UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

June 2, 1993

<u>**MEMORANDUM**</u>

SUBJECT: Policy on Counting Superceded Checklists in StATS

FROM: Richard LaShier, Acting Chief
            State and Regional Programs Branch

TO: Authorization Section Chiefs
            Regions I-X

        As we proceed with implementing the State Authorization Tracking System (StATS), and develop management reports based on data in StATS, we continue to identify issues dealing with what events should or should not be counted in the system.

        One such issue is the issue of "superceded checklists." Superceded checklists are those regulations from earlier clusters that are wholly or partially replaced by a regulation in a later cluster. Once a state adopts the later (or superceding) regulation, the material in the old checklist is replaced by the new regulation and no longer has any legal effect under state law. Once the new or superceding checklists are authorized and codified, they also supplant the old checklists, for purposes of defining the authorized program that EPA may enforce in authorized states.

        Based on the checklist linkage tables in the State Authorization Manual (SAM), the issue of superceded checklists may arise in connection with the following materials

Superceded CL	Subject	New Checklist
17A	Small Quantity Gens.	23
17K	Fuel Labeling	19
17R	Haz. Waste Exports	31
28 (partially)	Tank Systems	52
29	Specific Waste Listings	46

For STATS purposes, the question presented is whether to count one or both of the affected checklists in StATS, particularly in those cases where a State has not in fact ever adopted the material from the earlier checklist, but instead, proceeds to adopt only the more recent, Superceding authority. Some contend that such a State should get credit for both the earlier and later checklists, while others contend that only those States that have actually undergone the effort of adopting and obtaining approval for both checklists should get credit for both in STATS.

While there are good arguments underlying both positions, the resolution of the question should be driven by considering which position best effectuates the oversight purposes of StATS. Put another way, is the overarching purpose of StATS to reflect accurately the status of the authorized and adopted programs in each State and Region, or is StATS merely a bean-counting tool?

As the manager of STATS, SRPB concludes that StATS must be implemented as far as possible so that it accurately depicts the status of programs, and allows valid comparisons between them. Thus, a State that has adopted and been authorized for only the later, superceding checklist should be shown to have the same status in StATS as states that have adopted and been authorized in succession for both the superseded and later regulations, since the program in effect and authorized is no different in these states.

Since the earlier checklists include authorizable material that is valid until States adopt the later authority, it would not be appropriate to purge the superceded checklists from StATS. Thus, the best way to accommodate the superceded checklist issue in StATS is to give all States that have received approval for the later, superceding authorities credit for both the now and superceded checklists. I have directed DPRA to implement this approach immediately.

The consideration of this issue also presents the opportunity to reaffirm the importance of the checklist linkage tables in the SAM. If you know of applications that include superseded checklists, the States involved should be encouraged to adopt the more recent, superceding provisions, and thereby avoid submitting to a review of material that is obsolete and will need revision.

If you have any questions about this policy, please direct them to Reely Clifford on 703-308-8763.

cc: Keely Clifford
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