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 HSWA. Finally, in accordance with 40 CFR Part 271, Subpart A, State statutes must provide, among other things, for 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 does this checklist include?

The **RCRA Statutory Checklist** which follows includes the statutory provisions listed on the original State Legislation Checklist, which States completed as part of the Base Program authorization, and the HSWA Statutory Checklist. The checklist is provided to aid attorneys and others in reviewing and documenting State hazardous waste enabling authority for authorization under Section 3006(b) of the Resource Conservation and Recovery Act (RCRA), as amended. 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.

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. Attorneys should look at all relevant State statutory authority, not just a particular statute, when assessing State hazardous waste legislative authority. For example, State administrative procedure acts, self-audit laws, and confidential business information protections are often relevant.

What is it used for?

This 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 Final Authorization or authorization update as a result of changes to the State's authority. Also, this checklist should be of use to the State in identifying appropriate citations and comments to aid in developing the Attorney General's Statement which is an essential element of the application.

Authorized States will be able to adopt analogues to many HSWA provisions and subsequent EPA implementing regulations simply by making regulatory changes. For instance, while HSWA requires EPA to list specified wastes, any State with interim or final authorization should already have the statutory authority to list additional wastes. Some 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 in 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 HSWA.

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.

RCRA STATUTORY CHECKLIST[i]

TABLE OF CONTENTS

Pa

I. DEFINITIONS 1

II. HAZARDOUS WASTE IDENTIFICATION AND LISTING [See 40 CFR §271.9] 2

III. STANDARDS FOR GENERATORS [See 40 CFR §271.10] 3

IV. STANDARDS FOR TRANSPORTERS [See 40 CFR §271.11] 4

V. STANDARDS FOR HW STORAGE, TREATMENT, AND DISPOSAL FACILITIES [See 40 CFR 271.12] 4

VI. LAND DISPOSAL RESTRICTIONS [See 40 CFR 271.25] 8

VII. PERMITS FOR HW STORAGE, TREATMENT AND DISPOSAL FACILITIES [See 40 CFR 271.13 and 271.14] 10

VIII. PUBLIC PARTICIPATION [See 40 CFR 271.14] 14

IX. REQUIREMENTS FOR USED OIL MANAGEMENT [See 40 CFR 271.26] 15

X. INSPECTIONS [See 40 CFR 271.15] 16

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

XII. SHARING OF INFORMATION WITH EPA [See 40 CFR 271.17] 17

XIII. EXPOSURE ASSESSMENTS 17

XIV. RADIOACTIVE MIXED WASTE 17

XV. AVAILABILITY OF INFORMATION [See 40 CFR 271.17] 17

XVI. ADDITIONAL MISCELLANEOUS AUTHORITIES 18

DELAWARE
RCRA STATUTORY CHECKLIST
Authorization Package #7
(8/21/06)

Title(s) of Legislation: 7 Delaware Code, Chapter 63 **Date Enacted: July 11, 1980**

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

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

Date Prepared: August 16, 2006 – (copy of 6/19/2003 version)

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	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)	Non-HSWA	§6302(4)
Generator	N/A	Not in RCRA; see 260.10	Non-HSWA	Not in 7 Del. Code, Chapter 63; See DRGHW §260.10
Hazardous waste[ii]	N/A	§ 1004(5)	Non-HSWA	§6302(7)
Manifest	N/A	§ 1004(12)	Non-HSWA	§6302(9)
Person	N/A	§ 1004(15)	Non-HSWA	§6302(10)
Storage	N/A	§ 1004(33)	Non-HSWA	§6302(13)
Transport	N/A	Not in RCRA; see 260.10 definition for *transportation*	Non-HSWA	§6302(15)
Treatment	N/A	§ 1004(34)	Non-HSWA	§6302(16)
Treatment, Storage or Disposal facility	N/A	Not in RCRA; see 260.10 definition for *facility*	Non-HSWA	§6302(17)
Waste (solid)	N/A	§ 1004(27)	Non-HSWA	§6302(12)

Remarks of the Attorney General/Independent Counsel:

II. HAZARDOUS WASTE IDENTIFICATION AND LISTING [See 40 CFR §271.9

The State needs the authority to:

1. Adopt a set of characteristics for identifying hazardous wastes[iii]	271.9(a)	§ 3001	Both	§6305(a)(1)
2. Adopt a list of hazardous wastes[iv]	271.9(a)	§ 3001(b)&(e)	Both	§6305(a)(1)
3. **Optional:** Adopt modified regulations for the generation, transportation, treatment, storage and disposal of hazardous waste produced by generators that generate less than 1000 kg/month	271.9(a)	§ 3001(d)	HSWA	§6305(a)(2) §6305(a)(6) §6305(a)(8) §6305(a)(13) §6306 §6307(d)
4. **Optional:** Exclude from regulation certain activities related to household waste	271.9(a)	§ 3001(i)	HSWA	§6305(a)
5. 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	271.9(a)	§ 3018(b)	HSWA	§6305(b)
6. **Optional:** Provide a delisting mechanism with regulations that are equivalent to 40 CFR 260.20(b) and 260.22[v]	271.9(b)	§ 3001(b)	Non-HSWA	§6305(a)(1)
7. **Required if a State has a delisting mechanism:** 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	271.9(b)	§ 3001(f)(1)	HSWA	§6305(a)(1)
8. **Required if a State has a delisting mechanism:** Prohibit new temporary delistings without prior notice and comment, absent good cause, and require that prior temporary delistings lapse if not made final by November 8, 1986	271.9(b)	§ 3001(f)(2)	HSWA	§6305(a)(1)

Remarks of the Attorney General/Independent Counsel:

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

The State needs the authority to:

1. Regulate all generators EPA regulates under 40 CFR Part 262[vi]	271.10	§ 3001 and § 3002	Both	§6305 §6306
2. Require use of I.D. numbers	271.10(a)	§ 3002(a)	Non-HSWA	§6304(b) §6305(a)(6)
3. Adopt waste determination requirements	271.10(a)	§ 3002(a)	Non-HSWA	§6306(d)
4. Adopt recordkeeping requirements	271.10(b)	§ 3002(a)	Non-HSWA	§6305(a)(10) §6305(13)
5. Adopt reporting requirements	271.10(b)	§ 3002(a)	Non-HSWA	§6305(a)(10) §6305(13)
6. Require generators to submit reports and manifest certifications regarding efforts taken to minimize the amounts and toxicity of wastes generated[vii]	271.10(b)	§ 3002(a)(6)(C)&(D) § 3002(b)	HSWA	§6305(a)(10) §6305(a)(12) §6305(a)(13)
7. Regulate accumulation of hazardous waste for short periods of time including use of appropriate containers[viii]	271.10(c)	§ 3002(a)	Both	§6305(a)(2) §6305(a)(13)
8. Adopt packaging, labeling, marking and placarding standards that are consistent with DOT regulations	271.10(d)	§ 3002(a)	Non-HSWA	§6305(c)
9. Regulate international shipments[ix]	271.10(e)	§ 3002(a) and § 3017	Both	§6305(8) §6305(a)(13) §6306(c)
10. Require the furnishing of information regarding hazardous waste to transporters, and TSD facilities	271.10(f)	§ 3002(a)	Non-HSWA	§6305(a)(8) §6305(a)(13) §6306(c)
11. Require the use of manifest system consistent with DOT and EPA requirements	271.10(f) and (h)	§ 3002(a)	Non-HSWA	§6305(a)(8) §6306(c)
12. Investigate interstate shipments for which the manifest has not been returned	271.10(g)	§ 3002(a)	Non-HSWA	§6305(a)(6) §6305(a)8) §6306(c)
13. Require actions to assure that all	271.10(f)	§ 3002(a)	Non-HSWA	§6306(c)

hazardous waste is designated for treatment, storage, or disposal in permitted facilities				

Remarks of the Attorney General/Independent Counsel:

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

The State needs the authority to:

1. Regulate all transporters EPA regulates under 40 CFR Part 263.[x]	271.11	§ 3001 § 3003	Both	§6306(a) §6306(c) §6306(e)
2. Require use of I.D. numbers	271.11(a)	§ 3003(a)	Non-HSWA	§6305(a)(10)
3. Adopt recordkeeping requirements	271.11(b)	§ 3003(a)	Non-HSWA	§6305(a)(10)
4. Require use of manifest system consistent with DOT and EPA requirements	271.11(c)	§ 3003(a)	Non-HSWA	§6305(c)
5. Require actions to assure that all hazardous waste is transported to designated permitted facilities	271.11(c)	§ 3003(a)	Non-HSWA	§6306(c)
6. Require notification of discharges	271.11(d)	§ 3003(a)	Non-HSWA	§6306(f)
7. Regulate cleanup of discharges	271.11(d)	§ 3003(a)	Non-HSWA	§6306(f)
8. Adopt labeling requirements	272.11(e)	§ 3003(a)	Non-HSWA	§6306(b)
9. Regulate transportation in a manner consistent with DOT regulations	271.11(e)	§ 3003(b)	Non-HSWA	§6305(c)
10. Regulate transportation of fuel produced from hazardous waste or from hazardous waste and any other material[xi]	271.11(e)	§ 3003(c)	HSWA	§6305(a)(12)

Remarks of the Attorney General/Independent Counsel:

V. STANDARDS FOR HW STORAGE, TREATMENT, AND DISPOSAL FACILITIES [See 40 CFR 271.12]

The State needs the authority to:

1. Regulate all owners and operators of hazardous waste management facilities that EPA regulates under 40 CFR Parts 264 and 266[xii]	271.12	§ 3004	Both	§6304 §6307
2. Adopt technical standards for tanks; containers; waste piles; incineration;	271.12(a)	§ 3004(a)	Non-HSWA	§6305(a)(4)

chemical, physical and biological treatment; surface impoundments; landfills; land treatment units; drip pads; miscellaneous units; containment buildings; boilers; and industrial furnaces[xiii]				
3. Prohibit landfilling of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste	271.12(a)	§ 3004(c)(1)	HSWA	§6305(a)(4)
4. Promulgate regulations that minimize the landfilling of containerized liquid hazardous wastes and free liquids in containerized hazardous wastes, and prohibit the landfilling of liquids absorbed in materials that biodegrade or release liquids when compressed	271.12(a)	§ 3004(c)(2)	HSWA	§6305(a)(2)
5. Prohibit disposal of non-hazardous liquids in Subtitle C landfills unless (1) the only reasonable alternative is disposal in a landfill or unlined impoundment, whether or not subject to Subtitle C, that contains or may contain hazardous waste and (2) disposal will not endanger an underground source of drinking water[xiv]	271.12(a)	§ 3004(c)(3)	HSWA	§6305(a)(4)
6. Prohibit the use of material which is contaminated or mixed with dioxin or any other hazardous waste for dust suppression or road treatment	271.12(a)	§ 3004(l)	HSWA	§6305(a)(12)
7. Require double liners for new landfills and surface impoundments	271.12(a)	§ 3004(o)	HSWA	§6305(a)(4) §6305(a)(15)
8. Require the attainment of minimum destruction and removal efficiency for incinerators	271.12(a)	§ 3004(o)	HSWA	§6305(a)(4)
9. Regulate fuel containing hazardous waste and all persons who produce, burn, distribute, and market fuel containing hazardous wastes[xv]	271.12(a)	§ 3004(q)-(s)	HSWA	§6305(a)(12)
10. **Optional:** Exempt certain 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	271.12(a)	§ 3004(q)(2)(A)	HSWA	§6305(a)(1) §6305(a)(12) §6314

11. Assure that permitting standards for underground hazardous waste tanks, at a minimum, satisfy Section §9003, Subtitle I of RCRA, 42 U.S.C. 9003	271.12(a)	§ 3004(w)	HSWA	§6305(a)(2) §6003(a)(2) §6010(a)
12. Adopt modified requirements for solid waste from the extraction, beneficiation or processing of ores and minerals; for fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated from combustion of fossil fuels; and for cement kiln dust waste	271.12(a)	§ 3004(x)	HSWA	§6305(a)
13. Require a showing of financial responsibility during facility operation	271.12(b)	§ 3004(a)	Non-HSWA	§6305(a)(11) §6307(h)
14. Adopt preparedness and prevention measures including contingency plans and emergency procedures to be followed in the event of a discharge or release	271.12(c)	§ 3004(a)	Non-HSWA	§6305(a)(2) §6305(a)(4) §6305(a)(15)
15. Adopt closure and post-closure requirements including financial assurance for costs involved	271.12(d)	§ 3004(a)	Non-HSWA	§6305(a)(4)
16. Adopt groundwater monitoring standards[xvi]	271.12(e)	§ 3004(a), (o) & (p)	Both	§6305(a)(4)
17. Require security to prevent unauthorized access to facilities	271.12(f)	§ 3004(a)	Non-HSWA	§6305(a)(7) §6305(a)(15)
18. Adopt standards for personnel training	271.12(g)	§ 3004(a)	Non-HSWA	§6305(a)(7)
19. Adopt recordkeeping standards	271.12(h)	§ 3004(a)	Non-HSWA	§6305(a)(10)
20. Adopt reporting requirements	271.12(h)	§ 3004(a)	Non-HSWA	§6305(a)(6) §6305(a)(10)
21. Adopt monitoring requirements	271.12(h)	§ 3004(a)	Non-HSWA	§6305(a)(10) §6307(j)
22. Require inspections	271.12(h)	§ 3004(a)	Non-HSWA	§6310
23. Require compliance with manifest system including that a signed copy of the manifest be returned to the generator	271.12(i)	§ 3004(a)	Non-HSWA	§6305(a)(8) §6306(c)
24. Promulgate rules for monitoring and controlling air emissions at treatment, storage, and disposal facilities	271.12(j)	§ 3004(n)	HSWA	6305(a)(2) 6003(a)(1)
25. Assure that permits issued after 11/8/84 require corrective action for releases of hazardous waste or constituents from any	N/A	§ 3004(u)	HSWA	§6305(a)(3)

solid waste management unit at a facility, regardless of when the waste was placed in the unit[xvii]				
26. Require corrective action beyond a facility's boundary and to include corrective action as a permit requirement	N/A	§ 3004(v)	HSWA	§6305(a)(3)
27. Require evidence of financial responsibility for corrective action on and off-site	N/A	§ 3004(a)(6)	HSWA	§6305(a)(3) §6305(a)(11)
28. Identify when military munitions are hazardous waste and adopt provisions for safe transportation and storage of such waste[xviii]	N/A	§ 3004(y)	Neither	§6305(a)(1) §6305(a)(2)
29. Require use of I.D. numbers	271.13(b)	§ 3004(a)	Non-HSWA	§6307(a)
30. Adopt location, design, and construction standards[xix]	271.12(j)	§ 3004(a) & (b)	Both	§6305(a)(15)
31. Require qualifications as to ownership	271.12(j)	§ 3004(a)	Non-HSWA	§6305(a)(2) §6305(a)(3) §6307
32. Require qualifications as to continuity of operation	271.12(j)	§ 3004(a)	Non-HSWA	§6307(i)

Remarks of the Attorney General/Independent Counsel

VI. LAND DISPOSAL RESTRICTIONS [See 40 CFR 271.25]

Note that 40 CFR Part 271 does not specifically address State authority to adopt land disposal restrictions that are no less stringent than those adopted in 40 CFR Part 268. However, 40 CFR 271.25 requires each State program to have standards at least as stringent as the requirements and prohibitions that have taken effect under HSWA. Thus, the State must have authority to:

1. Prohibit the land disposal of any hazardous waste. Land disposal includes, but is not limited to, landfills, surface impoundments, waste piles, deep injection wells, and land treatment facilities; 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[xx]	271.25	§ 3004(d)-(g)	HSWA	§6304(b) §6305(a) §6307

Item 2 of this Section is to completed by States that decide not to seek or cannot obtain such broad authority as described in Item 1 of Section VI. The following list in Item 2 breaks down the various HSWA provisions relating to land disposal bans that States will need to adopt authority to:

2. 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 (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	271.25	§ 3004(d)-(f)	HSWA	§6304(b) §6305(a)
(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	271.25	§ 3004(d)-(f)	HSWA	§6304(b) §6305(a)

(F) solvents				
(G) dioxins				
3. Prohibit the land disposal of any hazardous waste which is prohibited from land disposal under §3004(g) of RCRA.	271.25	§ 3004(g)	HSWA	§6304(b) §6305(a)
4. **Optional**: Waive until November 8, 1987, a prohibition on land disposal of certain hazardous wastes (i.e., those designated in Item 2 above) that might otherwise apply to the disposal of contaminated soil or debris from CERCLA §104 or §106 actions or RCRA corrective actions	271.25	§ 3004(d)-(g)	HSWA	§6304(b) §6305(a)
5. 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. **Optional for #5:** Exempt wastes in compliance with such levels or methods from the land disposal prohibitions.	271.25	§ 3004(m)	HSWA	§6305(a)(2) §6305(a)(4)
6. Prohibit the storage of hazardous waste prohibited from land disposal	271.25	§ 3004(j)	HSWA	§6305(a)(2)

Remarks of the Attorney General/Independent Counsel:

VII. PERMITS FOR HW STORAGE, TREATMENT AND DISPOSAL FACILITIES [See 40 CFR 271.13 and 271.14]

The State needs the authority to:

1. Require permits for owners and operators of all TSD facilities	271.13(a)	§ 3005(a)	Non-HSWA	§6307(b) – (e)
2. Prohibit operation of facilities without permits	271.13(a)	§ 3005(a)	Non-HSWA	§6307(b) – (e)
3. **Optional:** Authorize owners or operators of TSD facilities to operate under interim status if the facility would qualify for interim status under the Federal program	271.13(a)	§ 3005(e)(1)	Non-HSWA	§6307(g)
4. **Optional:** Allow facilities to qualify for	271.13(a)	§ 3005(e)(1)	HSWA	§6307(g)

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[xxi]				
5. **Required for Interim Status:** Require that facilities may not qualify for interim status under the State analog to RCRA § 3005(e) if they were previously denied a Section 3005(c) permit or for which authority to operate has been terminated	271.13(a)	§ 3005(c)&(e)		§6307(g)
6. **Required for Interim Status:** 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)	Non-HSWA	§6307(g)
7. **Required for Interim Status:** Determine that interim status terminates	271.13(a)	§3005(e)(2) & (3) §3005(c)(2)(C)	HSWA	§6307(g) §6305(a)(2)
(i) for land disposal facilities qualifying for interim status prior to 11/8/84,on 11/8/85 unless, a Part B application and certification of compliance with ground-water monitoring and financial responsibility requirements are submitted				
(ii) for land disposal facilities in existence on the effective date of statutory or regulatory amendments under HSWA that require a permit, 12 months after the facility is first required to obtain a permit, unless a Part B application and certification of compliance with ground-water monitoring and financial responsibility requirements are submitted	271.13(a)	§3005(e)(2) & (3) §3005(c)(2)(C)	HSWA	§6307(g) §6305(a)(2)
(iii) for incinerator facilities, by 11/8/89, unless the owner/operator submits a Part B application by 11/8/86	271.13(a)	§ 3005(e)(2) & (3) §3005(c)(2)(C)	HSWA	§6307(g) §6305(a)(2)
(iv) 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[xxii]	271.13(a)	§ 3005(e)(2) & (3) §3005(c)(2)(C)	HSWA	§6307(g) §6305(a)(2)
8. **Required for Interim Status:** Require landfills, surface impoundments, land treatment units, and piles that received	271.13(a)	§ 3005(i)	HSWA	§6305(a)(2)

wastes 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				
9. **Required for Interim Status:** 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)[xxiii]	271.13(a)	§ 3005(j)	HSWA	§6305(a)(2)
10. **Required for Interim Status:** 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. (SR1)[22]	271.13(a)	§ 3005(j)	HSWA	§6305(a)(2)
11. **Optional - Interim Status:** Provide conditional exemptions from the double-liner and leak detection system requirements for surface impoundments, including modification of 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)[22]	271.13(a)	§ 3005(j)(2)-(9) and (j)(13)	HSWA	N/A
12. **Required for Interim Status:** 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	271.13(a)	§ 3015(a)	HSWA	§6305(a)(2)
13. **Required for Interim Status:** Require new units, expansions and replacement units at interim status landfills and surface impoundments to meet the requirements for double liners and	271.13(a)	§ 3015(b)	HSWA	§6305(a)(2)

leachate collection systems applicable to new permitted landfills and surface impoundments				
14. Issue permits containing any conditions necessary to protect human health and environment	271.13(a)	§ 3005(c)(3)	HSWA	§6301(b) §6305(a)(3) §6307(d)
15. Require permits to contain all technical and administrative standards for facilities	271.13(c)	§ 3005(a)	Non-HSWA	§6301(b) §6305(a)(3) §6307(d)
16. Provide for permit modifications and termination (revocation)	271.13(d) 271.14	§ 3005(c) § 3005(d)	Non-HSWA	§6307(a) §6307(b) §6307(d) §6307(f)
17. Allow public disclosure of name and address of permit applicants and permittees	271.14	§ 3005(a)	Non-HSWA	§6305(a) §6305(a)(16)
18. Review land disposal permits every five years and modify them as necessary to assure compliance with State's analogue to RCRA §§3004 and 3005 and to take into account improvements in technology	271.14	§ 3005(c)(3)	HSWA	§6307(e)
19. Impose construction ban	271.14	§ 3005(a)	Non-HSWA	§6307(b)
20. Require permit application information	271.14	§ 3005(b)	Non-HSWA	§6307(c)
21. Require permit applicants for landfills or surface impoundments to submit exposure information	271.14	§ 3019(a)	HSWA	§6307(c)
22. Require permittee to certify annually that the generator at a TSD facility has a waste minimization program in place and that the method of treatment, storage, or disposal is a practicable, available method which minimizes present and future threat to health and environment	271.14	§ 3005(h)	HSWA	§6305(a)(12) §6307(d)
23. **Optional**: 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 after construction or operation of such a facility has begun	Not required	§ 3005(a)	HSWA	§6305(a)
24. **Optional:** A. Issue a one-year research development, and demonstration permit				§6305(a)(2)

for a facility that proposes an innovative and experimental treatment technology or process not yet regulated				
B. Authority to waive or modify general permit application and issuance requirements for R&D permits, except for financial responsibility and public participation requirements				§6305(a)(2) §6305(a)(3)
C. Authority to terminate experimental activity if necessary to protect health and the environment	Not required	§ 3005(g)	HSWA	§6305(a)(3)

Remarks of the Attorney General/Independent Counsel:

VIII. PUBLIC PARTICIPATION [See 40 CFR 271.14]

The regulations at 40 CFR 271.14 require that an authorized State program contain certain public participation procedures contained in 40 CFR Part 124. Thus, a State needs the authority to promulgate regulations that require:

1. Draft permit, fact sheet, etc.	271.14(v) & (w)	§ 7004(b)	Non-HSWA	§6305(a)(16) §6312
2. Notice of all draft permits by radio broadcasts and notices in newspapers	271.14(x)	§ 7004(b)	Non-HSWA	§6305(a)(16) §6312
3. 45-day public comment period on all draft permits	271.14(y)	§ 7004(b)	Non-HSWA	§6305(a)(16) §6312
4. Informal hearing with written notice of opposition	271.14(z)	§ 7004(b)	Non-HSWA	§6305(a)(16) §6312
5. Consideration of and response to public comments	271.14(aa)	§ 7004(b)	Non-HSWA	§6305(a)(16) §6312
6. Pre-application public notice and meeting	**N/A**	§ 7004(b)	Non-HSWA	§6305(a)(16) §6312
7. Public notice of application	**N/A**	§ 7004(b)	Non-HSWA	§6305(a)(16) §6312
8. Information repository	**N/A**	§ 7004(b)	Non-HSWA	§6305(a)(16) §6312

Remarks of the Attorney General/Independent Counsel:

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

The State needs the authority to:

1. Promulgate regulations establishing such performance standards and other requirements as may be necessary to protect health and the environment from hazards associated with recycled oil, as specified in 40 CFR Part 279[xxiv]	271.26	§ 3014(a)	Both	§6305(a)(2)
2. Promulgate special generator and transporter standards for recycled hazardous waste used oil	271.26	§ 3014(c)	HSWA	§6305(a)(6) §6305(a)(8) §6305(a)(10) §6305(a)(12) §6305(a)(13) §6306(b) §6306(d) §6306(e) §6306(f)
3. **Optional**: 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	271.26	§ 3014(d)	HSWA	§6307(g)

Remarks of the Attorney General/Independent Counsel:

X. INSPECTIONS [See 40 CFR 271.15]

The State needs the authority to:

1. Enter, inspect and obtain samples (at all regulated premises and where records are kept)	271.15(c)	§ 3007	Non-HSWA	§6310(a) §6310(b)

Remarks of the Attorney General/Independent Counsel:

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

The State needs the authority to[xxv]:

1. Immediately restrain unauthorized activity	271.16(a)(1)	§ 3006	Non-HSWA	§6308 §6309
2. Sue to enjoin any threatened or	271.16(a)	§ 3006	Non-HSWA	§6309

continuing program violation without prior revocation of permit	(2)			
3. Obtain civil penalties for any violation (maximum no less than $10K per day)	271.16(a)(3)(i), (b), and (c)	§ 3006	Non-HSWA	§6309
4. 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	Non-HSWA	§6309
5. Allow public intervention	271.16(d)	§ 7004	Non-HSWA	DRGHW Part 260, Subpart D
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)	HSWA	N/A

Remarks of the Attorney General/Independent Counsel:

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

The State needs the authority to:

1. Share all information with EPA	271.17(a)	§ 3007(b)	Non-HSWA	§6304(c)

Remarks of the Attorney General/Independent Counsel:

XIII. EXPOSURE ASSESSMENTS XIII. EXPOSURE ASSESSMENTSXIII. EXPOSURE ASSESSMENTSXIII. EXPOSURE ASSESSMENTSXIII. EXPOSURE ASSESSMENTSXIII. EXPOSURE ASSESSMENTS

The State needs the authority to:

1. Make exposure and health assessment information available to the Agency for Toxic Substances and Disease Registry (See CERCLA § 104(i)) (SI)[22]	Not in 40 CFR Part 271	§ 3019(b)(1)	HSWA	§6304(c)

Remarks of the Attorney General/Independent Counsel:

XIV. RADIOACTIVE MIXED WASTE XIV. RADIOACTIVE MIXED WASTEXIV. RADIOACTIVE MIXED WASTEXIV. RADIOACTIVE MIXED WASTEXIV. RADIOACTIVE MIXED WASTE

1. 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)[22],[xxvi]	271.9(a)	§ 1004(27)	Non-HSWA	§6302(12)

Remarks of the Attorney General/Independent Counsel:

XV. AVAILABILITY OF INFORMATION [See 40 CFR 271.17] XV. AVAILABILITY OF INFORMATION [See 40 CFR 271.17]XV. AVAILABILITY OF INFORMATION [See 40 CFR 271.17]XV. AVAILABILITY OF INFORMATION [See 40 CFR 271.17]XV. AVAILABILITY OF INFORMATION [See 40 CFR 271.17]XV. AVAILABILITY OF INFORMATION [See 40 CFR 271.17]

The State needs the authority to:

1. 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. (AI)[22]	271.17(c)	§ 3006(f)	HSWA	§6304(c)

Remarks of the Attorney General/Independent Counsel:

XVI. ADDITIONAL MISCELLANEOUS XVI. ADDITIONAL MISCELLANEOUS AUTHORITIESXVI. ADDITIONAL MISCELLANEOUS AUTHORITIESXVI. ADDITIONAL MISCELLANEOUS AUTHORITIESXVI. ADDITIONAL MISCELLANEOUS AUTHORITIESXVI. ADDITIONAL MISCELLANEOUS AUTHORITIES

1. **Optional:** Authority to grant variances and exemptions that are no less stringent than allowed by Subtitle C of RCRA[xxvii]	Not required	N/A	N/A	§6314
2. Importation ban[xxviii]	Not required	N/A	N/A	N/A
3. Siting[xxix]	Not required	N/A	N/A	§6303(a)(4) §6305(a)(15)
4. **Optional:** Adopt the Federal regulations by reference	N/A	N/A	N/A	N/A
5. **Optional:** Adopt the Federal regulations by reference to include any EPA	N/A	N/A	N/A	N/A

revisions that may occur in the future (prospective incorporation by reference)[xxx]				
6. **Optional:** Limitation on State authority to adopt more stringent or broader in scope provisions	N/A	N/A	N/A	N/A

Remarks of the Attorney General/Independent Counsel:

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. The general authority for identifying hazardous waste characteristics is non-HSWA. However, the HSWA provisions at RCRA § 3001(c), (g), and (h) modify or clarify EPA's authority for regulating specific hazardous waste characteristics. A State may not need to have additional authority in order to implement the HSWA elements of the regulations authorized by the provisions at RCRA § 3001(c), (g), and (h).

4. The general authority for listing hazardous waste is non-HSWA. However, the HSWA provision at RCRA § 3001(e) addresses specific wastes. A State may not need additional authority in order to implement HSWA elements of the regulations authorized by the provision at RCRA § 3001(e).

5. A State is not required to provide a delisting mechanism as part of its hazardous waste program. However, if a delisting mechanism is included, the State must have adequate authority to adopt regulations that are equivalent to the Federal delisting regulations at 40 CFR 260.20(b) and 260.22. In addition, the HSWA requirements listed in items 8 and 9 are only applicable to States that provide a delisting mechanism.

6. The scope of the generator requirements is linked to the types and quantity of wastes handled by a solid waste generator. Some wastes are listed or identified as hazardous pursuant to HSWA authority. See the section of this checklist that addresses the authority for identification and listing of hazardous wastes for a discussion of HSWA and Non-HSWA authorities.

7. This authority does not only address the requirement to partake in waste minimization activities. The Federal recordkeeping and reporting requirements relative to waste minimization were also adopted pursuant to HSWA authority.

8. The regulations addressing on-site accumulation of hazardous waste implement HSWA authority to the extent that they apply to tank systems owned or operated by small quantity generators or establish leak detection requirements for underground tank systems for which construction commenced after July 14, 1986.

9. The general authority to regulate generators is derived from the Non-HSWA portions of § 3002(a). That section does not specifically address international shipments of hazardous waste. Congress adopted specific authority for regulation of international shipments as part of HSWA. This authority is found at RCRA § 3017. Note that certain aspects of the regulation of international shipments are not delegable to state programs as indicated in 40 CFR 271.10(e).

10. The scope of the transporter requirements is linked to the types of wastes handled by a solid waste transporter. Some wastes are listed or identified as hazardous pursuant to HSWA authority. See the section of this checklist that addresses the authority for identification and listing of hazardous wastes for a discussion of HSWA and Non-HSWA authorities.

11. A State may not need separate authority to regulate fuel from hazardous waste as required by HSWA. The general authority to regulate transporters may be broad enough to include this specific authority.

12. The scope of the TSD facility standards is linked to the types of wastes handled by a facility. Some wastes are listed or identified as hazardous pursuant to HSWA authority. See the section of this checklist that addresses the authority for identification and listing of hazardous wastes for a discussion of HSWA and Non-HSWA authorities.

13. The general authority for adopting technical standards for specific units addressed at 40 CFR 271.12(a) covers both non-HSWA and HSWA provisions. For purposes of this checklist, the general non-HSWA authority at RCRA § 3004(a) has been listed separately from the specific HSWA authorities introduced at RCRA §§ 3004(c), (l), (o), (q), (r), (s), (w), and (x). Note that [The provision at 40 CFR 271.12(a) needs to be amended to include references to "drip pads, miscellaneous units, containment buildings; boilers and industrial furnaces.]

14. States should particularly note the RCRA § 3004(c)(3) requirement. Since many States statutes pertain only to hazardous waste, States are likely to need new authority to regulate the disposal of non-hazardous waste at Subtitle C facilities.

15. A State may not need separate authority to regulate hazardous waste used as fuel as required by HSWA. However, the State may need additional authority over some of the persons or activities described above.

16. The general authority at § 3004(a) provides coverage for groundwater monitoring standards. In addition, at §§ 3004(o) and (p), HSWA specifically addressed groundwater monitoring standards for new landfills and surface impoundments.

17. 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, so long as all RCRA requirements are met.

18. The provision at RCRA § 3004(y) was introduced by the Federal Facilities Compliance Act (FFCA) of 1992. Note that a State's general authorities may be broad enough to encompass this specific authority.

19. At § 3004(b), HSWA introduced a specific prohibition on the placement of any noncontainerized or bulk liquid hazardous wastes in salt dome formations, salt bed formations, underground mines or caves.

20. EPA believes that States already have the authority to prohibit land disposal of hazardous waste 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 in Item 1 of Section VI. 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 list in Item 2 breaks down the various HSWA provisions relating to land disposal bans for which States will need to adopt authority.

21. 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 5 through 13 of Section VII.

22. 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.)

23. 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.

24. This used oil management authority originated at RCRA § 3012, but was amended and redesignated as § 3014(a) by HSWA.

25. 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.

26. EPA has determined that hazardous wastes are subject to RCRA if they are mixed with source, material nuclear or by product 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.

27. Various HSWA provision 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 with to grant a variance or exemption, EPA strongly recommend States obtain the above authority. The State's variance procedures and decision criteria must be no less stringent than EPA's.

28. 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.

29. 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.

30. 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.***