



DIRECTIVE NUMBER: 9540.00-8

TITLE: Capability Assessments for RCRA Authorization
Program Revisions

APPROVAL DATE: 4/8/87

EFFECTIVE DATE: 4/8/87

ORIGINATING OFFICE: OSW

FINAL

DRAFT

STATUS:

[]	A- Pending OMB approval
[]	B- Pending AA-OSWER approval
[]	C- For review &/or comment
[]	D- In development or circulating

REFERENCE (other documents): headquarters

1. State Capability Assessment Guidance (6/26/84)
2. Additional Guidance on RCRA State Capability Assessments (12/27/84)

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OSWER Directive Initiation Request

1. Directive Number

9540.00-8

2. Originator Information

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3. Title

Capability Assessment for RCRA Authorization Program Revisions

4. Summary of Directive (include brief statement of purpose)

OSWER has refined the approach initially used to develop capability assessments to ensure quality reviews of State hazardous waste programs for authorization. The subject document provides guidance on this approach.

5. Keywords

Authorization/HSWA/Capability Assessments

6a. Does This Directive Supersede Previous Directive(s)?

No

Yes

What directive (number, title)

b. Does It Supplement Previous Directive(s)?

No

Yes

What directive (number, title)

7. Draft Level

A -- Signed by AA/DAA

B -- Signed by Office Director

C -- For Review & Comment

D -- In Development

8. Document to be distributed to States by Headquarters?

Yes

No

This Request Meets OSWER Directives System Format Standards.

9. Signature of Lead Office Directives Coordinator

Date

10. Name and Title of Approving Official

Date

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9540.00-8

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

APR 8 1987

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Capability Assessments for RCRA Authorization
Program Revisions

FROM: *J. Winston Porter*
J. Winston Porter, Assistant Administrator
Solid Waste and Emergency Response (WH-562B)

TO: Regional Administrators
Regions I-X

State performance and capability will continue to be important considerations as we begin to make authorization decisions on State program revisions for the HSWA requirements. Capability assessments provide EPA with a continuing mechanism to identify areas of State programs that warrant enhancement and to establish the EPA and State actions necessary to strengthen the programs. This assessment should tell us not only whether a State is effectively implementing the base program but also how that State may implement additional program areas. In general, States should demonstrate the ability to capably implement the base RCRA program as well as the additional elements of HSWA for which they are seeking authorization. The assessment should reflect an evaluation of the State's entire authorized program, not just the activities funded by EPA. For instance, an evaluation of a State's capability to implement an adequate enforcement program is to be based on a review of enforcement activities at all significant non-compliers.

A capability assessment must be prepared in connection with an application for State authorization for HSWA provisions that significantly impact the State's workload. This category includes those applications covering all or most of the July 15, 1985, codification rule provisions or any application that includes corrective action. It would not include a State application that addresses only the §3006(f) availability of information requirements nor in most situations an application for additional waste listings. It is difficult to develop a comprehensive list of those provisions for which an assessment is or is not needed because some provisions which do not warrant an assessment if applied for singly may need an assessment if their combined workload is significant. As you review your State authorization schedules, your staff should consult

with OSW/OWPE staff before determining that an assessment is not needed.

OSWER has refined the approach initially used to develop capability assessments to ensure quality reviews of State hazardous waste programs while minimizing the burden of conducting comprehensive assessments. This memorandum, with the attached checklist and instructions, provides guidance on this approach.

The attached checklist lists the grant commitments and Quality Criteria elements for which State performance should be evaluated. A State will be viewed as having a satisfactory base program if it satisfies the checklist items without substantial dependence on the Region for any part of the authorized portion of the program. In evaluating dependence, it is recognized and accepted that continuing assistance from the Regions is appropriate in administering a complex program. "Substantial dependence" will be a subjective evaluation that properly takes all factors into account. While EPA is responsible for overseeing State programs and providing assistance and support, a State must be capable of managing its authorized program without substantial dependence on the Region.

No additional narrative is necessary if the Region submits current documentation that explains why the performance is satisfactory. The checklist should be completed based on available information such as existing State program evaluations (quarterly, mid-year, end-of-year), monthly State reports, tracking of items detailed in the MOA and any other State/EPA agreement, and day-to-day contact with the State.

For States that generally do not operate their authorized program in a satisfactory manner, the Region and State, in consultation with OSW/OWPE staff, will agree on an action plan to correct problems identified in the capability assessment. We suggest that until these problems are corrected, the Region delay any authorization decision. Any delay should be minor for States needing short-term improvements (e.g., timely submission of reports). However, where States face significant problems (e.g., inability to draft land disposal permits or to correctly complete more complicated inspections), they should focus their efforts toward upgrading their program and properly administering those elements of the program for which they are presently authorized rather than applying for authorization. Should such States persist in applying for authorization of additional program elements, the Region will need to prepare an action plan (in consultation with Headquarters) that explicitly identifies what the State must do to qualify for authorization.

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OSW and OWPE staff will be available to review and comment on proposed action plans to ensure that all areas of concern are identified at an early stage. Before an action plan is finally negotiated with a State, the Region and Headquarters should agree on acceptable performance levels and schedules for the problems identified. Regardless of whether short or long-term improvements are needed, the time required to complete a comprehensive capability assessment and to demonstrate the necessary improvements to the State program should be factored into the Region's schedule for authorizing the State. In some instances, a State may not have completed all items identified in the action plan, such as ongoing staff training, but will be on a schedule to complete these items. However, in general, a State should complete all items in its action plan before receiving authorization.

I would like to reiterate that our purpose in continuing to conduct capability assessments is to ensure that States are fully capable of assuming the new responsibilities before we authorize them and not to prevent or hinder States from obtaining authorization for additional elements of RCRA.

Attachments

cc: Waste Management Division Directors, Regions I-X
RCRA Branch Chiefs, Regions I-X
Marcia Williams
Gene Lucero
State Programs Branch, OSW
Implementation and Compliance Branch, OWPE

Instructions and Checklist for HSWA Capability Assessments

Instructions for Completing HSWA
Capability Assessment Checklist

The "satisfactory" or "needs improvement" column should be checked for each item or "N/A" filled in per the instructions below (see Enforcement, No. 2; Permits and Closure Plans, Nos. 1 and 2; and Corrective Action). "Satisfactory" indicates the State operated the authorized program without substantial dependence on the Region, including fully meeting grant commitments and Quality Criteria elements. If the Region judges that a lesser level of performance is satisfactory, the reason should be explained. "Needs improvement" means some level of improvement is needed; short-term corrective steps may not delay authorization (see transmittal memo from J. Winston Porter).

The numbers below correspond to the numbers on the checklist.

Enforcement

1. State has multi-year compliance monitoring strategy: The State multi-year compliance monitoring strategy may be a separate document or may be incorporated into the MOA or other State-EPA agreement. To meet the satisfactory standard, the State must meet the Criteria found under Key Questions 1, 2, and 6 under Enforcement Program Criteria on pages 8, 9, 10, and 14 of the Quality Criteria.
2. State undertakes inspections: This includes "satisfactory" performance as defined above. If no grant commitments were negotiated for a particular item, mark N/A for not applicable. Satisfactory should be marked only when the State has met the initial grant commitments; or when grant commitments have been renegotiated during the fiscal year and the Region justifies the new numbers and any satisfactory rating in writing.

Verifications: For high priority violations, an inspection, record review, or other verification must be performed within 30 days of the final compliance date and return to compliance confirmed.

3. Files are maintained and readily accessible: Case development/case referral files must be comprehensive, well documented, and current to ensure that enforcement actions are timely and that all available evidence is accurately identified. A review of the files, together with Regional oversight of State inspections, should demonstrate the quality of inspections.

4. For HPVs, formal complaint issued or case referred within 90 days: A formal complaint is to be issued within 90 days after violation discovery by those States with administrative penalty authority. A case is to be referred within 90 days after violation discovery by those States with no administrative penalty authority.

For Class I violations, Quality Criteria timeframes are followed: To meet the satisfactory standard, a State must meet the Criteria found under Key Question 4.B. (Enforcement Program Criteria on pages 12 and 13 of the Quality Criteria).

Penalties are assessed appropriately: Penalties are assessed in accordance with the Enforcement Response Policy.

5. State follows late and incomplete Part B policy: A late incomplete, or inadequate Part B application is a Class I violation. As such, no more than two NOD's should be issued before assessing a penalty. The penalty assessed should be in accordance with the Civil Penalty Policy for all Part 270 and contributing Part 265 violations. If the owner/operator fails to comply by the date specified, the State should initiate termination of interim status by issuing a notice of intent to deny the permit.

Permits and Closure Plans

- 1-2. State meets permit grant commitments; State meets closure grant commitments: See Instruction No. 2 under Enforcement.
3. Permit/closure plan quality: OSW has developed permit and closure/post-closure plan quality review documents. These documents should be used to determine the quality of a representative sample of permits issued and closure/post-closure plans approved by the State before making a judgment regarding a State's rating in this area.

Corrective Action

This section need be completed only when a State is seeking authorization for the corrective action portion of HSWA authorization. States are likely to have the least amount of experience in this area. However, where States have had experience with corrective action, either under a cooperative agreement or under State authorities, their performance should be evaluated. For the five elements listed under the corrective action section, rate the elements for which a State has had some experience. For those elements for which a State has had no experience, mark "N/A" for "not applicable". States which have no experience in corrective action will not be prohibited from receiving authorization for HSWA corrective action.

However, States are encouraged to develop experience with corrective action under a cooperative agreement. This section is based on draft corrective action guidances. When these guidances are finalized, this section will be revised.

Management

3. Facility management planning: To complete this section, refer to Key Questions 1 through 4 under Goal #3, Management Criteria, on pages 27 and 28 of the Quality Criteria. It should be noted that enforcement and permitting actions include closures and corrective action.

Capability Assessments for HSWA Authorities

ENFORCEMENT

	Satis- factory	Needs Im- provement
1. State has multi-year compliance monitoring strategy.*		

2. State undertakes inspections.*		
° CEI inspections (land disposal, treatment, storage)		
° CME inspections		
° Inspection of TSDF's receiving CERCLA wastes		
° Closing facilities inspections		
° Generator/transporter inspections		
° Verifications*		
° Record reviews		

3. Inspection and record reviews are thorough and properly documented.		
° Inspection checklists are complete and accurate		
° Violations are well documented		
° Files are maintained and readily accessible*		
° CME's are conducted in accordance with TEGD		
° State properly classifies violations		

4. State takes timely and appropriate enforcement action.		
° For HPV's, including SNCs, formal complaint issued or case referred within 90 days*		
° For Class I violations, Quality Criteria timeframes are followed*		
° Penalties are assessed appropriately*		
° Enforcement actions specify remedies and dates for completion		

5. State follows late and incomplete Part B policy.*		

* see instructions

PERMITS AND CLOSURE PLANS

	Satis- factory	Needs Im- provement
1. State meets permit grant commitments:*		
° Land Disposal		
- completeness/technical reviews		
- draft permit/public notices		
- final determinations		
° Incinerators		
- completeness/technical reviews		
- draft permit/public notices		
- final determinations		
° Storage		
- completeness/technical reviews		
- draft permit/public notices		
- final determinations		

2. State meets closure grant commitments:*		
° Land disposal		
- technical reviews		
- public notices		
- plan approvals		
° Incinerators		
- technical reviews		
- public notices		
- plan approvals		
° Storage		
- technical reviews		
- public notices		
- plan approvals		

* see instructions

PERMITS AND CLOSURE PLANS (continued)

	Satis- factory	Needs Im- provement
3. Permit/Closure plan quality*		
° All regulatory requirements are addressed		
° Documents are technically sound		
° Documents are enforceable		

4. Public participation		
° State follows public participation requirements in processing permits and closure plans		
° State meets grant commitments for public involvement activities		

CORRECTIVE ACTION*

	Satis- factory	Needs Im- provement
1. State ensures that RFA's and RFI's identify and evaluate all SWMU's and known/likely releases.		

2. State ensures that RFA recommendations for RFI, interim measures or corrective action are adequately documented to support permit or compliance order conditions.		

3. State ensures that RFI and corrective measures plans are technically sufficient and contain enforceable schedules of compliance.		

4. State monitors approved RFI and corrective measures plans.		

5. State ensures that corrective measures plans specify the expected results and how these will be measured.		

* see instructions

MANAGEMENT

	Satis- factory	Needs Im- provement
1. Resources, staffing and data management:		
° Resources utilized in accordance with grant		
° Staff adequately trained; appropriate skill mix		
° State effectively utilizes information/data system in support of their program; system provides timely and accurate permit, enforcement, closure and corrective action information		
° State provides quality, timely information for HWDMS		

2. Reporting:		
° State informs EPA of program changes		
° State meets MOA/grant commitments for reporting, program coordination, etc.		

3. Facility Management Planning:*		
° State has a process for planning and coordinating enforcement and permitting actions at all environmentally significant facilities		
° State has developed and is implementing a multi-year strategy that addresses how the responsible agency(ies) plan to permit and/or bring all TSD's into compliance with applicable regulations		

* see instructions