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# Hazardous Waste A Guide For Obtaining Permits and Authorization For State Programs

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# **HAZARDOUS WASTE**

## **a guide for obtaining permits and authorization for state programs**

### **I. THE NATIONAL PROGRAM FOR REGULATING HAZARDOUS WASTE**

A new and nationwide effort is underway to protect human health and the environment from the damaging effects of hazardous wastes. Under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), the U.S. Environmental Protection Agency (EPA) is legally required to develop regulations for controlling all significant quantities of hazardous wastes from the point of generation to their ultimate disposal. These controls include appropriate monitoring, recordkeeping, and reporting. Congress deemed such a strict system of controls necessary—it has been described as “cradle-to-grave”—because of the special dangers hazardous wastes have presented when they were mismanaged in the past.

It has taken approximately 3 years to develop the seven regulations constituting the hazardous waste control program. These regulations have been proposed in the *Federal Register* at various times during 1978 and 1979. The Agency has circulated drafts of the regulations for comment and held about 85 public meetings, which were attended by various sectors of the public. EPA carefully analyzed the comments and integrated many of them into the proposed regulations.

The regulations called for by RCRA cover these areas:

- Definition, identification, and listing of hazardous waste (section 3001)

- Standards applicable to generators of hazardous waste (section 3002)
- Standards applicable to transporters of hazardous waste (section 3003)
- Performance, design, and operating requirements for facilities that treat, store, or dispose of hazardous waste (section 3004)
- A permit system for such facilities (section 3005)
- Guidelines to assist States in developing their own hazardous waste programs and procedures for obtaining EPA authorization for their programs (section 3006)
- Procedures by which hazardous waste generators, transporters, and facility owners/operators notify EPA of their activities (section 3010)

EPA and State governments share responsibilities for implementing and monitoring the programs to regulate hazardous waste under sections 3005 and 3006 of RCRA. Each State is to develop its own regulatory program, which must be authorized by EPA. To receive authorization, the State program must be able to meet certain criteria EPA has developed. EPA regulates hazardous waste only in States that choose not to implement their own programs or fail to qualify for EPA authorization. Currently, about 40 States are expected to apply for authorization.

This guide summarizes the regulations developed under sections 3005 and 3006 of RCRA and is intended to assist those directly involved with or affected by implementation of the regulations. However, the regulations themselves should be read in conjunction with this guide. Two groups of people should find the guide especially helpful:

- **Operators of hazardous waste management facilities seeking permits under section 3005.** In States without an approved program, the operator applies to the Regional Administrator of the appropriate EPA regional office (see back cover), according to the procedures outlined in Chapter III of this guide. In States with an approved program, the owner must apply to the State Director of the appropriate State agency. (EPA will publish a list of authorized States, as such authorization is granted, in the *Federal Register*). The application will have to meet certain operational requirements similar to those of the Federal program, as well as any other requirements imposed by the State.

- **States seeking authorization from the EPA Administrator to conduct a hazardous waste management program under section 3006.** States may apply either for a 2-year “interim” authorization or for “full” authorization. (The latter is simply called “authorization” in the regulations.)

Promulgation of the section 3001 regulations defining hazardous wastes will act as the “trigger” that will put the entire Federal program into effect. Within 180 days of promulgation of the regulations under section 3001, all applicants for a hazardous waste management facility permit must apply to EPA for “interim status,” which allows them to operate temporarily. States seeking interim authorization under section 3006 are encouraged to file as soon as possible after promulgation of the section 3001 regulations to take full advantage of the 2-year period for upgrading their programs in order to receive “full” authorization.

## II. EPA'S CONSOLIDATED PERMIT PROGRAM REGULATIONS

The RCRA regulations under sections 3005 and 3006 are among five sets of EPA related regulations that have been consolidated into one set of regulations because they have similar procedures and requirements. The five are:

- The hazardous waste management program under RCRA
- The underground injection control (UIC) program under the Safe Drinking Water Act (SDWA)
- The national pollutant discharge elimination system (NPDES) under the Clean Water Act (CWA)
- The dredge or fill (section 404) program under CWA
- The prevention of significant deterioration (PSD) program under the Clean Air Act

The five have been consolidated into one “package” to improve the efficiency and consistency of the regulatory process. Under the consolidation:

- Related regulations appear in one place in the *Federal Register* and follow the same format
- Redundant regulations are eliminated
- Common definitions and procedures are used

EPA has also developed a set of consolidated permit application forms, including an “umbrella” form to collect standard information under any EPA permit program, in addition to forms pertaining to the specific programs. The draft application materials appear in the same *Federal Register* as the Consolidated Permit Regulations. These consolidated application materials will reduce the amount of paperwork required to be submitted by permit applicants, especially where a single facility requires more than one EPA permit.

The regulations proposed for the hazardous waste management program, when promulgated in final form, will be included in 40 *Code of Federal Regulations (CFR)* Parts 122, 123, and 124, which now cover only the NPDES regulations. The format of the proposed regulations is being used because it provides an existing, workable structure for organizing permit regulations.

The three Parts of the *CFR* are:

- Part 122: EPA-Administered Permit Programs
- Part 123: State Program Requirements
- Part 124: Procedures for Decisionmaking

To structure the regulations into an understandable format, Parts 122, 123, and 124 have been organized into subparts. Parts 122 and 123 contain:

- Subpart A: General requirements for all programs
- Subpart B: Specific requirements for the hazardous waste program under RCRA
- Subpart C: Specific requirements for the UIC program under SDWA
- Subpart D: Specific requirements for the NPDES program under CWA

Part 123 also contains a Subpart E governing State regulation of the dredge or fill program under section 404 of CWA.

In Part 124, a subpart is not provided for the UIC program because all procedures necessary are covered in Subpart A. Subpart B establishes additional requirements for the RCRA program. Subpart C applies to the PSD program and Subparts D, E, and F to the NPDES program.

The RCRA procedures under Parts 122, 123, and 124 should be read, where appropriate, in conjunction with proposed regulations under RCRA sections 3001, 3002, 3003, 3004, and 3010, and regulations under the Hazardous Materials Transportation Act of the U.S. Department of Transportation (see inside back cover). These guidelines and regulations constitute the hazardous waste regulatory program under Subtitle C of RCRA.

### **III. APPLYING TO EPA FOR A HAZARDOUS WASTE PERMIT (PART 122)\***

Part 122 includes definitions and basic requirements for EPA to issue permits under the RCRA (section 3005), NPDES, and UIC programs. It covers the full range of substantive program requirements, spelling out in detail who must apply for a permit; the duration of a permit; requirements for modifying, revoking, or reissuing a permit; termination of a permit; the terms, conditions, and schedules of compliance that must be incorporated into a permit; when and how permit conditions must be monitored and reported; and specific requirements applicable to the different permit programs. Part 123 requires authorized States to have some Part 122 provisions, especially those covering operational requirements (sections 123.8, 123.39).

**WHO NEEDS A PERMIT?** Any person who owns, operates, or proposes to own or operate a facility that treats, stores, or disposes of hazardous waste must receive a permit from EPA (sections 122.6, 122.21(b), 122.23(a)) or an authorized State. A waste is considered hazardous if it has certain characteristics or is listed in regulations defining a hazardous waste under RCRA section 3001.

The first step in obtaining a permit from EPA for a hazardous waste management facility is to submit an application to the Regional Administrator of the appropriate EPA regional office (see back cover). Certain information may be considered confidential if the applicant specifies so at the time of application (section 122.16).

#### **THE APPLICATION**

**PART A.** The application process is divided into two parts. Part A of the application requires a description of the amounts and types of hazardous waste to be handled and the processes for handling them. A topographic map that indicates any surface waters must be enclosed (section 122.23(c)). The requirements pertaining to Part A of the application can be met by filing Forms 1 and 3 of the Consolidated Application Forms (published along with the Consolidated Permit Regulations). The permit application must be signed by a principal executive officer, sole owner, or duly elected public official, as appro-

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\*Sections in Subpart A (general): 122.1–122.16

Sections in Subpart B (RCRA): 122.21–122.28

priate. Other required forms may be signed by a duly authorized representative (section 122.5).

**PART B.** Part B of the application requires detailed data on the geology, hydrology, and engineering aspects of the facility, as well as a “master plan” and map of the facility. In addition, detailed information is needed on such factors as financial responsibility, employee training, contingency plans, operation and maintenance plans, and plans for air and water monitoring (section 122.23(d)). No specific form is being developed for the Part B application requirements.

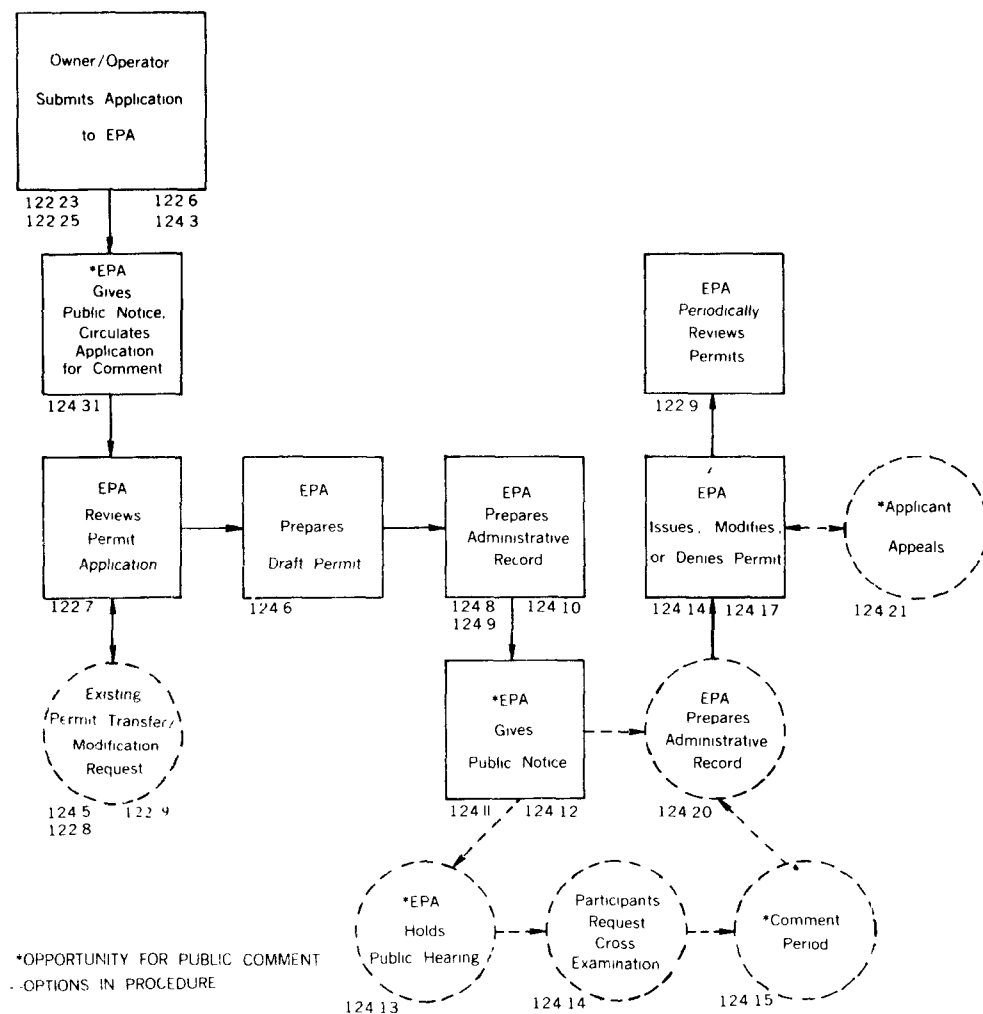
**PART B WAIVER.** Some of the requirements for information under Part B of the permit application may be waived by the Regional Administrator, if the information is not necessary to establish conditions for issuing a permit (section 122.23(d)(7)). An example would be waiver of site geological information for an incinerator or above-ground storage tanks. Any request for waiver must be submitted to the Regional Administrator in writing along with reasons why the information is not needed.

**INTERIM STATUS.** Owners or operators of existing facilities—that is, facilities open or under construction on or before the date that regulations under section 3001 defining hazardous wastes are promulgated (section 122.21(b))—must notify the Regional Administrator of their operations, as required by RCRA section 3010, and submit Part A within 180 days of the promulgation date of the section 3001 regulations (section 122.23(a)). The facility then has “interim status”—that is, temporary authority to operate under RCRA—and must comply with a limited set of operating procedures. The Regional Administrator reviews the Part A submissions and determines the date for Part B submissions from certain facilities, giving the applicant at least 6 months’ notice. For new facilities, both Parts A and B must be submitted together at least 180 days before physical construction is scheduled to start (section 122.23(b)).

**EXCEPTIONS.** Certain solid waste disposal facilities, receiving small amounts of hazardous waste not covered by a manifest, do not require a permit (section 122.3(b)). Injection wells disposing of hazardous waste covered by a manifest are regulated under the UIC permit program. However, any pit, pond, lagoon, or tank associated with an injection well must have a RCRA permit. Also, proposed regulations for waste generators under section 3002 of RCRA authorize storage of hazardous wastes on the generator’s property for up to 90 days without the need for a storage permit, if the wastes are intended to be shipped elsewhere and are properly labeled and containerized.



## EPA PROCESS FOR ISSUING A RCRA PERMIT



**SPECIAL PERMITS.** Two classes of facilities are allowed to obtain a "special permit" in lieu of the regular permit, as a means of reducing the paperwork burden. Certain departments of hospitals and veterinary hospitals routinely produce wastes that fall under the broad definition of hazardous waste. In most cases, health care facilities are closely regulated by existing State laws. Hence, they may submit an abbreviated application (section 122.25(a)). Experimental facilities intended to advance the state-of-the-art for treatment, storage, or disposal of hazardous wastes are also allowed to operate under a special permit (section 122.25(b)).

**PERMITS BY RULE.** Three classes of facilities are regulated under a “permit-by-rule” mechanism (section 122.26(a)):

- Facilities handling “special wastes,” which are hazardous portions of certain large-volume wastes—cement kiln dust; utility waste; waste from mining, beneficiation, and processing of phosphate rock; uranium mining wastes; other mining waste; gas and oil drilling muds; and oil production brines. Although some of these wastes may be hazardous by definition, little information is available on their management. Therefore, EPA concluded that imposing the full permitting burden serves no useful purpose. In its place, EPA is requiring only a permit by rule, which means that the facility is considered to have a permit, without having to submit an application, if it complies with the standards imposed by the regulations for special wastes proposed under section 3004 of RCRA.
- Publicly owned treatment works that accept hazardous waste under a hazardous waste manifest or other delivery document. Such facilities are already regulated under NPDES permits.
- Barges or other vessels receiving hazardous waste under a manifest or delivery document for purposes of ocean disposal. Such vessels are already regulated under the permit system of the Marine Protection, Research, and Sanctuaries Act.

These three types of facilities need only notify the Regional Administrator, under section 3010 of RCRA, to obtain interim status.

**DURATION OF PERMITS.** The RCRA permit will generally be issued for the designed operating life of the facility. An exception is a special permit for an experimental facility, which terminates on the date specified by the Regional Administrator. The initial period is not to exceed 1 year. An extension of no more than 1 additional year may be granted (section 122.25(b)).

**CONDITIONS OF PERMITS.** No facility may start to treat, store, or dispose of hazardous waste in a modified or newly constructed facility until modification or construction is complete and until the Regional Administrator has approved start-up (section 122.24(e)).

A number of other conditions are imposed on the holder of a permit issued under the consolidated regulations program. The permittee must:

- Conduct all monitoring required, record results, and make reports to the Regional Administrator at least once a year (section 122.14).
- Allow the facility and activities being regulated to be inspected, sampled, and monitored (section 122.11(e))
- Furnish all records as requested (sections 122.11(f), 122.14)
- Operate and maintain efficiently all facilities and systems of control used to meet permit conditions (section 122.11(g))
- Inform the Regional Administrator immediately when permit conditions are not being met, providing details on what happened, when, why, and steps taken to reduce, eliminate, or prevent a recurrence (section 122.11(h)). In the meantime, the permittee must take all reasonable steps to minimize adverse impacts on the environment (section 122.11(i)), including stopping or reducing business activities (section 122.11(j)).

**CHANGES IN PERMITS.** Permits must be reviewed whenever a permit under the NPDES or UIC programs is modified, reissued, or terminated, or at least once every 5 years, or when new information justifies a review (section 122.9). The permit may be modified or revoked and reissued (section 122.9) for a number of reasons:

- Substantial alterations or additions to the operations not covered by the permit—for example, in wastes treated, disposed of, or stored, or changes in operational methods
- New information indicating that conditions of the permit do not adequately protect health and the environment or meet RCRA requirements
- A change in standards or regulations
- A change in the owner or operator of the facility
- Modification, revocation, and reissuance or termination of another permit issued to the facility requiring a change in its permit

In addition, permits may be terminated for (section 122.10):

- Violation of any term or condition of the permit or of RCRA
- Misrepresentation or failure to fully disclose relevant facts

A permit holder may transfer a permit, providing that (section 122.8(e)):

- The Regional Administrator receives a written statement specifying the date when responsibility is to be transferred
- The Regional Administrator does not notify the applicant of an intent to modify, reissue, or terminate the permit or require that a new application be submitted

**EMERGENCY AUTHORIZATION.** In the event of an immediate hazard to human health or the environment, the Regional Administrator may issue temporary authorization to a hazardous waste facility with a permit to allow treatment, storage, or disposal of a hazardous waste not covered by a permit (section 122.28). The authorization is not to exceed 90 days in duration and must clearly specify the wastes to be received and how and where they are to be treated, stored, or disposed. The public must be notified of the emergency authorization.

## **IV. EPA PROCEDURES FOR ISSUING A HAZARDOUS WASTE PERMIT (PART 124)\***

Part 124 establishes the procedures EPA will use in issuing RCRA (section 3005), NPDES, UIC, and PSD permits. Included are procedures for enabling the public to participate in permit decisions, consulting with other State and Federal agencies, consolidating review and issuance of two or more permits for the same facility or activity, and filing appeals to permit issuances and denials. Permits for a given facility under more than one of the programs may be processed together, if greater efficiency is likely to result, but combined processing is not required in all cases. Limited delays in applying are possible in some cases to allow consolidation (section 124.4).

Most requirements in Part 124 are only applicable where EPA is the permit-issuing authority. Part 123 requires States to have some Part 124 provisions, especially those affording the public an opportunity to participate in the permit-issuing process (section 123.8).

**MAJOR AND MINOR FACILITIES.** It is estimated that approximately 30,000 hazardous waste management facilities, many of them small, noncomplex, and noncontroversial, will require permits. To enable EPA to concentrate its limited resources on those facilities that are the subject of widespread interest or raise major issues, EPA is proposing that facilities handling 5,000 metric tons or more of hazardous waste per year be designated as major facilities and the remainder as minor (section 122.3(b)).

**PUBLIC NOTICE.** The Regional Administrator reviews applications for completeness within 30 days of receipt and requests any additional information that is needed. When a permit application for a major facility is complete, the Regional Administrator informs the public by sending a notice to (among others) State and local governments, the local public library, and interested parties (section 124.31).

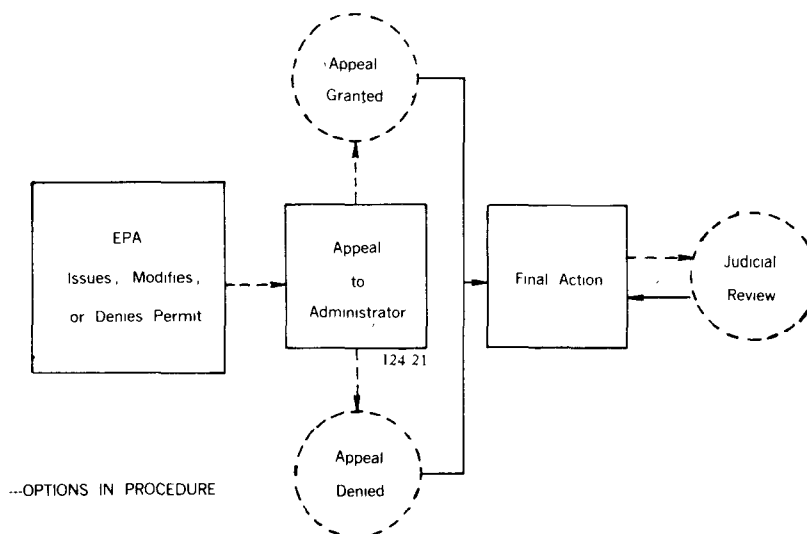
**DRAFT PERMIT.** If the Regional Administrator's decision is to issue a permit, a draft permit is prepared (section 124.6). A draft permit for a major facility is accompanied by a "fact sheet," in which EPA explains in some detail the basis for the permit (section 124.9). Minor permits are accompanied by a "statement of basis" that briefly describes the terms and conditions of the application and the reasons for them (section 124.8). The application, draft permit, and other

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\* Sections in Subpart A (general): 124.1–124.22  
Section in Subpart B (RCRA): 124.31

supporting documents are assembled into the “administrative record,” on which the Regional Administrator bases the decision for the draft permit (section 124.10).

## RCRA APPEALS PROCESS



**COMMENT PERIOD.** Once the draft permit has been prepared, the public is again informed (section 124.11). A comment period of at least 30 days is provided, during which any interested person may submit written comments or request a public hearing. A hearing may be held either in response to a request or on the Regional Administrator’s initiative (section 124.12). If a public hearing is held, the Regional Administrator designates a presiding officer and may also assign a panel of EPA experts to take part (section 124.13). No cross-examination is permitted at the hearing, although any participant may request cross-examination within 1 week after a full transcript of the hearing becomes available (section 124.14). All interested persons have an obligation to raise points or provide information during the comment period (section 124.15). If any substantial new questions are raised, the comment period may be reopened (section 124.16). If no questions are raised, the hearing record is closed after 10 days (section 124.13).

**FINAL PERMIT.** After the close of the public comment period (including any public hearing period), the Regional Administrator issues a final permit, modified permit, or permit denial (section 124.17), accompanied by a response to all significant comments received (section 124.19). This response to comments, plus any additional supporting material, constitutes the administrative record for the final permit (section 124.20). The decision of the Regional Administrator becomes EPA's final action unless, within 30 days, a participant in the hearing petitions for review of any term or condition in the permit (section 124.21). If a request for a review is granted, the contested permit terms may be stayed (section 124.18).

## V. REQUIREMENTS FOR A STATE APPLYING TO EPA TO ADMINISTER A HAZARDOUS WASTE MANAGEMENT PROGRAM (PART 123)\*

Part 123 establishes the requirements that must be met by a State seeking approval from EPA to administer a program under RCRA (section 3006), NPDES, UIC, and dredge or fill (section 404) programs. Part 123 also references applicable requirements of Parts 122 and 124 that State programs must meet, and outlines the process by which EPA approves, revises, or withdraws approval of State programs.

Guidelines under section 3006 of RCRA were proposed in the *Federal Register* on February 1, 1978 (43 *Fed. Reg.* 4366). The consolidated regulations under this Part contain changes that reflect comments on the proposed guidelines. The section 3006 regulations are repropounded because these consolidated regulations may identify issues on which the public has not had a chance to comment.

RCRA's approach in approving State hazardous waste programs is similar to that of the NPDES and UIC programs in that it sets *minimum* requirements, allows States, in general, to be more stringent, and encourages States to incorporate by reference the Federal program. Further, under the RCRA program, States are prohibited from imposing any requirements that would prevent hazardous waste from moving between States.

**"FULL" AND INTERIM AUTHORIZATION.** The State hazardous waste program need not be worded or structured the same as the Federal program. However, it must be *equivalent* to the Federal program to receive "full" authorization (simply called "authorization" in the regulations). This type of authorization is effective no earlier than 6 months after regulations under section 3001, defining hazardous wastes, are promulgated (section 123.33). Programs that are *substantially equivalent* to the Federal program receive "interim" authorization, which also begins 6 months after the regulations under section 3001 are promulgated. Interim authorization may be granted for a maximum of 2 years, thus giving the States time to upgrade their programs so that they may qualify for "full" authorization.

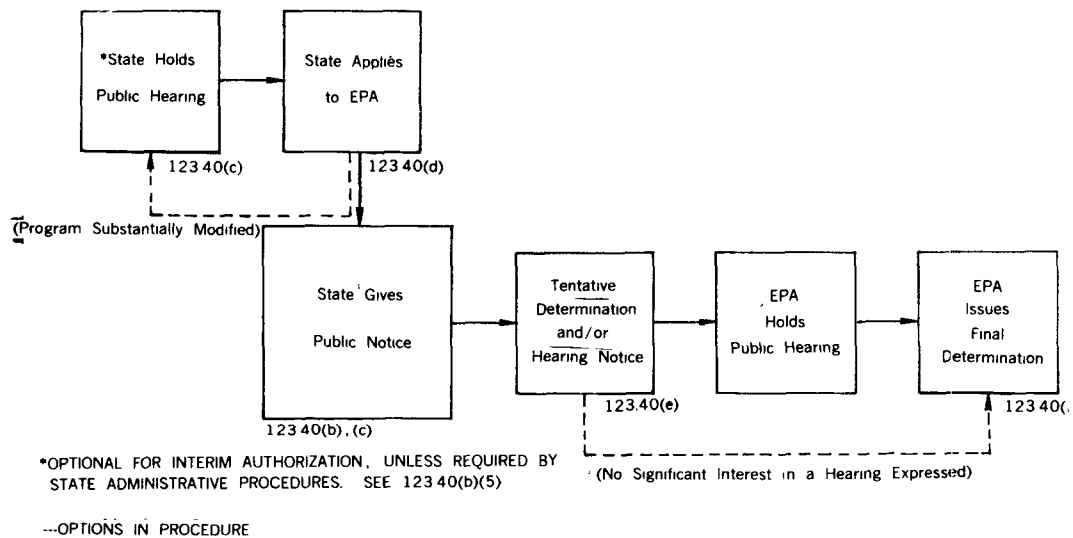
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\* Sections in Subpart A (general): 123.1–123.17  
Sections in Subpart B (RCRA): 123.31–123.41



**PERMIT PROGRAM.** A number of general requirements in Parts 122 and 124 for the operation of State permit programs are imposed by Subpart A of Part 123 (section 123.8). In addition, the States must have legal authority to implement RCRA provisions in Subpart B of Part 122 covering application for a permit, establishment of permit terms and conditions, special permits, and emergency authorization (section 123.39).

## PROCESS FOR EPA APPROVAL OF A STATE HAZARDOUS WASTE MANAGEMENT PROGRAM



**HOW A FACILITY APPLIES FOR A STATE PERMIT.** An owner/operator of a hazardous waste management facility located in a State with an approved hazardous waste management program must apply to that State for a permit. The application will have to meet certain minimal procedural and operational requirements imposed by the State (sections 123.8, 123.32(b), 123.39). However, in the first 6 months of the Federal program, all applications will probably be filed with the Regional Administrators because it is unlikely that the authorization process will have been completed in any State in that initial period.

**COMPLIANCE EVALUATION.** States must have a systematic program for evaluating compliance with permit conditions and other program requirements. The program should include (section 123.9):

- Procedures for receipt, evaluation, recordkeeping, and investigation for possible enforcement of all notices and reports required of permittees (or failure to submit such notices and reports)

- Inspection and surveillance procedures to determine if operators and permittees are complying with requirements, independent of the information they supply
- Authority to enter any site to investigate suspected violations
- Procedures to ensure that samples taken and information gathered will provide evidence admissible in an enforcement proceeding or in court

**ENFORCEMENT AUTHORITY.** The State program must have an array of enforcement tools available to remedy violations of its program, including the authority to (section 123.10):

- Respond immediately to emergency situations endangering public health
- Sue in court to stop violations
- Assess or sue to recover in court civil remedies for violations
- Seek criminal penalties, including fines, for violations made knowingly. The maximum penalty for the first offense is \$25,000 and a year in jail, and is doubled for the second offense.
- Seek criminal penalties, including fines, against any person who knowingly makes false statements or tampers with monitoring equipment. The maximum penalty is \$25,000 and a year in jail, and is doubled for the second offense.

**COLLECTING AND REPORTING DATA.** A State must make regular reports to the Regional Administrator. Every quarter, the State must submit a report on the hazardous wastes sent from the State to foreign countries (section 122.27(a)) and another report listing major facilities out of compliance (section 122.15). In addition, the State must make an annual report that includes a list of permit actions completed, compliance of minor facilities, and summary information on wastes managed (section 122.27(b)).

## **REQUIREMENTS COMMON TO APPLICATIONS FOR FULL OR INTERIM AUTHORIZATION**

**PUBLIC PARTICIPATION.** Prior to submitting an application to the EPA Administrator for full or interim authorization of a State program, the State must inform the public (section 123.40(b)). A

comment period of not less than 30 days is provided to allow the public to express its views. If warranted by public interest, a public hearing may be scheduled. If the proposed State program is substantially modified after the public comment period, the State is to provide opportunity for further comment on the modification before submitting the program to EPA (section 123.40(c)).

**DOCUMENTS REQUIRED IN APPLICATION.** To apply for full or interim authorization, the State must submit a number of documents (section 123.3), including:

- A letter from the governor requesting authorization
- A complete program description
- A statement from the attorney general
- Copies of forms to be used and applicable State laws, court decisions, and regulations
- A memorandum of agreement

**PROGRAM DESCRIPTION.** The description of the program must cover the following (section 123.4):

- The scope, structure, coverage, and process of the State program
- The organization and structure (including organization charts) of the State agency or agencies that will administer the program. The number of people that will carry out the program and their occupations must be included, as well as an itemization of estimated costs for the first 2 years of the program, sources of funding, and the type of activities to be regulated.
- Applicable State procedures, including permitting procedures, and any State appellate review procedures
- The State's priorities for issuing permits and for enforcement, including the State's compliance tracking and enforcement program

**ATTORNEY GENERAL'S STATEMENT.** The Attorney General's statement, accompanying the application, must verify that the laws of the State provide adequate authority to carry out a hazardous waste program meeting Federal requirements. The authorities cited must be in the form of lawfully adopted State statutes and regulations that are in full force at the time the statement is signed (section 123.5). (EPA is developing a model format for the Attorney General's statement.)

**MEMORANDUM OF AGREEMENT.** The memorandum of agreement between the State Director and the Regional Administrator defines the basic working relationship between the State and EPA (section 123.6). The State must have legal authority to do what it says it will do in the memorandum (section 123.7). The memorandum must (section 123.6):

- Provide for prompt transfer of any pending permit applications or any other relevant information from EPA to the State
- Specify the basis and procedures for the Regional Administrator to receive draft permits and permit applications from the State for review and comment
- Specify the frequency and content of reports, documents, and other information that the State must submit to EPA
- Describe the State's enforcement program, including compliance monitoring by the State and EPA and fiscal arrangements to support litigation by the State
- Describe provisions, where appropriate, for consolidated permitting by the State and EPA
- Include procedures for modifying the memorandum of agreement, with the approval of EPA

The memorandum should also include provisions establishing procedures for the Regional Administrator to (section 123.37):

- Make routine compliance inspections of major hazardous waste management facilities and to review and comment on draft permits and permit applications for major facilities
- Inspect any minor facility, generator, or transporter that there is reason to believe is violating RCRA, after giving the State the opportunity to investigate the situation

If provided for in the memorandum, the Regional Administrator may also review and comment on draft permits and permit applications of minor facilities or conduct routine inspections of generators and transporters.

## **SPECIFIC REQUIREMENTS FOR INTERIM AUTHORIZATION**

**SUBSTANTIAL EQUIVALENCY.** EPA will grant interim authorization, providing that the State program is substantially equiva-

lent to the Federal program (section 123.32(a)). The State program must be able to:

- Control by permit or equivalent document all on-site or off-site hazardous waste *disposal* facilities. (Control of treatment or storage facilities, while desirable, is not required.)
- Commit adequate resources and provide the administrative capability to process permits and conduct an effective enforcement program, including compliance evaluation

The States also must show substantial compliance with other provisions of the regulations, including those covering certain operational requirements and enforcement authority (section 123.32(b)).

**PROGRAM DESCRIPTION.** To apply for interim authorization, the description of the State's program must provide the following additional information (section 123.34(a)):

- A general description and estimate of:
  - The number, types, and relative sizes of activities to be regulated during the interim authorization period
  - If available, the total quantity of hazardous waste expected to be disposed of annually from both in-State and out-of-State sources
- An "authorization plan" describing the additions or modifications necessary to the State program to qualify for authorization at the end of the interim period. This plan must include the schedule under which the State proposes to achieve those additions and modifications, plus a description of any changes in the State's legal authority, resources, permit system, and surveillance and enforcement program that will be necessary during the interim period in order to qualify for full authorization.

**PROGRESS REPORTS.** A State with interim authorization must submit a semiannual report to the Regional Administrator briefly summarizing the State's progress in meeting the requirements of the authorization plan, the reasons and proposed remedies for any delay in meeting milestones, and the anticipated problems and solutions for the next reporting period (section 123.36).

**ATTORNEY GENERAL'S STATEMENT.** For interim authorization, the Attorney General's Statement shall certify that the State has legal authority to implement the minimal program proposed and

that the authorization plan, if carried out, would provide the State with the legal authority to meet the requirements for full authorization (section 123.35).

**MANIFESTS.** A State applying for interim authorization need not have an operating system for controlling manifests, but it must have adequate legal authority and be ready to operate such a system immediately after it has full authorization. Note that even though the State temporarily may not oversee the flow of manifests, the regulated community must still prepare and use manifests in a State with interim authorization.

## **SPECIFIC REQUIREMENTS FOR “FULL” AUTHORIZATION**

To apply for full authorization, the State must provide the following additional information (section 123.34(b)):

- A description of the State manifest system
- A description of the types and relative sizes of regulated activities, including an estimate of the number of generators; transporters; and on- and off-site storage, treatment, and disposal facilities that must file for or have been issued a State permit
- An estimate, if available, of the annual quantities of wastes generated within the State; transported into or out of the State; and stored, treated, or disposed of on-site and off-site

To be authorized, the State program must provide a degree of control over the generation, transportation, treatment, storage, and disposal of wastes equivalent to EPA regulations and include the management of manifests involving both intrastate and interstate transportation of hazardous waste (section 123.39(b), 123.39(c)). States must use the manifest format approved by EPA but may supplement it.

EPA will not approve a State program if it imposes any requirements that would prevent hazardous waste from moving between States (section 123.33(c)).

## **EPA’S ACTIONS DURING AND AFTER AUTHORIZATION**

Once the State’s complete program is submitted, the EPA Administrator will make a tentative decision within 90 days whether to grant authorization, or will give notice of a public hearing for interim

authorization. The decision is published in the *Federal Register* and elsewhere (section 123.40(d), 123.40(e)). If the decision is negative, reasons must be given. The Administrator will schedule a public hearing no earlier than 30 days after the tentative determination or notice, provided there is public interest, and will give the public no less than 30 days, after the notice, to comment on the State's submission and the tentative decision. Within 90 days of the tentative decision, or notice of public hearing for interim authorization, the Administrator will make a final decision, taking into account any comments submitted; the decision is published in the *Federal Register* and elsewhere (section 123.40(f)).

**OVERSIGHT BY EPA.** If the Administrator grants approval, the State is responsible for management of hazardous waste within that State. EPA will continue to oversee the program to ensure that it operates in accordance with regulations, primarily by inspections and by reviewing permit applications, draft permits, and State reports. EPA's relationship with the State is outlined in the memorandum of agreement (section 123.37). Under the review provisions of the memorandum, the Regional Administrator may comment if it appears that issuing a permit would be inconsistent with RCRA or the regulations and recommend the actions that the State should take in response to the comments (section 123.38).

**REVISIONS.** A State program may later be revised by either EPA or the State (section 123.13(a)). Such revision may be needed when the State's statutory or regulatory authority is modified or supplemented. The State must also notify EPA whenever it proposes to transfer all or part of any program to another agency (section 123.13(c)). The State submits a modified program description, Attorney General's statement, memorandum of agreement, and any other necessary documents to EPA (section 123.13(b)). If EPA decides that the modifications are substantial, it will issue a public notice and provide an opportunity for public comment on the modifications. A public hearing will be held if there is significant interest. The modification becomes effective when approved by the Administrator. Notice of any substantial modification is published in the *Federal Register* and elsewhere.

**WITHDRAWAL OF APPROVAL.** The Administrator may withdraw approval of a State program if it no longer meets the requirements for Part 123 and the State fails to take corrective action (section 123.14). Such circumstances include:

- Legal authority no longer meets requirements
- Program operations fail to comply with requirements

- Enforcement program fails to comply with requirements
- Terms of memorandum of agreement are not met

In addition, the Administrator may withdraw approval if a State program is modified after approval in such a way that it interferes with the free movement of hazardous waste from across the State border or to other States to facilities having hazardous waste permits under an approved State or Federal program (section 123.41).


A withdrawal proceeding may start either at the request of the Administrator or in response to a petition from an interested person (section 123.15(b)). The Administrator schedules a hearing and specifies the allegations against the State. The State has 30 days to admit or deny the allegations in writing. The hearing procedures to be followed are those contained in the regulations under 40 *CFR* Part 22, proposed on August 4, 1978 (43 *Fed. Reg.* 34639).

Within 30 days after filing of proposed findings and conclusions, the presiding officer recommends a decision to the Administrator. Within 20 days, all parties may file exceptions to the recommended decision, with a supporting brief. The Administrator reviews the record and issues a decision within 60 days. If the Administrator concludes that the State has administered the program according to RCRA and the regulations, this decision requires no further State action. If the Administrator concludes that the State has failed, the deficiencies in the program are listed and the State is given up to 90 days to take corrective action. If the State fails to do so, the Administrator withdraws authorization.

**VOLUNTARY TRANSFER.** A State with an approved program may voluntarily transfer its responsibilities to EPA. The State must give the Administrator 180 days notice of the proposed transfer and submit a plan for the orderly transfer of all the information EPA needs to administer the program. Within 60 days, the Administrator must evaluate the State's transfer plan and identify any additional information needed or any other deficiencies in the plan. At least 30 days before the transfer is to occur, the Administrator must publish the information in the *Federal Register* and in newspapers in the State.

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