

Introduction to State Authorization Training Manual

INTRODUCTION TO STATE AUTHORIZATION



INTRODUCTION TO STATE AUTHORIZATION

Lesson I - Fundamentals of State Authorization

Format of Training	I-1
Authorization Overview	I-3
Statutory Authority	I-4
State Authorization Requirements	I-8
The Authorization Application	I-15
Program Modifications	I-20
Required Verses Optional Revisions	I-24
Program Modification Process	I-25
Differences Among States' Rulemaking Process	I-33
Authorization Guidance	I-33
Tools	I-36

Lesson II - Introduction to Checklists

What is a Checklist?	II-1
Types of Checklist	II-3
List of Revision Checklists	II-13
Consolidated Checklists	II-20
Customizing a Checklist	II-29

Lesson III - Program Description

What is the Program Description?	III-1
Regulatory Requirements	III-2
Specific CFR Requirements	III-4
Revision PDs	III-11

Lesson IV - Memorandum of Agreement

What is the MOA?	IV-1
When is the MOA Required?	IV-2
MOA Regulatory Requirements	IV-3
Other Uses of the MOA	IV-6
Model MOAs	IV-7
The MOA Checklist	IV-9
MOA Deficiencies	IV-11





INTRODUCTION TO STATE AUTHORIZATION

Lesson V - Attorney General's Statement

Regulatory Requirements	V-2
Reviewing Legal Authorities	V-6
Reviewing the Certification	V-9

Appendices

- Appendix One - Answers to Exercises
- Appendix Two - Example Program Description
- Appendix Three - 1997 Model MOA

Exhibits

Lesson I:

Examples of Broader in Scope vs. More Stringent Provision	I-10
40 CFR Section 271.22	I-14
Requirements for Final Authorization	I-19
40 CFR Section 271.21	I-21
Revision Application Process	I-26

Lesson II:

RCRA Revision Checklist 129	II-5
RCRA Revision Checklist 120	II-7
RCRA Revision Checklist 54	II-9
Revision Checklists and Final Rules	II-12
Revision Checklist 129 Summary	II-14
Table G-1	II-15
Table G-2	II-16
Map of Revision Checklist Materials	II-18
Revision Checklist Linkage Table	II-19
Special Consolidated Checklist	II-23
Availability of Special Consolidated Checklists	II-24
Consolidated Checklists	II-27
Consolidated Checklist C5	II-28
Consolidated Checklist C4 (WV)	II-30



INTRODUCTION TO STATE AUTHORIZATION



Lesson III:

40 CFR Section 271.6 III-3

Lesson IV:

40 CFR Section 271.8 IV-4
Sample of Model MOA in SAM Volume II IV-8

Lesson V:

Reviews Checklist for the Attorney General’s Statement V-17

Exercises

Lesson I:

Exercise I-1 I-6
RCRA Program Modifications and Revisions I-23
Timeframes for Modifications and Revision Applications I-31

Lesson II:

Exercise II-1 II-17

Lesson IV:

State Program Review IV-10
Exercise IV-2 IV-12
Permit Issuance IV-13
State Permitting IV-13

Lesson V:

Remarks of the State Attorney General V-7
Remarks of the State Attorney General V-14





LESSON I - OVERVIEW OF TRAINING/ FUNDAMENTALS OF STATE AUTHORIZATION

Notes:

The purpose of this training is to:

- Understand the need for the Resource Conservation and Recovery Act (RCRA) State authorization;
- Learn the steps involved in authorization; and
- Become familiar with the tools to assist in preparing and reviewing authorization applications.

This training is designed to teach practical skills needed to prepare and review State authorization applications.

Format of Training

The course is broken down into five lessons that contain all the basic information necessary to understand the statutory and regulatory authority for State authorization and the process by which it is obtained. There are several exercises. The answers to exercises are provided in **Appendix One**. In the PDF version of the training manual, red text indicates links within the manual and blue text indicates links to relevant documents posted on the State Authorization Website. The lessons for the course are as follows:

Lesson I: Lesson I provides an overview of RCRA and presents the basics of authorization including:

- Why States seek authorization;
- From where the statutory and regulatory authority is derived;
- The basic requirements States must meet to satisfy these statutory and regulatory requirements;
- The authorization process overview; and
- The components of the authorization application.

The remaining lessons are devoted to describing in more detail the components of an authorization application and the types of authorization available.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Lesson II: Lesson II describes checklists in more detail, an authorization tool introduced during Lesson I. Students will learn about:

- The different types of checklists and how to use them;
- How to customize checklists to fit your needs;
- The interrelationships between checklists and other reference lists; and
- Where to obtain checklists.

Lesson III: Lesson III is devoted to a discussion of the Program Description (PD); a component of the authorization application. Students will learn:

- What a PD is;
- The PD's place in the authorization package;
- How to make revisions to the PD; and
- What types of information should be included in the PD.

A sample PD is included in **Appendix Two** for reference.

Lesson IV: Lesson IV discusses the Memorandum of Agreement (MOA). The MOA is an important component of the authorization package, because it defines the roles and responsibilities of EPA and the State. Students will learn about:

- The regulatory requirements;
- The contents of the MOA;
- When it is required;
- Other uses of the MOA;
- About MOA checklist; and
- Common MOA deficiencies.

Students will also learn about the Model MOAs. **Appendix Three** contains a 1997 Model MOA for reference.

Lesson V: Lesson V is devoted to components of the authorization application with a discussion of the Attorney General's (AG) Statement.



INTRODUCTION TO STATE AUTHORIZATION



Students will learn:

Notes:

- What an AG Statement is;
- The AG's purpose;
- The regulatory requirements;
- When it is required;

What is RCRA State Authorization?

- States are granted the authority to implement the Federal Hazardous Waste Program in lieu of EPA.



- What EPA reviewers look for;
- About the AG checklist; and
- Common AG deficiencies.

Authorization Overview

RCRA Subtitle C can be implemented directly by EPA or by States authorized to administer the program in lieu of the Federal government. RCRA was designed so that the entire Subtitle C program would eventually be administered by the States. Authorization is achieved by a State through a process of preparing and submitting an authorization application package (authorization package) described throughout this course. Once approved by the EPA Region, the State is then authorized to implement RCRA or portions of it. EPA administers RCRA in unauthorized States. States seek authorization for the following reasons:

- Availability of funding:
 - States may receive up to 75% of their program costs from the RCRA grant fund, but must provide a minimum match of 25%.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

- Opportunity for State control:
 - Many States prefer to have the primary role in issuing permits and taking enforcement actions.
 - The regulated community prefers one set of rules and often prefers to deal with States rather than EPA.
 - States can tailor the standards, for example, by making certain aspects more stringent, to meet local coalitions.
 - States enforce their own regulations - not the Federal.

Statutory Authority

The Federal hazardous waste program, commonly referred to as RCRA, is implemented through the authority granted EPA by two statutes: RCRA and its amending statute, the Hazardous and Solid Waste Amendments of 1984 (HSWA).

The key components of each statute are described in the next sections.

The Resource Conservation and Recovery Act (RCRA)

- Congress developed and enacted RCRA in 1976 in response to public concern regarding the threat posed to human health and the environment by increased waste generation.
- RCRA describes, in very broad terms, the kind of waste management program that Congress wanted to establish.
- In addition, RCRA instructs EPA to develop and promulgate regulations to implement such a program, and gives the EPA Administrator the authority necessary to carry out the intent of the Act, including the authority to conduct inspections.

The Hazardous and Solid Waste Amendments of 1984 (HSWA)

- HSWA broadened the scope and requirements of RCRA. Like RCRA, HSWA is a statute, but HSWA amended an existing statute.



INTRODUCTION TO STATE AUTHORIZATION



- HSWA is unusual because Congress placed explicit requirements in the statute, in addition to instructing EPA in general language to develop regulations.
- HSWA is also significant because it contains ambitious schedules for implementation of the Act's provisions. Specifically, HSWA establishes "hammer" provisions, which are statutory requirements that go into effect automatically if EPA fails to issue regulations by a certain date (e.g., land disposal restrictions).

Notes:

RCRA and HSWA are implemented through regulations published in the Code of Federal Regulations (CFR). RCRA regulations are born at EPA Headquarters (HQ) and are promulgated as rules (e.g., the Hazardous Waste Identification Rule (HWIR)). Once finalized within EPA, the rule is published in the Federal Register (FR) and is eventually codified annually (July 1) in the CFR, along with all other Federal rules published that year. Most of the regulations pertaining to RCRA are published at 40 CFR Parts 260 through 280. Some administrative activities are published at 40 CFR Part 124, such as permit appeals.

HSWA's Effect on State Authorization

- Prior to HSWA, new RCRA regulations took effect only in States that were not authorized for the base program.
- EPA implements HSWA requirements until the States are authorized.
- The preamble to each rule indicates whether it is promulgated pursuant to HSWA or pre-HSWA authority. Some rules are promulgated under both.

Prior to HSWA, new RCRA regulations went into effect only in States not authorized for the base program. For a State authorized for the base program, until it adopted similar requirements, the regulated community was not required to comply with the regulation.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Regulations promulgated under HSWA, however, are immediately effective in all States, regardless of authorization status. EPA administers HSWA rules until States are authorized.

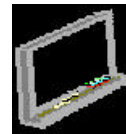
The enactment of HSWA resulted in significant EPA presence in authorized States, with the State and EPA managing different parts of the hazardous waste programs within a State. Table 1 in 40 CFR 271.1 lists regulations implementing HSWA.

- Examples of HSWA provisions include: land disposal restrictions; corrective action; Toxicity Characteristic (TC) Rule; and boilers and industrial furnaces (BIFs).
- Examples of non-HSWA provisions include: mixed waste; permit modifications; and mining waste I and II.

Some provisions are promulgated under both RCRA and HSWA authority, such as the wood preserving listings.

Exercise I-1

You are a member of a three person planning team that reports directly to the Hazardous Waste Division Director of EPA Region XII. Your responsibilities include examining upcoming changes in hazardous waste regulations and forecasting the changes in EPA duties and responsibilities, and the corresponding personnel assignments based on these forecasts. Today you are examining several changes that are upcoming to 40 CFR Parts 260-280.



Background on your Region. Region XII is comprised of three States:

1. Howard, a primarily agricultural State. Howard has never adopted any hazardous waste management regulations and has not expressed any interest in becoming authorized.
2. Shenandoah, a rural, mountainous State. Shenandoah received initial authorization in 1990. The State has adopted the land disposal restrictions (LDRs), but has not received authorization. The State plans to submit an application for LDRs next month. In addition, the State hopes to submit an application for four other rules in the next year.
3. New Trenton, a highly industrialized State, with a complex highway and infrastructure network. New Trenton is authorized for all rules, through RCRA Cluster VI. In fact, New Trenton's regulations go well beyond RCRA requirements in the identification and management of hazardous wastes.



INTRODUCTION TO STATE AUTHORIZATION



Exercise I-1 (Cont'd.)

Expected changes to RCRA. In the next four months the following changes are expected to take place in the Federal regulations.

Change 1: A new rule will be promulgated under HSWA that creates a new list of hazardous wastes to be added to the lists in 40 CFR 261. These will be called Q-listed wastes and will consist primarily of wastes from agricultural operations.

Change 2: New generator labeling requirements for wastes under 40 CFR Part 262. The new requirement will demand that, when writing dates on labels, the full name of the month be written out, rather than abbreviated or given numerically. The rule will be a non-HSWA requirement.

Change 3: The land disposal restrictions in 40 CFR Part 268 will now allow a new treatment method (solar diffusion) as an alternative to meeting a specified concentration for organic wastes from certain electroplating processes (food waste). This rule will be a HSWA requirement.

Notes:

[Click here for answer.](#)

Notes:





INTRODUCTION TO STATE AUTHORIZATION

Notes:

State Authorization Requirements

RCRA intends for States to be the primary implementers of RCRA. States may obtain authorization to implement a State program in lieu of the Federal program, provided that the State program:

- Is equivalent to and at least as stringent as the Federal rules;
- Is consistent with the Federal program and other authorized State programs;
- Contains adequate enforcement authority; and
- Provides for public participation and availability of information.

Requirements of State Authorization

- To obtain and retain authorization, State programs must be fully equivalent to, and no less stringent than, the Federal program.

In order to obtain and retain authorization, State programs must be fully equivalent to, and no less stringent than, the Federal program. The term “equivalent” implies that the State must regulate at least the same universe of waste and handlers. “No less stringent” signifies that each aspect of the State regulations must be at least as stringent.

In addition, States may also impose requirements that are “broader in scope” or “more stringent” than the Federal program. The litmus test serves as a tool to differentiate between more stringent and broader in scope requirements. The following are the basic questions used in a litmus test to determine the type of requirement.



INTRODUCTION TO STATE AUTHORIZATION



The Litmus Test

1) Does imposition of the State requirement increase the universe of the regulated community beyond that of the Federal program?

IF YES - then those portions which go beyond the scope of the Federal program are “broader in scope.”

IF NO - answer the following question.

2) Does the requirement in question have the direct counterpart in the Federal law or regulatory program?

[The “direct counterpart” criterion suggests that there should be a rough one-to-one correspondence between the activities or sanctions described in the Federal provision and the activities or sanctions identified in the State counterpart. When the State provision imposes sanctions for acts or omission that differ in kind (rather than degree) from those in Federal law, the State provision is probably “broader in scope.”]

IF YES - then the State requirement is either equivalent to, more stringent than, or less stringent than the corresponding Federal program.

Notes:

Exhibit I-1 provides examples of broader in scope versus more stringent provisions.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Exhibit I-1 Examples of Broader in Scope vs. More Stringent Provisions			
	Incr. Univ.?	Fed. Cntpt?	MS/BIS?
40 CFR Parts 264 and 265			
- Additional restrictions on location in sensitive environments (same environments that EPA regulates)	No	Yes	MS
- Restrictions on location in additional sensitive environments	No	No	BIS
- Annual report instead of biennial	No	Yes	MS
- More extensive ground-water monitoring requirements	No	Yes	MS
- Monitoring requirements for media other than ground water	No	No	BIS
- Ground-water monitoring for tanks	No	No	BIS
- Fewer financial mechanisms	No	Yes	MS
- Insurance plus corporate guarantee required for liability	No	Yes	MS
40 CFR Part 270			
- Additional permit information from new land disposal facilities	No	No	BIS
- Fee for permit applicants	No	No	BIS
- Shorter duration for permits	No	Yes	MS
40 CFR Part 261			
- More wastes listed (e.g., PCBs)	Yes	n/a	BIS
- More characteristics (e.g., radioactivity)	Yes	n/a	BIS
- Lower characteristic regulatory levels	Yes	n/a	BIS
- Fewer exemptions (e.g., regulates mining wastes, generators <100kg)	Yes	n/a	BIS
40 CFR Part 262			
- Licenses generators	No	No	BIS
- Accumulation time of <90 days	No	Yes	MS
- Additional recordkeeping	No	Yes	MS
40 CFR Part 263			
- Licenses transporters	No	No	BIS
- Controls on traffic outside site	No	No	BIS
Incr. Univ.? = Increase Universe; Fed Cntpt? = Federal Counterpart?; MS/BIS = More Stringent/Broader in Scope?			





Requirements of State Authorization (Cont'd.)

- State programs must be consistent with the Federal program.
- States must also provide for public participation, have adequate enforcement authority, and make hazardous waste information available to the public.

Notes:

State authorization requires that State programs be consistent with the Federal program. There are three tests of consistency:

- States may not impose bans or unreasonable restrictions on the transport of wastes from or to other States;
- States may not establish prohibitions on the treatment, storage, or disposal of wastes in the State without an environmental basis; and
- States must use the uniform national manifest.

In addition, State authorization requires States to have adequate enforcement authority. States must “provide adequate enforcement of compliance with the requirements of” RCRA Subtitle C. The requirements for inspection, enforcement, remedy and penalty authorities are specified in 40 CFR Sections 271.15 and 271.16.

As required by Section 271.14, States must follow specific procedures for public notice and hearing in the permitting process. States must provide:

- Notice of intent to issue a permit through publication in newspapers or broadcasts over the radio;
- At least a 45-day public comment period; and
- An opportunity for informal public hearings.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Finally, 40 CFR Section 271.17 requires that States make hazardous waste information available to the public “in substantially the same manner and to the same degree” as it would be made under the Federal program. This is referred to as “availability of information.”

What Provisions Can EPA Enforce?

- Equivalent provisions are part of the approved program and enforceable by EPA.
- More stringent provisions are part of the approved program and enforceable by EPA.
- Broader in scope provisions are permissible, but not part of the approved program and not enforceable by EPA.
- Less stringent provisions cannot be approved and are not enforceable by EPA.

A State determines whether its law and/or regulation is either equivalent to, more stringent than, or broader in scope than the corresponding Federal law and/or regulation. The State notes the determination in its AG Statement and on the checklists. Upon review of the State’s law and regulations, the EPA Regional Office determines whether the State has correctly identified the State law and/or regulation as equivalent to, more stringent than, or broader in scope than the corresponding Federal law and/or regulation. While EPA generally defers to a State’s interpretation of its law, EPA has final say on how State laws compare in stringency to Federal requirements.





State Authorization Withdrawal

- EPA may withdraw authorization if a State fails to comply with regulatory requirements (40 CFR §§271.22-.23).
- States may voluntarily transfer the program back to EPA (40 CFR §§271.22-.23).

Notes:

There are two occasions when a State's authority may be terminated. EPA may initiate withdrawal, in accordance with procedures in Part 271, for noncompliance with regulatory or statutory requirements. Alternately, States may voluntarily transfer the program back to EPA. To date voluntary transfer has only occurred in the State of Iowa.

40 CFR §271.22 (Exhibit I-2) contains criteria for withdrawing approval of a State program.

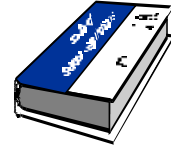




INTRODUCTION TO STATE AUTHORIZATION

Notes:

Exhibit I-2 - Sec. 271.22 Criteria for withdrawing approval of State programs.



(a) The Administrator may withdraw program approval when a State program no longer complies with the requirements of this subpart, and the State fails to take corrective action. Such circumstances include the following:

(1) When the State's legal authority no longer meets the requirements of this part, including:

(i) Failure of the State to promulgate or enact new authorities when necessary; or

(ii) Action by a State legislature or court striking down or limiting State authorities.

(2) When the operation of the State program fails to comply with the requirements of this part, including:

(i) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits;

(ii) Repeated issuance of permits which do not conform to the requirements of this part; or

(iii) Failure to comply with the public participation requirements of this part.

(3) When the State's enforcement program fails to comply with the requirements of this part, including:

(i) Failure to act on violations of permits or other program requirements;

(ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or

(iii) Failure to inspect and monitor activities subject to regulation.

(4) When the State program fails to comply with the terms of the Memorandum of Agreement required under Sec. 271.8.



INTRODUCTION TO STATE AUTHORIZATION



What is an Authorization Application?

Components of an application include:

- Letter from State Director;
- Attorney General's Statement; and
- Copies of State statutes, regulations or other legal authorities.



Notes:

The Authorization Application

The nature and extent of documentation needed from the State for an authorization application will vary. The following components, however, will be required in virtually all program revision applications.

- A one-page letter from the State Director to the Regional Administrator transmitting the revision with a clear statement of the nature of the modification (e.g., reference to specific checklists or designation of HSWA final or interim authorization);
- An Attorney General's Statement (described in Lesson V) certifying that the State's program is equivalent to the Federal requirements;
- Copies of State statutes, regulations, or other legal authorities upon which the State is relying to show equivalence; and
- Completed regulatory and/or statutory checklists (see Appendix J in SAM Volume II - these are usually attached to, or referenced in, the AG's Statement).





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Additional Application Components

Other components are sometimes necessary, such as the:

- Program Description;
- Memorandum of Agreement; and
- Capability Assessment

Program Description and Memorandum of Agreement

In addition to an Attorney General's Statement, modifications to the Program Description (described in **Lesson III**) and the Memorandum of Agreement (described in **Lesson IV**) are often necessary elements of an application. The Program Description explains how the State will implement the authorized revision, and the Memorandum of Agreement is analogous to a contract between EPA and the authorized State, describing the roles and responsibilities of each.

Even when a State has existing regulations that are analogous to new Federal regulations, a revision application is required to obtain authorization for the following reasons:

- The State's requirements must be evaluated in light of the new Federal requirements;
- The State's Attorney General must certify equivalence regarding the new Federal requirements; and
- Under the Administrative Procedure Act, the public must be given the opportunity to comment on EPA's decision to authorize or not to authorize the State's program regarding the new requirements.

The Capability Assessment

A capability assessment, conducted by the Region, is required for base program applications and applications for corrective action and other major rules (at the Region's discretion).



INTRODUCTION TO STATE AUTHORIZATION



The capability assessment is intended to ensure that State programs are capable and functioning effectively.

Notes:

Capability assessments provide EPA with a continuing mechanism through the authorization process to assess how effectively a State is implementing the program for which it is already authorized. The capability assessment also identifies areas of State programs that warrant enhancement, establishes the EPA and State actions necessary to strengthen the programs, and describes how the State may implement additional program areas. In general, States should demonstrate the capability to implement their existing authorized programs as well as the additional elements for which they are seeking authorization.

A capability assessment must be prepared for any application that includes elements that significantly affect the State's workload. This includes:

- Applications covering all or most of HSWA Cluster I or HSWA Cluster II; and
- Any application for corrective action (a HSWA Cluster I component).

There is no comprehensive list of provisions that require a capability assessment. Many provisions, if applied for alone, would not require a capability assessment. The combined workload from several provisions, however, may be significant enough to warrant an assessment. The Regions should consult early with the Headquarters Regional liaisons to determine whether a capability assessment will be necessary for a particular application.

Draft capability assessments should be submitted with draft authorization applications in order to identify and resolve problems as early as possible. The capability assessment will need to be updated if a long period of time passes between the draft and official applications.

See SAM Volume I, Chapter Three for more information on capability assessments. A capability assessment checklist is available in SAM Volume II, Appendix L.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

When is an Application Required?

Applications are required in two situations:

- Initial program authorization:
 - For establishing a State's hazardous waste program.
- Program Revisions:
 - For modifying a State's program.

Initial Program Authorization

The initial program application establishes the State's hazardous waste program. Since most States have received base authorization, this training focuses on program revisions.

Program Revisions

A revision application is required when a State modifies its hazardous waste program. The State should work with the EPA Regional Office to determine what specific documentation should be included in the revision application. The completed regulatory and statutory checklists are not required; they serve, rather, as guidance and tools for preparing applications (see **Lesson II**).

In order to evaluate a State's application for a program revision, EPA must have information that allows it to:

- Understand the substance of the program modification; and
- Evaluate the impact the program modification has on the State's ability to continue to meet the statutory requirements for authorization.



INTRODUCTION TO STATE AUTHORIZATION



Agencies need to be careful when using the terms “modifications” and “revisions”:

Notes:

- A modification is a State’s action to change its statutes, rules, and other program elements, as well as the actual change itself.
- A revision is the process of submitting an application and obtaining EPA review and approval of the State program modification.

If EPA changes one of its rules, the Regional State authorization contacts should advise their State counterparts of the change and should discuss whether a revision is needed. **Exhibit I-3** contains a table summarizing requirements for final authorization.

Exhibit I-3

REQUIREMENTS FOR FINAL AUTHORIZATION

	Statutory Component	EPA Regulations (40 CFR)	State Application Component
1.	Equivalent Program §3006(b)	271.9 - .14	Program Description, AG Statement, and MOA
2.	No Less Stringent Program §3009	271.9 - .14	Program Description, AG Statement, and MOA
3.	Consistent Program §3006(b)	271.4	Program Description and AG Statement
4.	More Stringent Program §3009	271.1(I)	Program Description and AG Statement
5.	Adequate Enforcement §3006(b); §7004(b)(1)	271.15 - .16	Program Description and AG Statement
6.	Notice and Hearing in the Permit Process §§7004(b)(1) and (2)	271.14	Program Description and AG Statement
7.	Availability of Information §3006(f)	271.17	Program Description, AG Statement and MOA





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Program Modifications

State authorization for hazardous waste management programs does not end when a State obtains final authorization. Additions and revisions to Federal requirements trigger changes to the authorized State program in order to meet Federal requirements. There are several reasons why States modify their programs when there are changes in the Federal program:

- It is required under RCRA Section 3006(b);
- Simplifies compliance by the regulated community; and
- Changes in State legislative structures.

Program Modifications

- RCRA Section 3006(b) requires authorized States to maintain equivalency to the Federal program.
- 40 CFR 271.21 contains procedures for revisions.

States also regularly update their programs. State modifications must be submitted to EPA and may trigger a revision application. States should notify their Regional contact before initiating a State modification. RCRA Section 3006(b) requires authorized States to maintain equivalency to the Federal program.

Exhibit I-4 contains the regulatory procedures for revising authorized programs ([40 CFR § 271.21](#)).

Type of Program Modifications

Federally-initiated

- Statutory amendments
- Regulatory changes
- Interpretation of legal authorities



INTRODUCTION TO STATE AUTHORIZATION



Exhibit I-4: Procedures for revising authorized State programs are found at 40 CFR 271.21:

Notes:

Sec. 271.21 Procedures for revision of State programs.

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances.

(2) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act. In approving or disapproving program revisions, the Administrator shall follow the procedures of paragraph (b)(3) or (4) of this section.

(3) The procedures for an immediate final publication of the Administrator's decision are as follows:

(i) The Administrator shall issue public notice of his approval or disapproval of a State program revision:

(A) In the Federal Register;

(B) In enough of the largest newspapers in the State to attract Statewide attention; and

(C) By mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested.

(ii) The public notice shall summarize the State program revision, indicate whether EPA intends to approve or disapprove the revision and provide for an opportunity to comment for a period of 30 days.

(iii) Approval or disapproval of a State program revision shall become effective 60 days after the date of publication in the Federal Register in accordance with paragraph (b)(3)(i) of this section, unless an adverse comment pertaining to the State revision discussed in the notice is received by the end of the comment period. If an adverse comment is received the Administrator shall so notify the State and shall, within 60 days after the date of publication, publish in the Federal Register either:

(A) A withdrawal of the immediate final decision; or

(B) A notice containing a response to comments and which either affirms that the immediate final decision takes effect or reverses the decision.

(4) The procedures for proposed and final publication of the Administrator's decision are as follows:

(i) The Administrator shall issue public notice of his proposed approval or disapproval of a State program revision:

(A) In the Federal Register;

(B) In enough of the largest newspapers in the State to attract Statewide attention; and

(C) By mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested.

(ii) The public notice shall summarize the State program revision, indicate whether EPA intends to approve or disapprove the revision and provide for an opportunity to comment for a period of at least 30 days.

(iii) A State program revision shall become effective when the Administrator's final approval is published in the Federal Register.

(c) States with approved programs shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator under paragraph (b) of this section. Organizational charts required under Sec. 271.6(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary.

(e)(1) As the Federal program changes, authorized State programs must be revised to remain in compliance with this subpart.

(2) Federal program changes are defined for purposes of this section as promulgated amendments to 40 CFR parts 124, 270, 260-266, or 268 and any self-implementing statutory provisions (i.e., those taking effect without prior implementing regulations) which are listed as State program requirements in this subpart. States must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval.

(i) For Federal program changes occurring before July 1, 1984, the State program must be modified within one year of the date of the Federal program change.

(ii) Except as provided in paragraphs (e) (iii) and (iv) of this section, for Federal program changes occurring on or after July 1, 1984, the State program must be modified by July 1 of each year to reflect all changes to the Federal program occurring during the 12 months preceding the previous July 1. (For example, States must modify their programs by July 1, 1986 to reflect all changes from July 1, 1984 to June 30, 1985.)

(iii) For Federal program changes identified in Sec. 271.1(j) that occur between November 8, 1984 and June 30, 1987 (inclusive), the State program must be modified by July 1, 1989.

(iv) For Federal program changes identified in Sec. 271.1(j) that occur between July 1, 1987 and June 30, 1990 (inclusive), the State program must be modified by July 1, 1991.

(v) States may have an additional year to modify their programs for those changes to the Federal program identified in paragraphs (e) (i), (ii), (iii), and (iv) of this section which necessitate a State statutory amendment.

(3) The deadlines in paragraphs (e)(2)(i) through (v) may be extended by the Regional Administrator upon an adequate demonstration by a State that it has made a good faith effort to meet these deadlines and that its legislative or rulemaking procedures render the State unable to do so. No such extension shall exceed six months.

(4)(i) Within 30 days of the completion of the State program modification the State must submit to EPA a copy of the program change and a schedule indicating when the State intends to seek approval of the change. Such schedule shall not exceed the dates provided for in paragraph (e)(4)(ii).

(ii) Within 60 days of the appropriate deadline in paragraphs (e), (f), and (g) of this section, the State must submit to EPA the documentation described in paragraph (b) of this section to revise its program.

(f) A State must modify its program to comply with any Federal program changes which occur prior to the day that final authorization is received, except for those changes that the State has already received authorization for pursuant to Sec. 271.3(f). Such State program modifications must be completed and submitted by the deadlines specified in paragraph (e) of this section or by the date of final authorization, whichever is later.

(g)(1) States that are unable to modify their programs by the deadlines in paragraph (e) may be placed on a schedule of compliance to adopt the program revision(s) provided that:

(i) The State has received an extension of the program modification deadline under paragraph (e)(3) and has made diligent efforts to revise its program during that period of time.

(ii) The State has made progress in adopting the program modifications.

(iii) The State submits a proposed timetable for the requisite regulatory and/or statutory revisions by the deadline granted under paragraph (e)(3).

(iv) The schedule of compliance for program revisions does not exceed one year from the extended program modification deadline under paragraph (e)(3), and

(v) The schedule of compliance is published in the Federal Register.

(2) If a State fails to comply with the schedule of compliance, the Administrator may initiate program withdrawal procedures pursuant to Secs. 271.22 and 271.23.

[48 FR 14248, Apr. 1, 1983, as amended at 51 FR 7542, Mar. 4, 1986; 51 FR 33722, Sept. 22, 1986]





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Types of Program Modifications (Cont'd.)

State Initiated:

- Statutory amendments
- Regulatory changes
- Administrative changes
- Legal changes

All State-initiated modifications should be reviewed by EPA to determine their effect on the State's authorized program and whether revision applications are needed. There are no deadlines specified in the regulations for State-initiated modifications for which EPA determines an application is necessary. The Region and State should jointly decide on a schedule for submitting a program revision application. In addition, State-initiated modifications that require approval cannot be implemented until they are approved by EPA. The State may, of course, implement its own rules under State authority. State and Regional authorization staff should discuss application packages in the early stages of the modification process.

Each FR notice explains in the preamble whether all or part of that rule triggers the need for State program revisions, and the checklists show section-by-section which specific provisions authorized States must adopt.

Exercise I-2 reviews situations to determine whether: 1) a change in the Federal rules or regulations requires a State modification, and program revision; or 2) a State modification requires a program revision.



INTRODUCTION TO STATE AUTHORIZATION



Exercise I-2: RCRA Program Modifications and Revisions

Notes:

Federal Program Triggers:

Phase II and Phase III land disposal restrictions establish treatment standards for hazardous wastes such as organic wastes and used oil management standards. Are State revisions required?

Are States required to maintain the same universe of waste and handlers as EPA?

Types of State Program Modifications:

A State legislature may enact new legislation that affects a State's authority to implement its authorized program (e.g., State may enact citing requirements that affect the permit process). What should the State submit to the Region for review and comment?

What other types of changes should the State submit to EPA for review? If a State wishes to transfer its hazardous waste program from the Health Department to the Environmental Protection Department, must it receive EPA approval?

[Click here for answers.](#)





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Required Versus Optional Revisions

States are not always required to become authorized for Federal program changes. Whether a State adopts a change depends upon whether it is required based on the type of change.

Federal program changes that are more stringent than the existing Federal program (expanded requirements for a regulated waste handler) or broader in scope (bring in new waste handlers) will always require State program revision applications and require EPA approval.

States are not required to modify their programs to address Federal changes that are less stringent than the existing Federal program or that reduce the scope of the existing Federal program. These changes are optional and are noted as such in the FR and on the checklists.

<u>Federal Program Changes</u>	<u>State Program Revisions</u>	
	<u>Required</u>	<u>Not Required</u>
More Stringent	X	
Less Stringent		X
Increase Scope	X	
Decrease Scope		X

EPA encourages States to adopt optional rules because they provide benefits to environmental protection. In addition, they often offer clarification, correct mistakes, or reduce management requirements.



INTRODUCTION TO STATE AUTHORIZATION



Examples of Federal requirements that are less stringent than previous Federal requirements (optional rules) are:

Notes:

- Research, development, and demonstration (RD&D) permits. This rule is less stringent, because EPA has the authority to waive some of the requirements when issuing permits.
- Treatability study sample exemptions are less stringent because they exempt samples from technical standards and permit requirements as long as they comply with a series of notification and information requirements.
- Permit modifications changed the existing requirements for most modifications to go through the standard permit process. The revised rule sets up classes of modifications that, in some cases, allow the permittee to make changes without prior EPA approval.

Program Modification Process

The three basic steps in the program modification process include:

- Modifying the program;
- Submitting a revision application, if necessary; and
- Receiving EPA approval.

States should consult EPA about the nature of the program modification, and EPA will determine if a revision application is needed. If the revision application is necessary, States should submit the application for EPA review. In addition, EPA provides opportunity for public comment before approving the revision application.

Overview of Revision Application Process

There are two phases of application review:

- Draft application review; and
- Final application review.



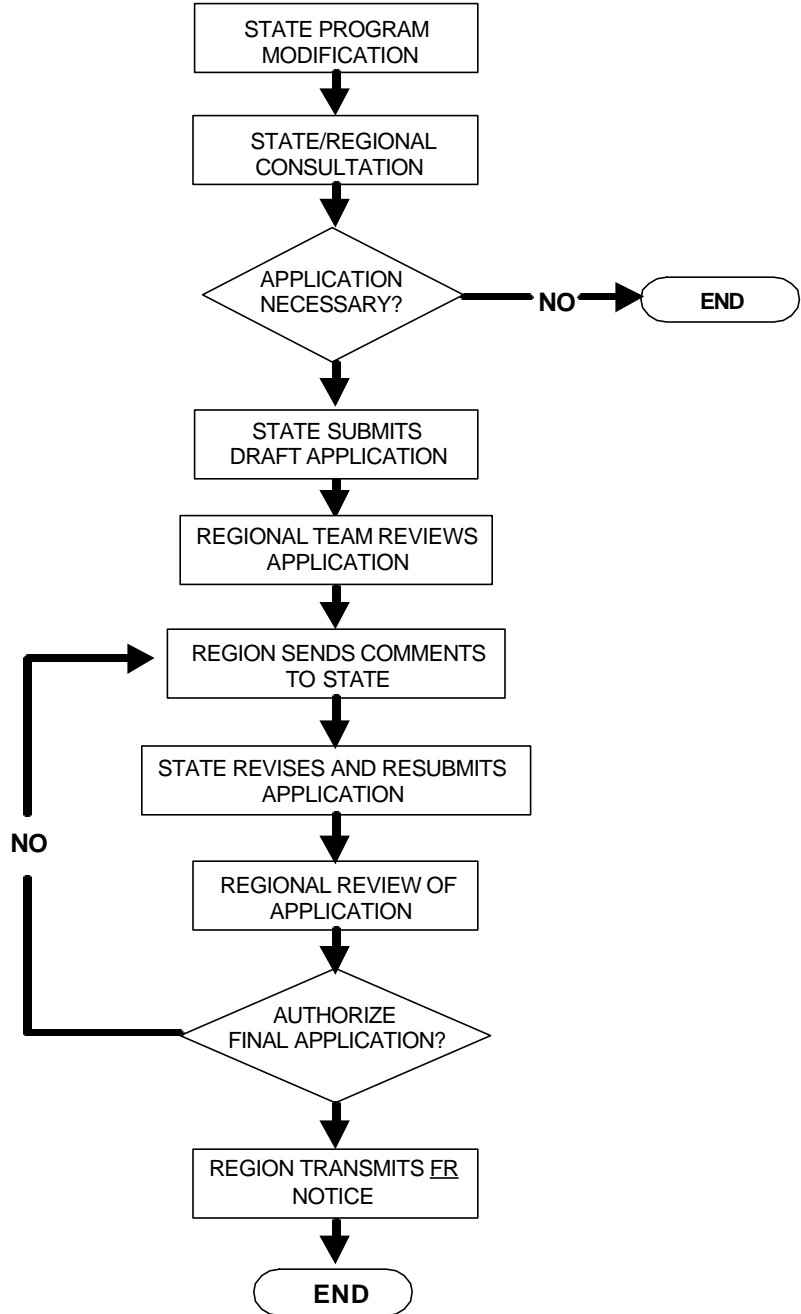


INTRODUCTION TO STATE AUTHORIZATION

Notes:

It is important that States involve EPA early in the revision process. States should first contact Regional EPA representatives. **Exhibit I-5** presents an overview of the revision application process.

Exhibit I-5
REVISION APPLICATION PROCESS





Draft Application Review

- State prepares and submits draft application.
- Region reviews draft application.
- Appropriate offices will participate in review.
- EPA completes initial review in 30 days.
- A second draft revision application may be necessary.

Notes:

The State and Region work as a team during the preparation and review of an application. Review of the draft application will involve the EPA Regional program, legal (e.g., Office of Regional Counsel (ORC)), and enforcement offices to ensure that all EPA concerns are identified at the draft stage. Generally, the Regional Authorization Coordinator will compile comments from these offices and send the State consolidated comments.

The length of EPA's review depends on the complexity of the application, the number of EPA offices that are involved in the review, and whether the application is clear and complete or needs extensive changes. In an ideal situation, EPA can complete its review in 30 days. If necessary, EPA may extend its review timeframe. EPA should notify a State of an extension within two weeks of receiving a draft.

If critical elements (e.g., AG Statement or regulatory checklists) are missing or inadequate, another draft revision application may be required. If components are grossly inadequate, the review may also be terminated.

Headquarters is responsible for:

- Ensuring national consistency between all State programs;
- Providing guidance and training support;
- Resolving national policy issues and legal concerns; and
- Providing funding for the RCRA program.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Final Application Review

- State submits revised application.
- Region ensures that State addresses all EPA comments.
- Region and State resolve any outstanding issues (e.g., capability, interpretation of legal authorities).
- Region makes authorization determination.

In reviewing the final application, EPA will generally refer to the consolidated comments on the draft application to ensure that they were satisfactorily addressed. If they are either not addressed satisfactorily or not addressed at all, the Region will set up conference calls and again prepare comments for the State to attempt to resolve the issues. Generally, new issues (i.e., issues not brought up during the draft application review) are not raised during the official application process unless they have legal ramifications.

ORC will verify that all legal issues have been addressed. After reviewing the final application and resolving any outstanding issues, the Region will make a tentative determination to approve or disapprove the program revision.

Regional Rulemaking

- Region transmits FR notice to Office of Federal Register
- Region sends copies to Regional library

Two kinds of rulemakings:

- Standard rulemaking
- Immediate final rulemaking



INTRODUCTION TO STATE AUTHORIZATION



The Region maintains a complete copy of the application at the Regional library for public review during the comment period.

Notes:

State Modification Deadlines: The Cluster System

- HSWA Clusters
- Non-HSWA Clusters
- RCRA Clusters

The cluster system was set up in an attempt to limit the number of times States would need to submit revision applications in response to the numerous Federal changes stemming from the 1984 HSWA amendments. The cluster periods coincide with the annual publications of the CFR (this is purely coincidental). The July date was selected to give States time to work on regulations (July-December); take them to the legislature (for those States that have legislative review, many legislatures meet during January-March); and develop an application (March-June).

The cluster system applies only to State modifications that are necessary because of changes to the Federal program after June 30, 1984.

It does not apply to State-initiated modifications, or rules promulgated between July 27, 1982, and June 30, 1984 (Checklists 1-8). There are three types of clusters: HSWA, Non-HSWA, and RCRA.

HSWA Clusters

There are two multi-year clusters that cover most of the HSWA regulations:

- Cluster I covers regulations promulgated between November 8, 1984, and June 30, 1987;
- Cluster II covers HSWA provisions promulgated between July 1, 1987, and June 30, 1990.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Cluster I includes the majority of facility standards; Cluster II includes the land disposal restriction requirements.

Non-HSWA Clusters

Non-HSWA clusters cover a period of one year and apply to rules issued between July 1, 1984, and June 30, 1990, under the authority of the pre-1984 RCRA. States must modify their programs by July 1 of the year following the closing date of the cluster for regulatory changes, and must modify their program by July 1 two years later for any provisions requiring a statutory change. Non-HSWA Cluster I encompasses the period from July 1, 1984, to June 30, 1985.

The State modification deadline is July 1, 1986, for regulatory changes, or July 1, 1987, if a State statutory change is necessary. There are six Non-HSWA clusters.

RCRA Clusters

After June 30, 1990, the clusters no longer distinguish between HSWA and Non-HSWA rules. All rules issued after that date fall into annual RCRA clusters. States must modify their programs within one year of the end of the cluster (or two years if a statutory change is required), and submit an application within 60 days after the modification deadline. Regional Administrators may grant case-by-case six month extensions to States that cannot meet the modification after good faith efforts (e.g., they may have lengthy public participation requirements, legislative involvement). If, after the extension, a State requests additional time, the Regional Administrator may place the State on a schedule of compliance for up to one additional year.





Timeframe for Modifications and Revision Applications

- States are not required to apply for all cluster provisions at one time.
- The Cluster Buster memorandum (December 1992) was developed to clarify that States may submit authorization applications for parts of clusters.
- States may apply for any Federal requirement at any time.
- Authorization cannot be granted until the Federal requirement is effective.

Notes:

Exercise I-3:

Timeframe for Modifications and Revision Applications



- What types of modifications must States inform EPA?
- How flexible are cluster deadlines?
- When may a State apply for a Federal requirement?





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Exercise I-3 (Cont'd.)

- Are States allowed to submit revision applications based on a Federal rule that has not yet been finalized?

- Is EPA allowed to approve a State's revision application before a Federal rule has been finalized?

[Click here for answers.](#)

Reasons States May Miss Cluster Deadlines

States frequently miss cluster deadlines

- Timeframes
- Public participation
- Background documentation
- Legislative review
- Constitutional or statutory restraints





Differences Among States' Rulemaking Processes

Notes:

Rulemaking processes differ among States, because some States adhere to more complicated processes than others. Some States incorporate the Federal rules verbatim, incorporate the rules by reference, or rewrite portions, or all of, the Federal rules. It is important that Regional authorization staff understand States' rulemaking processes and timeframes in order to negotiate realistic schedules for authorization applications.

Some States need legislative review, which would be equivalent to EPA having to go back to Congress for its regulations. For example, Wisconsin requires approximately 18 months to two years to adopt a new rule because of public participation requirements. However, other States are able to adopt rules much more quickly. In addition, States also have temporary and emergency rulemaking procedures.

Authorization Guidance

In addition to this training manual, there are two more manuals to assist in preparing and reviewing an authorization application - the State Authorization Manual (SAM) and the 1988 version of the State Consolidated RCRA Authorization Manual (SCRAM). The SCRAM is still the basic document for base program applications.

State Authorization Manual

- SAM Volume I - How to prepare and review a revision application.
- SAM Volume II - Appendices - checklists, models, and other working tools to aid in the authorization process.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

SAM Volume I provides background information on the base authorization process and focuses on the State program revision process. SAM Volume I consists of four chapters:

- Chapter One provides an overview of the Subtitle C State authorization program.
- Chapter Two identifies and describes program revision triggers. It also includes a discussion of the timeframe for submitting program modifications and revision applications.
- Chapter Three discusses the components of a revision application.
- Chapter Four discusses the program revision process.

1995 SAM: Volume I

- Overview of the State authorization program
- Program revision triggers
- The program revision application
- The program revision process
- Glossary



SAM
Volume I



INTRODUCTION TO STATE AUTHORIZATION



SAM Volume I also discusses codification of authorized State programs. Codification is the process of placing a rule in the Code of Federal Regulations (CFR). Rather than relying solely on a Federal Register notice to make EPA’s authorization decision formal, the CFR identifies the specific elements of the State program that EPA has approved as RCRA Subtitle C requirements. This is useful for the regulated community and the public, as they can see what elements of the RCRA program a State administers.

Notes:

In addition, it clarifies EPA’s enforcement authority in the event EPA decides to take an enforcement action in an authorized State, since EPA can only enforce the authorized program requirements. Finally, it identifies the provisions of the State program EPA cannot enforce because they are “broader in scope” than the Federal program.

Codifying State programs is accomplished by “incorporating by reference” State statutes and regulations. Other authorization documents, such as the AG Statement, MOA, and PD, are codified by referencing the title and date but are not incorporated by reference. Incorporation by reference has the same legal effect as if the incorporated material were published in full in the CFR.

The incorporated materials are kept on file in the Office of the Federal Register, as well as in EPA offices, and are available to the public. SAM Volume II, Chapter Four provides more information on codification.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

1995 SAM: Volume II

- Revision checklists with consolidated format.
- Adoption by reference checklist.
- MOA, AG Statement, and FR notice models.
- Consolidated AG Statement, PD, and MOA review protocols.
- State Authorization Web Site has checklists and models (<http://www.epa.gov/epaoswer/hazwaste/state/index.htm>).



**SAM
Volume II**

Tools

All authorization guidance can be found on the Internet at the EPA OSW RCRA State Authorization Home Page. The address for the Home Page is:

<http://www.epa.gov/epawaste/laws-regs/state/index.htm>. This page includes all materials in the SAM, checklists, and policy guidance.

Current State Authorization Status

- To date, 49 States and Territories are authorized for the RCRA program.
- Information on States' authorization status is available from the EPA Office of Solid Waste RCRA State Authorization Web Site.





LESSON II - INTRODUCTION TO RULE CHECKLISTS

Notes:

The major objectives of this lesson are to:

- Understand the types of checklists available and how to use them;
- Learn how to customize a checklist to meet your needs;
- Understand the interrelationships between the Checklists and Other Reference Lists, such as the Linkage Table; and
- Learn where to obtain the Checklists.

Review checklists used by EPA will not be covered in this lesson.

What is a Checklist?

Checklists serve two basic purposes. A checklist is a tool to assist:

- States, and to help ensure that States include all required information in the application; and
- EPA Regions to systematically review parts of an authorization application (e.g., the Memorandum of Agreement (MOA), Program Description (PD), and the Attorney General (AG) Statement).





INTRODUCTION TO STATE AUTHORIZATION

Notes:

For States there are two types of checklists, Statutory and Regulatory:

- Statutory Checklists are used by the State to document its authority for the hazardous waste program.
- Regulatory Checklists are used by a State to provide analogs to the Federal regulatory provisions.

Although the various checklists differ (because they serve different purposes), they have the same basic structure. Checklists provide a fill-in-the-blank form for walking the State and Region through preparing or reviewing an application.

Why Should a State Use a Checklist?

- It makes it easier to develop State analogs to Federal Rules.
- It can be used to assist the State in preparing the AG Statement.

Checklists are not mandatory, but there are several reasons why a State should use a checklist. Some of the major reasons are as follows:

- It makes it easier to develop State analogs to the provisions in a Federal rule.
- Once a State develops the checklist, it can be used to prepare the Attorney General (AG) Statement.
- The AG Statement requires that the State provide citations of State laws and regulations and the dates of enactment and adoption. Therefore, by completing the Revision Checklists first, the State can simply transfer the citations from the checklists to the AG Statement and add the date of enactment and adoption.



INTRODUCTION TO STATE AUTHORIZATION



Types of Checklists

Within each of the two basic types of checklists, Statutory and Regulatory, there are sub-groups.

Notes:

Statutory Checklists

- The State Legislation Checklist documents the State's enabling authority for Final Authorization under RCRA Section 3006(b).
- The HSWA Statutory Checklist documents the State's authority for the HSWA program.

There are two types of Statutory Checklists, the State Legislation Checklist and the HSWA Statutory Checklist:

- The State Legislation Checklist is submitted as part of the State's initial application for Base authorization; and
- The HSWA Statutory Checklist is submitted as part of the State's application for authorization of any of the HSWA provisions.

Both of these checklists should be updated and submitted to EPA for approval in case of a renumbering, restructuring, or changes to the State's statutes that affect State authorization. Hardcopy versions of the State Legislation and HSWA Statutory Checklists were included in the State Consolidated RCRA Authorization Manual (SCRAM), which preceded the State Authorization Manual (SAM). Electronic versions of the Statutory Checklists are available through the EPA State Authorization Web Site to make it easy for States to update the checklists when there are changes to their statutes.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Regulatory Checklists

- Revision Checklists
- Special Consolidated Checklists
- Consolidated Checklists C1-C11

The regulatory checklists consist of:

- The Revision Checklists, which are based on Federal final rules;
- The Special Consolidated Checklists, each of which is a consolidation of the Revision Checklists for a major rule, such as the LDR; and
- Consolidated Checklists C1 through C11, which are based on the different parts of the 40 CFR.

Basic Parts of a Revision Checklist

Exhibit II-1 shows the basic structure of a Revision Checklist (<http://www.epa.gov/epawaste/laws-regs/state/revision/clists/cl129.pdf>). A Revision Checklist consists of three basic parts, the:

- Title (A);
- Introduction (B); and
- Checklist itself in table format (C).

Title

The title identifies the name of the rule, date of publication of the Federal Register (FR) notice and the FR citation pertaining to the rule, any amendments to the rule, and the cluster number for the rule.

Introduction

The introductory section of the checklist provides background information on the rule and refers the applicant to other relevant checklists. The introduction can significantly vary in length from one sentence to a full page of explanation.



INTRODUCTION TO STATE AUTHORIZATION



EXHIBIT II-1

RCRA REVISION CHECKLIST 129

Notes:

Revision of Conditional Exemption for
Small Scale Treatability Studies

59 FR 8362-8366

February 18, 1994

(RCRA Cluster IV, Non-HSWA provisions)

_____ A

1) This rule revises the July 19, 1988 (53 FR 27290) Treatability Studies Sample Exemption Rule addressed by Revision Checklist 49. States which are not authorized for Revision Checklist 49 are encouraged to adopt these present revisions at the same time the requirements addressed by Revision Checklist 49 are adopted.

_____ B

2) As with the July 19, 1988 rule, States are not required to adopt these present revisions because they are less stringent or reduce the scope of the existing Federal requirements. However, EPA strongly encourages States to adopt these revisions. In addition, the Agency plans to work with States to encourage timely adoption of this rule because of its benefits to the development of treatment capacity.

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIVALENT	LESS STRINGENT	MORE STRINGENT	BROADER IN SCOPE
PART 261 - IDENTIFICATION AND LISTING OF HAZARDOUS WASTE						
SUBPART A - GENERAL						
† EXCLUSIONS						
replace "1000 kg of any non-acute hazardous waste" with "10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media"; replace "or 250 kg of soils, water, or debris" with "2500 kg media"	261.4(e)(2)(i)					

_____ C





INTRODUCTION TO STATE AUTHORIZATION

Checklist

Notes:

The checklist portion consists of four major columns (See **Exhibit II-1**):

- D **FEDERAL REQUIREMENTS** - describes the requirement.
- E **FEDERAL RCRA CITATION** - cites the specific regulation.
- F **ANALOGOUS STATE CITATION** - the State applicant fills in the specific section(s) of the State code as it relates to the Federal provision.
- G **STATE ANALOG IS** - the State marks an “X” in the sub-column that describes the State code as it relates to the Federal provision. The four sub-columns are as follows: Equivalent, Less Stringent, More Stringent, and Broader in Scope.

A State should not be less stringent than the Federal code. If More Stringent is selected, it must be explained in the AG Statement. The State should also explain why the State considers a specific provision to be Broader in Scope.

Additional Features of a Revision Checklist

Exhibits II-2 and II-3 provide other examples of Revision Checklists. Note the following items in **Exhibit II-2** (Revision Checklist 120; Wood Preserving; Revisions to Listings and Technical Requirements found at <http://www.epa.gov/epawaste/laws-regs/state/revision/clists/cl120.pdf>).

- A data table showing the entries for F032, F034, F035, is reproduced from the Federal regulations to provide specific details of the regulatory changes.
- A “†” placed in the left margin denotes an optional provision. These are changes that make the existing Federal code less stringent; therefore, States are not required to make these changes. However, any State that chooses to adopt an optional requirement must be sure that its analogous requirement is at least as stringent as the Federal requirement.
- All of the subparagraphs or requirements contained within an optional provision must be adopted if a State chooses to adopt that provision.



INTRODUCTION TO STATE AUTHORIZATION



EXHIBIT II-2

RCRA REVISION CHECKLIST 120

Wood Preserving; Revisions to
Listings and Technical Requirements
57 FR 61492-61505
December 24, 1992
(RCRA Cluster III, Both HSWA and Non-HSWA provisions)

Notes:

Note: ***

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:		
			EQUIVALENT	LESS STRINGENT	MORE STRINGENT
PART 261 - IDENTIFICATION AND LISTING OF HAZARDOUS WASTE					
SUBPART D--LISTS OF HAZARDOUS WASTES					
HAZARDOUS WASTES FROM NON-SPECIFIC SOURCES					
†, 1 revise F032, F034, and F035 listings to read as follows:	261.31(a)(table)				

Industry and EPA hazardous waste No.	Hazardous waste	Hazard code
*	*	*
*	*	*
F032	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that currently use or have previously used chlorophenolic formulations (except potentially cross-contaminated wastes that have had the F032 waste code deleted in accordance with § 261.35 of this chapter or potentially cross-contaminated wastes that are otherwise currently regulated as hazardous wastes (i.e., F034 or F035), and where the generator does not resume or initiate use of chlorophenolic formulations). This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
F034	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use creosote formulations. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
F035	Wastewaters (except those that have not come into contact with process contaminants), process residuals, preservative drippage, and spent formulations from wood preserving processes generated at plants that use inorganic preservatives containing arsenic or chromium. This listing does not include K001 bottom sediment sludge from the treatment of wastewater from wood preserving processes that use creosote and/or pentachlorophenol.	(T)
*	*	*
*	*	*

1 For those States that did not adopt the June 13, 1991 administrative stay, the changes to these listings represent a narrowing of the F032, F034, and F035 listings. Thus, these changes are optional for States that are not adopting that administrative stay. Those States which adopted the administrative stay should remove the wording added by the stay and replace the wording with that shown in the December 24, 1992 rule and presented in this checklist. See the Preamble for additional information regarding this administrative stay.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

- Numbers placed in the checklist's left margin indicate endnotes. The actual endnotes appear at the end of the checklist. For example, Endnote 1 of Revision Checklist 120 provides guidance to States on how to adopt the changes at 261.31(a), depending on whether the State adopted the June 13, 1991 administrative stay addressed by Revision Checklist 91.

In **Exhibit II-3** (Revision Checklist 54; Permit Modification Rule found at <http://www.epa.gov/epawaste/laws-regs/state/revision/clists/cl054.pdf>, all of the requirements are designated as optional; therefore the checklist is considered an "optional" checklist. States are not required to apply for the changes represented by optional checklists, and such checklists are not required to be in an application for a cluster.

Revision Checklists

- Optional part of the revision application package; may be sent with the Attorney General's Statement to EPA for review.
- Purpose is to help States develop their authorization applications.
- Individual checklists have been developed for every final rule under RCRA Subtitle C; they are numbered in order of date of promulgation and grouped by Cluster.
- Revision Checklists are available on the EPA State Authorization Website.



INTRODUCTION TO STATE AUTHORIZATION



EXHIBIT II-3

RCRA REVISION CHECKLIST 54

Notes:

Permit Modifications for Hazardous Waste Management Facilities
 53 FR 37912-37942
 September 28, 1988
 as amended on October 24, 1988, at 53 FR 41649
 (Non-HSWA Cluster V)

Note: The standards addressed by this checklist are less stringent than existing Federal requirements; thus, authorized States are not required to adopt them. However, EPA strongly encourages States to adopt this permit modification rule as promulgated. If preferred, States may amend their programs to incorporate only selected portions of the rule. See 53 FR 37933-37934 for a discussion of this option.

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIVALENT	LESS STRINGENT	MORE STRINGENT	BROADER IN SCOPE
PART 124 - PROCEDURES FOR DECISION MAKING						
SUBPART A - GENERAL PROGRAM REQUIREMENTS						
^MODIFICATION, REVOCATION AND REISSUANCE OR TERMINATION OF PERMITS						
add reference "or 270.42(c)"	124.5(c)(3)					
PART 264 - STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES						
SUBPART D - CONTINGENCY PLAN AND EMERGENCY PROCEDURES						
^AMENDMENT OF CONTINGENCY PLAN						
remove the comment	264.54(e)					
SUBPART G - CLOSURE AND POST-CLOSURE						
^CLOSURE PLAN; AMENDMENT OF PLAN						
add wording on "notification" and "review" to text	264.112(c)					
insert "notification or" prior to "request"	264.112(c)(1)					
insert "notification or" prior to "request"	264.112(c)(2)					





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Once a State receives Base Program authorization, it is required to continuously revise its program every time new Federal hazardous waste regulations are promulgated. The Revision Checklist is a tool designed to assist States in developing their program modifications and authorization applications and in documenting specific State analogs to the Federal regulations. The Revision Checklist is not required; however, once completed, it makes it easier for a State to prepare the AG Statement. The completed checklists may be submitted with the AG Statement to EPA for review.

Individual Revision Checklists have been developed for every final rule under RCRA Subtitle C. Each checklist outlines specific changes made by a final rule. As new regulations are promulgated, new Revision Checklists are developed and distributed to States through the State Program Advisories (SPA) system and are available for downloading from the EPA State Authorization Web Site.

Revision Checklists and Final Rules

- Generally, each Revision Checklist addresses one Federal rule (e.g., Revision Checklist 100).
- However, there are several Revision Checklists that address multiple Federal rules (e.g., Revision Checklist 140).
- States should adopt all the final rules addressed by a particular checklist in order to be authorized for that checklist.

Revision Checklists generally address one Federal rule. For example, Revision Checklist 100, which addresses Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units, consists of only one Federal rule promulgated on January 29, 1992 (57 FR 3462).



INTRODUCTION TO STATE AUTHORIZATION



However, there are several Revision Checklists that address multiple Federal rules. An example of such a checklist is Revision Checklist 140 (Carbamate Production Identification and Listing of Hazardous Waste) (**Exhibit II-4** depicts types of Revision Checklists). Checklist 140 is based on:

Notes:

- (1) Three Federal final rules;
 - (2) One interpretive rule; and
 - (3) A U.S. Court of Appeals decision.
- The first final rule addressed by Revision Checklist 140 was promulgated on February 9, 1995. The final rule lists as hazardous certain carbamate wastes.
 - On April 17, 1995, EPA published a correction to the February 9, 1995, final rule which corrected certain typographical and omission errors.
 - A subsequent correction was published in the Federal Register on May 12, 1995, to correct a typographical error in the April 17, 1995, final rule.
 - Then, on August 8, 1995, EPA published an interpretive rule regarding a change in the Agency's interpretation of the February 9, 1995, final rule.
 - Finally, on November 1, 1996, the U.S. Court of Appeals for the District of Columbia Circuit vacated a number of carbamate wastes listed by the February 9, 1995, final rule.

A State seeking authorization for a checklist with multiple rules must ensure that it adopts the provisions addressed by ALL the final rules on that checklist.





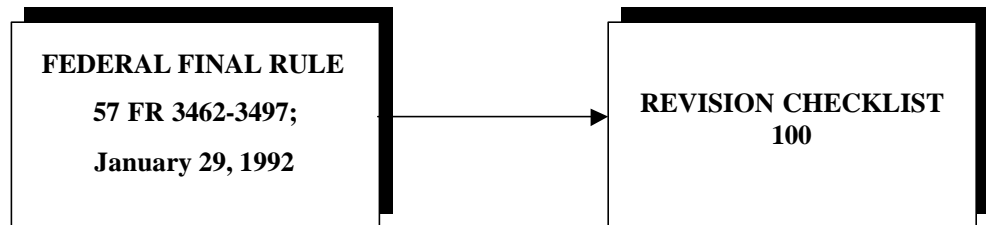
INTRODUCTION TO STATE AUTHORIZATION

EXHIBIT II-4

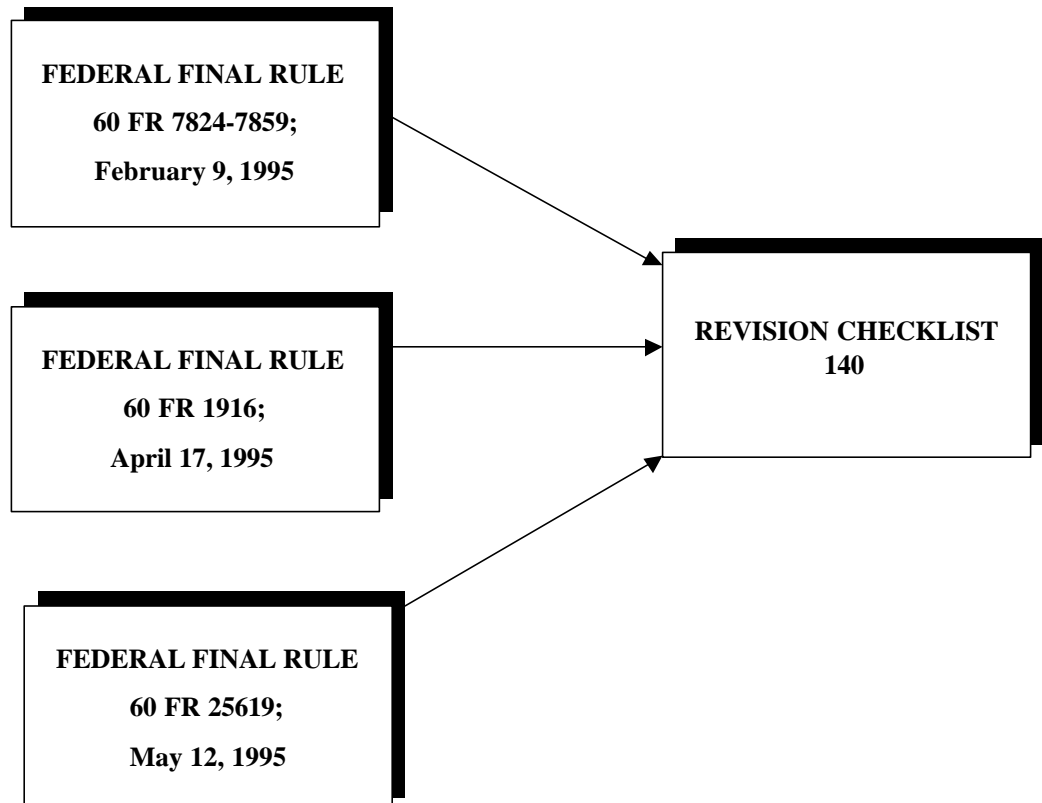
Notes:

REVISION CHECKLISTS AND FINAL RULES

REVISION CHECKLISTS GENERALLY ADDRESS ONE FEDERAL RULE.



HOWEVER, THERE ARE SEVERAL REVISION CHECKLISTS THAT ADDRESS MULTIPLE FEDERAL RULES.



INTRODUCTION TO STATE AUTHORIZATION



Revision Checklist Summaries

A Summary is available with each Revision Checklist. Each Summary provides the following information:

Notes:

- Rule title, Federal Register publication date and reference number, effective date;
- RCRA cluster, provision type (HSWA versus non-HSWA), and relationship to other Revision Checklists (Linkage);
- Summary of the rule;
- State Authorization Guidance;
- Model Attorney General's Statement entry; and
- Incorporation by Reference/Adoption Guidance.

Exhibit II-5 represents a Revision Checklist Summary (<http://www.epa.gov/epawaste/laws-regs/state/revision/sum/sum129.pdf>)

List of Revision Checklists

Included in each SPA are two Tables which provide a list of the Revision Checklists, organized in different ways.

Table G-1

Table G-1, shown in **Exhibit II-6** lists the Revision Checklists by cluster and specifies the due date for the cluster. The table also includes a Federal Register reference for each checklist.

Table G-1 may be used for guidance on the timeframe for submitting the program revisions represented by each checklist. For example, in **Exhibit II-6**, we see that RCRA Cluster V includes Federal rules promulgated between July 1, 1994, through June 30, 1995, and that the State's deadline for submitting the authorization package is July 1, 1996.





INTRODUCTION TO STATE AUTHORIZATION

OSWER DIRECTIVE NO. 9541.00-21
SPA 15

Notes:

EXHIBIT II-5 Revision Checklist 129 Summary

Rule Title: Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Treatability Studies Sample Exclusion

Checklist Title: Revision of Conditional Exemption for Small Scale Treatability Studies

Reference: 59 FR 8362-8366

Promulgation Date: February 18, 1994

Effective Date: February 18, 1994

Cluster: RCRA Cluster IV

Provision Type: Non-HSWA

Linkage: Revision Checklist 49

Optional: Yes

Summary: On July 19, 1988 (53 FR 27290; Revision Checklist 49) EPA promulgated the Treatability Sample Exemption Rule which conditionally exempted from Subtitle C regulation samples of hazardous waste collected for purposes of conducting small-scale treatability studies.

This February 18, 1994 rule revises that existing rule, the principal change being to increase the quantity and time limits for major classes of contaminated media (specifically soil and debris) used in treatability studies without triggering RCRA Subtitle C requirements.

State Authorization: This rule is placed in RCRA Cluster IV; the changes addressed by it were promulgated under non-HSWA authority.

For states that choose to adopt these changes, the state modification deadline is July 1, 1995 (or July 1, 1996 if a State Statutory change is necessary). The State Revision Application must include applicable regulations, AG statement addendum, Revision Checklist 129, other associated checklists and other application materials, i.e. a program description and an MOA, as determined by the Regional office.

Attorney General's Statement Entry: The following entry should be placed at Subsection I DD in the Model Revision Attorney General's Statement.

DD. [OPTIONAL]: This is a reduced requirement.] State statutes and regulations increase the quantity and time limits for contaminated media used in treatability studies, as indicated in Revision Checklist 129.

Federal Authority: RCRA §3001; 40 CFR 261.4(e)(2)(i)&(ii), (e)(3), (f)(3), (f)(4), and (f)(5) as amended February 18, 1994 (59 FR 8362).

Citation of Laws and Regulations; Date of Enactment and Adoption
Remarks of the Attorney General

[Adoption/Incorporation by Reference: No special guidance needed.]



INTRODUCTION TO STATE AUTHORIZATION



EXHIBIT II-6 TABLE G-1 LIST OF REVISION CHECKLISTS BY CLUSTER Through June 30, 1998

Notes:

StATS ¹ Rule Code	Revision Checklist Number ²	Federal Requirement	HSWA or FR Reference	Promul- gation or HSWA Date
RCRA Cluster V (July 1, 1994 - June 30, 1995; Due Date - July 1, 1996 ³)				
135	†135	Recovered Oil Exclusion (Non-HSWA)	59 <u>FR</u> 38536	7/28/94
136	136	Removal of the Conditional Exemption for Certain Slag Residues (HSWA)	59 <u>FR</u> 43496	8/24/94
126.1	(126)	[Testing and Monitoring Activities (Included on Revision Checklist 126 in RCRA Cluster IV)]	59 <u>FR</u> 47980	9/19/94
137	137	Universal Treatment Standards and Treatment Standards for Organic Characteristic Wastes and Newly Listed Waste (HSWA/Non-HSWA)	59 <u>FR</u> 47982	9/19/94
154.1	(154)	[See Revision Checklists 154, Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, in RCRA Cluster VII (formerly withdrawn Revision Checklist 138)]	59 <u>FR</u> 62896	12/6/94
137.1	(137)	[Universal Treatment Standards and Treatment Standards for Organic Characteristic Wastes and Newly Listed Waste (Included on Revision Checklist 137 in RCRA Cluster V)]	60 <u>FR</u> 242	1/3/95
139	139	Testing and Monitoring Activities Amendment I (Non-HSWA)	60 <u>FR</u> 3089	1/13/95
140	140	Carbamate Production Identification and Listing of Hazardous Waste (HSWA)	60 <u>FR</u> 7824	2/9/95
141	141	Testing and Monitoring Activities Amendment II (Non-HSWA)	60 <u>FR</u> 17001	4/4/95
140.1	(140)	[Carbamate Production Identification and Listing of Hazardous Waste (Included on Revision Checklist 140 in RCRA Cluster V)]	60 <u>FR</u> 19165	4/17/95

Table G-2

Table G-2, shown in **Exhibit II-7** lists the Revision Checklists in numerical order. The Table also lists the Federal requirement and the associated cluster. Table G-2 may be used as a quick reference for determining which revision cluster a checklist is in. In addition, non-checklisted items are also listed in Table G-2.





INTRODUCTION TO STATE AUTHORIZATION

EXHIBIT II-7

TABLE G-2. NUMERICAL LISTING OF REVISION CHECKLISTS AND CORRESPONDING CLUSTER Through June 30, 1998

Notes:

Revision Checklist Number	Federal Requirement	Cluster
22	Listing of Four Spent Solvents	HSWA Cluster I
23	Generators of 100 to 1000 kg Hazardous Waste	HSWA Cluster I
24 ²	Financial Responsibility: Settlement Agreement	Non-HSWA Cluster II and Non-HSWA Cluster VI
25	Codification Rule, Technical Correction (Paint Filter Test)	HSWA Cluster I
†26	Listing of Spent Pickle Liquor (K062)	Non-HSWA Cluster II
†27 ³	Liability Coverage - Corporate Guarantee	Non-HSWA Cluster III
28	Standards for Hazardous Waste Storage and Treatment Tank Systems	Non-HSWA Cluster III and HSWA Cluster I
29	Correction to Listing of Commercial Chemical Products and Appendix VIII Constituents	Non-HSWA Cluster III
30	Biennial Report; Correction	HSWA Cluster I
31	Exports of Hazardous Waste	HSWA Cluster I
32	Standards for Generators - Waste Minimization Certifications	HSWA Cluster I
33	Listing of EBDC	HSWA Cluster I
34	Land Disposal Restrictions	HSWA Cluster I
35	Revised Manual SW-846; Amended Incorporation by Reference	Non-HSWA Cluster III
36	Closure/Post-closure Care for Interim Status Surface Impoundments	Non-HSWA Cluster III
ETC.		

† Optional.

² Only those sections, i.e., 40 CFR 264.113 and 265.113, of Revision Checklist 24 (Amended) recharacterized as more stringent by the June 26, 1990 correction are included in Non-HSWA Cluster VI. All other Revision Checklist 24 provisions continue to be included in Non-HSWA Cluster II. States which have already adopted the 264.113 and 265.113 amendments as part of their authorization for Revision Checklist 24 in Non-HSWA Cluster II, are not affected by this correction and do not have to submit an amended Revision Checklist 24.

³ While Revision Checklists 27 and 43 are optional, States which have adopted or choose to adopt the changes addressed by Revision Checklist 27, must adopt the provisions addressed by Revision Checklist 43.



INTRODUCTION TO STATE AUTHORIZATION



Exhibit II-8, *Map of Revision Checklist Materials* provides a good summary of the relationship between the:

Notes:

- SPAs;
- Federal promulgation dates of final rules;
- Revision Checklists; and
- Clusters.

For example, RCRA Cluster I includes Revision Checklists from SPAs 10 and 11 and addresses final rules promulgated between July 1, 1990, and June 30, 1991. In addition, SPA 17 is part of RCRA Cluster VI and includes Revision Checklists 145-152. These checklists are based on Federal rules promulgated between July 1, 1995, and June 30, 1996.

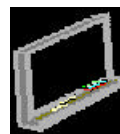
Revision Linkage Table

The Revision Checklist Linkage Table is another tool available to States. **Exhibit II-9** shows sample entries from this Table. The Revision Checklist Linkage Table shows which Revision Checklists are related (i.e., which checklists affect similar sections of code).

For example, Revision Checklists 34, 39, 50, 63, 78, 109, 137, 151, 157, and 162 are considered “linked” because they all deal with the Land Disposal Restrictions (LDRs). Similarly, Revision Checklists 112, 122, and 130 are “linked” because they deal with the Used Oil Management Standards.

Exercise II-1

Look at **Exhibit II-9** and determine:



1. Which checklists are linked with Checklist 5?
2. Why are they linked?

[Click here for answers.](#)





INTRODUCTION TO STATE AUTHORIZATION

EXHIBIT II-8. MAP OF REVISION CHECKLIST MATERIALS (as of June 30, 1998)

Notes:

SPA No.	Dates Included	Checklists	Cluster(s) (Rules included)
Pre-SPA	01-01-83 to 06-30-84	CL 1-8	Recent Requirements (1-8)
Part of SCRAM ¹	07-01-84 to 06-30-85	CL 9-16	Non-HSWA I (AI, 9, 10, 11, 12, 13, 13.1, 15)
	07-01-85 to 06-30-86	CL 17-26	Non-HSWA II (13.2, 24, 26)
	07-01-86 to 12-31-86	CL 27-34	Non-HSWA III (MW, 27, 28N, 29, 28N.1, 26.1, 35, 36, 37, 38)
SPA 3	01-01-87 to 06-30-87	CL 35-38	
SPA 4	07-01-87 to 12-31-87	CL 39-45	Non-HSWA IV (40, 41, 26.2, 38.1, 43, 45, 24.1, 46)
SPA 5	01-01-88 to 06-30-88	CL 46	
SPA 6	07-01-88 to 12-31-88	CL 47-58	Non-HSWA V (49, 52N, 53, 54, 55, 54.1, 56, 57, 58, 59, 60, 61)
SPA 7	01-01-89 to 06-30-89	CL 59-63	
SPA 8	07-01-89 to 12-31-89	CL 64-70	Non-HSWA VI (64, 65, 67, 70, 24A, 71, 72, 73, 76, 78N)
SPA 9	01-01-90 to 06-30-90	CL 71-79	
SPA 10	07-01-90 to 12-31-90	CL 80-82	RCRA I (80-91)
SPA 11	01-01-91 to 06-30-91	CL 83-91	
SPA 12	07-01-91 to 12-31-91	CL 92-99	RCRA II (92-106)
SPA 13	01-01-92 to 06-30-92	CL 100-106	
SPA 14	07-01-92 to 06-30-93	CL 107-124	RCRA III (107-124)
SPA 15	07-01-93 to 06-30-94	CL 125-134	RCRA IV (125-134)
SPA 16	07-01-94 to 06-30-95	CL 135-144	RCRA V (135-144)
SPA 17	07-01-95 to 06-30-96	CL 145-152	RCRA VI (145-152)
SPA 18	07-01-96 to 06-30-97	CL 153-159	RCRA VII (153-159)
SPA 19	07-01-97 to 6-30-98	CL 160-168	RCRA VIII (160-168)

¹ State Consolidated RCRA Authorization Manual - which was the predecessor of the State Authorization Manual (SAM) SCRAM.





EXHIBIT II-9 Revision Checklist Linkage Table as of June 30, 1998

Notes:

Revision Checklist Number	Linked Checklists	Topic or Explanation
1	17 D, 30	Biennial Report
2 ¹	---	Permit - Settlement Agreement
3	10	Interim Status - Applicability
* 4	---	Chlorinated Aliphatic Hydrocarbon Listing
5	17 D,32,58	National Uniform Manifest Requirements
6 ¹	---	Permit - Settlement Agreement ¹
* 7	---	Warfarin & Zinc Phosphate Listing
* * * * *		
16	25	Paint Filter Test
17 A ²	23,42,47	Small Quantity Generators
17 B	---	Delisting
17 C	9	Household Waste Exclusion
17 D	1,5,30,32,58	Biennial Report/National Uniform Manifest
17 E	---	Salt Domes, Salt Beds, Underground Mines and Caves Standards
* * * * *		
34	39,50,63,78,109,137, 151,157,162	Solvents & Dioxins Land Disposal Restrictions
35	11,67,73,126	Corrections - Test Methods Manual
36	---	Surface Impoundments: Closure/Post Closure Care
* * * * *		
* 82	91,92,101,120,167F	Wood Preserving Listings
* 83	78,102,103,106,109,116 123,124,137,151,157	Third Third Land Disposal Restriction Correction
84	74,80,108	Toxicity Characteristic
85	19,94,96,105,110,111,114, 125,127,164	Burning of Hazardous Waste in Boilers and Industrial Furnaces

* These are checklists affecting the lists of hazardous waste in 40 CFR 261, Subpart D.

¹ While Revision Checklists 2 and 6 address similar topics, they affect different sections of code.

² Superseded by Revision Checklist 23.





INTRODUCTION TO STATE AUTHORIZATION

A State may use the Revision Checklist Linkage Table to verify that all related changes to a State program are made at the same time.

Notes:

In summary, the Revision Checklist is a tool to assist States in systematically including all required information for some portion of an authorization application. The Revision Checklist, in particular, makes it easier to develop State analogs to Federal rules. Once a State develops the checklists, they can be used to prepare the AG Statement. Finally, the Linkage table should be used to identify which Revision Checklists are related.

Consolidated Checklists

There are two types of Consolidated Checklists that States can use to reduce the burden of using so many Revision Checklists to accomplish the same task.

Consolidated Checklists

Two types of Consolidated Checklists:

1. Special Consolidated Checklists
2. Consolidated Checklists C1 through C11

The two types of Consolidated Checklists are:

1. Special Consolidated Checklists (Collection of Revision Checklists for a major part of the RCRA program); and
 2. Consolidated Checklists C1 through C11 (Based on 40 CFR Parts).
- Each citation on the Consolidated Checklist shows the Revision Checklists that have affected that citation.
 - The two types of Consolidated Checklists serve different functions, depending on the needs of the State.



INTRODUCTION TO STATE AUTHORIZATION



Special Consolidated Checklist

The Special Consolidated Checklist collects the Revision Checklists for a major part of the RCRA program, such as the LDRs. Consolidated Checklists C1 through C11 are based on the individual parts of the CFR (i.e., 40 CFR Parts 260, 261, 262, 263, etc.). The two types of Consolidated Checklists serve different functions.

Notes:

Purpose and Use of Special Consolidated Checklists:

- Used by States seeking authorization for a major rule to eliminate the need to submit several Revision Checklists.
- Special Consolidated Checklists are available for each of the major program areas, including LDR, BIF, Used Oil, etc.
- Parallel Revision Checklists in form.
- Notes on the checklists provide guidance to States regarding adoption.

The Special Consolidated Checklists are useful for a State that wants to adopt a major program area, such as the LDR. It eliminates the need to submit several Revision Checklists. There are eight sets of Special Consolidated Checklists that are revised on an annual basis to include changes to a major hazardous waste rule, as of June 30 of a given year. They are:

1. LDRs (two separate checklists):
 - A. LDR program through 1992 (i.e., through Revision Checklist 106), and
 - B. LDR-2 which includes Revision Checklist 109 through the current year,
2. Burning of Hazardous Waste in Boilers and Industrial Furnaces (BIFs),





INTRODUCTION TO STATE AUTHORIZATION

Notes:

3. Toxicity Characteristics (TC Rule),
4. Wood Preserving Listings,
5. Bevill Exclusion for Mining Wastes,
6. Recycled Used Oil Management Standards,
7. Treatability Studies Sample Exemption, and
8. Subpart CC Organic Air Emission Standards.

Special Consolidated Checklists parallel the Revision Checklists in form and function. They require the same information and are used in the same fashion. The “notes” on these checklists provide guidance to States regarding adoption.

Basic Parts of a Special Consolidated Checklist

Exhibit II-10 (Phase I-IV LDRs, as of June 30, 1998) [shows an example of the format of a Special Consolidated Checklist](#). The first Note on the checklist indicates that the checklist is for those States that have adopted a LDR program through the Third Third Scheduled wastes (i.e., through Revision Checklist 106) and lists the Revision Checklists that are included in the Special Consolidated Checklist. In this example, the note indicates that the Special Consolidated Checklist includes all the LDR checklists starting with Revision Checklist 109 through Revision Checklist 167C.

The checklist includes a “Checklist reference” column which is a very important column to show the amendatory history for each citation. The “Checklist reference” column is used to indicate which of the individual Revision Checklists have affected each listed citation. For example, 40 CFR § 268.42(a)(3) was introduced into the Federal code by Revision Checklist 63, and amended by Revision Checklists 78 and 83.

Finally, endnotes are used to provide additional information, such as redesignations by subsequent Revision Checklists, deletions of Federal provisions by certain checklists, etc.





Notes:

EXHIBIT II-10
SPECIAL CONSOLIDATED CHECKLIST
for the

Phases I-IV Land Disposal Restrictions as of June 30, 1998

Note: 1.) This consolidated checklist is intended for those States that have adopted a LDR program through the Third Third Scheduled wastes (i.e., through Revision Checklist 106; 57 FR 28628; June 26, 1992) and are now revising their program to include the Phase I-IV LDR wastes. The LDR "Checklist Reference" column indicates which of the following checklists have affected each listed citation.

This checklist consolidates the changes to Federal code addressed by the following Phases I-IV Land Disposal Restrictions (LDR) checklists:

- Revision Checklist 109 [57 FR 37194 (August 18, 1992)];
- Revision Checklist 116 [57 FR 47772 (October 20, 1992)];
- Revision Checklist 123 [58 FR 28506 (May 14, 1993)];

* * * *

- Revision Checklist 162 [62 FR 64504 (December 5, 1997)];
- Revision Checklist 165 [63 FR 24596 (May 4, 1998), 63 FR 35147 (June 29, 1998)]; and
- Revision Checklists 167 A-C [63 FR 28556 (May 26, 1998), 63 FR 31266 (June 8, 1998)].

* * * *

FEDERAL REQUIREMENTS	CHECKLIST REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	EQUIVALENT	STATE ANALOG IS:		
					LESS STRINGENT	MORE STRINGENT	BROADER IN SCOPE
11 PART 268 - LAND DISPOSAL RESTRICTIONS							
SUBPART A - GENERAL							
12 PURPOSE, SCOPE AND APPLICABILITY							
13 delete both occurrences of "from land disposal"; insert "or part 148 of this chapter" after "under this part,"	151	268.1(c)(3)					
13, add "and" at the end of the 14 subparagraph	151	268.1(c)(3)(i)					
13 insert "identified in 40 CFR part 261, subpart C" after "waste"	137, 151	268.1(c)(3)(ii)					
13, 14 remove paragraph added by 137	137, 151	268.1(c)(3)(iii)					
* * * *							





INTRODUCTION TO STATE AUTHORIZATION

Availability of Special Consolidated Checklists

Notes:

Exhibit II-11 shows the versions of Special Consolidated Checklists that are available for each of the major rules. For example, there are nine versions of the LDR Consolidated Checklist, starting with the June 1990 version and ending with the June 1998 version. Updates to the Special Consolidated Checklists are distributed as part of the SPA and are available on the EPA State Authorization Web Site.

EXHIBIT II-11. AVAILABILITY OF SPECIAL CONSOLIDATED CHECKLISTS

Checklist Name	Versions Available	Checklists Included in Most Recent Version
Land Disposal Restrictions	June 1990 through June 1998 (annually)	34, 39, 50, 62, 63, 66, 78, 83, 95, 102, 103, 106
Phases I-IV Land Disposal Restrictions	June 1995 through June 1998 (annually)	109, 116, 123, 124, 136, 137, 142A - 142E, 151, 155, 157, 159, 160, 161, 162, 167A-C
Burning of Hazardous Waste in Boilers and Industrial Furnaces	Dec. 1991 and June 1992 through June 1998 (annually)	85, 94, 96, 98, 105, 110, 111, 114, 125, 127, 164
Toxicity Characteristics Revisions	June 1991 through June 1998 (annually)	74, 80, 84, 108, 117, 119
Wood Preserving Listings	Dec. 1991 and June 1992 through June 1998 (annually)	82, 91, 92, 101, 120, 167F
Bevill Exclusion for Mining Wastes	June 1992 through June 1998 (annually)	53, 65, 71, 90, 167E
Recycled Used Oil Management Standards Waste Treatment, Storage, and Disposal Facilities	June 1994 through June 1998 (annually)	112, 122, 130, 166
Treatability Studies Sample Exemption	June 1994 through June 1998 (annually)	49, 129
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers	June 1998	154, 163



INTRODUCTION TO STATE AUTHORIZATION



Consolidated Checklists consolidate the initial RCRA Base Program, plus all the revisions to this program. Each Consolidated Checklist corresponds to a specific Part of the 40 CFR.

Notes:

Purpose and Use of the Consolidated Checklists C1-C11

- Each Consolidated Checklist corresponds to a specific Part of the 40 CFR.
- Originally developed to help States that have not received authorization for a hazardous waste program.
- Can also be used when a State makes major revisions to its regulations.
- Can be used to track the history of the revisions to each specific provision of the Federal regulations.
- Can serve as a comprehensive crosswalk between the State's entire program and the Federal regulations.

Consolidated Checklists C1-C11 were originally developed to help States that have not received authorization for a hazardous waste program. However, they can also be used when an authorized State makes major revisions to its regulations, such as:

- Renumbering its code;
- Changing from an incorporation by reference to a verbatim adoption, or vice versa; and
- Replacing current State regulations with verbatim adoption of the Federal regulations or an incorporation by reference.

Consolidated Checklists are helpful in tracking the history of the revisions to each specific provision of the Federal regulations. Each citation shows the Revision Checklists that have affected it. Endnotes are also used to provide additional information about specific citations.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

In addition, States can use a Consolidated Checklist to track its own program as it corresponds to the Federal code. It serves as a crosswalk between the State's entire authorized program and the Federal regulations.

Exhibit II-12 shows a list of the individual checklists that make up Consolidated Checklists C1 through C11. As indicated earlier, each Consolidated Checklist represents one part of the 40 CFR, including Parts 260 through 266, 268, 270, 273, and 279. For example, Consolidated Checklist C5 corresponds to 40 CFR Part 264. Note that Parts 270 and 124 are combined into one Consolidated Checklist C9, addressing the Hazardous Waste Permit Program. Also note that because 40 CFR Part 279 was promulgated before 40 CFR Part 273, Consolidated Checklist C10 corresponds to Part 279, whereas C11 corresponds to Part 273.

Consolidated Checklists are developed on an annual basis. Each set of Consolidated Checklists corresponds to the annual CFR beginning with the July 1, 1990 CFR. Recent Consolidated Checklists are also available on the EPA State Authorization Web Site.

Exhibit II-13

shows the basic format for the Consolidated Checklists. These checklists have the same three basic parts as the Revision and Special Consolidated Checklists - the title, the introductory notes, and the checklist itself. Like the Special Consolidated Checklist, it has a CHECKLIST REFERENCE column which is used to indicate which of the Revision Checklists have affected each listed citation. The following symbols are used in the Checklist reference column:

- An asterisk (*) is used to indicate those Federal provisions which existed prior to the Revision Checklists, but were not included in the Base Program Checklists (see the entry for 264.1(a)).
- I, II, III, IVA, IVB, and V refer to the Base Program Checklists and numbers refer to the Revision Checklists. For example, 264.1(g)(2) was initially included in Base Program Checklist IVA and has been substantially amended by Revision Checklists 13, 111, and 122.





EXHIBIT II-12 - CONSOLIDATED CHECKLISTS

Consolidated Checklist Number	Consolidated Checklist Name	40 CFR
C1	Hazardous Waste Management System - General	Part 260
C2	Identification and Listing of Hazardous Waste	Part 261
C3	Standards Applicable to Generators of Hazardous Waste	Part 262
C4	Standards Applicable to Transporters of Hazardous Waste	Part 263
C5	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	Part 264
C6	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	Part 265
C7	Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities	Part 266
C8	Land Disposal Restrictions	Part 268
C9	EPA Administered Permit Programs: The Hazardous Waste Permit Program; Procedures for Decision Making	Part 270 Part 124
C10	Standards for the Management of Used Oil	Part 279
C11	Standards for Universal Waste Management	Part 273

Notes:





INTRODUCTION TO STATE AUTHORIZATION

Notes:

**EXHIBIT II-13
CONSOLIDATED CHECKLIST C5
Part 1 of 5 parts**

Standards for Owners and Operators of Hazardous Waste Treatment,
Storage, and Disposal Facilities
40 CFR Part 264, Subparts A-G, as of June 30, 1998
as published in the July 1, 1998 CFR

Notes: 1) Consolidated Checklist C5 is divided into five separate documents/computer files solely for ease of handling its printed and electronic versions. Consolidated Checklist C5 remains one checklist; States must adopt all five portions simultaneously to correctly use this Consolidated Checklist. Note, the prenotes and end notes associated with each part have been placed with the part to which they apply.

FEDERAL REQUIREMENTS	CHECKLIST REFERENCE	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
				EQUIVALENT	LESS STRINGENT	MORE STRINGENT	BROADER IN SCOPE
SUBPART A - GENERAL							
PURPOSE, SCOPE AND APPLICABILITY							
purpose	*	264.1(a)					

1 recyclable materials	IV A,13,111,122	264.1(g)(2)					
generator accumulating waste in compliance with 262.34	IV A	264.1(g)(3)					

GENERAL WASTE ANALYSIS							
1 analysis required prior to handling any hazardous waste or 264.113(d) non-hazardous waste; what information, at a minimum, the waste analysis must contain	IV A,34,†64,102	264.13(a)(1)					





Customizing a Checklist

The Checklists are formatted as WordPerfect Tables. Therefore, through coordination with the EPA Regional office and the Regional Counsel a State may reinvent or customize the checklists to suit its needs.

Notes:

Customizing a Checklist to Suit Your Needs

- Add a new column to a checklist to document renumbering of its regulations or to insert the State-only provisions.
- Add a row to insert comments regarding the State's analog, such as stringency issues or issues that must be addressed in an AG Statement.
- Comments may be added to explain stringency of the State's provisions.
- Delete rows that are not necessary because a State incorporates certain sections or Subparts of the Federal regulations by reference.

Exhibit II-14 provides an example of a customized checklist from West Virginia.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

EXHIBIT II-14 CONSOLIDATED CHECKLIST C4 WEST VIRGINIA

Standards Applicable to Transporters of Hazardous Waste
40 CFR Part 263 as of June 30, 1995

FEDERAL REQUIREMENTS	FEDERAL RCRA CITATION	ANALOGOUS STATE CITATION	STATE ANALOG IS:			
			EQUIVALENT	LESS STRINGENT	MORE STRINGENT	BROADER IN SCOPE
SUBPART C - HAZARDOUS WASTE DISCHARGES						
IMMEDIATE ACTION						
transporter action in event of discharge	263.30(a)	47-35-1.6 & 6.1; 150-11-5.1; 157-7-6.1	X			
removal/authorization by official	263.30(b)	47-35-1.6 & 6.1; 150-11-5.2; 157-7-6.2	X			
duties of transporter:	263.30(c)	47-35-1.6 & 6.1; 150-11-5.3.a; 157-7-6.3	X			
notice to National Response Center	263.30(c)(1)	47-35-1.6 & 6.1; 150-11-5.3.a.1-a.3, 150-11-5.3.b, 157-7-6.3.1-.3			X	
written report to DOT	263.30(c)(2)	47-35-1.6 & 6.1; 150-11-5.4; 157-7-6.4			X	

MORE STRINGENT/AG STATEMENT ISSUE: West Virginia is more stringent because rail transporters must also notify the Railroad Safety Division of the Public Service Commission of West Virginia and the West Virginia Department of Natural Resources. Highway transporters must also notify the West Virginia Departments of Highways and of Natural Resources. West Virginia has included some of the language of 49 CFR 171.15 to more clearly specify when notice is required to the National Response Center. West Virginia, at 150-11-5.3.b and at 157-7-6.3.4 detail the information that must be provided in the notice. The Federal regulations are not this specific.

MORE STRINGENT/AG STATEMENT ISSUE: West Virginia, at 150-11-5.4.a and 157-7-6.4.1 requires that a report also be submitted to the specified State agencies. At 150-11-5.4.b and 157-7-6.4.2, West Virginia outlines the information that must be included in the report. The Federal requirements are not this specific. West Virginia specifies a time frame of 15 days. The Federal regulations do not.





Other Program Revisions

- States must be authorized for the “Availability of Information” (AI) requirements using the AI Checklist.
- Some revisions do not have a corresponding checklist.
- Guidance for the AI and other Non-checklist revisions can be found in the June 1995 SAM.
- Updates will be available through State Program Advisories (SPAs).

Notes:

States should be aware that RCRA section 3006(f) requires States with authorized RCRA programs to provide for the availability of hazardous waste information “in substantially the same manner, and to the same degree” as EPA. To assist States in meeting this requirement, EPA has developed an “Availability of Information” checklist which can be found in the June 1995 version of the SAM.

Not all program revisions for which States may be seeking authorization have Revision Checklists. Some program revisions are known as “non-checklist” revisions. This is because the provisions addressed by these revisions are not based on changes in the Federal regulations. A list of non-checklisted revisions include:

MW: Statutory Authority over the Hazardous Component of Radioactive Mixed Waste;

DA: Direct Action Against Insurers (Not delegable to States);

SR1 & SR2: Surface Impoundment Requirements;





INTRODUCTION TO STATE AUTHORIZATION

Notes:

- SI: Sharing of Information with the Agency for Toxic Substances and Disease Registry;
- BB: Exceptions to Burning and Blending of Hazardous Waste; and
- CP: Hazardous Waste Used Oil Fuel Criminal Penalties.

Additional information about “non-checklist” program revisions can be found in Appendix E, Exhibit 1, of the June 1995 SAM and in Appendix N - Guidance for State Authorization Issues.

Where to Obtain the Checklists

- From the EPA State Authorization Web Site
(<http://www.epa.gov/epawaste/laws-regs/state/index.htm>).
- Request that the files be sent to you.
- Request a diskette version.



INTRODUCTION TO STATE AUTHORIZATION



LESSON III - PROGRAM DESCRIPTION

Notes:

Lesson III identifies and describes the components of the Program Description (PD) and the revised PD. The lesson will:

- Introduce students to the PD;
- Discuss the PD's place in the authorization package;
- Describe how to make revisions to the PD; and
- Identify what types of information should be included in the PD.

What is the Program Description?

The PD is like the resume you would use when applying for a new job. You would include your experience and education, as well as your accomplishments and awards. You want to get across what talents you would bring to the job.

The Program Description Describes:

- How States intend to carry out program responsibilities;
- The division of responsibilities for program implementation among State agencies;
- Differences, if any, between the State and Federal programs; and
- For revisions, impacts on authorized programs and updates.

The PD discusses the systems the State sets up to ensure smooth functioning of the program (e.g., tracking manifests, finding non-notifiers). The PD discusses the differences, if any, between the State and Federal programs. It describes, for example, what areas the State regulates more broadly and how its permit issuance procedures vary. This is usually updated in a revision application.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

The elements that must be included in the PD are specified in **40 CFR § 271.6** (see Exhibit III-1). A sample PD is included in **Appendix Two** for reference.

Regulatory Requirements

40 CFR § 271.6 Requirements



- Program scope, structure, and coverage:
 - ✧ State agency responsibilities;
 - ✧ Staffing and funding resources; and
 - ✧ State procedures.
- Compliance monitoring and enforcement program:
 - ✧ Permit, reporting and other forms;
 - ✧ Manifest tracking system and program coordination; and
 - ✧ Quantities of hazardous wastes, types of facilities, and permit status.

States should clearly address the following points in the PD:

- For what provisions the State is applying;
- Who is responsible for implementing the revised program element for which the State is applying;
- How the State will identify newly regulated handlers;
- The State's outreach or educational program (e.g., will an outreach program be used?);
- How the State will address the need for additional resources and greater technical expertise; and



INTRODUCTION TO STATE AUTHORIZATION



Exhibit III-1: 40 CFR §271.6

Sec. 271.6 Program description.

Any State that seeks to administer a program under this subpart shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an interstate compact. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency must be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibilities. When the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(2) An itemization of the estimated costs of establishing and administering the program, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support. This estimate must cover the first two years after program approval.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding. This estimate must cover the first two years after program approval.

(c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(d) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program. Forms used by the State for hazardous waste management need not be identical to the forms used by EPA but should require the same basic information, except that the State RCRA program must require the use of EPA Manifest Forms 8700-22 and 8700-22A. Where the State preprints information on the Manifest forms, such forms must be submitted with the State's application for approval. Restrictions on preprinting by the States are identified in 40 CFR 271.10(h). Otherwise, the State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms.

(e) A complete description of the State's compliance tracking and enforcement program.

(f) A description of the State manifest tracking system, and of the procedures the State will use to coordinate information with other approved State programs and the Federal program regarding interstate and international shipments.

(g) An estimate of the number of the following:

- (1) Generators;
- (2) Transporters; and
- (3) On- and off-site storage, treatment and disposal facilities, and a brief description of the types of facilities

[[Page 352]]

and an indication of the permit status of these facilities.

(h) If available, an estimate of the annual quantities of hazardous wastes generated within the State; transported into and out of the State; and stored, treated, or disposed of within the State: On-site; and Off-site.

[48 FR 14248, Apr. 1, 1983, as amended at 49 FR 10506, Mar. 20, 1984]

Notes:




Notes:

- How new activities will be integrated with existing activities.

Specific CFR Requirements

The following presents more detailed information regarding the CFR requirements. Because most States are authorized and have existing PDs, this discussion focuses on activities for both the initial PD and the revised PD.

Scope, Structure and Coverage
(Section 271.6(a))

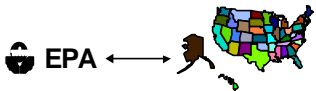


- Describe the scope of an application; and
- Note major differences between State and Federal programs.

When a PD is developed or revised, the State must describe the scope of the program or program revisions. For revisions, the State must clearly explain whether the revision application addresses a complete cluster or clusters or only certain provisions of a cluster or clusters.

Differences in coverage between the State and Federal programs should be discussed. For example, if a State has lower TC levels than the Federal program, the PD should explain the implications of making its program broader in scope.

State Agency Responsibilities
(Section 271.6 (b))



- Identify responsible State agency; and
- Differentiate between EPA and State responsibilities.



INTRODUCTION TO STATE AUTHORIZATION



The introduction of the revised PD should clearly state how it relates to the previous PD. Information that is not revised remains the same as the previous PD.

Notes:

The State must identify the agency responsible for administering the program or program revisions. If the authorized State agency is responsible for administering the program, no further explanation is required. If a different agency or program within the State agency is responsible, the PD must describe its relationship with the authorized State agency.

This section of the PD may also describe the division of responsibility between the State and EPA. A clear statement of State or Federal lead on permitting and enforcement activities for each HSWA requirement is especially important for the regulated community that will be affected by the revised program.

[*Note:* This description of Federal-State responsibilities needs to be coordinated with the MOA, which contains joint permit procedures and provides for coordinating compliance monitoring and enforcement activities.]

Staffing and Funding Resources (40 CFR §271.6 (b)(1-3))

- For original PD, provide a description of:
 - ✧ Staff and duties assigned to carry out program responsibilities;
 - ✧ Estimated costs associated with establishing the program; and
 - ✧ Funding sources and amounts.
- For revisions, identify new resources vs. existing resources assigned to new responsibilities; and
- Discuss changes since prior authorization that affect:
 - ✧ Resources;
 - ✧ Budget or staffing increases or decreases; and
 - ✧ Internal reorganizations.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

This section of the PD must address the State agency's resources to carry out the activities that are the subject of the program or program revision. It should provide the number and duties of State agency staff. It should project program management costs, as well as identify sources and amounts of funding available, for two years after program approval.

It must distinguish between new resources and existing resources being assigned to the new responsibilities. Sometimes the revised PDs do not include such a discussion. If the State expects additional resources, it should say this. If not, the State should explain how activities will shift. If the State is unsure of the effects of a revision, it can refer to the Agency Operating Guidance and grant agreements.

State Procedures (Section 271.6 (c))



- Describe procedures to implement program:
 - ◇ Permitting;
 - ◇ Compliance monitoring; and
 - ◇ Enforcement.
- Administrative or judicial review procedures.

The State should discuss changes that have occurred since it first received authorization that affect the program's resource needs, such as a reduction in the size of the regulated community, or program changes that affect the agency's efficiency, such as improved permit processing.

Internal reorganizations of the agency should also be included here, with a revised organization chart whenever possible.

As appropriate, this section should describe any State procedures (e.g., permitting, certification, notification, compliance monitoring, and enforcement) that will be used to implement the program revision.





Compliance Monitoring and Enforcement (Section 271.6 (e))



Notes:

- Identify regulated universe (newly regulated for revisions);
- Describe compliance monitoring and enforcement program; and
- For revisions, describe:
 - ✧ How new activities will be integrated with existing activities (inspections, sampling, and analysis);
 - ✧ How priorities may change; and
 - ✧ Planned notification activities (where different).

For revision PDs, this section need only be changed if the revision procedures have changed. The PD should, however, indicate that there are no anticipated changes from the procedures described in prior applications.

Several HSWA provisions have the potential to significantly increase the size of the RCRA universe. The State must discuss its strategy and methods for identifying new members of the regulated community. The State must also describe changes made in its compliance monitoring and enforcement program.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Compliance Monitoring and Enforcement (Section 271.6 (e)) (cont'd.)



- Discuss impact on compliance monitoring resources:
 - ◇ Training;
 - ◇ Hiring;
 - ◇ Interagency support; and
 - ◇ Contractor assistance.
- Discuss effect of additional requirements on manifest tracking and data management tracking and data management.

In particular, the PD should address the resource levels available to handle the new responsibilities, including plans for training staff, plans for hiring additional staff, agreements with other agencies, and plans to use contractor assistance. For revision PDs, additional resources may be needed to monitor compliance with the new program activities while continuing to monitor compliance with the existing program.

If trade-offs must be made with existing activities, the State should explain the basis for the decision.

The effect of additional requirements on manifest tracking and data management and changes to enforcement processes or policies need to be discussed in the new PD.





Compliance Monitoring and Enforcement (Section 271.6 (e)) (cont'd.)

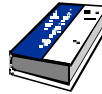


Notes:

- For revision PDs, explain:
 - ✧ Any changes to enforcement processes or policies;
 - ✧ Use of criminal enforcement authorities; and
 - ✧ Civil enforcement response policy.

Several HSWA provisions may result in increased noncompliance among waste handlers, including the LDRs and the used oil recycling and burning waste-as-fuel requirements. The discussion of criminal enforcement procedures in earlier PDs may need to be supplemented to address these new impacts.

Copies of State Forms and Intergovernmental Coordination (Section 271.6(d) and (f))



- For the original PD provide:
 - ✧ Copies of permit, application, and reporting forms; and
 - ✧ Notification and manifest tracking.
- For revisions:
 - ✧ Provide new or revised forms only for revisions; and
 - ✧ Discuss changes to intergovernmental coordination, if any.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

The revised PD should also address any changes in the State's enforcement response policy (i.e., violation classification, response timeframe, informal and formal enforcement process or changes in the civil enforcement process).

For most program revisions, States will not need to provide copies of State forms or additional discussion of how the State coordinates its activities with other State and Federal agencies. This information is provided with the State's initial application.

Estimate of Regulated Activities (Section 271.6 (g) and (h))



- Provide numerical estimates of hazardous waste activities and numbers of generators, transporters, and TSDFs; and
- If available, provide estimates of annual quantities of hazardous waste:
 - ◇ Generated, transported, treated, stored or disposed (on- and off-site), and exported.

However, when changes are made to existing forms or new forms are developed, copies should be included with the PD (e.g., notification, permit, reporting, and manifest tracking forms).

The State must provide the best numerical estimate, based on existing data, of hazardous waste activities in the identified categories covered by the application. A table is generally sufficient to convey this information, along with a brief narrative explanation of the estimates.

Numerical estimate of generator, transporters, and TSDFs, as well as annual quantities of waste generated, transported, treated, stored or disposed of on- and off-site, and exported should be provided.



INTRODUCTION TO STATE AUTHORIZATION



Revision PDs

Notes:

In the base program application, the State described the division of responsibilities for program implementation among the State agencies and within the State agency. In other words, the PD told us who did what and how the State hazardous waste program was organized. In a revision application, the PD is merely updated or supplemented, or states that there is no change from the previous PD (e.g., mixed waste).

For revision applications, the PD describes how a specific requirement will be implemented and its impact on the State's authorized program (e.g., impact on its resources). The State can choose to submit a completely revised PD for a revision, but generally will choose to modify the base, or latest, PD.

The State's PD for a revision application usually just updates or modifies the most recent PD. It presents a chance for the State to highlight what the State has done well. The revision PD also explains the size of the job the State is taking on. The revision PD:

- Examines who is affected by the new responsibilities;
- Explains how they will find out they are affected;
- Discusses what the new responsibilities will require in terms of people and money and how those requirements will be satisfied; and
- Describes the effect of the new responsibilities on the existing programs.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Revision Applications: Modifications to the PD

- PD changes can be made by:
 - ✧ Preparing a new PD;
 - ✧ Adding to PD in prior applications;
 - ✧ Providing updated page inserts; or
 - ✧ Describing minor revisions in transmittal letter.

As Federal rules are modified, States may have to submit modifications to existing PDs. The following are options for making changes.

- In cases where program revisions require extensive changes to numerous elements of the PD, the State may want to revise its existing PD and submit the new PD as a replacement to the original.
- Another option is attaching an addendum to the existing PD. The addendum should identify the appropriate section of the existing PD to be deleted, modified, and/or expanded.
- Page inserts may be used to update specific portions of the original PD. All new pages should be clearly marked with a revision date, and page numbers should correspond to the original text.
- In some cases, a State program revision may be simple enough to be addressed in the State's revision application transmittal letter. An addendum of this type should be clearly identified as such in order to facilitate codification.





Potential Impacts of Program Revisions

- Increase size of regulated community;
- Require different expertise;
- Increase overall workload;
- Change enforcement needs; and
- Require additional or increased interagency coordination.

Notes:

The following represent scenarios under which the State may be required to submit a revised PD.

- When a revision will bring in a significant number of new handlers, the State's strategy and methods for identifying new members of the regulated community should be discussed in a revised PD. The State also needs to describe how it will implement any notification activities and identify any non-notifiers if these procedures differ from or amend those in the most recent PD.
- If significant new types of expertise are needed to implement a revision, a modified PD may also be necessary. Examples include the need for additional staff training (e.g., for corrective action), lab or contractor support to ensure effective implementation, and new or revised interagency agreements to clearly identify agency responsibilities.
- Some provisions may significantly increase a State's inspection workload, resulting in potential changes to the PD. The revised PD should include a description of State inspection priorities after integration with existing program priorities (e.g., LDR inspections may result in a cutback of other types of inspections). Alternatively, the PD could reference a State/EPA enforcement agreement or grant work plan for this information.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

The PD should indicate whether additional resources are available or will be sought. If not, the PD should explain how the State will handle the additional workload.

- If enforcement procedures change to handle new workload, the PD would need to be revised.
- With changes in inspection and enforcement procedures and requirements, data management and tracking systems may need to be assessed and changed, also triggering PD changes (e.g., manifest tracking may need modification to accommodate increased numbers and types of handlers).

[*Note:* Enforcement procedures and data management systems may have changed since the base application (e.g., State may have obtained administrative order authority). While these changes may not be directly tied to the program revision, the application for that revision is a good opportunity to update the State's PD with the latest information.]

- Actual permitting procedural changes, as well as changes in data management systems used to track permit information, should be discussed in a revised PD.
- Program changes may result in additional or increased interagency coordination. The State may need to enter into new MOUs or MOAs, or revise existing agreements. These changes need to be addressed in the new PD.



INTRODUCTION TO STATE AUTHORIZATION



LESSON IV- MEMORANDUM OF AGREEMENT (MOA)

Notes:

Lesson IV discusses the Memorandum of Agreement (MOA), another component of the authorization application package. The MOA is an important component of the authorization package because it defines the roles and responsibilities of EPA and the State. Students will learn about:

- The regulatory requirements;
- The contents of the MOA;
- When it is required;
- Other uses of the MOA;
- The Model MOAs;
- The MOA checklist; and
- Common MOA deficiencies.

What is the MOA?

If we think of the Program Description as the State’s resume, we can think of the MOA as the State-EPA contract for how the authorized program will operate with respect to the Federal hazardous waste program. It’s the vehicle for specifying areas of coordination and cooperation and defining the respective roles and responsibilities of EPA and the State. In short, it tells us “who does what.”

What is the MOA?

- Defines roles and responsibilities of EPA and the State; and
- Outlines coordination and cooperation between EPA and the State.

While an authorized State program operates in lieu of the Federal program, the MOA is needed to explain:

- Cooperative activities in those areas for which the State is not authorized (i.e., joint permitting);





INTRODUCTION TO STATE AUTHORIZATION

Notes:

- Transitional activities (e.g., the State is authorized but EPA still administers the EPA-issued permits);
- The enforcement and oversight authorities EPA retains even when the State is fully authorized (e.g., routine and emergency inspections, review of the permits) or for HSWA provisions until the State is authorized for such provisions;
- Administrative procedures (e.g., transfer of information between EPA and State, notification procedures); and
- Resolution of differences between EPA and State authorities, short of the State revising its regulations.

Most importantly, the MOA should present a clear picture of who does what (State or EPA), and how the State and EPA will coordinate those activities so that there are no surprises or misunderstandings of the respective roles.

When is the MOA Required?

The Memorandum of Agreement is required by **40 CFR § 271.8** for all base applications. It is not required, however, to be submitted with all State revision applications. Whether an MOA is necessary for a revision depends on how extensively the State's program is changing and whether the current MOA needs updates for reasons beyond the State's application.

When is the MOA Required?

- Required by 40 CFR § 271.8;
- Initial program application;
- Some revision applications; and
- Regulations require the MOA to be reviewed each year, and updated as necessary.



INTRODUCTION TO STATE AUTHORIZATION



MOAs are State-specific. However, there are generic aspects that apply to all States and Regions (e.g., all revisions must be signed by the State Director and Regional Administrator).

Notes:

Preparing the MOA is more straightforward than the PD, because there is a model you can follow and adjust as needed to accommodate Region and State-specific needs. The MOA may still be controversial, and therefore, not necessarily easy, but at least all the pieces are readily identified.

Also, unlike the PD, which is basically a snapshot taken at the time of the application, the regulations require the MOA to be reviewed each year and updated as necessary.

MOA revision may be dealt with in one of two ways by:

- Replacing the MOA with a new version; or
- Amending or adding to the existing MOA.

MOA Regulatory Requirements

There are a number of components that must be included in the MOA. These are found in 40 CFR § 271.8 and the model MOA (see Exhibit IV-1 for the regulations). In developing the MOA, the regulatory requirements must be kept in mind: The MOA may not restrict EPA's statutory oversight responsibility. For example, the MOA must allow EPA to routinely review the State's records, reports, and files.

MOA Regulatory Requirements



- Procedures for sharing and transferring permitting responsibility;
- Framework for EPA overview of program administration and enforcement;
- Provisions for exchange of information; and
- References to other State Director and EPA Regional Administrator Agreements.





INTRODUCTION TO STATE AUTHORIZATION

Notes:



Exhibit IV-1: 40CFR 271.8

Sec. 271.8 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this subpart shall submit a Memorandum of Agreement (MOA). The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the requirements of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this subpart and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.

(b) All Memoranda of Agreement shall include the following:

(1) Provisions for the Regional Administrator to promptly forward to the State Director information obtained prior to program approval in notifications provided under section 3010(a) of RCRA. The Regional Administrator and the State Director shall agree on procedures for the assignment of EPA identification numbers for new generators, transporters, treatment, storage, and disposal facilities.

(2) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate.

(3) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(4) Provisions allowing EPA to conduct compliance inspections of all generators, transporters, and HWM facilities in each year for which the State is operating under final authorization. The Regional Administrator and the State Director may agree to limitations on compliance inspections of generators, transporters, and non-major HWM facilities.

[[Page 353]]

(5) No limitations on EPA compliance inspections of generators, transporters, or non-major HWM facilities under paragraph (b)(4) of this section shall restrict EPA's right to inspect any generator, transporter, or HWM facility which it has cause to believe is not in compliance with RCRA; however, before conducting such an inspection, EPA will normally allow the State a reasonable opportunity to conduct a compliance evaluation inspection.

(6) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other

information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.).

When existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

[Note: For example, EPA and the State and the permittee could agree that the State would issue a permit(s) identical to the outstanding Federal permit which would simultaneously be terminated.]

(7) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection.

(8) When appropriate, provisions for joint processing of permits by the State and EPA, for facilities or activities which require permits from both EPA and the State under different programs. See Sec. 124.4

[Note: To promote efficiency and to avoid duplication and inconsistency, States are encouraged to enter into joint processing agreements with EPA for permit issuance.]

(9) Provisions for the State Director to promptly forward to EPA copies of draft permits and permit applications for all major HWM facilities for review and comment. The Regional Administrator and the State Director may agree to limitations regarding review of and comment on draft permits and/or permit applications for non-major HWM facilities. The State Director shall supply EPA copies of final permits for all major HWM facilities.

(10) Provisions for the State Director to review all permits issued under State law prior to the date of program approval and modify or revoke and reissue them to require compliance with the requirements of this subpart. The Regional Administrator and the State Director shall establish a time within which this review must take place.

(11) Provisions for modification of the Memorandum of Agreement in accordance with this subpart.

(c) The Memorandum of Agreement, the annual program grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this subpart. The State/EPA Agreement may not override the Memorandum of Agreement.

[Note: Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. However, it may still be appropriate to specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA agreement.]



INTRODUCTION TO STATE AUTHORIZATION



Sharing and Transferring Permitting Responsibility

Notes:

The MOA must provide a procedure for sharing and transferring permitting responsibility. Since EPA *suspends* permit issuance upon authorization of the State, the MOA should include the arrangements for the State to pick up permit issuance responsibility for those permits that EPA has been processing. The MOA should also specify EPA's and the State's roles in joint permitting, EPA's role in commenting on State permits and how the State will treat EPA comments, and how permits will be administered and tracked. The MOA should also address the administration of permits EPA has issued. Keep in mind that EPA administers permits it has issued until they expire or are terminated.

Framework for EPA Overview

The MOA should also include a framework for EPA overview of program administration and enforcement. The MOA should discuss the amount of notice needed prior to EPA inspections, and conditions under which EPA will take enforcement action.

Provisions for Exchange of Information

Provisions for exchange of information are an important part of the MOA. EPA agrees to notify the State of changing Federal regulations, policies, and guidance; the State agrees to notify EPA of pending program or organizational changes that may affect the State's authorization (e.g., new regulations, judicial decisions). The State and EPA also agree on how to exchange inspection data.

Other State-EPA Agreements

The MOA should also include references to other State-EPA agreements (e.g., State-EPA Enforcement Agreements and the grant workplan, where appropriate).

Required Signatures

Finally, no later than the effective date of the State's authorization, the State Director and Regional Administrator must sign the MOA.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Other Uses of the MOA

In addition to the previous generic statutory elements, the MOA is also used to address State-specific circumstances.

Other Uses of the MOA

- Identifies multiple State agency responsibilities;
- Documents State commitments;
- Is used for waivers and variances;
- Carries out procedural requirements; and
- Records State-specific agreements.

Multiple State Agency Responsibilities

In some cases, for example, Directors of two or more State agencies (e.g., State Department of Water and State Department of Air) share substantive responsibility and resources for the functions described in the MOA. In this case, each Director must sign the MOA.

The signature requirement does not apply, however, to the Attorney General for providing enforcement support or to local agencies that provide support such as conducting generator inspections. It is assumed that the State will have written agreements with local governments or agencies.

Documenting State Commitments

The MOA may also be used to document certain State commitments.

- For example, if the State's variance or waiver authority is broader than that of the Federal program, the State must agree in the MOA not to use that authority to allow a less stringent requirement to take effect and must also agree to notify EPA when waiver or variance authority is used.
- In *limited* instances, MOA commitments can also be used in lieu of regulations for procedural requirements



INTRODUCTION TO STATE AUTHORIZATION



(e.g., permit procedures) as long as the AG certifies that the State has authority to enter into and carry out the agreement and that the State is not required to promulgate a rule for the procedure to be binding.

Notes:

The State may not use the MOA to adopt procedures that directly conflict with State laws or regulations. For example, a State could not agree to provide a 45-day public comment period if the State's regulations set a maximum 30-day period. A State could, however, agree to a 45-day comment period if its regulations specify a period of *at least* 30 days.

State- Specific Agreements

The MOA may also record other State-specific agreements, such as delisting, assigning of EPA ID numbers, and handling confidential information.

Model MOAs

There are two Model MOAs available. One, created in 1991, is provided in SAM Volume II, Appendix B.

The other, included as **Appendix Three**, was developed in 1997. Both were created to expedite development and review of the MOA and to ensure that the MOA is all-inclusive. The 1997 Model provides a complete, basic framework and is set up so that it can be tailored to individual States and Regions. Exhibit IV-2 presents an excerpt from the 1991 Model MOA.

Model MOA

- The Model MOA provides the basic framework.
- It can be tailored for each State and Region.
- Follow the Model MOA to:
 - ◇ Expedite review of a MOA; and
 - ◇ Ensure the MOA is inclusive.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Exhibit IV-2

Sample of Model MOA in SAM Volume II, Appendix B

VI. PERMIT ADMINISTRATION

A. EPA

[If the State has authority to directly administer permits issued by the Federal government, this section may be inapplicable and the Region should insert provisions for transferring responsibility for all Federal permits to the State.]

EPA will administer the RCRA permits or portions of permits it has issued to facilities in the State until they expire or are terminated. EPA will be responsible for enforcing the terms and conditions of the Federal permits while they remain in force. When the State either incorporates the terms and conditions of the Federal permits in State RCRA permits or issues State RCRA permits to those facilities, EPA will terminate those permits pursuant to 40 CFR Part 270 and rely on the State to enforce those terms of an acceptable State/EPA Enforcement Agreement. *[Insert agreement regarding State enforcement of the terms of EPA-issued permits or reference to the Joint Permitting Agreement, as appropriate.]*

B. State

The State agrees to review all hazardous waste permits which were issued under State law prior to the effective date of this Agreement and to modify or revoke and reissue such permits as necessary to require compliance with the amended State Program [insert citation to relevant State environmental statutes and regulations and administrative procedures act and regulations equivalent to the 40 CFR Part 264 requirements] and [insert citation to relevant State environmental regulations.]

The State agrees to modify or revoke and reissue these State permits as RCRA permits in accordance with the following schedule. *[EPA intends that the schedule in the MOA provide a reasonable time period for the review and upgrading of existing State permits, based on such factors as the number of State permits and the additional permit terms and conditions needed to satisfy the requirements of 40 CFR Part 271.]*

Many current MOAs contain State-specific provisions that have been negotiated over several years. In these cases, the State and Region may prefer to amend the existing agreement instead of replacing it.

EPA is planning to update the Model MOA. A number of factors have led EPA to believe changes are needed to the Model MOA language. Two examples include:



INTRODUCTION TO STATE AUTHORIZATION



- In Ciba-Geigy Corp. v. Sidamon-Eristoff, 3 F. 3d 40 CFR (2d Cir. 1993), the Court found reasonable EPA's interpretation allowing for continued administration of Federal permits after the immediate moment of authorization. The Court held that EPA's regulations at 40 CFR 271.8(b)(6) require only that the MOA contain a provision for transfer of existing permits; the content of the provision is left open.
- Under Sections 7 and 9 of the Endangered Species Act, all Federal agencies must consult with the Fish and Wildlife Service (FWS) to ensure their actions do not jeopardize an endangered species or its habitat. EPA is considering how the consultation requirements impact RCRA State authorization. EPA is working on Model MOA language whereby the State agrees to inform EPA of ESA issues encountered during review of a permit or permit modification.

Notes:

Until new language is developed, States and Regions should continue to use the existing Models. Once language is agreed upon by Regions and EPA Headquarters, States will be required to use the new language.

The MOA Checklist

A detailed reviewer's checklist for the MOA is provided in SAM Volume II, Appendix C (see the Web Site for the MOA Reviewer's Checklist). It's designed to ensure that the regulatory requirements of Section 271.8 are covered in the MOA and that inappropriate limitations are not placed on EPA's authority.

MOA Checklist



- EPA uses checklists when reviewing the MOA;
- States can use checklists when preparing a MOA; and
- Checklist covers regulatory requirements of 40 CFR §271.8.



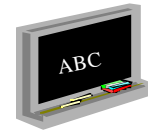


INTRODUCTION TO STATE AUTHORIZATION

Notes:

EPA uses the checklist when reviewing the MOA package. Therefore, it would be worthwhile for the State to use this checklist when preparing its MOA, as an indication of what EPA will be looking for in its review.

Exercise IV-1



State Program Review

A. General

“Review of the State files may be scheduled at semi-annual intervals. Program review meetings between the State and the Regional Administrator or their assignees will be scheduled at reasonable intervals not less than annually to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. To ensure effective program review, the State agrees to allow EPA access to all files and other information requested by the Regional Administrator or his/her designee and deemed necessary by EPA for reviewing State program administration and enforcement. These meetings will be scheduled at least thirty days in advance unless agreed to differently. A tentative agenda for the meeting will be prepared by EPA.”

Questions:

(Questions are taken from Section III of the MOA checklist)

1. Does the MOA limit the scope of EPA oversight activities?
2. Does the MOA restrict the tools (i.e., the information sources) EPA may use for oversight?
3. Does the MOA allow for regularly scheduled reviews?

[Click here for answers.](#)



INTRODUCTION TO STATE AUTHORIZATION



MOA Deficiencies

Notes:

Only certain, limited requirements can be handled through the MOA.

Common MOA Deficiencies

- Limitations on EPA's oversight authority;
- Inconsistencies within the MOA; and
- Outdated language.

Limitations on EPA's Oversight Authority

Sometimes the MOA places limitations on EPA's oversight authority (e.g., not allowing EPA to inspect in emergency situations without notice to the State; restricting EPA's ability to comment on draft State permits; changing EPA access to State information deemed confidential business information).

Inconsistencies

Another common deficiency is inconsistencies within the MOA (e.g., having different frequency of reports for the same item).

Outdated Language

Finally, the language in the MOA may not have been updated to properly reflect revisions (e.g., not using the latest MOA Model or not incorporating HSWA language, such as joint permit issuance).





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Exercise IV-2



“...The State agrees to inform the Regional Administrator of any proposed or adopted program changes that would affect the State’s ability to implement the authorized program. Program changes of concern include modification of the State’s legal authorities, modifications of Memoranda of Agreement or Understanding with other agencies, and modification of resource levels...”

Question:

1. Does the MOA require the State to inform EPA in advance of program changes?

[Click here for answer.](#)

Common MOA Deficiencies (cont’d.)

- Inappropriate use as a substitute for regulatory requirements;
- Omissions;
- Joint permitting references;
- Section 3006(f) agreements; and
- Signatures.

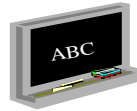
MOAs are deficient when items are missing from the MOA. Such items may include: references to joint permitting; Section 3006(f) availability of information agreements; and the State signatures.



INTRODUCTION TO STATE AUTHORIZATION



Exercise IV-3: Permit Issuance



EPA Overview of State Permits

“EPA may comment in writing on draft permits or draft permit modifications when EPA comments on the permit application. EPA must submit its comments to the State within 30 days of receipt of the draft permit. Where EPA indicates in a comment that issuance of a permit would be inconsistent with the approved State program, EPA must provide the information required by 40 CFR § 271.19(b) - (d).”

Questions:

1. Does the MOA provide for EPA comment on any permit application or draft permit?
2. Is the comment period provided for EPA’s review less than 45 days?
3. Is EPA required to provide information other than that specified in 40 CFR § 271.19(b) - (d) when a comment indicates that the State permit would be inconsistent with the approved State program?

[Click here for answers.](#)

Notes:

Exercise IV-4: State Permitting



“State regulation XYZ.400 requires a public comment period of at least 30 days for permit issuance. The State commits to hold a public comment period of at least 45 days for every RCRA permit issued, modified, reissued, terminated, or denied in the State.”

Questions:

The State is using the MOA to satisfy permitting procedures not found in State regulations.

1. Does the MOA contain an unequivocal commitment to apply the procedures to each permit?
2. Does the MOA commit the State to inform the public in each permit public notice that procedures to be followed are derived from the MOA as well as from State laws and regulations?

[Click here for answers.](#)



INTRODUCTION TO STATE AUTHORIZATION



LESSON V- ATTORNEY GENERAL'S STATEMENT

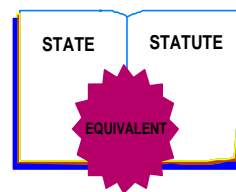
Notes:

Lesson V opens with a general discussion of the Attorney General's (AG) Statement. The remainder of the lesson is devoted to components of the authorization application. Students will learn:

- What an AG Statement is;
- The purpose of the AG Statement;
- Regulatory requirements;
- When it is required;
- What EPA reviewers look for;
- About common deficiencies; and
- About the AG checklist.

What is the AG Statement?

- Identifies State legal authorities;
- Interprets State law; and
- Certifies equivalence.



One basic purpose of the AG Statement is to identify State legal authorities, both statutory and regulatory. The AG interprets State authorities and explains in the AG Statement how they are equivalent to Federal standards. Because EPA attorneys are not familiar with State law, it is important that the interpretation be as clear and detailed as possible. The AG certifies that the program or program modification is equivalent to, more stringent than, or broader in scope than the Federal requirement.

When is an AG Statement Required?

- Initial program authorization;
- Program revisions;
- State-initiated changes; and
- Federally-initiated changes.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

An AG Statement must always accompany an authorization application, whether it is for the base program or for revisions. Each time a revision application is submitted, a new AG Statement must be developed to specifically address, in general, the program changes in the application. Federally initiated changes will always require a revised Statement. State initiated changes that do not modify the State's legal authorities, such as the reorganization of a State agency, do not require a revised Statement.

Regulatory Requirements

The regulatory requirements for the AG Statement are published at **40 CFR § 271.7**. There are five basic elements of an AG Statement: certification; citations of State laws and regulations; date of enactment of laws and regulations; checklists; and analysis of authorities.

AG Statement Regulatory Requirements (40 CFR § 271.7):



- Certification;
- Made by AG or authorized attorney;
- Citations of State laws and regulations;
- Date of enactment of laws and regulations; and
- State laws and regulations must be fully adopted and in full force and effect as of the date authorization is effective.

Certification

The Attorney General, or an attorney authorized to represent the State agency in court, must certify in the Statement that State law provides adequate authority to carry out the program revision. This certification is usually made in the first paragraph of the Statement.



INTRODUCTION TO STATE AUTHORIZATION



Although not an element of the AG Statement, for a revision application, the AG Statement should explain how the revised Statement relates to the previously approved Statement (e.g., whether it is an addendum or an amendment).

Notes:

Citations to State Laws

Critical components of the AG Statement are the citations or references to the specific State laws and/or regulations on which the State is basing its claim of program equivalency to the Federal program. Broad statutory authority to implement regulations may be sufficient. However, you need to be cautious that there is nothing outside the State's hazardous waste law that may impinge on the program modification, such as State penal code limitations, State Administrative Procedure Act, or State water regulations.

Date of Enactment of State Laws

One area that has tended to be a problem has been basing applications on laws or regulations that will not be fully adopted and effective as of the date authorization is effective. This is required under § 271.7. The State, however, may submit proposed rules and statutes with a draft application.

It is important to cite specific statutes and regulations, and the dates of their enactment, somewhere in the AG Statement or checklists.

AG Statement Regulatory Requirements (40 CFR § 271.7)(cont'd.)



- Checklists;
- Analysis of authorities;
- Narrative;
- Why and how authority is provided;
- Legislative history; case law;
- Explanation of differences; and
- Signature.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Checklists

The fourth basic element of the AG Statement is the checklists (see **Lesson II**), which are generally referenced in the AG Statement. The checklists assist the AG in citing State analogues to Federal requirements. For manageability, these checklists are in chronological order and grouped by cluster. See SAM Volume II, Appendix G, and the index at the end of Appendix E (see the Web Site for a sample checklist <http://www.epa.gov/epawaste/laws-regs/state/index.htm>).

[*Note:* The AG should cite State statutes in the AG Statement; the statute doesn't have to be cited on the checklists. (The new model revision checklists do not have space to cite the statutes, just the analogous State regulations.)]

In general, the analogous State regulation should be cited in the AG Statement, as well as on the revision checklist, if used. If the AG Statement references the checklist, citing the regulation on the checklist may be sufficient and the AG Statement itself need not cite the specific regulations. Problems may arise, however, when the checklist does not cite the date of enactment or effective date of the State regulation. The important concept is to cite to specific statutes and regulations and the dates of their enactment somewhere in the AG Statement or checklists.

Analysis of Authorities

The fifth basic element of the AG Statement is the AG's analysis of State authorities. An analysis of State authorities is not needed if the State is clearly and obviously equivalent (e.g., if the State is incorporating by reference). Generally, EPA defers to the AG's opinion on State law. However, EPA does not defer to States on interpretation of Federal law, including equivalency.

When an analysis is needed, it should provide a discussion of where and how the authority is equivalent. It should *reference and cite* legislative history to support the equivalency claim, using case law if necessary. Finally, explain any differences, problems or peculiarities between the Federal requirement and State authority. This explanation of differences is especially important when an authority does not appear to be equivalent. The explanation should be done point by point and be a sound, thorough analysis.



INTRODUCTION TO STATE AUTHORIZATION



However, it is not a legal brief and need not be too complex. As noted above, EPA does not want to have to interpret State law, therefore, the State *must* show *how* and *where* the State's law is equivalent.

Notes:

What Reviewers Look For in an AG Statement

- Check format for inclusion of:
 - ✧ Citations to State statutory and regulatory authorities;
 - ✧ Effective date of State statutory and regulatory authorities;
 - ✧ Appropriate signature;
 - ✧ AG certification;
 - ✧ Provisions for which State is seeking authorization; and
 - ✧ Explanation of relationship of this Statement to previous Statements.

Helpful Hints

- States have found that review of the AG Statement is easier if they provide an easy-to-use cross-walk of State authorities and regulatory requirements.
- Some States provide a simple chart in the beginning of their AG Statement.
- Citations to State statutory and regulatory authorities should be checked to make sure that none are missing and that the citations in the Statement match the checklists.
- The State needs to be very specific in citing its authorities. The citations should be specific to the section or subsection.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

This will avoid causing EPA to try to determine on which specific authority the State is relying to demonstrate equivalence.

- You must also check to make sure that the effective dates of State statutory and regulatory authorities, as well as the appropriate signature, are included in the Statement. (No signature is needed on a draft AG Statement.)
- When reviewing the AG Statement, check the format for completeness. The Statement must include an AG certification. You should also check to see if all provisions for which the State is seeking authorization are included, as well as an explanation of the relationship of this Statement to previous Statements.

Since State codes have different numbering systems, it would facilitate review of the regulations if the State submitted an explanation of its system with its application.

Reviewing Legal Authorities

Once the format has been checked, the next step is to review the legal authorities to ensure that they provide equivalent authority. A line by line review of the CFR and the State's authorities may be necessary. Contractor support may be useful for this task.

Review of Legal Authorities



- Ensure that statute provides authority to adopt implementing regulations;
- Ensure that statute and regulations do not conflict;
- Ensure review of narratives; and
- Ensure equivalency of statutes or regulations if not clearly equivalent or if supporting documentation is not provided.



INTRODUCTION TO STATE AUTHORIZATION



The State statutes must be reviewed to ensure that they provide the authority to adopt implementing regulations. You need to be particularly cautious of general enabling legislation that may be insufficient to demonstrate equivalence (e.g., the basic statute doesn't allow specific implementation of some of the regulations the State is adopting). In reviewing statutes for HSWA corrective action, for example, EPA has encountered problems with statutes that provide for cleanup from regulated units, but that may not provide for implementing corrective action at Solid Waste Management Units (SWMUs), corrective action beyond the facility boundary, and financial assurance for corrective action.

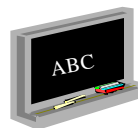
Notes:

When reviewing the legal authorities, also ensure that State statutes and regulations do not conflict. For example, two broad statutes may have conflicting provisions.

There are generally two concerns of the equivalency review conducted by the technical program officer; one is strictly legal, the other is functional. Both need to be looked at together to determine equivalency and then discussed in comments on the AG Statement if necessary.

Another component of the AG Statement review is the review of the narratives, or legal analyses. The narrative must be checked carefully to ensure equivalency of statutes or regulations if they are not clearly equivalent and to ensure that supporting documentation is included with the Statement (e.g., an opinion of the Attorney General on the State's application of a statutory or regulatory provision).

Exercise V-1



Remarks of the State Attorney General:

The State is amending its regulations for establishing permit conditions by allowing the State Environmental Agency Director, in certain circumstances, to add conditions necessary to protect human health, welfare and the environment. The addition of the welfare criterion is more stringent than the Federal regulations, as it allows the State to add conditions beyond those that EPA could add. However, the State Agency Director is limited to adding to a RCRA permit only those provisions that are not the responsibility of another Federal or State agency. This limitation does not have an effect on the equivalency of this provision. All issues that are raised by the public or within the State Agency on a draft permit will be considered by the State Agency.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Those that are within the Agency's jurisdiction may be incorporated in RCRA permits. Those that address issues that are properly the consideration of other agencies would be referred to the appropriate agency to consider in developing its applicable permits. Thus, the State's provision is equivalent to the Federal requirements. It ensures that all conditions necessary to protect public health and the environment will be considered and incorporated, as necessary, in the appropriate permits.

State Hazardous Waste Regulations 122.32(b)

- (1) Each permit shall include permit conditions necessary to comply with the Act and regulations.
- (2) The permit shall contain terms and conditions as the State Director deems necessary to protect human health, welfare, and the environment.
- (3) The State Director shall not add terms and conditions that are currently the jurisdiction of other Federal or State agencies.

RCRA Section 3005(c)(3). Permit Issuance.

Each permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.

40 CFR §270.32(b) revised by 50 FR 28742, July 15, 1985

Each permit issued under section 3005 of this act shall contain terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment.

Issues:

The State's submittal involved two issues: adding welfare to the criteria by which the State Director evaluates permits, and limiting the authority of the State Director to regulate aspects currently under the jurisdiction of other Federal or State agencies. In the first case, adding welfare broadens the evaluation categories to include factors such as property values, traffic congestion, noise and other related issues that possibly would affect the host community. Thus, the State's authority is made broader by the addition of a welfare criterion. In the second case, limiting the Director's authority to add conditions to areas where no other agencies have jurisdiction seriously compromises the State Director's authorities. For example, the State Health Department may have authority to issue permits with conditions that relate to protection of human health. The State Director would be precluded from adding any provisions related to human health protection that overlapped with authorities of the State Health Department. This makes the State's provision less stringent, as the intent of §3005(c)(3) is to put such conditions under RCRA permits where it is necessary to protect human health and the environment. RCRA does not limit this authority only



INTRODUCTION TO STATE AUTHORIZATION



to those instances where there is no one else with authority to consider the issue. Further, the State cannot argue that imposing a more stringent requirement (i.e., welfare) and a less stringent requirement balances to make an equivalent requirement.

Suggested Remedy:

[Click here for answer.](#)

Notes:

Reviewing the Certification

Reviewing the Certification



- Review additional certifications, as appropriate:
 - ◇ Incorporation of Federal regulations by reference;
 - ◇ Jurisdiction over Indian Lands;
 - ◇ Use of MOA for procedural requirements; and
 - ◇ Use of MOA for variances and waivers.

If appropriate, additional certifications should be reviewed.

Incorporation by Reference

For those States that incorporate Federal regulations by reference, the AG must demonstrate that the State has the authority to adopt Federal regulations in this manner. If this certification was provided in a previous Statement, it need not be repeated if the authorities on which the certification is based have not been challenged or changed.





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Jurisdiction over Indian Lands

Another certification that may need to be reviewed is a State's claim of jurisdiction over Indian Lands.

Use of MOA

The State may wish to use the MOA to satisfy certain procedural requirements. The MOA may also be used to ensure equivalent use of variances and waivers. If a State uses the MOA in either of these two ways, the following need to be checked in the AG Statement, that:

- The State has the authority to enter into the agreement and to carry it out; and
- Nothing in the State statutes or regulations (including the State's APA) precludes it from using the MOA in this way. For example, if the APA requires that the procedure be promulgated as a rule in order to be binding, the MOA could not be used as a substitute for a rule.

For example, the State's regulations may provide that the State Director may reduce the frequency of monitoring under certain conditions. Since the Federal regulations do not provide this option, the State can agree in the MOA not to exercise this waiver authority in a manner that would render a facility's monitoring program less stringent than one that would be required under the Federal program.





Reviewer's Comments



- Comments should:
 - ◇ Clarify procedural or format questions (e.g., citations, dates, signatures);
 - ◇ Explain or clarify meaning of State laws or regulations;
 - ◇ Provide more specific or better explanation of authority; and
 - ◇ Amend State laws or regulations if equivalent authority is not or cannot be cited.

Notes:

If the State's incorporation by reference is intended to include any EPA revisions that may occur in the future (this is known as prospective incorporation by reference), the Attorney General must cite State authority that enables it to both promulgate and enforce regulations in this manner.

Reviewers' comments on a draft AG Statement must be specific and clear in order for the State to understand what is expected in its official application. In addition to written comments, it is important for the Regions and States to talk about the comments in order to ensure full understanding.

Comments to the AG could include the need for clarification on procedural or format questions or an explanation of the meaning of State laws or regulations. It is important that the reviewer be specific to the State about why something is unclear.

The reviewer may also ask the State to provide more specific explanations of authority or, as the last resort, to amend State laws or regulations if equivalent authority is not or cannot be cited.

Again, it is crucial that the reviewer tell the State why the authorities need to be amended.






INTRODUCTION TO STATE AUTHORIZATION

Notes:

Reviewing the AG's Response to Comments

- Reviewers will check the following:
 - ✧ Are format questions resolved? 
 - ✧ Do narratives clarify conflicts or ambiguities in State authorities?
 - ✧ Where AG explanations did not demonstrate equivalence, has the explanation been satisfactorily revised, or have authorities been amended?

If the comments on the draft AG Statement were not clear and specific, the AG should provide a quality response. In reviewing the AG's response, the EPA reviewer should ask the following questions:

- Are format questions resolved?
- Do narratives clarify conflicts or ambiguities in State authorities?
- Have authorities been amended where explanations do not demonstrate equivalence?

What if an issue cannot be resolved? If the requirement in question is only part of a cluster, the State can withdraw that part of the application and resubmit it in a later application.





Common AG Statement Deficiencies

- General format deficiencies:
 - ✧ Omitted or unauthorized signatures;
 - ✧ Omission of Federal and State authorities;
 - ✧ Conflicting citations; and
 - ✧ Failure to state the relationship to prior AG Statements.

- Substantive deficiencies:
 - ✧ Less stringent regulations;
 - ✧ Regulations that are not in effect;
 - ✧ Insufficient explanation of differences in Federal and State regulations; and
 - ✧ Inadequate statutory authority to promulgate specific regulations.

Notes:





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Exercise V-2



Remarks of the State Attorney General

The State is replacing its regulations for identifying and listing hazardous wastes by incorporating the Federal regulations by reference. State Statute 444.700 defines “hazardous waste” for the purposes of the jurisdiction of the State Hazardous Waste Act, Sections 444.700 *et seq.* The statute remains unchanged. The State regulations at 10 SR Part 261 first repeal all previous regulations regarding the identification and listing of hazardous waste, and second, incorporate the criteria expressed in 40 CFR Part 261, Subparts A-D. State Administrative Procedure Act 105.7 provides the necessary authority to incorporate Federal regulations by reference.

State Hazardous Waste Act 444.710

- a) The State Environmental Protection Agency (EPA) shall, within 18 months of the enactment of this Act, after notice and opportunity for public hearing, and after consultation with appropriate State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be the subject of provisions of this subtitle, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate.
- b) The State EPA shall, not later than eighteen months after the date of enactment of this section, and after notice and opportunity for public hearing, promulgate regulations identifying characteristics of hazardous wastes, which shall be subject to the provisions of this subtitle. Such regulations shall be based on criteria promulgated under subsection (a) and shall be revised from time to time there after as may be appropriate.

State Administrative Procedure Act 105.7

For purposes of establishing regulatory programs for approval by the Federal government, the State executive branch agencies may incorporate Federal regulations by reference, after providing notice and opportunity for public comment as specified in section 105.10. (NOTE: Specific requirements are not included because they are not relevant to this exercise.)





State Regulations: 10 SR Part 261, Identification and Listing of Hazardous Waste

- a) All previous criteria for the identification and listing of hazardous waste are hereby repealed and replaced by those referenced in subsection (b).
- b) Criteria for the identification and listing of hazardous waste shall be as those established in 40 CFR Part 261.

Issue:

By incorporating 40 CFR Part 261 by reference without a specific date, the State has, in reality, prospectively incorporated these regulations and any future amendments. The Attorney General's comments cite State authority to incorporate by reference, but do not mention the State's legal authority for prospective incorporation by reference. EPA must, therefore, question whether the State can incorporate Federal regulations prospectively.

Suggested Remedy:

[Click here for answer.](#)

Notes:





INTRODUCTION TO STATE AUTHORIZATION

Notes:

AG Statement Checklist

- Reviewer's checklist for the AG Statement in Appendix F:
 - ◇ Part I: General review requirements;
 - ◇ Part II: Review by Cluster; and
 - ◇ Appendix: Basic program requirements.

- The AG Statement review checklist helps:
 - ◇ States ensure that legal authority is adequately described; and
 - ◇ EPA reviewers identify and prepare comments.

A detailed reviewer's checklist for the AG Statement is provided in SAM Volume II, Appendix F

(see <http://www.epa.gov/epawaste/laws-regs/state/index.htm> for the AG Statement Reviewer's Checklist) and can be very useful in focusing your review of the AG Statement and in preparing comments. It is designed to ensure that the AG Statement adequately describes the State's legal authorities, discusses how those authorities might differ from the Federal regulations, and contains the appropriate citations and certifications.

The checklist consists of three parts:

- Part I, General Review Requirements, should be completed for all applications. It covers procedural issues that need to be reviewed in both base and program revision applications;
- Part II, Review by Cluster, is organized by cluster and addresses program revisions; and
- The appendix, Base Program Requirements, addresses elements of a base program application.



Exhibit V-1 presents an excerpt from the Reviewer's Checklist for the AG Statement.



Exhibit V-1

REVIEWER'S CHECKLIST FOR THE ATTORNEY GENERAL'S STATEMENT

Notes:

Introduction

This checklist should be used to review the Attorney General's Statement (AG Statement). It is designed to ensure that the AG Statement adequately describes the State's legal authorities, discusses how those authorities might differ from the Federal regulations, and contains the appropriate citations and certifications.

Part I, General Review Requirements, should be completed for all applications. It covers procedural issues that need to be reviewed in both base and program revision applications. Part II, Review by Cluster, is organized by cluster and addresses program revisions. The appendix, Basic Program Reviews, addresses elements of a base program application.

Part I: General Review Requirements

Questions 1-3 must be answered for all AG Statements; questions 4-6 must be answered as appropriate. A check in the "no" column requires a comment to the State.

1. Y_ N_ Is the Attorney General's Statement (AG Statement) signed by one of the following persons:

- a) the State Attorney General or an attorney in his/her office who is authorized to sign for the Attorney General,
- b) a Deputy or Assistant Attorney General, or
- c) independent legal counsel?

(see SAM, p. 3-2)

2. Y_ N_ N/A_ If the person signing the AG Statement in question #1 of this check list is either a Deputy or Assistant Attorney General, or independent legal counsel, does that person have one of the following:

- a) for a Deputy or Assistant Attorney General, authorization in writing, case law or statute the he/she is authorized to sign for the Attorney General, or
- b) for independent legal counsel, full authority to independently represent the State Agency in court on all matters pertaining to the State program?





INTRODUCTION TO STATE AUTHORIZATION

Notes:

Model Revision Attorney General's Statement

- Required each time a State submits a revision authorization application;
- Approved language and format for the revised AG Statement

SAM Volume II, Appendix E contains a model revised Attorney General's Statement

(see <http://www.epa.gov/epawaste/laws-regs/state/index.htm> for the Attorney General's Statement). A revised AG Statement is required each time a State submits a revision authorization application.

The model includes approved language and format for the revised AG Statement. You may use this language verbatim.



INTRODUCTION TO STATE AUTHORIZATION



APPENDIX ONE - ANSWERS TO EXERCISES

LESSON I - OVERVIEW OF TRAINING/FUNDAMENTALS OF STATE AUTHORIZATION

Exercise I-1

You are a member of a three person planning team that reports directly to the Hazardous Waste Division Director of EPA Region XII. Your responsibilities include examining upcoming changes in hazardous waste regulations and forecasting the changes in EPA duties and responsibilities, and the corresponding personnel assignments based on these forecasts. Today you are examining several changes that are upcoming to 40 CFR Parts 260-280.

Background on your Region. Region XII is comprised of three States:

1. Howard, a primarily agricultural State. Howard has never adopted any hazardous waste management regulations and has not expressed any interest in becoming authorized.
2. Shenandoah, a rural, mountainous State. Shenandoah received initial authorization in 1990. The State has adopted the land disposal restrictions (LDRs), but has not received authorization. The State plans to submit an application for LDRs next month. In addition, the State hopes to submit an application for four other rules in the next year.
3. New Trenton, a highly industrialized State, with a complex highway and infrastructure network. New Trenton is authorized for all rules, through RCRA Cluster VI. In fact, New Trenton's regulations go well beyond RCRA requirements in the identification and management of hazardous wastes.

Expected changes to RCRA. In the next four months the following changes are expected to take place in the Federal regulations.

Change 1: A new rule will be promulgated under HSWA that creates a new list of hazardous wastes to be added to the lists in 40 CFR 261. These will be called Q-listed wastes and will consist primarily of wastes from agricultural operations.

Change 2: New generator labeling requirements for wastes under 40 CFR Part 262. The new requirement will demand that, when writing dates on labels, the full name of the month be written out, rather than abbreviated or given numerically. The rule will be a non-HSWA requirement.



INTRODUCTION TO STATE AUTHORIZATION

Exercise I-1 (Cont'd.)

Change 3: The land disposal restrictions in 40 CFR Part 268 will now allow a new treatment method (solar diffusion) as an alternative to meeting a specified concentration for organic wastes from certain electroplating processes (food waste). This rule will be a HSWA requirement.

Answer:

	Howard	Shenandoah	New Trenton
Change 1	Federal lead until State becomes authorized for base program and this rule	Federal lead until State becomes authorized for this rule	Federal lead until State becomes authorized for this rule
Change 2	Federal lead until State becomes authorized for base program and this rule	Not effective until State adopts and becomes authorized for this rule.	Not effective until State adopts and becomes authorized for this rule
Change 3	Federal lead until State becomes authorized for base program and this rule	Federal lead until State becomes authorized for LDRs	Existing authorized State regulations supercede this less stringent provision

Exercise I-2: RCRA Program Modifications and Revisions

Federal Program Triggers:

Phase II and Phase III land disposal restrictions establish treatment standards for hazardous wastes such as organic wastes and used oil management standards. Are State revisions required?

Yes. Each aspect of the State's regulation must be as stringent as the Federal regulations. For example, when EPA tightens requirements for a category of waste handlers, the EPA rule triggers the need for State revisions.

INTRODUCTION TO STATE AUTHORIZATION



Exercise I-2 (Cont'd.)

Are States required to maintain the same universe of waste and handlers as EPA?

Yes. For example, when EPA lists a new waste (such as petroleum refinery wastes in November, 1990, States also had to change their lists of waste). Likewise, when EPA expands the universe of regulated handlers (e.g., the boiler and industrial furnace rule of February, 1991), the need for a State program revision is triggered.

Types of State Program Modifications:

A State legislature may enact new legislation that affects a State's authority to implement its authorized program (e.g., State may enact citing requirements that affect the permit process). What should the States submit to the Region for review and comment?

Pursuant to State statutory requirements, or on its initiative, the State agency may amend its regulations. Again, copies of proposed regulations should be submitted to the Region for review and comment.

What other types of changes should the State submit to EPA for review?

Program changes that would alter the agreements established in the MOA (e.g., a State wants to start receiving notification forms instead of having EPA receive them), changes to forms, and other similar administrative changes.

If a State wishes to transfer its hazardous waste program from the Health Department to the Environmental Protection Department, must it receive EPA approval?

Yes. EPA approval is needed when States transfer authority to another agency, renumber their codes, or amend a regulation that is part of the authorized program. EPA approval is not needed when a State makes administrative changes such as an internal reorganization or a change to its schedules for activities (e.g., grant commitments). EPA approval may be needed when a State establishes a Memorandum of Understanding (MOU) with another agency to carry out certain activities, or changes internal procedures such as who reviews and approves enforcement actions. Actions such as these are in a grey area. It is important for the Region to review the actions to determine whether an application is necessary.



INTRODUCTION TO STATE AUTHORIZATION

Exercise I-3: Timeframe for Modifications and Revision Applications

What types of modifications must States inform EPA?

States must inform EPA of all modifications to their authorized RCRA programs (in advance where possible.) Within 30 days of modifying its program, a State must submit to the Region a copy of the program modification, whether it is State-initiated or in response to a Federal change, and a schedule indicating when the State intends to submit an application for approval of the modification (Section 271.21(e)(4)).

How flexible are cluster deadlines?

States are not required to apply for all cluster provisions at one time but must comply with cluster deadlines.

When may a State apply for a Federal requirement?

A State may apply for any Federal requirement at any time (either alone or in combination with other requirements). However, the State must have applied for all provisions in a cluster no later than 60 days after the State modification deadline for that cluster.

Are States allowed to submit revision applications based on a Federal rule that has not yet been finalized?

Yes. Usually, a RCRA final rule is promulgated six months in advance of its effective date. A State may modify its program and submit its revision application to EPA prior to the effective date.

Is EPA allowed to approve a State's revision application before a Federal rule has been finalized?

Yes. EPA may publish the approval of the State program revision before the effective date of the Federal requirement; however, the authorization can only become effective on or after the Federal requirement's effective date.

For example, if a waste listing is published in January and becomes effective the following July, EPA could review and approve the State's corresponding waste listing during the January-July period, but the State's authorization to operate in lieu of the Federal program could not become effective until the July effective date for the Federal waste listing.

** Note: Effective dates for certain regulations should be monitored, as they may be delayed.*



LESSON II - INTRODUCTION TO RULE CHECKLISTS

Exercise II-1

Look at Exhibit II-9 and determine:

1. Which checklists are linked with Checklist 5?

17D, 32, 58

2. Why are they linked?

They all pertain to National Uniform Manifest Requirements



INTRODUCTION TO STATE AUTHORIZATION

LESSON IV - MEMORANDUM OF AGREEMENT

Exercise IV-1: State Program Review

A. General

“Review of the State files may be scheduled at semi-annual intervals. Program review meetings between the State and the Regional Administrator or their assignees will be scheduled at reasonable intervals not less than annually to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. To ensure effective program review, the State agrees to allow EPA access to all files and other information requested by the Regional Administrator or his/her designee and deemed necessary by EPA for reviewing State program administration and enforcement. These meetings will be scheduled at least thirty days in advance unless agreed to differently. A tentative agenda for the meeting will be prepared by EPA.”

(Questions are taken from Section III of the MOA checklist)

1. Does the MOA limit the scope of EPA oversight activities?

No.

2. Does the MOA restrict the tools (i.e., the information sources) EPA may use for oversight?

No; it gives EPA the authority to determine what is necessary for EPA oversight.

4. Does the MOA allow for regularly scheduled reviews?

Yes, the MOA provides for semi-annual reviews that are to be scheduled 30 days in advance. Regions and States should work together to develop a schedule that works best.



Exercise IV-2

“...The State agrees to inform the Regional Administrator of any proposed or adopted program changes which would affect the State’s ability to implement the authorized program. Program changes of concern include modification of the State’s legal authorities, modifications of memoranda of agreement or understanding with other agencies, and modification of resource levels...”

1. Does the MOA require the State to inform EPA in advance of program changes?

No. Not acceptable.

Exercise IV-3: Permit Issuance

EPA Overview of State Permits

“EPA may comment in writing on draft permits or draft permit modifications when EPA comments on the permit application. EPA must submit its comments to the State within 30 days of receipt of the draft permit. Where EPA indicates in a comment that issuance of a permit would be inconsistent with the approved State program, EPA must provide the information required by 40 CFR § 271.19(b) - (d).”

1. Does the MOA provide for EPA comment on any permit application or draft permit?

No, only when EPA commented on the permit application. This is not acceptable.

2. Is the comment period provided for EPA’s review less than 45 days?

Yes. Not acceptable. EPA must be provided at least as much time as the general public.

3. Is EPA required to provide information other than that specified in 40 CFR § 271.19(b) - (d) when a comment indicates that the State permit would be inconsistent with the approved State program?

No.



Exercise IV-4: State Permitting

“State regulation XYZ.400 requires a public comment period of at least 30 days for permit issuance. The State commits to hold a public comment period of at least 45 days for every RCRA permit issued, modified, reissued, terminated, or denied in the State.”

The State is using the MOA to satisfy permitting procedures not found in State regulations.

1. Does the MOA contain an unequivocal commitment to apply the procedures to each permit?

Yes.

2. Does the MOA commit the State to inform the public in each permit public notice that procedures to be followed are derived from the MOA as well as from State laws and regulations?

No. Not acceptable.



LESSON V - ATTORNEY GENERAL'S STATEMENT

Exercise V-1: Remarks of the State Attorney General:

The State is amending its regulations for establishing permit conditions by allowing the State Environmental Agency Director, in certain circumstances, to add conditions necessary to protect human health, welfare and the environment. The addition of the welfare criterion is more stringent than the Federal regulations, as it allows the State to add conditions beyond those that EPA could add. However, the State Agency Director is limited to adding to a RCRA permit only those provisions that are not the responsibility of another Federal or State agency. This limitation does not have an effect on the equivalency of this provision. All issues that are raised by the public or within the State Agency on a draft permit will be considered by the State Agency. Those that are within the Agency's jurisdiction may be incorporated in RCRA permits. Those that address issues that are properly the consideration of other agencies would be referred to the appropriate agency to consider in developing its applicable permits. Thus, the State's provision is equivalent to the Federal requirements. It ensures that all conditions necessary to protect public health and the environment will be considered and incorporated, as necessary, in the appropriate permits.

State Hazardous Waste Regulations 122.32(b)

- (1) Each permit shall include permit conditions necessary to comply with the Act and regulations.
- (2) The permit shall contain terms and conditions as the State Director deems necessary to protect human health, welfare, and the environment.
- (3) The State Director shall not add terms and conditions that are currently the jurisdiction of other Federal or State agencies.

RCRA Section 3005(c)(3). Permit Issuance.

Each permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.

40 CFR §270.32(b) revised by 50 FR 28742, July 15, 1985

Each permit issued under section 3005 of this act shall contain terms and conditions as the Administrator or State Director determines necessary to protect human health and the environment.



INTRODUCTION TO STATE AUTHORIZATION

Exercise V-1 (Cont'd.)

Issues:

The State's submittal involved two issues: adding welfare to the criteria by which the State Director evaluates permits, and limiting the authority of the State Director to regulate aspects currently under the jurisdiction of other Federal or State agencies. In the first case, adding welfare broadens the evaluation categories to include factors such as property values, traffic congestion, noise and other related issues that possibly would affect the host community. Thus, the State's authority is made broader by the addition of a welfare criterion. In the second case, limiting the Director's authority to add conditions to areas where no other agencies have jurisdiction seriously compromises the State Director's authorities. For example, the State Health Department may have authority to issue permits with conditions that relate to protection of human health. The State Director would be precluded from adding any provisions related to human health protection that overlapped with authorities of the State Health Department. This makes the State's provision less stringent, as the intent of §3005(c)(3) is to put such conditions under RCRA permits where it is necessary to protect human health and the environment. RCRA does not limit this authority only to those instances where there is no one else with authority to consider the issue. Further, the State cannot argue that imposing a more stringent requirement (i.e., welfare) and a less stringent requirement balances to make an equivalent requirement.

Suggested Remedy:

The State must amend its regulations to delete subsection (b)(3) entirely or to limit its applicability only to the welfare criterion. Since that criterion is not mandatory, deleting subsection (b)(3) maintains authority for important factors relevant to protection of human health and the environment in the hands of the Director.

Exercise V-2: **Remarks of the State Attorney General**

The State is replacing its regulations for identifying and listing hazardous wastes by incorporating the Federal regulations by reference. State Statute 444.700 defines "hazardous waste" for the purposes of the jurisdiction of the State Hazardous Waste Act, Sections 444.700 *et seq.* The statute remains unchanged. The State regulations at 10 SR Part 261 first repeal all previous regulations regarding the identification and listing of hazardous waste, and second, incorporate the criteria expressed in 40 CFR Part 261, Subparts A-D. State Administrative Procedure Act 105.7 provides the necessary authority to incorporate Federal regulations by reference.

INTRODUCTION TO STATE AUTHORIZATION



Exercise V-2 (Cont'd.)

State Hazardous Waste Act 444.710

- a) The State Environmental Protection Agency (EPA) shall, within 18 months of the enactment of this Act, after notice and opportunity for public hearing, and after consultation with appropriate State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be the subject of provisions of this subtitle, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate.
- b) The State EPA shall, not later than eighteen months after the date of enactment of this section, and after notice and opportunity for public hearing, promulgate regulations identifying characteristics of hazardous wastes, which shall be subject to the provisions of this subtitle. Such regulations shall be based on criteria promulgated under subsection (a) and shall be revised from time to time there after as may be appropriate.

State Administrative Procedure Act 105.7

For purposes of establishing regulatory programs for approval by the Federal government, the State executive branch agencies may incorporate Federal regulations by reference, after providing notice and opportunity for public comment as specified in section 105.10. (NOTE: Specific requirements are not included because they are not relevant to this exercise.)

State Regulations: 10 SR Part 261, Identification and Listing of Hazardous Waste

- a) All previous criteria for the identification and listing of hazardous waste are hereby repealed and replaced by those referenced in subsection (b).
- b) Criteria for the identification and listing of hazardous waste shall be as those established in 40 CFR Part 261.

Issue:

By incorporating 40 CFR Part 261 by reference without a specific date, the State has, in reality, prospectively incorporated these regulations and any future amendments. The Attorney General's comments cite State authority to incorporate by reference, but do not mention the State's legal authority for prospective incorporation by reference. EPA must, therefore, question whether the State can incorporate Federal regulations prospectively.



INTRODUCTION TO STATE AUTHORIZATION

Exercise V-2 (Cont'd.)

Suggested Remedy:

A number of State Supreme Court cases have held that State statutes which adopt prospective Federal regulation are an unconstitutional delegation of Federal authority. States are not precluded from incorporating Federal regulations prospectively but they must have specific legal authority to do so. The Attorney General needs to demonstrate that the State has the necessary legal authority for promulgating and enforcing statutes prospectively by reference by citing the legal authorities. If the State did not intend to prospectively incorporate by reference the Federal regulations, then the statute should be amended by adding the date of the Federal regulations that were incorporated.

Appendix Two

Example Program Description

ADDENDUM TO PROGRAM DESCRIPTION
OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY
HAZARDOUS WASTE MANAGEMENT PROGRAM

Part I: Organization and Management of the State Program (§ 271.6(b) through (h)

With this revision authorization application, the State of Oklahoma, through the Oklahoma Department of Environmental Quality ("DEQ"), is seeking authorization for RCRA Cluster VI. The State program now has in place statutory authority and regulations for all required program components through RCRA Cluster VI. These statutory and regulatory provisions were developed to provide corresponding authority to the Federal program; therefore, the State program is equivalent to and no less stringent than the Federal program.

The DEQ has received final authorization for the base RCRA program; for non-HSWA Clusters I through VI; for HSWA Clusters I and II; for RCRA Clusters I, II, III, and IV; and on April 15, 1997, submitted its final application for RCRA Cluster V. The DEQ received final authorization for the Base Program in January of 1985.

No major changes have taken place in the State program since the last Addendum to Program Description was submitted to EPA on April 15, 1997.

A. State Agency Responsibilities (§ 271.6(b))

Oklahoma statutes provide authority for a single state agency, the DEQ, to administer the provisions of the State hazardous waste management program. These statutes are the Oklahoma Environmental Quality Act, 27A O.S. Supp. 1997 §§ 1-1-101 et seq. (Appendix A); general provisions of the Oklahoma Environmental Quality Code which may affect the hazardous waste program, 27A O.S. Supp. 1997 §§ 2-1-101 through 2-3-507 (Appendix B); and the Oklahoma Hazardous Waste Management Act, 27A O.S. Supp. 1997 §§ 2-7-101 et seq. ("OHWMA")

(Appendix C). No amendments were made to the above statutory authorities during the 1997 legislative session which will substantially affect the State hazardous waste management program; however, 27A O.S. § 2-14-305 has been added to allow for issuance of general permits (Appendix D).

As was the case when the April 15, 1997, Addendum to Program Description was submitted, the Environmental Quality Board ("Board") which consists of thirteen (13) members is appointed by the Governor with the advice and consent of the Senate. The Board is the rulemaking body of the DEQ. Permanent rules regarding hazardous waste are promulgated with the advice of the Hazardous Waste Management Advisory Council ("Council"); however, emergency rules may be promulgated by the Board without the advice of the Council.

The Council may not recommend rules for promulgation by the Board unless all applicable requirements of the Oklahoma Administrative Procedures Act, 75 O.S. §§ 250 et seq., as amended (Appendix E) have been followed, including but not limited to notice, rule impact statement and rule-making hearings.

The rules promulgated and in effect as permanent rules which implement the State hazardous waste program are codified in the Oklahoma Administrative Code ("OAC") at OAC 252:200 et seq. (Appendix F).

On January 8, 1998, the Council voted to recommend amendments to OAC 252:200-3-1 and 252:200-3-2 to incorporate by reference, in accordance with the *Guidelines For State Adoption Of Federal Regulations By Reference*, the following EPA Hazardous Waste Management Regulations as amended through July 1, 1997: the provisions of 40 CFR Part 124 which are required by 40 CFR § 271.14 as well as 124.31, 124.32, and 124.33; 40 CFR Parts 260-266, with the exception of 40 CFR § 260.20 through 260.22; 40 CFR Part 268; 40 CFR Part 270; 40 CFR

Part 273; and 40 CFR Part 279. The Board adopted these amendments on January 27, 1998 as permanent and emergency rules. The emergency amendments will be effective immediately upon signature by the Governor, and will become effective as permanent rules on June 1, 1998. The Rules in Appendix G contain these latest amendments.

The State's incorporation of Federal regulations does not operate to incorporate prospectively future changes to the incorporated sections of the Code of Federal Regulations, and no other Oklahoma law or regulation reduces the scope of coverage or otherwise affects the authority provided by these incorporated-by-reference provisions. Further, Oklahoma interprets these incorporated provisions to provide identical authority to the Federal provisions. Thus, OAC 252:200-3-1 through 252:200-3-6 provides equivalent and no less stringent authority than the Federal Subtitle C program in effect as of July 1, 1997.

Pursuant to the Oklahoma statutes listed in Part I.(A) above, a single state agency, the DEQ, has authority to administer the provisions of the State hazardous waste management program.

The DEQ remains the official agency of the State of Oklahoma, as designated by 27A O.S. Supp. 1997 § 2-7-105(13) to cooperate with Federal agencies for purposes of hazardous waste regulation.

The OHWMA delegates authority to the DEQ to administer the State hazardous waste program, including the statutory and regulatory provisions necessary to administer the RCRA VI provisions. The DEQ is the sole State agency responsible for administering the provisions of the OHWMA.

Currently, the Oklahoma Corporation Commission ("OCC") regulates certain aspects of the oil and gas production and transportation industry in Oklahoma, including certain wastes

generated by pipelines, bulk fuel sales terminals and certain tank farms. The DEQ and the OCC have in place a *DEQ/OCC Jurisdictional Guidance Document* which reflects the current state of affairs between the two agencies. The DEQ exclusively regulates hazardous waste in Oklahoma (excluding Indian lands) and the OCC does not regulate hazardous waste in Oklahoma. Appendix H contains the current DEQ/OCC Jurisdictional Guidance Document.

The revision of the State program to include administering the provisions of RCRA Cluster VI will not require a change in which state agency will be responsible for administering the State hazardous waste program.

B. Staffing and Funding Resources (271.6(b))

The Executive Director of the DEQ, whose responsibilities have not changed significantly since the April 15, 1997 Addendum to Program Description submittal, is appointed by the Board, and is responsible for the administration of the DEQ. The Executive Director is given specific powers and duties necessary to fully implement a State hazardous waste program which is equivalent to the Federal hazardous waste program.

The Executive Director is given the duty to "establish such divisions and such other programs and offices as the Executive Director may determine necessary to implement and administer programs and functions within the jurisdiction of the DEQ pursuant to the Oklahoma Environmental Quality Code". Accordingly, the Executive Director has created the Waste Management Division ("WMD") which is responsible for implementing the provisions of the OHWMA.

The Waste Management Division continues to be staffed with personnel that have the administrative expertise, technical background and experience necessary to effectively administer and implement the RCRA VI program.

Many of the personnel currently employed in the service have several years of experience in the hazardous waste program. Both experienced and new personnel participate in a variety of training programs to increase their expertise and skills. A training curriculum designed specifically for new employees of the WMD is well established.

The organization of the WMD is depicted in Appendix I. Table I shows staffing requirements for the WMD hazardous waste program support personnel, based on the EPA/State Grant. Table I-A itemizes the costs of administrative support, technical support, and costs of personnel for fiscal year 1998, based on contributions the State will make above the amounts in the EPA/State Grant. Table II shows the WMD hazardous waste program budget for State Fiscal Year 1998 (July 1, 1997-June 30, 1998), which shows funding amounts based on the personnel requirements set out in the EPA/State Grant. Tables III and IV are estimated budgets for FY 1999 and FY 2000, respectively. Tables II, III, and IV also identify the sources and amounts of funding, including Federal grant money, and explain how the funding may be expended.

Personnel are primarily engineers and hydrologists in the Permitting & Site Remediation Section of the WMD. These individuals are presently involved in the ongoing RCRA permitting and facility management activities throughout the state.

With respect to assignment of personnel to perform necessary duties to meet the requirements of implementation of RCRA Cluster VI, many factors will be taken into consideration. These factors include: (1) other Program Plan commitments; (2) other state program commitments; (3) the nature of the work being performed; and (4) the specific skills of the personnel. For example, although most of the personnel involved will be engineers and groundwater specialists, if a project requires specialized knowledge of hazardous waste combustion, the DEQ technical staff utilizes personnel with advanced knowledge in this area.

Therefore, RCRA work involving combustion is handled by these individuals and other work assignments are adjusted accordingly.

The DEQ estimates that a full-time technical employee costs \$45,000 - \$50,000 annually, including benefits and all administrative costs. It is anticipated that no additional personnel will need to be hired to implement the provisions of RCRA Cluster VI. The state matching funds are required to be spent within the hazardous waste program, however, there are no restrictions or limitations which would prohibit these funds from being spent on RCRA requirements.

C. State Procedures (§ 271.6(c))

The current rules of procedure in place for the DEQ were amended by the Environmental Quality Board on January 28, 1997. These rules, OAC 252:002 were approved by the Governor on March 18, 1997, and became effective as permanent rules on April 2, 1997. See Appendix J. Nothing in the current rules in any way restricts the Waste Management Division from fulfilling its responsibilities under the OHWMA, the Memorandum of Agreement ("MOA") which is included with this Revision Application, or the Performance Partnership Agreement ("PPA") entered into by the DEQ and EPA.

Appeal procedures for RCRA hazardous waste permits issued by the DEQ are specified in 40 CFR § 124.19(a) through (c) and (e), which the DEQ adopts by reference.

The Department and EPA have agreed to a joint permitting process (see section V.D of the MOA) for the joint processing and enforcement of permits for those provisions of HSWA promulgated after June 30, 1993; however, as the Department receives authorization for provisions of the HSWA promulgated after June 30, 1993, EPA will suspend issuance of Federal permits in the State for those provisions.

The division of responsibility between the State and EPA for administration of respective provisions of RCRA is described in detail in the MOA.

While EPA may comment on any permit application or draft permit, EPA's overview function will focus primarily on those facilities identified in the PPA, as well as on facilities for which the Department requests EPA's assistance.

D. Compliance Tracking and Enforcement (§ 271.6(e))

The goal of the RCRA Compliance Unit of the DEQ has not changed since the submittal of the April 15, 1997 Addendum to Program Description, and the Unit continues to achieve and maintain a high rate of compliance within the regulated universe by establishing a comprehensive inspection program and taking timely and effective enforcement actions against violators.

The DEQ continues to diligently attempt to adhere to the time frames for enforcement actions specified in the current EPA Enforcement Response Policy ("ERP") and the multi-year EPA/DEQ Enforcement Memorandum of Understanding ("MOU") [generally, 180 days for formal enforcement against Significant Non-Compliers ("SNC"), and 180 days from the first day of discovery of noncompliance with the compliance schedule (and extensions granted) established through the informal enforcement action (Notice of Violation "NOV") for formal enforcement if necessary or appropriate against Secondary Violators ("SV")]. In those circumstances in which the DEQ determines it cannot meet a specified time frame, it makes every effort to notify the EPA, as specified in the ERP and MOU, in advance of the deadline with a specification of the reason(s) for the delay and identifies an alternate time frame.

The PPA specifies the annual goals for inspections to be performed by the DEQ within the various categories of hazardous waste handlers.

The DEQ identifies violations of RCRA hazardous waste requirements by three primary means: inspections, periodic record reviews (e.g. manifests and state disposal plans), and complaints (as verified by subsequent investigation or inspection). The DEQ utilizes numerous inspection checklists to identify violations, including the Land Disposal Restriction checklist, when performing inspections at hazardous waste handler sites. Once a violation is identified, it is recorded by entry into the EPA RCRIS system, as well as the internal tracking system of the WMD. Violations are documented by the issuance of a Notice of Violation ("NOV") for most Class I and II violations and by the issuance of an Administrative Compliance and Penalty Order ("ACPO") for SNCs. When either an NOV or ACPO is issued, compliance is tracked by both the WMD tracking system previously mentioned and by the computerized docket system of the Office of General Counsel of the DEQ, until resolution.

The DEQ continues to use EPA's Violation Classification Guidance document, i.e., violations are classified as Class I* (most serious), Class I (very serious), and Class II (less serious), and violators as SNCs and SVs. A SNC is a handler who, by its violations, has caused actual exposure or a substantial likelihood of exposure to hazardous waste or hazardous constituents, or who is a chronic or recalcitrant violator, or who substantially deviates from the terms of a permit, order or decree. Generally, a SV is a handler who does not meet the criteria for identification as a SV. More details, along with examples, of the violation classification scheme are contained in the EPA/DEQ Enforcement MOU.

As noted above, Administrative Orders with penalties are the means commonly used to address SNCs. NOV's are typically issued to SVs, with an administrative order subsequently issued if necessary within 180 days from the first day of discovery of noncompliance with the schedule (and extensions granted) established through the NOV. State statutes also authorize the DEQ to

bring actions in state court for injunctions and civil penalties, and to refer violations to state district attorneys for criminal prosecution. Fines of up to \$25,000.00 per day per violation are authorized in administrative, civil and criminal actions; additionally, the most serious violations (e.g. illegal disposal), if committed knowingly and willfully, are now classified as felonies under state law, with prison terms of up to ten years. A copy of the Environmental Crimes Act, 21 O.S. Supp. 1997 §§ 1230.1 et seq is attached as Appendix K.

Once any type of order is issued to a facility, it is tracked by the above-mentioned tracking mechanisms until resolution. Verification of compliance is usually accomplished by either requiring the violator to submit appropriate documentation to demonstrate compliance, by a follow-up inspection or a combination of submittal of appropriate documentation and a follow-up inspection.

E. Estimated Regulated Activities (§§ 271.6(g) and (h))

Currently, based on Hazardous Waste Notifications, there are approximately 177 large quantity generators; 1,268 small quantity generators; 1,393 conditionally exempt generators; and 484 transporters.

There are approximately 3 on-site and 5 off-site treatment facilities in Oklahoma. The State has five on-site disposal facilities and 2 off-site disposal facilities.

Of the total of approximately 19 storage facilities, there are approximately 14 on-site facilities and 5 off-site facilities. Treatment facilities that were also storage facilities were only counted in the treatment category. Disposal facilities that also had storage were only counted in the disposal category. Virtually all of the treatment and disposal facilities also had storage capability.

DEQ data from 1985, which was the year the State program was originally authorized, indicates the universe in the State at that time included approximately 136 large quantity generators; 160 small quantity generators; 350 conditionally exempt generators; 115 transporters; 17 burner/blenders; and 47 treatment, storage and disposal facilities.

Estimates of annual quantities of hazardous waste managed in Oklahoma, based upon the most recent available compiled Biennial Report data, are:

- 511,918 tons generated within the State;
- 121,115 tons transported into the State;
- 46,626 tons transported out of the State;
- 424,844 tons managed on-site within the State;
- 138,537 tons managed off-site within the State (including 121,115 tons of imported waste).

F. Copies of State Forms and Coordination With Other Agencies (§§ 271.6(d) and (f))

There is no impact upon State forms or upon interagency coordination by the changes discussed herein. It should be noted in particular, because of the ramifications for other authorized State programs and the Federal program, that the DEQ continues to require use of the Uniform Hazardous Waste Manifest for the shipment of hazardous waste. The DEQ supplies copies of all international shipment manifests to EPA in accordance with the PPA. The DEQ is currently working with EPA to automate this process. Copies of the forms used by the State are attached as Appendix L.

Part II: Scope, Structure, Coverage and Processes

To provide a more detailed discussion of the scope of the program revisions being applied for, the following narrative discussion corresponds to the format of the Reviewer's Checklist for the Program Description included in SPA 17 of the EPA State Authorization Manual:

A. Hazardous Waste Management; Liquids in Landfills, Revision Checklist 145 (HSWA): In accordance with federal authorities RCRA §3004(c), 42 U.S.C. 6924(c); 40 CFR §§ 264.314(e)(2)(ii)&(iii), and 265.314(e)(2)(ii)&(iii) as amended July 11, 1995 (60 FR 35703), State statutes 27A O.S. Supp. 1997 §§ 2-7-106, 2-2-107, 2-2-104 and Rules 252:200-3-1 through 252:200-3-6 provide authority for State program requirements to be equivalent to the Federal program requirements which provide that OECD 301B (Modified Sturm Test) may also be used to demonstrate that a sorbent is non-biodegradable as indicated in Revision Checklist 145. Accordingly, the State requirements are consistent with and equivalent to the Federal requirements and no significant increase in funding or personnel will be required when the State receives authorization for these provisions.

B. RCRA Expanded Public Participation, Revision Checklist 148 (Non-HSWA): In accordance with federal authorities RCRA §§2002, 3004, 3005, and 7004(b), 40 CFR §§ 124.31, 124.32, 124.33, 270.2, 270.14(b)(22), 270.30(m), 270.62(b)(6), 270.62(d), 270.66(d)(3), and 270.66(g) as amended December 11, 1995 (60 FR 63417), State statutes 27A O.S. Supp. 1997 §§ 2-7-106, 2-7-105 and 2-2-104, and Rules 252:200-3-1 through 252:200-3-6 provide authority for State program requirements to be equivalent to the Federal program requirements which provide for opportunities for earlier public involvement in the permitting process and expand public access to information throughout the permitting process and the operational lives of facilities as indicated in Revision Checklist 148. Accordingly, the State requirements are

consistent with and equivalent to the Federal requirements, and no significant increase in funding or personnel will be required when the State receives authorization for these provisions.

C. Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste, Revision Checklist 150 (Non-HSWA): In accordance with federal authorities RCRA §§2002 and 3001; 40 CFR §§ 261.4(a)(12) as amended March 26, 1997 (61 FR 13103), State statutes 27A O.S. Supp. 1997 §§ 2-7-106, 2-2-104 and Rules 252:200-3-1 through 252:200-3-6 provide authority for State program requirements to be equivalent to the Federal program requirements which provide that recovered oil excluded from the definition of hazardous waste at 40 CFR § 261.4(a)(12) be inserted into the petroleum refining process at or before a point where contaminants are removed as indicated in Revision Checklist 150. Accordingly, the State requirements are consistent with and equivalent to the Federal requirements, and no significant increase in funding or personnel will be required when the State receives authorization for these provisions.

D. Land Disposal Restrictions Phase III--Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners, Revision Checklist 151 (HSWA): In accordance with federal authorities RCRA § 3004(d) through (k), 3004(m); Public Law 104-119, 100 Stat. 830, 40 CFR Part 268 as amended April 8, 1997 (61 FR 15566 and 61 FR 15660); April 30, 1997 (61 FR 19117); June 28, 1996 (61 FR 33680); July 10, 1996 (61 FR 36419); August 26, 1996 (61 FR 43924), and February 19, 1997 (62 FR 7502), State statutes 27A O.S. Supp. 1997 §§ 2-7-107(A)(10), 2-7-106, 2-2-104 and Rules 252:200-3-1 through 252:200-3-6 provide authority for State program requirements to be equivalent to the Federal program requirements which contain treatment standards for hazardous wastes from the production of carbamate pesticides and from primary aluminum production; contain the treatment standards for hazardous wastes that exhibit

the characteristic of reactivity; and put back into place the LDR "Third" "Third" provisions for the treatment of certain wastewaters as indicated in Revision Checklist 151. These statutes and regulations also codify the Federal policy that combustion of inorganic waste is an impermissible form of treatment as also indicated in this checklist. Accordingly, the State requirements are consistent with and equivalent to the Federal requirements, and no significant increase in funding or personnel will be required when the State receives authorization for these provisions.

Appendix Three

1997 Model MOA

[Please note that this document is only a model. Regions are welcome to modify the language and contents of this model to meet their own specific needs and concerns. Sections marked with asterisks discuss provisions required under 40 C.F.R. §271.8. However, in general, the regulations on crafting the MOA are very flexible.]

MEMORANDUM OF AGREEMENT BETWEEN

THE STATE OF []

AND

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION []

I. GENERAL

****This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR 271.8 for the State of *[State Name's]* Hazardous Waste program (hereinafter "State Program") authorized under Section 3006 of the Resource Conservation and Recovery Act (hereinafter "RCRA or "the Act") of 1976 (42 USC 6901 et seq.), as amended (Public laws 94-580, 96-482, 98-616), and the United States Environmental Protection Agency (hereinafter EPA) Regional Office for Region *[insert number]*. This Agreement further sets forth the manner in which the State and EPA will coordinate in the State's administration and enforcement of the State program and, pending State authorization, EPA's administration of the provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA). For purposes of this Agreement, references to "RCRA" include HSWA.**

This Agreement is entered into by the Director *[or other title as appropriate]* of *[State Agency]* (hereinafter "Director" or "the State") and the Regional Administrator, EPA Region *[insert number]* (hereinafter "Regional Administrator" or "EPA"). *[Where State program responsibility is shared among two or more agencies, each of the agencies is to be identified here as a party to the Agreement, the Director of each is to sign the Agreement, and the Agreement must identify which of the agencies is responsible for each provision of the Agreement. The Agreement should also indicate which State agency will be the lead agency communicating and coordinating with EPA.]***

****Nothing in this Agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under RCRA. Nothing in this Agreement shall be construed to contravene any provision of 40 CFR Part 271.****

The parties will review the Agreement jointly at least once a year (and other times as appropriate) during preparation of the annual State Grant work program or Performance Partnership Grant (hereinafter "Grant"), in connection with grant funding under section 3011 of RCRA.

This Agreement may be modified upon the initiative of either party in order to ensure consistency with State program modifications made or for any other purpose mutually agreed upon. Any revisions or modifications to this Agreement must be in writing and must be signed by the State and the Regional Administrator. This Agreement will remain in effect until such time as State program authorization is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR 271.22 and 40 CFR 271.23.

This Agreement is being executed (or revised) because the State is seeking authorization for *[insert description of relevant changes]*. This Agreement shall be signed by the State and the Regional Administrator and shall become effective *[Insert either: 1) at the time the State's authorization takes effect, on (date of the Federal Register notice of the Regional Administrator's decision to grant authorization to the State,); or 2) after being signed by both parties.] [Insert either: 1) This Agreement shall modify and be incorporated by reference into the Agreement dated ____.; or 2) This Agreement shall supersede the Agreement dated ____.]*

II. POLICY STATEMENT

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon granting of final authorization by EPA, the State assumes primary responsibility for implementing the authorized provisions of the RCRA hazardous waste program within its geographic boundaries, except in Indian country *[Modify accordingly if the State has explicitly demonstrated its authority and has been expressly authorized by EPA to implement the RCRA program in part or all of Indian country. Remove reference to Indian country if the State does not contain Indian country.]* The State will conduct its hazardous waste program in accordance with EPA program policies and guidance.¹ While EPA retains responsibility for the direct implementation of those provisions of HSWA for which the State is not authorized, it is the intention of EPA and the State to coordinate the implementation of such provisions to the greatest degree possible. The State and the Regional Administrator agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective administration of the State program.

¹ These policies and guidance include, at a minimum, the OSWER Consolidated Guidance; the Office of Enforcement and Compliance Assurance MOA guidance; RCRA Civil Penalty Policy dated October 26, 1990; National Criteria for a Quality Hazardous Waste Program; revised Hazardous Civil Enforcement Response Policy (April, 15, 1996); and the EPA Policy on Performance Based Assistance (May 31, 1985); and the May 1, 1996 Advanced Notice of Proposed Rulemaking for the Corrective Action Program, Setting Customer Service Standards (E.O. 12862, September 11, 1993); Improving Customer Service (Fred Hanson, April 8, 1998); Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations (E.O. 12892, February 11, 1994); EPA OSWER Environmental Justice Action Agenda (EPA 540/R-95/023, 1995).

EPA will oversee implementation of the authorized State program in order to ensure full execution of the requirements of RCRA, to promote national consistency in the hazardous waste program, and to allow EPA to report to the President and Congress on the achievements of the hazardous waste program. Oversight will be accomplished by EPA through written reporting requirements, permit overview, compliance and enforcement overview, and annual review of the State's programs.

III. STATE PROGRAM REVIEW

The Regional Administrator will assess the State administration and enforcement of the hazardous waste program on a continuing basis for equivalence and consistency with RCRA, this Agreement, and all applicable Federal requirements and policies, and for adequacy of enforcement. This assessment will be accomplished by EPA review of information submitted by the State in accordance with this Agreement and the State grant work program, permit overview, compliance and enforcement overview, and annual review of State program activities. The Regional Administrator may also consider, as part of this regular assessment, written comments about the State's program administration and enforcement that are received from regulated persons, the public, and Federal, State and local agencies. Copies of any such comments received by the Regional Administrator will be provided to the State.

****The State agrees to allow EPA access to all files and other information requested by the Regional Administrator or his or her designee and deemed necessary by EPA for reviewing State program administration and enforcement.**** File reviews may be conducted at any time. Program review meetings between the State and the Regional Administrator or their assignees will be scheduled at reasonable intervals, not less than annually, to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. These meetings will be scheduled at least fifteen days in advance unless mutually agreed to differently. A tentative agenda for the meeting will be prepared by EPA.

The State and EPA agree to develop, on an annual basis as a part of the State grant work program, criteria for priority activities, including activities regarding handlers of hazardous waste. These criteria will be based on guidance issued by EPA in the annual Agency Operating Year Guidance, other guidance documents as may be appropriate, and State specific concerns, and will serve to identify those activities which should receive the highest priority during the grant period.

IV. INFORMATION SHARING

A. General

This Section covers information sharing on miscellaneous elements of the RCRA program, including notification, RCRIS data, etc. Specific information sharing requirements for the other major program elements are covered in their respective Sections: **V. Permit Issuance**,

VI. Permit Administration, and VII. Enforcement. ****Detailed tables describing the flow of documents between the State and EPA for Sections V., VI., and VII. of the MOA are included at the end of this document.****

–As the respective information needs of the State and EPA evolve, changes to this section of the Agreement or the tables may be appropriate. During the annual review of this Agreement the State and the Regional Administrator will carefully examine the information sharing requirements for needed revision.

Information related to Sections V. and VI., Permitting, shall be sent by the State to: *[EPA contact address.]* EPA shall send permit related information to: *[State specify.]* Information related to Section VII., Enforcement, shall be sent to: *[EPA contact address.]* EPA shall send enforcement related information to: *[State specify.]*

1. EPA will keep the State informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the State program. EPA will also provide general technical guidance to the State. EPA will share with the State any reports developed by EPA from the data submitted through State reporting requirements.
2. EPA will make available to the State other relevant information as requested which the State needs to implement its approved program. Information provided to the State will be subject to the terms of 40 CFR Part 2.
3. The State agrees to inform the Regional Administrator of any proposed program changes which would affect the State's ability to implement the authorized program with as much advance notice as possible. Program changes of concern include modification of the State's legal authorities (i.e., statutes, regulations and judicial or legislative actions affecting those authorities), modifications of Memoranda of Agreement or Understanding with other agencies, and modifications of resource levels (i.e., available or budgeted personnel and funds). Program changes also include legal changes that would affect compliance monitoring and enforcement, such as privileges and immunities laws. The State recognizes that program revisions must be made in accordance with the provisions of 40 CFR 271.21, and that until approved by EPA, revisions are not authorized as RCRA Subtitle C requirements. EPA agrees to support the State with timely review of proposed State legislation that might have a significant potential to affect the authorized hazardous waste program.
4. ****The State agrees to provide any pertinent information requested by the Regional Administrator or his or her designee within a mutually agreed upon time frame, *[or specify time limit, if appropriate]* as necessary for EPA to carry out its oversight responsibilities.****

5. ****The State agrees to submit the following reports and documents to the Regional Administrator or his or her designee within the specified time periods:**** a) Midyear and End-of-Year reports on the dates set in the Grant and b) Additional reports and documents as specified by the Grant.**
6. The State agrees to provide EPA with a copy of any decisions regarding requests made by hazardous waste handlers to change their classifications (e.g., requests to be deleted as generators but to retain facility status) and facility requests to make on-site changes prior to permit issuance (e.g., requests to handle additional wastes not identified on the facility's original notification and RCRA Part A Permit Application.)
7. **[Optional:]** EPA agrees to adhere to the schedules in the Grant and the schedules specified by the Grant, including the Document Flow Tables.

B. Site Visits

EPA is responsible for maintaining reliable national data on hazardous waste management. This data is used to report to the President and Congress on the achievements of the hazardous waste program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information, EPA will first seek to gain this information from the States. The State of *[insert name]* agrees to supply the Regional Administrator with this information if readily available and as resources allow. If the State is unable to provide the information or if it is necessary to supplement the State information, EPA may conduct a special survey or perform information collection site visits after notifying the State (normally with at least seven days advance notice) and inviting the State to participate in the site visit. EPA will share with the State any reports developed by EPA as a result of such information collection.

C. Emergency Situations

Upon receipt of any information that the handling, storage, treatment, transportation, or disposal of hazardous waste is endangering human health or the environment, the party in receipt of such information shall immediately notify by telephone the other party(ies) to this Agreement of the existence of such situation. EPA shall call *[State specify]* at *[State specify]*. The State shall call EPA's Emergency Response Branch at *[EPA specify]*.

D. Confidentiality

1. Any information obtained or used in the administration of the State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information. Any information obtained from a State and subject to a claim of

confidentiality will be treated in accordance with the regulations in 40 CFR Part 2, Public Information.

2. EPA agrees to furnish to the State information in its files which is not submitted under a claim of confidentiality and which the State needs to implement its program. EPA will release confidential information only to States with confidentiality provisions equivalent to 40 CFR Part 2. Subject to the conditions in 40 CFR Part 2, EPA will furnish to the State information submitted to EPA under a claim of confidentiality which the State needs to implement its program. All information EPA agrees to transfer to the State will be transferred in accordance with the requirements of 40 CFR Part 2. EPA will notify affected facilities when such information is sent to the State. The State will handle such information consistent with its authorized program.

E. Delisting *-[Optional: The Region may wish to insert a delisting agreement]*

[Example of delisting agreement when a State is authorized for delisting:] The State shall send a copy of the delisting petition, and all subsequent revisions, to EPA within 15 days of receipt. Please consult the Enforcement and Compliance document flow table, attached to the Grant, for additional information on delisting documents the State should share with EPA.

****F. Notification**

[Suggested language if EPA assigns identification numbers:]

EPA agrees to assign EPA identification numbers to generators and transporters and to owners and operators of hazardous waste treatment, storage and disposal facilities submitting notifications after the effective date of this Agreement.

[Suggested language if EPA receive Notifications:]

EPA agrees to provide the State with notification information from EPA Form 8700-12 obtained prior to the effective date of this Agreement if such information has not already been provided to the State. The Director and EPA shall agree on the format in which the information will be provided and the information will be provided within thirty days of the effective date of this Agreement. EPA will also forward, on a monthly basis, notification information (including newly assigned EPA identification numbers) submitted by persons in the State who file such forms after the effective date of this Agreement. This information will be submitted to the Director within 10 days of the end of each month for the preceding month.

[Suggested language for States that receive Notifications but where EPA assigns i.d. number:]

Pursuant to section 3010 and according to agreements between EPA and the State, the State is responsible for receiving, processing, and verifying information on notification forms (Form 8700-12) and for forwarding such information to EPA for the assignment of EPA identification numbers.

[Suggested language for States that assign EPA identification numbers:]

EPA and the State have jointly decided that the State will assign all EPA I.D. numbers and enter all notification data into RCRIS. If the applicant sends a notification form (8700-12 or equivalent) directly to EPA, EPA will forward the form to the State for the assignment of an I.D. number within 30 days of receipt. If the State receives a notification form from EPA or from the applicant, the State will assign an I.D. number to the applicant and inform the applicant of its number.**

G. Variances and Waivers *[if applicable, where the State's variance authority is broader than the Federal authority, and where the State and the Region enter into an agreement to limit the State's waiver authority]*

[Example of EPA-State agreement for EPA's review of proposed variances:] The State will obtain concurrence from the Regional Administrator on all variances to assure that the State program is as stringent as the federal program. EPA agrees to evaluate these requests for concurrence within forty-five (45) days of receipt. All public notices of intent to issue variances or waivers should be sent to EPA within fourteen (14) days of issuance. The State will transmit a copy of all variance or waiver approvals to EPA within ten (10) days of issuance.

H. RCRA Data Management

1. The State agrees to use, maintain, and enter data into, the national RCRA data management systems (currently RCRIS).
2. The State is responsible for the correctness of the data it enters. The State will timely correct any State data errors in the RCRIS edit reports generated by the merge procedure. The State will provide all core data to RCRIS, as defined by EPA Headquarters, plus non-core data as agreed to with Region *[insert number]* program offices. EPA is responsible for the correctness of the data it enters, and will timely correct any data errors that EPA has created.
3. The State will provide to EPA by the 20th of every month RCRIS data representing the previous month's activities. The State will run data assessment reports provided by EPA on the Region *[insert number]* RCRIS Reports menu at least once a quarter and make indicated corrections promptly.
4. The State will collect Biennial Reporting data and provide the data to EPA for loading into the national Biennial Report System (BRS) according to the schedule promulgated by EPA Headquarters, and the schedule in the Grant.

5. EPA will be responsible for maintenance and clean-up of all EPA data entered in the RCRIS corrective action module prior to the State's authorization for HSWA corrective action.
6. EPA will inform the State promptly when changes are made to RCRIS that might affect the State's implementation of RCRIS. EPA will assist the State in RCRIS consulting and training as resources allow.
7. EPA will help the State maximize usefulness of RCRIS and BRS data by enhancing existing reports or writing new report programs to fit specifications of the State. These reports will be available on the EPA mainframe computer. EPA will also assist the State in resolving BRS data quality problems according to the schedule promulgated by EPA Headquarters.
8. Neither the State nor the Region will unilaterally change its RCRIS implementer system in any way without advance consultation with, and agreement of, the other party.
9. Both the Region and the State have the right, as implementers of RCRIS, to choose and to change their RCRIS hardware platforms to optimize system efficiency, but will not do so in such a way as to affect the merged data base, access to the merged data base reports, or the potential for updating their implementer databases with the other party's data.

V. PERMIT ISSUANCE

A. EPA Permitting

Upon authorization of the State program, EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities for which the State is receiving authorization. If EPA promulgates standards for additional regulations mandated by HSWA, that are not covered by the State's authorized program, EPA will issue and enforce RCRA permits in the State for these new regulations until the State receives final authorization for equivalent and consistent State standards. If EPA promulgates new standards requiring a permit modification, then EPA may, pursuant to 40 CFR 270.42(b)(6)(vii), extend the time period for final approval or denial of a modification request until such time that the State receives authorization for the new standards. At the time the State program is approved in the new areas, EPA will suspend issuance of Federal permits in the State.

****EPA will transfer any pending permit applications, completed permits or pertinent file information to the State within thirty days of the approval of the State program in conformance with the conditions of this Agreement. -**

[Each Region should try to make special arrangements with the State for the State to assume responsibility for issuing particular permits EPA has been working on. The State will need specific authority to assume responsibility in the midst of the process, unless the proceedings have been joint, with both the same Federal and State administrative procedures followed up to the time the State assumes full responsibility.] **

The State and EPA have agreed to a joint permitting process (see section V.D of this Agreement) for the joint processing and enforcement of permits for those provisions of RCRA for which the State does not have authorization. As the State receives authorization for additional provisions of RCRA, EPA will suspend issuance of Federal permits in the State for those provisions.

B. EPA Overview of State Permits

**While EPA may comment on any permit application or draft permit, EPA's overview function will focus primarily on those facilities identified by the State and EPA in the State's Multi-Year Permit Strategy, annual State Grant Work Program and the State's Program Description.

EPA may comment in writing on any draft permit or proposed permit modification, within forty five days of its receipt, whether or not EPA commented on the permit application. Where EPA indicates in a comment that issuance, modification, reissuance, termination or denial of the permit would be inconsistent with the approved State program, EPA shall include in the comment:

- a. a statement of the reasons for the comment (including the section of the State law or regulations that supports the comment), and
- b. the actions that should be taken by the State in order to address the comment (including the conditions which the permit would include if it were issued by EPA).

[Insert here any agreement the Region makes with the State regarding resolution of EPA comments on draft permits before final permit issuance by the State, e.g., the State and the RA agree to meet or confer whenever necessary to resolve a disagreement between their staffs on the terms of any RCRA permit to be issued by the State. The Region may want to add a specific time limit within which the State and RA will meet. Example:] The State and EPA will usually reach concurrence on permit conditions prior to issuance of the draft permit or approval of proposed permit modifications. EPA shall withdraw such comments if satisfied that the State has met or refuted its concerns and shall also provide the permit applicant with a copy of such withdrawal.**

Under section 3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of 40 CFR Part 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, EPA will observe the conditions established in 40 CFR 271.19(e) and any other applicable authorities.

C. State Permitting

**The State is responsible for expeditiously drafting, circulating for public review and comment, issuing, modifying, reissuing and terminating RCRA permits for those hazardous waste treatment, storage and disposal facilities subject to the authorized provisions of the State's program and shall do so in a manner consistent with RCRA as amended by HSWA, this Agreement, all

applicable Federal requirements, and the State's Program Description. *[Insert here any agreement the State makes regarding the adoption or reissuance of EPA-issued RCRA permits or portions of permits. Note that the State must have specific authority either to assume administration and enforcement of EPA-issued permits or portions of permits or to adopt them as State permits; otherwise, the State must reissue the permits as State RCRA permits.]* The State agrees to issue, modify and reissue all permits subject to the authorized portions of the State's program in accordance with *[insert citation to relevant State procedural environmental statutes and regulations and administrative procedures act and regulations]* and to include as permit conditions all applicable provisions of *[insert citation to relevant State environmental regulations]*. This agreement also applies to permits issued after final authorization but for which the processing may have begun before final authorization.**

[Insert here any agreement the State makes that is necessary to carry out the permitting procedures analogous to those at 40 CFR Parts 270 and 124.]

The State agrees to consider all comments EPA makes on permit applications and draft permits. The State will satisfy or refute EPA's concerns on a particular permit application, proposed permit modification, or draft permit in writing before issuing the permit or making the modification.

****D. Joint Permitting Process *[insert if there is a joint permit agreement]***

Pursuant to section 3006(g)(1), and in accordance with RCRA, as amended, EPA has the authority to issue or deny permits or those portions of permits to facilities in **[Name of State]** for the requirements and prohibitions in or stemming from RCRA, until the State's program is amended to reflect those requirements and prohibitions and authorization is received for the portion or portions of the program.

EPA and *[Name of State]* hereby establish this joint permitting process for the issuance of RCRA permits in *[Name of State]*. This joint permitting process is established in accordance with section 3006(c)(3) of RCRA. The administrative details of the joint permitting process shall be incorporated into the annual State grant work program. The duties and responsibilities of EPA and the State for joint permitting, including worksharing agreements, shall also be specified in the annual State grant work program.

The details of the joint permitting process, as contained in the State Grant Work Program, shall be reviewed and revised as often as necessary, but no less often than annually to assure its continued appropriateness.

Upon authorization of the State for any of the provisions of RCRA, the specifics of the Joint Permitting Agreement as set in the annual State grant work program shall be amended to reflect the authorization. Amendment of this Memorandum of Agreement or the execution of a separate Memorandum of Agreement may be required for authorization of any of the provisions of HSWA.**

VI. ** PERMIT ADMINISTRATION**

A. EPA

[If the State has authority to directly administer permits issued by the Federal government, this section may be inapplicable and the Region should insert provisions for transferring responsibility for all Federal permits to the State.]

EPA will administer the RCRA permits or portions of permits it has issued to facilities in the State until they expire or are terminated. EPA will be responsible for enforcing the terms and conditions of the Federal permits while they remain in force. When the State either incorporates the terms and conditions of the Federal permits in State RCRA permits or issues State RCRA permits to those facilities, EPA will terminate those permits pursuant to 40 CFR Part 270 and rely on the State to enforce those terms and conditions subject to the terms of an acceptable State/EPA Enforcement Agreement.

B. State

The State agrees to review all hazardous waste permits which were issued under State law prior to the effective date of this Agreement in accordance with 40 CFR 271.13(d), and to modify, or revoke and reissue, such permits as necessary to require compliance with the amended State Program. The State shall notify EPA of any permits not equivalent to federal permit requirements, including any permits that have been issued but are pending administrative or judicial appeal. Except for these non-equivalent permits, once EPA has determined that the State has fulfilled the requirements of 40 CFR 271.13(d), EPA will terminate the applicable Federal permit, or Federal portion of the permit, pursuant to the procedures in 40 CFR 124.5(d), notify the State that the permit is terminated, and no longer administer those permits or portions of permits for which the State is authorized.

Where the State permit is not equivalent to federal permit requirements, the State may modify, or revoke and reissue, its permit as necessary to require compliance with its authorized program in a manner consistent with RCRA as amended by HSWA. If the State does not modify, or revoke and reissue, a permit equivalent to the federal permit, EPA will administer and enforce its permit until it expires or is terminated.

Upon the effective date of an equivalent State permit, EPA will terminate the federal permit pursuant to 40 CFR 271.8(b)(6) and 124.5 (d). EPA will notify the permittee by certified mail of its intent to terminate the federal permit, and give the permittee 30 days in which to agree or object to termination of the permit.

The State agrees to resolve all State permit appeals in a manner consistent with its authorized RCRA program.

****VII. COMPLIANCE MONITORING AND ENFORCEMENT****

A. EPA

****Nothing in this Agreement shall restrict EPA's right to inspect any hazardous waste generator, transporter or facility or bring enforcement action against any person believed to be in violation of the State or Federal hazardous waste program or believed to have a release of hazardous waste or constituent. Before conducting an inspection of a generator, transporter or facility, the Regional Administrator will normally give the State at least seven days notice of the intent to inspect in accordance with 40 CFR 271.8(b)(3)(i),** and will invite the State to participate in the inspection. In case of an imminent hazard to human health and the environment, the Regional Administrator may shorten or waive the notice period. EPA agrees to make available to the State copies of any reports and data resulting from compliance inspections within a reasonable time from completion of the inspections.**

****The frequency of EPA oversight and training inspections will be specified in the annual State grant work program. EPA will negotiate on an annual basis with the State the number or percentage of the State's compliance inspections on which EPA will accompany the State.****

****EPA may take enforcement action against any person determined to be in violation of RCRA in accordance with section 3008(a)(2). EPA will take enforcement action upon determining that the State has not taken timely and appropriate enforcement action or upon request by the State. Prior to issuing a compliance order under section 3008(a) EPA will give notice to the State. EPA also retains its rights to issue orders and bring actions under sections 3008(h), 3013 and 7003 of RCRA and any other applicable Federal statute.****

After notice to the State, EPA may take action under section 3008 of RCRA against a holder of a State-issued permit on the grounds that the permittee is not complying with a condition of that permit. In addition, EPA may take action under section 3008 of RCRA against a holder of a State-issued permit on the grounds that the permittee is not complying with a condition that the Regional Administrator, in commenting on that permit application or draft permit, stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit.

B. State

The State agrees to carry out a timely and effective program for monitoring compliance by generators, transporters, and facilities with applicable program requirements (see 40 CFR 271.15). As part of this program, the State will conduct inspections to assess compliance with generator and transporter standards (including manifest requirements), facility standards, permit requirements,

compliance schedules, and all other program requirements. Compliance monitoring activities and priorities will be specified in the Office of Enforcement and Compliance Assurance's bi-annual MOA guidance and the annual State grant work program and shall be consistent with all applicable Federal requirements and with the State's Program Description. State specific activities and priorities for compliance monitoring will also be included in the annual grant work plan.

[Insert any agreement the Region makes with the State regarding inspections at EPA-permitted facilities. Individuals in the State program may be designated as EPA representatives under section 3007 of RCRA so that they can inspect facilities for violations of the terms and conditions of Federal permits.]

The State agrees to take timely and appropriate enforcement action as defined in the 1996 Hazardous Waste Enforcement Response Policy against all persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements, including violations detected by State or Federal compliance inspections. The State will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public.

The State agrees to provide EPA with copies of reports on data resulting from any compliance inspection and subsequent enforcement actions, when EPA requests such copies. The State agrees to retain all records for at least three years unless there is an enforcement action pending. In that case all records will be retained until such action is resolved.

VIII. AVAILABILITY OF INFORMATION

[This Section of the MOA must be carefully tailored to each State. Some or all of the requirements in this Section may be N/A if the State legislation and/or regulations previously have been determined to be equivalent to the Federal requirements at the time of authorization for 3006(f). Please consult the 3006(f) checklist in the individual States' authorization file and determine which of the requirements, if any, given below are needed for that particular State. In other words, some States may need one or more of the statements below to fill a legislative or regulatory gap in their 3006(f) State equivalent program.]

A. General

Section 3006(f) of RCRA requires an authorized state to provide for the public availability of information obtained by the State regarding facilities and sites for treatment, storage and disposal of hazardous waste. Such information must be available to the public in substantially the same manner as, and to the same degree as, that available under federal law.

B. Requests for Information

1. The State agrees to make certain materials routinely available without a formal information request. Examples of these materials are final opinions or orders in case adjudication, State regulations, statements of Agency policy, and administrative staff manuals affecting the public. In addition, records prepared for routine public distribution will also be made available. Examples of such records are press releases, copies of speeches, pamphlets, and educational materials.
2. The State Agency agrees to make reasonable efforts to assist a requestor in identifying records being sought, and to help the requestor formulate his or her request.
3. If a request for information is denied, the State agrees to provide the requestor the basis for the denial and to notify the requestor of any State judicial, administrative procedures, or statutes of limitation.
4. The State agrees to make the fullest possible disclosure of records to the public, except where the record would qualify for any of the exemptions under the Federal Freedom of Information Act, 5 U.S.C. 552(a)(2), if such exemption is recognized by the State.
5. ***[The following shall be included if the State charges a fee to provide copies of information: A reduction or waiver of fees will be considered in connection with each request from a representative of the press or other communication medium, or from a public interest group. The State agrees to reduce or waive the fee if it determines that a reduction or waiver of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.]***

C. Confidentiality of Business Information

If a claim of confidentiality is asserted and cannot be resolved in the time period provided for an agency response to a request, the State agrees to notify the requestor of the confidentiality claim within the maximum 20-day time limit provided for an agency response. In addition, the requestor will be told that the request was initially denied in order to resolve the business confidentiality claim.

D. Oversight

1. The State agrees to keep a log of denials of requests for information (or a file containing copies of denial letters sent to requestors) which will be made available to EPA during the State review.
2. The State agrees to keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities, as applied to section 3006(f).

STATE OF _____

U.S. ENVIRONMENTAL PROTECTION
AGENCY

REGION _____

BY: _____

BY: _____

DATE: _____

DATE: _____

[Tailor the following tables to the particular State-EPA MOA. However, the following tables must include: permit applications; draft permits; proposed permit modifications; public notices on draft permits and permit modifications; copies of final permits and permit modifications; notices of permit denials; and information on corrective action, closure/post closure, and groundwater monitoring activities.]

**BASE PERMITTING DOCUMENT FLOW
BETWEEN EPA AND _____**

Item	Item Description	State Action	EPA Action
1	New and revised Part A application	Copy to EPA with monthly submittals	Review and become familiar with document
2	a) LDF <u>Operating</u> Permit Part Bs, and subsequent revisions b) Combustion Operating Permit Part Bs, including trial burn plans, and subsequent revisions, and risk assessment protocols and risk assessments c) Subpart X Part B's, risk assessment protocols, and risk assessments	Copy to EPA within 30 days of receipt.	Review and become familiar with documents. Comment as appropriate at State request
3	Copies of warning letter and first Notice of Deficiency (NOD) for all TSDFs	Copy to EPA with monthly submittals	Review for HSWA applicability, e.g. CC.
4	Copies of 2nd and subsequent NODs/Order for facilities in item 2.	Send draft 30 days prior to issuance if comments requested; final when issued.	Comments, if any, w/in 30 days of receipt
5	Completeness determinations for all TSDFs	Send 30 days prior to issuance	Monitor progress. Comments, if any, due within 30 days of receipt.
6	Draft permits and draft modifications for TSDFs in item 2, with fact sheets and public notices	Send to EPA 30 days before start of public comment period.	Comment to State w/in 30 days of receipt.
7	Draft permits and draft modifications for all other TSDFs, with fact sheets and public notices	Copy to EPA with monthly submittals	Review and comment to State/facility if cursory review indicates problems.
8	Final permits and final modifications for all TSDFs, and notices of permit denials	Copy to EPA with monthly submittals	Review if EPA commented on draft.
9	Emergency Permits	Notify EPA by telephone ASAP, then send copy of permit with monthly submittal	Monitor situation.

10	a) Clean Closure Plans for LDFs b) Closure Plans for Tank Units	Send to EPA with monthly submittals	Become familiar with plans, particularly clean closure submittals
11	Closure Plan NODs for item 10 facilities	Copy to EPA with monthly submittals	Review and provide comments to State, if requested.
12	Closure Plan public notices, approval letters and closure acceptance letters for all TSDFs	Copy to EPA with monthly submittals	Comment during public comment period.
13	Closure equivalency petitions and all associated documents	Copy to EPA with monthly submittals	Review and provide comments to State during comment period.
14	Other documents at State's request	Per State schedule	Assist State to maximum extent possible.

**CORRECTIVE ACTION DOCUMENT FLOW
BETWEEN EPA AND _____**

Item	Item Description	State Action	EPA Action
1	Visual Site Inspection notification letters sent to facilities	cc: EPA	Review letter or supply standard letter for state use. Accompany State, if appropriate.
2	Draft RFA Reports generated by State	Send to EPA in draft form when sent to facility for comment	Comments to State w/in 30 days of receipt, or tell State will not review.
3	Final RFA Reports sent to facilities	Copy to EPA with monthly submittals	Review if EPA commented on draft.
4	Final EI evaluations and NCAPS worksheets	Send to EPA with monthly submittals	Review if EPA commented on draft
5	Stabilization Evaluation Questionnaires (GPRA Universe)	Copy to EPA with monthly submittals	Comments, if any to State w/in 30 days of receipt
6	All work plans and reports that address investigation and corrective action requirements for SWMUs at facilities with high NCAPS ranking.	Copy to EPA with monthly submittals unless comments requested on expedited schedule.	Become familiar with documents.
7	Notices of Technical Inadequacy (NOTIs) and NOV's and Orders on Corrective Action Documents in item 7	cc: EPA	EPA review, if requested.

8	Remedy Selection Documents (Permit mods., Orders, SOBs, etc.)	Copy to EPA 30 days before issuance of draft. copy of final to EPA upon issuance.	Review and comment w/in 30 days of receipt of draft. Review final for conformity to EPA comments.
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**ENFORCEMENT AND COMPLIANCE DOCUMENT FLOW
BETWEEN EPA AND _____ (Items in Italics show varying requirements
between States)**

Item	Item Description	State Action	EPA Action
1	List of <i>all facilities / TSDFs / significant generators</i> that State will inspect each <i>quarter/year</i>	Send list to EPA prior to start of <i>quarter / year</i>	Review list and notify State which facilities EPA will inspect.
2A ²	<i>State draft inspection reports for joint EPA/State inspections prior to finalization</i>	<i>Send to EPA for review</i>	<i>Comment to State w/in 15 days of receipt.</i>
2B	<i>EPA draft report for joint EPA/State inspections; EPA final inspection report for independent inspections</i>	<i>Review draft EPA joint inspection report and provide comments to EPA</i>	<i>Final reports to be sent to facility with cc to State w/in 45 days after inspect.</i>
3	For <i>all inspections / inspections of Significant Non-Compliers (SNCs)</i> , copies of inspection reports, and any follow-up reports, warning letters, NOVs, and administrative orders, etc.	Send to EPA upon <i>issuance / specified time frame</i>	Monitor State Action for timeliness and appropriate action.
4	All enforcement referrals from district offices to central office	Send copy to EPA	(Same as above)
5	Notice of Intent to receive hazardous waste from a foreign source pursuant to 40 CFR 265.12	Send copy to EPA upon <i>receipt / within 5 days of receipt</i>	Region review and take action as necessary
6	Notification of State that EPA will take enforcement action	Receive notification and take appropriate response, if required	<i>Notification prior to issuing 3008(a) Order by telephone and /or writing within a specified time frame</i>

²Provisions for coordinating inspection findings for joint EPA/State inspections in Items 2 and 3 vary greatly procedurally and in degrees of formality between States.

7	Notification of EPA of any determination that a <u>CERCLA off-site facility</u> is a SNC or may be posing significant threat to public health, welfare or the environment or otherwise affect the satisfactory operation of the facility.	State notifies EPA within 5 days of determination	EPA reviews per off-site rule, consults with State, and takes appropriate action.
8	For all TSDFs receiving <u>CERCLA off site waste</u> , Inspection Reports, NOV's, Orders, Civil and or Criminal actions and corrective action requirements when significant RCRA violations occur and a formal enforcement response is initiated.	State will send within 15 days of issuance	EPA reviews per off-site rule, consults with State, and takes appropriate action.
9	Draft and final delisting decisions, where State is authorized for delisting	Send draft to EPA 30 days before public notice. Send final decision to EPA 15 days before mailing to applicant	EPA review and provide comments to State within 30 days of receipt of draft decision. EPA notify State before State mails final decision to applicant if EPA finds serious technical deficiencies.
10	Citizen concerns referred to State by EPA	State investigate <i>and report results to EPA w/in 30 days of referral from EPA.</i>	EPA refer to State.

Glossary

Addendum to the State's EPA-Approved Hazardous Waste Management Program - a supplementary document to the EPA binder containing the text of the authorized version of each State provision to which unauthorized amendments have been made. The Addendum consists of an explanatory statement, a table of contents, and a text section and is kept in the Office of the EPA Region developing the codification package.

Attorney General's (AG) Statement - a statement prepared by the State Attorney General (or the attorney for the State agencies which have independent legal counsel) as part of the authorization application that identifies and interprets State legal authorities, and explains how these authorities are equivalent to, broader in scope, or more stringent than, the Federal standards. The AG Statements are optionally referenced in the codification but are not incorporated by reference.

Authorization package - the application materials submitted by the State to the EPA for review for State authorization. The package typically includes State statutes, regulations, an AG Statement or addendum, revision checklist, program description, and a memorandum of agreement.

Base program authorization - the RCRA program initially made available for final authorization, reflecting Federal regulations as of July 26, 1982.

Base program checklists - the set of check lists submitted for State base program authorization, including Checklists I, II, III, IVA, IVB, and V.

Broader in scope (BIS) - provisions that (1) allow the State to regulate more entities or wastes than the Federal code or (2) add an aspect to a State's statutes or regulations for which there is no Federal counterpart in the RCRA statutes or regulations. Broader in scope provisions are referenced in the codification but are not incorporated by reference.

CFR (see Code of Federal Regulations)

Checklists - used to document the State analogs to the Federal requirements. They include a column to indicate whether the State requirement is equivalent to, more stringent, or broader in scope than the analogous Federal requirement. (*Also See Revision Checklists, Base program checklists, State Legislation Checklist, HSWA statutory checklist, and Consolidated checklists.*)

Code of Federal Regulations (CFR) - a codification of final rules published in the *Federal Register* by the Executive departments and agencies of the Federal government.

Codification - a process of placing a rule in the Code of Federal Regulations (CFR). The CFR identifies the specific elements of the State program that EPA has approved as RCRA Subtitle C requirements. This is useful for the regulated community and the public, as they can see what elements of the RCRA program a State administers. Codification also

clarifies EPA's enforcement role by identifying which, if any, of the State requirements are broader in scope than the Federal program. EPA cannot enforce such broader-in-scope requirements. Codifying State program is accomplished by "incorporating by reference" approved State statutes and regulations. Other signed State documents, such as the AG Statement, MOA and Program Description may be referenced by title and date but are not incorporated by reference.

Codification package - the package submitted to the Office of the Federal Register consisting of the codification *Federal Register* notice, the EPA binder, a chargeback form and a letter to the Director of the *Federal Register* requesting approval of the incorporation by reference.

Consolidated checklists - a checklist, based on each Part of the CFR, reflecting the Federal RCRA requirements as of a specific CFR date (e.g., June 30, 1993). They are numbered from C1 through C10. For example, Consolidated Checklist C9 includes the Federal requirements in Parts 270 and 124 needed for authorization.

Crosswalk (see regulatory crosswalk, statutory crosswalk and preliminary crosswalk)

Enforcement provisions - address such things as civil penalties, criminal penalties, enforcement procedures, court proceedings, and enforcement proceedings. Enforcement provisions are referenced in the codification but are not incorporated by reference.

Federal Register - a document published daily by the Federal government that contains proposed and final regulations and notices. Tentative authorization, final authorization and codification decisions are published in the *Federal Register*.

HSWA program or HSWA provisions - elements of the Federal RCRA program that are implemented pursuant to the Hazardous and Solid Waste Amendments of 1984.

HSWA statutory checklist - used to document State enabling authority when seeking authorization for a HSWA provision for the first time. It provides State analogs to the Federal HSWA statutory provisions.

Incorporation by reference - the process by which a State's statutes and regulations are codified. Incorporation by reference has the same legal effect as if the incorporated materials were published in full in the CFR.. The incorporated materials are kept on file in the Office of the Federal Register, as well as in EPA Offices, and are available to the public.

Memorandum of Agreement (MOA) - a document submitted as part of the State's authorization application package which provides for coordination and cooperation between the State Director and the EPA Regional Administrator regarding the administration and enforcement of the authorized State program. The most recent version of the document signed by the State and the EPA is needed only if a Region chooses to reference it in the codification notice. The MOA is not incorporated by

reference but may be referenced in the codification.

Office of Regional Counsel (ORC) representative - the ORC staff member on the Regional codification team who is responsible for reviewing the statutory and regulatory crosswalks to assure accurate classification of all provisions as either (1) authorized, (2) procedural/enforcement, (3) broader in scope, or (4) other unauthorized and extra provision.

Official version of the State statutes and regulations - the version of the State's statutes and regulations that is acknowledged by the State as legally enforceable and used in court.

Preliminary crosswalk - provides an initial structure for a regulatory or statutory crosswalk so that when the regulations or statutes are examined on a section-by-section basis, the focus can be on classifying each section/paragraph (*See regulatory crosswalk; statutory crosswalk*)

Procedural provisions - address public notice, public hearings and appeals. Provisions that give a State Agency or Commission specific authorities are also considered procedural. Procedural provisions are referenced in the codification but are not incorporated by reference.

Program Description - a document submitted as part of the State's authorization application package which explains the program the State proposed to administer, together with any forms used to administer the program under State law. It designates the lead agency for the program, and often identifies where the State is broader in scope. Program Descriptions may be referenced in the codification *Federal Register* notice but are not incorporated by reference.

RCRA - the Resource Conservation and Recovery Act of 1976, and all amendments of that Act.

Regional codification team - a group of EPA and State staff members established to work together to help resolve the problems and issues which will arise during the codification process. The team typically consists of the Regional representative responsible for the codification, a State authorization specialist from the State being codified, and a representative from the Office of Regional Counsel.

Regulatory checklist - used to describe a base program checklist or a revision checklist.

Regulatory crosswalk - an organized approach for classifying each section/paragraph of State regulations so that the authorized program can be accurately identified and so that the information can be easily checked and entered into the codification *Federal Register* notice. The following information is included for each section/paragraph cited: the amendment or effective date of the authorized version; documentation of the authorization history of the provision; a description or RCRA analogous citation; and whether the section/paragraph is authorized, procedural/enforcement, broader in scope or other unauthorized or extra provision.

Revision Checklists - represent checklists based on specific Federal rules published in the *Federal Register* that addressed changes made to the Federal RCRA program beyond the base program. Revision checklists are presented and numbered in chronological order by date of promulgation.

State authorization specialist - a State staff person on the Regional codification team who provides support in obtaining background documents and the official versions of the State's statutes and regulations.

State Legislation Checklist - used to document State Hazardous waste enabling authority for final authorization under section 3006(b) of RCRA. It provides a crosswalk between a State's statutes and RCRA and is typically submitted as part of the State base program authorization.

StATS - the **S**tate **A**uthorization **T**racking **S**ystem is an information management system designed to document the progress of each State and territory in establishing and maintaining RCRA-authorized hazardous waste management programs. StATS tracks the status of each State with regard to each change made to the Federal hazardous waste regulations, from the State's first submission of draft regulations for review through the final authorization and codification of the State's program in the *Federal Register*.

Statutory checklist (HSWA) (see HSWA statutory checklist)

Statutory crosswalk - an organized approach for classifying each section/paragraph of State statutes so that the authorized program can be accurately identified and so that the information can be easily checked and entered into the codification *Federal Register* notice. The following information is included for each section/paragraph cited: the amendment or effective date of the authorized version of the provision; a description or RCRA analog; the basis for the classification (authorization history); and whether the section/paragraph is authorized, procedural/enforcement, broader in scope, or other unauthorized or extra provision.

Additional Training Manual References

Environmental Protection Agency

§ 271.6

of time allotted for formal EPA review of a proposed State program under section 3006(b) of the Act) shall be deemed to have begun on the date of receipt of the State's submission. If EPA finds that a State's submission is incomplete, the review period shall not begin until all necessary information is received by EPA.

(c) If the State's submission is materially changed during the review period, the review period shall begin again upon receipt of the revised submission.

(d) The State and EPA may extend the review period by agreement.

§ 271.6 Program description.

Any State that seeks to administer a program under this subpart shall submit a description of the program it proposes to administer in lieu of the Federal program under State law or under an interstate compact. The program description shall include:

(a) A description in narrative form of the scope, structure, coverage and processes of the State program.

(b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program, including the information listed below. If more than one agency is responsible for administration of a program, each agency must have statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and an agency must be designated as a "lead agency" to facilitate communications between EPA and the State agencies having program responsibilities. When the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this paragraph shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will carry out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

(2) An itemization of the estimated costs of establishing and administering the program, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support, and cost of technical support. This estimate must cover the first two years after program approval.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director to meet the costs listed in paragraph (b)(2) of this section, identifying any restrictions or limitations upon this funding. This estimate must cover the first two years after program approval.

(c) A description of applicable State procedures, including permitting procedures and any State administrative or judicial review procedures.

(d) Copies of the permit form(s), application form(s), and reporting form(s) the State intends to employ in its program. Forms used by the State for hazardous waste management need not be identical to the forms used by EPA but should require the same basic information, except that the State RCRA program must require the use of EPA Manifest Forms 8700-22 and 8700-22A. Where the State preprints information on the Manifest forms, such forms must be submitted with the State's application for approval. Restrictions on preprinting by the States are identified in 40 CFR 271.10(h). Otherwise, the State need not provide copies of uniform national forms it intends to use but should note its intention to use such forms.

(e) A complete description of the State's compliance tracking and enforcement program.

(f) A description of the State manifest tracking system, and of the procedures the State will use to coordinate information with other approved State programs and the Federal program regarding interstate and international shipments.

(g) An estimate of the number of the following:

(1) Generators;

(2) Transporters; and

(3) On- and off-site storage, treatment and disposal facilities, and a brief description of the types of facilities

and an indication of the permit status of these facilities.

(h) If available, an estimate of the annual quantities of hazardous wastes generated within the State; transported into and out of the State; and stored, treated, or disposed of within the State: On-site; and Off-site.

[48 FR 14248, Apr. 1, 1983, as amended at 49 FR 10506, Mar. 20, 1984]

§ 271.7 Attorney General's statement.

(a) Any State that seeks to administer a program under this subpart shall submit a statement from the State Attorney General (or the attorney for those State agencies which have independent legal counsel) that the laws of the State provide adequate authority to carry out the program described under § 271.6 and to meet the requirements of this subpart. This statement shall include citations to the specific statutes, administrative regulations and, where appropriate, judicial decisions which demonstrate adequate authority. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be in the form of lawfully adopted State statutes and regulations at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program.

NOTE: EPA will supply States with an Attorney General's statement format on request.

(b) When a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

§ 271.8 Memorandum of Agreement with the Regional Administrator.

(a) Any State that seeks to administer a program under this subpart shall submit a Memorandum of Agreement (MOA). The Memorandum of Agreement shall be executed by the State Director and the Regional Administrator and shall become effective when approved by the Administrator. In addition to meeting the require-

ments of paragraph (b) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements consistent with this subpart and relevant to the administration and enforcement of the State's regulatory program. The Administrator shall not approve any Memorandum of Agreement which contains provisions which restrict EPA's statutory oversight responsibility.

(b) All Memoranda of Agreement shall include the following:

(1) Provisions for the Regional Administrator to promptly forward to the State Director information obtained prior to program approval in notifications provided under section 3010(a) of RCRA. The Regional Administrator and the State Director shall agree on procedures for the assignment of EPA identification numbers for new generators, transporters, treatment, storage, and disposal facilities.

(2) Provisions specifying the frequency and content of reports, documents and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports where appropriate.

(3) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and by EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(4) Provisions allowing EPA to conduct compliance inspections of all generators, transporters, and HWM facilities in each year for which the State is operating under final authorization. The Regional Administrator and the State Director may agree to limitations on compliance inspections of generators, transporters, and non-major HWM facilities.

(5) No limitations on EPA compliance inspections of generators, transporters, or non-major HWM facilities under paragraph (b)(4) of this section shall restrict EPA's right to inspect any generator, transporter, or HWM facility which it has cause to believe is not in compliance with RCRA; however, before conducting such an inspection, EPA will normally allow the State a reasonable opportunity to conduct a compliance evaluation inspection.

(6) Provisions for the prompt transfer from EPA to the State of pending permit applications and any other information relevant to program operation not already in the possession of the State Director (e.g., support files for permit issuance, compliance reports, etc.). When existing permits are transferred from EPA to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring the administration of these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

NOTE: For example, EPA and the State and the permittee could agree that the State would issue a permit(s) identical to the outstanding Federal permit which would simultaneously be terminated.

(7) Provisions specifying classes and categories of permit applications, draft permits, and proposed permits that the State will send to the Regional Administrator for review, comment and, where applicable, objection.

(8) When appropriate, provisions for joint processing of permits by the State and EPA, for facilities or activities which require permits from both EPA and the State under different programs. See § 124.4

NOTE: To promote efficiency and to avoid duplication and inconsistency, States are encouraged to enter into joint processing agreements with EPA for permit issuance.

(9) Provisions for the State Director to promptly forward to EPA copies of draft permits and permit applications for all major HWM facilities for review and comment. The Regional Administrator and the State Director may

agree to limitations regarding review of and comment on draft permits and/or permit applications for non-major HWM facilities. The State Director shall supply EPA copies of final permits for all major HWM facilities.

(10) Provisions for the State Director to review all permits issued under State law prior to the date of program approval and modify or revoke and re-issue them to require compliance with the requirements of this subpart. The Regional Administrator and the State Director shall establish a time within which this review must take place.

(11) Provisions for modification of the Memorandum of Agreement in accordance with this subpart.

(c) The Memorandum of Agreement, the annual program grant and the State/EPA Agreement should be consistent. If the State/EPA Agreement indicates that a change is needed in the Memorandum of Agreement, the Memorandum of Agreement may be amended through the procedures set forth in this subpart. The State/EPA Agreement may not override the Memorandum of Agreement.

NOTE: Detailed program priorities and specific arrangements for EPA support of the State program will change and are therefore more appropriately negotiated in the context of annual agreements rather than in the MOA. However, it may still be appropriate to specify in the MOA the basis for such detailed agreements, e.g., a provision in the MOA specifying that EPA will select facilities in the State for inspection annually as part of the State/EPA agreement.

§ 271.9 Requirements for identification and listing of hazardous wastes.

(a) The State program must control all the hazardous wastes controlled under 40 CFR part 261 and must adopt a list of hazardous wastes and set of characteristics for identifying hazardous wastes equivalent to those under 40 CFR part 261.

(b) The State is not required to have a delisting mechanism. A State may receive authorization for delisting if the State regulations for delisting decisions are equivalent to § 260.20(b) and § 260.22, and the State provides public notice and opportunity for comment

paragraph (a)(1) of this section. The notification shall include a concise statement of the reasons for this determination, and a response to significant comments received.

[48 FR 14248, Apr. 1, 1983; 48 FR 30115, June 30, 1983, as amended at 60 FR 33914, June 29, 1994]

§ 271.21 Procedures for revision of State programs.

(a) Either EPA or the approved State may initiate program revision. Program revision may be necessary when the controlling Federal or State statutory or regulatory authority is modified or supplemented. The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities.

(b) Revision of a State program shall be accomplished as follows:

(1) The State shall submit a modified program description, Attorney General's statement, Memorandum of Agreement, or such other documents as EPA determines to be necessary under the circumstances.

(2) The Administrator shall approve or disapprove program revisions based on the requirements of this part and of the Act. In approving or disapproving program revisions, the Administrator shall follow the procedures of paragraph (b)(3) or (4) of this section.

(3) The procedures for an immediate final publication of the Administrator's decision are as follows:

(i) The Administrator shall issue public notice of his approval or disapproval of a State program revision:

(A) In the FEDERAL REGISTER;

(B) In enough of the largest newspapers in the State to attract State-wide attention; and

(C) By mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested.

(ii) The public notice shall summarize the State program revision, indicate whether EPA intends to approve or disapprove the revision and provide for an opportunity to comment for a period of 30 days.

(iii) Approval or disapproval of a State program revision shall become effective 60 days after the date of publication in the FEDERAL REGISTER in ac-

cordance with paragraph (b)(3)(i) of this section, unless an adverse comment pertaining to the State revision discussed in the notice is received by the end of the comment period. If an adverse comment is received the Administrator shall so notify the State and shall, within 60 days after the date of publication, publish in the FEDERAL REGISTER either:

(A) A withdrawal of the immediate final decision; or

(B) A notice containing a response to comments and which either affirms that the immediate final decision takes effect or reverses the decision.

(4) The procedures for proposed and final publication of the Administrator's decision are as follows:

(i) The Administrator shall issue public notice of his proposed approval or disapproval of a State program revision:

(A) In the FEDERAL REGISTER;

(B) In enough of the largest newspapers in the State to attract State-wide attention; and

(C) By mailing to persons on the State agency mailing list and to any other persons whom the agency has reason to believe are interested.

(ii) The public notice shall summarize the State program revision, indicate whether EPA intends to approve or disapprove the revision and provide for an opportunity to comment for a period of at least 30 days.

(iii) A State program revision shall become effective when the Administrator's final approval is published in the FEDERAL REGISTER.

(c) States with approved programs shall notify EPA whenever they propose to transfer all or part of any program from the approved State agency to any other State agency, and shall identify any new division of responsibilities among the agencies involved. The new agency is not authorized to administer the program until approved by the Administrator under paragraph (b) of this section. Organizational charts required under §271.6(b) shall be revised and resubmitted.

(d) Whenever the Administrator has reason to believe that circumstances have changed with respect to a State program, he may request, and the

Environmental Protection Agency

§ 271.21

State shall provide, a supplemental Attorney General's statement, program description, or such other documents or information as are necessary.

(e)(1) As the Federal program changes, authorized State programs must be revised to remain in compliance with this subpart.

(2) Federal program changes are defined for purposes of this section as promulgated amendments to 40 CFR parts 124, 270, 260-266, or 268 and any self-implementing statutory provisions (i.e., those taking effect without prior implementing regulations) which are listed as State program requirements in this subpart. States must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval.

(i) For Federal program changes occurring before July 1, 1984, the State program must be modified within one year of the date of the Federal program change.

(ii) Except as provided in paragraphs (e) (iii) and (iv) of this section, for Federal program changes occurring on or after July 1, 1984, the State program must be modified by July 1 of each year to reflect all changes to the Federal program occurring during the 12 months preceding the previous July 1. (For example, States must modify their programs by July 1, 1986 to reflect all changes from July 1, 1984 to June 30, 1985.)

(iii) For Federal program changes identified in §271.1(j) that occur between November 8, 1984 and June 30, 1987 (inclusive), the State program must be modified by July 1, 1989.

(iv) For Federal program changes identified in §271.1(j) that occur between July 1, 1987 and June 30, 1990 (inclusive), the State program must be modified by July 1, 1991.

(v) States may have an additional year to modify their programs for those changes to the Federal program identified in paragraphs (e) (i), (ii), (iii), and (iv) of this section which necessitate a State statutory amendment.

(3) The deadlines in paragraphs (e)(2)(i) through (v) may be extended by the Regional Administrator upon an adequate demonstration by a State

that it has made a good faith effort to meet these deadlines and that its legislative or rulemaking procedures render the State unable to do so. No such extension shall exceed six months.

(4)(i) Within 30 days of the completion of the State program modification the State must submit to EPA a copy of the program change and a schedule indicating when the State intends to seek approval of the change. Such schedule shall not exceed the dates provided for in paragraph (e)(4)(ii).

(ii) Within 60 days of the appropriate deadline in paragraphs (e), (f), and (g) of this section, the State must submit to EPA the documentation described in paragraph (b) of this section to revise its program.

(f) A State must modify its program to comply with any Federal program changes which occur prior to the day that final authorization is received, except for those changes that the State has already received authorization for pursuant to §271.3(f). Such State program modifications must be completed and submitted by the deadlines specified in paragraph (e) of this section or by the date of final authorization, whichever is later.

(g)(1) States that are unable to modify their programs by the deadlines in paragraph (e) may be placed on a schedule of compliance to adopt the program revision(s) provided that:

(i) The State has received an extension of the program modification deadline under paragraph (e)(3) and has made dils to revise its program during that period of time,

(ii) The State has made progress in adopting the program modifications,

(iii) The State submits a proposed timetable for the requisite regulatory and/or statutory revisions by the deadline granted under paragraph (e)(3),

(iv) The schedule of compliance for program revisions does not exceed one year from the extended program modification deadline under paragraph (e)(3), and

(v) The schedule of compliance is published in the FEDERAL REGISTER.

(2) If a State fails to comply with the schedule of compliance, the Administrator may initiate program withdrawal procedures pursuant to §§ 271.22 and 271.23.

[48 FR 14248, Apr. 1, 1983, as amended at 51 FR 7542, Mar. 4, 1986; 51 FR 33722, Sept. 22, 1986]

§ 271.22 Criteria for withdrawing approval of State programs.

(a) The Administrator may withdraw program approval when a State program no longer complies with the requirements of this subpart, and the State fails to take corrective action. Such circumstances include the following:

(1) When the State's legal authority no longer meets the requirements of this part, including:

- (i) Failure of the State to promulgate or enact new authorities when necessary; or
- (ii) Action by a State legislature or court striking down or limiting State authorities.

(2) When the operation of the State program fails to comply with the requirements of this part, including:

- (i) Failure to exercise control over activities required to be regulated under this part, including failure to issue permits;
- (ii) Repeated issuance of permits which do not conform to the requirements of this part; or
- (iii) Failure to comply with the public participation requirements of this part.

(3) When the State's enforcement program fails to comply with the requirements of this part, including:

- (i) Failure to act on violations of permits or other program requirements;
- (ii) Failure to seek adequate enforcement penalties or to collect administrative fines when imposed; or
- (iii) Failure to inspect and monitor activities subject to regulation.

(4) When the State program fails to comply with the terms of the Memorandum of Agreement required under § 271.8.

§ 271.23 Procedures for withdrawing approval of State programs.

(a) A State with a program approved under this part may voluntarily trans-

fer program responsibilities required by Federal law to EPA by taking the following actions, or in such other manner as may be agreed upon with the Administrator.

(1) The State shall give the Administrator 180 days notice of the proposed transfer and shall submit a plan for the orderly transfer of all relevant program information not in the possession of EPA (such as permits, permit files, compliance files, reports, permit applications) which are necessary for EPA to administer the program.

(2) Within 60 days of receiving the notice and transfer plan, the Administrator shall evaluate the State's transfer plan and shall identify any additional information needed by the Federal government for program administration and/or identify any other deficiencies in the plan.

(3) At least 30 days before the transfer is to occur the Administrator shall publish notice of the transfer in the FEDERAL REGISTER and in enough of the largest newspapers in the State to provide Statewide coverage, and shall mail notice to all permit holders, permit applicants, other regulated persons and other interested persons on appropriate EPA and State mailing lists.

(b) The following procedures apply when the Administrator orders the commencement of proceedings to determine whether to withdraw approval of a State program.

(1) *Order.* The Administrator may order the commencement of withdrawal proceedings on his or her own initiative or in response to a petition from an interested person alleging failure of the State to comply with the requirements of this part as set forth in § 271.22. The Administrator shall respond in writing to any petition to commence withdrawal proceedings. He may conduct an informal investigation of the allegations in the petition to determine whether cause exists to commence proceedings under this paragraph. The Administrator's order commencing proceedings under this paragraph shall fix a time and place for the commencement of the hearing and shall specify the allegations against the State which are to be considered at the hearing. Within 30 days the State shall admit or deny these allegations