



**DIRECTIVE NUMBER:** 9434.00-6

**TITLE:** PIG-81-9

Effect of EPA's Memorandum of Understanding with the  
Department of Transportation on Activities in States  
with Cooperative Arrangements

**APPROVAL DATE:** December 10, 1980

**EFFECTIVE DATE:** December 10, 1980

**ORIGINATING OFFICE:** Office of Solid Waste

**FINAL**

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**STATUS:**

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

**REFERENCE (other documents):**

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United States Environmental Protection Agency  
Washington, DC 20460

# OSWER Directive Initiation Request

OSWER Directive Number

9434.00-61

## Originator Information

Name of Contact Person SPB	Mail Code - Branch OSW	Telephone Number 382-2210
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Lead Office	Approved for Review	
<input type="checkbox"/> OUST <input type="checkbox"/> OERR <input checked="" type="checkbox"/> OSW <input type="checkbox"/> OWPE <input type="checkbox"/> AA-OSWER	Signature of Office Director	Date

Title

(PIG-81-9) Effect of EPA's MOU with the DOT on Activities in States with Cooperative Agreement

Summary of Directive

Memo answers the following. How does EPA's memorandum of understanding with the DOT affect activities conducted by States with Cooperative Agreements.

Key Words:

Federal Agency, Unauthorized

Type of Directive (Manual, Policy Directive, Announcement, etc.)	Status
	<input type="checkbox"/> Draft <input checked="" type="checkbox"/> Final <input type="checkbox"/> New <input type="checkbox"/> Revision

Does this Directive Supersede Previous Directive(s)?  Yes  No

Does It Supplement Previous Directive(s)?  Yes  No

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

Review Plan

<input type="checkbox"/> AA-OSWER	<input type="checkbox"/> OUST	<input type="checkbox"/> OECM	<input type="checkbox"/> Other (Specify)
<input type="checkbox"/> OERR	<input type="checkbox"/> OWPE	<input type="checkbox"/> OGC	
<input type="checkbox"/> OSW	<input type="checkbox"/> Regions	<input type="checkbox"/> OPPE	

This Request Meets OSWER Directives System Format

Signature of Lead Office Directives Officer	Date
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Signature of OSWER Directives Officer	Date
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF ENFORCEMENT

FIG-81-9

MEMORANDUM

SUBJECT: Effect of EPA's Memorandum of Understanding with the Department of Transportation on Activities in States with Cooperative Arrangements

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

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

TO: PIG's Addressees

ISSUE:

How does EPA's Memorandum of Understanding (MOU) with the Department of Transportation (DOT) affect activities conducted by States with Cooperative Arrangements?

DISCUSSION:

The EPA-DOT Memorandum of Understanding (45 FR 51645, see attachment) on hazardous wastes transportation enforcement was signed on June 24, 1980. The purpose of the MOU is to clarify the responsibilities each Agency has in enforcing regulations concerning hazardous waste transportation. The MOU, in essence, assigns to DOT the primary enforcement responsibility regarding transporters of hazardous waste and assigns to EPA the primary enforcement responsibility regarding generators and TSD facilities. It also calls for the exchange of information between the Agencies and cooperation in inspecting and bringing enforcement actions against violators of regulations under both RCRA and the Hazardous Materials Transportation Act (HMTA).

The EPA-DOT MOU was executed by and operates solely between the two Federal agencies. Authorization, pursuant to §3006 of RCRA, of State programs does not bring the States within the purview of the MOU. EPA encourages authorized States to execute similar agreements with either the U.S. DOT or their State DOT counterparts to enable them to obtain maximum use of available resources and expertise.

The responsibilities and conditions of the EPA-DOT MOU must be considered where States are conducting inspections and other enforcement activities under Cooperative Arrangements with EPA. If the Cooperative Arrangement calls for State personnel to inspect transporters under the State's authority, as a matter of policy such activity falls under the auspices of the EPA-DOT MOU, and the U.S. DOT should be notified. Where State personnel are acting as representatives of EPA under §3007 of RCRA, the inspections clearly fall within the jurisdiction of the EPA-DOT MOU and the U.S. DOT must be notified. The EPA Regional Office or the State should be able to provide the U.S. DOT Regional Office with information on the extent of the anticipated inspection program, the targeted areas, and the results of completed inspections where violations of the HMTA are detected. EPA and/or the State can expect similar information from DOT.

DECISION:

In preparing the Cooperative Arrangement where the State is performing inspections of hazardous waste transporters, either the EPA Regional Office or the State must inform the appropriate U.S. DOT Regional Office of such Arrangement. Under the EPA-DOT MOU, the EPA Regional Office remains obliged to notify DOT. However, as part of the Cooperative Arrangement, the State may fulfill this obligation.

To address the responsibilities assigned in the MOU, EPA Headquarters is preparing an Implementation Plan. This Plan will describe exact procedures EPA and DOT will use in carrying out the MOU. In the near future, we will transmit a draft of the plan to the Regional Offices for review and comment.

Attachment: EPA-DOT MOU

waster programs are encouraged to develop their own agreements between the appropriate State transportation agency and State environmental agency to ensure the uniform and consistent enforcement of the hazardous waste transportation regulations.

The MOU, which delineates the areas of compliance monitoring and enforcement responsibilities with respect to hazardous waste shipments, reads as follows:

Memorandum of Understanding Between the Environmental Protection Agency and the Department of Transportation

#### I. Purpose

The purpose of this Memorandum of Understanding (MOU) is to delineate the areas of responsibility of the Department of Transportation (DOT) and the Environmental Protection Agency (EPA) for the enforcement of standards applicable to the shipment and transportation of hazardous waste. This MOU will also set forth those areas of joint responsibility and cooperation between the two Agencies.

#### II. Statutory Basis

A. *EPA and the Resource Conservation and Recovery Act of 1976*. The Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. 6901 et seq.) in Section 3002 and Section 3003 requires EPA to regulate generators and transporters of hazardous wastes to protect human health and the environment. This authority covers both inter- and intra-state transportation. The Act requires EPA to promulgate standards concerning recordkeeping, reporting, labelling, containers, compliance with the manifest system, and the transportation of waste only to permitted facilities.

Section 3003 also requires the Administrator of EPA to ensure that hazardous waste transportation regulations promulgated under RCRA are consistent with those promulgated by DOT under the Hazardous Materials Transportation Act (HMTA). Furthermore, it provides the Administrator the authority to make recommendations to the Secretary of Transportation respecting HMTA regulations and for addition of materials to be covered under those regulations. (40 CFR Parts 280-285.)

B. *DOT and the Hazardous Materials Transportation Act*. The Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 1801 et seq.) requires the Secretary of Transportation to promulgate standards for the transportation of hazardous materials in commerce to protect public health and safety or property. "In commerce" extends to all activities which affect interstate transportation. The HMTA regulations cover all modes of transportation (highway, railroad, air and water) and require, among other things, proper marking, containerization, storage, shipping papers and placarding. (49 CFR Parts 170-179.)

#### III. Background

A. *Regulatory Overlap*. DOT and EPA are both promulgating regulations concerning

hazardous waste material transportation. The DOT regulations require shippers of hazardous wastes, as defined by EPA, to comply with both HMTA and RCRA regulations. This group includes wastes which were previously designated hazardous materials. These wastes must comply with the new DOT standards for hazardous waste materials.

B. *Areas of Individual Regulation*. There are, however, areas over which only one or the other Agency has jurisdiction. One such area is the EPA requirement that transporters clean up any discharges of hazardous waste which they are carrying. DOT cannot incorporate such a requirement into its regulations because it is beyond DOT's authority.

DOT, on the other hand, requires that certain safety features be installed on all motor vehicles. EPA's authority does not extend to such safety requirements, and they would not be included in EPA's regulations.

#### IV. Terms of Agreement

##### A. The Environmental Protection Agency Will:

1. Conduct an on-going program to monitor compliance of generators of hazardous waste and hazardous waste management facilities with the RCRA regulations.

2. Bring enforcement actions, at times, involving hazardous waste transporters where the transportation is ancillary to treatment, storage or disposal of hazardous waste or other activities normally under the primary jurisdiction of EPA as discussed in this MOU. (For example, a "midnight dumper" will be considered an illegal disposer. The fact that the "dumper" is transporting the waste is ancillary to the disposal of the waste and EPA will bring appropriate enforcement action against him.)

3. Provide to the Bureau of Motor Carrier Safety (BMCS), Federal Highway Administration's (FHWA) Washington Office, DOT on a continuing basis, a list of all hazardous waste transporters who have notified EPA pursuant to section 3010 of RCRA and their identification numbers.

4. Immediately notify the BMCS, FHWA's Washington Office, DOT of any possible violation of HMTA or regulations adopted thereunder of which it is aware and provide that office with all relevant information.

5. Investigate reports from DOT which give EPA cause to suspect that a violation of RCRA has occurred and, where warranted, initiate appropriate regulatory or enforcement action under RCRA.

6. Provide DOT with any information obtained during the course of an EPA investigation which EPA believes may involve a violation of HMTA.

7. Make available to BMCS, FHWA, DOT any reports, documents or other evidence necessary to support an enforcement action under HMTA which involves hazardous waste materials.

8. Make available to the Office of Hazardous Materials Regulation, Materials Transportation Bureau, Research and Special Programs Administration, DOT, any reports, documents or other evidence necessary to support a regulatory action under HMTA which involves hazardous waste materials.

[FRL 1558-8]

#### Enforcement of Standards Applicable to Shippers and Transporters of Hazardous Waste; Memorandum of Understanding Between the Department of Transportation and the U.S. Environmental Protection Agency

Pursuant to the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. 1801-1812, the Secretary of Transportation promulgated regulations governing the transport of hazardous wastes and hazardous substances. 45 FR 34560 (May 22, 1980). Pursuant to the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6981, the Administrator of the U.S. Environmental Protection Agency (EPA) promulgated regulations which establish standards applicable to transporters of the hazardous waste. 45 FR 33150 (May 19, 1980). The regulations establishing standards applicable to transporters of hazardous waste were promulgated by the Administrator after consultation with the Secretary of Transportation and are consistent with the requirements of HMTA and the regulations promulgated pursuant to that Act. In addition, the Administrator of the EPA has made recommendations to the Secretary of Transportation respecting the regulations of hazardous waste materials subject to HMTA and for the addition of materials to be covered by that Act.

In order to integrate the administration and enforcement of the provisions of HMTA and RCRA, and to avoid duplication to the maximum extent practicable, the Secretary of Transportation and the Administrator of EPA have executed a Memorandum of Understanding (MOU) regarding the enforcement of standards applicable to shippers and transporters of hazardous waste.

The Secretary of Transportation and the Administrator of EPA do not intend the MOU to establish standards applicable to state hazardous waste programs which are authorized under § 3006 of RCRA. States which are authorized to carry out hazardous

9. Bring enforcement actions to address hazardous waste activities which may present an "imminent and substantial endangerment to health and the environment" as those words are used in the statutes administered by EPA (such as § 7003 of RCRA and § 504 of the Clean Water Act).

*B. The Department of Transportation Will:*

1. Conduct an on-going program of inspections of transporters and shippers of hazardous waste to monitor their compliance with HMTA regulations.

2. Immediately advise the appropriate EPA regional office of any possible violation of RCRA or regulations adopted thereunder of which it is aware and provide that office with all relevant information.

3. Investigate reports from EPA which give DOT cause to suspect that a violation of HMTA has occurred and, where warranted, initiate appropriate regulatory or enforcement action under HMTA.

4. Provide EPA with any information obtained during the course of a DOT investigation which DOT believes may involve a violation of RCRA.

5. Make available to EPA any reports, documents or other evidence necessary to support enforcement and regulatory actions under RCRA which involve hazardous waste.

*C. Each Agency Will:* 1. Presume that when information reveals a violation of both RCRA and HMTA, if DOT takes an enforcement action under HMTA, EPA will not normally take such action. Conversely, if EPA takes an enforcement action under RCRA, DOT will not normally take such action. This does not, however, preclude either Agency from initiating other legal sanctions in regard to that violation.

2. Coordinate investigations and enforcement actions involving violations of both RCRA and HMTA to avoid duplication of effort.

3. Maintain a close working relationships with the other, both in Headquarters as well as in the field, including an exchange of information relative to the Agencies' planned hazardous waste material compliance monitoring and enforcement activities.

4. Designate for the other Agency a Headquarters contact point to whom communication regarding this agreement or matters affected thereby may be referred for attention.

5. Assign regional liaisons between the Agencies, and provide a mechanism by which regional contacts will be made and maintained for the period of this agreement.

6. Issue and exchange with the other instructions and guidelines implementing this Memorandum of Understanding identifying interagency contacts and liaison representatives, and setting forth other pertinent operational procedures to be followed relative to this agreement.

*V. Effect*

A. This Memorandum of Understanding is not intended to limit in any way the statutory authority or jurisdiction of either Agency.

B. Nothing in this Memorandum of Understanding modifies other existing agreements, or precludes either Agency from entering into separate agreements setting forth procedures for special programs which

can be handled more efficiently and expeditiously by such special agreement.

C. This Memorandum of Understanding when accepted by both Agencies shall continue in effect unless modified by mutual written consent of both Agencies or terminated by either Agency upon a thirty day written notice.

D. Any conflict arising as a result of this Memorandum of Understanding will be resolved by EPA's Deputy Assistant Administrator for Water Enforcement and DOT's Associate Director for Operations and Enforcement, Materials Transportation Bureau, Research and Special Programs Administration.

For the Environmental Protection Agency:

Douglas M. Costle,

Administrator.

Dated: May 2, 1980.

For the Department of Transportation:

Neil Goldschmidt,

Secretary.

Dated: June 24, 1980.

(This Memorandum of Understanding becomes effective on the date of the final signature)

(FR Doc. 80-22314 Filed 8-1-80; 8:45 am)

BILLING CODE 5580-01-M