



DIRECTIVE NUMBER: 9471.00-01a

TITLE: Assurance of Hazardous Waste Capacity Guidance
to State Officials

APPROVAL DATE: April 15, 1991

EFFECTIVE DATE: April 15, 1991

ORIGINATING OFFICE: Capacity Programs Branch,
Waste Management Division,
Office of Solid Waste

FINAL

DRAFT

STATUS: **A - Pending OMB Approval**
 B - Pending AA-OSWER Approval

REFERENCE (Other Documents):

Supplement to 9471.00-01 (formerly 9010.00) and
9471.00-02 (formerly 9010.00a)

OSWER OSWER OSWER OSWER
DIRECTIVE DIRECTIVE DIRECTIVE



DIRECTIVE NUMBER: 9471.00-01a

TITLE: Assurance of Hazardous Waste Capacity Guidance
to State Officials

APPROVAL DATE: April 15, 1991

EFFECTIVE DATE: April 15, 1991

ORIGINATING OFFICE: Capacity Programs Branch,
Waste Management Division,
Office of Solid Waste

FINAL

DRAFT

STATUS: **A - Pending OMB Approval**
 B - Pending AA-OSWER Approval

REFERENCE (Other Documents):

Supplement to 9471.00-01 (formerly 9010.00) and
9471.00-02 (formerly 9010.00a)

OSWER OSWER OSWER OSWER
DIRECTIVE DIRECTIVE DIRECTIVE



United States Environmental Protection Agency
Washington DC 20460

OSWER Directive Initiation Request

1 Directive Number

9471.00-01a

2 Originator Information

Name of Contact Person
Stephen Bergman

Mail Code
OS-321W

Office
Capacity Programs

Telephone Code
(703) 308-8474

3 Title

Assurance of Hazardous Waste Capacity Guidance to State Officials

4 Summary of Directive (include brief statement of purpose)

The attached guidance document describes the submission that will constitute the basis for the State's assurance that sufficient hazardous waste capacity would exist to manage wastes generated in the State during the next 20 years. It is limited in scope, requiring only the States address status of progress to meet capacity needs.

5 Keywords

assurance / hazardous waste / capacity / guidance / State officials / CAPS /

CERCLA 104(c)(9)

6a Does This Directive Supersede Previous Directive(s)?

No

Yes

What directive (number, title)

b Does It Supplement Previous Directive(s)?

No

Yes

What directive (number, title)

9471.00-01 & 9471.00-02

7 Draft Level

A - Signed by AA/DAA

B - Signed by Office Director

C - For Review & Comment

D - In Development

8. Document to be distributed to States by Headquarters?

Yes

No

This Request Meets OSWER Directives System Format Standards

9 Signature of Lead Office Directives Coordinator

Lynn S. Hansen
Lynn S. Hansen, OSW Policy Directives Coordinator

Date

4/16/91

10 Name and Title of Approving Official

Henry Longest for Don R. Clay, AA/OSWER

Date

4/15/91

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

OSWER OSWER OSWER O
VE DIRECTIVE DIRECTIVE DIRECTIVE



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

APR 15 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Ms. Cynthia Bailey
Executive Director
Department of Waste Management
101 N. 14th Street
Richmond, Virginia 23219

Dear Ms. Bailey:

The attached guidance document, Assurance of Hazardous Waste Capacity, describes the submission that will constitute the basis for the state's assurance that sufficient hazardous waste capacity would exist to manage wastes generated in the state during the next 20 years. It is limited in scope, requiring only that States address status of progress to meet capacity needs. This submission and the accompanying transmittal letter, together with the 1989 CAP and any amendments, revisions or supplements submitted by the state since its original submission, will be considered as we determine the adequacy of the state's assurance.

We would like to thank all those State representatives who commented on our draft, as well as those who made recommendations at various meetings we have attended over the past year. The comments were thoughtful and informative, and we appreciate the effort you made. We are trying to improve the capacity assurance planning process, and we cannot do that without your assistance. We have enclosed a summary of the many comments that we received concerning the draft guidance, and an explanation of how each was, or will be, addressed.

Although the intent of this letter is to transmit the 1991 guidance document to you, I would also like to use this opportunity to tell you what the Agency is doing to implement the 1989 CAP and how the Agency is preparing for the 1993 CAP.

Implementation of the 1989 CAP

There is a growing concern among some States that the burden of hazardous waste management is not shared by all States. States that have capacity believe that they have become the nation's dumping grounds. Their original expectation that CERCLA 104(c)(9) would force all States to assume a "fair share" of responsibility has been replaced by a feeling that the SARA capacity planning process is defective unless sanctions are imposed.

EPA agrees that some inducements may bolster the capacity process. Over the next several months, we will be reviewing all these conditions in an effort to determine how we can "level the playing field" to correct for any current inequities. We expect to develop guidance that will promote national consistency and consider the feasibility of equitable inducements. Our plan is to distribute this 1989 CAP implementation guidance document to states for review this Spring.

Deadline for States' Submission

In response to the many requests we have had to allow as much time as possible between the issuance of the CAP guidance document and the CAP submittal date, we have decided to require this submission by February 15, 1992, rather than October 1991. This should give you sufficient time to prepare this submission (now to be referred to as the 1992 CAP submission), as well as anything that may be necessary in response to the 1989 implementation guidance document.

Planning for the 1993 CAP

The Agency is committed to implementing the capacity assurance provision so that planning for hazardous waste minimization and management is as efficient and effective as possible. At various meetings held over the last year, States had an opportunity to evaluate the '89 CAP process and offer their recommendations for improving the process. The States expressed a series of concerns and suggested a number of changes that could be made; for example, several of the regional agreement States provided specific reports to the Agency in which they made recommendations to improve the CAP process. In addition, we have undertaken a joint effort with the National Governors' Association to form workgroups comprised of State and EPA members who are considering how the process can be improved so that it will be a worthwhile exercise for us all. After reviewing all the recommendations, the Agency will prepare a draft of the 1993 guidance that all States will have an opportunity to review before it is issued in final.

Capacity Assurance Planning Data Requirements

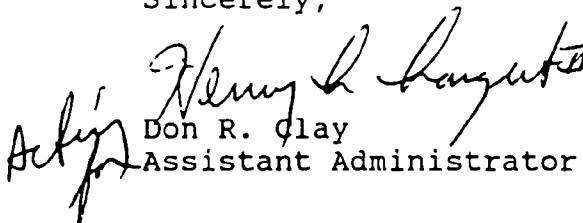
One of the areas that is most crucial to the success of the capacity assurance program as a waste management planning tool is the collection of accurate data. Without accurate data, planning becomes a meaningless exercise. EPA is aware of the limitations of former data collection efforts and is working towards eliminating past problems.

The Biennial Report and Capacity Assurance staffs are working together to ensure that States have the authority and ability to collect the information that is needed to effectively utilize this planning effort. The Agency will generally not ask the States for any data that are not collected through the Biennial Reporting process. In other words, the Biennial Reporting process will be the primary data collection tool for SARA CAP data requirements. The state, however, is free to use its state equivalent system.

The Biennial Report staff, with assistance of workgroups comprised of State, regional and Headquarters members, plans to promulgate a rule which will codify what the States will report voluntarily in the 1991 cycle. We do not anticipate making any major revisions in the reporting process in terms of expanding the universe of facilities who report, nor do we anticipate any major changes in terms of the type of information collected. The reporting process will be modified to some degree to enhance the capacity assurance planning process; major changes will only be proposed, however, after the Office of Solid Waste has had time to fully evaluate them to determine how necessary the additional information is.

Again, thanks to all of you who commented on our draft, as well as those of you who have added your recommendations for the CAP process at other times. Our dedication to improving the process is greatly enhanced by your interest and suggestions.

Sincerely,


Don R. Clay
Assistant Administrator

Enclosure

OSWER DIRECTIVE
9471.00-01a
APRIL 15, 1991

**ASSURANCE OF HAZARDOUS WASTE CAPACITY
GUIDANCE TO STATE OFFICIALS**

**A SUPPLEMENT TO OSWER DIRECTIVE 9471.00-01
(FORMERLY OSWER DIRECTIVE 9010.00), ISSUED DECEMBER 1988
AND OSWER DIRECTIVE 9471.00-02
(FORMERLY OSWER DIRECTIVE 9010.00a), ISSUED OCTOBER 1989
PLEASE SEE THESE DIRECTIVES FOR ADDITIONAL INFORMATION**

TABLE OF CONTENTS

	<u>PAGE</u>
INTRODUCTION	1
BACKGROUND	1
BASIS FOR ASSURANCE	1
INTERSTATE AND REGIONAL AGREEMENTS	2
1989 MILESTONES AND SUPPLEMENTAL CONDITIONS	2
1992 SUBMISSION (FORMERLY THE 1991 SUBMISSION)	3
• GOVERNOR'S TRANSMITTAL LETTER	4
• PROGRESS TO MEET CAPACITY NEEDS	5
- WASTE MINIMIZATION PROGRAM	5
- FACILITIES STATUS	5
- INTERSTATE OR REGIONAL AGREEMENT	5
• SUBMISSION OF MATERIALS TO EPA	6
STATUS OF CAPACITY ASSURANCE PLAN	6

I. INTRODUCTION

CERCLA 104(c)(9) requires that any State receiving CERCLA funds for remedial action directly or pursuant to a cooperative agreement must provide capacity assurance deemed adequate by the Environmental Protection Agency. Since October 17, 1989, the Agency has entered into cooperative agreements or State Superfund Contracts to fund CERCLA remedial actions only in States that provided an assurance, through the Capacity Assurance Plan (CAP) process, that sufficient hazardous waste capacity would exist to manage wastes generated in the State during the next 20 years.

This document is a supplement to the 1988 directive, "Assurance of Hazardous Waste Capacity, Guidance to State Officials," and its purpose is to describe the 1992 capacity assurance planning submission that is required of states.¹

II. BACKGROUND

This past year was the first time EPA and the States implemented the CERCLA 104(c)(9) provision. The Agency believes that this first round of capacity assurance planning has been a beneficial exercise in many ways, and we applaud the efforts of all the states. Although only ten states had remedial action money at stake since the October 1989 deadline, every state in the nation, as well as the District of Columbia submitted a CAP.

Although EPA realizes that there are still problems with implementation of this provision, it believes that the CAP program has been successful in a number of ways. EPA and the states have worked together and have learned from this process. We have improved our understanding of hazardous waste management systems and identified the strengths and weaknesses of individual programs. We have engaged in constructive interstate dialogue and planning and will continue this dialogue so that problems can be anticipated as we plan for the future. Great strides have also been made in improving and expanding waste minimization programs. There is increased public discussion of siting issues, including the related issue of "fair share" of responsibility for waste management. Together, the states and EPA are seeking equitable solutions to the complex questions raised.

III. BASIS FOR ASSURANCE

Among the factors used by the Agency in 1989 to determine that a state's assurance was adequate were the economic models the state provided showing data for waste generated, and capacity within and outside the state for that waste. This data

¹ The original plan was due in October of 1991, however, the Agency is now requiring the CAP to be submitted by 2/15/92.

demonstrated the state's knowledge of its hazardous waste management system as well as its present and planned future export and import balance. The Agency decided that an array of 20 years of data and projections was necessary, for the first round of implementation, to show that provisions for waste minimization, treatment or disposal had been made for all hazardous waste the state included in its projections.

The Agency understands the concern states have with the lack of reliability of projections that extend 20 years into the future, and we are working with the states to determine just how far in the future reliable projections can extend. For this submission, we intend to rely on states' commitments to maintain capacity for the latter years of the 20 year period. We do not find it necessary to use data and projections covering a 20 year period (1992 to 2012), as a basis for deeming a state's assurance adequate. The status of the CAP submitted pursuant to the 1992 submission, coupled with the data included in the 1989 capacity assurance plan which covers the period through 2009 (or 18 years), will be sufficient to judge the adequacy of the state's basis for assurance.

IV. INTERSTATE AND REGIONAL AGREEMENTS

CERCLA 104(c)(9) requires that assurances relying upon the availability of facilities outside the state must be in accordance with an interstate agreement or regional agreement or authority. All but seven states are currently participating in regional capacity sharing agreements. Although Congress did not specify the form these agreements would take, we believe they contemplated that interstate agreements would demonstrate that states were working cooperatively to plan for adequate treatment and disposal capacity.

Several changes in regional agreement participation have occurred since October 1989 and will likely continue to occur. Since one of our goals is to portray a more realistic view of the country's hazardous waste management, we urge States to continue to pursue arrangements that they believe more accurately reflect actual interstate waste flows.

V. 1989 MILESTONES AND SUPPLEMENTAL CONDITIONS

Although some of the state Capacity Assurance Plans (CAPs) have been approved unconditionally, the great majority of CAPs are those for which Regional Administrators have established supplemental conditions, such as schedules to provide additional information or to obtain capacity through regional agreements or siting. The Agency believes that approval with supplemental conditions is a productive procedure because it allows the Agency to keep states, who thus far have made a good faith effort to comply with the statute, actively involved in the process.

However, a CAP cannot serve as the valuable planning tool it was meant to be, nor can it be said to provide a basis for assurance of capacity, unless supplemental conditions and the commitments included by the states themselves in their CAPs, are met. Although we believe that these commitments are extremely important, and expect that states will continue to meet these conditions, we do not expect additional information or a report on progress to meet these conditions in the 1992 submission. The Regions will continue to track compliance with supplemental conditions and failure to meet supplemental conditions may place the CAP's approval status in jeopardy.

Supplemental Conditions for Hazardous Waste Going to Exempt Systems and Mixed Waste

As a condition for approval of their CAPs, many states received supplemental conditions for hazardous waste going to exempt systems and mixed waste. The Agency realizes that states are limited in their authority and ability to collect data and report on hazardous waste going to exempt systems and mixed waste. Therefore, until such time as the Agency is able to provide states with a tool to collect such data, we will no longer require states to satisfy their supplemental conditions for hazardous waste going to exempt systems and mixed waste. We do not believe that these categories of waste are of sufficient consequence to affect capacity determinations.²

VI. 1992 SUBMISSION

In Don R. Clay's August 20, 1990 memorandum entitled "Capacity Assurance Planning for 1991," it was stated that the Agency has decided that the '91 submission (now the '92 submission) should be limited in scope, and tailored to only what is essential at this time. Totally new generation and capacity analyses will not be required until 1993. Based on our analysis, there are only two items (Governor's Transmittal Letter and Report on Progress to Meet Capacity Needs), that are considered essential for the 1992 submission. They are described below.

A. Governor's Transmittal Letter

Each state is to submit its 1992 submission to EPA on or before February 15, 1992. A suggested transmittal letter, including the state's assurance, appears below. If the letter transmitting the 1989 CAP was not signed by the Governor or authorized designee, then this transmittal letter must be signed

² At some time in the future, if possible, we may wish to collect this information for long-term planning purposes using the Biennial Reporting System.

by the Governor or his designee. Also, if the Governor has delegated authority to provide the assurance, and the 1989 submission did not contain this information, then the 1992 CAP submission should also include a letter signed by the Governor, delegating authority to the signatory to provide the assurance. However, if the 1989 CAP submission included a letter signed by the Governor and/or a letter which delegated authority to the signatory to provide the assurance, then a new signature by the Governor is not required at this time; the designee's signature will suffice.

Dear Regional Administrator:

Section 104(c)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, requires as a condition for providing remedial actions that states assure the availability of treatment or disposal facilities which have the capacity to treat, destroy, or securely dispose of all hazardous wastes that are reasonably expected to be generated within this [State, Commonwealth, Territory] for twenty years.

In evaluating the adequacy of the materials that provide a basis for you to evaluate this assurance, [name of state, commonwealth, territory] wishes the Regional Administrator to consider the following:

- [name of state, commonwealth, territory]'s Capacity Assurance Plan ("CAP") submitted [month/day], 1989.
- Agreement between EPA Region [number] and [name of state, commonwealth, territory] approving of the state's CAP, including supplemental conditions and/or milestones.
- [any amendments, revisions or supplements to the state's CAP since its original submission referred to above -- please briefly describe each inclusion]
- The following attached documents:

Status report on progress to meet capacity needs,
and

Letter signed by [name of governor], Governor of [name of state, commonwealth, territory] delegating authority to the undersigned to provide this assurance, if not provided with the 1989 submission.

• The government of this [State, Commonwealth, or Territory] hereby reaffirms its commitment to carry out the activities described in these incorporated documents.

Sincerely yours,

B. Progress to Meet Capacity Needs

All 50 States (and territories) should provide a qualitative assessment and progress report that covers the waste minimization program, the status of facilities, and any interstate or regional agreement. We do not expect that this report will include new generation and capacity analyses, but you are welcome to include this information if you wish.

(1) Waste Minimization Program

Please include a brief description of any relevant legislation, as well as:

- a description of the current situation;
- changes that have occurred since the CAP was first submitted;
- state's plans for the future

(2) Status of Facilities

Please include only those facilities that meet the following criteria: any 1) new or 2) expanded siting within the State's borders, and any other 3) major changes in facility status, such as closure or failure to obtain as anticipated, permit modification to expand, that affect capacity. Please describe qualitatively:

- a description of the current situation;
- major changes that have occurred since the CAP was first submitted, and how these changes effect any shortfalls which were described in the original CAP submission;
- state's plans for the future

We would appreciate your including any information in a situation where the legal status of a facility is being challenged, e.g., permit denial undergoing appeal.

(3) Interstate or Regional Agreement

Please include:

- changes that have occurred since the CAP was first submitted, and how these changes effect any shortfalls which were described in the original CAP submission;

C. Submission of Materials to EPA

All materials should be transmitted to EPA for review. The Agency expects that the states' 1992 submission will include one document containing two subparts: 1) a transmittal letter, and 2) a report describing: a) the waste minimization program, b) the status of facilities, and c) interstate/regional agreements.

An original and four (4) copies of this document should be sent to the appropriate regional office.

VII. STATUS OF CAPACITY ASSURANCE PLAN³

It should be clearly understood that although the 1992 submission will not be as broad in scope as the one for 1989, failure to submit the requested information will constitute default in the state's obligation to assure capacity under CERCLA 104(c)(9). Thus, if the state fails to submit the CAP by February 15, 1992, the state will no longer have assured capacity under CERCLA 104(c)(9). If no 1992 submission is made, the 1989 CAP cannot form the basis for continuing capacity assurance. If the status of the state's 1989 CAP is unapproved, this submission will not change the status of such a CAP. Until the 1989 submission has been approved, a previously unapproved CAP will retain its status of not approved.

Once the 1992 CAP has been submitted, priority for review and determinations will be given to those states in which there are pending Superfund remedial actions.

³ It may happen that EPA will approve a CAP, but that subsequent information or events persuade EPA that the CAP no longer provides adequate assurance. In that case, EPA would not provide remedial actions until adequate assurance was provided.