



DIRECTIVE NUMBER: 9542.00-4

TITLE: (PIG-81-7) Final Determinations on State
ations for Interim Authorization Action Memo
ederal Register Notice

EFFECTIVE DATE: 12/01/80

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

OSWER OSWER OSWER
/E DIRECTIVE DIRECTIVE D



United States Environmental Protection Agency
Washington, DC 20460

OSWER Directive Initiation Request

Field Directive Number
9542.00-4

Originator Information

Name of Contact Person
SPB

Main Code - Branch
State Programs

Telephone Number
382-2210

Lead Office

- OERR
- OSW

- OUST
- OWPE
- AA-OSWER

Approved for Review

Signature of Office Director

Date

Title

(PIG-81-7) Final Determinations on State Applications for Interim Authorization: Action Memo and Federal Register Notice.

Summary of Directive

Memo answers the following. What subjects should be addressed in the Action Memo and Federal Register notice of final determination on State applications for interim authorization? What is the process for development, review and dissemination of these documents?

Key Words:

State Authorization

Type of Directive (Manual, Policy Directive, Announcement, etc.)

Status

Draft

New

Final

Revision

Does this Directive Supersede Previous Directives? Yes No

Does It Supplement Previous Directives? Yes No

If "Yes" to Either Question, What Directive (number, title)

Review Plan

AA-OSWER

OUST

OECM

Other (Specify)

OERR

OWPE

OGC

OSW

Regions

OPPE

This Request Meets OSWER Directives System Format

Signature of Lead Office Directives Officer

Date

Signature of OSWER Directives Officer

Date

9042 00-4



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

DEC 1

PIGS - 81 - 7

MEMORANDUM

SUBJECT: Final Determinations on State Applications for
Interim Authorization: Action Memorandum and
Federal Register Notice

FROM: Steffen W. Plehn *Steffen Plehn*
Deputy Assistant Administrator
for Solid Waste (WH-562)

R. Sarah Compton *R. Sarah Compton*
Deputy Assistant Administrator
for Water Enforcement (EN-335)

TO: PIGS Addressees

ISSUE

What subjects should be addressed in the Action Memorandum and Federal Register notice of final determination on State applications for interim authorization? What is the process for development, review and dissemination of these documents?

DISCUSSION

The basic requirements and procedures for final decision-making on State applications for interim authorization are listed in 40 CFR 123.135(b), EPA Delegation 8-7 (as amended), and pages 1.2-8 and 1.2-9 of the RCRA State Interim Authorization Guidance Manual. This guidance memorandum presents these requirements and provides additional information on this subject, including examples of the Federal Register notice and Action Memorandum.

40 CFR 123.135(b) provides that:

"Within 90 days of the notice in the Federal Register required by paragraph (a)(1) of this section, the Administrator shall make a final determination whether or not to approve the State's program taking into account any comments submitted. The Administrator will give notice of this final determination in the Federal Register and in accordance with §123.39(a)(1). The notification shall include a concise statement of the reasons for this determination, and a response to significant comments received."

EPA Delegation 8-7, as amended, delegates this decision-making authority to the Regional Administrator. It also provides that:

"Before issuing, denying or withdrawing interim or final authorization for a State hazardous waste program under Section

3006 of RCRA, the Regional Administrator must obtain the concurrences of the Assistant Administrator for Water and Waste Management, the Assistant Administrator for Enforcement and the General Counsel. If these Headquarters offices do not respond in writing within ten working days from receipt of the action memorandum and draft Federal Register notice, the RA may assume these offices' concurrence."

The RCRA State Interim Authorization Guidance Manual provides a discussion of the Action Memorandum preparation and review process:

"After the Headquarters Review Team comments on the responses to the public comments, an Action Memorandum for the Regional Administrator will be prepared by the State Delegation Coordinator and the Regional Counsel. This Action Memorandum should contain a specific recommendation with respect to the approval of the application.

The Action Memorandum should highlight specific questions or problem areas and provide some insight into key agreements reached during the drafting stage. The Action Memorandum should provide space for Headquarters and Regional Office concurrence sign-offs. An additional item to be included in the package which goes to the Regional Administrator is a Federal Register Official Notice of the Approval.

It is important that the Action Memorandum represent the recommendations of the Regional Workgroup members and the Headquarters Review Team in order to expedite the concurrence sign-off process.

Each Regional Workgroup member and Headquarters Review Team member has the responsibility of briefing his/her respective Division Director or Office Director on the final recommendation in advance of the transmittal of the Action Memorandum to ensure that there will not be any unnecessary delays in the concurrence process. Coordination of the concurrence sign-off in Washington remains with the Headquarters Review Team Leader and the State Delegation Coordinator in the Region.

In the event the concurring offices cannot agree on the final determination, it is the Regional Administrator's responsibility to resolve the problem with the Administrator."

Several questions have been raised concerning implementation of these requirements, such as: What information should be in the Action Memorandum? How should the Federal Register notice be worded? Who sends the Action Memorandum and who receives it? How are HQ officials involved in the review and concurrence process? The remainder of this memorandum provides answers to these questions.

DECISION

The Action Memorandum should contain the following items noted in the Manual:

- ° Highlights of specific questions or problem areas, raised in EPA review or significant public comments;
- ° Discussion of key agreements reached during the drafting of the State's application (e.g., how the State responded to EPA comments);
- ° A specific recommendation with respect to approval of the application; and
- ° Spaces for the concurrences of the Assistant Administrators and General Counsel and for the signature of the RA.

A draft Federal Register notice of final determination on the application should be attached to the Action Memorandum. The Federal Register notice must contain a concise statement of the reasons for the Agency's determination on the State application and concise responses to significant comments received from the public. The discussion of reasons for the decision should indicate that the State does or does not satisfy the 40 CFR 123 Subpart F requirements for Phase I of interim authorization. The response to public comments should especially note any comments received in regard to "Major Issues of Interest to EPA" listed in the earlier Federal Register notice of public comment and public hearing. The effective date of the authorization can be the date of the notice's publication or a later date and should be specified in the Federal Register notice. The notice should be double-spaced, as required by Federal Register procedures.

Attached are copies of the Action Memorandum and Federal Register notice on Arkansas' complete application. These documents provide an example of how to cover the topics discussed in this memorandum. It should be noted, however, that the Arkansas application and public hearing were relatively non-controversial. In States where a larger number of critical issues have been raised or where the authorization decision is less straightforward, it may be necessary to expand the discussion of specific questions, comments, and agreements reached during earlier stages of the process. (We wish to thank Region VI for the competent preparation of the Arkansas documents.)

As the Guidance Manual indicates, the State Delegation Coordinator and Regional Counsel should prepare the Action Memorandum package. These papers should reflect the recommendations of both the Regional Workgroup and Headquarters Review

Team if possible. Such a consensus will expedite the concurrence process. The package should receive the concurrences of the Regional Workgroup on the yellow file copy before being transmitted to the RA.

We suggest that the Action Memorandum be addressed from the RA to the two Assistant Administrators and the General Counsel, since the concurrences of these HQ offices are being solicited. After the RA has reviewed and signed the Memorandum, it should be transmitted along with the draft Federal Register notice to the HQ Review Team Leader. This person will provide copies to the two Assistant Administrators, the General Counsel and HQ Review Team members on the day the package is received. The 10-day HQ review period will take place concurrently in all three offices. Because of the brevity of the review period, HQ offices should promptly identify any remaining major problems and immediately raise them with their AA/GC and Regional counterparts. This will expedite attempts to resolve the problem and develop approaches agreeable to all parties. The HQ Review Team Leader will collect the three HQ offices' responses and return them to the Region.

If any of the HQ offices do not respond within the 10 working days the RA may assume the office's concurrence with the Region's recommendation. (The HQ Review Team Leader will magnafax HQ responses to the RA if necessary to meet the 10-day deadline.) If one or more of the HQ offices nonconcur with the recommendation, and no resolution can be reached, it is the RA's responsibility to resolve the problem with the Administrator. It is our hope, however, that through the review process discussed above, disagreements can be resolved and formal non-concurrences and appeals to the Administrator can be avoided in most cases.

After obtaining HQ concurrences, the Region's State Delegation Coordinator should send an original signed Federal Register notice and four copies to:

Federal Register Office (PM-223)
U.S. Environmental Protection Agency
401 M Street S.W.
Washington, D.C. 20460

Attention: Carolyn Ward

A copy of the signed Federal Register notice should be sent at the same time to the HQ Review Team Leader.

The EPA Federal Register office will add appropriate log and billing numbers and transmit the notice for publication. Generally, this office can review and transmit the notice within a day after receipt. The notice should be published within an additional three working days. If you need information or expedited treatment, call Carolyn Ward at FTS 287-0778.

In addition to the Federal Register notice, the final determination must be announced in accordance with 40 CFR 123.39(a)(1). This section requires that a notice be:

"...circulated in a manner calculated to attract the attention of interested persons including: (i) publication in enough of the largest newspapers in the State to attract statewide attention; and (ii) mailing to persons on the State agency mailing list and to any other persons whom the Agency has reason to believe are interested."

Finally, we wish to call attention to the requirement in 40 CFR 123.135(b) that the final determination be made within 90 days of the initial Federal Register notice of public comment. We will define "final determination" as the date on which the Federal Register notice of final determination is signed by the RA following the completion of the HQ concurrence process. The preparation, review and final approval of the Action Memorandum and Federal Register notice must be accomplished within this 90 day period.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DATE October 30, 1980

SUBJECT Phase I Interim Authorization of Arkansas' Hazardous
Waste Management Program -- ACTION MEMORANDUM

FROM *Adlene Harrison*
Adlene Harrison
Regional Administrator

TO Eckhardt C. Beck
Assistant Administrator for
Water and Waste Management (WH-563)

Michele Beigel Corash
General Counsel (A-130)

Jeffrey G. Miller
Acting Assistant Administrator
for Enforcement (EN-329)

ISSUE

In the attached Federal Register notice, I grant Phase I interim authorization of the State of Arkansas' hazardous waste management program according to section 3006 of the Resource Conservation and Recovery Act of 1976 (RCRA) and 40 CFR Part 123. Your concurrence is required before we can publish the notice in the Federal Register.

DISCUSSION

The State of Arkansas submitted its draft application for Phase I interim authorization on July 30, 1980. In our comments to the State, we identified four major problem areas, namely (1) deficiencies regarding the right of citizens to intervene in enforcement actions; (2) restrictions on availability to EPA of State program information without restriction; (3) lack of detail in the Authorization Plan; and (4) limitations in the Memorandum of Agreement concerning EPA's oversight responsibilities.

The State submitted its final application on September 11, 1980. The application remedied most problems in the first area. However, EPA desired additional assurances that departmental policy on public participation in enforcement actions would be endorsed by the Commission on Pollution Control and Ecology. Therefore, on September 26, 1980, the Commission adopted a resolution endorsing the Federal requirements for public participation in enforcement actions.

In a letter dated September 29, 1980, the attorney authorized to sign the Attorney General's statement stated that "upon request from the EPA, any information obtained or used by this Department in the administration of the RCRA program may be made available to EPA upon its request without any restrictions except those which are placed upon the EPA by any applicable laws or regulations." This letter clarified all stated reservations to possible restrictions on EPA's access to State program information.

The Authorization Plan submitted with the final application specifies with sufficient detail the actions the State will take to seek and obtain Phase II Interim Authorization and Final Authorization.

The Memorandum of Agreement was also revised to include EPA's comments. In addition, the State submitted additional information about the Arkansas Transportation Commission's portion of the State hazardous waste program, including an elaboration of the Commission's responsibilities, enforcement authority, and coordination procedures.

EPA gave the public sufficient time to comment on the State's application. We held a public hearing on October 20, 1980. We also held open the public comment period until October 27, 1980. The three comments we received were presented at the public hearing.

An industry representative requested that the procedures for handling confidential information be revised so that EPA would request such information directly from the firm. The commenter was concerned that adequate protection of such information be provided.

In our opinion confidential information will be adequately protected by the procedures set forth in 40 CFR Part 2. As discussed in the Attorney General's statement, there is adequate protection for information transmitted between EPA and the State through procedures that allow claims of confidentiality to be asserted and evaluated when such transfer of information occurs. Any information for which confidentiality is requested must be treated as such by both the State and EPA once a claim of confidentiality has been reviewed and its validity has been accepted.

The second commenter remarked that there were no guidelines or specifications for equipment to be used by transporters of hazardous wastes. The standards for transporters can be found in 40 CFR Part 263. Packaging requirements may also be found in 40 CFR Part 262.

The other comment related to whether the State would have an adequate well-trained staff and proper funding to operate the program. We have concluded in accordance with national guidelines on state resources that the State currently has adequate resources to operate Phase I of the program. The Department of Pollution Control and Ecology has submitted a budget to the State Legislature that should provide adequate resources to meet EPA's requirements for Phase II Interim Authorization. This budget request, of course, is subject to approval by the State Legislature.

RECOMMENDATION

In your memorandum of October 6, 1980, you expected "to concur in granting authorization to this program" realizing, of course, that "a final determination to approve the State program cannot be made until comments submitted by the public have been taken into account". I therefore recommend that you concur in my action and publish the attached notice in the Federal Register.

Attachment

Concur
 Non-concur

Eckhardt C. Beck
Assistant Administrator
for Water and Waste Management

Date

 Concur
 Non-concur

Michele Beigel Corash
General Counsel

Date

 Concur
 Non-concur

Jeffrey G. Miller
Acting Assistant Administrator
for Enforcement

Date