

**ATTACHMENT 3**

**MARYLAND  
RCRA STATUTORY CHECKLIST**

**PROGRAM REVISION III**

# MARYLAND RCRA STATUTORY CHECKLIST

## Introduction (EPA GUIDANCE INFORMATION)

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 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.

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.

This 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. 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. 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 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.

There are some HSWA provisions which we doubt will require legislative amendments but which we have included in the checklist in case they were needed. 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

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**Titles of State Legislation:** Environment, Title 1, §§1-601 through 1-607, Annotated Code of Maryland (2007).  
Environment, Title 1, §§1-601 through 1-607, Annotated Code of Maryland (2012 Supplement).  
Environment, Title 7, Subtitle 2, Annotated Code of Maryland (2007).  
Environment, Title 7, Subtitle 2, Annotated Code of Maryland (2012 Supplement).

**Date Prepared:** April 4, 2013

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
<b>I. DEFINITIONS</b>					
<b>Authority to define:</b>					
Disposal	N/A	§ 1004(3)	Non-HSWA	§7-208(a)	Section 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs disposal of controlled hazardous substances (CHS).
Generator	N/A	Not in RCRA; see 260.10	Non-HSWA	§7-208(a)	Section 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs generation of CHS.
Hazardous waste <sup>1</sup>	N/A	§ 1004(5)	Non-HSWA	§7-201(b) §7-208(e)(1)	Maryland uses the term "controlled hazardous substance" ("CHS"), which is defined as any hazardous substance the Department identifies as a controlled hazardous substance under Subtitle 2, or low-level nuclear waste. Section 7-208(e)(1) requires the Department, by rule or regulation, to identify all controlled hazardous substances.
Manifest	N/A	§ 1004(12)	Non-HSWA	§7-208(a) §7-209(b)	Section 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs the use of manifests for shipments of CHS. Section 7-209(b) specifies the required content of the manifest form and provides that it shall include any other information considered necessary by the Department.

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Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
Person	N/A	§ 1004(15)	Non-HSWA	§7-201(r) §7-208(a)	The statutory definition of “person” includes “the federal government, this State, any county, municipal corporation, or other political subdivision of this State, and any of their units”. This definition does not include trusts, joint stock companies, partnerships, associations, and interstate bodies, which are included in the Federal definition. However, the broad authority in §7-208(a) authorizes the adoption of a regulatory definition of “person” for purposes of regulating the generation, transportation, storage, treatment, and disposal of CHS.
Storage	N/A	§ 1004(33)	Non-HSWA	§7-208(a)	Section 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs storage of CHS.
Transport	N/A	Not in RCRA; see 260.10 definition for "transportation"	Non-HSWA	§7-208(a)	Section 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs transportation of CHS.
Treatment	N/A	§ 1004(34)	Non-HSWA	§7-201(w) §7-208(a)	The statute’s definition for “treatment” is found at §7-201(w). The broad authority in §7-208(a) authorizes the adoption of a regulatory definition of “treatment” for purposes of regulating the treatment of CHS.

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Treatment, Storage or Disposal (TSD) facility	N/A	Not in RCRA; see 260.10 definition for "facility"	Non-HSWA	§7-201(c) §7-208(a)	The statute defines “controlled hazardous substance facility” as “a disposal structure, system, or geographic area designated by the Department for treatment, storage related to treatment or disposal, or disposal of CHS.” In addition, the broad authority in §7-208(a) authorizes the adoption of a regulatory definition of "TSD facility" for purposes of regulating the treatment, storage, and disposal of CHS.
Waste (solid)	N/A	§ 1004(27)	Non-HSWA	§7-201(u)	<p>Maryland’s statutes define “solid waste” as any: “abandoned material or substance which is disposed of, burned, or incinerated or accumulated, stored, or treated before or in lieu of being disposed of, burned, or incinerated”; “material or substance which is recycled or accumulated, stored, or treated before recycling”; or “material or substance which is considered inherently waste-like.”</p> <p>Maryland excludes “irrigation return flows” from the definition of “solid waste”, while the Federal definition only excludes “solid or dissolved materials” in irrigation return flows. This does not affect the scope of regulated substances, however.</p> <p>Maryland excludes “materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process”. Because these materials are not discarded or disposed of, they would also not be solid waste under the Federal definition.</p>

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

**General Comment:** The general authority in §7-208(a) allows the Department to adopt rules and regulations to carry out the provisions of Subtitle 2. Sections 7-208(d) and (e) contain more specific authority. Section 7-209 contains requirements for generators generating greater than 100 kg of controlled hazardous substances (CHS) during a calendar month. Section 7-209(c) subjects these generators to applicable rules and regulations adopted

**Authority to:**

1. Adopt a set of characteristics for identifying hazardous wastes <sup>2</sup>	271.9(a)	§ 3001	Both	§7-208(e)(1) §7-208(e)(2)	Section 7-208(e)(1) gives the Department authority to identify controlled hazardous substances (CHS). Section 7-208(e)(2) gives the Department the authority to set standards to identify lethal, toxic, and other injurious effects of CHS.
2. Adopt a list of hazardous wastes <sup>3</sup>	271.9(a)	§ 3001(b) & (e)	Both	§7-208(e)(1) §7-201(l)(2)	Section 7-208(e)(1) gives the Department the authority to identify all hazardous substances that are controlled hazardous substances governed by Subtitle 2. The definition of “hazardous substance” in §7-201(l)(2) includes any substance that is identified as a CHS by the Department by regulation.
3. <b>Optional:</b> 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	§7-208(a), (d) & (e)(5) §7-209(c)	The general authority in §7-208(a) allows the Department to adopt rules and regulations to carry out the provisions of Subtitle 2. Sections 7-208(d) and (e) contain more specific authority. Section 7-209 contains requirements for generators generating greater than 100 kg of controlled hazardous substances (CHS) during a calendar month. Section 7-209(c) subjects these generators to applicable rules and regulations adopted under §7-208(e).

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4. <b>Optional:</b> Exclude from regulation certain activities related to household waste	271.9(a)	§ 3001(i)	HSWA	§7-208(a) §7-208(d)(4)	The general authority in §7-208(a) allows the Department to adopt rules and regulations to carry out the provisions of Subtitle 2. Section 7-208(d)(4) gives the Department the authority to grant exemptions consistent with Federal law.
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	§7-208(e)(3), (5), & (6)	CHS facilities are regulated pursuant to §7-208(e)(3) and (6). This requirement as it applies to activities outside of a CHS facility is covered by the authority in §7-208(e)(5) to adopt regulations applicable to all CHS activities.
6. <b>Optional:</b> Provide a delisting mechanism with regulations that are equivalent to 40 CFR 260.20(b) and 260.22 <sup>4</sup>	271.9(b)	§ 3001(b)	Non-HSWA	§7-208(d)(3)	Section 7-208(d)(3) allows the Department to specify different provisions, as circumstances require, for different pollutant, solid waste, and hazardous substance sources, or for different geographical areas. Note, however, that Maryland is not currently seeking authorization for delisting.
7. <b>Required if a State has a delisting mechanism:</b> 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	§7-208(d)(3)	Section 7-208(d)(3) allows the Department to specify different provisions, as circumstances require, for different pollutant, solid waste, and hazardous substance sources, or for different geographical areas. Note, however, that Maryland is not currently seeking authorization for delisting.



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8. <b><u>Required if a State has a delisting mechanism:</u></b> 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	§7-208(d)(3)	Section 7-208(d)(3) allows the Department to specify different provisions, as circumstances require, for different pollutant, solid waste, and hazardous substance sources, or for different geographical areas. Note, however, that Maryland is not currently seeking authorization for delisting.

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

**General Comment:** Sections 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs the generation, transportation, storage, treatment, and disposal of CHS. Section 7-208(e)(5) provides specific authority for monitoring the generation of CHS. Section 7-209(c) explicitly subjects generators generating greater than 100 kilograms (kg) of CHS during a calendar month to the applicable regulations adopted under §7-208(e).

<b>Authority to:</b>					
1. Regulate all generators EPA regulates under 40 CFR Part 262 <sup>5</sup>	271.10	§ 3001 and § 3002	Both	§7-208(a)&(e)(5) §7-209(c)	See general comment for generators.
2. Require use of I.D. numbers	271.10(a)	§ 3002(a)	Non-HSWA	§7-208(a) &(e)(5) §7-209(a), (b)(2)(ii) & (c)	See general comment for generators. Also, §7-209(b)(2)(ii) requires a generator of greater than 100 kg per month to use a manifest containing the generator's EPA ID number. §7-209(a) requires notification of the Secretary by generators.
3. Adopt waste determination requirements	271.10(a)	§ 3002(a)	Non-HSWA	§7-208(a)&(e)(5) §7-209(c)	See general comment for generators.

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4. Adopt recordkeeping requirements	271.10(b)	§ 3002(a)	Non-HSWA	§7-208(a)&(e)(5) §7-209(c)	See general comment for generators.
5. Adopt reporting requirements	271.10(b)	§ 3002(a)	Non-HSWA	§7-208(a)&(e)(5) §7-209(c)	See general comment for generators.
6. Require generators to submit reports and manifest certifications regarding efforts taken to minimize the amounts and toxicity of wastes generated <sup>6</sup>	271.10(b)	§ 3002(a)(6)(C)&(D) § 3002(b)	HSWA	§7-205(b) §7-208(a)&(e)(5)	Section 7-208(a) authorizes the Department to adopt regulations to carry out the provisions of Subtitle 2. Section 7-205(b) requires generators to demonstrate to the satisfaction of the Department that recovery possibilities have been considered and that the CHS cannot be reasonably treated further to reduce the volume of or the hazard that the CHS poses to the environment. In addition, the general authority at §7-208(e)(5) to establish procedures to monitor the generation of wastes provides sufficient coverage.
7. Regulate accumulation of hazardous waste for short periods of time including use of appropriate containers <sup>7</sup>	271.10(c)	§ 3002(a)	Both	§7-208(a)&(e)(5) §7-209(c)	See general comment for generators.
8. Adopt packaging, labeling, marking and placarding standards that are consistent with DOT regulations	271.10(d)	§ 3002(a)	Non-HSWA	§7-208(a)&(e)(5) §7-209(c) §7-253(1)	See the general comment for generators. In addition, §7-253(1) requires generators of CHS to label the CHS prior to transportation in accordance with rules and regulations of the Department.

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9. Regulate international shipments <sup>8</sup>	271.10(e)	§ 3002(a) and § 3017	Both	§7-208(a) & (e)(5) §7-209(b) §7-209(c) §7-253(2)	See the general comment for generators. In addition, §§7-209(b) and 7-253(2) require the use of a manifest for any shipments off premises.
10. Require the furnishing of information regarding hazardous waste to transporters, and TSD facilities	271.10(f)	§ 3002(a)	Non-HSWA	§§7-208(a) & (e)(5) §7-209(c)	See general comment for generators.
11. Require the use of manifest system consistent with DOT and EPA requirements	271.10(f) and (h)	§ 3002(a)	Non-HSWA	§§7-208(a) & (e)(5) §7-209(b) & (c) 7-253(2)	See the general comment for generators. In addition, §7-209(b) requires the use of a manifest by generators producing over 100 kg per month and shipping CHS off site and provides the Department with authority determine the contents of the manifest. Section 7-253(2) requires a generator having CHS transported to a CHS facility to provide a manifest for each CHS vehicle.
12. Investigate interstate shipments for which the manifest has not been returned	271.10(g)	§ 3002(a)	Non-HSWA	§§7-208(a) & (e)(5) §7-209(c)	See the general comment for generators.
13. Require actions to assure that all hazardous waste is designated for treatment, storage, or disposal in permitted facilities	271.10(f)	§ 3002(a)	Non-HSWA	§§7-208(a) & (e)(5) §7-209(b) §7-209(c) §7-253(4)	See the general comment for generators. In addition, §7-209(b) requires that generators generating greater than 100 kg of CHS in a month include the EPA identification number of the designated facility on the manifest. Section 7-253(4) states that generators may only contract for treatment, storage, or disposal of CHS with a facility permit holder or a CHS hauler who has a valid contract with a CHS facility for treatment, storage, or disposal.

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

**General Comment:** Section 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs the generation, transportation, storage, treatment, and disposal of CHS. Section 7-208(e)(5) provides general authority for monitoring the transportation of CHS. Note that Maryland requires transporters to obtain hauler certificates and vehicle certificates; this requirement is outside the scope of the Federal program.

**Authority to:**

1. Regulate all transporters EPA regulates under 40 CFR Part 263. <sup>9</sup>	271.11	§ 3001 § 3003	Both	§§7-208(a) & (e)(5)	See the general comment for transporters.
2. Require use of I.D. numbers	271.11(a)	§ 3003(a)	Non-HSWA	§§7-208(a) & (e)(5)	See the general comment for transporters.
3. Adopt recordkeeping requirements	271.11(b)	§ 3003(a)	Non-HSWA	§§7-208(a) & (e)(5)	See the general comment for transporters.
4. Require use of manifest system consistent with DOT and EPA requirements	271.11(c)	§ 3003(a)	Non-HSWA	§§7-208(a) & (e)(5) §7-252(a)(3)	See the general comment for transporters. In addition, §7-252(a)(3) requires the transporter to carry the manifest in the cab of the CHS vehicle.
5. Require actions to assure that all hazardous waste is transported to designated permitted facilities	271.11(c)	§ 3003(a)	Non-HSWA	§§7-208(a) & (e)(5)	See the general comment for transporters.

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6. Require notification of discharges	271.11(d)	§ 3003(a)	Non-HSWA	§§7-208(a), (d)(2), & (e)(5)	See the general comment for transporters. In addition, §7-208(d)(2) gives the Department authority to adopt “special provisions for alert and abatement standards and procedures for occurrences or emergencies of pollution or on other short term conditions that are an acute danger to public health or to the environment”.
7. Regulate cleanup of discharges	271.11(d)	§ 3003(a)	Non-HSWA	§§7-208(a), (d)(2), & (e)(5)	See the general comment for transporters. In addition, §7-208(d)(2) gives the Department authority to adopt “special provisions for alert and abatement standards and procedures for occurrences or emergencies of pollution or on other short term conditions that are an acute danger to public health or to the environment”.
8. Adopt labeling requirements	272.11(e)	§ 3003(a)	Non-HSWA	§§7-208(a) & (e)(5) §7-252(a)(4)	See the general comment for transporters. In addition, §7-252(a)(4) requires transporters to label the controlled hazardous substance in accordance with the Department’s rules and regulations.
9. Regulate transportation in a manner consistent with DOT regulations	271.11(e)	§ 3003(b)	Non-HSWA	§§7-208(a) & (e)(5) §7-252(a)(4)	See the general comment for transporters. In addition, §7-252(a)(4) requires transporters to label the controlled hazardous substance in accordance with the Department’s rules and regulations.
10. Regulate transportation of fuel produced from hazardous waste or from hazardous waste and any other material <sup>10</sup>	271.11(e)	§ 3003(c)	HSWA	§7-208(e)(3), (5), (6) & (7)	Under §§7-208(e)(3), (6) and (7), the Department can regulate all waste containing CHS at a CHS facility. In addition, §7-208(e)(5) provides the authority to establish procedures for monitoring generation, transportation, storage, treatment, and disposal of CHS.

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

**General Comment:** Section 7-208(e)(5) grants the Department the authority to adopt regulations establishing procedures for monitoring the treatment, storage, and disposal of CHS. Section 7-208(e)(6) gives the Department the authority to adopt regulations that set minimum requirements for the operation, maintenance, monitoring, reporting, and supervision of any CHS facility.

**Authority to:**

1. Regulate all owners and operators of hazardous waste management facilities that EPA regulates under 40 CFR Parts 264 and 266 <sup>11</sup>	271.12	§ 3004	Both	§§7-208(e)(5) & (6)	See the general comment for TSD facilities.
2. Adopt technical standards for tanks; containers; waste piles; incineration; chemical, physical and biological treatment; surface impoundments; landfills; land treatment units; drip pads; miscellaneous units; containment buildings; boilers; and industrial furnaces <sup>12</sup>	271.12(a)	§ 3004(a)	Non-HSWA	§§7-208(e)(3), (5), (6) & (9) §7-242(a)(2)	See the general comment for TSD facilities. Also, §7-208(e)(3) gives the Department the authority to set minimum design standards for CHS facilities. Section 7-208(e)(9) gives the Department the authority to set health and safety standards relating to the site of a CHS facility (§7-209(e)(9)(i)-(v) lists minimum siting considerations). In addition, §7-242(a)(2) requires that a facility permit holder design and construct the CHS facility in a manner approved by the Department.

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3. Prohibit landfilling of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste	271.12(a)	§ 3004(c)(1)	HSWA	§7-208(e)(4) §7-224(a)	Under §7-224(a), a person may not store, discharge, treat, or dispose of a CHS except in a CHS facility and in accordance with Subtitle 2. In addition, §7-208(e)(4) gives the Department the authority to establish the types of CHS which may be disposed of.
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	§7-208(e)(4) §7-224(a)	Under §7-224(a), a person may not store, discharge, treat, or dispose of a CHS except in a CHS facility and in accordance with Subtitle 2. In addition, §7-208(e)(4) gives the Department the authority to establish the types of CHS which may be disposed of.
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 <sup>13</sup>	271.12(a)	§ 3004(c)(3)	HSWA	§7-208(e)(4) & (6) §9-252(a)(1) & (2)	Section 7-208(e)(4) gives the Department the authority to establish types and quantities of CHS that may be disposed of. Section 7-208(e)(6) gives the Department the general authority to promulgate minimum requirements for the operation, maintenance, monitoring, reporting, and supervision of any CHS facility. This authority would extend to waste that is not CHS under Maryland law. Section 9-252(a) is the general authority for Maryland's solid waste program and provides additional authority to regulate nonhazardous liquids.

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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	§7-208(e)(4) §7-224(a)	Under §7-224(a), a person may not store, discharge, treat, or dispose of a CHS except in a CHS facility and in accordance with Subtitle 2. In addition, §7-208(e)(4) gives the Department the authority to establish the types of CHS which may be disposed of.
7. Require double liners for new landfills and surface impoundments	271.12(a)	§ 3004(o)	HSWA	§§7-208(e)(3), (5)&(6)	See the general comment for TSD facilities. In addition, § 7-208(e)(3) gives the Department authority to set minimum design standards for CHS facilities.
8. Require the attainment of minimum destruction and removal efficiency for incinerators	271.12(a)	§ 3004(o)	HSWA	§§7-208(e)(5) & (6)	See the general comment for TSD facilities.
9. Regulate fuel containing hazardous waste and all persons who produce, burn, distribute, and market fuel containing hazardous wastes <sup>14</sup>	271.12(a)	§ 3004(q)-(s)	HSWA	§7-208(e)(3), (5), (6) & (7)	Under §§7-208(e)(3), (6) and (7), the Department can regulate all waste containing CHS at a CHS facility. In addition, §7-208(e)(5) provides the authority to establish procedures for monitoring generation, transportation, storage, treatment, and disposal of CHS.
10. <b>Optional:</b> Exempt certain petroleum coke containing hazardous waste from petroleum refining from regulation 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	§7-208(d)(4)	Section 7-208(d)(4) gives the Department the authority to provide exemptions that are consistent with Federal law and regulation.



## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
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	§7-208(e)(6) &(7)	The general authority at §§7-208(e)(6) and (7) provides the Department with sufficient authority.
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	§7-208(d)(3) & (4)	Section 7-208(d)(3) allows the Department to establish regulations that specify different provisions as circumstances require for different pollutant, solid waste, and hazardous substance sources. Section 7-208(d)(4) allows the Department to provide exemptions that are consistent with Federal law and regulations.
13. Require a showing of financial responsibility during facility operation.	271.12(b)	§ 3004(a)	Non-HSWA	§§7-208(e)(5), (6) & (7); §7-236(a)(1) & (2); §7-242(a)(1)	See the general comment for TSD facilities. In addition, §7-208(e)(7) contains authority to set requirements for receiving and applying for facility permits. Sections 7-236(a)(1) and (2) require evidence of financial responsibility as a prerequisite for issuing a permit. Section 7-242(a)(1) requires maintenance of financial assurance as a requirement for keeping the facility permit.

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non- HSWA	State Cite	Remarks
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	§§7-208(e)(5) &(6) §7-242(a)(3)	See the general comment for TSD facilities. In addition, §7-242(a)(3) requires that a facility permit holder establish emergency procedures and safeguards to prevent accidents and reasonably foreseeable harm to human beings or the environment.
15. Adopt closure and post-closure requirements including financial assurance for costs involved.	271.12(d)	§ 3004(a)	Non- HSWA	§§7-208(e)(5) & (6) §7-242(a)(1) & (6)	See the general comment for TSD facilities. In addition, §7-242(a)(6) requires a facility permit holder to restore the CHS facility to its original condition if use as a CHS facility is terminated, to the extent practicable. Section 7-242(a)(1) requires maintenance of a bond or other security to cover the costs of closing the facility and assuring the security of the facility after it closes.
16. Adopt groundwater monitoring standards <sup>15</sup> .	271.12(e)	§ 3004(a), (o) & (p)	Both	§§7-208(e)(5) &(6)	See the general comment for TSD facilities.
17. Require security to prevent unauthorized access to facilities.	271.12(f)	§ 3004(a)	Non- HSWA	§§7-208(e)(5) &(6)	See the general comment for TSD facilities.
18. Adopt standards for personnel training.	271.12(g)	§ 3004(a)	Non- HSWA	§§7-208(e)(5) &(6)	See the general comment for TSD facilities.
19. Adopt recordkeeping standards.	271.12(h)	§ 3004(a)	Non- HSWA	§§7-208(e)(5) &(6)	See the general comment for TSD facilities.
20. Adopt reporting requirements.	271.12(h)	§ 3004(a)	Non- HSWA	§§7-208(e)(5) &(6)	See the general comment for TSD facilities.

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
21. Adopt monitoring requirements.	271.12(h)	§ 3004(a)	Non-HSWA	§§7-208(e)(5) &(6)	See the general comment for TSD facilities.
22. Require inspections.	271.12(h)	§ 3004(a)	Non-HSWA	§§7-208(e)(5) &(6)	See the general comment for TSD facilities.
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	§§7-208(e)(5) &(6)	See the general comment for TSD facilities.
24. Promulgate rules for monitoring and controlling air emissions at treatment, storage, and disposal facilities.	271.12(j)	§ 3004(n)	HSWA	§7-208(e)(3)&(6)	In addition to the authority at §7-208(e)(6), §7-208(e)(3) gives the Department the authority to set minimum design standards for CHS facilities.
25. Assure that permits issued after 11/8/84 require corrective action for releases of hazardous waste or constituents from any solid waste management unit at a facility, regardless of when the waste was placed in the unit <sup>16</sup> .	N/A	§ 3004(u)	HSWA	§7-208(e)(6)&(7)	In addition to the general authority to adopt regulations for CHS facilities at §7-208(e)(6), §7-208(e)(7) gives the Department the authority to set requirements for receiving and applying for permits. Note, however, that Maryland is not currently seeking authorization for HSWA corrective action.

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
26. Require corrective action beyond a facility's boundary and to include corrective action as a permit requirement.	N/A	§ 3004(v)	HSWA	§7-208(e)(6)&(7)	In addition to the general authority to adopt regulations for controlled hazardous substance facilities at §7-208(e)(6), §7-208(e)(7) gives the Department the authority to set requirements for receiving and applying for permits. Note, however, that Maryland is not currently seeking authorization for HSWA corrective action.
27. Require evidence of financial responsibility for corrective action on and off-site.	N/A	§ 3004(a)(6)	HSWA	§7-208(e)(6) &(7) §7-236(a)(1) &(2) §7-242(a)(1)	Sections 7-208(e)(6)&(7) give the Department the general authority to promulgate minimum requirements for the operation, maintenance, monitoring, reporting, and supervision of any CHS facility and the general authority to set standards for receiving and applying for facility permits. Sections 7-236(a)(1)&(2) require evidence of financial responsibility as a prerequisite for the issuance of a permit. Section 7-242(a)(1) requires the maintenance of financial assurance to cover all requirements related to the facility permit, related to monitoring, maintaining, or closing a facility, or assuring the security of the facility after closing. Note, however, that Maryland is not currently seeking authorization for HSWA corrective action authority.
28. Identify when military munitions are hazardous waste and adopt provisions for safe transportation and storage of such waste <sup>17</sup> .	N/A	§ 3004(y)	Neither	§§7-208(e)(5) & (6) §7-208(e)(1)	See the general comment for TSD facilities.  Authority to identify when military munitions are hazardous waste is found in §7-208(e)(1), which gives the Department authority to identify all hazardous substances that are CHS.

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
29. Require use of I.D. numbers.	271.13(b)	§ 3004(a)	Non-HSWA	§§7-208(e)(5) &(6)	See the general comment for TSD facilities.
30. Adopt location, design, and construction standards <sup>18</sup> .	271.12(j)	§ 3004(a) & (b)	Both	§§7-208(e)(3), (5),(6)&(9) §7-242(a)(2)	See the general comment for TSD facilities. Also, §7-208(e)(3) gives the Department the authority to set minimum design standards for CHS facilities. Section 7-208(e)(9) gives the Department the authority to set health and safety standards relating to the site of a CHS facility (§7-208(e)(9)(i)-(v) lists minimum siting considerations). In addition, §7-242(a)(2) requires that a facility permit holder design and construct the CHS facility in a manner approved by the Department.
31. Require qualifications as to ownership.	271.12(j)	§ 3004(a)	Non-HSWA	§§7-208(e)(5) &(6)	See the general comment for TSD facilities.
32. Require qualifications as to continuity of operation.	271.12(j)	§ 3004(a)	Non-HSWA	§§7-208(e)(5) &(6)	See the general comment for TSD facilities.

### 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	271.25	§ 3004(d)-(g)	HSWA	§7-205 §7-208(e)(4), (6),&(7)	Section 7-205 prohibits disposal of CHS unless the generator demonstrates to the satisfaction of the Department that the CHS cannot be reasonably treated further to reduce the hazard the CHS poses to the environment. Section 7-208(e)(4) gives the Department the authority to establish types and quantities of CHS that
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## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
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 <sup>19</sup> .					may be disposed of. In addition, §7-208(e)(6)&(7) give the Department the general authority to promulgate minimum requirements for the operation, maintenance, monitoring, reporting, and supervision of any CHS facility and the general authority to set standards for receiving and applying for facility permits. Note, however, that Maryland is not currently seeking authorization for the HSWA land disposal restrictions.
2. <b>Optional:</b> 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	§7-208(d)(4) §7-208(e)(4) &(6)	Section 7-208(d)(4) gives the Department the authority to grant exemptions that are consistent with Federal law. Section 7-208(e)(4) gives the Department the authority to establish types and quantities of controlled hazardous substances that may be disposed of. Section 7-208(e)(6) gives the Department the general authority to promulgate minimum requirements for the operation, maintenance, monitoring, reporting, and supervision of any controlled hazardous substance facility. Note, however, that Maryland is not currently seeking authorization for the HSWA land disposal restrictions.
3. Promulgate standards specifying levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially	271.25	§ 3004(m)	HSWA	§7-208(e)(4) &(6) §7-208(d)(4)	Section 7-208(e)(4) provides the authority to establish types and quantities of CHS that may be disposed of, and §7-208(e)(6) provides the authority to set standards for CHS facilities. In addition, §7-208(d)(4) allows the Department to provide exemptions that are consistent with Federal law or regulation. Note, however, that

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
<p>reduce the likelihood of its migration so as to minimize threats to human health and the environment.</p> <p><b><u>Optional for #3:</u></b> Exempt wastes in compliance with such levels or methods from the land disposal prohibitions.</p>					Maryland is not currently seeking authorization for the HSWA land disposal restrictions.
4. Prohibit the storage of hazardous waste prohibited from land disposal.	271.25	§ 3004(j)	HSWA	§7-208(e)(6)	The general authority at §7-208(e)(6) gives the Department the authority to promulgate minimum requirements for the operation, maintenance, monitoring, reporting, and supervision of any CHS facility.

### 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	§7-232(a)	Section 7-232(a) requires that persons hold a facility permit before owning, operating, establishing, or maintaining a CHS facility.
2. Prohibit operation of facilities without permits.	271.13(a)	§ 3005(a)	Non-HSWA	§7-232(a)	Section 7-232(a) requires persons to hold a facility permit prior to owning, operating, establishing, or maintaining a CHS facility.

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
3. <b>Optional:</b> 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	§7-208(d)(4) §7-208(e)(6) &(7)	Section 7-208(d)(4) allows the Department to grant exemptions that are consistent with Federal law. Section 7-208(e)(6) gives the Department the general authority to set standards for controlled hazardous waste facilities, and §7-208(e)(7) authorizes the Department to set requirements for receiving and applying for a permit.
4. <b>Optional:</b> 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 <sup>20</sup> .	271.13(a)	§ 3005(e)(1)	HSWA	§7-208(d)(4) §7-208(e)(6) &(7) §7-232(a)	Section 7-232(a) requires a person to hold a permit before owning, establishing, operating, or maintaining a CHS, and §7-208(d)(4) allows the Department to grant exemptions that are consistent with Federal law. Section 7-208(e)(6) gives the Department the general authority to set standards for controlled hazardous waste facilities, and §7-208(e)(7) authorizes the Department to set requirements for receiving and applying for a permit.
5. <b>Required for Interim Status:</b> 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	271.13(a)	§ 3005(c) & (e)		§7-208(d)(4) §7-208(e)(6) &(7) §7-232(a)	Section 7-232(a) requires a person to hold a permit before owning, establishing, operating, or maintaining a CHS, and §7-208(d)(4) allows the Department to grant exemptions that are consistent with Federal law. Section 7-208(e)(6) gives the Department the general authority to set standards for controlled hazardous waste facilities, and §7-208(e)(7) authorizes the Department to set requirements for receiving and applying for a permit.



## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
or for which authority to operate has been terminated.					
6. <b>Required for Interim Status:</b> 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	§7-208(d)(4) §7-208(e)(6) &(7) §7-232(a)	Section 7-232(a) requires a person to hold a permit before owning, establishing, operating, or maintaining a CHS, and §7-208(d)(4) allows the Department to grant exemptions that are consistent with Federal law. Section 7-208(e)(6) gives the Department the general authority to set standards for controlled hazardous waste facilities, and §7-208(e)(7) authorizes the Department to set requirements for receiving and applying for a permit.
7. <b>Required for Interim Status:</b> Determine that interim status terminates  (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;	271.13(a)	§ 3005(e)(2) & (3)	HSWA	§7-208(d)(4) §7-208(e)(6) &(7) §7-232(a)	Section 7-232(a) requires a person to hold a permit before owning, establishing, operating, or maintaining a CHS facility, and §7-208(d)(4) allows the Department to grant exemptions that are consistent with Federal law. Section 7-208(e)(6) gives the Department the general authority to set standards for controlled hazardous waste facilities, and §7-208(e)(7) authorizes the Department to set requirements for receiving and applying for a permit. Note, however, that Maryland is not currently seeking authorization for the HSWA land disposal restrictions.

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
(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 groundwater monitoring and financial responsibility requirements are submitted;	271.13(a)	§ 3005(e)(2) & (3)	HSWA	§7-208(d)(4) §7-208(e)(6) &(7) §7-232(a)	See comment for 7.(i) above.
(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)	HSWA	§7-208(d)(4) §7-208(e)(6) &(7) §7-232(a)	See comment for 7.(i) above.
(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 <sup>21</sup> .	271.13(a)	§ 3005(e)(2) & (3)	HSWA	§7-208(d)(4) §7-208(e)(6) &(7) §7-232(a)	See comment for 7.(i) above.

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
<p>8. <b>Required for Interim Status:</b> Require landfills, surface impoundments, land treatment units, and piles that received 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.</p>	271.13(a)	§ 3005(i)	HSWA	§7-208(e)(3), (6)&(7)	Sections 7-208(e)(3)&(6) give the Department the general authority to set design standards and minimum requirements for CHS facilities. In addition, §7-208(e)(7) authorizes the Department to set requirements for receiving and applying for facility permits.
<p>9. <b>Required for Interim Status:</b> 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)<sup>22</sup>.</p>	271.13(a)	§ 3005(j)	HSWA	§7-208(e)(3), (6)&(7)	Sections 7-208(e)(3)&(6) give the Department the general authority to set design standards and minimum requirements for CHS facilities. In addition, §7-208(e)(7) authorizes the Department to set requirements for receiving and applying for facility permits.

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
<p>10. <b><u>Required for Interim Status:</u></b> 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)<sup>22</sup>.</p>	271.13(a)	§ 3005(j)	HSWA	§7-208(e)(3), (6)&(7)	Sections 7-208(e)(3)&(6) give the Department the general authority to set design standards and minimum requirements for CHS facilities. In addition, §7-208(e)(7) authorizes the Department to set requirements for receiving and applying for facility permits.
<p>11. <b><u>Optional - Interim Status:</u></b> 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 for impoundments in § 3005(j)(1) if prior to October 1, 1984, the owner/operator has</p>	271.13(a)	§ 3005(j)(2)-(9) and (j)(13)	HSWA	§7-208(d)(4) §7-208(e)(3) &(6)	The Department's authority to establish design standards and minimum requirements for CHS facilities and the authority to grant exemptions consistent with Federal law provide sufficient authority.

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
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) <sup>22</sup> .					
12. <b>Required for Interim Status:</b> 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	§7-208(e)(3), (6), & (7)	Section 7-208(e)(3) gives the Department the authority to set minimum design standards for controlled hazardous waste facilities, and Section 7-208(e)(6) gives the Department the authority to set minimum requirements for the operation, maintenance, monitoring, reporting, and supervision of controlled hazardous substance facilities. Section 7-208(e)(7) authorizes the Department to adopt requirements for receiving and applying for permits.
13. <b>Required for Interim Status:</b> Require new units, expansions and replacement units at interim status landfills and surface impoundments to meet	271.13(a)	§ 3015(b)	HSWA	§7-208(d)(4) §7-208(e)(3), (6)&(7)	Section 7-208(e)(3) gives the Department the authority to set minimum design standards for controlled hazardous waste facilities, and §7-208(e)(6) gives the Department the authority to set minimum requirements for the operation, maintenance, monitoring, reporting, and supervision of controlled hazardous substance facilities. Section 7-208(e)(7) authorizes the Department to adopt

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
the requirements for double liners and leachate collection systems applicable to new permitted landfills and surface impoundments.					requirements for receiving and applying for permits. Additionally, §7-208(d)(4) gives the Department the authority to grant exemptions consistent with Federal law.
14. Issue permits containing any conditions necessary to protect human health and environment.	271.13(a)	§ 3005(c)(3)	HSWA	§7-208(e)(6) &(7)	Section 7-208(e)(6) provides the general authority to adopt regulations for controlled hazardous substance facilities, and §7-208(e)(7) gives the Department the authority to set requirements for receiving and applying for permits.
15. Require permits to contain all technical and administrative standards for facilities.	271.13(c)	§ 3005(a)	Non-HSWA	§7-208(a)&(e)(6)	The general authority to adopt regulations in §7-208(a) and the more specific authority to set minimum requirements for the operation, maintenance, monitoring, reporting, and supervision of a CHS facility in §7-208(e)(6), gives the State sufficient coverage.
16. Provide for permit modifications and termination (revocation).	271.13(d) 271.14	§ 3005(c) § 3005(d)	Non-HSWA	§7-207(a)(2) &(5) §7-257(b)(7)	Section 7-207(a)(2) gives the Department the authority to modify or revoke permits that require construction, modification, extension, or alteration of new or existing disposal systems or treatment works, while §7-207(a)(5) gives the Department the authority to modify or revoke permits to install, modify, or operate disposal systems. Section 7-257(b)(7) authorizes the Department to revoke a facility permit when there is "good cause".

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
17. Allow public disclosure of name and address of permit applicants and permittees.	271.14	§ 3005(a)	Non-HSWA	§1-603(b) §7-239(a)	Section 7-239(a) requires the Department to comply with Title 1, Subtitle 6. Section 1-603(b) requires the Department to make permit applications available to the public.
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	§7-238(a)(2) §7-208(e)(3), (5), (6) & (7)	Section 7-238(a)(2) limits the term of permits to ten years. Section 7-208(e)(3) gives the Department the authority to set minimum design standards for controlled hazardous substance facilities, §7-208(e)(5) gives the Department the authority to establish procedures for monitoring the disposal of controlled hazardous substances, and §7-208(e)(6) gives the Department the authority to set minimum requirements for the operation, maintenance, monitoring, reporting, and supervision of controlled hazardous substance facilities. Section 7-208(e)(7) authorizes the Department to adopt requirements for receiving and applying for permits.
19. Impose construction ban.	271.14	§ 3005(a)	Non-HSWA	§7-232(a)	Section 7-232(a) requires persons to hold a facility permit prior to owning, operating, establishing, or maintaining a CHS facility.
20. Require permit application information.	271.14	§ 3005(b)	Non-HSWA	§7-208(e)(7) §7-235(1) §7-207(a)(4)	Section 7-208(e)(7) gives the Department the authority to set requirements for receiving and applying for facility permits. In addition, §7-235(1) requires facility permit applicants to submit an application to the Department on the form the Department requires. Finally, §7-207(a)(4) gives the Department authority to require submission of plans, specifications, and other information prior to issuance of any permits required by Subtitle 2.

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
21. Require permit applicants for landfills or surface impoundments to submit exposure information.	271.14	§ 3019(a)	HSWA	§7-208(e)(7) §7-235(1)	Section 7-208(e)(7) gives the Department the authority to set requirements to apply for and receive a permit; §7-235(1) gives the Department the authority to specify the permit application form.
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 that practicable, available method which minimizes present and future threat to health and environment.	271.14	§ 3005(h)	HSWA	§7-208(e)(7) §7-205(b)	Section 7-208(e)(7) gives the Department the authority to set requirements to apply for and receive a permit. Section 7-205(b) prohibits generators from disposing of CHS unless recovery possibilities have been considered and the CHS cannot be reasonably treated further to reduce its volume or the hazard it poses to the environment.
23. <b>Optional:</b> 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	§7-208(d)(3) & (4)	Section 7-208(d)(3) allows the Department to establish regulations that specify different provisions as circumstances require for different pollutant, solid waste, and hazardous substance sources. Section 7-208(d)(4) allows the Department to provide exemptions that are consistent with Federal law and regulations.



## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
24. <b>Optional:</b> A. Issue a one-year research development, and demonstration permit for a facility that proposes an innovative and experimental treatment technology or process not yet regulated.	Not required	§ 3005(g)	HSWA	§7-208(d)(4) §7-208(e)(6) &(7) §7-232(a)	The State's authority to grant exemptions consistent with Federal law, its authority to set requirements for receiving permits, and its authority to set requirements for controlled hazardous substance facilities give the State sufficient authority to issue research, development, and demonstration permits, as well as to include provisions in permits allowing the Department to terminate the experimental activity.
B. Authority to waive or modify general permit application and issuance requirements for R&D permits, except for financial responsibility and public participation requirements..	Not required	§ 3005(g)	HSWA	§7-208(d)(4) §7-208(e)(6) &(7) §7-232(a)	See comment above under 24.A.
C. Authority to terminate experimental activity if necessary to protect health and the environment.	Not required	§ 3005(g)	HSWA	§7-208(d)(4) §7-208(e)(6) &(7) §7-232(a) §7-257(b)(7)	See comment above under 24.A. Section 7-257(b)(7) provides that any permit issued under Subtitle 2 may be terminated with good cause.

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
<b>VIII. PUBLIC PARTICIPATION [See 40 CFR 271.14]</b>					
<i>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:</i>					
1. Draft permit, fact sheet, etc.	271.14(v) & (w)	§ 7004(b)	Non-HSWA	§1-604(a)(1) & (2) §7-239(a)	Section 7-239(a) requires the Department to comply with the Title 1, Subtitle 6 requirements which govern public participation. Section 1-604(a)(1) requires that the Department prepare a tentative determination explaining/describing the proposed decision. Section 1-604(a)(2) requires that the Department include the draft permit in the tentative determination.
2. Notice of all draft permits by radio broadcasts and notices in newspapers, etc.	271.14(x)	§ 7004(b)	Non-HSWA	§1-604(a)(3) §7-239(a) §1-602(a)(1)  §7-208(a), §7-208(e)(7)	Section 7-239(a) requires the Department to comply with the Title 1, Subtitle 6 requirements which govern public participation. Section 1-604(a)(3) requires the Department to issue notice of its tentative determination. Section 1-602(a)(1) provides that when notice is required by Title 1, Subtitle 6, it must be published in a newspaper. For the radio broadcast requirement, §7-208(a) gives general authority to the Department to adopt rules and regulations. §7-208(e)(7) gives authority to the Department to adopt regulations that set requirements for receiving facility permits. COMAR 26.13.07.20-2E(4)(b) is the regulation requiring notice to be broadcast on radio that was adopted under the general statutory authority.
3. 45-day public comment period on all draft	271.14(y)	§ 7004(b)	Non-HSWA	§1-604(a)(3) §7-208(e)(6)	Section 7-239(a) requires the Department to comply with the Title 1, Subtitle 6 requirements which govern public

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
permits.				& (7) §7-239(a)	participation. Section 1-604(a)(3) only requires the Department to allow 30 days for public comment after the publication of the tentative decision. The Department's general authority at §7-208(e)(6) & (7) provides the authority to require a longer (45-day) comment period.
4. Informal hearing with written notice of opposition.	271.14(z)	§ 7004(b)	Non-HSWA	§1-604(a)(4)(i) §7-208(e)(6) & (7) §7-239(a)	Section 7-239(a) requires the Department to comply with the Title 1, Subtitle 6 requirements which govern public participation. Section 1-604(a)(4)(i) requires the Department to schedule a public hearing if written request for public hearing is made within 20 days of the notice of tentative determination. The general authority at §7-208(e)(6) & (7) permits the Department to require public hearings if requested in writing later in the public comment period.
5. Consideration of and response to public comments.	271.14(aa)	§ 7004(b)	Non-HSWA	§7-208(a) §7-207(a)(5) §7-239(a) §1-604(b)	Section 7-208(a) gives the Department general authority to adopt regulations to carry out the provisions of Subtitle 7 of the Environment Article. Among those provisions is the general power of the Department to issue permits, established by §7-207(a)(5). Thus, the Department has authority to adopt such regulations that it deems necessary to support the issuance of permits. Section 7-239(a) requires the Department to comply with the Title 1, Subtitle 6 requirements which govern public participation.
6. Pre-application public notice and meeting.	N/A	§ 7004(b)	Non-HSWA	§7-208(a) §7-207(a)(5)	Section 7-208(a) gives the Department general authority to adopt regulations to carry out the provisions of Subtitle 7 of the Environment Article. Among those provisions is the general power of the Department to issue permits, established by §7-207(a)(5). Thus, the Department has

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
					authority to adopt such regulations that it deems necessary to support the issuance of permits.
7. Public notice of application.	N/A	§ 7004(b)	Non-HSWA	§7-239(a) §1-603(a)	Section 7-239(a) requires the Department to comply with the Title 1, Subtitle 6 requirements which govern public participation.
8. Information repository.	N/A	§ 7004(b)	Non-HSWA	§7-208(a) §7-207(a)(5)	Same explanation as Item VIII.5.

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

**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 <sup>23</sup> .	271.26	§ 3014(a)	Both	§4-405	Section 4-405 (concerning regulation of recycled hazardous used oil) provides general authority to the Secretary. However, Maryland is not seeking authorization for the recycled used oil management standards at this time.
2. Promulgate special generator and transporter standards for recycled hazardous waste used oil.	271.26	§ 3014(c)	HSWA	§7-208(e)(5) §7-209(c) §7-252 §4-405	See the general comment for this review regarding the Department's authority to regulate generators. Section 7-252 provides additional authority for the Department to adopt regulations requiring transporters to meet the labeling and container requirements. Also, §4-405 (concerning regulation of recycled hazardous used oil)

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
					provides general authority to the Secretary.
3. <b>Optional:</b> 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	§7-208(d)(4)	Section 7-208(d)(4) gives the Department the authority to grant exemptions that are consistent with Federal law.

### X. INSPECTIONS [See 40 CFR 271.15]

#### Authority to:

1. Enter, inspect and obtain samples (at all regulated premises and where records are kept).	271.15(c)	§ 3007	Non-HSWA	§7-256(a)	Section 7-256(a) gives the Department the authority to enter, at any reasonable time, any hazardous substance facility to: inspect the facility; to obtain water, waste, soil or air samples; to drill test wells; and to measure the volume and kinds of substances that are received, treated, stored, or disposed of.
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## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
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### XI. ENFORCEMENT REMEDIES (INCLUDING PUBLIC PARTICIPATION IN ENFORCEMENT) [See 40 CFR 271.16]

**Authority to<sup>24</sup>:**

1. Immediately restrain unauthorized activity.	271.16(a)(1)	§ 3006	Non-HSWA	§§7-263(a),(c), & (d)	Section 7-263(a) gives the Department the authority to seek an injunction against any person who violates Subtitle 2 or any rule or permit issued under Subtitle 2. Section 7-263(c) allows the Department to obtain an injunction without showing a lack of adequate remedy at law. Section 7-263(d) allows the Department to sue for an immediate injunction if an emergency exists from imminent danger to the public health, public welfare, or the environment.
2. Sue to enjoin any threatened or continuing program violation without prior revocation of permit.	271.16(a)(2)	§ 3006	Non-HSWA	§§7-263(a),(c)	Section 7-263(a) gives the Department the authority to seek an injunction against any person who violates Subtitle 2 or any rule or permit issued under Subtitle 2. Section 7-263(c) allows the Department to obtain an injunction without showing a lack of adequate remedy at law.
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	§§7-266(a)&(b) §7-266.1	Section 7-266(a) allows the Department to obtain civil penalties of up to \$25,000 for each day of violation. Under §7-266(b), the Department may impose a penalty of up to \$25,000 for each violation (where each day a violation occurs is a separate violation), but not exceeding \$100,000 total. Section 7-266.1 provides authority for additional punitive damages.
4. Obtain criminal penalties for specified	271.16(a)(3)(ii) &	§ 3006	Non-HSWA	§7-265(a)	Section 7-265(a) states that criminal penalties may be obtained against any person who treats, stores or disposes

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
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.	(b)				of CHS without a permit; who transports CHS to any place other than a permitted facility; falsifying any information required by the Department; or directing any such offense. A person convicted of any of these offenses is subject to a fine not to exceed \$100,000 or imprisonment not exceeding 5 years.
5. Allow public intervention.	271.16(d)	§ 7004	Non-HSWA	MOA	This program element was addressed in Section VIII of the Base AG Statement. There is no statutory provision, however, case law supports the proposition that intervention is allowed. The MOA should include language that Department agrees to not oppose intervention in accordance with 40 CFR 271.16(d)(2).
6. <b>Optional:</b> 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	No State Citation	The State does not have a provision in Subtitle 2 relating to liability of common carriers of CHS.

## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
<b>XII. SHARING OF INFORMATION WITH EPA [See 40 CFR 271.17]</b>					
<b>Authority to:</b>					
1. Share all information with EPA.	271.17(a)	§ 3007(b)	Non-HSWA	§7-207(b)(2)	Section 7-207(b)(2) requires the Department to advise, consult, and cooperate with units of the federal government to carry out the provisions of Subtitle 2.
<b>XIII. EXPOSURE ASSESSMENTS</b>					
<b>Authority to:</b>					
1. Make exposure and health assessment information available to the Agency for Toxic Substances and Disease Registry (See CERCLA § 104(i)) (SI) <sup>22</sup> .	Not in 40 CFR Part 271	§ 3019(b)(1)	HSWA	§7-207(b)(2)	Under §7-207(b)(2), the Department shall advise, consult, and cooperate with units of State or federal government.
<b>XIV. RADIOACTIVE MIXED WASTE</b>					
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) <sup>22, 25</sup> .	271.9(a)	§ 1004(27)	Non-HSWA	§7-208(e)(1)	The Department has the authority to specify which wastes are CHS under §7-208(e)(1).



## MARYLAND - RCRA STATUTORY CHECKLIST

Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non-HSWA	State Cite	Remarks
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### XV. AVAILABILITY OF INFORMATION [See 40 CFR 271.17]

**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) <sup>22</sup> .	271.17(c)	§ 3006(f)	HSWA	§§ 10-611 through 10-630, State Government Article, Annotated Code of Maryland	<p>Maryland's Public Information Act, found at §§ 10-611 through 10-630, State Government Article, Annotated Code of Maryland, establishes requirements concerning the availability of public records. A public record is defined as the original or copy of any documentary material in any form created or received by an agency in connection with the transaction of public business.</p> <p>Maryland is not seeking authorization of its availability of information requirements at this time.</p>
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### XVI. ADDITIONAL MISCELLANEOUS AUTHORITIES

**Authority to:**

1. <b>Optional:</b> Authority to grant variances and exemptions that are no less stringent than allowed by Subtitle C of RCRA <sup>26</sup> .	Not required	N/A	N/A	§7-208(d)(3) §7-208(d)(4) §7-208(e)	Section 7-208(d)(3) gives the Department the authority to specify through regulations different provisions, as circumstances require, for different waste sources and geographical areas. In addition, variances or waivers may be established through regulation under the State's general regulatory authority in §7-208(e). Finally, §7-208(d)(4) gives the Department the authority to adopt regulations that grant exemptions from requirements of Subtitle 7 of the Environment Article if the exemptions are consistent with Federal law.
2. Importation ban <sup>27</sup> .	Not	N/A	N/A	No State	Maryland does not have an importation ban.

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Statutory Element	Part 271 Reference	RCRA Cite	HSWA/ Non- HSWA	State Cite	Remarks
	required			citation.	
3. Siting <sup>28</sup> .	Not required	N/A	N/A	§7-208(e)(9)	Section 7-208(e)(9) allows the Department to set health and safety standards that relate specifically to the site of a CHS facility. The criteria that the statute gives the Department authority to use as the basis for facility siting do not create any inconsistencies with EPA's requirements for permitting.
4. <b>Optional:</b> Adopt the Federal regulations by reference.	N/A	N/A	N/A	§7-208(a)	Section 7-208(a) contains broad authority to adopt rules and regulations to carry out the provisions of Subtitle 2, which governs storage of CHS.
5. <b>Optional:</b> Adopt the Federal regulations by reference to include any EPA revisions that may occur in the future (prospective incorporation by reference) <sup>29</sup> .	N/A	N/A	N/A	State Government Article §7-207(a)(3)(iii) 2.	Maryland has not prospectively adopted any federal regulations that are part of the federal regulatory program for hazardous waste. However, State Government Article §7-207(a)(3)(iii)2 provides that a unit incorporating federal law (including federal regulations) may incorporate future versions of that law by using the phrase "as amended".
6. <b>Optional:</b> Limitation on State authority to adopt more stringent or broader in scope provisions.	N/A	N/A	N/A	No State citation	There are no provisions in the Maryland statutes that place a limitation on the State's authority to adopt more stringent or broader in scope requirements.

See next page for explanatory notes.

## EXPLANATORY NOTES

1. 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.
2. The general authority for identifying hazardous waste characteristics is not 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).
3. The general authority for listing hazardous waste is not 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).
4. 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.
5. 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.
6. 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.
7. 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.
8. 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).

## EXPLANATORY NOTES (continued)

9. 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 NonHSWA authorities.
10. 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.
11. 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 NonHSWA authorities.
12. The general authority for adopting technical standards for specific units addressed at 40 CFR 271.12(a) covers both nonHSWA and HSWA provisions. For purposes of this checklist, the general nonHSWA 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".]
13. 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 nonhazardous waste at Subtitle C facilities.
14. 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.
15. 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.
16. 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 RCRA requirements are met.
17. 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.
18. At § 3004(b), HSWA introduced a specific prohibition on the placement of any noncontainerized or bulk liquid hazardous wastes in salt

## EXPLANATORY NOTES (continued)

dome formations, salt bed formations, underground mines or caves.

19. 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.
20. 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.
21. A State's analog to interim status must terminate automatically in these cases (whether the state 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 analog to Federal interim status.)
22. 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.

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

## EXPLANATORY NOTES (continued)

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24. 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 States authority should be adequate to meet the requirements listed in 40 CFR 271.16 which were established pursuant to RCRA §§ 3006 and 7004.
25. 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.
26. 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 wish 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.
27. 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.
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 permitting.
29. For prospective incorporation of the Federal regulations by reference, the Attorney General or Independent Legal Counsel must have State authority that enables it both to **promulgate and enforce** regulations in this manner.