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TITLE: Cooperative Agreement Guidance for State
Mining Waste Programs

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ORIGINATING OFFICE: Office of Solid Waste

FINAL

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STATUS:

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

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OSWER Directive Initiation Request

1. Directive Number
9571.00-1A

2. Originator Information

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3. Title
Cooperative Agreement Guidance for State Mining Waste Programs

4. Summary of Directive (include brief statement of purpose)
The purpose of this document is to provide guidance to the Regions for evaluating cooperative agreement applications from the States. This guidance is to provide the criteria and procedures for distribution of cooperative agreement funds for State mining waste program activities in FY'88 and FY'89. As a supplement to the regulations the guidance is to be used in developing and reviewing cooperative agreements, (below)

5. Keywords
Mining Waste / RCRA / Subtitle D / Cooperative Agreement / 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)

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 <i>Jennifer A. Barker</i> Jennifer A. Barker, Office of Solid Waste	Date 08/10/88
10. Name and Title of Approving Official Sylvia K. Lowrance, Director, Office of Solid Waste	Date 07/29/88

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

Summary continued:

distributing funds, and monitoring activities.

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

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

JUL 29 1988

MEMORANDUM

SUBJECT: Cooperative Agreement Guidance for State
Mining Waste Programs

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

TO: Regional Waste Management Division Directors

Attached is the revised Guidance for State Mining Waste Cooperative Agreements which supersedes the Guidance dated November 18, 1987. The earlier Guidance provided for distribution of \$1.95 million based on the number of mines, beneficiation plants, and processing facilities. Budget priority changes for FY 1988 reduced the amount available to \$415,000. The fundable tasks now call for participating States to gather information on their respective mining wastes and regulatory programs to assist us with our regulatory development efforts. Region VIII will distribute the funds as the cooperative agreements are approved by the respective Regions. These are two-year funds and must be spent by the end of FY 1989.

Attachment

cc: RCRA Branch Chiefs, Region I-X
Brian Burgess, Region VI
Rob Walline, Region VIII
Jerry Allen, Region VIII
Mike Hanline, Region X

FY'88 COOPERATIVE AGREEMENT GUIDANCE
FOR STATE MINING WASTE PROGRAMS

I. INTRODUCTION

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I. INTRODUCTION

Currently, all wastes from the extraction, beneficiation, and processing of ores and minerals are conditionally excluded by RCRA Section 3001(b)(3)(A)(ii) (the Bevill Amendment to RCRA) from regulation as hazardous wastes under Subtitle C of RCRA. Thus, these mining wastes fall within the jurisdiction of Subtitle D of RCRA (the Subtitle D program addresses all solid wastes that are not regulated as hazardous waste under Subtitle C of RCRA) and other laws administered by States and other Federal authorities. The decision (51 FR 24496, July 3, 1986) to create a special Subtitle D program for certain mining wastes was based on EPA's recognition that: (1) the current Subtitle D standards (in 40 CFR Part 257) are aimed principally at municipal and industrial solid waste landfills and do not fully address mining waste concerns, and (2) the revisions to Subtitle D (now being prepared as required by RCRA Section 4010) will also not address mining waste concerns.

This program is not part of the Subtitle C hazardous waste program for which States can receive authorization under Section 3006 of RCRA or for which State financial assistance is available under Section 3011 of RCRA. The mining waste program is entirely separate from the Subtitle C hazardous waste program.

II. STATE MINING WASTE COOPERATIVE AGREEMENTS

Purpose

The purpose of this cooperative agreement program is to encourage the States with experience in minerals industry-related issues to assist EPA during its mining waste regulatory development program; in so doing, we hope to foster interstate and Federal-State communication and information-sharing. The information gained under this program will be used to assist the Federal mining waste regulatory development effort.

Authority

Section 4008(a)(2)(A) authorizes appropriation of funds for financial assistance to States "for implementation of programs to provide solid waste management" For FY'88, the budget includes \$415,000 in State cooperative agreement funds to assist in the development of the mining waste program, but the statutory authority is not specific in directing the manner in which funds are to be distributed among States.

Regulations and Guidance

For FY'88, we intend to rely on the existing cooperative agreement regulations of 40 CFR Parts 30 and 35 Subpart A. These regulations require a minimum match from the States of 5%. During FY'89 we will decide whether it is necessary or

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desirable to develop specific mining waste cooperative agreement regulations. Also, if future funds are made available, we intend to develop a multi-year funding strategy that would consider requiring funded States to: (1) increase the match in subsequent fiscal years; and (2) undertake steps to improve the State mining waste program or begin institutional initiatives to carry out a program.

This guidance is to provide the criteria and procedures for distribution of cooperative agreement funds for State mining waste program activities in FY'88 and FY'89. As a supplement to the regulations, the guidance is to be used in developing and reviewing cooperative agreements, distributing funds and monitoring activities.

Specific activities funded under each State's annual work program will be negotiated individually by the Regional Offices. Regions should begin working with their States in developing draft cooperative agreements as soon as possible to give the Regions time for review and approval so that timely distributions can be made. The agreement must identify the resources (dollars and FTEs) associated with each task. Cooperative agreements are to be performance-based with quarterly work commitments clearly tied to resources. All available cooperative agreement funds should be spent by the end of FY'89. Any remaining FY'88 funds not spent by the Regions in FY'89 will be reprogrammed or returned to the Treasury.

The funds appropriated for FY'88 under Section 4008(a)(2)(A) will be administered by the Waste Management Division, Region VIII, and may only be used for mining waste cooperative agreement eligible activities. (See OMB Circular A-87 and 40 CFR 30.410.) Funds not distributed or committed to a State may be used to supplement distributions to other States. Funds may not be diverted from Subtitle C to support mining waste activities or vice versa.

State Eligibility

Only States for which a single agency or department has been designated by the Governor to coordinate the tasks in the cooperative agreement are eligible for FY'88 financial assistance. Federal cooperative agreement funds may not pass through the designated agency to substate or local government offices.

Distribution Mechanism

The budget for FY'88 includes \$415,000 in State cooperative agreement funds for the mining waste program. Each Region will send a copy of the approved State cooperative agreement to the Waste Management Division in Region VIII, which will distribute the funds on a first-come, first-served basis. Regions should be aware that a separate grant has been awarded to the Western

Governors' Association (WGA) to facilitate the involvement of the western States for similar fundable tasks. Therefore, Regions should review the status of State activities funded under the WGA grant to avoid duplicate funding of similar cooperative agreement tasks.

Regions are not obliged to enter into a cooperative agreement with every State or distribute a particular amount to any State. All FY'88 funds should be obligated by the Regions by the end of FY'89.

Fundable Tasks

This section discusses fundable tasks for FY'88 and FY'89 State mining waste cooperative agreements. States need not undertake all of the tasks in FY'88. Appropriate outputs and schedules for individual States will be determined by negotiations between State and Regional Office staff, considering the nature and extent of the program within the State and the needs within the State. These State/Regional negotiations should begin as soon as possible.

- Task 1: Identify the quantities and characteristics of the mining wastes generated within the State.
- Task 2: Identify existing State statutory and regulatory programs and standards and the application of existing Federal standards on mining wastes generated within the State.
- Task 3: Evaluate the adequacy of existing programs and standards in protecting human health and the environment.
- Task 4: Develop a preferred regulatory option to deal with the identified health and environmental effects under existing programs and standards.
- Task 5: Coordinate with other States to identify problems encountered with the implementation of the preferred (or similar) regulatory option.
- Task 6: Evaluate the costs of implementation (by the State) of regulatory scenarios.

III. FEDERAL-STATE RELATIONSHIP (Cooperative Agreement Award/ Administration)

States or Regional offices may initiate the cooperative agreement process. States may submit draft agreements to the Regions or the Regions can provide draft work plans to their States for consideration. Headquarters will, as a courtesy to the Region, review these when requested. As soon as executed, a copy of each final agreement (including work program) should be sent to Michael Flynn, Acting Chief, Special Wastes Branch, (WH-565-E), Office of Solid Waste, Washington, D.C. 20460.

In accordance with 40 CFR Parts 30 and 35, Regions must hold one on-site review. We recommend that two be scheduled, including a mid-year review in concert with other on-site activities. A review may also be combined with the review of the FY'90 agreement. Regions may arrange for more frequent reviews.

A mid-year program review for each State should examine progress towards completion of fundable tasks. Regions should also specify program follow-up procedures whereby States respond, on a quarterly timetable, to the Region's findings. Reviews should identify: (1) weakness in the State's program; (2) areas where the Region may help the State; (3) approaches that could be shared with other States, and (4) approaches that could be shared with the developing Federal mining waste program. Copies of all program review reports, including the performance evaluation final report, should be submitted to Michael Flynn, Acting Chief, Special Wastes Branch, (WH-565-E), Office of Solid Waste, Washington, D.C. 20460, within 30 days of completion of the report.

Reporting Requirements

Headquarters may request information obtained during the performance of the cooperative agreements. The data may be used as a basis for a future distribution mechanism, should funds be appropriated. We will provide more information on this in later guidance. No other reporting is contemplated as yet.

Future Funding

Development of future guidance will take into account data obtained during the performance of the cooperative agreements. We will continue to pursue the development of a multi-year funding strategy, including the investigation of Federal/State roles at various funding levels and other State support (e.g., partial funding, peer matching and loan of personnel), if funds are appropriated.