

Revision Checklist 179 Summary - Revised

Rule Title:	Land Disposal Restrictions -- Phase IV: Treatment Standards for Wood Preserving Wastes, Treatment Standards for Metal Wastes, Zinc Micronutrient Fertilizers, Carbamate Treatment Standards, and K088 Treatment Standards; Final Rule
Checklist Title:	Land Disposal Restrictions Phase IV -- Technical Corrections and Clarifications to Treatment Standards
Reference:	64 <u>FR</u> 25408-25417
Promulgation Date:	May 11, 1999
Effective Date:	May 11, 1999
Cluster:	RCRA Cluster IX
Provision Type:	HSWA/non-HSWA
Linkage:	Revision Checklists 157, 167A-E, 170, 171, and 173
Optional:	No

Summary: This rule clarifies and/or makes technical corrections to the following five final rules published by EPA:

- (1) May 12, 1997, regulations promulgating Land Disposal Restrictions (LDR) treatment standards for wood preserving wastes, as well as reducing the paperwork burden for complying with LDRs (Revision Checklist 157);
- (2) May 26, 1998, regulations promulgating LDR treatment standards for metal-bearing wastes, as well as amending the LDR treatment standards for soil contaminated with hazardous waste, and amending the definition of which secondary materials from mineral processing are considered to be wastes subject to the LDRs (Revision Checklist 167A-E);
- (3) August 31, 1998, an administrative stay of the metal-bearing waste treatment standards as they apply to zinc micronutrient fertilizers (Revision Checklist 170);
- (4) September 4, 1998, an emergency revision of the LDR treatment standards for hazardous wastes from the production of carbamate wastes (Revision Checklist 171); and,
- (5) September 24, 1998, revised treatment standards for spent aluminum potliners from primary aluminum production (Revision Checklist 173).

State Authorization: This rule is placed in RCRA Cluster IX. The State modification deadline is July 1, 2000 (or July 1, 2001 if a State statutory change is necessary).

The revisions to 262.34(d)(4), 268.2(h), 268.2(k), 268.7(a)(4)/Table, 268.7(b)(3)(ii)/Table, 268.7(b)(4)(iv), 268.9(d)(2) intro, 268.9(d)(2)(i), 268.40(i), 268.40(j), 268.40/Table, 268.48(a)/Table, 268.49(c)(3) intro, 268.49(c)(3)(A)&(B) are made pursuant to HSWA. These regulations go into effect on the Federal effective date in all States. The revisions to 261.2(c)(3), 261.2(c)(4)/Table, 261.2(e)(1)(iii), first paragraph 261.4(a)(16), 261.4(a)(17)intro & (v), and 261.4(b)(7)(iii)&(iii)(A) are made related to non-HSWA authority. EPA will implement these requirements only in States that do not have interim or final authorization. In authorized States, the non-

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HSWA requirements will not be applicable until the States revise their programs to adopt equivalent requirements under State law, unless the wastes are designated as hazardous due to the Toxicity Characteristic, which was promulgated relative to HSWA. In this latter case, the requirements relative to such wastes would become effective in all States on the rule's effective date. Both interim and final authorization are available for the HSWA provisions. Interim authorization expires January 1, 2003. Only final authorization is available for the non-HSWA provisions.

Note that the provisions at 261.2 and 261.4(a) that are amended by this checklist were previously amended by Revision Checklist 167 D (May 26, 1998; 63 FR 28556). An April 21, 2000, court decision set aside the parenthetical “(except as provided under 40 CFR 261.4(a)(16))” - to the second sentence, through which EPA attempted to expand its regulation of mineral processing secondary materials. (Association of Battery Recyclers, Inc. v. EPA, 208 F.3d 1047 (D.C. Cir. 2000)). As such, Revision Checklist 167 D and this checklist have been revised to reflect the court decision by only referring to the parenthetical added to the first sentence. States that have elected to ignore the April 21, 2000, court decision and include the second parenthetical in 261.2(c)(3), will have a broader in scope program because the effect is to include materials that are not considered solid waste by EPA.

The State Revision Application must include applicable statutes and regulations, Revision Checklist 179, and other application materials, i.e. a supplemental AG statement, a program description, and/or an MOA, as determined by the Regional office. Note that under 271.21(b), the Regional office is allowed flexibility to determine what specific documents must be included in an application. Also, under 40 CFR 271.21(d), the Regional office may require the submission of any additional application materials it deems necessary.

Attorney General's Statement Entries: The entry at Subsection I (OO) in the Model Revision Attorney General's Statement should be replaced with the following revised entry:

OO. [OPTIONAL: This is a reduced requirement.] State statutes and regulations provide for secondary materials from mineral processing to be co-processed with normal raw materials in beneficiation operations which generate Bevill exempt wastes, without changing the exempt status of the resulting Bevill waste, provided certain conditions are met as indicated in Revision Checklists 167 E and 179.

Federal Authority: RCRA §3001; 40 CFR 261.4(b)(7) as amended May 26, 1998 (63 FR 28556) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

The entry at Subsection II (D) in the Model Revision Attorney General's Statement should be replaced with the following revised entry:

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D. [OPTIONAL: This is a reduced requirement.] State statutes and regulations provide for a conditional exclusion from the definition of solid wastes for mineral processing spent materials as indicated in Revision Checklists 167 D and 179.

Federal Authority: RCRA §3001; 40 CFR 261.2(c)(3), 261.2(c)(4) Table 1, 261.2(e)(1)(iii) and 261.4(a)(16) as amended May 26, 1998 (63 FR 28556) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and AdoptionRemarks of the Attorney General

The entry at Subsection XXI (DD) in the Model Revision Attorney General's Statement should be replaced with the following revised entry:

DD. State statutes and regulations include prohibitions and treatment standards for metal constituents in all hazardous wastes including the toxic characteristic wastes as indicated in Revision Checklists 167 A and 179.

Federal Authority: RCRA §§3004(g)(4) and (m); 40 CFR 268.2(i), 268.3(d), 268.34, 268.40(e)&(h), 268.40 table, and 268.48 as amended May 26, 1998 (63 FR 28556) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and AdoptionRemarks of the Attorney General

The entry at Subsection XXI (FF) in the Model Revision Attorney General's Statement should be replaced with the following revised entry:

FF. [OPTIONAL: This is a reduced requirement.] State statutes and regulations include treatment standards for contaminated soils as indicated in Revision Checklists 167 B and 179.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 262.34(d)(4), 268.2(h), 268.2(k), 268.7(a)(1)-(6), 268.7(b)(1)-(3), 268.7(b)(4) intro & (b)(iv), 268.9(d)(2) intro, 268.9(d)(2)(i), 268.7(e), 268.44(h)(3)-(5), 268.49 as amended May 26, 1998 (63 FR 28556) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and AdoptionRemarks of the Attorney General

Revision Checklist 179 Summary (cont'd)

The entry at Subsection XXI (GG) in the Model Revision Attorney General's Statement should be replaced with the following revised entry:

GG. State statutes and regulations include corrections and clarifications to the land disposal restrictions as indicated in Revision Checklists 167 C and 179.

Federal Authority: RCRA §§3004(d)-(k) and (m); 40 CFR 268.4(a)(2)(ii)&(iii), 268.7(a)(7), 268.7(b)(3)(ii)/Table, 268.7(b)(4)(iv)&(v), 268.7(b)(5)&(6), 268.40/Table, 268.40(e), 268.42(a), 268.45(a) intro, 268.45(d)(3)&(4), 268.48, 268 Appendices VII & VIII as amended May 26, 1998 (63 FR 28556), June 8, 1998 (63 FR 31266) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

The entry at Subsection XXI (II) in the Model Revision Attorney General's Statement should be replaced with the following revised entry:

II. [OPTIONAL: This is a reduced requirement.] State statutes and regulations stay the May 26, 1998 Phase IV Land Disposal Restriction treatment standards for metal-bearing hazardous wastes which exhibit the characteristic of toxicity, until EPA develops more consistent and comprehensive regulations for hazardous waste-derived fertilizers. In the interim, affected fertilizers are subject to the treatment standards that previously existed for toxic metals as specified on Revision Checklists 170 and 179.

Federal Authority: RCRA §§3001 and 3004(d), 40 CFR 268.40(i), as amended August 31, 1998 (63 FR 46332) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

The entry at Subsection XXI (JJ) in the Model Revision Attorney General's Statement should be replaced with the following revised entry:

JJ. State statutes and regulations provide revised treatment standards for seven carbamate wastes and extend indefinitely the temporary treatment standards; remove the treatment standard for one carbamate waste; delete certain carbamate wastes as underlying hazardous constituents; and extend for six months the temporary alternative treatment standards for the other 32 carbamate wastes as indicated in Revision Checklists 171 and 179.

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Federal Authority: RCRA § 3004(d)-(k) and (m); 40 CFR 268.40(g)-(j), 268.40/Table, and 268.48(a)/Table as amended September 4, 1998 (63 FR 47410) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and AdoptionRemarks of the Attorney General

The entry at Subsection XXI (LL) in the Model Revision Attorney General's Statement should be replaced with the following revised entry:

LL. State statutes and regulations provide for interim replacement standards for spent potliners from primary aluminum reduction (EPA hazardous waste K088) as indicated in Revision Checklists 173 and 179.

Federal Authority: RCRA §3004(d)-(k), and (m); 40 CFR 268.40, as amended September 24, 1998 (63 FR 51254) and May 11, 1999 (64 FR 25408).

Citation of Laws and Regulations; Date of Enactment and AdoptionRemarks of the Attorney General

Incorporation by Reference Guidance: As explained in the state authorization section of this summary and in the summary for Revision Checklists 167 A-E, States choosing to include the parenthetical to the second sentence as introduced by Revision Checklist 167D are broader in scope; this should be noted in the Attorney General's Statement submitted with the authorization package containing this Revision Checklist. States electing not to be broader in scope should recognize the April 21, 2000, opinion of the D.C. Circuit Court of Appeals by excluding from their incorporation by reference the parenthetical to the second sentence in 40 CFR 261.2(c)(3).