVE DOCUMENT

## CHAPTER 3.5

STATUTORY AUTHORITY CHECKLIST FOR THE  
HAZARDOUS AND SOLID WASTE ACT AMENDMENTS OF 1984Introduction

As a result of the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-618 (Nov. 8, 1984) [HSWA] amending the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et. seq., all authorized States and all States seeking authorization will need to revise their program to reflect the HSWA. The checklist which follows is provided to guide attorneys and others in assessing which changes to the Subtitle C RCRA program may necessitate new State legislation.

States will be able to adopt analogues to many HSWA provisions and subsequent EPA implementing regulations simply by making regulatory changes. For instance, while the HSWA requires EPA to list specific hazardous wastes, any State with interim or final authorization should already have the statutory authority to list additional wastes. Similarly, any finally authorized State should already have adequate statutory authority to require double liners for landfills since, to receive final authorization, a State must be able to establish permit requirements for landfills. Thus, we have not included such HSWA provisions in the statutory checklist.

Other provisions are very likely to require State statutory amendments, such as the HSWA requirement that corrective action for all releases at a facility must be included as a requirement for a RCRA permit, regardless of when the waste was placed in the solid waste management unit. All such provisions are included in the checklist. However, inclusion of a provision on this checklist does not mean that EPA has concluded that all States, or any particular State will need to amend their statutes. States should carefully review all their existing statutory and regulatory authority before deciding whether statutory or regulatory changes are necessary as a result of the HSWA.

There are some HSWA provisions which we doubt will require legislative amendments but which we have included in the checklist out of an abundance of caution. The main example of this is the prohibition on the land disposal of various hazardous wastes. While we believe any State with authority to regulate land disposal would probably have the authority to prohibit land disposal of particular wastes, we have included provisions like these on the checklist as possibly requiring legislative amendments. Another example is the requirement that a State have authority to prohibit the storage of waste prohibited from land disposal.

Other provisions are marked "optional." These are cases where the HSWA is less stringent than pre-existing law or where variances and exemptions may be granted. If a State wishes to maintain a more stringent program, as is authorized by Section 3009, it need not adopt the optional provisions.

A few provisions are marked "potential requirements." Depending on future EPA action, a State may or may not need to adopt similar authority in the future. States are not required to seek authority for these provisions now; however, if a State wishes to minimize the likelihood that it will wish to consider seeking authority for the potential requirements now. The major provisions in this area concern EPA's enhanced enforcement authority under Section 3008. We have not listed each change to Section 3008; States wishing to strengthen their enforcement authority in a similar fashion should review Section 232 and 233 of the HSWA amending Section 3008. Before States would be required to amend their enforcement authority, EPA would need to amend the State authorization enforcement requirements in 40 CFR §271.16.

Unless otherwise indicated, States must have authority to implement every mandatory requirement on the checklist. To receive final authorization for the requirement, the State's authority must be equivalent to, and no less stringent than, EPA's authority. To receive interim authorization under Section 3006(g) is only temporary we strongly encourage any State needing to amend its statute to seek "equivalent" authority. By doing so, the State will not need to amend its statute twice.

Not all the mandatory requirements on the checklist must be adopted immediately. 40 CFR §271.21(e) establishes the time frame for making statutory and regulatory changes; the deadlines vary depending on the provision. Since the purpose of this checklist is to identify all possible statutory changes so that States may develop one legislative package to present to their legislatures, the checklist does not differentiatiate among the different time deadlines.

We strongly recommend that persons using this checklist familiarize themselves with the pertinent RCRA provisions. The checklist is an important evaluation tool but it is not a substitute for the statute. Further, we add the cautionary note that because of the number of regulations EPA will be adopting in the coming years, we cannot provide any guarantee that a State which has relied on this checklist may not need to obtain new statutory authority at some time. We have tried to minimize that possibility in preparing this checklist but we cannot rule it out. Additionally this checklist does not address non-Subtitle C requirements (such as Title VI requirements on underground storage tanks).

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

Prepared By: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Reviewed By: \_\_\_\_\_  
 Date: \_\_\_\_\_

Statutory Element	RCRA (HSWA) Cite	Coverage Y/N	State Cite	Comment
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RCRA §3001

1. Authority to regulate the generation, transportation, treatment, storage and disposal of hazardous waste produced by generators of between 100-1000 kg/month.

\*2. Authority to regulate the generation, transportation, treatment, storage and disposal of hazardous waste produced by generators of less than 100 kg/month.

3. Optional: Authority to allow generators of between 100-1000 kg/mo to store hazardous waste on-site for up to 180 days without a permit or interim status. On-site storage of no more than 6,000 kgs may occur for up to 270 days without a permit or interim status if the generator must ship or haul the waste over 200 miles.

§3001(d)  
 [Sec. 221]

Statutory Element	Cite	Y/N	Cite	Comment
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§3001(f)(1)  
[Sec. 222]

4. Required if a State has a delisting mechanism: in any delisting action, authority to consider factors (including additional constituents) other than those for which the waste was listed, if the State has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste.

§3001(f)(2)  
[Sec. 222]

5. Required if State has delisting authority: State may not allow new temporary delistings without prior notice and comment, absent good cause. Prior temporary delistings lapse if not made final by November 8, 1986.

§3002 (b)  
[Sec. 224]

RCRA §3002

6. Authority to require generators to submit reports and manifest certifications regarding efforts taken to minimize the amounts and toxicity of waste generated.

§3004(a)(6)  
[Sec. 208]

RCRA §3004

7. Authority to promulgate rules requiring evidence of financial responsibility for corrective action on and off-site.

Statutory Element	RCRA (HSWA) Cite	Coverage Y/N	State Cite	Comment
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8. Authority to prohibit the land disposal of any hazardous waste. Land disposal includes, but is not limited to, landfills, surface impoundments, waste piles, deep injection wells, land treatment facilities, salt dome and bed formations and underground mines or caves. Deep injection well means a well used for the underground injection of hazardous wastes other than a well to which §7010(a) of RCRA applies.

We believe that States already have this authority through their authority to regulate the treatment, storage and disposal of hazardous waste. However, if a State believes it needs new authority to ban a waste from land disposal, we strongly recommend that the State seek the broad statutory authority described above. This recommendation is based primarily on §3004(g) of RCRA; Section 3004(g) requires EPA to decide whether to prohibit one or more methods of land disposal for every listed or identified hazardous waste by 1990. Thus, unless a State has statutory authority to ban the land disposal of any such hazardous waste, it may need to amend its statute repeatedly as EPA decides the status of each waste.

If a State decides not to seek or cannot obtain such broad authority, the following list breaks down the various HSWA provisions relating to land disposal bans that States will need to adopt in the coming months and years:

- \*A. Authority to prohibit the disposal of any hazardous waste in salt dome and bed formations, underground mines, or caves until a §3005(c) permit is issued. In addition, authority to prohibit disposal of any bulk liquid hazardous waste in salt dome and bed formations, underground mines, or caves until

§3004(b) [Sec. 201]

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RCRA [HSWA] State Coverage Comment  
Cite Y/N Cite

(1) it is determined, after notice and opportunity for hearings on the record in the affected area, that such placement is protective of health and the environment and (2) performance and permitting standards for such facilities are adopted.

B. Authority to prohibit landfilling of bulk or non-containerized liquid hazardous waste. §3004(c) [Sec. 201]

C. Authority to promulgate regulations that minimize the landfilling of containerized liquid hazardous waste and free liquids in containerized hazardous wastes, and prohibit the landfilling of liquids absorbed in materials that biodegrade or release liquids when compressed. §3004(c) [Sec. 201]

\*E. Authority to prohibit the land disposal, including underground injection into deep injection wells, of the following wastes (including the authority to set more stringent concentration levels for categories A-E):

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals

§3004(d),(e),(f) [Sec. 201]

\* Authority regarding deep injection wells may be under the State's hazardous waste authority or its underground injection control authority as long as

RCRA (HSWA) Cite Coverage Y/N State Cite Comment

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(or elements) at concentrations greater than or equal to those specified below:

- (i) arsenic and/or compounds  
(as As) 500 mg/l
- (ii) cadmium and/or compounds  
(as Cd) 100 mg/l
- (iii) chromium VI and/or compounds  
(as Cr VI) 500 mg/l
- (iv) lead and/or compounds  
(as Pb) 500 mg/l
- (v) mercury and/or compounds  
(as Hg) 20 mg/l
- (vi) nickel and/or compounds  
(as Ni) 134 mg/l
- (vii) selenium and/or compounds  
(as Se) 100 mg/l
- (viii) thallium and/or compounds  
(as Th) 130 mg/l
- (C) Liquid hazardous waste having a pH less than or equal to two (2.0)
- (D) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm
- (E) Hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1000 mg/kg
- (F) solvents
- (G) dioxins



Statutory Element	RCRA [Section] Cite	Coverage Y/N	State Cite	Comment
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11. Authority to prohibit the storage of hazardous wastes prohibited from land disposal.	§3004(j) [Sec. 2011]			
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12. Authority to prohibit the use of waste oil or other materials contaminated with hazardous wastes (except ignitable wastes) as a dust suppressant.	§3004(l) [Sec. 2011]			
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13. Authority to promulgate standards specifying levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of its migration so as to minimize threats to human health and the environment.	§3004(m) [Sec. 2011]			
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Optional for #13: Authority to exempt wastes in compliance with such levels or methods from the land disposal prohibitions.

14. Authority to promulgate rules for monitoring and controlling air emissions at treatment, storage, and disposal facilities.	§3004(n) [Sec. 2011]			
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15. Authority to regulate fuel containing hazardous waste and all persons who produce, burn, distribute, and market fuel containing hazardous wastes.	§3004(q-s) [Sec. 2064]			
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Comment: States should not need new authority over fuel containing hazardous waste but may need additional authority over some of the persons or activities described above.

Statutory Element	RCRA [HSWA] Cite	Coverage Y/N	State Cite	Comment
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§3004(q)(2)(A)  
[Sec. 204]

16. Optional: Authority to exempt petroleum coke containing hazardous waste from petroleum refining from regulation if it is to be burned for energy recovery unless the coke exhibits a characteristic of hazardous waste.

§3004(t)  
[Sec. 205]

17. Authority to allow direct action against the insurer or corporate guarantor if an owner/operator is in bankruptcy or reorganization.

Optional:

(A) Authority to allow an insurer to claim all rights and defenses available to the owner/operator.

(R) Authority to limit insurer liability to the liability amount provided as evidence of financial responsibility and by contractual agreement unless the owner/operator acted in bad faith.

§3004(u)  
[Sec. 206]

\*18. Authority to assure that permits issued after 11/8/84 require corrective action for releases of hazardous waste or constituents

\* Note: States must have authority to require corrective action for all solid waste management units, even though the only unit receiving a permit is a deep injection well. (This authority may be under a hazardous waste or underground injection control program as long as all RCRA requirements are met.)

RCRA (SMA) Cite Coverage Y/N State Cite Comment

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from any solid waste management unit at a facility, regardless of when the waste was placed in the unit.

§3004(v)  
[Sec. 207]

19. Authority to require corrective action beyond a facility's boundary. Once EPA promulgates the regulations required by §3004(v), the state must have authority to include corrective action as a permit requirement.

Until then, a state may use corrective action orders as an alternative to imposing corrective action in a permit. Without some mechanism for requiring correction action beyond a facility's boundary, a state may not issue a RCRA permit.

§3004(v)  
[Sec. 207]

20. Authority to assure that permitting standards for underground hazardous waste tanks, at a minimum, satisfy Section 9003, Subtitle I of RCRA, 42 USC 9003.

RCRA §3005

§3005(a)(3)  
[Sec. 211]

21. Optional: Authority to allow a facility to construct an approved TSCA facility for burning PCBs without first obtaining a RCRA permit. An owner/operator may file for a RCRA permit to burn hazardous waste after construction or

Statutory Element	RCRA [HSWA] Cite	Coverage Y/N	State Cite	Comment
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22. Authority to review land disposal permits every five years and to modify them as necessary to assure compliance with State's analogue to RCRA §§3004, 3005 and to take into account improvements in technology.

§3005(c)(3)  
[Sec. 212]

23. Authority to issue permits containing any conditions necessary to protect human health and environment.

§3005(c)(3)  
[Sec. 212]

\*24. Authority to require that

(1) for land disposal facilities qualifying for interim status prior to 11/8/84, interim status terminates 11/8/85 unless a Part B application and certification of compliance with applicable ground-water monitoring and financial responsibility requirements are submitted by 11/8/85.

§3005(c)(e)  
[Sec. 213]

\*\* (11) For land disposal facilities in existence on the effective date of statutory or regulatory amendments under the HSWA that require the facility to have a RCRA permit, interim status terminates 12 months after the facility is first required to

\* Note that the state's analogue to interim status must terminate automatically in these cases (whether the state's analogue is Part 265 type standards or permits). If a State statute or regulation would require any type of hearing to terminate the facility's operating authority, the State must amend its authority to delete that requirement for these provisions. (Interim status as used here means the state's analogue to Federal interim status.)

RCRA (A)	Coverage	State	Comment
Cite	Y/N	Cite	

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obtain a permit, unless a Part B application and certification of compliance with applicable ground-water monitoring and financial responsibility requirements are submitted 12 months after the date the facility is first required to obtain a permit.

(111) Interim status terminates for incinerator facilities by 11/8/89 unless the owner/operator submits a Part B application by 11/8/86.

(1v) Interim status terminates for any facility other than a land disposal or an incineration facility by 11/8/92 unless the owner/operator submits a Part B application by 11/8/88.

25. Optional: Authority to allow facilities to qualify for interim status if they  
 (1) are in existence on the effective date of statutory or regulatory changes that render the facility subject to the requirement to have a permit and (2) meet notice and permit application requirements.

§ 3005(e)  
 [Sec. 241]

26. Authority to require that facilities may not qualify for interim status under the State's analogue to Section 3005(e) if they were previously denied a Section 3005(c) permit or for which authority to operate has been terminated.

§ 3005(c),(e)  
 [Sec. 213]

Statutory Element	RCRA [HSWA] Cite	Coverage Y/N	State Cite	Comment
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27. Optional:

A. Authority to issue a one-year research permit for any hazardous waste treatment facility which proposes an innovative and experimental hazardous waste treatment technology or process not yet regulated. Permits may be renewed no more than three times; no renewal may exceed a year.

\$3005(R)  
[Sec. 214]

B. Authority to waive or modify general permit application and issuance requirements for R&D permits, except for financial responsibility and public participation requirements (RCRA §7004(b)(2)).

C. Authority to terminate experimental activity if necessary to protect health and the environment. (Mandatory if State adopts R&D permitting authority).

28. Authority to require landfills, surface impoundments, land treatment units, and 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.

\$3005(1)  
[Sec. 243]

29. Authority to require interim status impoundments to comply with the double liner, leachate collection, and ground-water monitoring requirements applicable to new units or stop treating,

\$3005(i)  
[Sec. 215]

RCRA (H...)  
 Cite

Coverage  
 Y/N

State  
 Cite

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§3005(j)  
 [Sec. 215]

30. Authority to impose any necessary requirements (including double liners) on an existing surface impoundment to protect health and the environment after determining that hazardous constituents are likely to migrate into groundwater.

§3005(j)(13)  
 [Sec. 215]

31. Optional: Authority to modify the double liner, leachate collection, and groundwater monitoring requirements for impoundments in §3005(j)(1) if prior to October 1, 1984, the owner/operator has entered into a consent decree, order, or agreement with EPA or an authorized State which requires corrective action and provides protection of health and environment at least equivalent to that in §3005(j)(1).

RCRA §3006

§3006(f)  
 [Sec. 226]

32. Authority to make information obtained on treatment, storage, and disposal facilities available to the public in substantially the same manner and to the same degree as if EPA were running the program.

RCRA §3014

§3014(c)  
 [Sec. 241]

\*33. Authority to promulgate special generator and transporter standards for recycled hazardous used oil.

\* Potential requirement: EPA is planning to list used oil as a hazardous

RCRA [HSMA] Cite	Coverage Y/N	State Cite	Comment
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34. Optional: Authority to deem hazardous waste used oil recycling facilities to have a permit if they comply with the State's analogue to the §3004 standards. However, a State must retain the authority to require individual permits if necessary to protect human health and the environment.

RCRA §3015

35. Authority to require new units, expansions and replacements of interim status waste piles to meet the requirements for a single liner and leachate collection system in current regulations applicable to permitted waste piles.

36. Authority to require new units, expansions, and replacement units at interim status landfills and surface impoundments to meet the requirements for double liners and leachate collection systems applicable to new permitted landfills and surface impoundments.

Optional: Facilities which comply in good faith need not retrofit at permit issuance unless the liner is leaking.

§3015(a)  
[Sec. 243]

§3015(b)  
[Sec. 243]

Statutory Element

RCRA [A]  
Cite

Coverage  
Y/N

State  
Cite

Comment

RCRA §3018

\*37. Authority to regulate listed or identified wastes which pass through a sewer system to a publicly owned treatment works (POTW) as necessary to adequately protect human health and environment.

§3018(b)  
[Sec. 246].

RCRA §3019

38. Authority to require permit applicants for landfills or surface impoundments to submit exposure information.

§3019(a)  
[Sec. 247]

39. Authority to make exposure and health assessment information available to the Agency for Toxic Substances and Disease Registry. (See CERCLA §104(1))

§3019(b)(1)  
[Sec. 247]

RCRA §§7002, 7003

\*\*40. Optional: Authority to grant variances and exemptions that are no less stringent than allowed by Subtitle C of RCRA.

\* Potential requirement: Depending on the result of reports EPA is required to prepare under §3018(a), EPA may impose regulations in the future addressing hazardous wastes passing through to a POTW. Such regulations, if adopted, may be under RCRA, the Clean Water Act or other authority, and may or may not be a State program requirement.

\*\* Various HSWA provisions amend RCRA to allow EPA and the States if they wish - to grant variances and exemptions. In addition to those variances specifically authorized by statute, the HSWA allows EPA to develop regulations with variance provisions or to make case-by-case variance decisions. Unless a state is absolutely sure that it will never wish to grant a variance or exemption, we strongly recommend states obtain the above authority.

RCRA [HSWA] Cite	Coverage Y/N	State Cite	Comment
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41. Optional: Neither the State nor citizens may bring action against common carriers for imminent hazards arising after delivery of the shipment to the consignee, provided the carrier exercised due care when handling the work.

\$7002(P),  
\$7003(a)(B)(2)

RCRA §1004

\*42. Authority to regulate hazardous waste that is radioactive except to the extent that the waste is source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended. (68 Stat. 923)

\$1004(27)

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\* This is not a HSWA requirement. Until recently there had been some controversy about the scope of EPA's RCRA authority over radioactive waste. EPA has now determined that hazardous wastes are subject to RCRA if they are mixed with source, special nuclear or byproduct material even though source, special nuclear, or byproduct material itself is not subject to RCRA. Thus, States will need to review their authority to ensure that only source, special nuclear, or byproduct material is excluded from their hazardous waste jurisdiction.