PROGRAM IMPLEMENTATION GUIDANCE SYSTEM MEMORANDUM

FY/#	TITLE
PIG-80-1	Establishment of RCRA "Program Implementation Guidance Systems (PIGs)"
PIG-80-2	Interim Authorization of Programs Based on Emergency State Regulations
PIG-80-3	Requirement That State-Permitted Hazardous Waste Facilities Have "Interim Status"
PIG-80-4	Short-Term Financial Assistance for States Expected to Receive Authorization Before January 1, 1981
PIG-81-1	The Use of State Permitting Systems During Phase I Interim Authorization Which Are Not Based on Explicit Regulatory Standards
PIG-81-2	Federal Register Notice of Public Hearing and Comment Period on State Applications for Interim Authorization
PIG-81-3	Effect of RCRA Regulation Changes on Phase I Interim Authorization Approval
PIG-81-4	Delisting of Wastes by Authorized States
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PIG-81-6	State Regulation of Federal Agencies for Purposes of Interim Authorization
PIG-81-7	Final Determinations on State Applications for Interim Authorization: Action Memorandum and Federal Register Notice
PIG-81-8	Program Implementation Guidance on Issuance of Provisional EPA Identification Numbers
PIG-81-9	Effect of EPA's Memorandum of Understanding With the Department of Transportation on Activities in States With Cooperative Arrangements
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 8 1981

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

PIG-80-1, Amended

MEMORANDUM

SUBJECT: Establishment of RCRA "Program Implementation Guidance System" (PIGS)

FROM: Christopher J. Capper
Acting Assistant Administrator for
Solid Waste and Emergency Response (WH-562A)

TO: See "Distribution" Below

PURPOSE: This memorandum revises the "Program Implementation Guidance System" (PIGS) established in PIG-80-1 issued on October 3, 1980. This revision is necessary to reflect changes in responsibilities due to the recent reorganization. The purpose of the PIG system is to aid in properly implementing the Federal and State hazardous waste management programs under Subtitle C of the Resource Conservation and Recovery Act, by providing directives regarding program implementation.

DISCUSSION: The RCRA hazardous waste regulations are one of the most comprehensive sets of regulations published by EPA. As a result there is a need for some means of documenting and disseminating information on implementation of these regulations and the national program they put into effect. The "Program Implementation Guidance System" (PIGS) is intended to provide this means. Program Implementation Guidance Memoranda will be issued to answer questions and provide direction regarding the implementation of the Federal program and to aid in management of the State programs. For example, PIG's may set forth internal EPA reporting requirements and respond to questions regarding program implementation at Headquarters and in the Regional offices. A prime objective of the PIG's will be to provide national consistency in implementing Subtitle C of RCRA.

IMPLEMENTATION: PIG's will be issued as memoranda in standard format and will be numbered to indicate the fiscal year and the sequential number of each issuance. For example, as the first PIG to be issued in FY 1980, this memorandum establishing the PIGS is numbered PIG-80-1.

PIG's will be developed by the Office of Solid Waste or the Office of Waste Programs Enforcement. All PIG's will be issued (signed) by the Assistant Administrator for Solid Waste and Emergency Response. Prior to issuance, the concurrence of the Associate General Counsel for Water and Solid Waste, the Director for the Office of Solid Waste, and the Director for the Office of Waste Programs Enforcement will be obtained. Thus, regardless of originating office, each PIG will represent the joint guidance of these three offices. Within the Office of Solid Waste, all PIG's will be reviewed by OSW Senior Staff. PIG's on RCRA permitting will be coordinated with the Permits Division, Office of Water Enforcement. As appropriate, the Office of Water Enforcement will include selected PIG's for inclusion in the Consolidated Permits Policy Guidance System.

Day-to-day management of the PIG's system will be the responsibility of the Office of Solid Waste. Following appropriate signature and concurrences, PIG's will be distributed by the State Programs Branch, Office of Solid Waste, as indicated, below.

DISTRIBUTION:

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Air and Hazardous Materials Division Directors (Regions I, III - X)
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Director for Office of Water Enforcement
Director for Office of Waste Programs Enforcement
Associate General Counsel for Water and Solid Waste
Senior Staff, Office of Solid Waste

States - Directors, State Solid Waste Agencies (See attached list)

Attachment

cc: Branch Chiefs, Office of Solid Waste

STATE SOLID AND HAZARDOUS WASTE AGENCIES
ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF SOLID WASTE

February 1981

ALABAMA

Alfred S. Chipley, Director
Division of Solid Waste and Vector Control
Department of Public Health
Union Bank Building, Room 1212
Montgomery, Alabama 36103

CML (205) 832-6728

ALASKA

Thomas R. Hanna
Air & Solid Waste Management
Department of Environmental Conservation
Pouch O
Juneau, Alaska 99811

Seattle FTS Operator 399-0150
CML (907) 465-2635

AMERICAN SAMOA

Pati Faiai, Executive Secretary
Environmental Quality Commission
American Samoa Government
Pago Pago, American Samoa 96799

Overseas Operator
(Commercial Call 633-4116)

Randy Morris, Deputy Director
Department of Public Works
Pago Pago, American Samoa 96799

ARIZONA

Dr. James Sarn
~~Dr. Bruce Scott, Assistant~~ Director
Department of Health Services
State Health Building, Room 202
1740 West Adams St.
Phoenix, Arizona 85007

FTS 8-765-1130
CML (602) 255-1130

ARKANSAS

Chief
Solid Waste Management Division
Department of Pollution Control and Ecology
P.O. Box 9683
8001 National Dr.
Little Rock, Arkansas 72219

CML (501) 371-1135

Alford Drinkwater
Solid Waste Program
Department of Energy
3000 Kavanaugh
Little Rock, Arkansas 72205

CML (501) 371-1370

CALIFORNIA

Dr. Harvey Collins, Chief
Environmental Health Branch
Department of Health Services
744 P Street
Sacramento, California 95814

FTS 8-552-2308
CML (916) 322-2308

Terry Trumbull, Chairman
State Solid Waste Management Board
1020 9th St. Suite 300
Sacramento, California 95814

FTS 8-552-3330
CML (916) 322-3330

COLORADO

Dr. James Martin
Section Chief
Solid & Hazardous Waste Section
Colorado Department of Health
4210 E. 11th Ave.
Denver, Colorado 80220

CML (303) 320-8333

Mr. Orville Stoddard, P.E.
Sr. Public Health Engineer
Col o Department of Health
421 st 11th Ave.
Denver, Colorado 80220

CML (303) 320-8333

COMMONWEALTH OF NORTH MARIANA ISLANDS

Carl Goldstein
Division of Environmental Quality
Department of Public Health and
Environmental Services
Commonwealth of the North Mariana Islands
Saipan, Mariana Islands 96950

Cable address: GOV. NMI Saipan

CONNECTICUT

Charles Kurker, Director
Solid Waste Management Unit
Department of Environmental Protection
State Office Building
165 Capitol Ave.
Hartford, Connecticut 06115

FTS 641-3672
CML (203) 566-3672

Stephen Hitchcock, Director
Hazardous Materials Management Unit
Department of Environmental Protection
State Office Building
165 Capitol Ave.
Hartford, Connecticut 06115

FTS 8-641-4924
CML (203) 566-4924

Patrick Bowe, Acting Chief
Hazardous Waste Section
Department of Environmental Protection
State Office Building
165 Capitol Ave.
Hartford, Connecticut 06115

FTS 8-641-5712
CML (203) 566-5712

Connecticut Resources Recovery Authority
179 lyn St. Suite 603
Pr sional Building
Hartford, Connecticut 06103

CML (203) 549-6390

DELAWARE

Kenneth R. Weiss, Supervisor/Resource Engineer
Solid Waste Management Section
Department of Natural Resources
and Environmental Control
Edward Tatnall Building
P.O. Box 1401
Dover, Delaware 19901

CML (302) 736-4781

DISTRICT OF COLUMBIA

James C. Lucore, Acting Administrator
Office of Environmental Planning and
Management
Department of Environmental Services
5000 Overlook Ave. S.W.
Washington, D.C. 20032

FTS 8-724-4102
CML (202) 724-4102

Kenneth Laden
RCRA Coordinator
Department of Environmental Services
5000 Overlook Ave. S.W.
Washington, D.C. 20032

CML (202) 767-8181

FLORIDA

Robert W. McVety
Solid Waste Management Program
Department of Environmental Regulation
Twin Towers Office Building, Room 421
2600 Blair Stone Rd.
Tallahassee, Florida 32301

CML (904) 488-0300

GEORGIA

Moses N. McCall, III, Chief
Land Protection Branch
Environmental Protection Division
Department of Natural Resources Room 822
270 Washington St. S.W.
Atlanta, Georgia 30334

CML (404) 656-2833

"y

am ranch, Deputy Administrator
A, vernment of Guam
.O. Box 2999
gana, Guam 96910

erseas Operator
(Commercial Call 646-8863)

AWAII

elvin Koizumi, Deputy Director
Environmental Health Division
Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801

California FTS Operator
8-556-0220
CML (808) 548-4139

Ralph Yukumoto
Environmental Health Division
Department of Health
P.O. Box 3378
Honolulu, Hawaii 96801

Ca_ rnia FTS Operator
8-556-0220
CML (808) 548-6410

IDAHO

Howard Burkhardt, Supervisor
Solid/Hazardous Materials Section
Department of Health and Welfare
State House
Boise, Idaho 83720

CML (208) 334-4108

ILLINOIS

John S. Moore, Manager
Division of Land and Noise
pollution Control
Environmental Protection Agency
2200 Churchill Rd. Room A104
Springfield, Illinois 62706

CML (217) 782-6760

INDIANA

David Lamm, Chief
Solid Waste Management Section
Division of Sanitary Engineering
State Board of Health
1330 West Michigan St., Room A304
Indianapolis, Indiana 46206

FTS 8-336-0176
CML (317) 633-0176

IOWA

Charles C. Miller, Director
Air and Land Quality Division
Department of Environmental Quality
Henry A. Wallace Building
900 East Grand Street, 3rd floor
Des Moines, Iowa 50319

FTS 8-841-8853
CML (515) 281-8853

KANSAS

Charles H. Linn, Chief
Solid waste Management Section
Department of Health and Environment
Forbes Field, Building 321
Topeka, Kansas 66620

CML (913) 862-9390, Ext. 297

KENTUCKY

Roger Blair, Director
Division of Hazardous Material and
Waste Management
Department of Natural Resources
and Environmental Protection
1121 Louisville Rd.
Pineville Plaza
Frankfort, Kentucky 40601

FTS 8-351-6716
CML (502) 564-6716

LOUISIANA

James Hutchinson, Deputy Secretary
Department of Natural Resources
P.O. Box 44396
Baton Rouge, Louisiana 70804

CML (504) 342-4506

Gerald D. Healy, Jr., Administrator
Haz[illegible]us Waste Division
Dep[illegible]ent of Natural Resources
P.O. Box 44066
Baton Rouge, Louisiana 70804

FTS 8-687-0468
CML (504) 342-1265

MAINE

Ronald C. Howes, Driector
Technical Services Division
Department of Environmental Protection
State House—Station 17
Augusta, Maine 04333

CML (207) 289-2111

John Brochu, Director
Bureau of Oil and Hazardous Waste Materials
Department of Environmental Protection
State House—Station 17
Augusta, Maine 04333

CML (203) 289-3355

Rob[illegible] Demkowicz, Coordinator-
Hazardous Waste Management Unit
Bureau of Oil & Hazardous Waste Materials
Department of Environmental Protection
State House—Station 17
Augusta, Maine 04333

CML (203) 289-2251

MARYLAND

Bernard Bigham
Waste Management Administration
Department of Health & Mental Hygiene
201 West Preston St. Room 212
Baltimore, Maryland 21201

CML (301) 383-2771

Fred Sachs
Hazardous Waste Program
Tawes State Office Building
Annapolis, Maryland 21401

CM[illegible] '301) 269-3823

Ronald Nelson, Director
Waste Management Administration
Office of Environmental Programs
Department of Health & Mental Hygiene
201 West Preston Street, Room 212
Baltimore, Maryland 21201

CML (301) 383-3123

MASSACHUSETTS

John Shortsleeve, Director
Bureau of Solid Waste Disposal
Department of Environmental Management
Room 1905
Leverett Saltonstall Building
100 Cambridge Street
Boston, Massachusetts 02202

CML (617) 727-4293

(Solid & Hazardous Waste Regulatory)
William Cass, Director
Division of Hazardous Waste
Department of Environmental Quality
Engineering
600 Washington St. Room 320
Boston, Massachusets 02111

CML (617) 727-2658

MICHIGAN

Gary Guenther, P.E., Deputy Director
Environmental Protection Bureau
Department of Natural Resources
P.O. Box 30028
Lansing, Michigan 48909

CML (517) 373-7917 or 373-2347

Fred Kellow, Division Chief
Resource Recovery Division
Department of Natural Resources
Westland Plaza
Lansing, Michigan 48909

CML (517) 373-0540

Allan Howard, Chief
Office of Hazardous Waste Mgmt.
Environmental Services Division
Department of Natural Resources
P.O. Box 30028
Lansing, Michigan 48909

CML (517) 373-2867

(Hazardous Waste, Liquid)
David Dennis, Chief
Oi: d Hazardous Materials Control Section
Wat Quality Division
Department of Natural Resources
P.O. Box 30028
Lansing, Michigan 48909

CML (517) 373-2794

(Hazardous Waste, Toxic or Critical Materials)
Delbert Rector, Chief
Environmental Services Division
Department of Natural Resources
P.O. Box 30028
Lansing, Michigan 48909

CML (517) 373-3560

(Michigan—Department of Public Health)
John L. Hesse, Chief
Chemicals and Health Center
Michigan Department of Public Helath
P.O. Box 30035
Lansing, Michigan 48909

C 517) 373-8050

MINNESOTA

Dale L. Wikre, Director
Division of Solid and Hazardous Waste
Pollution Control Agency
1935 West County Rd. B-2
Roseville, Minnesota 55113

CML (612) 297-2735

MISSISSIPPI

Jack M. McMillan, Director
Division of Solid Waste Management
and Vector Control
State Board of Health
P.O. Box 1770
Jackson, Mississippi 39205

CML (601) 982-6317

MISSOURI

Robert M. Robinson, Director
Solid Waste Management Program
Department of Natural Resources
State Office Building
P.O. Box 1368
Jefferson City, Missouri 65102

CML (314) 751-3241

MONTANA

Duane L. Robertson, Chief
Solid Waste Management Bureau
Department of Health and Environmental Sciences
Cogswell Bldg., Room A201
Helena, Montana 59601

FTS 8-587-2821
CML (406) 449-2821

NEBRASKA

Robert Wall, Chief
Water and Waste Management Division
Department of Environmental Control
State House Station
P.O. Box 94877
Lincoln, Nebraska 68509

FTS 8-541-2186
CML (402) 471-2186

NEVADA

Lewis H. Dodgion, Administrator
Division of Environmental Protection
Department of Conservation and Natural Resources
Capitol Complex
Carson City, Nevada 89701

FTS 8-470-5911
CML (702) 885-4670

Verne Rosse
Waste Management Program Director
Division of Environmental Protection
Department of Conservation and Natural Resources
Capitol Complex
Carson City, Nevada 89701

CML (702) 885-4670

HAMPSHIRE

Sweeney, Chief
reau of Solid Waste
partment of Health and Welfare
th and Welfare Building
zen Drive
cord, New Hampshire 03301

(603) 271-4610

I JERSEY

o F. Pereira, Administrator
lid Waste Administration
vision of Environmental Quality
O. Box CN027
enton, New Jersey 08625

8-477-9120
(609) 292-9120

MEXICO

n Thompson, Chief
unity Support Services Section
al' d Environment Department
O. 968, Crown Building
ta Fe, New Mexico 87503

8-476-5271 Ext. 272
IL (505) 827-5271 Ext. 272

. Ray Krehoff, Program Manager
lid & Hazardous Waste Management Programs
unity Support Services Section
alth and Environment Department
.O. Box 968, Crown Building
.ta Fe, New Mexico 87503

8-476-5271 Ext. 282
(505) 457-5271 Ext. 282

YORK

man H. Nosenchuck, P.E., Director
ivision of Solid Waste
rtment of Environmental Conservation
0 Wolf Rd., Room 415
y, New York 12233

57-6603
IL) 457-6603

NORTH CAROLINA

O. W. Strickland, Head
Solid & Hazardous Waste Management
Branch
Division of Health Services
Department of Human Resources
P.O. Box 2091
Raleigh, North Carolina 27602

CML (919) 733-2178

NORTH DAKOTA

Jay Crawford, Director
Division of Environmental Waste Management
and Research
Department of Health
1200 Missouri Ave., 3rd floor
Bismarch, North Dakota 58505

CML (701) 224-2382

OHIO

Donald E. Day, Chief
Office of Land Pollution Control
Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216

FTS 8-942-8934
CML (614) 466-8934

OKLAHOMA

H.A. Caves, Chief
Industrial and Solid Waste Service
Department of Health
P.O. Box 53551
1000 N.E. 10th St., Room 803
Oklahoma City, Oklahoma 73152

CML (405) 271-5338

OREGON

Ernest A. Schmidt, Administrator
Solid Waste Management Division
Department of Environmental Quality
P.O. Box 1760
522 S.W. Fifth Ave.
Portland, Oregon 97207

FTS 8-424-5913
CML (503) 229-5913

ENNSYLVANIA

~n A. Lazarchik
ure_ of Solid Waste Management
epartment of Environmental Resources
ulton Building 8th floor
.O. Box 2063
arrisburg, Pennsylvania 17120

TS 8-637-9870
L (717) 787-9870

JERTO RICO

ntos Rohena, Associate Member
nvironmental Quality Board
fice of the Governor
.O. Box 11488
Santurce, Puerto Rico 00910

D.C. FTS Operator 472-6620
CML (809) 725-2062
(809) 725-5140 Ext 229 or 264

RHODE ISLAND

John S. Quinn, Jr., Chief
Sol aste Management Program
Dep ment of Environemtnal Managment
204 Cannon Building
75 Davis St.
Providence, Rhode Island 02908

CML (401) 831-4440

SOUTH CAROLINA

Hartsill W. Truesdale, Director
Solid Waste Management Division
S.C. Department of Health and Environmental Control
J. Marion Simms Building
2600 Bull St.
Columbia, South Carolina 29201

CML (803) 758-5681

Robert E. Malpass, Chief
Bureau of Solid and Hazardous Waste Management
S.C. Department of Health and Environmental Control
J. on Simms Building
26 ull St.
Columbia, South Carolina 29201

CML (803) 758-5681

SOUTH DAKOTA

Joel C. Smith, Chief
Air Quality and Solid Waste Programs
Department of Health
Joe Foss Building
Pierre, South Dakota 57501

CML (605) 773-3329

TENNESSEE

Tom Tiesler, Director
Division of Solid Waste Management
Bureau of Environmental Services
Department of Public Health
Capitol Hill Building, Suite 326
Nashville, Tennessee 37219

FTS 8-853-3424
CML (615) 741-3424

TEXAS

Jack C. Carmichael P.E., Director
Division of Solid Waste Management
Texas Department of Health
1100 West 49th Street, T-602
Austin, Texas 78756

CML (512) 458-7271

Jay Snow, P.E.
Head of Industrial Solid Waste Unit
Department of Water Resources
1700 North Congress, Room 237-1
P.O. Box 13087 Capitol Station
Austin, Texas 78711

CML (512) 475-2041

UTAH

Dale Parker, Director
Bureau of Solid Waste Management
Division of Health
P.O. Box 2500
150 West North Temple
Salt Lake City, Utah 84101

CML (801) 533-4145

VERMONT

Ric . A. Valentinetti, Chief
Air ..d Solid Waste Programs
Agency of Environmental Conservation
State Office Building
Montpelier, Vermont 05602

FTS 8-832-3395
CML (802) 828-3395

VIRGIN ISLANDS

Donald Francois
Department of Cultural Affairs
Government of the Virgin Islands
Natural Resources Management Building
2nd floor, Sub Base
St. Thomas, Virgin Islands 00801

D.C. Overseas Operator 472-6620
CML (809) 774-6420

VIRGINIA

William F. Gilley, Director
Bu... of Solid and Hazardous Waste Management
De. ent of Health
Madi..n Building, Room 927
109 Governor St.
Richmond, Virginia 23219

FTS 8-936-5271
CML (804) 786-5271

WASHINGTON

Earl Tower, Supervisor
Solid Waste Management Divison
Department of Ecololgy
Olympia, Washington 98504

FTS 8-434-6883
CML (206) 753-6883

WEST VIRGINIA

Dale Parsons, Director
Solid Waste Division
Department of Health
1800 Washington St. E.
Room 520
C. ;ton, West Virginia 25305

FTS 8-885-2987
CML (304) 348-2987

John Northeimer
Division of Water Resources
Department of Natural Resources
1201 Greenbrier St., 2nd floor
Charleston, West Virginia 25311

CML (304) 348-0375

WISCONSIN

Robert Krill, Director
Bureau of Solid Waste Management
Department of Natural Resources
P.O. Box 7921
Madison, Wisconsin 53707

FTS 8-366-1327
CML (608) 266-1327

WYOMING

Charles Porter, Supervisor
Solid Waste Management Program
State of Wyoming
Department of Environmental Quality
Equality State Bank Building
401 West 19th St., Room 3011
Cheyenne, Wyoming 82002

FTS 8-328-7752
CML (307) 777-7752

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

OCT 31980

PIG-80-2

MEMORANDUM

SUBJECT: Interim Authorization of Programs Based on Emergency State Regulations

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

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

TO: PIGS Addressees

ISSUE

Can States use emergency regulations to obtain interim authorization?

DISCUSSION

In order to qualify for interim authorization a State must have a hazardous waste statute and regulations that meet minimum Federal requirements. In some cases when a State promulgates final regulations they are subject to State administrative review. Such a review process may be time-consuming and delay the State's receipt of Phase I interim authorization. Many States have authority to enact emergency regulations which postpone this State administrative review.

A major drawback of authorizing State programs based upon emergency regulations is the possibility that the regulations may expire before final regulations are enacted. A State hazardous waste program without regulations obviously would not comply with minimum Federal requirements, and interim authorization would be subject to withdrawal under section 123.136. However, EPA could not administer a Federal program in the State until the State voluntarily returned the program to EPA or the extensive withdrawal procedures under section 123.15(b) were completed. Theoretically, this could result in a void during which no State or Federal regulations would be in force in the State.

In addition to the possibility that the emergency regulations would expire prior to the effective date of the final regulations, EPA is also concerned that the State's final regulations might be inadequate. The withdrawal procedures of 40 CFR 123.15(b) would apply in either case. However, the Agency wants to eliminate any possible gap in regulatory control and address in advance questions regarding reversion of the program in both of these situations.

Therefore, it is necessary that the Memorandum of Agreement (MOA) describe the process whereby the State would immediately and voluntarily return the program to EPA. The Federal regulations provide for such a reversion process at 40 CFR 123.15(a): "... or in such other manner as may be agreed upon with the Administrator." The State must also agree to submit its final regulations for review of adequacy at the time it applies for Phase II authorization.

DECISION

Recognizing both the advantages and disadvantages of allowing a State to use emergency regulations to qualify for interim authorization, EPA has decided to allow a State to use emergency regulations, provided the State meets certain conditions.

EPA will grant Phase I interim authorization to a State whose program under emergency regulations is substantially equivalent to the Federal program if, in addition, the following conditions are met:

1) The State must show that under its normal administrative procedures it will be able to enact final regulations which will take effect before the emergency regulations expire;

2) The MOA must provide that the State will submit its final regulations to EPA for review at the time the State applies for Phase II interim authorization; and

3) The MOA must describe the process by which the State will immediately and voluntarily return the program to EPA in the event that the emergency regulations expire prior to the effective date of the final regulations.

Emergency regulations will not be an eligible basis for issuance of final authorization.

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

OCT 31 1980

PIG-80-3

MEMORANDUM

SUBJECT: Requirement That State-Permitted Hazardous Waste Facilities Have "Interim Status"

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

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

TO: PIGS Addressees

ISSUE

If a State agency in a State with Phase I authorization issues a facility permit after November 19, 1980 but the State program has not been authorized for Phase II interim authorization:

a) Does the facility have interim status?

b) If the facility does not have interim status, can it begin operation?

DISCUSSION/DECISION

a) For a facility to obtain interim status it must meet three requirements as stated in Section 3005(e) of RCRA. These are:

- The facility must have been "in existence" on the date of enactment of RCRA (October 21, 1976), or on the date specified by any amendments passed by Congress; and
- The facility must have complied with the notification requirements specified in Section 3010(a); and
- The facility must have applied for a permit as required under Section 3005(a).

If a facility meets all three of these requirements, it has interim status for the purposes of RCRA until a RCRA permit has been issued or denied by EPA or a State authorized for Phase II.

b) Assuming that a facility does not qualify for interim status and has not been issued a RCRA permit, facility construction and operation are precluded until a RCRA permit is issued. Because EPA is not authorizing State permit programs during Phase I interim authorization, a facility permit issued by a State with Phase I authorization is not a RCRA permit. For the same reason, Phase I authorization of a State program does not suspend the RCRA Section 3005 requirement that in order to operate lawfully a facility must have a RCRA permit or interim status. Because neither EPA nor any States will be issuing RCRA permits during Phase I, only facilities with interim status may operate during that period.

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

OCT 31980

PIG-80-4

MEMORANDUM

SUBJECT: Short-Term Financial Assistance for States Expected to Receive Authorization Before January 1, 1981

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

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

TO: PIGS Addressees

ISSUE:

In order to provide financial assistance to those States where the Region expects to issue interim authorization after November 19, 1980, but before January 1, 1981, is it necessary to execute a complete Cooperative Arrangement?

DISCUSSION:

The situation is likely to arise where a State has submitted a complete interim authorization application, the Regional Office expects to issue authorization before January 1, 1981, but authorization will not be issued until after November 19, 1980. Such a State could enter into a Cooperative Arrangement with the Region in order to obtain Federal funds and to aid in implementing the Federal program. (Note that the FY'81 RCRA Guidance provides on page 7 that where nonauthorized States desire financial assistance they must enter into Cooperative Arrangements).

However, there would appear to be little, if any, benefit in completing the documentation associated with a Cooperative Arrangement in such a situation since: (1) the documentation would be applicable for a relatively short period of time and (2) some of the required documentation would be very similar to that already submitted in the State's authorization application.

DECISION:

Where a State desires financial assistance and the Region expects to authorize the State's program after November 19, 1980, but before January 1, 1981, it is desirable to reduce the burden of documentation.

To this end, financial assistance can be provided without entering into a Cooperative Arrangement provided that:

(1) The State and Regional Office jointly execute a document which delineates the respective roles, responsibilities, and activities of the two entities during the period between the date of execution and the date on which interim authorization is issued. The Region must be assured that the State has authority to perform those activities which it would undertake (e.g., a signed statement from the Attorney General). (Note that implementation of the Federal program will begin November 19, 1980, and there is no "grace period" during which implementation is delayed pending issuance of authorization to a State.) and

(2) The cooperative agreement (grant) expressly provides that financial assistance will automatically terminate on January 1, 1981, unless the State has, by that date, been issued interim authorization or entered into a Cooperative Arrangement.

COA consists of:
1) A C.O. Agreement (grant);
2) MOU;
3) Development Plan (mini A.P.); and
4) Certification of Authority (mini A.G.)

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

OFFICE OF WATER
AND WASTE MANAGEMENT
PIG-81-1

OCT 17 1980

MEMORANDUM

SUBJECT: The Use of State Permitting Systems During Phase I Interim Authorization Which are not Based on Explicit Regulatory Standards.

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

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

TO: PIGS Addressees

Issue:

Can a State program be considered substantially equivalent to the Federal Phase I hazardous waste program if the State controls hazardous waste management facilities through a permitting system which is not based on explicit regulatory standards?

Discussion:

This issue is not concerned with the authorization of States to issue/revoke RCRA permits, as is provided in §3005. Such authorization will not be available to States until the Phase II regulations are effective. During Phase I of interim authorization, Federal interim status standards or their State analogues apply to existing facilities. Some States with Phase I interim authorization may elect to apply their version of Federal interim status standards by issuing permits containing conditions analogous to the Federal interim status standards. This approach is perfectly acceptable. However, a permit containing those standards is not a RCRA permit and does not relieve the facility owner/operator holding it of the obligation to apply for and receive a RCRA permit after the effective date of Phase II.

In those States which deal with hazardous waste only through a permitting system, the Agency is concerned with the substance of the permit conditions. These permit conditions (along with compliance monitoring) will be the key elements which determine the success of a State program. The ideal situation exists when permit conditions are based on explicit regulatory standards which are substantially equivalent to the Federal interim status standards. This situation has the advantage of minimizing the potential for litigation by permittees who disagree with the permit conditions and provides a sound enforcement position. Some States, however, base their hazardous waste permit conditions on policy or guidance rather than on explicit standards established via regulation. Such a State program may require additional scrutiny by EPA prior to making a decision on whether to grant interim authorization.

Decision:

A State program may be issued interim authorization for Phase I even if it controls hazardous waste facilities through a permitting system which is not based on explicit regulatory standards. In determining whether the State's facility controls are substantially equivalent to the Federal program, the considerations discussed below must be examined.

The State's program description must delineate the conditions that will be used in all permits and must demonstrate that these conditions are substantially equivalent to the Federal interim status standards.

The State must have the legal authority to apply these permit conditions and to enforce compliance with the conditions. The State Attorney General must indicate in his or her statement (as part of the application) that such legal authority does exist.

Furthermore, the Memorandum of Agreement (MOA) must provide that all permit conditions delineated in the program description will be incorporated into all permits prior to the date of interim authorization. The MOA must state that permits will not be re-issued or modified unless as re-issued or modified they are substantially equivalent with the Federal interim status standards. The MOA must certify that the permits will be modified, if necessary, because of modifications in the Federal regulations, within one year of the date of promulgation of the new Federal regulation. In cases where a State statutory amendment or enactment is required to reflect changes in the Federal regulations, the MOA must provide that the permits will be modified within two years, as provided by 40 C.F.R. §123.13(e) (45 FR 33463). The MOA must also specify that all hazardous waste management activities without a permit are prohibited. Authority for such prohibition must be indicated in the Attorney General's Statement.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C. 20460

OCT 20 1980

OFFICE OF WATER
AND WASTE MANAGEMENT

PIG-81-2

MEMORANDUM

SUBJECT: Federal Register Notice of Public Hearing and Comment Period on State Applications for Interim Authorization

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

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

TO: PIGS Addressees

ISSUE

How should Federal Register notices regarding public hearing and comment on State applications for interim authorization be worded? What is the process for publishing such notices?

DISCUSSION

A number of Regional Offices recently have asked about the wording and publishing of Federal Register notices required in 40 CFR 123.135(a). This guidance memorandum has been prepared to provide for national consistency and to expedite the approval process. This memorandum provides background information on the regulatory requirements and presents suggested wording and publication procedures for the notice. We wish to thank Laura Yoshii of the Region IX Hazardous Materials Branch and Cheryl Koshuta of the Office of Regional Counsel, Region X, for their invaluable assistance in the preparation of the model notice.

Section 123.135 of 40 CFR describes the approval process for complete State applications for interim authorization of hazardous waste management programs. Section 123.135(a)(1) directs the Regional Administrator to issue notice in the Federal Register, and in accordance with §123.39(a)(1), of a public hearing on the State's application for interim authorization. The Interim Authorization Guidance Manual suggests that this notice be published as soon as possible after the receipt of a complete State application. (The regulation allows up to 30 days after receipt before the notice must be issued.) The tighter schedule found in the Manual is based on making a final decision on the complete State application on an accelerated basis within 60 days.

Regional Offices should ensure that the application is complete before issuing the notice. The complete application should address all major issues raised by EPA during review of the draft application, as well as contain all required documents. When major issues have not been adequately addressed, it may be desirable for the State to submit additional information and application amendments before the application is considered complete and before the Federal Register notice is published. If, however, a notice is published and the State subsequently submits significant new information or program changes, it may be necessary to issue a second Federal Register notice announcing the availability of the new information and extending the public review and comment period. In some instances, it may become necessary to postpone the hearing or schedule a second hearing to provide adequate public consideration of the significant new information. This is a decision the Region should make on a case-by-case basis as the situation dictates. Efforts made at the outset to ensure that the State's application is complete before issuing the notice can avoid later confusion, delays, or impediments to public participation.

Section 123.135(a) requires that the public hearing be held by EPA no earlier than the 30th day after the Federal Register notice is published. Expedited publication of the notice will enable the hearing to take place close to the 30th day after the complete application is received, thus keeping us on the schedule toward timely approval of acceptable State programs.

The regulation also provides that where significant public interest in a hearing is not expressed the hearing may be cancelled if a statement to that effect was included in the public notice. Also, State participation is required in any public hearing held by EPA.

In addition to EPA's Federal Register notice, public notice must be issued in accordance with 40 CFR §123.39(a)(1). This section requires the notice to 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."

The regulations also specify that EPA must afford the public 30 days after the notice to comment on the State's submission and must note the availability of the State's submission for inspection and copying by the public. The State submission must, at a minimum, be available in the main office of the lead State agency and in the EPA Regional Office.

The Guidance Manual's review procedure for complete applications states that the Regional Workgroup and Headquarters Review Team must complete their respective reviews prior to the public hearing, in order to facilitate interpretation of public comments received at the hearing. After the hearing has been held and public comments have been submitted, the State Delegation Coordinator will be responsible for preparing responses to the comments. The responses are to be reviewed by the Regional Workgroup and the Headquarters Review Team.

The §123.135(b) requirements for interim authorization approval state that within 90 days after the initial notice in the Federal Register, the Administrator must make a final determination whether or not to approve the State's program, taking into account any comments submitted. The Administrator must give notice of this final determination in the Federal Register and in accordance with §123.39(a)(1). The Administrator must include a concise statement of the reasons for this determination and a response to significant comments received. Pages 1.2-8 and 1.2-9 of the Guidance Manual provide additional information concerning the content, timing, and concurrences in the Regional Administrator's Action Memorandum and official Federal Register notice of approval.

DECISION

We believe that consistent wording in the Federal Register notices will promote public understanding of the program and ensure that all regulatory requirements are satisfied. A model Federal Register notice which meets the requirements of 40 CFR 123.135(a) has been developed and is attached. This model has been reviewed and approved by Federal Register attorneys and editors. We suggest that all Regional Offices use this basic format and wording, with the addition of appropriate details concerning names, places, times, etc.

The Model Federal Register notice contains optional sections on Conduct of Hearings and Preparation of Transcripts. A specific format for the hearings is not set forth in the regulations. Thus, the format which is suggested in this model can be changed to meet specific situations which may arise regarding the various States. Once the format is established, this section can be used in conjunction with the background information section of the notice as general opening remarks for the hearing.

The suggested format provides for a panel to receive testimony and to pose questions, as appropriate, to persons testifying. The panel should recognize that its role is not one of defending a particular course of action (i.e. approval or disapproval), the State's program, or the Federal regulations. The decision to approve or disapprove interim authorization can be made only after the hearing; thus, the Agency will not have a final decision to defend at the hearing. However, in some cases the Agency may have developed a preliminary conclusion based on review of the application prior to the hearing. In such cases the public should be fully informed as to the Agency's "leanings". This can be handled as a "Major Issue" identified in the Federal Register hearing notice. Also, as a minimum, the hearing chairperson should identify the Agency's preliminary conclusion in the opening remarks and should explain that the conclusion is only tentative, pending the review of public comments and the proceedings of the hearing.

The purpose of the hearing is to receive information from and the opinions of the public, and the panel should be encouraged to ask clarifying questions of the public as appropriate. The panel is to consist of EPA personnel, especially those who have personally reviewed the State's application in depth.

We suggest that a representative of the State be present to testify first, including in the testimony a brief description of the State program, and to participate in any question and answer session which the panel might provide at the hearing's conclusion. (Any general question and answer session should be off the record.)

States may desire to use the hearing to satisfy their own legal requirements to hold public hearings. Regional Offices should then determine whether a joint EPA - State hearing is desirable, considering the purpose of the State's hearing and its relationship to EPA's hearing requirement. In some cases joint hearings would be very cost-effective: States would not have to bear the cost of conducting separate hearing; and the public could avoid the cost of appearing at multiple hearings.

However, at joint hearings where the State participates on the hearing panel we must avoid any appearance of State involvement in EPA's decision-making. The hearing chairperson can avoid such appearances by carefully and clearly explaining the situation in the opening remarks. State participation on the panel should be noted in the "Conduct of Hearing" portion of the Federal Register hearing notice. Persons presenting testimony should be asked to identify whether their comments are for purposes of the State proceedings or the EPA proceedings.

The model also contains an optional section for listing major issues of interest to EPA. This section is designed to set out and briefly describe specific problems or issues which have arisen during review of the State's application. The listing of major issues may help to focus comments on particular problems facing EPA in the decision whether to grant interim authorization to the State.

The notice should be double-spaced. The original signed notice and four copies should be sent 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 notice should also be sent to the HQ Review Team Leader, for placement in the HQ Library with a copy of the State application. (The notice should indicate that an application copy is available for public inspection at the EPA HQ Library).

The EPA Federal Register Office will add appropriate log and billing numbers and transmit the notice for publication. Generally, EPA's Federal Register Office can review and transmit the notice within a day. The notice should be published within an additional three days. If you need information or special assistance concerning publication, call Carolyn Ward at FTS 287-0778.

Attachment

U.S. ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123 (Subpart F)

[State] Application for Interim Authorization, Phase I, Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region ____.

ACTION: Notice of public hearing and public comment period.

SUMMARY: EPA has promulgated regulations under Subtitle C of the Resource Conservation and Recovery Act (as amended) to protect human health and the environment from the improper management of hazardous waste. Phase I of the regulations were published in the Federal Register on May 19, 1980 (45 FR 33063). These regulations include provisions for authorization of State programs to operate in lieu of the Federal program. Today EPA is announcing the availability for public review of the [State] application for Phase I interim authorization, inviting public comment, and giving notice of a public hearing to be held on the application.

DATE: Comments on the [State] interim authorization application must be received by [a date at least thirty days from the date of publication of this notice].

PUBLIC HEARING: EPA will conduct a public hearing on the [State] interim authorization application at [Time] on [a date no earlier than 30 days after the date of publication of this notice]. EPA reserves the right to cancel the public hearing if significant public interest in a hearing is not expressed. The State of _____ will participate in the public hearing.

ADDRESSES: The public hearing will be held at:

[Room number, address, city, state].

Copies of the [State] interim authorization application are available at the following addresses for inspection and copying by the public:

[Address and phone number of the main office of the lead State agency];

[Address and phone number of EPA Regional Office];

EPA Headquarters Library, Room 2404, 401 M Street, S.W., Washington, D.C.

Written comments and requests to speak at the hearing should be sent to:

[Name, address and phone number of person at EPA Regional Office].

FOR FURTHER INFORMATION CONTACT:

[Name, address and phone number of EPA Regional Office contact person].

SUPPLEMENTARY INFORMATION: In the May 19, 1980 Federal Register (45 FR 33063) the Environmental Protection Agency promulgated Phase I of its regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (as amended), to protect human health and the environment from the improper management of hazardous waste. EPA's Phase I regulations establish, among other things: the initial identification and listing of hazardous wastes; the standards applicable to generators and transporters of hazardous wastes, including a manifest system; and the "interim status" standards applicable to existing hazardous waste management facilities before they receive permits.

The May 19 regulations also include provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect. In order to qualify for interim authorization, the State hazardous waste program must, among other things:

(1) have been in existence prior to August 17, 1980, and

(2) be "substantially equivalent" to the Federal program.

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 123 Subpart F, (45 FR 33479).

The State of _____ has submitted a complete application to EPA for Phase I interim authorization. Copies of the State submittal are available for public inspection and comment as noted above. A public hearing is to be held on the submittal, unless significant public interest is not expressed, as also noted above.

CONDUCT OF HEARING

(Note: Where joint hearings are held to satisfy State as well as Federal hearing requirements, this section should be reworded to reflect any changes in hearing format and conduct. See discussion of joint hearings on page 4 of PIG - 81 -2.)

The hearing is intended to provide an opportunity for interested persons to present their views and submit information for consideration by EPA in the decision whether to grant [State] interim authorization for Phase I of the RCRA program. A panel of EPA employees involved in relevant aspects of the decision will be present to receive the testimony.

The hearing will be informally structured. Individuals providing oral comments will not be sworn in, nor will formal rules of evidence apply. Questions may be posed by panel members to persons providing oral comments; however, no cross-examination by other participants will be allowed.

The State will testify first and present a short overview of the State program. Other commenters will then be called in the order in which their requests were received by EPA. As time allows, persons who did not sign up in advance but who wish to comment

on the State's application for Phase I interim authorization will also be given an opportunity to testify.

Each organization or individual will be allowed as much time as possible for oral presentation based on the number of requests to participate and the time available for the hearing. As a general rule, in order to ensure maximum participation and allotment of adequate time for all speakers, participants should limit the length of their statements to 10 minutes.

The public hearing will be followed, as time permits, by a question and answer session during which participants may pose questions to members of the panel.

PREPARATION OF TRANSCRIPTS

A transcript of the comments received at the hearing will be prepared. To ensure accurate transcription, participants should provide written copies of their statements to the hearing chairperson. Transcripts will be available from [person and address] approximately [ ] days after the hearing at a cost of $[ ].

MAJOR ISSUES OF INTEREST TO EPA

In order for a State program to receive interim authorization, it must be substantially equivalent to the Federal program. EPA is soliciting comment on all aspects of the substantial equivalence of the [State] program to the Federal hazardous waste management program. The Agency is particularly interested in public comment on the following issues:

[List specific points where questions exist as to substantial equivalence.]

Dated: [date]

[Signature]
Regional Administrator

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON D C 20460

OCT 30 1980

PIG-81-3

MEMORANDUM

SUBJECT: Effect of RCRA Regulations Changes on Phase I Interim Authorization Approval

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

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

TO: PIGS Addressees

ISSUE

Can EPA issue Phase I Interim Authorization to a State program that does not incorporate promulgated revisions to the Federal regulations of May 19, 1980?

DISCUSSION

Questions have arisen as to the status of a State's application for Phase I Interim Authorization where that application is based on the Federal regulations promulgated May 19, 1980, but is submitted subsequent to promulgation of changes to those Federal regulations.

Specific concern centers around the Part 261 listed wastes. On May 19, 1980, EPA categorized certain hazardous wastes and specifically listed 85 process wastes and 361 commercial chemical products as hazardous wastes. At the same time, EPA referenced "Other Listed Wastes" (Preamble, 40 CFR Part 261, 45 FR 33087) intended for listing as hazardous in June, 1980 and in Fall 1980 (Appendices A and B, respectively). Appendix A lists 25 additional wastes, and Appendix B adds 29 more wastes. By including Appendices A and B in the May 19, 1980, regulation EPA tried to ease the burden on the States of having to modify their regulations in a piecemeal fashion. While there was no indication that States would have to include these wastes in their applications for Interim Authorization approval by November 19, 1980, it was a notice to the States that they most likely would eventually have to include such wastes.

Clearly the Congress and EPA anticipate the need for periodic expansion of regulations promulgated under §3001 of RCRA. Thus, the Regions and States should prepare for revisions and be flexible enough to include them wherever possible. The Agency also recognizes that changes to State regulations may entail very involved procedures, and States may not be able to produce modifications as quickly as EPA, or they, might desire.

DECISION

EPA will continue to encourage States to incorporate Federal regulatory revisions as quickly as possible. However, with the exception of Authorization Plans, all complete applications for Phase I Interim Authorization submitted prior to May 20, 1981, will be evaluated against only those Federal regulations which were promulgated on May 19, 1980. Authorization Plans included in the States' applications must address Federal regulatory changes which have been promulgated prior to submission of the Plan to EPA for evaluation.

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

- 3 1 '80

PIG-81-4

MEMORANDUM

SUBJECT: "Delisting" of Wastes by Authorized States

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

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

TO: PIGS Addressees

ISSUE:

Can a State with an authorized hazardous waste management program be allowed to exempt ("delist") hazardous waste from individual sites?

DISCUSSION:

EPA has provided certain standards and procedures for "delisting" waste from a particular generating facility or storage, treatment, or disposal facility at which a hazardous waste is generated (see 40 CFR 260.20 and 260.22, 45 FR 33076, and preamble discussion at 45 FR 33116). Persons seeking such a delisting action may petition the Administrator of EPA for an amendment to the Federal regulations which would provide the exemption. In the petition, the person must show that the waste is fundamentally different than that listed by demonstrating, as appropriate, that the waste does not:

(1) exhibit the characteristic of ignitability, corrosivity, reactivity, or toxicity,

(2) meet the criteria for listing the waste as acutely hazardous (i.e., the oral or dermal LD50 or inhalation LC50 specified in 40 CFR 261.11(a)(2), 45 FR 33121) and also does not meet the toxicity criterion,

(3) contain the hazardous constituent of Appendix VIII of 40 CFR 261 (45 FR 33312) for which it was listed, or, if the waste does contain those constituents, show that consideration of other factors argue against the waste being considered a hazardous waste (see 40 CFR 261.11(a)(3), 45 FR 33121). This decision is based on consideration of any of approximately ten factors and is a discretionary one.

When a State program has been found to be substantially equivalent to the Federal program, it receives interim authorization to operate in lieu of the Federal program; i.e., Federal requirements generally no longer apply, and the "requirement(s) of this subtitle" which are enforced under section 3008 of the Act are those of the State program approved under section 3006. Therefore, action by EPA to delist a waste from a particular generating facility (or storage, treatment, or disposal facility which generates hazardous waste) in a State with interim authorization would not affect the State requirements unless the State took a similar action.

Some concern exists regarding the potential incompatibility inherent in allowing one State to delist, whereas another State may desire not to delist. This problem is not unique to the issue of delisting, since the latter State program may be viewed as a "more stringent" one (because it regulates more wastes) and is acceptable under section 3009 of RCRA. (See the preamble to 40 CFR Part 123, Subparts B and F, 45 FR 33385.)

The question here is whether a State program with interim authorization can provide a delisting mechanism. If so, what shape and form must that mechanism take if EPA is to authorize the State program as "substantially equivalent" to the Federal program?

In the regulations under 40 CFR Part 123, EPA is silent on the issue of State delisting mechanisms. A State without such a mechanism is not precluded from receiving interim authorization. The universe of wastes controlled by such a State would be subject to change only through regulatory or statutory change.

For interim authorization, EPA requires the States to control a universe of hazardous waste generated, treated, stored, and disposed of in the State which is nearly identical to that which would be controlled by the Federal program under 40 CFR Part 261 (see 40 CFR 123.128(a), 45 FR 33481). A State can demonstrate that its program contains a delisting provision which, nevertheless, leaves the State universe nearly identical to EPA's. On the other hand, if the State's delisting mechanism lacked explicit

standards and procedures analogous to those included in EPA's delisting mechanism, it would be difficult for EPA to assure that the State was providing the proper control of wastes.

It is possible that a State, as a result of its delisting, may decrease its universe of wastes such that its coverage is no longer nearly identical to the Federal universe. For example, a question has arisen as to what would happen if an interim authorized State abused its discretion in delisting wastes from individual sites, but EPA, operating the Federal program in one or more States into which those wastes were imported, refused to delist the wastes from those sites. This would clearly be a situation where the State would be subject to withdrawal of EPA's authorization for failure to exercise control over activities required to be regulated (40 CFR 123.136 and 40 CFR 123.14(a)(2)(i)).

DECISION: State programs with delisting mechanisms may receive interim authorization provided those delisting mechanisms are substantially equivalent to EPA's. In order to be considered substantially equivalent, the State must demonstrate that the delisting methodology is consistent with its methodology for listing. The Memorandum of Agreement must contain a provision that the State will keep EPA fully informed of any State delisting activities and should make clear the possibility of withdrawal of authorization in the event that, due to delistings, the State's universe of wastes is no longer nearly identical to EPA's.

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

NOV 14 1980 PIG-81-5

MEMORANDUM

SUBJECT: Used Oil Recycling Act of 1980 (P.L. 96-463)

FROM: Steffen W. Plehn
Deputy Assistant Administrator
for Solid Waste

R. Sarah Compton
Deputy Assistant Administrator
for Water Enforcement

TO: PIGS Addressees

Issue

How will the Used Oil Recycling Act of 1980 (P.L. 96-463) affect the Subtitle D State solid waste management plans?

Discussion

On October 15, 1980, the "Used Oil Recycling Act of 1980" (P.L. 96-463) was enacted. This Act, which amends the Solid Waste Disposal Act, includes provisions which:

- Define the terms "used oil;" "recycled oil;" "lubricating oil;" and "re-refined oil."
- Direct the Federal Trade Commission (FTC) to remove and prevent any biased labeling requirements on re-refined oil.
- Provide for the establishment of discretionary oil recycling programs within the existing State solid waste management planning process under Subtitle D of RCRA.
- Provide for technical assistance to the States to address issues regarding oil recycling.

- Require the EPA to develop standards for the recycling of used oil and to determine whether used oil is subject to the hazardous waste requirements under Subtitle C of RCRA.

- Require the EPA, in cooperation with the Department of Energy (DOE), Federal Trade Commission (FTC), and the Department of Commerce (DOC), to study the environmental concerns and the collection cycle of used oil and to analyze the supply and demand in the used oil industry. In addition, the comparison of energy savings associated with the re-refining of oil and the development of policies at the Federal, State and local levels to encourage the recycling of used oil are to be addressed.

Since the passage of the "Used Oil Recycling Act of 1980" many questions have been raised concerning the impact of this Act on the Subtitle C and Subtitle D programs. The majority of these questions have been in regard to the discretionary plan (Subtitle D) provisions relating to recycled oil. Section 4003(b) provides that any State plan submitted under Subtitle D may include, at the State's option, provisions to carry out each of the following:

> "(1) Encouragement to the maximum extent feasible and consistent with the protection of the public health and the environment, of the use of recycled oil in all appropriate areas of State and local government.
>
> (2) Encouragement of persons contracting with the State to use recycled oil to the maximum extent feasible, consistent with protection of the public health and the environment.
>
> (3) Informing the public of the uses of recycled oil.
>
> (4) Establishment and implementation of a program (including any necessary licensing of persons and including the use, where appropriate, of manifests) to assure that used oil is collected, transported, treated, stored, reused and disposed of, in a manner which does not present a hazard to the public health or environment."

Section 4008(f) further provides that the Administrator may make grants to States, which have a State plan approved under Section 4007, or which have submitted a State plan for approval under such section, where such plan includes the discretionary provisions for recycled oil described above in Section 4003(b). These grants would be for the purpose of assisting the States in carrying out the discretionary provisions but could not be used for construction or for the acquisition of land or equipment.

Finally, there are authorized to be appropriated $5,000,000 for fiscal year 1982 and $5,000,000 for fiscal year 1983. No funds are authorized for fiscal year 1981, and funds for fiscal years 1982 and 1983 have not yet been appropriated.

Decision

To obtain approval under Section 4007, State plans need not include the discretionary provisions of Section 4003 (b). However, to be eligible for possible financial assistance in carrying out the discretionary provisions, the State solid waste management plan, including the discretionary provisions, must be approved under Section 4007, or must have been submitted for approval.

States considering the submission of a discretionary plan for recycled oil must do so in accordance with Section 4003(b). The discretionary provisions must be incorporated into the State solid waste management plan which is to be developed pursuant to Section 4002(b). Subpart D of 40 CFR Part 256, "Guidelines for for Development and Implementation of State Solid Waste Management Plans" sets forth additional requirements and recommendations for developing and implementing resource conservation and recovery programs. The deadline for submission of State plans for approval under Section 4007 is January 31, 1981. States may subsequently amend their plans to include these discretionary provisions (See 40 CFR 256.03).

Should funds be appropriated for such grants in fiscal year 1982 or fiscal year 1983, States meeting the eligibility requirements may apply for financial assistance to carry out the discretionary provisions. We intend to address this program in the "Guidance for the Development of State Work Programs for Fiscal Year 1982 under the Resource Conservation and Recovery Act (RCRA)."

Further questions should be directed to: Mr. James Michael (WH-563), State Programs Branch, State Programs and Resource Recovery Division, Office of Solid Waste; telephone (202) 755-9145.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C. 20460

MEMORANDUM NOV 14 1980 PIG-81-6

SUBJECT: State Regulation of Federal Agencies for Purposes of Interim Authorization

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

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

TO: PIGS Addressees

ISSUE

Must States have independent statutory and regulatory control over Federal facilities and Federal agencies in order to qualify for interim authorization?

DISCUSSION

I. Introduction

Some States appear to exclude Federal agencies from their regulated community, thereby not requiring Federal agencies to comply with State requirements placed on generators and transporters of hazardous waste and on owners and operators of hazardous waste management facilities. Generally, the apparent exclusion is not explicit. Rather, Federal agencies are, as a group, not specifically identified in the State's definition of the regulated community.

Approximately 700 Federal installations have notified EPA that they are engaged in hazardous waste activities. Ground-water contamination from two Federal facilities was cited by the U.S. House of Representatives (House of Respresentatives Report #94-1491, 1976) as part of the hazardous waste management problem which required Federal action through the Resource Conservation and Recovery Act of 1976.

The purpose of this Program Implementation Guidance memorandum is to indicate whether a State must have statutory and regulatory authority for hazardous waste management over Federal agencies in order to qualify for Interim Authorization, pursuant to 40 CFR 123 Subpart F.

II. Definition of a Federal agency

Federal agency is defined in RCRA §1004 (4) and in 40 CFR 260.10(a)(22). Federal agency means "any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government Corporation, and the Government Printing Office". As used in this memorandum, "Federal facilities" are any facilities owned or operated by any "Federal agency".

III. What Federal requirements exist over Federal agencies?

Subtitle F of RCRA establishes Federal responsibilities for solid and hazardous waste management. RCRA §6001 states that each Federal agency shall be subject to, and comply with, the same substantive and procedural requirements for hazardous waste management that are imposed on other persons by Federal, State, and local governments, when that Federal agency is engaged in activities which result, or which may result, in the disposal or management of solid or hazardous waste.

Executive Order 12088 directs Executive agencies to comply with the Solid Waste Disposal Act, as amended by RCRA (42 U.S.C. 6901 et seq). Section 1-302 directs the EPA Administrator or his agent to conduct inspections, as necessary, to monitor compliance by Executive agencies. Section 1-601 establishes that the Administrator or an appropriate State agency can notify an Executive agency of its violation of an applicable pollution control standard, and approve a compliance plan and schedule. This procedure is in addition to the other applicable statutory enforcement procedures and sanctions.

IV. What controls must States have over Federal agencies to qualify for Interim Authorization?

A. Universe of Wastes

The Federal regulation at 40 CFR 123.128(a) requires that a State program control a universe of hazardous waste generated, treated, stored, and disposed of in the State which is nearly identical to that which would be controlled by the Federal program under 40 CFR Part 261. The "nearly identical" test is discussed in the RCRA State Interim Authorization Guidance Manual (EPA, 1980, pp. 3.1-1,2). The test for substantial equivalence is based on the generic nature of the waste, not on the nature of ownership (e.g. Federal) of the generating facility or the waste.

B. Generators, Transporters and Facilities

The Federal regulation at 40 CFR 123.128(b)(2) requires that a State program regulate all generators located in the State. The regulations at 40 CFR 123.128(b)(3) through (8) require that the State regulate generators in a manner substantially equivalent to the procedural and substantive requirements of 40 CFR 262. Parallel requirements for State programs concerning transporters of hazardous waste are established in 40 CFR 123.128(c). The Federal regulation at 40 CFR 123.128(e) requires that State programs enforce facility standards which are substantially equivalent to 40 CFR 265, and that State law prohibit the operation of facilities not in compliance with such standards. 40 CFR Part 123, Subpart F indicates that States are to exercise regulatory control over all generators, transporters, and owners/operators of facilities managing hazardous wastes.

C. State Controls

There is no provision in 40 CFR Part 123, Subpart F that States may exempt from their regulated community those wastes or waste management activities involving Federal agencies. Consequently, in order to be substantially equivalent to the Federal program, a State program must exercise authority over Federal agencies involved in hazardous waste management.

DECISION

For purposes of interim authorization, a State must demonstrate, through its Attorney General's Statement and Program Description, that it controls Federal agencies in the manner required by 40 CFR §123.128.

When State law and regulations explicity include Federal agencies in the State's regulated community, the issue is not in controversy, and the Attorney General's demonstration would be straightforward. This would be the case where a State's definition of "person" (i.e., those who are subject to the regulatory requirements for hazardous waste management established in the State Program) explicitly includes Federal agencies.

When Federal agencies are not explicitly included in (or excluded from) the State's regulated community (i.e., State statutes and regulations are silent on whether Federal agencies are regulated), the Attorney General's Statement must explain the basis for the State's assertion of jurisdiction over them. This explanation must be based on the State's overall statutory and regulatory framework. The State Attorney General can cite RCRA §6001 and Executive Order 12088 to demonstrate Congressional and Executive intent that Federal agencies comply with State Program requirements. However, these citations do not independently

provide the State with jurisdiction over Federal agencies.

In addition, when Federal agencies are not explicity included in the regulated community, the State must also indicate in its Program Description that it will regulate Federal agencies in the manner described by 40 CFR §123.128.

~~If a State Attorney General's Statement indicates that the State cannot control Federal agencies, interim authorization cannot be granted.~~

In defining their regulated community, States should be encouraged to explicitly include Federal agencies, in order to qualify for final authorization.

Attachment - Executive Order 12088

presidential documents

[3195-01-M]

Title 3—The President

Executive Order 12088 October 13, 1978

Federal Compliance With Pollution Control Standards

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 22 of the Toxic Substances Control Act (15 U.S.C. 2621), Section 313 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1323), Section 1447 of the Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300j-6), Section 118 of the Clean Air Act, as amended (42 U.S.C. 7418(b)), Section 4 of the Noise Control Act of 1972 (42 U.S.C. 4903), Section 6001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6961), and Section 301 of Title 3 of the United States Code, and to ensure Federal compliance with applicable pollution control standards, it is hereby ordered as follows:

1-1. *Applicability of Pollution Control Standards.*

1-101. The head of each Executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency.

1-102. The head of each Executive agency is responsible for compliance with applicable pollution control standards, including those established pursuant to, but not limited to, the following:

(a) Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*).

(b) Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 *et seq.*).

(c) Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*).

(d) Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

(e) Noise Control Act of 1972 (42 U.S.C. 4901 *et seq.*).

(f) Solid Waste Disposal Act, as amended (42 U.S.C. 6901 *et seq.*).

(g) Radiation guidance pursuant to Section 274(h) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(h); see also, the Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays approved by the President on January 26, 1978 and published at page 4377 of the FEDERAL REGISTER on February 1, 1978).

(h) Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401, 1402, 1411-1421, 1441-1444 and 16 U.S.C. 1431-1434).

(i) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 *et seq.*).

1-103. "Applicable pollution control standards" means the same substantive, procedural, and other requirements that would apply to a private person.

1-2. *Agency Coordination.*

1-201. Each Executive agency shall cooperate with the Administrator of the Environmental Protection Agency, hereinafter referred to as the Adminis-

trator, and State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution.

1-202. Each Executive agency shall consult with the Administrator and with State, interstate, and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

1-3. *Technical Advice and Oversight.*

1-301. The Administrator shall provide technical advice and assistance to Executive agencies in order to ensure their cost effective and timely compliance with applicable pollution control standards.

1-302. The administrator shall conduct such reviews and inspections as may be necessary to monitor compliance with applicable pollution control standards by Federal facilities and activities.

1-4. *Pollution Control Plan.*

1-401. Each Executive agency shall submit to the Director of the Office of Management and Budget, through the Administrator, an annual plan for the control of environmental pollution. The plan shall provide for any necessary improvement in the design, construction, management, operation, and maintenance of Federal facilities and activities, and shall include annual cost estimates. The Administrator shall establish guidelines for developing such plans.

1-402. In preparing its plan, each Executive agency shall ensure that the plan provides for compliance with all applicable pollution control standards.

1-403. The plan shall be submitted in accordance with any other instructions that the Director of the Office of Management and Budget may issue.

1-5. *Funding.*

1-501. The head of each Executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget.

1-502. The head of each Executive agency shall ensure that funds appropriated and apportioned for the prevention, control and abatement of environmental pollution are not used for any other purpose unless permitted by law and specifically approved by the Office of Management and Budget.

1-6. *Compliance With Pollution Controls.*

1-601. Whenever the Administrator or the appropriate State, interstate, or local agency notifies an Executive agency that it is in violation of an applicable pollution control standard (see Section 1-102 of this Order), the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include an implementation schedule for coming into compliance as soon as practicable.

1-602. The Administrator shall make every effort to resolve conflicts regarding such violation between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency. If the Administrator cannot resolve a conflict, the Administrator shall request the Director of the Office of Management and Budget to resolve the conflict.

1-603. The Director of the Office of Management and Budget shall consider unresolved conflicts at the request of the Administrator. The Director shall seek the Administrator's technological judgment and determination with regard to the applicability of statutes and regulations.

1-604. These conflict resolution procedures are in addition to, not in lieu of, other procedures, including sanctions, for the enforcement of applicable pollution control standards.

1-605. Except as expressly provided by a Presidential exemption under this Order, nothing in this Order, nor any action or inaction under this Order, shall be construed to revise or modify any applicable pollution control standard.

1-7. *Limitation on Exemptions.*

1-701. Exemptions from applicable pollution control standards may only be granted under statutes cited in Section 1-102(a) through 1-102(f) if the President makes the required appropriate statutory determination: that such exemption is necessary (a) in the interest of national security, or (b) in the paramount interest of the United States.

1-702. The head of an Executive agency may, from time to time, recommend to the President through the Director of the Office of Management and Budget, that an activity or facility, or uses thereof, be exempt from an applicable pollution control standard.

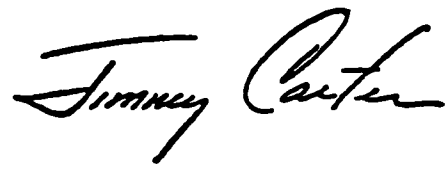
1-703. The Administrator shall advise the President, through the Director of the Office of Management and Budget, whether he agrees or disagrees with a recommendation for exemption and his reasons therefor.

1-704. The Director of the Office of Management and Budget must advise the President within sixty days of receipt of the Administrator's views.

1-8. *General Provisions.*

1-801. The head of each Executive agency that is responsible for the construction or operation of Federal facilities outside the United States shall ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

1-802. Executive Order No. 11752 of December 17, 1973, is revoked.



THE WHITE HOUSE,
October 13, 1978.

[FR Doc. 78-29406 Filed 10-13-78; 3:40 pm]

EDITORIAL NOTE: The President's statement of Oct. 13, 1978, on signing Executive Order 12088 and his memorandum for the heads of departments and agencies, dated Oct. 13, 1978, on Federal compliance with pollution control standards are printed in the Weekly Compilation of Presidential Documents (vol. 14, no. 41).

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

DEC 1 1980

PIG - 81 -7

MEMORANDUM

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

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

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

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
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

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 123

Arkansas: Interim Authorization, Phase I, Hazardous Waste Management Program

AGENCY: Environmental Protection Agency, Region 6

ACTION: Approval of State program

SUMMARY: The purpose of this notice is to grant Phase I interim authorization to the State of Arkansas for its hazardous waste management program.

In the May 19, 1980, Federal Register (45 FR 33063), the Environmental Protection Agency (EPA) promulgated regulations, pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976 (RCRA), to protect human health and the environment from the improper management of hazardous wastes. Included in these regulations, which become effective 6 months after promulgation, were provisions for a transitional stage in which states could be granted interim program authorization. The interim authorization program will be implemented in two phases corresponding to the two stages in which an underlying Federal program will take effect.

On September 11, 1980, the State of Arkansas applied to EPA for Phase I interim authorization of its hazardous waste management program. On September 18, 1980, EPA issued in the Federal Register (45 FR 62170) a notice of the public comment period on the State's application. All comments received during this period have been noted and considered, as discussed below.

The State of Arkansas is hereby granted interim authorization to operate the RCRA Subtitle C hazardous waste management program in accordance with section 3006 (c) of RCRA and implementing regulations found in 40 CFR 123 Subpart F.

EFFECTIVE DATE: November 19, 1980

FOR FURTHER INFORMATION CONTACT: Thomas D. Clark, Solid Waste Branch, U.S. EPA, Region 6, 1201 Elm Street, Dallas, Texas 75270 (214) 767-2645.

SUPPLEMENTARY INFORMATION: The State of Arkansas submitted its draft application for Phase I interim authorization on July 30, 1980. After reviewing the document, EPA identified four areas of major concern, 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) deficiencies in the Memorandum of Agreement between EPA and the State.

On September 11, 1980, the State of Arkansas submitted its final application for Phase I Interim Authorization. Because the application did not adequately address the first two areas, the State submitted supplemental information that satisfied EPA's concerns.

On September 26, 1980, the Arkansas Commission on Pollution Control and Ecology 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 available to EPA upon its request without any restrictions except those which are placed upon the EPA by any application 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.

EPA's comments were satisfied in the Memorandum of Agreement submitted with the final application. 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.

As noticed in the Federal Register on September 18, 1980 (45 FR 62170), EPA gave the public until October 27, 1980, to comment on the State's application. EPA also held a public hearing in Little Rock, Arkansas, on October 20, 1980. The only comments received were presented at the public hearing.

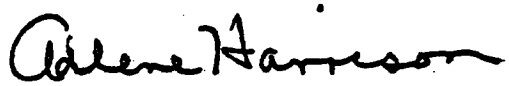
An industry representative requested that the procedures for handling confidential information be revised so that EPA would request such information directly from the firm. The commenter was concerned that adequate protection of such information be provided.

EPA believes that 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 the claim of confidentiality has been reviewed and its validity has been accepted.

The other comment related to whether the State would have an adequate well-trained staff and proper funding to operate the program. EPA believes the State has adequate resources to operate Phase I of the program under interim authorization. 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.

Dated: November 10, 1980



Adlene Harrison

Regional Administrator

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 nonconcurs 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.

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

25 1980 PIG 81-8

MEMORANDUM

SUBJECT: Program Implementation Guidance On Issuance of Provisional EPA Identification Numbers

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

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

TO: PIGS Addressees
and Regional Notification Contacts

Issue:

Should the Agency establish a new procedure to facilitate rapid issuance of EPA identification numbers to generators or transporters during spills or other unanticipated events?

Discussion:

The final RCRA Subtitle C regulations effective November 19, 1980 include requirements for hazardous waste generators and transporters to obtain EPA identification numbers. Generators and transporters who did not obtain an EPA identification number during the notification period may obtain one by applying on EPA Form 8700-12. Concern has been expressed by some EPA Regional Offices and some members of the regulated community that the regulations do not provide for rapid issuance of identification numbers during spills and other unanticipated incidents where a person may become a hazardous waste generator or transporter. The following scenario illustrates this type of situation.

A spill of gasoline, which met the ignitable characteristic of hazardous waste, occurred at a gasoline filling station. The station did not have an EPA identification number. Once the spilled material was contained in barrels, the station operator judged that keeping the barrels on-site for several weeks while waiting for an identification number could be

dangerous. The transporters he contacted would not pick up the waste to take it to a facility unless the station operator produced a manifest bearing the generator's identification number. The operator called his EPA Regional Office to obtain a number but was told that the regulations do not provide for their issuance over the phone, and that application would have to be made on Form 8700-12. Obviously, that solution was unworkable, for it prevented timely and safe handling of the waste. Later that day it was resolved that the Regional Office would issue a special identification number over the phone to the operator, thus enabling him to have the waste transferred to another location without delay. This is one of several examples brought to our attention, indicating a need for rapid identification number issuance.

In response to this need, the Agency will publish a Notice in the Federal Register as soon as possible announcing that EPA Regional Offices may in certain instances and at their discretion issue provisional EPA identification numbers. The Regional Notification Contacts will be listed as contact points. I urge those individuals to plan for implementation of this new procedure.

At this time, we have identified a general set of circumstances where issuance of a provisional identification number would be appropriate. As the hazardous waste program matures, other applications will probably become apparent. Officials may waive the EPA identification number requirements for generators and transporters engaged in immediate hazardous waste removal following a discharge incident. (See 40 CFR 263.30(b) and EPA Headquarters guidance memo to Regional Offices on emergency response, 11/19/80.) For a variety of reasons a waiver may not be authorized, or if a waiver is authorized, the generator or transporter may still identify a practical need for obtaining an identification number before transporting the waste. In such a case, an oral or written provisional identification number may be issued by a Regional Office.

Decision:

Regional Office personnel should be prepared to issue provisional numbers on a 7-day, 24-hour basis. Preparations should also be made to issue these numbers orally either over the phone or in person, as well as in writing.

Recommended procedures for issuing a provisional identification number are as follows:

a) Ascertain the need for a provisional number from the applicant.

b) If a decision is made to issue the number, collect as much of the information required for Form 8700-12 as possible.

c) Issue the number. We suggest this be done by using a system devised internally in each Region. A recommended format, similar to the standard EPA identification number format, would have the two letter state abbreviation, followed by the letter "P" for "Provisional", followed by a serially increasing nine digit code for each subsequent number issued, e.g., "VAP000000428." (These numbers will not be part of the Dun and Bradstreet system and will not be entered into the national computer data base.)

d) Explain what conditions, if any, apply to the use or duration of the number. Inform the applicant of requirements for submission of completed Form 8700-12 within 10 days of receipt of a blank form from EPA. A final identification number may then be issued.

e) Document all proceedings and follow through as appropriate.

We intend that the provisional identification number be a practical alternative in situations where the standard procedure for issuing EPA identification numbers would be unreasonably time-consuming. A regulation change is not necessary in order to implement this procedure, however, future amendments to the generator and transporter regulations will clarify and discuss other requirements which may apply to persons who receive provisional numbers. The establishment of this procedure is part of a larger effort by the Agency to address the application of the Subtitle C regulations to hazardous waste discharges and other circumstances requiring rapid response. Your comments and suggestions are welcome.

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

DEC 10 1980

OFFICE OF ENFORCEMENT

PIG-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
Deputy Assistant Administrator
for Solid Waste (WH-562)

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

[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. 6901–6987, 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 RCRA. However, State hazardous waste 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 250–255.)

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

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

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. 80-23214 Filed 8-1-80; 8:45 am]

BILLING CODE 6560-01-M

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

JUL 23 1980

OFFICE OF ENFORCEMENT

MEMORANDUM

SUBJECT: Memorandum of Understanding with the Department of Transportation on the Enforcement of Hazardous Waste Transportation Regulations

TO: See Below

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

A Memorandum of Understanding (MOU) between the Department of Transportation (DOT) and the Environmental Protection Agency (EPA) was signed and became effective on June 24, 1980. The MOU addresses the responsibilities of DOT and EPA for the enforcement of the hazardous waste transportation regulations promulgated pursuant to the Hazardous Material Transportation Act and the Resource Conservation and Recovery Act, respectively. I am attaching a copy of it for your information.

This MOU is generally binding only upon federal actions. It has little, if any, affect on State hazardous waste programs, however, it is likely to serve as a model for State MOUs.

The MOU requires EPA to monitor and enforce the generator and hazardous waste management facility standards and requires DOT to monitor and enforce requirements for transporters. A plan describing the procedures for implementing the MOU will be included in the Case Proceedings Manual which is being developed in my office.

If you have any questions concerning the MOU, please direct them to Amy Schaffer at FTS-755-2870.

Attachment

Addressees:
Regional Administrators
Regional Enforcement Division Directors
Regional Air & Hazardous Materials Division Directors
Regional Surveillance & Analysis Division Directors
Regional Water Program Division Directors
General Counsel (A-130)
Assistant Administrator for Water and Waste Management (WH-556)
Assistant Administrator for Planning and Management (PM-208)
Assistant Administrator for Research and Development (RD-672)
Deputy Assistant Administrator for Solid Waste (WH-562)

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 .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, labeling, containers, compliance with the manifest system, and the transportation of waste only to permitted facilites.

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 Transporation 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 260-265.)

B. DOT and the Hazardous Materials Transportation Act

The Hazardous Materials Transportation Act (HMTA) (49 USC 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.)

II. BACKGROUND

A. Regulatory Overlap

DOT and EPA are both promulgating regulations concerning azardous waste material transportation. The DOT regulations equire shippers of hazardous wastes, as defined by EPA, to comply ith both HMTA and RCRA regulations. This group includes wastes hich were previously designated hazardous materials. These astes must comply with the new DOT standards for hazardous waste aterials.

B. Areas of Individual Regulation

There are, however, areas over which only one or the other gency has jurisdiction. One such area is the EPA requirement hat transporters clean up any discharges of hazardous waste which hey are carrying. DOT cannot incorporate such a requirement into ts regulations because it is beyond DOT's authority.

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

ERMS OF AGREEMENT

A. The Environmental Protection Agency Will:

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

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

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

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 relationship 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 delines implementing this Memorandum of Understanding ntifying interagency contacts and liaison representatives, and tting 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.

• 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 on 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 Adminstrator 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

Approved:

Douglas M. Costle
Administrator

Dated: May 2, 1980

For the Department of Transportation

Approved:

Neil Goldschmidt
Secretary

Dated: June 2, 1980

This Memorandum of Understanding becomes effective on the date of the final signature.

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

MEMORANDUM

MAY 14 1981

PIG-81-10

SUBJECT: Transfer of Notification and Permit Application Information to States

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

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

TO: PIGS Addressees

ISSUE:

When should EPA transfer information from both the notification forms and the Part A's of the RCRA permit applications to the States? In what format should EPA transfer this information? How can the States assist EPA to review and process this information?

DECISION:

(1) Until EPA authorizes a State for Phase II Interim Authorization to carry out a permit program in lieu of the Federal permit program (or authorizes a component of Phase II), EPA is responsible for reviewing and acknowledging RCRA permit applications in that State, including determining who appears to meet the statutory requirements for interim status and acknowledging the processes they may use and the wastes they may handle during interim status*. EPA is also responsible for these activities for those facilities not covered in a State's authorization for a Phase II component. However, EPA encourages States to assist the Agency in reviewing permit applications until such time as the State receives its Phase II authorization and will be receiving its own permit applications.

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*Note that this acknowledgment of the processes a facility may use and the wastes they may handle is based only on the owner/operator's Part A application. EPA merely copies on to the acknowledgment the wastes and processes the owner/operator included on the application; the acknowledgment is not a determination by EPA that a facility is an environmentally acceptable facility for particular wastes.

(2) EPA Headquarters is providing State solid and hazardous waste management agencies with copies of the Agency's notification report which presents a compilation of information that was received and processed between May 19, 1980 and November 19, 1980. The report includes the names and addresses of notifiers in each State and a listing of the hazardous waste(s) they handle. EPA will provide supplements of this report to State agencies as new notification information is received and processed.

(3) Subject to confidentiality constraints, EPA will also share all Part A permit application information with the States. Because there is a large volume of information, EPA Regional Offices and States should work together to sort out exactly which information items each State needs and when the State needs it. The Regional Offices and States should set mutually agreeable time frames for transferring the information. The following items should be considered when transferring information: (a) Transfer of information to States should not impede or delay issuance of the first round interim status acknowledgments (except in cases of special information needs, issuing these acknowledgments is the higher priority). (b) If information is transferred prior to completion of the verification of all items on the Part A application, the Regional Office should carefully identify the unverified information.

(4) EPA Regional Offices should initially use computer printouts for transferring data to the States before copying notification and Part A permit application forms. This may satisfy a State's initial information needs and will save EPA a considerable amount of time in copying forms.

DISCUSSION:

Status of EPA review and processing of notification and Part A permit application information

EPA has received approximately 60,000 notifications and 14,000 Part A permit applications. Except for recent submittals, the Agency has reviewed and processed all of the information from the notification forms and has the information available on the Agency's ADP computer files. EPA Regional Offices are presently reviewing and processing the Part A permit applications.

The Part A applications will be processed initially in two rounds. Round one of the review process consists only of determining that: (1) the applicant filed the correct permit application forms on time; (2) the application indicates the facility was in existence on November 19, 1980; and (3) a notification was filed for the facility on or before August 18, 1980. EPA

will send an initial acknowledgment to applicants when they meet all of these three conditions. The purpose of this acknowledgment is to inform the applicant that a preliminary review of the information he provided indicates that he appears to satisfy the statutory requirements for interim status. EPA will not load any data into the computer data base during this initial review except to "flag" the data base to indicate those facilities for which EPA has sent an acknowledgment.

During round two of the review process EPA will conduct a more detailed review of the permit application. The purposes of this round are (1) to attempt to verify that the facility needs a RCRA permit; (2) to acknowledge the processes which the facility is allowed to use and the wastes which the facility is allowed to handle during interim status; and (3) to check that the remainder of the information items required in Part A of the application, such as the map, photographs, and sketch have been provided. In the round two review, EPA (using State assistance wherever possible) will resolve errors and inconsistencies in information items by communicating with the applicant. When EPA has verified that certain key items are correct, the data on the application will be loaded into the computer data base, and a second acknowledgment will be sent to the applicant. This acknowledgment will include a list of the wastes which may be handled during interim status and the processes to which the interim status applies (based on the owner/operator's Part A application).

EPA and State responsibilities

There has been some confusion as to what role the States can play in reviewing and acknowledging permit applications. Until a State receives Phase II Interim Authorization to carry out a permit program in lieu of the Federal permit program (or part of a program, i.e., a component of Phase II)*, EPA is responsible for reviewing and acknowledging all permit applications, including determining who appears to qualify for interim status, and acknowledging the processes they may use and the wastes they may handle during the interim status period. States with only Phase I Interim Authorization are not authorized to carry out a RCRA permit program and cannot assume responsibility for these functions (although they can assist EPA in this area). EPA is also responsible for these activities for those facilities not covered in a State's authorization for a component of Phase II**.

*Do not confuse Phase I and Phase II of Interim Authorization with the two rounds of Part A permit application processing.
**When a State receives interim authorization for one or more components of Phase II, the issue of whether a facility (covered by a component handled by the State) qualifies for interim status is moot because State, rather than Federal requirements, then apply.

Therefore, EPA is responsible for completing the review of Part A of the permit applications and for sending out acknowledgments. EPA must therefore retain the originals of all notification forms and Part A's of the permit applications which the Agency has received*.

EPA encourages and welcomes States to assist the Agency in reviewing and acknowledging applications, particularly for the round two reviews. This State involvement has a number of advantages: (1) it will give the States an opportunity to become familiar with the information which applicants have submitted; (2) the extra resources will help EPA expedite the review and acknowledgment of applications; and (3) the States can provide useful, and sometimes crucial information about certain facilities of which EPA may not be aware.

State information needs and specific provisions for EPA to provide States with information

The information EPA received in the notification forms and in the Part A's of the applications can be useful to the States in various ways. Some examples are:

(1) to evaluate the scope of State regulatory coverage and to determine if State control of hazardous waste is "substantially equivalent" to Federal control,

(2) to calculate resource needs for conducting a State hazardous waste permit program, for conducting surveillance and enforcement activities, and for providing technical assistance,

(3) as a potential source of data for revisions to grant regulations,

(4) to assist States with interim authorization in preparing reports to EPA,

(5) as input for developing a strategy for siting hazardous waste facilities,

(6) to assist States with hazardous waste permit programs to identify facilities which may need a State permit but have not applied for one. (Likewise, State permit files will also be useful to EPA).

*Note that this continues to be important even after a State receives interim authorization for one or more components of Phase II, because if a State program reverts to EPA during Phase II or at the end of the interim authorization period, facilities without RCRA permits will again need interim status in order to be able to operate lawfully.

(7) to assist States with notification requirements to identify non-notifiers.

(8) to assist State inspectors in conducting facility inspections.

Both the "RCRA State Interim Authorization Guidance Manual", issued June 25, 1980, and the "Additional Guidance for Cooperative Arrangements under Subtitle C of RCRA", issued August 5, 1980, provide that States may obtain notification and permit application information. Specifically, the guidance for interim authorization indicates that EPA will furnish to States with interim authorization copies of notification forms and permit applications within 30 days after the Memorandum of Agreement is signed. The guidance for cooperative arrangements does not specify that EPA will furnish notification and permit application information to the States. However, under cooperative arrangements, the States are encouraged to assist EPA in identifying and contacting non-notifiers and to make recommendations to EPA concerning the review of applications. In order to make this process work, the Agency will have to provide the States with some notification and Part A information, consistent, of course, with the confidentiality provisions in 40 CFR Part 2.

Assessing individual State information needs and formats for transferring information

EPA Headquarters will send each State solid and hazardous waste management office copies of EPA's summary report containing notification information received during the period of May 19, 1980, to November 19, 1980. The report contains the following items of information on hazardous waste facilities: the name and location of the facility; the type of activity(ies) (i.e., generate, transport, treat, store, or dispose of hazardous waste); a listing of the hazardous waste(s) which the facility handles; the name of the owner of the facility; whether or not the facility is Federally or privately owned; and whether or not there is an underground injection well located at the facility. The report has ten volumes; one volume for each of EPA's ten regions. Each volume contains a State-by-State listing of notifiers. The Agency will routinely send State Agencies supplements to this report as new notification information is received and processed.

While EPA intends to share fully with the States all permit application information, transferring this information requires a significant resource commitment, and if not done carefully can result in the States being inundated with information which has not been verified and therefore may be of little use to the State. We recommend that Regional Offices and States work together and carefully assess what specific pieces of Part A

application data the individual States need to run their program and to assist EPA, and when that data is needed. For example, a State with Phase I interim authorization may need to know early on who has applied for a Federal permit and who has received a round one acknowledgement. The State may have no immediate use for information about the processes or wastes described in the application, except on a case by case basis. In this example, it would make little sense for EPA to spend time copying Part A forms in order to provide the State with the information. Instead, as EPA completes the round one reviews for facilities in the State, it would be better for the Agency to provide the State with computer printouts containing the names and addresses of all facilities EPA considers to have interim status. This approach would provide the State with much of the information it needs, save EPA a considerable amount of time in copying forms, and eliminate the possibility of the State clogging its files with superfluous information which may be inaccurate since it has not been reviewed by the Agency.

A number of notifiers and applicants have submitted claims of confidentiality for their information. EPA will transfer to the States information covered by these claims only in accordance with the provisions of 40 CFR Part 2.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C 20460

FEB 12 1981

OFFICE OF WATER
AND WASTE MANAGEMENT

PIG-81-11

MEMORANDUM

SUBJECT: Involvement of States without Phase II Interim Authorization in RCRA Permitting

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

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

TO: PIGs Addressees

ISSUE

How should States without interim authorization for Phase II be involved in RCRA permitting?

DISCUSSION

As you know, the recent promulgations of Phase II facility standards under Part 264 and permitting requirements under Part 122 enable States to receive Phase II interim authorization for issuing RCRA permits to the following categories of facilities:

- use and management of containers;
- storage and treatment of hazardous wastes in tanks, surface impoundments, and waste piles; and
- treatment of waste in incinerators.

In addition, EPA has published interim final regulations (Part 267) which, for a period of 18 months, will allow EPA to issue permits to new land disposal facilities pending promulgation of the final land disposal regulations. States may not receive interim authorization for permitting land disposal facilities at this time, since the Part 267 regulations only provide temporary standards which will not suffice for determinations of substantial equivalence.

Although States may now apply for Phase II interim authorization for permitting certain facilities, some States may not choose to do so in 1981. Some States may postpone their Phase II application until the final Federal land disposal regulations are promulgated later this year or in 1982. Also, State preparation of Phase II applications may take longer than Phase I applications, due to the complexity of the technical facility standards and the financial responsibility requirements. Some States may need to adopt or amend legislation and regulations to obtain substantially equivalent authority in these areas and may need to add additional personnel to administer the permitting program.

Given this situation, the Federal permit process must be implemented in a way which maximizes the use of State resources and technical capabilities and avoids inefficient and confusing duplication with State programs. Therefore, EPA must work closely with State permitting programs, especially those programs which appear to be moving in a timely manner toward Phase II interim authorization.

DECISION

EPA Regional Offices must seek the active involvement of State programs in the conduct of RCRA permitting during the period before a State receives Phase II interim authorization. This policy will provide for the most efficient use of EPA and State permitting resources and technical expertise, reduce confusion and paperwork burdens for the regulated community and the public, and ease the transition toward State administration of the RCRA permit program in lieu of EPA. While EPA retains authority and responsibility for RCRA permitting until a State receives Phase II authorization, EPA must cooperate with the States as closely as possible in the implementation of this responsibility.

State involvement prior to Phase II interim authorization should take several forms:

- States should assist Regional Offices in the development of permitting priorities and in initial contacts with potential permittees, based on their own priorities and their knowledge of local conditions.

° States should review permit applications, share information from their files, assist EPA in obtaining additional information (including site visits) and help prepare technical analyses and support documents.

° States should assist in developing permit conditions and should comment on draft and final permits.

° Where unauthorized States must issue permits under State law, they should participate with EPA in joint permit issuance procedures (e.g., joint public notice, public hearings, response to comments).

These and other Federal-State working relationships should be formalized in writing through an amendment to a Cooperative Arrangement, a Phase I Memorandum of Agreement, or a Subtitle C grant work program. Through these mechanisms, the State can agree to perform specified tasks for which it has legal authority and can be funded by EPA to perform those tasks.

EPA can also support State involvement in the permit process through funding of State travel by the Peer Matching program, State access to EPA contractors, and participation of State personnel in RCRA training. We encourage Regional Offices to be aggressive in securing State involvement as we move toward the issuance of the first RCRA permits.

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

SEP 29 1981

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

PIG - 81 - 12

MEMORANDUM

SUBJECT: States' Role in Assigning EPA Identification Numbers

FROM: Christopher J. Capper
Acting Assistant Administrator (WH-562A)

TO: PIGS Addressees

Issue:

EPA requires all hazardous waste 1/ generators and transporters and owners and operators of hazardous waste treatment, storage, and disposal facilities to receive an EPA identification number (ID number) before they handle hazardous waste.2/ Identification numbers are issued by the EPA Regional Offices. What role should the States play in assisting the EPA Regional Offices to assign identification numbers?

Decision:

(1) States with interim authorization and States under Cooperative Arrangements are encouraged to assist EPA in assigning EPA identification numbers. Specifically, EPA would like State assistance in distributing and reviewing RCRA Notification and Part A Permit Application Forms. The responsibility for assigning EPA ID numbers will remain in the Regional Offices.

(2) States with their own system of assigning ID numbers are encouraged to use the EPA ID number as the State ID number.

1/ Hazardous waste means hazardous waste as defined by EPA except where specifically noted in this memorandum.

2/ Sections 262.12, 263.11, 264.11 and 265.11 establish this requirement for persons handling hazardous waste in States where EPA is running the hazardous waste program. Sections 123.34 - 36 require for final authorization that States mandate that persons handling hazardous waste within their borders obtain EPA ID numbers. There is no comparable requirement for interim authorization but to date all States have accepted the use of EPA ID numbers.

Discussion:

EPA assigns an identification number to each generator and transporter of hazardous waste and to owners and operators of hazardous waste treatment, storage, and disposal facilities who notify the Agency. Generators must not offer their hazardous waste for transportation; transporters must not transport hazardous waste; and owners and operators of hazardous waste management facilities must not treat, store, or dispose of hazardous waste without first receiving an EPA identification number.3/ EPA assigns a unique identification number to each single site where hazardous waste is generated, treated, stored, or disposed; or, in the case of a transporter, to his principal place of business. The identification number is used on all manifests, reports, and records that EPA requires. The EPA identification number also serves as the "password" for entering and retrieving data from EPA's Hazardous Waste Data Management ADP System (HWDMS). HWDMS is the Agency's major source of information on hazardous waste handlers across the country and is a critical element in implementing Subtitle C of RCRA. EPA is also in the process of tying together HWDMS with other EPA data management systems using the EPA ID number as the common link.

The scheme EPA uses to assign identification numbers is based on the Data Universal Numbering System (DUNS number) that Dun and Bradstreet Incorporated (D & B) has developed. D & B has assigned approximately three million DUNS numbers to all types of businesses across the nation. EPA also assigned temporary "T" numbers to persons who did not have an existing DUNS number.4/ All persons who have registered with EPA have been assigned an ID number that is their DUNS number, a "T" number, or for some Federal activities, their GSA Real Property Number.

Seven general steps are involved in assigning an EPA ID number. They are (1) answer requests for blank forms (hazardous waste generators and transporters must submit standard EPA form 8700-12, the EPA Notification Form; owners and operators of new hazardous waste management facilities must submit standard EPA forms 3510-1 and 3510-3, the RCRA Part A Permit Application), (2) review the submitted information for completeness and obtain any missing information, (3) review the D & B microfiche list to determine if the site has an existing DUNS number, (4) if the site is not listed on the D&B microfiche, check other files within the Region to determine if EPA has assigned an alternate DUNS number to the site under another program which also can be used as the EPA ID number for the RCRA program, (5) if the site does not have a number under another program, assign one of the numbers from the Region's D & B user block, (6) enter information about the activity into HWDMS, and (7) generate an acknowledgment from HWDMS and issue it to the requestor to inform him of his EPA ID number.

3/ See footnote 2.

4/ EPA is no longer issuing "T" numbers as of August 1, 1981. Instead, EPA purchased from D & B a block of unassigned DUNS numbers and will assign numbers from this block to persons who do not already have a DUNS number. EPA has begun converting existing "T" numbers to DUNS numbers for facilities requiring RCRA permits and for generators and transporters with activities regulated under other EPA programs.

There has been confusion as to what responsibilities the States can assume in assisting EPA to carry out these steps. In order to obtain final authorization a State must require new hazardous waste generators and transporters and owners and operators of hazardous waste treatment, storage, and disposal facilities to obtain EPA ID numbers before conducting hazardous waste activity (§§123.34 (a), 123.35 (a), and 123.37 (b)). Both the "RCRA State Interim Authorization Guidance Manual" (June 25, 1980) and the "Additional Guidance for Cooperative Arrangements under Subtitle C of RCRA" (August 5, 1980) provide for States to assist EPA in assigning identification numbers prior to final authorization .

States with interim authorization and States under Cooperative Arrangements are encouraged to assist EPA in steps number 1 and 2 listed above. For now, EPA will retain full responsibility for steps 3 through 7. Several States have expressed an interest in assisting EPA in steps 3, 4, and 5, and further have requested that EPA provide them with blocks of unassigned ID numbers which the State could assign directly and eliminate delays in getting new numbers one at a time from EPA. EPA prefers not to relinquish the responsibility for steps 3, 4, and 5. The Agency must maintain tight control over the assignment of all new numbers since the EPA identification number is the key means of identifying the activity in the Agency's data management systems (EPA will continue to enter into the Agency's ADP data base the name, address and type of activity for all sites that are assigned an EPA ID number).

Recognizing the need for rapid issuance of new identification numbers, EPA has assigned contractor (Computer Sciences Corporation) personnel in each Regional Office to perform steps 3, 4, and 5. The plan is for the contractor to complete these steps within one day. Steps 6 and 7 involve interacting with EPA's ADP system. Since there is presently no capability for States to enter information into HWDMS, no State can perform these steps.

EPA is aware that several States have systems for assigning State identification numbers to hazardous waste (as defined by the State) handlers. Since the federal regulations require the use of EPA identification numbers, EPA strongly encourages States that issue their own identification numbers to adopt the EPA numbering scheme. State use of the EPA scheme should benefit the State programs and the regulated community by:

- eliminating duplication of effort;
- eliminating confusion from the issuance of multiple numbers;
- providing for rapid issuance of numbers directly from the Regional Offices, and
- reducing costs.

Furthermore, States employing the EPA numbering scheme will be better prepared to use the proposed uniform national manifest form 5/ which will accommodate only EPA issued identification numbers.

5/ EPA plans to publish the uniform national manifest form for public review and comment in October 1981.

In cases where a State has adopted a definition of hazardous waste that is broader than the Federal definition, it may not always be clear if the person requesting an identification number in that State handles "Federally defined" hazardous waste or hazardous waste covered under the broader portion of the State definition. These handlers may be issued an EPA identification number since it is not critical that only "bona fide" handlers of Federally defined hazardous waste receive an EPA identificaion number. However, it would be helpful if States participating in Step 2, above, would point out these cases so that we can make a note in our files that the activity has been issued an EPA ID number but may not be handling Federally defined hazardous waste.

PIG file

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

NOV 20 1981

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

PIG-82-1

MEMORANDUM

SUBJECT: Universe of Wastes for EPA Permit Activities in States Authorized for Phase I Only

FROM: Christopher J. Capper
Acting Assistant Administrator (WH-562-A)

TO: PIG Addressees

Issue

What is the universe of wastes which EPA will use to carry out permit activities in a State which has been granted interim authorization for Phase I, but has not yet obtained authorization for Phase II of the Federal program?

Discussion

Since May 19, 1980, regulations promulgated under the Resource Conservation and Recovery Act (as amended) have provided a Federal program of hazardous waste management using the universe of wastes delineated in 40 CFR Part 261.

The decision to grant interim authorization to a State program is contingent, in part, on a State's ability to control a universe of wastes which is "nearly identical" (40 CFR 123.128(a)) to that in the Federal regulations. The nearly identical universe delineated by a State may (during interim authorization) exclude some of the wastes in the Federal universe if those wastes are not handled in that State. Conversely, the universe of wastes as defined by a State may be more inclusive than the Federal universe (40 CFR 123.121(g)(1)). EPA's authorization of a State program covers only that portion of the State's universe which overlaps with the Federal universe (40 CFR

123.121(g)(2)). Any additional wastes which the State controls (or which are controlled by EPA but not the State) are not considered part of that State's authorized program.

Subsequent to a State's authorization, EPA may add new wastes to 40 CFR Part 261. During the period between EPA's addition of the wastes to its universe and the State's addition of the wastes to its universe those wastes would not be considered hazardous wastes in that State; i.e., EPA's universe of waste would be larger than the State's authorized universe.

DECISION

The universe of hazardous wastes considered part of a State's authorized RCRA program are those wastes identified or listed by both EPA and the State. This is the universe of hazardous wastes for purposes of Federal activities in that State. EPA's permitting authority in those States with Phase I interim authorization is bound by the State's authorized universe. The underlying principle is that the authorized State program (including the State's waste universe which is considered part of Phase I authorization) operates in lieu of the Federal program.

Therefore, in a State authorized for Phase I only (or for some, but not all of Phase II), EPA may issue permits only to those facilities handling wastes defined as hazardous by the State's authorized program. A facility handling wastes defined as hazardous only by the State is outside the scope of the RCRA program, and does not require a RCRA permit or interim status to operate. The State, of course, may issue whatever permit or license is appropriate under State law. Such State permit actions would not be part of the RCRA permit issuance process but would be handled solely under State law.

A facility handling a waste which is defined as hazardous by EPA but not by the authorized State (where, for example, EPA lists a new waste and the State has not yet incorporated it into its regulations), will not require a RCRA permit or interim status to handle that particular waste until the State has listed that waste. At the time the waste became part of the authorized State hazardous waste program, a facility handling that waste would be required to comply with all applicable State (and Federal, if the State had only Phase I authorization) statutory and regulatory requirements.