



DIRECTIVE NUMBER: 9541.08-85

TITLE: Revisions to State Programs

APPROVAL DATE: 08/16/85

EFFECTIVE DATE: 08/16/85

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
VE DIRECTIVE DIRECTIVE DI

Key Words: Authorized States, HSWA

Regulations: 40 CFR 271.21(c), 271.23

Subject: Revisions to State Programs

Addressee: Hazardous Waste Management Division Directors, Regions I-X

Originator: Bruce R. Weddle, Director, Permits and State Program Division

Source Doc: #9541.08(85)

Date: 8-16-95

Summary:

The memo describes procedures for States to follow to revise their programs in order to incorporate new Federal program requirements under HSWA. These requirements apply to States that have final authorization as well as those that are seeking final authorization.

16 AUG 1985

MEMORANDUM

SUBJECT: Revisions to State Programs

FROM: Bruce R. Weddle 15/
Director
Permits and State Programs Division (WH-563-B)TO: Hazardous Waste Management Division Director
Regions I-X

Under our current regulations, changes to the Federal program can have a profound impact on States that either are applying for or have received final authorization:

- The 26 States that currently have final authorization must revise their programs to pick up all of the recent Federal changes.
- States that intend to apply for final authorization in the near future will need to demonstrate coverage of some of the new Federal requirements, depending on the date that the official application is submitted.

The Regions need to make all the States aware of the upcoming revisions deadlines as discussed in this memorandum and my March 20, 1985 memorandum (attached) so that they can develop schedules with the States for the execution and submission of State program modifications.

CHANGING THE PROGRAM REVISION RULE

The current draft of the proposed codification rule proposes to change the program revision deadlines. The proposal would suspend until 1992 the deadlines in §271.21(e) for State revisions for HSWA rules. The deadline in §3006(b) for review of official applications would not be affected by the suspension, nor would the suspension apply to the availability of information requirements of §3006(f).

The proposal also includes the concept of "clustering" new HSWA requirements annually so that program revisions will be required only once a year for a group of requirements, instead of

 (WH-563-B):F.McAlister:drb:8/15/85:S-256:382-2210
 Disk: MC-Reg; Index: 12

separate one year deadlines applying to each individual requirement. The first cluster would encompass the non-HSWA requirements promulgated between July 1, 1984 and June 30, 1985 (see the attached table). That cluster would also contain the State availability of information requirements. State program modifications for this cluster would need to be complete by July 1, 1986 (or July 1, 1987, for those provisions in the cluster for which a State statutory change is needed). HSWA requirements (other than the State availability of information requirement) would be included in the annual clusters beginning July 1, 1990. A copy of the draft proposed rule is attached for your information.

Although we believe our draft proposal is a reasonable way to implement the newly expanded RCRA-HSWA program, at this time we cannot be certain as to the ultimate outcome of the rulemaking. However, over the past few months we have indicated in meetings with you as well as with ASTSWMO that we plan to propose the above changes to the program revision requirements. As a result, few States have initiated the legislative and rulemaking actions to adopt the HSWA amendments as required by our current regulations. We, therefore, face a dilemma: we could urge authorized States to adopt the appropriate HSWA amendments by November 8, even though we are attempting to change our regulations; or we could assume that our regulatory changes will be in effect by November 8. I recommend the latter approach.

While I believe that we should urge the States to adopt the HSWA amendments as quickly as practicable, I believe that "forcing" them to adopt changes by November while we are actively proposing to change the regulations is not advisable. As part of the rulemaking process we may decide to retain the existing program revision schedules. Should this occur we then can negotiate schedules with the States that enable them to adopt the necessary program changes before initiating the program withdrawal procedures under §271.23. It should be noted that program withdrawal is discretionary and the procedures provide time for the States to remedy any program deficiencies.

OFFICIAL APPLICATION APPROVAL PROCESS

In order for a State to obtain final authorization, it must submit an official application to EPA for review. The State's application must address all provisions of the Federal program that were promulgated (for regulations) or effective (for self-implementing statutory provisions) more than one year prior to application submission. (See §271.21(e)(1)(i); note that the six month extension in §271.21(e)(1)(ii) was superseded by the HSWA change to §3006(b) and removed from the regulation by the July 15, 1985 final codification rule.) Therefore, it is important for any State which is applying for final authorization

to adopt any Federal program changes that occurred earlier than the date one year before its official application is submitted. Once the State's application has been submitted, the application does not have to be amended for subsequent changes in the Federal program. The application proceeds through the EPA approval process specified in §270.20. The attached table identifies the deadlines for submission of an official application without addressing certain Federal program changes.

As an example, the chlorinated aliphatic hydrocarbon listing was promulgated on February 10, 1984. Therefore any official final authorization application submitted on or after February 10, 1985 must address this listing (see attached table). An application received prior to that date does not have to include the waste listing, but the State will subsequently need to revise its program for the listing as discussed below.

PROGRAM REVISION PROCESS

The revision process is separate from the initial final authorization approval process; it applies to States that have obtained or are in the process of obtaining final authorization. (See §271.21(e)(1)(iii), (e)(2), and (e)(3).) States must modify their programs to pick up Federal program changes by certain deadlines, currently one year after rule promulgation or after the effective date of self-implementing statutory provisions. An extension of an additional year is allowed if the State must make statutory changes. Once the State has modified its program, it must seek EPA approval of the change within 30 days (§271.21(e)(4)). As discussed earlier in this memorandum, EPA is about to propose changes to the revision deadlines.

It is possible that a State can be involved in the authorization process and revision process simultaneously. This can happen when a change to the Federal program occurs during the period beginning one year prior to the State's submission and ending one year prior to the date that authorization is granted. In this case, the State's application does not have to address the Federal change, but the State must modify its program by the date of authorization. For example, if an official application is submitted prior to February 10, 1985 but authorization is not granted by that date, the State is obliged to modify its program to include chlorinated aliphatic hydrocarbons by the date of final authorization. The RA may extend the February 10, 1985, deadline for the modification by up to six months (August 10, 1985) if the State made a good faith effort to meet the deadline. (See §271.21(e)(3); note that the deadline extension begins on February 10, 1985, not on the date of final authorization.) If the RA grants such an extension, then the authorization may proceed without the modification.

TABLE OF FEDERAL PROGRAM CHANGES

I am attaching a table which identifies amendments to the Federal program since January 1, 1983 that States with final authorization are obliged to pick up. The table delineates which provisions are HSWA requirements and which are non-HSWA requirements. It also specifies the deadlines for submission of official final authorization applications. State program modification deadlines are presented for those rules unaffected by the proposed codification rule (i.e., changes promulgated prior to July 1, 1984).

As can be seen from this table, we are now past the deadline for four State program modifications:

- immediate response to spills and discharges
- biennial report
- uniform national manifest
- chlorinated aliphatic hydrocarbon listing

All States with final authorization should have completed their program modifications for these rules and submitted documentation to EPA for approval. Recently authorized States may already have received approval for some or all of these provisions as part of their final authorization decisions; in such cases the State only has to revise its program for the remaining rules listed above.

We are developing a computerized tracking system that will allow the Agency to monitor each State's program in receiving approval for its program revisions. You will be receiving information on this system very soon. In addition, the attached table will be updated as additional requirements are promulgated. The updated tables will be issued by the State Programs Branch, and all Regional Hazardous Waste Branch Chiefs will receive copies.

Attachments

cc: Hazardous Waste Branch Chiefs, Regions I-X
RCHA OGC Branch Chiefs, Regions I-X
John Skinner, OSW
Gail Capper, OGC
State Programs Branch
Sue Moreland, ASTSWMO