

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 more likely to require State statutory amendments. 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.

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VERMONT RCRA STATUTORY CHECKLIST

Title of Legislation: The Vermont Waste Management Act (Act 106) of the 1977 Session

Date Enacted: July 1, 1977

Amendments to the Vermont Waste Management Act: Act 195 [effective May 6, 1980]; Act 102 [effective July 1, 1981]; Act 148 [effective July 1, 1981]; Act 70 [effective May 20, 1985]; Act 189 [effective May 14, 1986]; Act 190 [effective May 14, 1986]; Act 231 [effective July 1, 1986]; Act 78 [effective July 1, 1987]; Act 85 [effective June 9, 1987]; Act 246 [effective June 13, 1988]; Act 275 [effective July 1, 1988]; Act 282 [effective July 1, 1988*]; Act 30 [effective April 27, 1989]; Act 61 [effective May 22, 1989]; Act 218 [effective July 1, 1990*]; Act 276 [effective June 20, 1990]; Act 281 [effective June 22, 1990]; Act 282 [effective June 22, 1990*]; Act 286 [effective July 1, 1990]; Act 75 [effective July 1, 1991]; Act 100 [effective July 1, 1991]; Act 157 [effective May 5, 1992]; Act 202 [effective May 27, 1992]; Act 210 [effective July 1, 1992]; Act 29 [effective May 26, 1993]; Act 81 [effective July 1, 1993*]; Act 92 [effective July 1, 1993]; Act 157 [effective July 1, 1994]; Act 233 [effective June 21, 1994]; Act 42 [effective July 1, 1995]; Act 44 [effective April 20, 1995]; Act 46 [effective July 1, 1995]; Act 141 [effective April 30, 1996]; Act 189 [effective May 22, 1996]; Act 51 [effective July 1, 1997]; Act 80 [effective July 1, 1998]; Act 133 [effective July 1, 1998]; Act 151 [effective July 1, 1998]; Act 155 [effective July 1, 1998*]; Act 161 [effective July 1, 1998]; Act 149 [effective July 1, 2003]; Act 42 [effective July 1, 2004]; arid Act 151 [effective January 31, 2005*]; Act 65 [effective June 16, 2005]; Act 71 [effective June 21, 2005]; Act 135 [effective May 31, 2006]; Act 215 [effective May 6, 2006]; Act 76 [effective June 7, 2007]; Act 130 [effective May 12, 2008]; Act 147 [effective May 16, 2008]; Act 209 [effective June 11, 2008]; Act 161 [effective May 17, 2012]; Act 148 [effective July 1, 2012]; Act 138 [effective May 14, 2012*]; Act 139 [effective May 14, 2012*]; Act 11 [effective July 1, 2013]; Act 34 [effective July 1, 2013]; Act 55 [effective July 1, 2013*]; Act 58 [effective June 3, 2013*]; Act 159 [effective July 1, 2014*]; Act 175 [effective July 1, 2014]; Act 23 [effective July 1, 2015]; Act 29 [effective July 1, 2015]; Act 52 [effective June 5, 2015*]; Act 57 [effective July 1, 2015]; Act 95 [effective May 10, 2016*]; Act 97 [effective July 1, 2016]; Act 150 [effective July 1, 2016*]; Act 154 [effective July 1, 2016]; Act 47 [effective May 23, 2017*]; Act 55 [effective June 2, 2017*]; Act 74 [effective July 1, 2017]; Act 83 [effective July 1, 2017]; Act 113 [effective July 1, 2018]; Act 208 [effective May 30, 2018*]; Act 69 [effective June 17, 2019*]; Act 75 [effective July 1, 2019*]; Act 83 [effective July 1, 2020]; Act 131 [effective July 1, 2020*]; Act 20 [effective July 1, 2021]; Act 41 [effective May 20, 2021]; Act 74 [effective July 1, 2021]; Act 93 [effective July 1, 2022]; Act 170 [effective July 1, 2022*]; Act 185 [effective July 1, 2022].

Date Prepared: September 6, 2022

VERMONT RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	State Cite
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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)	10 V.S.A. § 6602(12)
Generator	N/A	Not in RCRA; see 260.10	10 V.S.A. § 6602(3)
Hazardous waste ²	N/A	§ 1004(5)	10 V.S.A. § 6602(4)
Manifest	N/A	§ 1004(12)	10 V.S.A. § 6603(1) and (9); 10 V.S.A. § 6604(b)
Person	N/A	§ 1004(15)	10 V.S.A. § 6602(6)
Storage	N/A	§ 1004(33)	10 V.S.A. § 6602(7)
Transport	N/A	Not in RCRA; see 260.10 definition for <i>transportation</i>	10 V.S.A. § 6602(8)
Treatment	N/A	§ 1004(34)	10 V.S.A. § 6602(9)
Treatment, Storage or Disposal facility	N/A	Not in RCRA; see 260.10 definition for <i>facility</i>	10 V.S.A. § 6602(10)
Waste (solid)	N/A	§ 1004(27)	10 V.S.A. § 6602(13)

Remarks of the Vermont Department of Environmental Conservation Office of General Counsel: Vermont's definition of "hazardous waste," 10 V.S.A. § 6602(4), read in conjunction with the definitions of "waste," 10 V.S.A. § 6602(13), and "solid waste," 10 V.S.A. § 6602(2), includes a hazardous waste controlled under 40 CFR §261. Like 40 CFR §§261.3(b) and (c), the Vermont Hazardous Waste Management Regulations (VHWMR) specify when a waste becomes a hazardous waste and when a waste ceases to be a hazardous waste. Under VHWMR § 7-202(a), a waste is a hazardous waste if, when, and until it no longer, meets the definition of a hazardous waste - that is, as soon as it has the characteristics of, or as soon as it is, a listed waste.

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Statutory Element	Part 271 Reference	RCRA Cite	State Cite
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 ³	271.9(a)	§ 3001	10 V.S.A. § 6603(1) and (9); 10 V.S.A. § 6604(b)
2. Adopt a list of hazardous wastes ⁴	271.9(a)	§ 3001(b)&(e)	10 V.S.A. § 6603(1) and (9); 10 V.S.A. § 6604(b)
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)	10 V.S.A. § 6603(1) and (9); 10 V.S.A. § 6604(b)
4. Optional: Exclude from regulation certain activities related to household waste	271.9(a)	§ 3001(i)	10 V.S.A. § 6603(1) and (9); 10 V.S.A. § 6604(b)
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)	10 V.S.A. § 1263
6. Optional: Provide a delisting mechanism with regulations that are equivalent to 40 CFR 260.20(b) and 260.22 ⁵	271.9(b)	§ 3001(b)	10 V.S.A. § 6603(1) and (9); 10 V.S.A. § 6604(b)
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)	10 V.S.A. § 6603(1) and (9); 10 V.S.A. § 6604(b)
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)	10 V.S.A. § 6603(1) and (9); 10 V.S.A. § 6604(b)

Remarks of the Attorney General/Independent Counsel: