

Abbreviated Version RCRA STATUTORY CHECKLIST

Introduction

To obtain final authorization, a State must have the enabling authority to establish a hazardous waste management program which meets the requirements of 40 CFR Part 271, Subpart A. In addition, 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, must revise their programs to reflect the HSWA. Finally, in accordance with 40 CFR Part 271, Subpart A, State statutes must provide for, among other things, the right of inspection of regulated facilities, civil and criminal remedies for violation of program requirements, and availability of information to the public. States may need to provide additional information on statutes that may not be directly associated with the hazardous waste program but have the potential to indirectly impact implementation, administration, and/or enforcement of the authorized program.

What is it used for?

The **RCRA Statutory Checklist** is provided to aid attorneys and others in reviewing and documenting statutory provisions required for authorization under Section 3006(b) of the Resource Conservation and Recovery Act (RCRA), as amended. States are advised to look broadly to their legislative authorities in assessing their programs. It is also provided to aid attorneys and others in documenting and reviewing a State's enabling authority as a result of renumbering, restructuring, or changes to the State's statutes that may impact authorization. EPA attorneys are encouraged to involve attorneys in a State's Attorney General's Office or other State legal counsel during such reviews.

The RCRA Statutory Checklist is intended for use as an evaluation tool, and it provides valuable assistance to EPA reviewers if submitted as part of the application for authorization of changes initiated by Federal rulemaking, as well as State-initiated changes to the State's statutes.

Under what circumstances do we recommend use of the abbreviated version?

We recommend use of this abbreviated version of the RCRA Statutory Checklist in lieu of the full **RCRA Statutory Checklist** in situations where State authority is broadly written such that use of the full RCRA Statutory Checklist would be overly repetitive and unnecessary. Examples of situations where we do not recommend use of this abbreviated checklist include instances where:

- (1) multiple State agencies share responsibility for regulation of hazardous waste under different statutes,
- (2) statutory authorities were drafted and enacted with very specific enumeration of agency powers and duties, and
- (3) statutes contain specific limitations on agency powers that do not have analogs in RCRA.

Anyone using the checklist should refer to Part 271 (and the regulations in Parts 260-265, 266, 268, 270, 273, 279, and 124 to the extent they are referenced in Part 271) for a full understanding of the regulations for which a State must have enabling authority and for enforcement authorities required for authorization. In addition, the full version of the RCRA Statutory Checklist contains guidance that may be useful. Users should look at all relevant statutes, not just the hazardous waste statutes, when assessing the hazardous waste program. For example, State administrative procedures acts, self-audit laws, and confidential business information protections would be relevant.

The statutory checklist is intended for use as an evaluation tool and to assist EPA to understand the State's enabling authority, as well as providing useful documentation for the State and EPA. The statutory checklist is not intended to identify State statutory provisions that are authorized to operate in lieu of the federal program, nor does it authorize the State statutory provisions listed in the checklist. It should not be referenced in a Federal Register notice authorizing a State's hazardous waste program; nor should it be referenced when the State's program is codified in 40 CFR part 272.

**Abbreviated Version
RCRA STATUTORY CHECKLIST¹**

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**[STATE NAME] RCRA STATUTORY CHECKLIST
(Abbreviated Version)**

Title(s) of Legislation: _____ Date Enacted: _____

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Date Prepared: _____

| Statutory Element | Part 271 Reference | RCRA Cite | State Cite |
|-------------------|--------------------|-----------|------------|
|-------------------|--------------------|-----------|------------|

I. DEFINITIONS

Note that 40 CFR Part 271 does not specifically address definitions of terms. However, the Federal program relies on various definitions for establishing the applicability and scope of the hazardous waste regulations. If definitions of these terms appear in state statutes, they should be at least as stringent as the analogous Federal statutory or regulatory definition. The State should have the authority to define the following terms in a manner at least as stringent as the Federal program:

| | | | |
|---|-----|---|--|
| Disposal | N/A | § 1004(3) | |
| Generator | N/A | Not in RCRA; see 40 CFR 260.10 defn. | |
| Hazardous waste ² | N/A | § 1004(5) | |
| Manifest | N/A | § 1004(12) | |
| Person | N/A | § 1004(15) | |
| Storage | N/A | § 1004(33) | |
| Transport | N/A | Not in RCRA; see 40 CFR 260.10 defn. of “transportation” | |
| Treatment | N/A | § 1004(34) | |
| Treatment, Storage or Disposal facility | N/A | Not in RCRA; see 40 CFR 260.10 defn. of “facility” | |
| Waste (solid) | N/A | § 1004(27) | |

Remarks of the Attorney General/Independent Counsel:

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| Statutory Element | Part 271 Reference | RCRA Cite | State Cite |
|--|--------------------|--|------------|
| II. HAZARDOUS WASTE IDENTIFICATION AND LISTING [See 40 CFR §271.9] | | | |
| 1. Authority to adopt a set of characteristics for identifying hazardous waste and a list of hazardous wastes that are no less stringent than, and consistent with, the Federal program, and to control all hazardous wastes controlled under 40 CFR part 261. | 271.9(a) | §§ 3001(a), (b), (d), (e), (i) & 3018(b) | |
| 2. Delisting (Optional): Authority to provide a delisting mechanism with regulations that are equivalent to 40 CFR 260.20(b) and 260.22 and that meets the requirements of RCRA § 3001(f)(1) & (2) | 271.9(b) | § 3001(b) & (f) | |

Remarks of the Attorney General/Independent Counsel:

III. STANDARDS FOR GENERATORS [See 40 CFR §271.10]

| | | | |
|--|--------|-----------------------|--|
| Authority to regulate all generators EPA regulates under 40 CFR Part 262 and to adopt requirements that are no less stringent than, and consistent with, the Federal generator requirements. | 271.10 | §§ 3001, 3002, & 3017 | |
|--|--------|-----------------------|--|

Remarks of the Attorney General/Independent Counsel:

IV. STANDARDS FOR TRANSPORTERS [See 40 CFR §271.11]

| | | | |
|--|--------|------------------|--|
| Authority to regulate all transporters EPA regulates under 40 CFR Part 263 and to adopt requirements that are no less stringent than, and consistent with, the Federal transporter requirements. | 271.11 | § 3001 § 3003 | |
|--|--------|------------------|--|

Remarks of the Attorney General/Independent Counsel:

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| Statutory Element | Part 271 Reference | RCRA Cite | State Cite |
|--|--------------------|-----------------------------------|------------|
| V. STANDARDS FOR HW STORAGE, TREATMENT, AND DISPOSAL FACILITIES [See 40 CFR 271.12] | | | |
| 1. Authority to regulate all owners and operators of hazardous waste management facilities that EPA regulates under 40 CFR Parts 264 and 266 and to adopt technical standards, requirements, and prohibitions that are no less stringent than, and consistent with, the Federal TSD facility requirements. | 271.12 | § 3004 | |
| 2. Authority to require corrective action in a manner that is no less stringent than, and consistent with, the Federal corrective action requirements. | 271.12 | § 3004(u) and (v), and 3004(a)(6) | |

Remarks of the Attorney General/Independent Counsel:

| | | | |
|--|--------|----------------------------|--|
| VI. LAND DISPOSAL RESTRICTIONS [See 40 CFR 271.25] | | | |
| Authority to enact land disposal restrictions that are no less stringent than, and consistent with, the Federal land disposal restrictions in 40 CFR Part 268. | 271.25 | § 3004(d)-(g), (j) and (m) | |

Remarks of the Attorney General/Independent Counsel:

| | | | |
|--|---------------------|---|--|
| VII. PERMITS FOR HW STORAGE, TREATMENT AND DISPOSAL FACILITIES [See 40 CFR 271.13 and 271.14] | | | |
| 1. Authority to require permits for owners and operators of all TSD facilities in a manner that is no less stringent than, and consistent with, the Federal permit program under 40 CFR Parts 270 and 124. | 271.13(a) | § 3005(a) | |
| 2. Authority to require permit application information (including exposure information) and to issue permits containing all technical and administrative standards for facilities and any conditions necessary to protect human health and environment | 271.13(a) 271.14 | § 3005(b) § 3005(c)(3) § 3005(g) § 3019(a) | |

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| Statutory Element | Part 271 Reference | RCRA Cite | State Cite |
|--|---------------------|--|------------|
| 3. Authority to provide for permit modification and termination (revocation) in a manner that is no less stringent than, and consistent with, the Federal program. | 271.13(d) 271.14 | § 3005(c) § 3005(d) | |
| 4. Interim Status: Authority to authorize owners or operators of TSD facilities to operate under interim status if the facility would qualify for interim status under the Federal program. ³ | 271.13(a) | § 3005(e)(1) | |
| 5. Interim Status: Authority to require interim status to terminate under conditions that are equivalent and consistent with the Federal program. ⁴ | 271.13(a) | § 3005(e)(2) & (3) | |
| 6. Interim Status: Authority to require interim status facilities to comply with standards at least as stringent as those in 40 CFR Part 265. | 271.13(a) | § 3005(e)(1) § 3005(h) § 3005(i) § 3015 | |
| 7. Interim Status: 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, receiving or storing hazardous wastes. (SR1) ⁵ | 271.13(a) | § 3005(j) | |
| 8. (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, agreement with EPA or an authorized State which requires correction and provides protection of health and environment at least equivalent to that in § 3005(j)(1). (SR2) ⁵ | 271.13(a) | § 3005(j)(2)-(9) and (j)(13) | |

Remarks of the Attorney General/Independent Counsel:

VIII. PUBLIC PARTICIPATION [See 40 CFR 271.14]

| | | | |
|--|------------------|-----------|--|
| Authority to adopt public participation procedures for the permit process. | 271.14(v) - (aa) | § 7004(b) | |
|--|------------------|-----------|--|

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| Statutory Element | Part 271 Reference | RCRA Cite | State Cite |
|-------------------|--------------------|-----------|------------|
|-------------------|--------------------|-----------|------------|

Remarks of the Attorney General/Independent Counsel:

IX. REQUIREMENTS FOR USED OIL MANAGEMENT [See 40 CFR 271.26]

| | | | |
|---|--------|-------------------------------------|--|
| Authority to promulgate regulations establishing special generator and transporter standards, performance standards, and other requirements as may be necessary to protect health and the environment from hazards associated with recycled used oil, as specified in 40 CFR Part 279. ⁶ | 271.26 | § 3014(a), (c) and (d) ⁶ | |
|---|--------|-------------------------------------|--|

Remarks of the Attorney General/Independent Counsel:

X. INSPECTIONS [See 40 CFR 271.15]

| | | | |
|---|-----------|--------|--|
| Authority to enter, inspect and obtain samples (at all regulated premises and any location where records are kept). | 271.15(c) | § 3007 | |
|---|-----------|--------|--|

Remarks of the Attorney General/Independent Counsel:

XI. ENFORCEMENT REMEDIES (INCLUDING PUBLIC PARTICIPATION IN ENFORCEMENT)⁷ [See 40 CFR 271.16]

| | | | |
|--|-------------------------------|--------|--|
| 1. Authority to immediately restrain unauthorized activity. | 271.16(a)(1) | § 3006 | |
| 2. Authority to sue to enjoin any threatened or continuing program violation without prior revocation of permit. | 271.16(a)(2) | § 3006 | |
| 3. Authority to obtain civil penalties for any violation (maximum no less than \$10K per day). | 271.16(a)(3)(i), (b), and (c) | § 3006 | |
| 4. Authority to obtain criminal penalties for specified maximum violations (no less than \$10K per day and imprisonment with maximum no less than 6 months); burden of proof no greater than under Federal law | 271.16(a)(3)(ii) & (b) | § 3006 | |
| 5. Authority to allow public intervention. | 271.16(d) | § 7004 | |

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|--|--------------------|------------------------|------------|
| 6. Optional: Require that 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. | Not required | § 7002(g) § 7003(a) | |

Remarks of the Attorney General/Independent Counsel:

XII. SHARING OF INFORMATION WITH EPA [See 40 CFR 271.17]

| | | | |
|---|-----------|-----------|--|
| Authority to share all information with EPA | 271.17(a) | § 3007(b) | |
|---|-----------|-----------|--|

Remarks of the Attorney General/Independent Counsel:

XIII. EXPOSURE ASSESSMENTS

| | | | |
|--|------------------------|--------------|--|
| Authority to make exposure and health assessment information available to the Agency for Toxic Substances and Disease Registry (See CERCLA § 104(i)) (SI) ⁵ | Not in 40 CFR Part 271 | § 3019(b)(1) | |
|--|------------------------|--------------|--|

Remarks of the Attorney General/Independent Counsel:

XIV. RADIOACTIVE MIXED WASTE

| | | | |
|--|----------|------------|--|
| 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) (MW) ^{5, 8} | 271.9(a) | § 1004(27) | |
|--|----------|------------|--|

Remarks of the Attorney General/Independent Counsel:

XV. AVAILABILITY OF INFORMATION [See 40 CFR 271.17]

| | | | |
|--|-----------|-----------|--|
| Authority to make information about 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 (AI) ⁵ | 271.17(c) | § 3006(f) | |
|--|-----------|-----------|--|

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Remarks of the Attorney General/Independent Counsel:

XVI. ADDITIONAL MISCELLANEOUS AUTHORITIES

| | | | |
|---|--------------|-----|--|
| 1. Authority to grant variances and exemptions that are no less stringent than allowed by Subtitle C of RCRA. ⁹ | Not required | N/A | |
| 2. Importation ban. ¹⁰ | Not required | N/A | |
| 3. Siting. ¹¹ | Not required | N/A | |
| 4. Authority to adopt existing and/or future Federal regulations by reference (current and prospective incorporation by reference). ¹² | N/A | N/A | |
| 5. Limitation on State authority to adopt more stringent or broader in scope provisions. | N/A | N/A | |

Remarks of the Attorney General/Independent Counsel:

[STATE NAME] RCRA STATUTORY CHECKLIST (Abbreviated Version)

EXPLANATORY NOTES

1. The statutory checklist is intended for use as an evaluation tool and to assist EPA to understand the State's enabling authority, as well as providing useful documentation for the State and EPA. The statutory checklist is not intended to identify State statutory provisions that are authorized to operate in lieu of the federal program, nor does it authorize the State statutory provisions listed in the checklist. It should not be referenced in a Federal Register notice authorizing a State's hazardous waste program; nor should it be referenced when the State's program is codified in 40 CFR part 272.
2. The State must have authority to regulate the recycling and reuse of hazardous waste in a manner at least as stringent as the Federal program.
3. States are not required to provide interim status for TSD facilities. However, if a State chooses to provide for interim status, then the State must have authority described in items 4 through 8 of Section VII.
4. A State's analog to interim status must terminate automatically in these cases (whether the state's analog 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 analog to Federal interim status.)
5. The following items are a part of the "Statutory (Non-Checklisted) Provisions addressed in Appendix N of the hardcopy version of the State Authorization Manual (SAM) -- Guidance for State Authorization Issues:

AI - Availability of Information
MW - Mixed Waste
SI - Sharing of Information
SR1 - Surface Impoundment Requirement
SR2 - Optional: Exemptions from the Surface Impoundment Requirements)
- Also, see the Availability of Information Checklist for a specific analysis of the manner and degree that EPA provides for availability of information.
6. This used oil management authority originated at RCRA § 3012, but was amended and redesignated as § 3014(a) by HSWA.
7. Note that RCRA contains enforcement provisions that differ from those listed in 40 CFR 271.16. Thus, the enforcement authority of an authorized State program need not be equivalent to the RCRA enforcement provisions. Instead, a State's authority should be adequate to meet the requirements listed in 40 CFR 271.16 which were established pursuant to RCRA §§ 3006 and 7004.
8. EPA has 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 itself is not subject to RCRA. States will need to review their authority to ensure that only source, special nuclear, or byproduct material is excluded from their hazardous waste jurisdiction.

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9. Various HSWA provisions amend RCRA to allow EPA 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. EPA strongly recommend States obtain the above authority. The State's variance procedures and decision criteria must be no less stringent than EPA's.
10. May create problems for a State seeking authorization. States with this authority should ensure that its statutory and regulatory provisions do not conflict with EPA's requirements for imports/exports and transportation.
11. May create problems for a State seeking authorization. States with this authority should ensure that its statutory and regulatory provisions do not conflict with EPA's requirements for permitting.
12. For prospective incorporation of the Federal regulations by reference, the Attorney General or Independent Legal Counsel must cite State authority that enables it both to **promulgate and enforce** regulations in this manner. *States which incorporate by reference prospectively, should provide a discussion on the constitutionality of the procedure within the State. Appropriate court case citations should also be provided.*

