

### Revision Checklist 199 Summary

<b>Rule Title:</b>	Hazardous Waste Management System; Definition of Solid Waste; Toxicity Characteristic
<b>Checklist Title:</b>	Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste
<b>Reference:</b>	67 <u>FR</u> 11251-11254
<b>Promulgation Date:</b>	March 13, 2002
<b>Effective Date:</b>	March 13, 2002
<b>Cluster:</b>	RCRA Cluster XII
<b>Provision Type:</b>	Non-HSWA
<b>Linkage:</b>	Revision Checklist 167
<b>Optional:</b>	No; however, most provisions are conditionally optional

**Summary:** This rule was promulgated in response to vacaturs ordered by the United States Court of Appeals for the District of Columbia Circuit in *Association of Battery Recyclers, v. EPA* 208 F.3d 1047 (2000). The court vacated two parts of the May 26, 1998 Phase IV LDR rule (63 FR 28556; Revision Checklist 167) in response to a legal challenge from the Association of Battery Recyclers, the National Mining Association and other trade groups. The first vacated part of the rule required deletion of regulatory language classifying mineral processing characteristic by-products and sludges being reclaimed as solid wastes. The second vacated part disallows the Toxicity Characteristic Leaching Procedure (TCLP) to be used for determining whether manufactured gas plant (MGP) waste is hazardous.

**State Authorization:** This rule is placed in RCRA Cluster XII. The State modification deadline is July 1, 2003 (or July 1, 2004 if a State statutory change is necessary).

All revisions in this rule are promulgated under non-HSWA authority and will only become effective in an authorized State when the State amends its regulations to include these vacaturs and receives authorization. For States without authorization, the vacaturs go into effect on the effective date of this rule.

With the exception of changes to 261.24(a), the revisions in this rule are conditionally optional; if a State adopted the optional provisions when it was added to the Federal program by Revision Checklist 167, then the State must make the Revision Checklist 199 revision.

**Attorney General (AG) Certification Guidance:** Specific AG certification of statutory authority may not be required for this checklist as long as the AG has previously demonstrated authority for identification and listing of hazardous waste.

**Program Description (PD) Guidance:** A State seeking authorization for this checklist should determine whether the revisions impact the program described in the Program Description. EPA

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believes that this rule does not include any significant changes or additions affecting the RCRA program and thus, States should not need to submit a revised PD.

**Incorporation by Reference Guidance:** States that followed the IBR guidance for Revision Checklist 167 D should remove any exceptions to the IBR for 40 CFR 261.2(c)(3). Instead, they should incorporate by reference, the rule addressed by this checklist.