

REVISION ATTORNEY GENERAL'S STATEMENT
OF THE STATE OF MAINE FOR FINAL AUTHORIZATION
FOR CHANGES TO THE FEDERAL RCRA PROGRAM
FROM JULY 1984 THROUGH NOVEMBER 1989

I hereby certify, pursuant to my authority as Attorney General of the State of Maine and in accordance with Section 3006(b) of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 USC 6901 *et seq.*), and 40 CFR 271 that in my opinion the laws of the State of Maine provide adequate authority to carry out the revised program set forth in the revised "Program Description" submitted by the Maine Department of Environmental Protection. The specific authorities provided are contained in statutes or regulations lawfully adopted at the time this Statement is signed and which are in effect now, as specified below. These authorities and this certification supplement the previously certified authorities described in my predecessor's certification of December 24, 1986 as amended on July 1, 1987.

PREFACE

1. The Revision Attorney General's Statement supplements the "Attorney General's Statement for the State of Maine" dated December 4, 1986. This statement is for the Federal statutory and regulatory changes of Non-HSWA Clusters I through IV and a portion of V and VI and a portion of HSWA Clusters I and II. For Non-HSWA Cluster V: Treatability Studies Sample Exemption (Revision Checklist 49); Standards for Hazardous Waste Storage and Treatment Tank Systems (Revision Checklist 52); Identification and Listing of Hazardous Waste (Revision Checklist 53); Statistical Methods (Revision Checklist 55); Standards for Generators (Revision Checklist 58); Miscellaneous Units (Revision Checklist 59); Incinerators (Revision Checklist 60); and Post Closure Permitting (Revision Checklist 61). For Non-HSWA Cluster VI: Mining Waste Exclusion I (Revision Checklist 65); Testing and Monitoring Activities (Revision Checklist 67); and Changes to 40 CFR Part 124 (Revision Checklist 70). For HSWA Cluster I: Dioxin Waste (Revision Checklist 14); Paint Filter Test (Revision Checklist 16); Waste Minimization (Revision Checklist 17D); Salt Domes, Salt Beds, Underground Mines and Caves (Revision Checklist 17E); Liquids in Landfills (Revision Checklist 17F); Dust Suppression (Revision Checklist 17G); Corrections to 264.221(c) and 264.301(c) (Revision Checklist 17H); Groundwater Monitoring (Revision Checklist 17I); Cement Kilns (Revision Checklist 17J); Corrective Action (Revision Checklist 17L); Pre Construction Ban (Revision Checklist 17M); Permit Life (Revision Checklist 17N); Omnibus Provision (Revision Checklist 17O); Interim Status (Revision Checklist 17P); Exposure Information (Revision Checklist 17S); Listing of TDI, DNT, and TDA Wastes (Revision Checklist 18); Listing of Spent Solvents

(Revision Checklist 20); Listing of EDB Wastes (Revision Checklist 21); Listing of Four Spent Solvents (Revision Checklist 22); Generators of 100 to 1000 kg Hazardous Waste (Revision Checklist 23); Technical Correction (Revision Checklist 25); Biennial Report Correction (Revision Checklist 30); Exports (Revision Checklist 31); Waste Minimization Certifications (Revision Checklist 32); Listing of EBDC (Revision Checklist 33); and Land Disposal Restrictions (Revision Checklist 34). For HSWA Cluster II: California List Waste Restrictions (Revision Checklist 39); Exception Reporting for Small Quantity Generators (Revision Checklist 42); HSWA Codification Rule 2 (Revision Checklist 44); Identification and Listing of Hazardous Waste (Revision Checklist 47); Farmer Exemptions (Revision Checklist 48); Land Disposal Restrictions (Revision Checklist 50); Land Disposal Restrictions (Revision Checklist 62); Land Disposal Restrictions (Revision Checklist 63); Land Disposal Restrictions (Revision Checklist 66); and Methyl Bromide Production Wastes (Revision Checklist 68).

2. All references to Maine's Hazardous Waste Management Rules ("Rules") as cited herein are to those Rules as most recently amended by Maine's Board of Environmental Protection ("BEP") effective March 16, 1994. The BEP is authorized to promulgate hazardous waste rules by the Maine Hazardous Waste, Septage and Solid Waste Management Act, 38 M.R.S.A. § 1301 et seq. (1989 & Supp. 1994). See especially section 1319-O.

I. IDENTIFICATION AND LISTING

A. State statutes and regulations contain lists of hazardous waste which encompass all wastes controlled under the following Federal regulations as indicated in the designated Revision Checklists:

(1) Chlorinated aliphatic hydrocarbons, 40 CFR 261.31, Part 261 Appendices VII and VIII as amended February 10, 1984 [49 FR 5308], Revision Checklist 4.

This was part of the December 24, 1986 certification.

(2) Warfarin and zinc phosphide listing, 40 CFR 261.33(e) and (f), as amended May 10, 1984 [49 FR 19923], Revision Checklist 7.

This was part of the December 24, 1986 certification.

(3) TDI, DNT and TDA wastes, 40 CFR 261.32, 261.33(f), and Part 261 Appendices III, VII and VIII as amended October 23, 1985 [50 FR 42936], Revision Checklist 18.

The State analog for 40 CFR 261.32 is 06-096 CMR 850.3C3. See especially page 26 of the Rules where each specific process is identified in the column at the left side of the page by "Industry and EPA hazardous number."

The State analog for 40 CFR 261.33(f) is 06-096 CMR 850.3C4. See especially pages 39 and 50.

The State analog for 40 CFR 261 Appendix III is 06-096 CMR Appendix III beginning at page 53 of the Rules.

The State analog for 40 CFR Appendix VII is 06-096 CMR 850 Appendix VII beginning at page 65 of the Rules.

The State analog for 40 CFR 261 Appendix VIII is 06-096 CMR 850 Appendix VIII beginning at page 73 of the Rules.

(4) Spent solvents, 40 CFR 261.31, as amended December 31, 1985 [50 FR 53319] and January 21, 1986 [51 FR 2702], Revision Checklist 20.

The State analog for 40 CFR 261.31 is 06-096 CMR 850.3C2 beginning at page 18 of the Rules.

(5) EDB wastes, 40 CFR 261.32 and Part 261 Appendices II, III and VIII, as amended February 13, 1986 [51 FR 5330], Revision Checklist 21.

The State analog for 40 CFR 261.32 is 06-096 CMR 850.3C3 beginning at page 24 of the Rules.

The State analog for 40 CFR Appendices III and VIII are 06-096 CMR 850 Appendices III and VIII respectively. Appendix III begins at page 53 and Appendix VIII begins at page 73 of the Rules.

(6) Four spent solvents, 40 CFR 261.31, 261.33(f), and Part 261 Appendices III, VII and VIII as amended February 25, 1986 [51 FR 6541], Revision Checklist 22.

The State analog for 40 CFR 261.31 is 06-096 CMR 850.3C2. The State analog for 40 CFR 261.33(f) is 06-096 CMR 850.3C4 of the Rules. The State analogs for 40 CFR Part 261, Appendices III, VII and VIII are 06-096 CMR 850 Appendices III, VII and VIII of the Rules, respectively.

(7) Listing of spent pickle liquor from steel finishing operations, 40 CFR 261.32, as amended May 28, 1986 [51 FR 19320] and September 22, 1986 [51 FR 33612], Revision Checklist 26.

The State analog for 40 CFR 261.32 is 06-096 CMR 850.3C3.

(8) Listing of commercial chemical products and Appendix VIII constituents, 40 CFR 261.33 and Appendix VIII, as amended August 6, 1986 [51 FR 28296], Revision Checklist 29; as amended July 10, 1987 [52 FR 26012], Revision Checklist 41; and as amended April 22, 1988 [53 FR 13382], Revision Checklist 46.

The State analog for 40 CFR 261.33(c) is 06-096 CMR 850.3C4c of the Rules. The State analogs for 40 CFR 261.33(e), 261.33(f) and Appendix VIII are 06-096 CMR 850.3C4; 850.3C4f and 850 Appendix VIII of the Rules, respectively.

(9) EBDC wastes, 40 CFR 261.32 and Part 261 Appendices III and VII, as amended on October 24, 1986 [51 FR 37725], Revision Checklist 33.

The State analogs for 40 CFR 261.32 and Part 261, Appendices III and VII are, respectively, 06-096 CMR 850.3C3 and 850 Appendices III and VII of the Rules.

(10) Listing of spent potliners from aluminum reduction (K088), 40 CFR 261.32 and Part 261 Appendix VII, as amended September 13, 1988 [53 FR 35412], Revision Checklist 53.

(11) Generic delisting of iron dextran (CAS No. 9004-66-4), 40 CFR 261.33(f) and Part 261 Appendix VIII, as amended October 31, 1988 [53 FR 43878], Revision Checklist 56.

No authorization is sought since the State has not delisted this chemical.

(12) Generic delisting of strontium sulfide (CAS No. 1314-96-1), 40 CFR 261.33(e) and Part 261 Appendix VIII, as amended October 31, 1988 [53 FR 43881], Revision Checklist 57.

No authorization is sought since the State has not delisted this chemical.

(13) Listing of two wastes (K131 and K132) generated during the production of methyl bromide, 40 CFR 261.32 and 261 Appendices III and VII, as amended October 6, 1989 [54 FR 41402], Revision Checklist 68.

The State analog is 06-096 CMR 850.3CE and Appendices III and VII.

(14) Listing of one generic category (F025) of waste generated during the manufacture of chlorinated aliphatic hydrocarbons by free radical catalyzed processes and amending F024, 40 CFR 261.31 and 261 Appendix VII; adding one toxicant to 261 Appendix VIII, as amended December 11, 1989 [54 FR 50968], Revision Checklist 69.

No authorization is sought since Checklist #69 items were adopted in December 1989, a month after DEP's most recent rulemaking.

(15) Amendment to the F019 hazardous waste listing to exclude wastewater treatment sludges from zirconium phosphating in aluminum can washing, when such phosphating is an exclusive conversion coating process, 40 CFR 261.31, as amended February 14, 1990 [55 FR 5340], Revision Checklist 72.

No authorization is sought since Checklist #72 items were adopted subsequent to DEP's most recent rulemaking.

(16) Listing of four wastes (K107-K110) generated during the production of 1, 1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides, 40 CFR 261.31 and Part 261 Appendices III and VII, as amended May 2, 1990 [55 FR 18496], Revision Checklist 75.

No authorization is sought since Checklist #75 items were adopted subsequent to DEP's most recent rulemaking.

(17) Listing of multisource waste (F039), 40 CFR 261.31 and Part 261 Appendix VII, as amended June 1, 1990 [55 FR 22520], Revision Checklist 78.

No authorization is sought since Checklist #78 items were adopted subsequent to DEP's most recent rulemaking.

Citation of Laws and Regulations; Date of Enactment and Adoption

See above.

Remarks of the Attorney General

In most cases the Rules cited above are identical to the federal rules for which they are state analogs. In all cases the Rules are equivalent to federal RCRA rules.

B. Small quantity generators in Maine are those which generate less than 100 kilograms/month. State statutes and regulations define hazardous waste so as to control the generation, transportation, treatment, storage and disposal of hazardous waste produced by generators of between 100 and 1000 kilograms/month in the same manner as large quantity generators as indicated in Revision Checklist 23 (which supersedes prior amendments by Revision Checklist 17 A) and Revision Checklist 47 (providing technical corrections to Checklist 23). State statutes and regulations also require all generators of over 100 kilograms/month to certify good faith efforts to minimize waste generation and to select the best available and affordable treatment, storage or disposal alternatives, 40 CFR Part 262 as amended October 1, 1986 [51 FR 35190], Revision Checklist 32 (see Item IX below).

Federal Authority: RCRA §3001(d); 40 CFR Parts 260-263 and 270 as amended March 24, 1986 (51 FR 10146), October 1, 1986 (51 FR 35190), and July 19, 1988 (53 FR 27162).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 850.3A5(a)-(e); 850.3C4(f); 851.13; 856.6A; 855.5B2; 857.5B of the Rules.

Remarks of the Attorney General

The Rules control the generation, transportation, treatment, storage and require waste reduction to a greater extent than applicable federal RCRA rules since all generators above 100 kilograms/month are large quantity generators.

C. State regulations provide authority to delist hazardous waste as indicated in Revision Checklist 17 B, however, the State is not seeking delisting authority from EPA.

(1) State statutes and regulations require that before deciding to delist a waste, the State must consider whether any listing factor (including additional constituents) other than those for which the waste was listed would cause the waste to be hazardous.

Federal Authority: RCRA §3001(f)(1); 40 CFR 260.22 as amended July 15, 1985 (50 FR 28702) and June 27, 1989 (54 FR 27114).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

(2) State statutes and regulations require that there be no new temporary delistings without prior notice and comment. All temporary delistings received before November 18, 1984 without the opportunity for public comment and full consideration of such comment, shall lapse if not made final by November 8, 1986.

Federal Authority: RCRA §3001(f)(2); 40 CFR 260.20(d) as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 850.3A3.

Remarks of the Attorney General

Pursuant to 06-096 CMR 850.3A3 no listed hazardous waste may be delisted by the Maine BEP unless that waste has already been delisted by EPA. Therefore, Maine's hazardous waste rules are as stringent as the applicable Federal authorities since the Federal authorities must be applied by EPA before Maine even considers delisting.

D. State statutes and regulations define hazardous waste so as to exclude pickle liquor sludge generated by lime stabilization, but only to the extent that such waste is excluded by 40 CFR 261.3(c)(2), as indicated in Revision Checklist 8.

Federal Authority: RCRA § 3001; 40 CFR 261.3(c) as amended June 5, 1984 (49 FR 23284).

Remarks of the Attorney General

No authorization is required since the State has not delisted this chemical

E. State statutes and regulations define hazardous waste so as to not exclude household waste other than those household wastes excluded in 40 CFR 261.4(b)(1), as indicated in Revision Checklists 9 and 17 C.

Federal Authority: RCRA §3001; 40 CFR 261.4(b)(1) as amended November 13, 1984 (49 FR 44980) and July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 850.3A(4)(a)(b)(ii).

Remarks of the Attorney General

Under State law, household wastes which have been processed at resource recovery facilities are not excluded.

F. State statutes and regulations incorporate the most recent edition and updates to "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (SW-846) as indicated in Revision Checklists 11 and 35.

Federal Authority: RCRA §§2002, 3001; 40 CFR 260.11, 260.21 and 270.6(a) as amended December 4, 1984 (49 FR 47390) and March 16, 1987 (52 FR 8072).

Citation of laws and Regulations; Date of Enactment and Adoption

06-096 CMR 850 Appendices III and XI of the Rules.

Remarks of the Attorney General

SW-846, as amended, is cited and incorporated by the Rules.

G. State statutes and regulations define solid wastes to include the hazardous components of radioactive mixed wastes, July 3, 1986 [51 FR 24504]. See State Program Advisory (SPA) #2.

Federal Authority: RCRA §§1004(27) and 3001(b).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 850.3 (a)(ii)(b) & 850.4(a)(v).

Remarks of the Attorney General

On July 3, 1986, EPA issued a notice informing states that wastes which are both radioactive and hazardous (often called "mixed wastes") are subject to RCRA regulation. In addition, EPA required that state programs must regulate such wastes to obtain or maintain state authorization.

EPA did not promulgate a rule embodying the announcement. Instead, the notice was simply an interpretation of the federal statutory definition of solid waste. Therefore, since Maine has a definition of solid waste similar to the federal definition, it has similar jurisdiction over mixed wastes.

The federal definition of solid waste exempts "source, special material, or byproduct material as defined by the Atomic Energy Act of 1954." There is no comparable exemption in the Maine statutory definition of solid or hazardous waste. See 38 M.R.S.A. § 1303(5), (10). I am also not aware of any relevant facility-specific or waste-specific exemptions from hazardous waste regulation under Maine law.

The Rules contain an exclusion from hazardous waste regulation identical to the federal statutory exclusion. See Chapter 850(4)(a)(v). Therefore, there is no statutory or regulatory bar from regulating radioactive mixed wastes as hazardous in Maine. The only Maine state agency which has jurisdiction over mixed waste is the DEP which regulates mixed waste as a hazardous waste.

H. State statutes and regulations exempt (with certain limitations) waste samples used in small scale treatability studies from Subtitle C regulation as indicated In Revision Checklist 49.

Federal Authority: RCRA §3001; 40 CFR 260.10 and 261.4(e)&(f) as amended July 19, 1988 (53 FR 27290).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 850.3A4(b) and 850.3A4(c).

Remarks of the Attorney General

The Rules incorporate the cited section of the federal RCRA rules except that the State rules do not permit requests for greater quantities to be excluded. Therefore, the State rules are at least as stringent as the federal rules.

I. State statutes and regulations provide for listing of six wastes (K064, K065, K066, K088, K090, and K091) as indicated in Revision Checklist 53.

Federal Authority: RCRA §3001(b); 40 CFR 261.4(b) (7), as amended September 13, 1985 (53 FR 35412).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 850.3C3 and Appendix VII.

Remarks of the Attorney General

The Rules provide for the listing of the six wastes cited above and, therefore, are as stringent as the cited federal rules.

J. State statutes and regulations provide final criteria to define Bevill-excluded mineral processing wastes, finalize the Bevill status of nine mineral processing waste streams, and list those mineral processing wastes subject to conditional retention as indicated in Revision Checklist 65.

Federal Authority: RCRA §3001(b); 40 CFR 261.3, 261.4 as amended September 1, 1989 (54 FR 36592).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 850.3A(b)(ii), (iii); 3A(4)(a)(ix)NOTE; 3A(3)(b)(ii); 200.1(H), (UU).

Remarks of the Attorney General

Maine's rules as cited above specify that wastes from the extraction and beneficiation of metallic ores and minerals are regulated under Chapter 200 of DEP's mining rules rather than under these Rules. It is also noted that under the above cited rules that mixtures of non-hazardous wastes with hazardous wastes are hazardous wastes and that wastes from solvent extraction and electroplating are not exempt from Maine's hazardous waste rules. Under Chapter 200§ 200.1(UU) those wastes which are excluded from regulation under federal law are also excluded under Maine law. Therefore Maine rules are equivalent to the federal rules.

K. State statutes and regulations incorporate 47 new testing methods as approved methods for use in meeting the regulatory requirements under Subtitle C of RCRA as indicated in Revision Checklist 67.

Federal Authority: RCRA §§3001, 3004, 3005, and 3006; 40 CFR 260.11, 261 Appendix III as amended September 29, 1989 (54 FR 40260) and on March 9, 1990 (55 FR 8948).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 850 Appendix III, Table 2.

Remarks of the Attorney General

The State has adopted all the 47 new testing methods approved by EPA.

II. DEFINITION OF SOLID WASTE

A. State statutes and regulations define hazardous waste and impose management standards so as to control all the hazardous waste controlled under 40 CFR Parts 261, 264, 265 and 266 as indicated in Revision Checklists 13 and 37.

Federal Authority: RCRA §§3001, 3004; 40 CFR Parts 260, 261, 264, 265, and 266 as amended January 4, 1985 (50 FR 614), April 11, 1985 (50 FR 14216), August 20, 1985 (50 FR 33541) and June 5, 1987 (52 FR 21306).

Citation of Laws and Regulations; Date of Enactment and Adoption

See below.

Remarks of the Attorney General

Maine's definition of hazardous waste incinerator as set forth at 06-096 CMR 854.3M covers all enclosed devices using controlled flame combustion to thermally break down hazardous waste. As such this definition covers all three federal definitions of incinerator, boiler and industrial furnace as set forth at Forty CFR § 260.10. Forty CFR Part 264 only contains special rules for operation of hazardous waste incinerators not for boilers or industrial furnaces and Maine's rules for the operation of incinerators are as stringent as the federal rules for incinerators set forth as Forty CFR Part 264 Subpart O. Hence Maine's rules are equivalent to federal rules.

Maine's rules at 06-096 CMR 850.3A2 define hazardous wastes as including all wastes whether they are recycled, reused, disposed of or treated. Maine does not grant variances from the classification of solid waste for certain recycled wastes as provided in Forty CFR 260.30(a)-(c) or Forty CFR 260.31(a)-(c). Therefore Maine's rules are more stringent than federal rules in this regard.

Maine's rules do not provide for a variance for wastes being accumulated for recycling as set forth in 40 CFR 260.40, 260.41. Maine's rules are more stringent than federal rules in this regard.

Maine's definition of solid waste as set forth at 06-096 CMR 850.3A2 brings all hazardous wastes into the regulatory system whether they are recycled, reused, disposed of or treated. Any material which is hazardous by characteristic or by listing is regulated in Maine as a hazardous waste if at any time it is "useless, unwanted or discarded" by the then current owner/operator. Maine's definition of waste explicitly includes, without being limited to, materials which are used in a manner constituting disposal, burned for energy recovery, reclaimed or accumulated speculatively. In 1989 EPA staff requested that DEP add a note to this

definition to emphasize that Maine intended to regulate every waste regulated under 40 CFR § 261.2 (c) (1)-(4) and the following note was added [Note: It is intended that the terms "materials which are used in a manner constituting disposal," "burned for energy recovery," "reclaimed," or "accumulated speculatively" should include all materials covered by 40 C.F.R. § 261.2(C)(1)-(4) and any amendments thereto.] This note was not meant to limit the scope of Maine's regulatory authority in any way. Therefore all the materials, including spent material, sludge and by-product listed on Table I to § 261.2(C)(1)-(4), are covered by Maine's program whether or not these specific terms are defined. This includes those materials which are not regulated by EPA as described on Table I.

Because Maine does not exclude from regulation "use constituting disposal" it does not need to define this term, as EPA has, at 40 CFR 261.2(a)-(d). Likewise, since Maine does not exclude from regulation recycled materials it does not need to describe, as EPA has, in optional rule § 261.2(e), the conditions under which such materials will be considered to be recycled. Maine's rules do contain an exclusion from the definition of hazardous waste which is similar in scope to § 261.2(e)(iii) but the Maine rule would not recognize the further exceptions granted by § 261.2(e)(i) & (ii) which appear to allow the transfer of waste chemicals from the point of origin. To the extent that Maine's rules define solid and therefore hazardous wastes in a more encompassing manner than do the federal rules, Maine's rules are more stringent.

Because fewer exceptions to the definition of solid waste are available under the Maine rules than under the federal rules, the procedures set forth at 40 CFR § 261.2(f), are not widely used in Maine. There are two provisions of Maine rules where documentation of appropriate handling of wastes may be necessary. To qualify for the exclusion for unused material the regulatee must provide the information required by 06-096 CMR850.3A4viii. The documentation necessary for the scrap metal exclusion set forth at 06-096 CMR850.3A4vi is contained in the Basis Statement to the Maine Hazardous Waste Rules which, under Maine law, is considered to be part of the rules. 5 M.R.S.A. § 8052(5) In both cases the Maine rules, like the federal rules, would require a letter or contract from a purchaser who is both willing and able to appropriately recycle the material. The Maine rules are equivalent to federal rules in this regard.

Maine has not adopted the amended part of 40 CFR 261.3(C)(2) which exempts certain materials that are reclaimed from solid wastes and used beneficially.

Because Maine does not exclude recyclable materials from regulation it does not have different definitions for those recyclable materials which are covered by its rules and those which are not, such as are set forth in the federal rules at 40 CFR 261.6(a)(1) and (2); wastes being recycled are still required to meet all the applicable provisions of the Maine rules. The Maine rules are more stringent than the federal rules in this regard.

In regard to 261.6(b), the manifesting and transportation of wastes for recycling is the same under Maine law as for hazardous wastes going for disposal except for those wastes excluded in 850.3A(4).

Since 261.6(c) provides less stringent requirements for recyclable materials than for wastes going for disposal and the Maine rule recognize no such distinction, the Maine rules have no exact analog to and are more stringent than the federal rules. Likewise, the Maine rules have no analog to 265.1(c)(6) which exempts owners and operators who manage certain types of recyclable materials. However, the Maine rules do permit beneficial use or reuse on the site of generation under an abbreviated license issued pursuant to 06-096 CMR 856.11A4 so this rule represents a partial analog to 40 CMR 261.6(c)(2).

The reasons set forth above also explain why Maine's rules have no exact analogs for those federal rules which distinguish between types of recyclable materials (266.20(a) &(b)) and those federal rules which apply certain standards those who generate or store only certain types of recyclable materials (266.21 & 266.22 & 266.23). Maine's rules recognize no such distinctions and regulate all hazardous wastes as hazardous wastes, i.e., pursuant to Chapters 851, 852, 853, 854, 855, 856 & 857 of Maine's rules. In this regard Maine's rules are more stringent than federal rules.

Maine's rules are also more stringent than the federal rules when it comes to hazardous waste burned for energy recovery. The federal rules carve out an exception from the full requirements imposed upon generators, transporters, marketers and burners of hazardous waste and then reimpose certain reduced requirements on a subcategory of this group (40 CFR 266.30(a),(b),32,33(a),33(b),34 & 35). Maine's rules recognizes no exemption for hazardous wastes burned for energy recovery and subject such wastes to regulation as hazardous wastes as specified above.

Maine also regulates inherently waste like material as wastes.

III. MANAGEMENT OF DIOXIN WASTES

A. State statutes and regulations contain the following requirements regarding dioxin wastes as indicated in Revision Checklist 14:

(1) Dioxin wastes are listed and otherwise identified as hazardous wastes so as to encompass all such wastes controlled under 40 CFR 261.5(e), 261.7(b), 261.30(d), 261.31, 261.33(f), and Part 261 Appendix X.

(2) Special management and permitting standards for facilities managing dioxin wastes and prohibitions applicable to permitted and interim status facilities, as provided in 40 CFR Parts 264, 265, and 270.

Federal Authority: RCRA §§3001, 3004; 40 CFR Parts 261, 264, 265 and 270 as amended January 14, 1985 (50 FR 1978).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 850.3A5(c); 850.3C4; 850.3A7; 850.3C; 850 Appendix III; 850 Appendix VII; 850 Appendix VIII; 850 Appendix X; 854.12B(1); 854.9E; 854.11B(1); 854.10C10; 854.8C; 854.13B3; 855.5B6; 855.9I; 855.9J; 956.10B; 856.10C; 856.10E; 856.10F; 856.10G.

Remarks of the Attorney General

Maine's Rules list and manage dioxin wastes in a manner equally stringent to federal authorities. Although Maine's regulation which spells out special requirements for hazardous waste generated by small quantity generators, § 850.A5c, fails to identify residues of the dioxin wastes, F020 through F023, F026 and F027 in soil and water as needing to comply with the lower acute waste threshold described in that rule, such wastes are, nonetheless, subject to full regulation under 38 M.R.S.A. § 1301 et seq. and 06-096 CMR c.s 850-857 to the extent that person accumulates 100 kilograms or more of these wastes during a single calendar month, § 850A5(a). Since this is the threshold applied to residues of dioxin contaminated wastes by the federal rules cited above, Maine's rules are equivalent to the federal rules.

IV. SATELLITE ACCUMULATION

A. State statutes and regulations allow generators to accumulate at the site of generation, without a permit or interim status, as much as 55 gallons of hazardous waste or one quart of acutely hazardous waste provided that the generator complies with the requirements specified in §262.34(c) as indicated in Revision Checklist 12.

Federal Authority: RCRA §§2002, 3002, 3004, 3005; 40 CFR 262.34(c) as amended December 20, 1984 (49 FR 49571).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 851.8C.

Remarks of the Attorney General

The Rules include the same 55 gallons of hazardous waste or one quart of acutely hazardous waste maximum accumulation amounts as set forth in § 262.34(c). Therefore, Maine's Rules are equivalent to federal authorities.

V. APPLICABILITY OF INTERIM STATUS STANDARDS

A. State statutes and regulations contain the following requirements regarding interim status standards as indicated in Revision Checklists 3 and 10:

- (1) Interim status standards apply to facilities identified in 40 CFR 265.1(b).

Federal Authority: RCRA §3004; 40 CFR Part 265 as amended November 22, 1983 (48 FR 52718) and November 21, 1984 (49 FR 46095).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 855.1, 2, 3, 9M.

Remarks of the Attorney General

Maine's interim status standards apply to facilities which were in existence on April 1, 1980. Thus, Maine's Rules are equivalent.

VI. PAINT FILTER TEST

A. State statutes and regulations require the use of a paint filter test to determine the absence or presence of free liquids in either a containerized or bulk waste as indicated in Revision Checklists 16, 17 F and 25.

Federal Authority: RCRA §§3004, 3005; 40 CFR Parts 260, 264, 265, and 270 as amended April 30, 1985 (50 FR 18370), July 15, 1985 (50 FR 28702) and May 28, 1986 (51 FR 19176).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 855.9H

Remarks of the Attorney General

Maine's Rules require the use of a paint filter test and are, therefore, equivalent.

VII. NATIONAL UNIFORM MANIFEST SYSTEM AND RECORDKEEPING

A. State statutes and regulations require generators to use the national uniform manifest as indicated in Revision Checklists 5 and 32.

Federal Authority: RCRA §§2002, 3002, 3003; 40 CFR Parts 260 and 262 as amended March 20, 1984 (49 FR 10490) and October 1, 1986 (51 FR 35190).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 857.5B.

Remarks of the Attorney General

Maine uses an 8-part manifest which is consistent with the manifests used by other New England States and which contains all the information contained in the National Uniform Manifest.

B. State statutes and regulations require that generators, of between 100 and 1000 kg/mo of hazardous waste, file an exception report in those instances where the generator does not receive confirmation of delivery of his hazardous waste to the designated facility as indicated in Revision Checklist 42.

Federal Authority: RCRA §§3001(d) and 3002(a)(5); 40 CFR Parts 262.42 and 262.44 as amended September 23, 1987 (52 FR 35894).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 857.6G.

Remarks of the Attorney General

Maine's Rules require all generators, including generators of less than 100 kilograms/month, to file an exception report as provided in the federal RCRA rules and, therefore, are equivalent.

C. State statutes and regulations require that the following be recorded, as it becomes available, and maintained in the operating record, until facility closure, as indicated in Revision Checklist 45: monitoring, testing or analytical data, corrective action where required by Subpart F and §§264.226, 264.253, 264.254, 264.276, 264.278, 264.280, 264.303, 264.309, 264.347, and 264.602.

Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.73(b) as amended December 10, 1987 (52 FR 46946).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.15C.

Remarks of the Attorney General

Maine's Rules require the same data to be maintained in the operating record as are required by federal RCRA rules, thus, the rules are equivalent.

D. State statutes and regulations include a burden disclosure statement with each uniform manifest form and renew the use of this form as indicated in Revision Checklist 58.

Federal Authority: RCRA §§2002, 3002, and 3003; 40 CFR 262.20 and 262 Appendix as amended November 8, 1988 (53 FR 45089).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 857.4 and Maine Manifest which expires 9/30/96.

Remarks of the Attorney General

Maine's form has a sunset date on its manifest form. Maine does not have a burden disclosure statement.

VIII. BIENNIAL REPORT

A. State statutes and regulations contain the following reporting requirements as indicated in Revision Checklists 1 and 30.

(1) The biennial report contains the information indicated in 40 CFR 262.41(a), 264.75 and 265.75.

(2) Facilities must submit groundwater monitoring data annually to the State Director as indicated in 40 CFR 265.94.

Federal Authority: RCRA §§3002, 3004; 40 CFR Parts 262, 264 and 265 as amended January 28, 1983 (48 FR 3977) and August 8, 1986 (51 FR 28566).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.6C11; 855.9A11.

Remarks of the Attorney General

The cited federal RCRA rules are adopted and incorporated by reference into the Maine rules. Therefore, Maine Rules are equivalent.

IX. WASTE MINIMIZATION

A. State statutes and regulations contain the following requirements regarding waste minimization as indicated in Revision Checklists 17 D, 30 and 32 (see Item I B above).

(1) Generators must submit report and manifest certifications regarding efforts taken to minimize the amounts and toxicity of wastes.

Federal Authority: RCRA §3002(a)(6), (b); 40 CFR 262.41, 264.75 and 265.75 as amended July 15, 1985 (50 FR 28702), August 8, 1986 (51 FR 28556) and October 1, 1986 (51 FR 35190).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 851.9G; 854.6C11; 855.9A11; 857.5B.

Remarks of the Attorney General

Maine's Rules are equivalent to federal RCRA rules because they require generators to submit reports and manifest certifications regarding their efforts to minimize the amounts and toxicity of wastes.

(2) RCRA permits for the treatment, storage, or disposal of hazardous waste on the premises where the waste was generated must contain a certification by the permittee regarding efforts taken to minimize the amount and toxicity of the generated wastes.

Federal Authority: RCRA §3005(h); 40 CFR 264.70, 264.73 and 270.30(j)(2) as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR §§ 851.9F, 854.6C9 and 856.13A10.

Remarks of the Attorney General

Maine's Rules condition TSD permits with requirements equivalent to those set forth in the applicable federal RCRA rules.

X. LIQUIDS IN LANDFILLS

A. State statutes and regulations contain the following requirements regarding liquids in landfills as indicated in Revision Checklists 17 F and 25.

(1) Effective May 8, 1985, there is a ban on the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids in any landfill pursuant to 40 CFR 264.314 and 265.314 as amended July 15, 1985 and May 28, 1986.

(2) Effective November 8, 1985, there is a ban on the placement of non-hazardous liquids in landfills unless the owner or operator satisfies the criteria set forth in 40 CFR 264.314(e) and 265.314(f), as amended July 15, 1985 and May 28, 1986.

(3) For bulk or non-containerized liquid wastes or wastes containing free liquids they may be placed in a landfill prior to May 8, 1985, only if the requirements of 40 CFR 264.314(a) and 265.314(a) are met.

Federal Authority: RCRA §3004(c); 40 CFR 264.314, 265.314 and 270.21(h) as amended July 15, 1985 (50 FR 28702) and May 28, 1986 (51 FR 19176).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.8C5; 855.9H.

Remarks of the Attorney General

Maine's Rules include equivalent bans against disposal of liquids in landfills to those contained in the cited federal RCRA rules.

XI. GROUND-WATER MONITORING

A. State statutes and regulations provide that the §3004 groundwater monitoring requirements applicable to surface impoundments, waste piles, land treatment units and landfills shall apply whether or not such units are located above the seasonal high water table, have two liners and a leachate collection system or have liners that are periodically inspected, as indicated in Revision Checklist 17 I.

Federal Authority: RCRA §3004(p); 40 CFR 264.222, 264.252, 264.253, and 264.302 as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.9B; 854.9F2; 854.9G; 854.11C; 854.8D; 854.8H.

Remarks of the Attorney General

Maine's Rules require groundwater monitoring of the cited solid waste management units regardless of the seasonal water table or construction details. Thus, Maine Rules are equivalent to federal RCRA rules.

B. State statutes and regulations may allow variances from the ground-

water monitoring requirements as provided in §3004(p). However, those variances must be restricted as provided in RCRA §3004(p) as indicated in Revision Checklist 17 I.

Federal Authority: RCRA §3004(p); 40 CFR 264.90(b) as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

None.

Remarks of the Attorney General

Maine's Rules do not permit an exemption for engineered units.

C. State statutes and regulations provide that with regard to ground-water monitoring, all land based hazardous waste treatment, storage, and disposal facilities analyze for a specified core list (Part 264, Appendix IX) of chemicals plus those chemicals specified by the Regional Administrator on a site-specific basis as indicated in Revision Checklist 40.

Federal Authority: RCRA §§1006, 2002(a), 3001, 3004, and 3005; 40 CFR Parts 264.98, 264.99, Appendix IX of Part 264, and 270.14 as amended July 9, 1987 (52 FR 25942).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.8D2 and 854 Appendix IX.

Remarks of the Attorney General

Appendix IX of Chapter 854 incorporates Part 264, Appendix IX Section 854.8D2 of Maine's Rules incorporate 40 CFR Parts 264.95-264.100 and Appendix IX. Therefore, Maine's Rules are equivalent to the federal RCRA rules.

D. State statutes and regulations specify statistical methods, sampling procedures, and performance standards that can be used in groundwater monitoring procedures to detect groundwater contamination at permitted hazardous waste facilities as indicated in Revision Checklist 55.

Federal Authority: RCRA §§1006, 2002(a), 3004 and 3005; 40 CFR 264.91, 264.92, 264.97, 264.98 and 264.99 as amended October 11, 1988 (53 FR 39720).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.8D2.

Remarks of the Attorney General

The cited federal RCRA rules are cited and incorporated by reference into the Maine Rules. Hence, the Maine Rules are equivalent to the federal RCRA rules.

XII. BURNING AND BLENDING OF HAZARDOUS WASTES

A. State statutes and regulations provide the following requirements:

(1) The burning of fuel containing hazardous waste in a cement kiln is prohibited as specified in 40 CFR 266.31 and Revision Checklist 17 J.

Federal Authority: RCRA §3004(q); 40 CFR 266.31 as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 850.3A9 and Chapter 856.

Remarks of the Attorney General

The cited rule prohibits burning of any hazardous waste in a cement kiln unless the applicant obtains a permit pursuant to Chapter 856. An applicant for such a permit would have to submit additional information showing that he complies with all requirements for a hazardous waste incinerator (856.10D) since under Maine's rules cement kilns would fall under the definition of hazardous waste incinerator. Among the many showings required of such an applicant is that he fully complies with all the requirements of the federal rules pertaining to hazardous waste incinerators as set forth at 40 CFR 270.62 (856.10D(2)(b)). The requirements of the federal rules for the location of hazardous waste incinerators are at least as stringent as those for the location of cement kilns and it follows that Mine's rules are at least as stringent as the federal rules in this regard.

(2) Fuels containing hazardous waste and all persons who produce, distribute and market fuel containing hazardous wastes must be regulated as indicated in Revision Checklists 17 J, 17 K, and 19.

Federal Authority: RCRA §§3004(q)-(s); 40 CFR 261.31; 266.34 as amended July 15, 1985 (50 FR 28702) and November 19, 1986 (51 FR 41900).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 850.3A(3)(a)(ii)

Remarks of the Attorney General

Under Maine's Mixing Rule, fuel containing hazardous waste is hazardous waste and is subject to all the permitting and management requirements of hazardous waste. Therefore, Maine's Rules are at least as stringent as federal RCRA rules on this point.

B. State statutes and regulations provide exceptions to the burning and blending of hazardous waste as specified in §§3004(q)(2)(A) and 3004(r)(2) & (3).

Federal Authority: RCRA §§3004(q)2(A) and 3004(r)(2) & (3).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 856.4E; 856.5A.

Remarks of the Attorney General

Maine's statutes and regulations, as cited above, generally prohibit treating hazardous waste without a permit. Maine's laws do not provide exceptions to the burning and blending of hazardous wastes. Therefore, Maine's laws are more stringent.

XIII. CORRECTIVE ACTION

A. State statutes and regulations contain the following corrective action requirements as indicated in Revision Checklist 17 L:

(1) Corrective action is required for releases of hazardous waste or constituents from any solid waste management unit at a facility seeking a permit, regardless of when the waste was placed in the unit, in all permits issued after November 8, 1984.

Federal Authority: RCRA §3004(u); 40 CFR 264.90; 264.101; 270.60 as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.6A; 854.6C18; 854.5E; 856.11A2(a)(ii).

Remarks of the Attorney General

Maine's Rules incorporate 40 CFR 264.101 which sets forth federal corrective action requirements. Therefore, Maine's Rules are equivalent to federal RCRA rules.

(2) Corrective action is required beyond a facility's boundary, in accordance with RCRA §3004(v). (States now may impose these requirements through a permit or a corrective action order. Once EPA promulgates the regulations required by RCRA §3004(v), States will need authority to impose corrective action in a permit following the §3004(v) regulations.)

Federal Authority: RCRA §3004(v)(1).

Citation of Laws and Regulations; Date of Enactment and Adoption

38 M.R.S.A. § 1319-R(6) (Supp. 1994) and § 1319-V (Supp. 1994). Both effective as of July 14, 1990.

Remarks of the Attorney General

Section 854.6C18 of these statutes empower Maine's Department of Environmental Protection to issue corrective action permits that require corrective action beyond the facility boundary.

(3) Corrective action is required beyond a facility's boundary in accordance with §3004(v) for all landfills, surface impoundments and waste pile units (including any new units, replacements of existing units or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

Federal Authority: RCRA §3004(v)(2).

Citation of Laws and Regulations; Date of Enactment and Adoption

38 M.R.S.A. § 1319-V (Supp. 1994).

Remarks of the Attorney General

The statute cited above requires the owner/operator to undertake corrective action beyond the facility boundary. Thus, Maine law is equivalent to federal rules.

(4) There is evidence of financial responsibility for corrective action on- and off-site.

Federal Authority: RCRA §§3004(a)(6); (u); 40 CFR 264.90; 264.101 as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.6C18.

Remarks of the Attorney General

The cited section of Maine's Rules incorporate 40 CFR 264.101 which set forth federal corrective action requirements for financial responsibility. Therefore, Maine's Rules are equivalent to federal rules.

B. State statutes and regulations provide for additional information and engineering feasibility plan requirements regarding groundwater contamination detected at the time of Part B permit application as indicated in Checklist 38.

Federal Authority : RCRA §§3004, 3005; 40 CFR 270.14 as amended June 22, 1987 (52 FR 23447) and September 9, 1987 (52 FR 33936).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 856.10B16(g)&(h).

Remarks of the Attorney General

Certain requirements of 40 CFR 270.14 are explicitly incorporated into the cited sections of Maine's rules and the remainder of the requirements of the federal rules are set forth in other words, in Maine's Rules.

C. State statutes and regulations require owners and operators of facilities seeking permits to provide descriptive information on the solid waste management units themselves and all available information pertaining to any releases from the units as indicated in Revision Checklist 44 A.

Federal Authority: RCRA §3004(u); 40 CFR 270.14 as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 856.10B17.

Remarks of the Attorney General

The cited section of Maine's Rules require equivalent information as is required by 40 CFR 270.14.

D. State statutes and regulations require that owners and operators of hazardous waste treatment, storage and disposal facilities (including permit-by-rule facilities subject to 264.101) institute corrective action beyond the facility boundary to protect human health and the environment, unless the owner/operator is denied access to adjacent lands despite the owner/operator's best efforts, as indicated in Revision Checklist 44 B.

Federal Authority: RCRA §3004(v); 40 CFR 264.100(e) and 264.101(e), as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

38 M.R.S.A. § 1319-V (Supp. 1994) effective date July 14, 1990 and 06-096 CMR 854.6B18 and 854.8D2.

Remarks of the Attorney General

Maine's statutes and rules require corrective action beyond the facility boundary as described above.

E. State statutes and regulations contain the following corrective action requirements for injection wells as indicated in Revision Checklist 44 C.

(1) Hazardous waste injection wells now operating under RCRA interim status may retain interim status after issuance of a UIC permit. Until a RCRA permit or a RCRA "rider" to a UIC permit, which addresses Section 3004(u) corrective action, is issued, the well must comply with applicable interim status requirements imposed by §265.430, Parts 144.146 and 147, and any UIC permit requirements.

Federal Authority: RCRA §3004(u); 40 CFR 144.1(h) as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.5E.

Remarks of the Attorney General

Underground injection wells for hazardous waste are prohibited in Maine. Thus, there are no wells to which this section applies.

(2) As part of the UIC permit process, available information regarding operating history and condition of the injection well must be submitted as well as any available information on known releases from the well or injection zone.

Federal Authority: RCRA §3004(u); 40 CFR 144.31(g) as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.5E.

Remarks of the Attorney General

Underground injection wells for hazardous waste are prohibited in Maine. Thus, there are no wells to which this section applies.

(3) UIC facility owners/operators must submit certain information related to corrective action with their UIC applications.

Federal Authority: RCRA §3004(u); 40 CFR 270.60(b)(3) as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.5E.

Remarks of the Attorney General

Underground injection wells for hazardous waste are prohibited in Maine. Thus, there are no wells to which this section applies.

F. State statutes and regulations require that miscellaneous units comply with regulations (Subpart F) regarding releases from solid waste management units when necessary to comply with §§264.601 through 264.603 as indicated in Revision Checklist 45.

Federal Authority: RCRA §3004(u); 40 CFR 264.90(d) as amended December 10, 1987 (52 FR 46946).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.15A; 854.15B; 854.15C; 854.6C(18).

Remarks of the Attorney General

Maine's Rules are equivalent to federal RCRA rules since Maine Rules cite and incorporate, by reference, 40 CFR 264.601 and require that permits for miscellaneous units must contain requirements for responses to releases.

XIV. HAZARDOUS WASTE EXPORTS

A. State statutes and regulations require generators and transporters of hazardous waste destined for export outside the United States to comply with standards equivalent to those as indicated in Revision Checklists 17 R, 31, and 48 (with the latter providing technical corrections to Checklist 31).

Federal Authority: RCRA §3017; 40 CFR 262.50 as amended July 15, 1985 (50 FR 28702), August 8, 1986 (51 FR 28664), and July 19, 1988 (53 FR 27164) and September 4, 1991 (56 FR 45704).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 857.7D.

Remarks of the Attorney General

Maine Rules are equivalent.

XV. STANDARDS FOR FACILITIES

A. State statutes and regulations prohibit the land disposal of hazardous waste prohibited under 40 CFR Parts 264 and 265 as indicated in Revision Checklist 17 E. Land disposal includes, but is not limited to, placement in landfills, surface impoundments, waste piles, deep injection wells, land treatment facilities, salt dome and bed formations and underground mines or caves. 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.

Federal Authority: RCRA §§3004(b)-(q); 40 CFR 264.18, 265.18 as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.5E; 855.5B7; 852.13 and see answers to XIII E above.

Remarks of the Attorney General

Section 854.5E of Maine's Rules prohibits placement of any hazardous waste into any salt dome formation, salt bed formation, underground cave or mine as well as the underground injection of hazardous wastes. Section 852.13 prohibits the placement of the federally listed wastes from land disposal of any type. Thus, Maine's Rules are equivalent to federal authorities.

B. Effective on November 8, 1984 State statutes and regulations prohibit the placement of any non-containerized or bulk liquid hazardous waste in any salt dome or salt bed formation any underground mine or cave except as provided in §264.18(c) and §265.18(c) as indicated in Revision Checklist 17 E. Furthermore, State statutes and regulations prohibit the placement of any other hazardous waste in such formations until a permit is issued.

Federal Authority: RCRA §3004(b); 40 CFR 264.18 and 265.18 as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.5E; 855.5B7.

Remarks of the Attorney General

Section 854.5E of Maine's Rules prohibits placement of any hazardous waste in any of the cited locations. Therefore, Maine's Rules provide at least equivalent protections as do the federal authorities.

C. State statutes and regulations prohibit the use of waste oil or other materials contaminated with hazardous wastes (except ignitable wastes) as a dust suppressant as indicated in Revision Checklist 17 G.

Federal Authority: RCRA §3004(1); 40 CFR 266.23 as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 850.3A8.

Remarks of the Attorney General

Maine's Rules provide an equivalent prohibition by prohibiting the use of materials contaminated with hazardous wastes as a dust suppressant.

D. State statutes and regulations allow direct action by third parties against the insurer or guarantor of an owner/operator's financial responsibilities if and owner/operator is in bankruptcy reorganization or arrangement or where (with reasonable diligence) jurisdiction in any State or Federal Court cannot be obtained over an owner/operator likely to be solvent at the time of judgment.

Federal Authority: RCRA § 3004(t).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

This is a non-delegable item. Maine does not have such authority.

E. State statutes and regulations require the permittee to take steps to minimize releases to the environment in accordance with 40 CFR Part 270.30(d) as indicated in Revision Checklist 2.

Federal Authority: RCRA §3005(c); 40 CFR part 270 as amended September 1, 1983 (48 FR 39622).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 856.13A(5).

Remarks of the Attorney General

Maine's 856.13A(5) and 40 CFR 270.30(d) are virtually identical. The federal rule requires a permittee who is not in compliance with its permit to take all reasonable steps to "minimize releases" and to "prevent significant adverse impacts." Maine's regulation requires a licensee, that is not in compliance with its license, to take "all reasonable steps to minimize or correct any adverse impact on the environment" Maine's regulation does not refer separately to minimizing releases but a release of any sort would be considered an adverse impact on the environment. Likewise, although Maine's regulations does not explicitly mention

human health as a part of the environment, impacts on human health are considered to be impacts on an aspect of the environment. By contrast, the federal rules only prevent significant impacts. Thus Maine's rule is at least as stringent as the federal rule.

F. State statutes and regulations require that closure and post-closure requirements and special requirements for containers apply to interim status landfills as indicated in Revision Checklist 15.

Federal Authority: RCRA §3004; 40 CFR 265.310, 265.315 as amended April 23, 1985 (50 FR 16044).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 855.9H.

Remarks of the Attorney General

The cited federal rules are incorporated by reference into Maine's Rules. Therefore, Maine's Rules are equivalent.

G. State statutes and regulations require compliance with closure/post-closure and financial responsibility requirements applicable to owners and operators of hazardous waste treatment, storage and disposal facilities, as indicated in Revision Checklists 24, 36, and 45.

Federal Authority: RCRA §§3004 and 3005; 40 CFR Parts 260, 264, 265, and 270 as amended May 2, 1986 (51 FR 16422), March 19, 1987 (52 FR 8704), and December 10, 1987 (52 FR 46946).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.6C15; 854.6C16; 855.9A15; 855.9A16.

Remarks of the Attorney General

The Maine Rules are equivalent since they incorporate all the relevant portions of the federal rules relating to closure/post closure and financial responsibility.

H. State statutes and regulations allow qualified companies that treat, store or dispose of hazardous waste to use a corporate guarantee to satisfy liability assurance requirements as indicated in Revisions Checklists 27 and 43.

Federal Authority: RCRA § § 2002,3004, and 3005; 40 CFR 264.147, 264.151, and 265.147 as amended July 11, 1986 (51 FR 25350) and November 18, 1987 (52 FR 44314).

Citation of Laws and Regulations; Date of Enactment and Adoption

None.

Remarks of the Attorney General

Maine does seek authorization for this reduced requirement

I. State statutes and regulations require companies that generate, treat or store hazardous waste in tanks to comply with tank standards equivalent to those indicated in Revision Checklists 28 and 52.

Federal Authority: RCRA §§1006, 2002, 3001 - 3007, 3010, 3014, 3017 - 3019 and 7004; 40 CFR Parts 260, 261, 262, 264, 265, and 270 as amended July 14, 1986 (51 FR 25422), August 15, 1986 (51 FR 29430) and September 2, 1988 (53 FR 34079).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 855.9D, 856.3B,856.11

Remarks of the Attorney General

Section 855.9D of Maine's Rules is equivalent to federal rules since it incorporates the relevant portions of 40 CFR 265 Subpart J. § 856.11 of Maine's Rules permits the owner/operator of an elementary neutralization unit to obtain license under an abbreviated license process. However, Maine's definition of an "elementary neutralization unit" is more restrictive than the definition of the same term set forth at 40 CFR 260.10. Under the Maine rule an elementary neutralization unit must consist of equipment meeting the federal definitions and must be located at the site where the hazardous waste is generated which is to be neutralized in the unit. Units which are not located on the site of generation do not meet this definition and do not qualify for abbreviated licensing procedures. These units default to the full licensing procedures set forth at § 856.10.

J. State statutes and regulations require environmental performance standards; monitoring, testing, analytical data, inspection, response and reporting procedures; and post-closure care for miscellaneous units as indicated in Revision Checklist 45.

Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.600, 264.601, 264.602, and 264.603 as amended December 10, 1987 (52 FR 46946).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.15A; 854.15B; 854.15C; 854.15D; 854.6C15.

Remarks of the Attorney General

Maine's Rules are equivalent.

K. State statutes and regulations allow owners and operators of landfills, surface impoundments, or land treatment units, under limited circumstances, to remain open after the final receipt of hazardous wastes in order to receive non-hazardous wastes in that unit as indicated in Revision Checklist 64.

Federal Authority: RCRA § § 1006, 2002(a), 3004,3005 and 3006; 40 CFR 264.13, 264.112, 264.113, 264.142, 265.13, 265.113, 265.142 and Appendix I to 270.42 as amended August 14, 1989 (54 FR 33376)

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

The State has not applied for this authorization.

XVI. REQUIREMENTS FOR PERMITS

A. State statutes and regulations allow a facility (1) to construct an approved TSCA facility for burning PCBs without first obtaining a RCRA permit and (2) to subsequently apply for a RCRA permit in accordance with Revision Checklist 17 M.

Federal Authority: RCRA §3005(a); 40 CFR 270.10(f)(3) as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 856.4A.

Remarks of the Attorney General

Maine's Rules do not provide for a TSCA facility exception and thus are more stringent than federal RCRA rules.

B. State statutes and regulations require review of land disposal permits every five years and modification of such permits as necessary to assure compliance with the requirements in Parts 124, 260 through 266, and 270, as indicated in Revision Checklist 17 N.

Federal Authority: RCRA §3005(c)(3); 40 CFR 270.41(a)(6), 270.50(d) as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 856.12E.

Remarks of the Attorney General

Section 856.12E of Maine's Rules is equivalent to federal law since it limits the term hazardous waste facility licenses to 5 years.

C. State statutes and regulations require permits to contain any conditions necessary to protect human health and the environment in addition to any conditions required by regulations as indicated in Revision Checklist 17 O.

Federal Authority: RCRA §3005(c)(3); 40 CFR 270.32(b) as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 856.12E.

Remarks of the Attorney General

Section 856.12E of Maine's Rules is equivalent since it requires the Board to include in hazardous waste facility licenses conditions necessary to protect human health and the environment.

D. State statutes and regulations require that:

(1) For land disposal facilities granted interim status prior to 11/8/84, interim status terminates 11/8/85; unless a Part B application and certification of compliance with applicable groundwater monitoring and financial responsibility requirements are submitted by 11/8/85, as indicated in Revision Checklist 17 P.

Federal Authority: RCRA §3005(e); 40 CFR 270.73(c) as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 855.7E1.

Remarks of the Attorney General

Maine's Rule is equivalent.

(2) For land disposal facilities in existence on the effective date of statutory or regulatory changes under this Act that render the facility subject to the requirement to have a permit and which is granted interim status, interim status terminates 12 months after the date the facility first becomes subject to such permit requirement unless a Part B application and certification of compliance with applicable groundwater monitoring and financial responsibility requirements are submitted by that date as indicated in Revision Checklist 17 P.

Federal Authority: RCRA §3005(e); 40 CFR 270.73(d) as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 855.7F.

Remarks of the Attorney General

Maine's Rule is equivalent.

(3) Interim status terminates for incinerator facilities on 11/8/89 unless the owner/operator submits a Part B application by 11/8/86 as indicated in Revision Checklist 17 P.

Federal Authority: RCRA §3005(c)(2)(C); 40 CFR 270.73(e) as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 855.7E2.

Remarks of the Attorney General

Maine's Rule is equivalent.

(4) Interim status terminates for any facility other than a land disposal or an incineration facility on 11/8/92 unless the owner/operator submits a Part B

application by 11/8/88 as indicated in Revision Checklist 17 P.

Federal Authority: RCRA §3005(c)(2)(O), 40 CFR 270.73(f) as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 855.7E3.

Remarks of the Attorney General

Interim status has terminated for such facilities in Maine.

E. State statutes and regulations 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) comply with §270.70(a) as indicated in Revision Checklist 17 P.

Federal Authority: RCRA §3005(e); 40 CFR 270.70(a) as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 855.5B1 and 855.8A.

Remarks of the Attorney General

The Maine Rules are equivalent to the federal since section 855.5B1 and 855.7E of the Maine Rules require notification and 855.8A requires the submission of the State equivalent to Part A.

F. State statutes and regulations provide that facilities may not qualify for interim status under the State's analogue to Section 3005(e) if they were previously denied a Section 3005(c) permit or if authority to operate the facility has been terminated as indicated in Revision Checklist 17 P.

Federal Authority: RCRA §3005(c)(3); 40 CFR 270.70(c) as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 855.5B8.

Remarks of the Attorney General

Maine's Rule is equivalent since it denies interim status where the facility was previously denied or its interim license has expired.

G. State statutes and regulations allow the issuance of a one-year research, development, and demonstration permit (renewable each year, but not for a period longer than three years) for any hazardous waste treatment facility which proposes an innovative and experimental hazardous waste treatment technology or process not yet regulated as indicated in Revision Checklist 17 Q. If adopted, however, the State must require the facility to meet RCRA's financial responsibility and public participation requirements and retain authority to terminate experimental activity if necessary to protect health or the environment.

Federal Authority: RCRA §3005(g); 40 CFR 270.65 as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

38 M.R.S.A. § 1306 & 06-096 CMR 854, 856.

Remarks of the Attorney General

All of the requirements of Maine's laws which apply to the licensing of any hazardous waste facility would apply to any R&D or demonstration project. Maine law does not recognize any reduced requirements for R&D or demonstration projects and to this extent is more stringent than federal law.

H. State statutes and regulations require landfills, surface impoundments, land treatment units, and waste piles that received waste 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 at the time of permitting as indicated in Revision Checklist 17 L.

Federal Authority: RCRA §3005(i); 40 CFR 264.90(a) as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.6A; 854.8; 854.9; 856.10B16 & 17 (and for interim measures 855.9B)

Remarks of the Attorney General

06-096 CMR 854.6A applies all Chapter 854 requirements to all facilities. It is a general applicability section. 06-096 CMR 854.8 contains the 40 CFR 264.93-100 provisions for landfills and 854.9 contains them for surface impoundments. 856.10B16 & 17 contain requirements for solid waste management units.

I. State statutes and regulations require:

(1) Surface impoundments in existence on November 8, 1984 [or subsequently becoming subject to RCRA pursuant to §3005(j)(6)(A) or (B)] to comply with the double liner, leachate collection, and groundwater monitoring requirements applicable to new units by November 8, 1988 [or the date specified in §3005(j)(6)(A) or (B)] or to stop treating, receiving, or storing hazardous waste, unless the surface impoundment qualifies for a special exemption under §3005(j).

Federal Authority: RCRA §3005(j)(6)(A).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 855.9E; 854.9B1-2; 854.9B5; 854.9B16.

Remarks of the Attorney General

State rules are equivalent.

(2) Surface impoundments to comply with the double liner, leachate collection and ground-water monitoring requirements if the Agency allows a hazardous waste prohibited from land disposal under §3004(d), (e) or (g) to be placed in such impoundments.

Federal Authority: RCRA §3005(j)(11).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 852.7A3.

Remarks of the Attorney General

State rules are equivalent.

(3) State statutes and regulations may allow variances from the above requirements as provided in RCRA §§3005(j)(2-9) and (13). However, the availability of such variances must be restricted as provided in RCRA §3005(j).

Federal Authority: RCRA §3005(j)(2-9).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 852.7A is a variance provision with specific standards. Section 854.9B18 is a specific standard for surface impoundments and section 854.18 includes general variance standards.

Remarks of the Attorney General

State rules are equivalent.

J. Facility owners or operators are given the opportunity to cure deficient Part A applications in accordance with 40 CFR 270.70 (b) before failing to qualify for interim status as indicated in Revision Checklist 6.

Federal Authority: RCRA § 3005; 40 CFR 270 Part 270 as amended April 24, 1984 (49 FR 17716).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

The State is not seeking authorization for this reduced requirement and in any event the interim status dates have passed and so this provision is now moot.

K. State statutes and regulations allow the permit granting agency to initiate modifications to a permit without first receiving a request from the permittee, in cases where statutory changes, new or amended regulatory standards or judicial decisions affect the basis of the permit as indicated in Revision Checklist 44 D.

Federal Authority: RCRA §3005(c); 40 CFR 270.41(a)(3) as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 856.13A7.

Remarks of the Attorney General

Maine's Rules are equivalent in that they allow the BEP for cause to modify the hazardous waste facility license.

L. State statutes and regulations require that permittees must comply with new requirements imposed by the land disposal restrictions promulgated under Part 268 even when there are contrary permit conditions, as indicated in Revision Checklist 44 E.

Federal Authority: RCRA §3006(g); 40 CFR 270.4(a) as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096CMR 856.13A7&8

Remarks of the Attorney General

State permits do not contain permit conditions which shield the permittee from the imposition of new LDR requirements. In addition, State permits do not convey any property rights to permittees and may be modified, revoked or suspended in cases where the regulations upon which they were based have been changed by the promulgations of new or amended regulations.

M. State statutes and regulations require information from permit applicants concerning permit conditions necessary to protect human health and the environment as indicated in Revision Checklist 44 F.

Federal Authority: RCRA §3005(c); 40 CFR 270.10 as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 856.10B18.

Remarks of the Attorney General

Maine's Rule is equivalent.

N. State statutes and regulations require post-closure permits for all landfills, surface impoundments, waste piles and land treatment units receiving hazardous waste after July 26, 1982 as indicated in Revision Checklist 44 G.

Federal Authority: RCRA §3005(i); 40 CFR 270.1(c) as amended December 1, 1987 (52 FR 45788).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 856.5F.

Remarks of the Attorney General

Maine's Rule is equivalent since it requires post-closure licenses for all surface impoundments, land treatment units and waste piles.

O. State statutes and regulations require that all owners and operators of units that treat, store, or dispose of hazardous waste in miscellaneous units must comply with the general application requirements (including Part A permit requirements), the Part B general application requirements of §270.14, and specific Part B information requirements for miscellaneous units as indicated in Revision Checklist 45 and Revision Checklist 59.

Federal Authority: RCRA §§3004 and 3005; 40 CFR 264.600, 270.14 and 270.23 as amended December 10, 1987 (52 FR 46946) and January 9, 1989 (54 FR 615).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 854.3W; 854.6A; 854.6B; 856.10B; and 856.10J.

Remarks of the Attorney General

Maine's Rules are equivalent.

P. State statutes and regulations provide owners and operators more flexibility to change specified permit conditions, to expand public notification and participation opportunities, and allow for expedited approval if no public concern exists for a proposed permit modification. Owner/operator permit modifications are categorized into three classes with administrative procedures for approving modifications established in each class. These changes are as indicated in Revision Checklist 54.

Federal Authority: RCRA § § 2002(a), 3004, 3005, and 3006; 40 CFR Parts 124, 264 265, and 270 as amended September 28, 1988 (53 FR 37912 and October 24, 1988 (53 FR 41649).

Citation of laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney

Not applicable since the State is not applying for this reduced requirement

Q. State statutes and regulations make it clear that existing incinerator facilities must either conduct a trial burn or submit other information as specified in 270.19(a) or (c) before a permit can be issued for that facility as indicated in Revision Checklist 60.

Federal Authority: RCRA §3005(b); 40 CFR Part 270 as amended January 30, 1989 (54 FR 4286).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 856.10D2c.

Remarks of the Attorney General

State rules are equivalent.

R. State statutes and regulations allow greater flexibility to interim status facilities to make changes during interim status following director approval as indicated in Revision Checklist 61.

Federal Authority: RCRA §§2002(a), 3004, 3005, 3006; 40 CFR 270.72 as amended March 7, 1989 (54 FR 9596).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 856.5F; 856.10A(1); 856.12A(3); 856.12B; 856.12G; 856.12C; 856.12D; 855.6; 855.6B; 855.6D; 855.6D(1); 855.6D(2); 855.7E; 855.7F; 38 M.R.S.A. § 1319-R(6), S(5).

Remarks of the Attorney General

Maine's rules are more stringent than the federal rules in that decisions on permits are effective immediately upon signature, approval is necessary prior to the handling of a new waste stream not already covered by the interim permit, changes necessary under emergency situations must also be reviewed by the agency and there is no automatic transfer provision for interim licenses. The Department must formally approve and transfer these licenses. The only types of "reconstruction" changes which can be made under interim status are those pursuant to Maine law, are those that are required by either a Department closure order or a corrective action order. The last interim license filing date for the various specific types of facilities is 11/8/89.

S. State statutes and regulations lift the reconstruction limit for changes: 1) to certain interim status units necessary to comply with Federal, State, or local requirements, 2) necessary to allow continued handling of newly listed or identified hazardous waste, 3) made in accordance with an approved closure plan, and 4) made pursuant to a corrective action order as indicated in Revision Checklist 61.

Federal Authority: RCRA §§2002(a), 3004, 3005, and 3006; 40 CFR 270.72 as amended March 7, 1989 (54 FR 9596).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 855.6(B)(D)(E).

Remarks of the Attorney General

The State recognizes only some of the circumstances permitted by federal rules for avoiding permanent licensing for reconstructing during interim statutes. State rules are more stringent.

T. State statutes and regulations that clarify that a permit can be denied for the active life of a facility while a decision on post closure permitting is pending as indicated in Revision Checklist 61.

Federal Authority: RCRA §§2002(a), 3004, 3005, and 3006; 40 CFR 124.1, 124.15, 124.19, and 270.29 as amended March 7, 1989 (54 FR 9596).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 856.5F;856.12A3, 12C; 38 M.R.S.A. § 1319-R(6), S(5).

Remarks of the Attorney General

State rules are equivalent.

U. State statutes and regulations that classify as Class 1 certain permit modifications requested by owners/operators necessary to enable permitted facilities to comply with the land disposal restrictions as indicated in Revision Checklist 62. Specifically these modifications include 1) adding restricted wastes treated to meet applicable 40 CFR Part 268 treatment standards or adding residues from treating "soft hammer" wastes, 2) adding certain wastewater treatment residues and incinerator ash, 3) adding new wastes for treatment in tanks or containers under certain limited conditions, and 4) adding new treatment processes, necessary to treat restricted wastes to meet treatment standards, that take place in tanks or containers.

Federal Authority: RCRA § § 2002(a), 3004, 3005 and 3006; 40 CFR 270.42 as amended March 7, 1989 (54 FR 9596).

Citation of Laws and Regulations; Date of Enactment and Adoption

Remarks of the Attorney General

Not applicable since the State is not applying for this reduced requirement.

V. State statutes and regulations incorporate updates to 40 CFR Part 124 as indicated in Revision Checklist 70.

Federal Authority: RCRA §§6901 and 6902; 40 CFR 124.3, 124.5, 124.6, 124.10 and 124.12 as amended April 1, 1983 (48 FR 14146), June 30, 1983 (48 FR 30113), July 26, 1988 (53 FR 28118), September 26, 1988 (53 FR 37396) and January 4, 1989 (54 FR 246).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 2.18 & 30.5B; 30.5C; 30.7; 30.21 & 856.5A,B,C,D, 856.10A. 1,2,3,12,13,14,15,16 & 20; 856.12A,B,C & I; 856.13A7;856.13A &C;856.15

Remarks of the Attorney General

Maine's rules and procedures are equivalent. With specific reference to notice to the Indian tribes, they will be given notice of any application for a facility for hazardous waste that abuts land owned by a tribe, 06-096 CMR 856.10A.14. In addition, since both the Penobscot and the Passamaquoddy Nations receive the periodically issued packets containing all items that will be acted upon by Maine's Board of Environmental Protection, they will have notice of every waste facility application in the State since it is the Board which must pass on all such applications. 06-096 CMR 856.12. The tribes may then request for any draft license under 06-096 CMR 2.18 and it will be sent to them. Moreover, 38 M.R.S.A. section 1319-R requires the Board to hold a public hearing on any application to construct, operate or substantially expand a commercial hazardous waste facility. The rules which govern such hearings give the Indian nations the opportunity to participate as full parties in such hearings since they would be considered both municipalities and interested parties. 06-096 CMR 30. 5B &C, 7 and 21.

XVII. MINIMUM TECHNOLOGICAL REQUIREMENTS

A. State statutes and regulations require that new units, expansions, and replacements of interim status waste piles meet the requirements for a single liner

and leachate collection system in regulations applicable to permitted waste piles as indicated in the Revision Checklist 17 H.

Federal Authority: RCRA §3015(a); CFR 265.254 as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 855.6C.

Remarks of the Attorney General

Section 855.6C of Maine's Rules require full licensing for any new, replacement or expansion landfill or surface impoundment. Thus, Maine's Rules are at least equivalent to the federal RCRA rules.

B. State statutes and regulation require that:

(1) New units, expansions, and replacement units at interim status landfills and surface impoundments and permitted landfills and surface impoundments meet the requirements for double liners and leachate collection systems applicable to new permitted landfills and surface impoundments in 40 CFR 264.221 and 264.301 and 265.221 and 265.301 as indicated in Revision Checklist 17 H.

(2) Facilities which comply in good faith need not retrofit at permit issuance unless the liner is leaking as provided in § § 265.221 (e) and 265.301 (e) as indicated in Revision Checklist 17 H.

(3) Variances from the above requirements are optional. However, the availability of such variances is restricted as provided in § § 264.221 (d) and (e), 264.301 (d) and (e), 265.221 (c) and (d), and 265.301 (c) and (d) as indicated in Revision Checklist 17 H.

Federal Authority: RCRA § 3015 (b); 40 CFR 264.221, 265.221 and 265.301 as amended July 15, 1985 (50 FR 28702) and May 9, 1990 (55 FR 19262).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 855.6C(for waste piles) and interim standards for surface impoundments; 854.8B (for landfills) and 854.9B1&2 (for surface impoundments).

Remarks of the Attorney General

Maine's Rules are equivalent since new units, expansions and replacement units at interim status landfills and surface impoundments require the same double liners and leachate collection systems applicable to new facilities under federal rules. Facilities in good faith compliance are permitted to keep their existing liners under Maine Rules subject to the same restrictions as apply under the federal regulations.

XVIII. EXPOSURE ASSESSMENTS

A. State laws and regulations require permit applicants for landfills or surface impoundments to submit exposure information as indicated in Revision Checklist 17 S.

Federal Authority: RCRA §3019(a); 40 CFR 270.10(j) as amended July 15, 1985 (50 FR 28702).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 856.10C13; 856.10G; 856.10D(3); 856.10I.

Remarks of the Attorney General

Maine's Rule is equivalent as it requires submission of exposure information equivalent to that required by the federal RCRA rule and in addition is more stringent in that it applies this information also to land treatment facilities, incinerators and commercial facilities.

B. State laws and regulations allow the State to make assessment information available to the Agency for Toxic Substances and Disease Registry. (See CERCLA §104(i).)

Federal Authority: RCRA §3019(b).

Citation of Laws and Regulations, Date of Enactment and Adoption

1 M.R.S.A. § 401, 408(1989)

Remarks of the Attorney General

See XIX below.

XIX. AVAILABILITY OF INFORMATION

A. State statutes and regulations provide that:

(1) All records shall be available to the public unless they are exempt from the disclosure requirements of the Federal FOIA, 5 U.S.C. 552;

Citation of Laws and Regulations, Date of Enactment and Adoption

1 M.R.S.A. § 401 et. seq. (1989).

Remarks of the Attorney General

Maine's Freedom of Access Law 1 M.R.S.A. § 401 et seq. and especially § 408 (1989) (effective October 1, 1975) makes all "public records" available for public inspection.

(2) All nonexempt records will be available to the public upon request regardless of whether any justification or need for such records has been shown by the requestor;

Citation of Laws and Regulations, Date of Enactment and Adoption

1 M.R.S.A. § 408(1989)

Remarks of the Attorney General

Section 408 of Maine's Freedom of Access Law requires no showing of justification or need.

(3) The same types of records would be available to the public from the State as would be available from EPA. [In making this certification, the Attorney General should be aware of the types of documents EPA generally releases under the FOIA, subject to claims of business confidentiality: permit applications; biennial reports from facilities; closure plans; notification of a facility closure; contingency plan incident reports; delisting petitions; financial responsibility instruments; ground-water monitoring data (note that exemptions 5 U.S.C. 552(b)(9) of the FOIA applies to such wells as oil and gas, rather than to ground-water wells); transporter spill reports; international shipment reports; manifest exception, discrepancy and unmanifested waste reports; facility EPA identification numbers; withdrawal requests; enforcement orders; and, inspection reports]; and,

Citation of Laws and Regulations, Date of Enactment and Adoption

1 M.R.S.A. § § 402.3 & 408 (1989)

Remarks of the Attorney General

The same types of records are available under the Maine Freedom of Access Law as would be available from EPA. They are all "public records." See definition at 1 M.R.S.A. § 402.3 and 1 M.R.S.A. § 408.

(4) Information is provided to the public in substantially the same manner as EPA as indicated in 40 CFR Part 2 and the Revision Checklist in Appendix D of the State Authorization Manual.

Citation of Laws and Regulations, Date of Enactment and Adoption

38 M.R.S.A. § 1310-B; 1 M.R.S.A. §§ 402(3), 408, 409(1); Memorandum of Agreement (MOA).

Remarks of the Attorney General

The State has the authority to enter into and carry out the MOA provisions and there are no State statutes (e.g., State Administrative Procedures Acts) which require notice and comment or promulgation of regulations for the MOA procedures to be binding.

The DEP must respond to information request in five working days 1 M.R.S.A. § 409.1. There is no right to pursue an administrative appeal upon being denied information but a direct judicial appeal is available. *Id.* Maine's law (38 M.R.S.A. § 1310-B(1) (Supp. 1994) (effective July 19, 1990)) provides for attorneys' fees by requestors who prevail on appeal. Maine's DEP has authority to enter the MOA under 38 M.R.S.A. § 342(3-A) (Supp. 1994) (effective July 14, 1990). No state statute, including Maine's APA, precludes DEP from agreeing to be bound by the MOA procedures. These procedures are policies regarding the internal management of DEP and therefore are excluded from the definition of "rule" under Maine's APA, see especially, 5 M.R.S.A. § 8002(9) (effective July 1, 1978).

(5) The State statutes and regulations protect Confidential Business Information (CBI) to the same degree as indicated in 40 CFR 2 and the Revision Checklist in Appendix N of the State Authorization Manual.

Federal Authority: RCRA §3006(f); 40 CFR §271.17(c).

Citation of Laws and Regulations; Date of Enactment and Adoption

38 M.R.S.A. § 1310-B.

Remarks of the Attorney General

Maine permits information relating to hazardous waste submitted to the Department to be designated as being only for the confidential use of the Department, its agents and employees and various other agencies including EPA. 38 M.R.S.A. § 1310-B (1989 & Supp. 1994) (effective July 14, 1990).

Section 1310-B does not prohibit the State from making assessment information available to the Agency for Toxic Substances and Disease Registry (ATSDR) since § 1310-B(2) permits sharing even confidential information with EPA and for purposes of § 1310-B(2) the State would consider ATSDR as being associated with EPA.

38 M.R.S.A. § 1310-B(4) (1989) opens all information for public review which has been submitted as part of a permit application.

Under § 1310-B the Commissioner of DEP makes the final determination as to whether information which has been designated as confidential by the submitter is a trade secret, commercial or financial information, the disclosure of which impair the competitive position of the submitter and would make available information which would otherwise not become public. Thus, as applied, § 1310-B is the functional equivalent of 40 CFR 2.

XX. BURNING OF WASTE FUEL AND USED OIL FUEL IN BOILERS AND INDUSTRIAL FURNACES

A. State statutes and regulations contain the following requirements regarding the burning of waste fuel and used oil fuel for energy recovery in boilers and industrial furnaces as indicated in Revision Checklist 19:

(1) Waste fuels and used oil fuels are identified as solid wastes so as to encompass all such wastes controlled under 40 CFR 261.3, 261.5 and 261.6.

(2) Special management standards for generators, transporters, marketers and burners of hazardous waste and used oil burned for energy, as set forth in 40 CFR 264.340, 265.340, 266.30-35 and 266.40-44.

Federal Authority: RCRA § § 3001, 3004, 3014 (a); 40 CFR Parts 261, 264, 265 and 266 as amended November 29, 1985 (50 FR 491964), November 19, 1986 (51 FR 41900) and April 13, 1987 (52 FR 11819).

Citation of Laws and Regulations; Date of Enactment and Adoption

Not applicable since the State is not applying for this reduced requirement.

Remarks of the Attorney General

Not applicable since the State is not applying for this reduced requirement.

B. State statutes and regulations provide the authority to obtain criminal penalties for violations of the waste fuel land used oil fuel requirements, as set forth in 40 CFR 266.40-44.

Federal Authority: RCRA § § 3006(h), 3008(d), 3014; 40 CFR 271.16

Citation of Laws and Regulations; Date of Enactment and Adoption

Not applicable since the State is not applying for this reduced requirement.

Remarks of the Attorney General

Not applicable since the State is not applying for this reduced requirement.

XXI. LAND DISPOSAL RESTRICTIONS

A. State statutes and regulations provide for the restrictions of the land disposal of certain spent solvents and dioxin-containing hazardous wastes as indicated in Revision Checklists 34, 39, and 50.

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Parts 260, 261, 262, 263, 264, 265, 268 and 270 as amended on November 7, 1986 (51 FR 40572), June 4, 1987 (52 FR 21010), July 8, 1987 (52 FR 25760), and August 17, 1988 (53 FR 31138).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 852.3A, 3B & 3D; 852.5; 852.13A; 852.13C.

Remarks of the Attorney General

Maine's Rules are equivalent as they restrict land disposal of spent solvents to dioxin-containing hazardous wastes to the same degree as do federal rules. 40 C.F.R. 260.1 (b) (2) and 260.3 provide that words used in parts 260 through 265 and 268 of the federal rules in the masculine gender also include the feminine and neuter genders and that words in the singular include the plural and *visa versa*. The same rules of construction apply to Maine's Rules. 1 M.R.S.A. § 71 (1989); Danforth v. Emmons, 126 A. 156 (Me. 1924); Jordon v. Mace, 69 A. 2d. 670 (Me. 1949).

B. State statutes and regulations for restricting the disposal of certain California list wastes, including liquid hazardous waste containing polychlorinated biphenyls (PCBs) above specified concentrations, and hazardous waste containing halogenated organic compounds (HOCs) above specified concentrations as indicated in Revision Checklists 39, 50, and 66.

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Parts 262, 264, 265, 268 and 270 as amended on July 8, 1987 (52 FR 25760), October 27, 1987 (52 FR 41295), August 17, 1988 (53 FR 31138), and September 6, 1989 (54 FR 36967).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 852.3A, 3B & 3D; 852.5; 852.13A; 852.13C.

Remarks of the Attorney General

Maine's Rules are equivalent.

C. State statutes and regulations for specific treatment standards and effective dates for certain wastes from the "First Third" of the schedule of restricted wastes listed in 40 CFR 268.10 as well as land disposal restrictions for those First Third wastes for which a treatment standard is not established as indicated in Revision Checklists 50, 62 and 66.

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Parts 264, 265, 266 and 268 as amended on August 17, 1988 (53 FR 31138), February 27, 1989 (54 FR 8264), May 2, 1989 (54 FR 18836), September 6, 1989 (54 FR 36967), and June 13, 1990 (55 FR 23935).

Citation of Laws and Regulations; Date of Enactment and Adoption

See Revision Checklists 50, 62 and 66.

Remarks of the Attorney General

Maine's Rules are equivalent. Maine's rules adopt the federal treatment standards set forth at 40 CFR 268. 40-268.43 and Parts 264-266:See § 852.14(A) of the Maine Rules. This section provides that a regulated party may file a petition for a variance from these treatment standards with the Maine Board of Environmental Protection. A precondition to filing any such petition with the Board is that the petitioner must first obtain approval for the variance from the EPA Administrator. This ensures that Maine will grant no variances from treatment standards that are less stringent than those permitted by the federal rules.

D. State statutes and regulations for certain treatment standards and

prohibition effective dates for certain Second Third wastes and for imposing the "soft hammer" provisions of 40 CFR 268.8 on Second Third wastes for which the Agency is not establishing treatment standards as indicated in Revision Checklist 63.

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Part 268 as amended June 23, 1989 (54 FR 26594).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 852.13D & 14A.

Remarks of the Attorney General

State rules are equivalent.

E. State statutes and standards for treatment standards and effective dates for certain First Third "soft hammer" wastes as well as for certain wastes originally contained in the Third Third of the Schedule as indicated in Revision Checklist 63.

Federal Authority: RCRA §3004(d)-(k) and (m); 40 CFR Parts 264, 265 and 268 as amended June 23, 1989 (54 FR 26594).

Citation of Laws and Regulations; Date of Enactment and Adoption

06-096 CMR 852.13D & 14A.

Remarks of the Attorney General

State rules are equivalent.

XXII. MEMORANDUM OF AGREEMENT (MOA)

The State uses the MOA to satisfy Federal procedural requirements.

(1) The State has the authority to enter into the MOA. See answer to XIX(4) above.

(2) The State has the authority to carry out the MOA. Id.

(3) No applicable State statute (including the Maine Administrative Procedure Act, 5 M.R.S.A. §§ 8001 et seq.) requires that the procedures agreed to in the MOA be promulgated as a rule in order to be binding.

Maine APA does not require the MOA to be promulgated as a rule in order to be binding upon the State of Maine.

VOLUNTARY RESPONSE ACTION PROGRAM ACT

Effective June 16, 1993, the Maine Legislature enacted the Voluntary Response Action Program Act ("VRAP"). 38 M.R.S.A. § 343-E (Supp. 1994). The purpose of VRAP was to encourage the clean-up of contaminated properties with private funds by providing to potential purchasers and financiers of contaminated properties protection against the legal liability that might otherwise be imposed upon such parties. To qualify for full VRAP protections, a person otherwise subject to DEP administered laws would have to develop and implement a voluntary response action plan approved by DEP. § 343-E(1), (2), (3) & (4).

Because the VRAP Act does not include the public notice and opportunity for participation requirements of RCRA, subtitle C and because the VRAP Act promises a release from liability while RCRA does not, the VRAP Act could be considered to be less stringent than RCRA if the VRAP Act was applied to RCRA clean-ups.

DEP must provide liability protections to specified parties once it has approved a VRAP plan. However, all liability protections under the VRAP Act are keyed to DEP approval of a VRAP plan. The VRAP Act does not require DEP to accept or review a voluntary action plan (see 38 M.R.S.A. § 343-E(1) & (2)). Consequently, the Department can control who qualifies for the liability protections established by the VRAP Act by deciding which VRAP plans to review. The Department has used its discretion to accept VRAP plans for review so as to avoid applying the VRAP program to any RCRA site (TDS or generator) where there is a financially viable owner/operator. These sites have been and shall continue to be cleaned up in full compliance with Maine's Hazardous Waste Management Statutes and Rules which are equivalent to EPA's RCRA remediation authorities.

RCRA sites where the owner/operator(s) have declared bankruptcy or have otherwise demonstrated that they are financially unable to perform the necessary remediation are eligible for transfer to the State's Superfund Program (see 38 M.R.S.A. § 1361 et seq.) and/or to the VRAP program. Through this policy, the Department maintains equivalency to the federal RCRA rules.



Signature

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Attorney General of the State of Maine

Title

February 24, 1997

Date