



DIRECTIVE NUMBER: 9541.00-9

TITLE: State Program Advisory (SPA) #5: Revised
Model Attorney General's Statement and Models
G and H Federal Register Notices for Codification

APPROVAL DATE: 8/22/88

EFFECTIVE DATE: 8/22/88

ORIGINATING OFFICE: Office of Solid Waste

☒ **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

SCRAM - OSWER Policy Directive #9540.00-9

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United States Environmental Protection Agency
Washington, DC 20460

OSWER Directive Initiation Request

1. Directive Number

9541.00-9

2. Originator Information

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3. Title
State Program Advisory (SPA) #5: Revised Model Attorney General's Statement and Models G and H Federal Register Notices for Codification

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

This document corrects some of the policy given in the SCRAM (OSWER Directive # 9540.00-9) regarding incorporation by reference in the Federal Register. SPA #5 corrects errors identified in the model A.G. statement and revises language in model codification notices. These documents are part of the SCRAM which provides guidance to the Regions and States. They must use them as models for authorization and codification

5. Keywords

Guidance / State Authorization / State Program

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)
9540.00-9

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

Jennifer A. Barker

Date

9/7/88

Jennifer A. Barker, Office of Solid Waste

10. Name and Title of Approving Official

Date

8/22/88

Sylvia K. Lowrance, Director, Office of Solid Waste

EPA Form 1315-17 (Rev. 5-87) Previous editions are obsolete.

(summary continued - of State hazardous waste programs.)

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

AUG 22 1988

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

OSWER DIRECTIVE #9541.00-9

MEMORANDUM

SUBJECT: State Program Advisory Number Five -- Revised Model Attorney General's Statement and Revised Federal Register Notices for Codification (Models G and H)

FROM: Sylvia K. Lowrance, Director *Sylvia K. Lowrance*
Office of Solid Waste

TO: Division Directors, Regions I-X

Please find attached State Program Advisory (SPA) #5. This SPA's purpose is twofold:

- (1) A revised Model Attorney General's (AG) Statement (see Attachment A) corrects two minor errors. This should replace the current AG Statement.
- (2) Concerning codification of authorized State programs in the Code of Federal Regulations (CFR), Attachment B to this SPA provides revised Federal Register codification notices (Models G and H) to replace those in Appendix C of the SCRAM. The models were revised at the request of the Office of Federal Register (OFR) because of changed OFR requirements. Following is a brief explanation of OFR's requirements and the codification process.

Codification is the process by which State statutes and regulations become part of the CFR. Through codification, the specific elements of the State's authorized hazardous waste program are identified as subject to direct Federal enforcement authority.

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Typically the OFR requires the entire reprinting in the CFR of those State statutes and regulations being codified. However, in the interest of space [and reproduction costs], EPA may meet this requirement by "incorporating by reference" materials published elsewhere (e.g., the State statutes, rules and accompanying checklists). Materials incorporated by reference have the same legal effect as if published in full in the CFR. A copy of the incorporated material is kept on file at OFR to ensure public availability. A change in OFR's policies on keeping incorporated material has necessitated some changes in the model codification notices provided as Attachment B.

Note that although the Program Description, Memorandum of Agreement and Attorney General's Statement are mentioned in the CFR, they are not incorporated by reference nor kept on file at OFR. These items, as distinguished from State statutes, rules and the checklist, are not Federally enforceable documents. However, the Region should maintain these documents as part of a State's authorization application for public review.

SPA #5 is provided to you out of sequence because SPA #4 is still in the review process. If you have any questions, please contact Alex Wolfe, Chief, Implementation Section, State Programs Branch or Marty Madison at FTS 382-2210.

Attachments

cc: RCRA Branch Chiefs, Regions I-X
Authorization Section Chiefs, Regions I-X
State Programs Branch, Headquarters
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OSWER DIRECTIVE #9541.00-9

Attachment A

MODEL ATTORNEY GENERAL'S STATEMENT FOR FINAL AUTHORIZATION
FOR CHANGES TO THE FEDERAL RCRA PROGRAM FROM
JANUARY, 1983 THROUGH JUNE, 1987

I hereby certify, pursuant to my authority as _____ and in accordance with Section 3006(b) of the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 USC 6901 et seq.), and 40 CFR 271 that in my opinion the laws of the State [Commonwealth] of _____ provide adequate authority to carry out the revised program set forth in the revised "Program Description" submitted by the [State Agency]. The specific authorities provided are contained in statutes or regulations lawfully adopted at the time this Statement is signed and which are in effect now [shall be fully effective by _____], as specified below.

I. IDENTIFICATION AND LISTING

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

- (1) Chlorinated aliphatic hydrocarbons, 40 CFR 261.31, as amended February 10, 1984 [49 FR 5308-15], Revision Checklist 4.
- (2) [OPTIONAL: This is a reduced requirement.] Warfarin and zinc phosphide listing, 40 CFR 261.33(e) and (f), as amended May 10, 1984 [49 FR 19923], Revision Checklist 7.
- (3) TDI, DNT and TDA wastes, 40 CFR 261.32 and 261.33(f), as amended October 23, 1985 [50 FR 42936-43], Revision Checklist 18.
- (4) Spent solvents, 40 CFR 261.31, as amended December 31, 1985 [50 FR 53319-20] and January 21, 1986 [51 FR 2702], Revision Checklist 20.
- (5) EDB wastes, 40 CFR 261.32, as amended February 13, 1986 [50 FR 5330], Revision Checklist 21.
- (6) Four spent solvents, 40 CFR 261.31 and 261.33(f), as amended February 25, 1986 [51 FR 6541], Revision Checklist 22.
- (7) [OPTIONAL: This is a reduced requirement.] Listing of spent pickle liquor from steel finishing operations, 40 CFR 261.32, as amended May 28, 1986 [51 FR 19320] and September 22, 1986 [51 FR 33612], Revision Checklist 26.

* The "OPTIONAL: This is a reduced requirement" is used to indicate provisions that either are less stringent or reduce the scope of the program. Any State which adopts an "optional" requirement must ensure that it is as least as stringent as the Federal requirement.

- OSHA DIRECTIVE 9341.00-1
- (8) Listing of commercial chemical products and Appendix VIII constituents, 40 CFR 261.33 and Appendix VIII, as amended August 6, 1986 [51 FR 28296], Revision Checklist 29.
 - (9) EBDC wastes, 40 CFR 261.32, as amended on October 24, 1986 [51 FR 37725], Revision Checklist 33.

[Federal Authority: RCRA §3001(b).]

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

B. State statutes and regulations define hazardous waste so as to control the generation, transportation, treatment, storage and disposal of hazardous waste produced by small quantity generators of between 100 and 1000 kilograms/month as indicated in Revision Checklist 23. State statutes and regulations also require small quantity generators to certify good faith efforts to minimize waste generation and to select the best available and affordable treatment, storage or disposal alternatives, 40 CFR 262 as amended October 1, 1986 [51 FR 35190], Revision Checklist 32 (see Item IX below).

[Federal Authority: RCRA §3001(d); 40 CFR Parts 260-263 and 270 as amended March 24, 1986 (51 FR 10174) and October 1, 1986 (51 FR 35190).]

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

C. [This is an optional requirement only if States do not have a delisting mechanism.] State statutes and regulations provide authority to delist hazardous waste as indicated in Revision Checklist 178.

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

[Federal Authority: RCRA §3001(f)(1); 40 CFR 260.22.]

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

[Federal Authority: RCRA §3001(f)(2); 40 CFR 260.20(d).]

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

D. [OPTIONAL: This is a reduced requirement.] State statutes and regulations define hazardous waste so as to exclude waste pickle liquor sludge generated by lime stabilization, but only to the extent that such waste is

excluded by 40 CFR 261.3(c)(2), as amended June 5, 1984 [49 FR 23287], as indicated in Revision Checklist 8.

[Federal Authority: RCRA §3001; 40 CFR 261.3(c).]

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

E. [OPTIONAL: This is a reduced requirement.] State statutes and regulations define hazardous waste so as to not exclude household waste other than those household wastes excluded in 40 CFR 261.4(b)(1), as amended November 13, 1984 [49 FR 44980], and as indicated in Revision Checklist 9.

[Federal Authority: RCRA §3001; 40 CFR 261.4(b)(c).]

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

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

[Federal Authority: RCRA §§2002, 3001 and 40 CFR 260.11, 260.21 and 270.6(a) as amended December 4, 1984 (49 FR 47391) and March 16, 1987 (52 FR 8072).]

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

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

[Federal Authority: RCRA §§1006 and 3001(b).]

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

II. DEFINITION OF SOLID WASTE

A. State statutes and regulations define hazardous waste and impose management standards so as to control all the hazardous waste controlled under 40 CFR Parts 261, 264, 265 and 266 as amended January 4, 1985 [50 FR 614-669], April 11, 1985 [50 FR 14216-20], August 20, 1985 [50 FR 33541-43] and June 5, 1987 (52 FR 21306) as indicated in Revision Checklists 13 and 37.

[Federal Authority: RCRA §§3001, 3004]

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

III. MANAGEMENT OF DIOXIN WASTES

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

- (1) Dioxin wastes are listed and otherwise identified as hazardous wastes so as to encompass all such wastes controlled under 40 CFR 261.5(e), 261.7(b), 261.30(d), 261.31, and 261.33(f).
- (2) Special management and permitting standards for facilities managing dioxin wastes and prohibitions applicable to interim status facilities, as provided in 40 CFR Parts 264, 265, and 270.

[Federal Authority: §§3001, 3004; 40 CFR Parts 261, 264, 265 and 270 as amended January 14, 1985 (50 FR 1978-2006).]

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

IV. SATELLITE ACCUMULATION

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

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

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

V. APPLICABILITY OF INTERIM STATUS STANDARDS

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

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

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

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

VI. PAINT FILTER TEST

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

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

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

VII. NATIONAL UNIFORM MANIFEST

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

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

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

VIII. BIENNIAL REPORT

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

- (1) The biennial report contains the information indicated in 40 CFR 262.41(a).
- (2) Facilities must submit groundwater monitoring data annually to the State Director as indicated in 40 CFR 265.94.

[Federal Authority: RCRA §§3002, 3004; 40 CFR Parts 262 and 265 as amended January 28, 1983 (48 FR 3981-83) and August 8, 1986 (51 FR 28566).]

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

IX. WASTE MINIMIZATION

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

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

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

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

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

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

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

X. LIQUIDS IN LANDFILLS

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

- (1) Effective May 8, 1985, there is a ban on the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids in any landfill pursuant to 40 CFR 264.314 and 265.314 as amended July 15, 1985 and May 28, 1986.
- (2) Effective November 8, 1985, there is a ban on the placement of non-hazardous liquids in landfills unless the owner or operator satisfies the criteria set forth in 40 CFR 264.314(e), 265.314(e), as amended July 15, 1985 and May 28, 1986.
- (3) For bulk or non-containerized liquid wastes or wastes containing free liquids they may be placed in a landfill prior to May 8, 1985, only if the requirements of 40 CFR 264.314(a) and 265.314(a) are met.

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

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

XI. GROUND-WATER MONITORING

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

system or have liners that are periodically inspected, as indicated in Revision Checklist 17I.

[Federal Authority: RCRA §3004(p); 40 CFR 264.222, .252, .253, and .302 as amended July 15, 1985 (50 FR 28702).]

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

B. [OPTIONAL: This is a reduced requirement.] State statutes and regulations may allow variances from the ground-water monitoring requirements as provided in §3004(p). However, those variances must be restricted as provided in RCRA §3004(p).

[Federal Authority: RCRA §3004(p); 40 CFR 264.90(b).]

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

XII. BURNING AND BLENDING OF HAZARDOUS WASTES

A. State statutes and regulations provide the following requirements:

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

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

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

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

[Federal Authority: RCRA §§3004(q)-(s); 40 CFR 261.33; 266.34, July 15, 1985 (50 FR 28702).]

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

B.. [OPTIONAL: This is a reduced requirement.] State statutes and regulations provide exceptions to these requirements as specified in §§3004(q)-(s).

[Federal Authority: RCRA §§3004(q)-(s).]

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

XIII. CORRECTIVE ACTION

State statutes and regulations contain the following corrective action requirements as indicated in Revision Checklists 17L and 38.

- (1) Corrective action is required for releases of hazardous waste or constituents from any solid waste management unit at a facility seeking a permit, regardless of when the waste was placed in the unit, in all permits issued after November 8, 1984 as indicated in Revision Checklist 17L.

[Federal Authority: RCRA §3004(u); 40 CFR 264.90; .101; 270.60.]

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

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

[Federal Authority: RCRA §3004(v)(1).]

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

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

[Federal Authority: RCRA §3004(v)(2).]

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

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

[Federal Authority: RCRA §§3004(a)(6); (u); 40 CFR 264.90; .101.]

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

- (5) Additional information and engineering feasibility plan requirements regarding groundwater contamination detected at the time of Part B permit application as indicated in Checklist 38 (52 FR 23447, June 22, 1987 and 52 FR 33936, September 9, 1987).

[Federal Authority: Secs 1006, 2002, 3005, 3007 and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6974), unless otherwise noted.]

XIV. HAZARDOUS WASTE EXPORTS

State statutes and regulations require generators and transporters of hazardous waste destined for export outside the United States to comply with standards equivalent to those as indicated in Revision Checklist 31.

[Federal Authority: RCRA §3017; 40 CFR 262.50 as amended August 8, 1986 (51 FR 28664).]

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

XV. STANDARDS FOR FACILITIES

A. State statutes and regulations prohibit the land disposal of hazardous waste prohibited under 40 CFR Parts 264 and 265 as indicated in Revision Checklist 17E. Land disposal includes, but is not limited to, placement in landfills, surface impoundments, waste piles, deep injection wells, land treatment facilities, salt dome and bed formations and underground mines or caves. Deep injection well means a well used for the underground injection of hazardous wastes other than a well to which §7010(a) of RCRA applies.

[Federal Authority: RCRA §§3004(b)-(q); 40 CFR 264.18, 265.18.]

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

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

[Federal Authority: RCRA §3004(b)(4); 40 CFR 264.18 and 265.18.] Citation of Laws and Regulations; Date of Enactment and Adoption Remarks of the Attorney General

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

[Federal Authority: RCRA §3004(1); 40 CFR 266.23.]

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

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

[Federal Authority: RCRA §3004(t).]

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

E. State statutes and regulations require the permittee to take steps to minimize releases to the environment in accordance with 40 CFR Part 270.30(d) as amended September 1, 1983, as indicated in Revision Checklist 2.

[Federal Authority: RCRA §3005(c).]

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

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

[Federal Authority: RCRA §3004; 40 CFR 265.310, .315 as amended April 23, 1985 (50 FR 16044).]

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

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

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

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

H. [OPTIONAL: This is a reduced requirement.] State statutes and regulations allow companies that treat store or dispose of hazardous waste to demonstrate alternate coverage for liability insurance in the form of a corporate guarantee as indicated in Revision Checklist 27.

[Federal Authority: RCRA §§2002, 3004, and 3005, 40 CFR 264.147 and 264.151 as amended July 11, 1986 (51 FR 25350).]

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

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

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

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

XVI. REQUIREMENTS FOR PERMITS

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

[Federal Authority: RCRA §3005(a), 40 CFR 270.10(f)(3).]

B. State statutes and regulations require review of land disposal permits every five years and modification of such permits as necessary to assure compliance with the requirements in Parts 264, 266, and 270, as indicated in Revision Checklist 17N.

[Federal Authority: RCRA §3005(c)(3), 40 CFR 270.41(a)(6), .50(d).]

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

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

[Federal Authority: RCRA §3005(c)(3); 40 CFR 270.32]

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

D. State statutes and regulations require that:

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

[Federal Authority: RCRA §3005(e); 40 CFR 270.73(c).]

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

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

[Federal Authority: RCRA §3005(e); 40 CFR 270.73(d).]

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

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

[Federal Authority: RCRA §3005(c)(2)(C); 40 CFR 270.73(e).]

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

- (4) Interim status terminates for any facility other than a land disposal or an incineration facility by 11/8/92 unless the owner/operator submits a Part B application by 11/8/88 as indicated in Revision Checklist 17P.

[Federal Authority: RCRA §3005(c)(2)(C); 40 CFR 270.73(f).]

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

E. [OPTIONAL: This is a reduced requirement.] State statutes and regulations allow facilities to qualify for interim status if they (1) are in existence on the effective date of statutory or regulatory changes that render the facility subject to the requirement to have a permit and (2) comply with §270.70(a) as indicated in Revision Checklist 17P.

[Federal Authority: RCRA §3005(e); 40 CFR 270.73(d).]

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

F. State statutes and regulations provide that facilities may not qualify for interim status under the State's analogue to Section 3005(e) if they were

previously denied a Section 3005(c) permit or if authority to operate the facility has been terminated as indicated in Revision Checklist 17P.

[Federal Authority: RCRA §3005(c)(3); 40 CFR 270.70(c).]

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

G. [OPTIONAL: This is a reduced requirement.] State statutes and regulations allow the issuance of a one-year research development, and demonstration permit (renewable 3x) for any hazardous waste treatment facility which proposes an innovative and experimental hazardous waste treatment technology or process not yet regulated as indicated in Revision Checklist 17Q. If adopted, however, the State must require the facility to meet RCRA's financial responsibility and public participation requirements and retain authority to terminate experimental activity if necessary to protect health or the environment.

[Federal Authority: RCRA §3005(g); 40 CFR 270.65]

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

H. State statutes and regulations require landfills, surface impoundments, land treatment units, and waste piles that received waste after July 26, 1982 and which qualify for interim status to comply with the groundwater monitoring, unsaturated zone monitoring, and corrective action requirements applicable to new units at the time of permitting as indicated in Revision Checklist 17L.

[Federal Authority: RCRA §3005(i); 40 CFR 264.90(a).]

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

I. State statutes and regulations require:

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

[Federal Authority: RCRA §3005(j)(8).]

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

- (2) Surface impoundments to comply with the double liner, leachate collection and ground-water monitoring requirements if the Agency

allows a hazardous waste prohibited from land disposal under §3004(d), (e) or (g) to be placed in such impoundments.

[Federal Authority: RCRA §3005(j)(11).]

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

- (3) [OPTIONAL: This is a reduced requirement.] State statutes and regulations may allow variances from the above requirements as provided in RCRA §3005(j)(2-9) and (13). However, the availability of such variances must be restricted as provided in RCRA §3005(j).

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

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

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

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

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

XVII. MINIMUM TECHNOLOGICAL REQUIREMENTS

A. State statutes and regulations require that new units, expansions, and replacements of interim status waste piles meet the requirements for a single liner and leachate collection system in regulations applicable to permitted waste piles as indicated in the Revision Checklist 17H.

[Federal Authority: RCRA §3015(a); CFR 265.254]

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

B. State statutes and regulation require that:

- (1) New units, expansions, and replacement units at interim status landfills and surface impoundments and permitted landfills and surface impoundments meet the requirements for double liners and leachate collection systems applicable to new permitted landfills and surface impoundments in 40 CFR 264.221 and .301 and 265.221 and .301 as indicated in Revision Checklist 17H.

- (2) [Optional: This is a reduced requirement.] Facilities which comply in good faith need not retrofit at permit issuance unless the liner is leaking as provided in §§265.221(e) and 265.301(e) as indicated in Revision Checklist 17H.
- (3) Variances from the above requirements are optional. However, the availability of such variances is restricted as provided in §§265.221(c) and 265.301(c) as indicated in Revision Checklist 17H.

[Federal Authority: RCRA §3015(b); 40 CFR 264.221 and 265.221.]

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

XVIII. EXPOSURE ASSESSMENTS

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

[Federal Authority: RCRA §3019(a); 40 CFR 270.10(j).]

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

[Federal Authority: RCRA §3019(b).]

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

XIX. AVAILABILITY OF INFORMATION

State statutes and regulations provide that:

- (1) All records shall be available to the public unless they are exempt from the disclosure requirements of the Federal FOIA, 5 U.S.C. 552;
- (2) All nonexempt records will be available to the public upon request regardless of whether any justification or need for such records has been shown by the requestor;
- (3) The same types of records would be available to the public from the State as would be available from EPA. [In making this certification, the Attorney General should be aware of the types of documents EPA generally releases under the FOIA, subject to claims of business confidentiality: permit applications; biennial reports from facilities; closure plans; notification of a facility closure; contingency plan incident reports; delisting petitions; financial responsibility instruments; ground-water monitoring data (note that

exemptions 5 U.S.C.552(b)(9) of the FOIA applies to such wells as oil and gas, rather than to ground-water wells); transporter spill reports; international shipment reports; manifest exception, discrepancy and unmanifested waste reports; facility EPA identification numbers; withdrawal requests; enforcement orders; and, inspection reports]; and,

- (4) Information is provided to the public in substantially the same manner as EPA as indicated in 40 CFR Part 2 and the Revision Checklist in Appendix D of the SCRAM. [OPTIONAL: Where the State agrees to implement the selected provisions through the use of a Memorandum of Agreement (MOA) the Attorney General must certify that: "The State has the authority to enter into and carry out the MOA provisions and there are no State statutes (e.g., State Administrative Procedures Acts) which require notice and comment or promulgation of regulations for the MOA procedures to be binding.]
- (5) [OPTIONAL: The State statutes and regulations protect Confidential Business information (CBI) to the same degree as indicated in 40 CFR 2 and the Revision Checklist in Appendix D of the SCRAM. Note, that States do not have to protect CBI, to satisfy 3006(f). However, if a State does extend protection to CBI then it cannot restrict the release of information that EPA would require to be disclosed.]

[FEDERAL Authority: RCRA Section 3006(f); 40 CFR Section 271.17(c).]

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

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

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

- (1) Waste fuels and used oil fuels are identified as solid wastes so as to encompass all such wastes controlled under 40 CFR 261.3, 261.5 and 261.6.
- (2) Special management standards for generators transporters, marketers and burners of hazardous waste and used oil burned for energy, as provided in 40 CFR 264.340, 265.340, 266.30-35 and 266.40-45.

[Federal Authority: Sections 3001, 3004, 3014(a); 40 CFR Parts 261, 264, 265 and 266 as amended November 29, 1985 [50 FR 49164 - 49212], November 19, 1986 [51 FR 41900 - 41904] and April 13, 1987 [52 FR 11819 - 11822].]

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

B. State statutes and regulations provide the authority to obtain criminal penalties for violations of the waste fuel and used oil fuel requirements, as provided in 40 CFR 266.40-45.

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

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

XXI. LAND DISPOSAL RESTRICTIONS

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

[Federal Authority: §3004(d)-(k) and (m); 40 CFR Parts 260, 261, 262, 263, 264, 265, 268 and 270 as amended on November 7, 1986 (51 FR 40572) and as amended on June 4, 1987 (52 FR 21010).]

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

XXII. MEMORANDUM OF AGREEMENT (MOA)

[If the State uses the MOA to satisfy Federal procedural requirements, the Attorney General must certify the following:

- (1) The State has the authority to enter into the agreement,
- (2) The State has the authority to carry out the agreement, and
- (3) No applicable State statute (including the State Administrative Procedure Act) requires that the procedure be promulgated as a rule in order to be binding.

Seal of Office

Signature

Name (Type or Print)

Title

Date

OSWER DIRECTIVE #9541.00-93

Attachment B

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

HAZARDOUS WASTE MANAGEMENT PROGRAM: CODIFICATION OF APPROVED
STATE HAZARDOUS WASTE PROGRAM FOR [insert name of State]

AGENCY: Environmental Protection Agency

ACTION: Proposed/Final Rule

SUMMARY: The Resource Conservation and Recovery Act of 1976² as amended (RCRA) authorizes the U.S. Environmental Protection Agency (EPA) to grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. 40 CFR Part 272 codifies EPA's prior authorization of State programs and incorporates by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA Sections 3008, 3013, and 7003. This [[proposal is to codify] or [rule codifies]] the [insert State name] authorized State program in Part 272.

DATES: [For proposed rule: Comments on [insert State name] authorized program proposed codification must be received by the close of business [insert date 30 days after publication]]. [For final rule: The codification is effective [insert date 14 days after publication]. The incorporation by reference of certain [name of State] statutes and regulations was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a).

[ADDRESSES: For proposed rule: Written comments should be sent to [insert name, address, and telephone number of the appropriate Regional contact]].

FOR FURTHER INFORMATION CONTACT: [Insert name, address, and telephone number of the appropriate Regional contact].

SUPPLEMENTARY INFORMATION

Background

Section 3006 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6926 et. seq., allows the U.S. Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. On [insert date of final determination], EPA published a Federal Register notice announcing its decision to grant final authorization to [insert State name]. (See FR). [Describe program revisions for which State is authorized and current [proposed] revisions if applicable].

Since that time, EPA has decided to codify its approval of State programs in Part 272 of Title 40, Code of Federal Regulations (CFR) and to incorporate by reference therein the State statutes and regulations that EPA will enforce under Sections 3008, 3013, and 7003 of RCRA. Today's [proposed] codification reflects the State program that was in effect when EPA granted [insert State name] final authorization under Section 3006(b) for its hazardous waste program and authorized revisions thereto and the revisions [[being authorized for today] or [proposed for authorization]].

This effort will provide clearer notice to the public of the scope of the authorized program in each State. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Pub. L. 98-616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By codifying the authorized [insert State name] program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in [insert State name], the status of Federally approved requirements of the [insert State name] program will be readily discernible.

The Agency will only codify for enforcement purposes those provisions of the [insert State name] hazardous waste management program for which authorization approval has been granted by EPA. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements and not the State analogs.

To codify the [insert State name] authorized hazardous waste program, EPA [[proposes to add] or [has added]] Subpart [] to Part 272 of Title 40 of the CFR. Subpart [] has previously been reserved for [insert State name]. [[As proposed, section, or

[Section]] 272. ____ 1(a)(1) [[will codify for enforcement purposes or [codifies for enforcement purposes]] the State statutes and regulations. Section ____ also codifies the Memorandum or Agreement, the Attorney General's Statement and the Program Description which are authorized and made part of the hazardous waste management program under Subtitle C of RCRA.

The Agency retains the authority under Section 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities and the Federal Administrative Procedure Act rather than the State authorized analogs to these requirements. Therefore, the Agency does not intend to codify for purposes of enforcement such particular, authorized [insert State name] enforcement authorities. [Proposed] [S]ection 272. ____ 1(a)(2) lists those authorized [insert State name] authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C. See 40 CFR Section 271.1(i). As a result, State provisions which are "broader in scope" than the Federal program are not codified for purposes of enforcement in Part 272. Section 272. ____ 1(a)(3) of the [proposed] codification simply lists for reference and clarity the [insert State name] statutory and regulatory provisions which are "broader in scope" than the Federal

program and which are not, therefore, part of the authorized program [[proposed for codification] or [being codified today]]. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

As noted above, the Agency is not [[proposing to amend] or [amending]] Part 272 to include HSWA requirements and prohibitions that are immediately effective in [insert State name] and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA. (See 50 FR 28702, July 15, 1985.) Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and codified State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibition by the deadlines set forth in 40 CFR Section 271.21, and then to seek authorization for those revisions pursuant to 40 CFR Section 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the Part 272 codification every time a new HSWA provision takes effect under the authority of RCRA Section 3006(g), EPA will wait until the State receives authorization for its analog

to the new HSWA provision before amending the State's Part 272 codification. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The codification of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It [[proposes to codify] or [codifies]] the decision already made to authorize the [insert State name] program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq., Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects In 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated:

Regional Administrator

For the reasons set forth in the preamble, 40 CFR Part 272 is [proposed to be] revised as follows:

PART 272 - APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority for Part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. The table of contents for Part 272 is revised to read as follows:

SUBPART [insert appropriate letter(s) and appropriate #s] -
[insert State name]

272. _____ State Authorization

272. _____ 1 State-Administered Program: Final Authorization

272. _____ 2 State-Administered Program: Interim Authorization

272. _____ 3 - 272. _____ [Reserved]

3. 40 CFR Part 272, Subpart [insert appropriate letter and appropriate #s] is amended to read as follows:

272. _____ State Authorization

(a) The State of [insert State name] is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6921 et. seq., subject to the Hazardous and Solid Waste Amendments of 1984 (HSWA), (Pub. L. 98-616, Nov. 8, 1984), 42 U.S.C. 6926(c) and (g)). The Federal

program for which a State may receive authorization is defined in 40 CFR Part 271. The State's program, as administered by the [insert State lead agency] was approved by EPA pursuant to 42 U.S.C. 6926(b) and Part 271 of this Chapter. EPA's approval was effective on [insert appropriate Federal Register reference].

(b) [insert State name] is not authorized to implement any HSWA requirements in lieu of EPA unless EPA has explicitly indicated its intent to allow such action in a Federal Register notice granting [insert State name] authorization.

(c) [insert State name] has primary responsibility for enforcing its hazardous waste program. However, EPA retains the authority to exercise its enforcement authorities under Sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, and 6973, as well as under other Federal laws and regulations.

(d) [insert] State name] must revise its approved program to adopt new changes to the Federal Subtitle C program in accordance with Section 3006(b) of RCRA and 40 CFR Part 271, Subpart A.

[Insert State name] must seek final authorization for all program revisions pursuant to Section 3006(b) of RCRA, but, on a temporary basis, may seek interim authorization for revisions required by HSWA pursuant to Section 3006(g) of RCRA, 42 U.S.C. 6926(g). If [insert State name] obtains final authorization for the revised requirements pursuant to Section 3006(g), the newly authorized provisions will be listed in 272. _____ 1 of this Subpart. If [insert State name] obtains interim authorization for the revised requirements pursuant to Section 3006(g), the newly authorized provisions will be listed in 272. _____ 2.

272. _____ 1 State-Administered Program: Final Authorization Pursuant to Section 3006(b) of RCRA, 42 U.S.C. 6926(b):

[Insert State name] has final authorization for the following elements submitted to EPA in [insert State name] program application for final authorization and approved for by EPA on _____. [Insert Final Authorization for Base Program and any program revisions].

(a) State Statutes and Regulations. (1) The requirements in the [insert State name] statutes and regulations cited in this paragraph are incorporated by reference and codified as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a).

(i) [Insert reference for statutory authorities that are part of the approved program under RCRA.]

(ii) [Insert reference for hazardous waste rules that are a part of the approved program under RCRA.]

(2) The following statutes and regulation, although not codified herein for enforcement purposes, are part of the authorized State program.

(i) [Insert reference for statutory authorities that are not to be incorporated by reference but are part of the approved program.]

(ii) [Insert reference for regulations that are not to be incorporated by reference but are part of the approved program under RCRA.]

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not codified herein for enforcement purposes.

(i) [Insert statutory provisions, if any, which are broader in scope.]

(ii) [Insert regulatory provisions, if any, which are broader in scope.]

(b) Memorandum of Agreement. The Memorandum of Agreement between EPA Region ____ and the [insert State lead agency], signed by EPA Regional Administrator on [insert appropriate date] is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq.

(c) Statement of Legal Authority. [(1)] "Attorney General's Statement for Final Authorization", signed by the Attorney General of [insert State name] on [insert appropriate date] is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq.

[(2)] Letter from the Attorney General of [insert State name] to EPA, [insert appropriate date].

(d) Program Description. The Program Description and any other materials submitted as part of the original application or as supplements thereto are codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq. 272.____2 State-Administered Program: Interim Authorization. [Insert paragraph similar to 272.____1

above. These paragraphs will reflect approved program revisions for interim authorization.]

MODEL H

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

HAZARDOUS WASTE MANAGEMENT PROGRAM: CODIFICATION OF APPROVED
STATE HAZARDOUS WASTE PROGRAM FOR [insert name of State]

AGENCY: Environmental Protection Agency

ACTION: Immediate Final Rule

SUMMARY: The Resource Conservation and Recovery Act of 1976 as amended (RCRA) authorizes the U.S. Environmental Protection Agency (EPA) to grant Final Authorization to States to operate their hazardous waste management programs in lieu of the Federal program. 40 CFR Part 272 codifies EPA's prior authorization of State programs and incorporates by reference those provisions of the State statutes and regulations that EPA will enforce under RCRA Sections 3008, 3013, and 7003. Thus, EPA intends to codify the [insert State name] authorized State program in Part 272.

DATES: The codification of [insert State's name] authorized hazardous waste program shall be effective [insert date 60 days after publication] unless EPA publishes a prior Federal Register action withdrawing this immediate final rule. All comments on the [insert State name] authorized program codification must be received by the close of business [insert date 30 days after publication].

ADDRESSES: Written comments should be sent to [insert name, address, and telephone number of the appropriate Regional contact].

FOR FURTHER INFORMATION CONTACT: [Insert name, address, and telephone number of the appropriate Regional contact].

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6926 et. seq., allows the U.S. Environmental Protection Agency (EPA) to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. On [insert date of final determination], EPA published a Federal Register notice announcing its decision to grant final authorization to [insert State name]. (See _____ FR _____.) [If applicable describe program revisions for which State is authorized].

Since that time, EPA has decided to codify its approval of State programs in Part 272 of Title 40, Code of Federal Regulations (CFR) and to incorporate by reference therein the State statutes and regulations that EPA will enforce under Sections 3008, 3013, and 7003 of RCRA. The intended codification reflects the State program that was in effect when EPA granted [insert State name] final authorization under Section 3006(b) for its hazardous waste program [and authorized revisions thereto].

This effort will provide clearer notice to the public of the scope of the authorized program in each State. Such notice is particularly important in light of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA), Pub. L. 98-616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By codifying the authorized [insert State name] program and by amending the Code of Federal Regulations whenever a new or different set of requirements is authorized in [insert State name], the status of Federally approved requirements of the [insert State name] program will be readily discernible.

The Agency will only codify for enforcement purposes those provisions of the [insert State name] hazardous waste management program for which authorization approval has been granted by EPA. Concerning HSWA, some State requirements may be similar to HSWA requirements that are in effect under Federal statutory authority in that State. However, a State's HSWA-type requirements are not authorized and will not be codified into the CFR until the Regional Administrator publishes his final decision to authorize the State for specific HSWA requirements and not the State analogs.

To codify the [insert State name] authorized hazardous waste program, EPA intends to add Subpart [] to Part 272 of Title 40 of the CFR. Subpart [] has previously been reserved for [insert State name]. Section 272. _____ 1(a)(1) intends to codify for

enforcement purposes the State statutes and regulations. Section _____ also codifies the Memorandum of Agreement, the Attorney General's Statement and the Program Description which are authorized and made part of the hazardous waste management program under Subtitle C of RCRA.

The Agency retains the authority under Section 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities and the Federal Administrative Procedure Act rather than the State authorized analogs to these requirements. Therefore, the Agency does not intend to codify for purposes of enforcement such particular, authorized [insert State name] enforcement authorities. [Proposed] [S]ection 272. ____ 1(a)(2) lists those authorized [insert State name] authorities that would fall into this category.

The public also needs to be aware that some provisions of the State's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions are not part of the RCRA Subtitle C program because they are "broader in scope" than RCRA Subtitle C. See 40 CFR Section 271.1(i). As a result, State provisions which are "broader in scope" than the Federal program are not codified for purposes of enforcement in Part 272. Section 272.____ 1(a)(3) of the [proposed] codification simply lists for reference and clarity the [insert State name] statutory and regulatory provisions which are "broader in scope" than the Federal

program and which are not, therefore, part of the authorized program [[proposed for codification] or [being codified today]]. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

As noted above, the Agency is not [[proposing to amend] or [amending]] Part 272 to include HSWA requirements and prohibitions that are immediately effective in [insert State name] and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective. A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA. (See 50 FR 28702, July 15, 1985.) Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and codified State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibition by the deadlines set forth in 40 CFR Section 271.21, and then to seek authorization for those revisions pursuant to Section 271. EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the Part 272 codification every time a new HSWA provision takes effect under the authority of RCRA Section 3006(g), EPA will wait until the State receives authorization for its analog

to the new HSWA provision before amending the State's Part 272 codification. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The codification of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. It [[proposes to codify] or [codifies]] the decision already made to authorize the [insert State name] program and has no separate effect on handlers of hazardous waste in the State or upon small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq., Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects In 40 CFR Part 272

Administrative practice and procedure, Confidential business information, Hazardous waste transportation, Hazardous waste, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated:

Regional Administrator

For the reasons set forth in the preamble, 40 CFR Part 272 is [proposed to be] revised as follows:

PART 272 - APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority for Part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. The table of contents for Part 272 is revised to read as follows:

SUBPART [insert appropriate letter(s) and appropriate #s] -
[insert State name]

272. _____ State Authorization

272. _____ 1 State-Administered Program: Final Authorization

272. _____ 2 State-Administered Program: Interim Authorization

272. _____ 3 - 272. _____ [Reserved]

3. 40 CFR Part 272, Subpart [insert appropriate letter and appropriate #s] is amended to read as follows:

272. _____ State Authorization

(a) [insert State name] is authorized to administer and enforce a hazardous waste management program in lieu of the Federal program under Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. 6921 et. seq., subject to the Hazardous and Solid Waste Amendments of 1984 (HSWA), (Pub. L.98-616, Nov. 8, 1984), 42 U.S.C. 6926(c) and (g)). The Federal program for which a State may

receive authorization is defined in 40 CFR Part 271. The State's program, as administered by the [insert State lead agency] was approved by EPA pursuant to 42 U.S.C. 6926(b) and Part 271 of this Chapter. EPA's approval was effective on [insert appropriate Federal Register reference].

(b) [insert State name] is not authorized to implement any HSWA requirements in lieu of EPA unless EPA has explicitly indicated its intent to allow such action in a Federal Register notice granting [insert State name] authorization.

(c) [insert State name] has primary responsibility for enforcing its hazardous waste program. However, EPA retains the authority to exercise its enforcement authorities under Sections 3007, 3008, 3013, and 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, and 6973, as well as under other Federal laws and regulations.

(d) [insert] State name] must revise its approved program to adopt new changes to the Federal Subtitle C program in accordance with Section 3006(b) of RCRA and 40 CFR Part 271, Subpart A.

[Insert State name] must seek final authorization for all program revisions pursuant to Section 3006(b) of RCRA, but, on a temporary basis, may seek interim authorization for revisions required by HSWA pursuant to Section 3006(g) of RCRA, 42 U.S.C. 6926(g). If [insert State name] obtains final authorization for the revised requirements pursuant to Section 3006(g), the newly authorized provisions will be listed in 272. _____ 1 of this Subpart. If [insert State name] obtains interim authorization for the revised requirements pursuant to Section 3006(g), the newly authorized provisions will be listed in 272. _____ 2.

272. _____ 1 State-Administered Program: Final Authorization
Pursuant to Section 3006(b) of RCRA, 42 U.S.C. 6926(b):

[Insert State name] has final authorization for the following elements submitted to EPA in [insert State name] program application for final authorization and approved for by EPA on _____. [Insert Final Authorization for Base Program and any program revisions].

(a) State Statutes and Regulations. (1) The requirements in the [insert State name] statutes and regulations cited in this paragraph are incorporated by reference and codified as part of the hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a).

(i) [Insert reference for statutory authorities that are part of the approved program under RCRA.]

(ii) [Insert reference for hazardous waste rules that are a part of the approved program under RCRA.]

(2) The following statutes and regulation, although not codified herein for enforcement purposes, are part of the authorized State program.

(i) [Insert reference for statutory authorities that are not to be incorporated by reference but are part of the approved program.]

(ii) [Insert reference for regulations that are not to be incorporated by reference but are part of the approved program under RCRA.]

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not codified herein for enforcement purposes.

(i) [Insert statutory provisions, if any, which are broader in scope.]

(ii) [Insert regulatory provisions, if any, which are broader in scope.]

(b) Memorandum of Agreement. The Memorandum of Agreement between EPA Region ____ and the [insert State lead agency], signed by the EPA Regional Administrator on [insert appropriate date] is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq.

(c) Statement of Legal Authority. [(1)] "Attorney General's Statement for Final Authorization", signed by the Attorney General of [insert State name] on [insert appropriate date] is codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq.

[(2)] Letter from the Attorney General of [insert State name] to EPA, [insert appropriate date].

(d) Program Description. The Program Description and any other materials submitted as part of the original application or as supplements thereto are codified as part of the authorized hazardous waste management program under Subtitle C of RCRA, 42 U.S.C. 6921 et. seq. 272.____2 State-Administered Program: Interim Authorization. [Insert paragraph similar to 272.____1]

above. These paragraphs will reflect approved program revisions for interim authorization.]