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# **RCRA State Interim Authorization Guidance Manual**

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

JUN 25 1980

MEMORANDUM

SUBJECT: RCRA State Interim Authorization Guidance Manual

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TO: Regional Administrators  
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This manual is the basic guidance document to be used by EPA in implementing Section 3006(c) of the Resource Conservation and Recovery Act of 1976 (RCRA), Interim Authorization of State Hazardous Waste Management Programs. The manual describes the documents that must be submitted by a State seeking interim authorization and outlines the procedures to be used by our staffs in determining "substantial equivalence" of a State program to the Federal program.

The manual should be used by State agencies in preparing draft and complete applications for Phase I of Interim Authorization. It is expected that EPA Regional Office and Headquarters staffs will follow the procedures outlined in this manual during the interim authorization process. EPA's approval process is outlined in chapter 1.2. Please note that we are now reevaluating the details of the process, and if changes to this chapter are appropriate they will be distributed as soon as practicable. Until such time, the procedures in chapter 1.2 should be followed.

The final decisions on State authorization will require judgments by EPA upper management. Therefore, early involvement of management and staff at Headquarters and in the Regional Offices is essential.

This manual was developed by a task force comprised of EPA Regional Office and Headquarters personnel under the general direction of John McGuire, Regional Administrator, Region V.

cc: Distribution list.

### NOTE TO USERS

This manual was prepared during the same period as the final RCRA Subtitle C and Consolidated Permit Regulations which were published in the Federal Register on May 19, 1980. Consequently, there may be some errors of omission or inappropriate references which should be corrected.

We would appreciate having all such instances brought to our attention as soon as possible. Please address your comments to:

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RCRA STATE INTERIM AUTHORIZATION  
GUIDANCE MANUAL

June 19, 1980

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# RCRA STATE INTERIM AUTHORIZATION GUIDANCE MANUAL

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## CHAPTER 1.1

### INTRODUCTION

The Resource Conservation and Recovery Act of 1976, (RCRA), as amended, provides for interim authorization of State programs that are substantially equivalent to the Federal program. This Guidance Manual has been developed to provide direction to States in developing draft and complete applications for Phase I of interim authorization. Use of the guidance models and examples will facilitate EPA's timely and orderly processing of a State application for interim authorization. It is the intent of the Agency to develop additional guidance for Phase II of interim authorization and for final State authorization application development.

This manual is divided into three sections. The first, General, gives an overview of the hazardous waste program and information on EPA's procedures for review of Applications for interim authorization. The second is the State Submittal Guidance which provides specific instructions for the State in developing its application to be submitted for interim authorization. The nine chapters in this section provide guidance to the States in assembling the authorization application and detail the reporting requirements for States whose programs are approved. The third section, Substantial Equivalence Guidance, is to be used by the State and by the Regional Offices in determining whether the State regulations are substantially equivalent to the Federal regulations. The Appendices contain the regulations pertinent to developing the program submittal and to reviewing State program submittals for interim authorization.

In order to receive approval by the effective date of the Federal regulations, the State must submit to its EPA Regional Office a Letter of Intent to seek interim authorization not later than 45 days after promulgation of the Federal regulations. This Letter of Intent must include a schedule indicating the timing for development and submittal of both draft and complete authorization applications. Guidance for the Letter of Intent to Apply for Interim Authorization, including Schedule is included in this Manual.

The Federal regulations in 40 CFR 123 Subpart F promulgated pursuant to Section 3006(c) of RCRA require that the State interim authorization application contain the following:

1. Governor's letter requesting State program approval.
2. A program description which explains the program the State proposes to administer together with any forms to be used to administer the program under State law.
3. A Statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) that the laws of the State or interstate compact do provide adequate authority to carry out the program the State proposes to administer.

4. A Memorandum of Agreement which describes any arrangement or understanding between the State Director and the U.S. EPA Regional Administrator regarding the administration and enforcement of the State regulatory program.
5. An Authorization Plan which describes the additions or modifications necessary to qualify the State program for final authorization.
6. Copies of all applicable State statutes and regulations, including those governing State administrative procedures.

The chapters in 2.0 State Submittal Guidance provide guidance documents, example documents, and/or models for authorization application items 2 through 5 above and for program requirements regarding resource adequacy.

## DEFINITIONS

For purposes of consistency, terms frequently used in this manual are defined below. Other items are defined in 40 CFR 122.

1. "RCRA State Interim Authorization Guidance Manual" is this loose-leaf notebook which includes specific guidance documents to assist States in applying for interim authorization.
2. "Letter of Intent to Apply for Interim Authorization, Including Schedule" is developed by the State to establish formally the State schedule and commitment to produce a complete application for interim authorization.
3. "Draft Application" is a preliminary version of the complete application which includes the Memorandum of Agreement, Attorney General's Statement, Program Description, Authorization Plan, and draft and final State hazardous waste regulations and legislation.
4. "Complete Application" is the official State application submitted for the formal EPA review.
5. "State Delegation Coordinator" is the EPA Regional Office contact responsible for coordinating and consolidating the review comments generated by the Regional Work Group and the Headquarters' Review Team on the State submittal.
6. "Regional Work Group" is an established group of Regional Office staff responsible for reviewing the draft application and complete application. The Work Group must represent all of the concurring Divisions and Offices, i.e., Regional Counsel, Air and Hazardous Materials Division, and Enforcement Division, within the Regional Office.



7. "Headquarters' Review Team" is an established team of Washington staff representing all the concurring offices, i.e., Office of Solid Waste, Office of General Counsel, and Office of Enforcement, responsible for reviewing the draft applications and complete applications.
8. "Headquarters' Review Team Leader" is responsible for coordinating the efforts of the Headquarters' Review Team and coordinates the transmittal of a single set of written review comments to the Regional State Delegation Coordinator.
9. "Action Memorandum" is a transmittal memorandum prepared by the Regional Office for the purposes of obtaining signatures from the appropriate concurring offices on the final determination on the complete application and Federal Register notice.
10. "Application Approval Process," is the procedure by which applications for interim authorization will be reviewed and determinations made within each Regional Office and Headquarters.
11. "State/EPA Agreement (SEA)" is a statement of agreement between the State and EPA delineating priority environmental program activities to be carried out in the State by either party. The document specifically covers work to be undertaken during the fiscal year encompassed.
12. "Annual State Grant Work Program" is an agreement negotiated annually between the State and EPA Regional Office delineating the work activities to be completed by the State as a condition of the RCRA grant for that year.
13. "Cooperative Arrangement" is a negotiated agreement on a fiscal year basis as part of the State/EPA agreement and annual State grant work program identifying elements of work to be performed by a State in assisting EPA to implement portions of the Federal program in that State when a State does not qualify for interim authorization.
14. "Phase I of Interim Authorization" is that phase of the Federal Hazardous Waste Management Program commencing on the effective dates of the following as initially promulgated: 40 CFR 122, 123, 260, 261, 262, 263, and 265. "Promulgation of Phase I" means promulgation of the regulations necessary for Phase I to begin.
15. "Phase II of Interim Authorization" is that phase of the Federal Hazardous Waste Management Program commencing on the effective date of the first of 40 CFR 264 Subparts F-R (as initially promulgated). "Promulgation of Phase II" means promulgation of the regulations necessary for Phase II to begin.

## CHAPTER 1.2

### APPLICATION APPROVAL PROCESS

#### I. INTRODUCTION

The "Application Approval Process" guidance presents the Regional/Headquarters procedure that will be used to review draft and complete applications for all phases of the Approval Process during Interim Authorization of State hazardous waste management programs.

The specific objectives of this guidance are to:

- Make the States aware of the EPA Approval Process;
- Provide for Regional and National consistency;
- Assign responsibilities to specific groups in both the Region and Headquarters; and
- Shorten the review and approval time frames so that it may be possible for States to receive interim authorization to operate in lieu of the Federal program on the effective date of the Federal regulations.

The success of this Approval Process lies with having upper management in Headquarters and in the Regional Offices (i.e., Assistant Administrator, Office Directors, Regional Administrators and Division Directors) review and understand how these procedures achieve the Agency's goal of making a final determination on State applications in a consistent and timely fashion. It is expected that the Regional Offices and Headquarters will follow these administrative procedures until otherwise modified.

#### II. GENERAL SCHEDULE FOR THE APPROVAL PROCESS

The goal of this Approval Process is to confer interim authorization to State hazardous waste programs within 6 months after promulgation of the Federal Regulations (40 CFR 261). It will be extremely difficult to authorize a state within this six-month time frame. In order to maintain this optimistic schedule the following critical key events and milestones must be met:

(D=Day of Promulgation of 40 CFR 261)

- Information discussions between States/Regions to begin (and to continue) as soon as possible;
- Intensive consultations/detailed discussions to commence upon promulgation of the Federal regulations, i.e., the promulgation date (D);

- States to submit Letter of Intent/Schedule, i.e., (D + 45 days);
- States to submit draft applications within 75 days after the promulgation of the Federal regulations (40 CFR 261), i.e., (D + 75 days);
- Regions/Headquarters to complete reviews of draft applications within 105 days after the promulgation of the Federal regulations, i.e., (D + 105 days);
- States to submit complete applications within 120 days after the Federal regulations are promulgated, i.e., (D + 120 days);
- EPA to render approval on the effective date of the Federal regulations, i.e., (D + 180 days).

Figure 1 contains a typical sequence of events that will be followed if a State wants to receive Interim Authorization by the effective date of the Federal Regulations.

### III. FACTORS CRITICAL TO SUCCESS

It is obvious that for this schedule to be achieved, extraordinary management and organizational arrangements must be established. This section sets forth those arrangements.

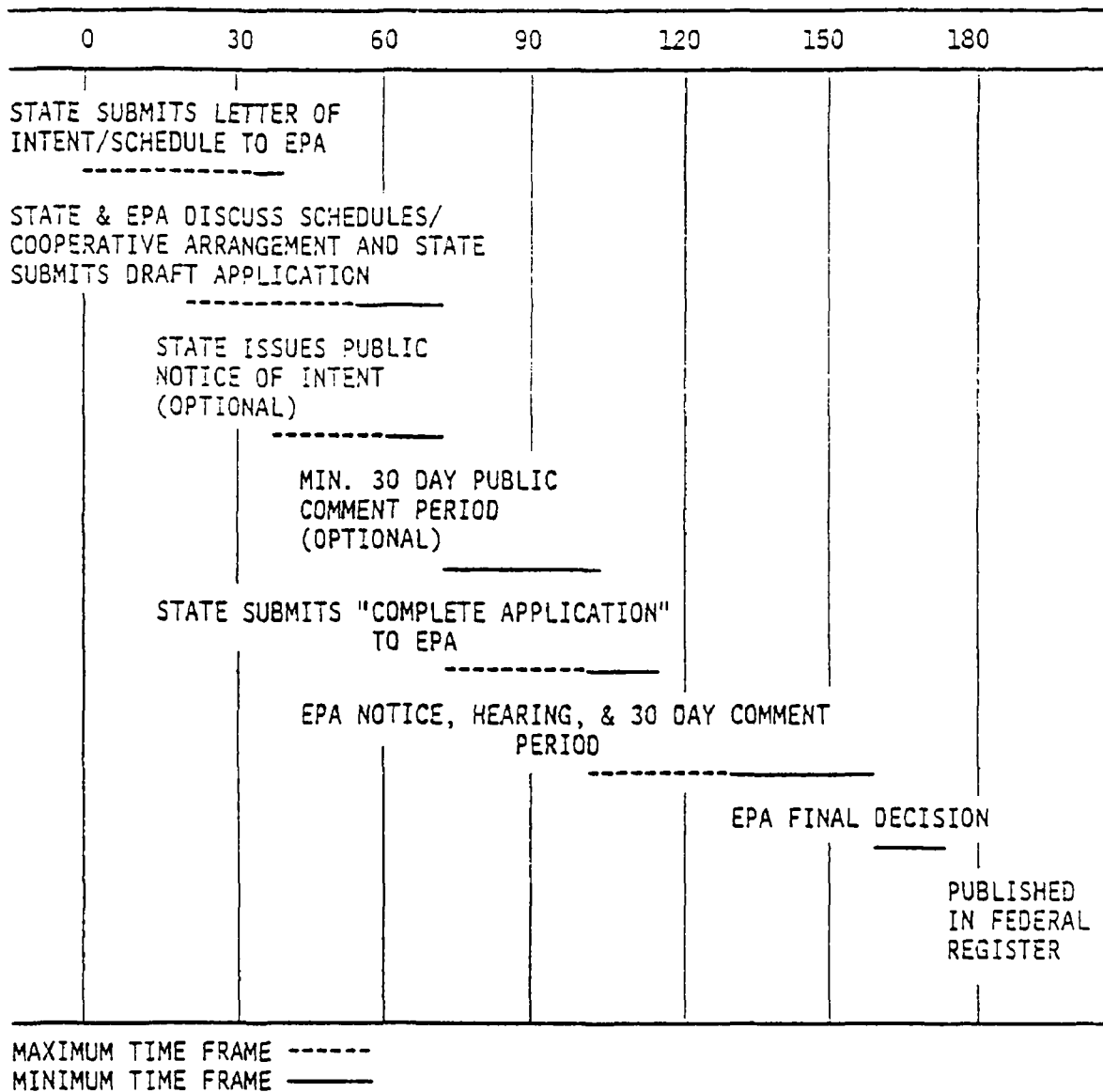
A. Regional and Headquarters Teams. Regional Workgroups and Headquarters Review Teams shall be established to coordinate and manage the Agency's review, comment and approval of State submittals.

Each Regional Office should establish a Regional Workgroup coordinated, directed and chaired by the Waste Management Branch. A Headquarters Review Team should be established for each State application. The Review Team will be coordinated, directed and chaired by the Office of Solid Waste. The individuals to be assigned to the Regional and Headquarters teams should be identified as soon as possible, should be selected from those organizations with obvious involvement/interest in hazardous waste programs, and should be as knowledgeable as possible. As a minimum the Regional Workgroups should be composed of members from the Hazardous Waste Branch, the Regional Counsel's Office and the Regional Enforcement Office. The Headquarters Review Teams should be composed of members from the Office of Solid Waste, the Office of General Counsel, the Office of Water Enforcement and other appropriate Headquarters Offices.

The development of these two groups as the respective Regional and Headquarters focal points is intended to involve all parties interested in the State program authorization and to ensure consistency in Agency comments to the States. Responsibilities of the Regional Workgroup and the Headquarters Review Team in the development and review of the State submittals should be defined in advance. Each State will be assigned a Delegation Coordinator from the Regional Office. The State Delegation Coordinator will be responsible for coordinating and consolidating the review comments generated by the Regional Workgroup and the Headquarters Review Team on various aspects of the State submittal.

Figure 1

SEQUENCE FOR APPROVAL PROCESS INTERIM AUTHORIZATION - PHASE I



KEY DUE DATES

Regulations Promulgated - Day 0	(May 19)
Letter of Intent/Schedule - Day 45	(July 3)
Draft Application Developed and Submitted before Day 75	(August 2)
State Submits Complete Application - Day 120	(September 16)
Public Comment Period - Days 130-170	(September 25 - November 5)
Final Determination - Day 180	(November 15)
Regulations Effective	(November 19)

B. Standardized Checklists. In order to expedite the review of draft and complete applications, standardized checklists should be used. These checklists cover each of the basic elements of the application, e.g., Program Description, Attorney General's Statement, Memorandum of Agreement, etc. Model checklists are presented in other chapters of this Guidance. The purposes of the checklists are as follows:

1. The checklists should ensure that all elements have been evaluated.
2. The checklists should allow the comments to be handwritten or typed into a space provided on the checklist itself. This will expedite the review and consolidation of comments.
3. The checklists should serve to focus the reviewers' comments on the more important issues of the application. The combination of the State authorization guidance document and the checklists will establish a reasonable basis for the scope of EPA's review.
4. The checklists will establish a uniform recordkeeping among the Regions. (See the section on State Reporting Guidance for details on this subject.)

C. Meeting All Milestones on Time and Consolidation of Comments. For each stage of the Approval Process, the specific activities and responsibilities of the Headquarters Review Team and Regional Workgroup have been defined and a notation made of the cumulative time elapsed in calendar days. The purpose of noting the cumulative calendar days elapsed is to establish the necessary turnaround times for completion of various activities. It should be noted that the times shown are based on the desire for a program approved by the effective date of the Federal Regulations.

In order to ensure that the Agency presents a clear and uniform position with respect to the review of State submittals, EPA should provide the States with a single consolidated set of comments. This guidance establishes a review process whereby the Regions and Headquarters will coordinate their comments via the Regional Delegation Coordinator.

Headquarters Review Team members and Regional Workgroup members are responsible for ensuring that their comments are submitted to the team leader on time. If milestones are missed, the Team Leaders may presume a "no comment" position and subsequent comments may not be considered.

Headquarters will provide one set of comments on the draft and complete applications under the combined signatures of the Assistant Administrator for Water and Waste Management, the Assistant Administrator for Enforcement and the General Counsel. These comments will be combined with the comments generated by the Regional Workgroup and forwarded to the State by the Regional Administrator as one set of comments. The Regional Delegation Coordinator shall resolve with Headquarters any conflicts in consolidating before transmitting to the States. If Headquarters' comments on the draft application are accommodated and no new issues are raised by the State in the complete application or by the public during the public comment period, the Regional Office should expect Headquarters' concurrence on the complete application in an expedited manner.

However, failure of the Regional Delegation Coordinator to transmit Headquarters' review comments to the State, or failure by the State to adequately address the issues raised in such comments, could result either in a delay in final concurrence or in non-concurrence by the Headquarters offices.

Final approval of complete applications will be made by the Regional Administrator with the concurrence of the Assistant Administrator for Water and Waste Management, the Assistant Administrator for Enforcement and the General Counsel. In the event that concurrence cannot be obtained from Headquarters within the time frames indicated, the Regional Administrator must immediately raise the issue to the Administrator for resolution.

Some of the other extraordinary features essential to success are:

1. Joint reviews of draft applications at each Regional Office by the Headquarters/Regional teams (Headquarters' teams travel to Regional Offices as needed);
2. The expediting of the distribution of documents by means other than mailing; and
3. Fast access to upper management for resolution of critical issues.

This Guidance assumes the States want the interim authorization process to be completed on or before the effective date of the Federal Regulations. In the event a State does not want the program on the effective date of the regulations, the procedures described here would remain the same, only the dates would change.

#### IV. STAGE I - DRAFT APPLICATION REVIEW

Experience with delegations under the Air and Water Programs has indicated that the development and review of draft applications should be viewed as the most critical step in the entire process. EPA should view the development of the State's draft application as a joint EPA-State effort as opposed to assuming only a review role.

The use of frequent working sessions is essential to assist the States in developing draft applications that will meet the test of substantial equivalency. Where issues arise which are common to several States, joint work sessions should be planned in order to effectively utilize staff and ensure national consistency on the issue. It is reasonable to assume that each of the major elements of the application will require separate meetings with appropriate State officials.

The draft application development activity will also involve the Headquarters Review Teams, especially where major issues or issues common to several States require coordinated Regional/Headquarters decisions. More intensive Headquarters involvement will start when the draft applications have been prepared; however, informal Headquarters and Regional coordination

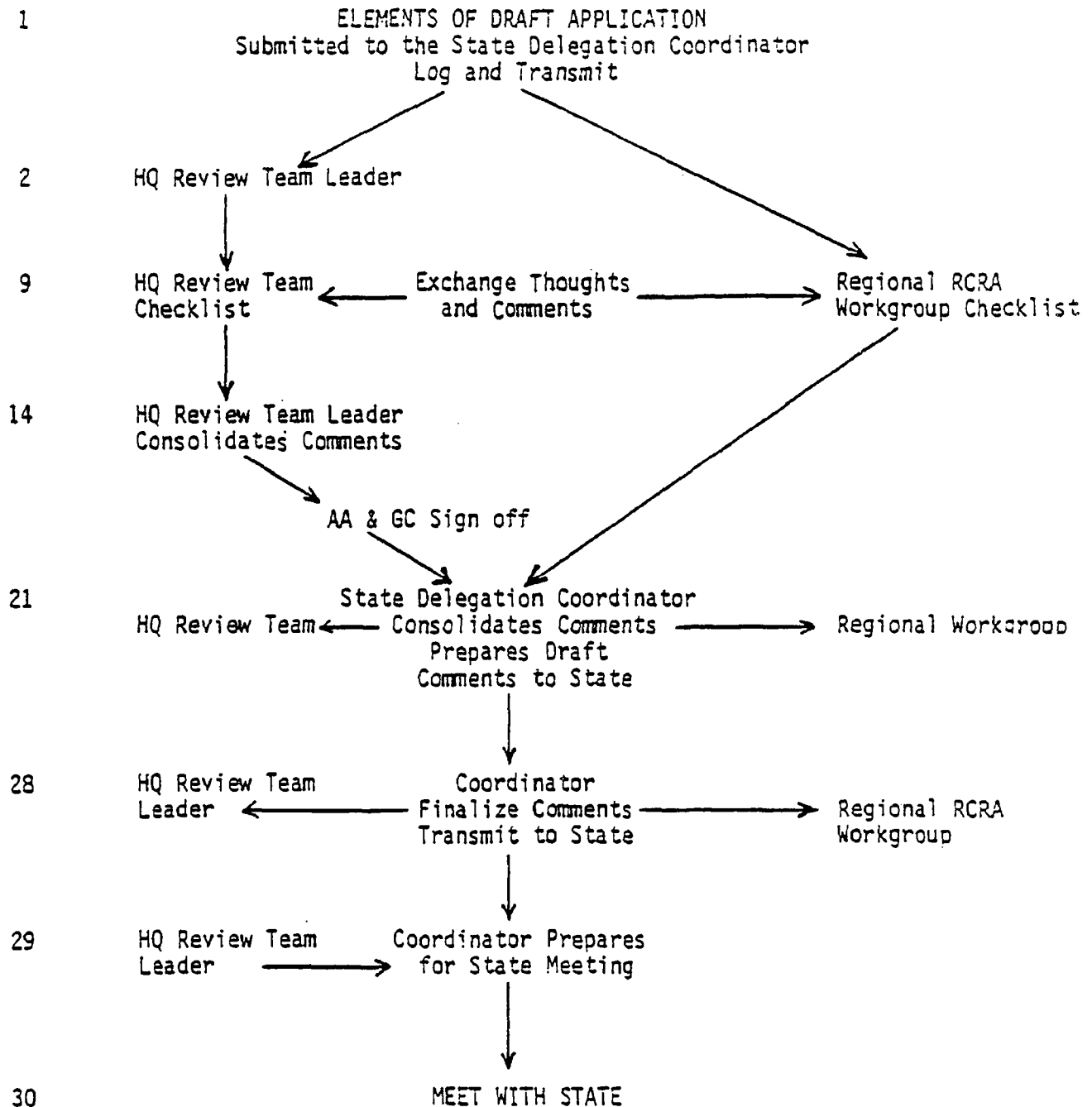


## ACTIVITIES

ASAP

## Working Sessions

## Developing a Draft



is encouraged prior to that time. These drafts will be transmitted to Headquarters for review and comment within a specified turnaround time. Frequent contact between the Regional Workgroup members and their respective program offices in Headquarters, e.g., the Regional Waste Management Branch and the Office of Solid Waste, the Enforcement Division and the Office of Enforcement, the Regional Counsel and the Office of General Counsel, is necessary in order to ensure that the positions taken during the drafting process will be acceptable to these concurring offices. It is important that significant telephone comments be written up in the form of a telephone memo for the files. The success of the delegation and cooperation between EPA and the State may depend on the Regional Workgroup and the Headquarters Review Team's effectiveness in communicating in a way that accurately reflects the Agency's position on significant issues.

Figure 2 is a flow diagram which summarizes the review procedure for the draft application.

#### V. STAGE TWO - COMPLETE APPLICATION REVIEW

The emphasis on the draft application should significantly reduce the workload and time needed to perform the formal review and approval of the complete applications. The recommended time frames for completion of various activities reflects this assumption.

Figure 3 represents a recommended sequence of events for the review and approval process of complete applications. The time frames suggested in Figure 3 are to make a final determination on a State program by the effective date of the Federal regulations. This will require the review of the State's complete application, the holding of a public hearing, the sign-off by all offices and a decision by the Regional Administrator within 60 days. This 60 day turnaround time further amplifies the importance of the work done during the draft stage.

The Regional Workgroup and the Headquarters Review Team remain the focal points for the review of complete applications. Upon receipt of the complete applications, the State Delegation Coordinator logs in and transmits copies of the complete application to the Headquarters Review Team Leader and the Regional Workgroup and prepares and issues the public notice. The State Delegation Coordinator and the Headquarters Review Team Leader will set up public depositories for public review in the State and Regional Offices.

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.

When a public hearing is held and public comments are submitted, the State Delegation Coordinator will be responsible for preparing responses to the comments. The responses to comments should be reviewed by the Regional Workgroup before being transmitted via the telephone to the Headquarters Review Team for their information and comments.

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 represents the recommendations of the Regional Workgroup members and the Headquarters Review Team in order to expedite the concurrence sign-off process. It should be noted that the recommended sequence of events in Figure 3 envisions Regional Office and Headquarters concurrences taking place at the same time.

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.

## VI. RECORDKEEPING

It is essential that the Regions develop a delegation file system which will represent a comprehensive record of the Agency's delegation process. The recordkeeping system should provide a simple, efficient system for:

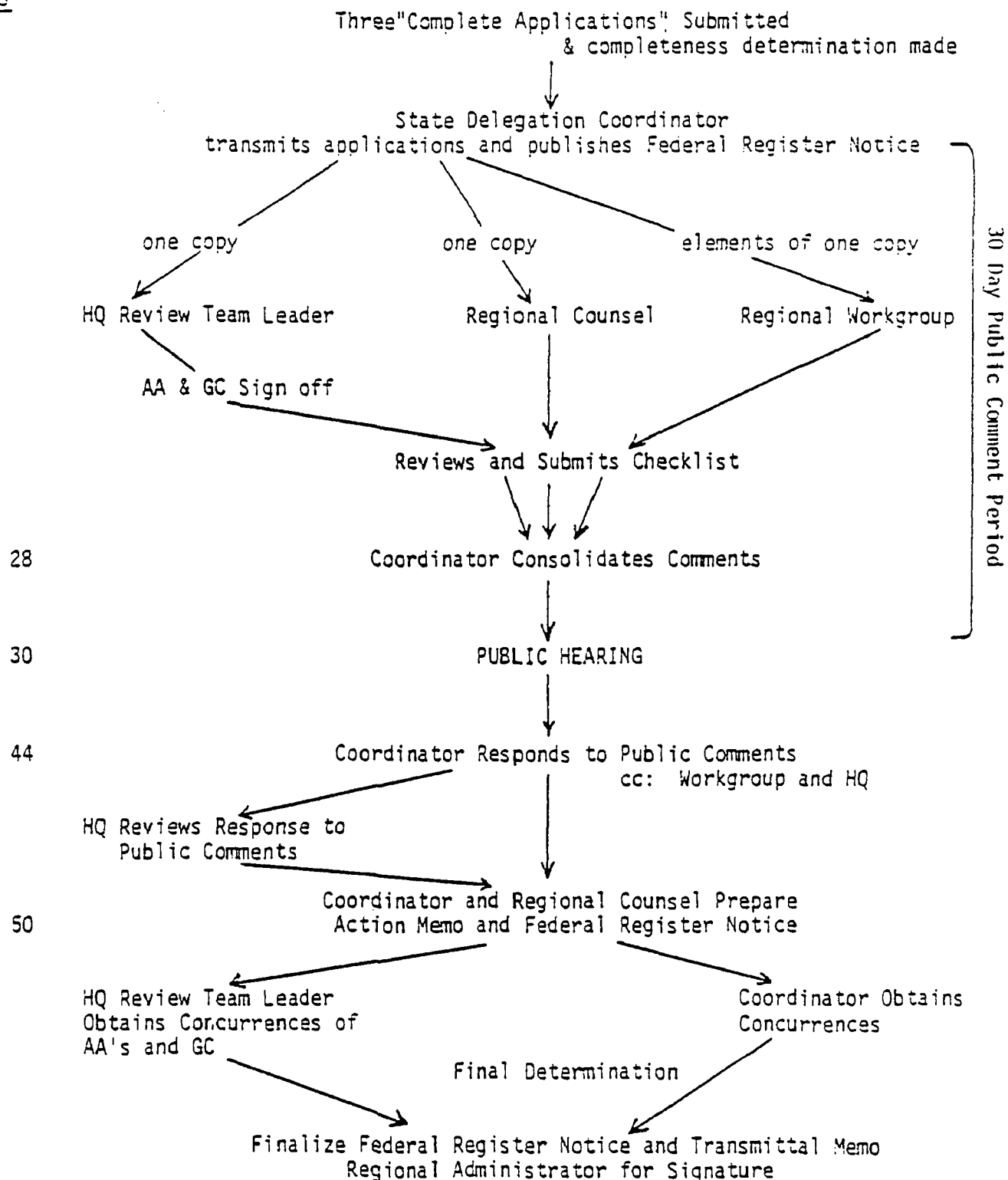
- Information useful in monitoring the approval process, e.g., tracking stage of completion and need for amendment;
- Information which can be used for program planning, e.g., phasing of the review and approval process and determining the total number of reviews in a given period of time; and
- Information which can be used to respond to subsequent changes to the application.

The State Delegation Coordinator is responsible for maintaining the delegation file. The delegation file should contain the following elements:

FIGURE 3

REVIEW PROCEDURE FOR THE COMPLETE APPLICATION

CUMULATIVE  
CALENDAR  
DAYS



- A. Copies of State/EPA agreements relevant to the approval process and copies of the cooperative arrangements if used during the interim authorization period;
- B. A copy of the legislation and regulations and a checklist that establishes that the State has or needs the proper authority to run a RCRA program;
- C. A copy of the Letter of Intent, including Schedule;
- D. Copies of all comments and checklists from the Regional Workgroup as they pertain to the draft and complete applications;
- E. Copies of consolidated comments and correspondence and telephone memos related to the application review from the Headquarters Review Team Leader;
- F. Summaries of meetings and trips and correspondence and telephone memos to and from Headquarters, the Regional Office and the State as they pertain to the approval process;
- G. A log which tracks the review of submittals and dates for comments, e.g., Figure 4;
- H. Copies of comments and statements from the Regional Administrator and concurring offices;
- I. Federal Register Notice of Hearing;
- J. All public comments and responses; and
- K. Action Memorandum.

The delegation file is not the same as a public docket file. Regional Counsels should be consulted when requests are received for any documents that are not already public documents (e.g., Action Memorandum).

A separate file should be maintained for the review of and comments on the draft regulations.

## FIGURE 4

[illegible]

1.2-11



## 2.0 STATE SUBMITTAL GUIDANCE

## CHAPTER 2.1

### LETTER OF INTENT INCLUDING SCHEDULE

#### Purpose and Scope

The purpose of this chapter is to provide guidance to the State in preparing a Letter of Intent and a Schedule for developing an application for receiving interim authorization of a State's hazardous waste program.

The Letter of Intent should be submitted to the U.S. EPA Regional Administrator as soon as possible, but no later than 45 days after promulgation of the Federal Phase I regulations. After submittal of the Letter of Intent, the State must submit draft and complete applications no later than 75 days and 120 days after the promulgation date respectively if the State expects to receive program approval within about six months of promulgation of the Federal Phase I regulations. For applications submitted on time EPA will attempt to complete the approval process in the shortest time possible. The U.S. EPA will accept and process applications received after these dates but will probably not be able to complete this process before the effective date of the Federal program.

#### Content

A Letter of Intent is from the State Director to the Regional Administrator stating that the State proposes to seek both interim and final authorization to administer and enforce a State hazardous waste program in lieu of the Federal program in accordance with Subtitle C, Resource Conservation and Recovery Act of 1976. The Letter of Intent may be used to: (1) identify those States desiring to receive interim authorization by the effective date of the Federal regulations; (2) set priorities for the development of Regional hazardous waste programs in States not expected to receive interim authorization; (3) establish a basis for State and U.S. EPA Agreements (SEA) and the annual State grant work program; and (4) identify States for cooperative arrangements with U.S. EPA in those situations where EPA is implementing the Federal hazardous waste program. The letter should include the following items as a minimum:

1. A general description of present State legislative and regulatory authority to operate the program.

This should not be the detailed statement required in the Attorney General's Statement in the complete application. It should be a brief summary of the present status of State authority. Its main purposes are to highlight, as early as possible, the additional legislation or regulatory authorities that the State believes are required and to describe what the State intends to do to qualify for interim and final authorization.

2. A brief description of the State Agency organizational structure and the departments or units that will be responsible for operating the program.

The letter should briefly describe the State's organizational structure; show which agency will operate the program; and, where there is shared program responsibility between State agencies, describe briefly how the responsibility is shared.

3. A schedule for preparing and submitting a draft and a complete application for interim authorization.

The attached Table 1 presents a sample State schedule that has been developed to show the shortest possible time in which U.S. EPA believes a complete application for interim authorization could be prepared by a State and reviewed and approved by the Regional Administrator. It assumes that only a minimal time is required to make regulatory changes in State authority, and that the application can be considered complete upon receipt. A State should prepare its schedule based on its best estimate of the time periods needed to develop each element of the draft and the complete application. EPA staff will be available to assist the State in developing a realistic schedule and a complete application.

TABLE 1

SAMPLE SCHEDULE FOR PREPARING DRAFT AND COMPLETE APPLICATIONS  
FOR PHASE I INTERIM AUTHORIZATION

Program Elements/Action Items		1980											
		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Time Sequence in Days						0	30	60	90	120	150	180	
PHASE I AUTHORIZATION													
Evaluate Needs and Obtain Effective Regulations Where Necessary													
Program Description	Draft												
	Final												
Attorney General's Statement and Authorization Plan	Draft												
	Final												
Memorandum of Agreement	Draft												
	Final												
Draft Application Submission by Director to U.S. EPA Regional Administrator													
Complete Application Submission by the Governor to U.S. EPA Regional Administrator													

Notes: The August 2 and September 16, 1980, dates for submission of a draft and complete application are critical if the State expects to receive program approval by November 19, 1980. States are obviously free to develop their own schedules. U.S. EPA intends to process applications received after September 16, 1980 as soon as reasonably possible.

## CHAPTER 2.2

### PROGRAM DESCRIPTION

#### Federal Requirement

##### **§ 123.124 Program description.**

Any State that wishes to administer a program under this Subpart shall submit to the Regional Administrator a complete description of the program it proposes to administer in lieu of the Federal program under State law. A State applying only for interim authorization for Phase II shall amend its program description for interim authorization for Phase I as necessary to reflect the program it proposes to administer to meet the requirements for interim authorization for Phase II. The program description shall include:

- (a) A description in narrative form of the scope, structure, coverage, and processes of the State program.
- (b) A description (including organization charts) of the organization and structure of the State agency or agencies which will have responsibility for administering the program including the information listed below. If more than one agency is responsible for administration of the program, each agency must have Statewide jurisdiction over a class of activities. The responsibilities of each agency must be delineated, their procedures for coordination set forth, and one of the agencies must be designated a "lead agency" to facilitate communications between EPA and the State agencies

having program responsibility. Where the State proposes to administer a program of greater scope of coverage than is required by Federal law, the information provided under this section shall indicate the resources dedicated to administering the Federally required portion of the program.

(1) A description of the State agency staff who will be engaged in carrying out the State program, including the number, occupations, and general duties of the employees. The State need not submit complete job descriptions for every employee engaged in carrying out the State program.

(2) An itemization of the proposed or actual costs of establishing and administering the program, including cost of the personnel listed in paragraph (b)(1) of this section, cost of administrative support and cost of technical support.

(3) An itemization of the sources and amounts of funding, including an estimate of Federal grant money, available to the State Director to meet the costs listed in paragraph (b)(2) of this section identifying any restrictions or limitations upon this funding.

(c) A description of applicable State procedures, including permitting procedures, and any State appellate review procedures.

(Note.—States applying only for interim authorization for Phase I need describe permitting procedures only to the extent they will be utilized to assure compliance with standards substantially equivalent to 40 CFR Part 255.)

(d) Copies of the forms and the manifest format the State intends to use in its program. Forms used by the State need not be identical to the forms used by EPA, but should require the same basic information. If the State chooses to use uniform national forms it should so note.

(e) A complete description of the State's compliance monitoring and enforcement program.

(f) A description of the State manifest system if the State has such a system and of the procedures the State will use to coordinate information with other approved State programs and the Federal program regarding interstate and international shipments.

(g) An estimate of the number of the following:

- (1) Generators;
- (2) Transporters; and
- (3) On- and off-site treatment, storage and disposal facilities including a brief description of the types of facilities and an indication, if applicable, of the permit status of these facilities.

#### Purpose and Scope

The Program Description is a critical element of a State's authorization application since it describes the program that the State plans to operate in managing hazardous wastes.

The information to be provided by the State in its Program Description for Interim Authorization is specified in 40 CFR 123.124. To assist EPA in reviewing the Program Description, the State should present its information in the order specified in the regulations. This guidance explains further several elements of the Program Description. Other elements are self-explanatory.

#### Content

Supplementary guidance is provided for specific requirements as follows:

1. Multiple State Agency Responsibilities and Lead Agency

The delineation of State agency responsibilities and identification of a lead agency, required when more than one agency is to be involved in program development, administration, and enforcement, must be accompanied by any and all memoranda of understanding or agreement in existence at the time that the authorization application is submitted to EPA. In the absence of adequate formal documentation of coordination, an informal description of procedures currently in existence must be developed for inclusion in the interim authorization application. EPA and the State will evaluate the need for formalization of such procedures. If needed, the Memorandum of Agreement or the Authorization Application should include commitments from the State to proceed with formalization.

2. State Compliance Monitoring and Enforcement Program

The State's Program Description must demonstrate the way in which the State compliance monitoring and enforcement program will operate in order to achieve the following objectives:

- a. Ensure that all operations of hazardous waste management facilities are conducted in accordance with State standards substantially equivalent to the Federal standards in 40 CFR 264 and 265; and
- b. Ensure compliance by hazardous waste generators and transporters with applicable State standards that are substantially equivalent to the Federal standards in 40 CFR 262 and 263, including use of the manifest system (where the State operates the manifest system).

Such a program should provide for compliance inspections as often as possible. Resource limitations may require that inspections be scheduled and conducted in priority order. The State's enforcement program will be deemed adequate if it provides for inspections to be conducted, at a minimum, with the following frequency:

- Major Hazardous Waste Management Facilities (including generators that treat, store, or dispose of waste on-site) - once per year;
- Non-major Hazardous Waste Management Facilities (including generators that treat, store, or dispose of waste on-site) - once every two years;
- Selected generators that ship waste off-site and selected transporters - once every two years; and



- Other generators and transporters- as often as possible after completion of the other inspection requirements.

It is recognized that major/non-major is a relative determination that will vary from State to State. The State application for interim authorization must include a proposed scheme for classifying major facilities and for selecting generators and transporters for compliance monitoring enforcement. Among the factors that may be considered in classifying are: the size of the physical plant; the location; the amount of waste generated/ handled; the hazard characteristics of the waste(s) generated/ handled; whether the generator/ facility/transporter is regulated under another program; and the number of generators/facilities/transporters within the State. The classification system will be incorporated in the Memorandum of Agreement.

The Program Description must also describe the State's program for:

- a. Investigation of reported or suspected violations;
- b. Follow-up inspections to ensure correction of detected violations;
- c. Collection and analysis of samples during routine monitoring and pursuant to investigations of violations;
- d. Coordination with the Federal and/or State Departments of Transportation to ensure enforcement of applicable transporter requirements; and
- e. Administrative/Judicial actions against violators.

3. Estimated Types and Number of Regulated Activities

The description of the estimated types and numbers of regulated activities is used for evaluating the adequacy of a State's program and resources to regulate the activities in question. To fulfill the requirements for this evaluation, the State should provide the best numerical estimates of existing data on hazardous waste activities in the listed categories.

The attached sample format in Table 2 may be used for display of this information. Only those activities that correspond with activities that would be regulated under the Federal program need to be reported.

4. Substantial Equivalence

The State must demonstrate that its regulations covering generators, transporters, facilities and hazardous wastes are substantially equivalent to the Federal regulations. In

order to meet this requirement, the State should complete the Substantial Equivalence Checklists included in Chapters 3.1, 3.2, 3.3 and 3.4 of this Manual and submit them with the Program Description.

TABLE 2  
Estimated Types and Number of Regulated Activities

<u>Types</u>	<u>Number</u>
Generation	
Transportation	
Storage	
on-site	
off-site	
Treatment	
on-site	
off-site	
Disposal	
on-site	
off-site	

## CHAPTER 2.3

### ATTORNEY GENERAL'S STATEMENT

#### Federal Requirement

##### § 123.125 Attorney General's statement.

(a) Any State seeking to administer a program under this Subpart shall submit a statement from the State Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel), that the laws of the State, or the interstate compact, provide adequate authority to carry out the program described under § 123.124 and to meet the applicable requirements of this Subpart. This statement shall include citations to the specific statutes, administrative regulations, and, where appropriate, judicial decisions which demonstrate adequate authority. Except as provided in § 123.128(d), the State Attorney General or independent legal counsel must certify that the enabling legislation for the program for Phase I was in existence within 90 days of the promulgation of Phase I. In the case of a State applying for interim authorization

for Phase II, the State Attorney General or independent legal counsel must certify that the enabling legislation for the program for Phase II was in existence within 90 days of the promulgation of Phase II. State statutes and regulations cited by the State Attorney General or independent legal counsel shall be lawfully adopted at the time the statement is signed and shall be fully effective by the time the program is approved. To qualify as "independent legal counsel" the attorney signing the statement required by this section must have full authority to independently represent the State agency in court on all matters pertaining to the State program. In the case of a State applying only for interim authorization for Phase II, the Attorney General's statement submitted for interim authorization for Phase I shall be amended and recertified to demonstrate adequate authority to carry out all the requirements of this Subpart.

(b)(1) In the case of a State applying only for interim authorization for Phase I, the Attorney General's statement shall certify that the authorization plan under § 123.127(a), if carried out, would provide the State with enabling authority and regulations adequate to meet the requirements for final authorization contained in Phase I.

(2) In the case of a State applying for interim authorization for Phase II, the Attorney General's statement shall certify that the authorization plan under § 123.127(b), if carried out, would provide the State with enabling authority and regulations adequate to meet all the requirements for final authorization.

(c) Where a State seeks authority over activities on Indian lands, the statement shall contain an appropriate analysis of the State's authority.

#### Introduction

The following guidance is intended to assist the attorney preparing the Attorney General's Statement for Phase I of Interim Authorization.

The Attorney General's Statement is a required element (see 40 CFR 123.125) of a State's application for interim authorization of its hazardous waste management program. It constitutes certification by the Attorney General (or the attorney for those State or interstate agencies which have independent legal counsel) that State law and regulations provide adequate authority to carry out the State program and to meet the applicable requirements for interim authorization.

States with interim authorization must submit a new application (including a new Attorney General's Statement) for final authorization in

order to receive final authorization. This guidance does not address the Attorney General's Statement for final authorization.

States may receive interim authorization in two phases: they may receive interim authorization corresponding to Phase I and amend the original application (including the Attorney General's Statement) for Phase I to meet the requirements of Phase II (see 40 CFR 123.122(c)(4)), or they may make an original application for interim authorization after the commencement of Phase II and receive interim authorization for both Phase I and Phase II at that time (see 40 CFR 123.122(c)(2) and (3)). This guidance does not address Phase II requirements at all. It is designed only for those States seeking interim authorization corresponding to Phase I. EPA will provide further guidance on Phase II requirements in the near future.

The Attorney General preparing the Attorney General's Statement for interim authorization Phase I should consult 40 CFR 123(F) which provides the regulatory requirements for interim authorization.

The model provided as part of this guidance is recommended for use in preparing the Phase I Attorney General's Statement. The model includes the minimum requirements a State must meet in order to qualify for interim authorization for Phase I and a suggested format for the Attorney General's certification that State laws, regulations and judicial decisions provide adequate authority for the State to carry out the program.

The model is intended only as a guide; while the specific elements must be addressed, the format may be varied as required by individual needs.

Please note the following:

- (1) In some States, Attorneys General can issue opinions which carry significant legal weight (for example, some are published opinions). The Phase I Attorney General's Statement need not be, necessarily, such a formal opinion of the Attorney General so long as it is a formal memorandum which reflects the official legal opinion of the Attorney General. Note, too, that in States where the agency administering the program has independent legal counsel, the statement may be prepared and signed by that counsel.
- (2) The additional certification regarding the Authorization Plan included in the first paragraph of the model is required by 40 CFR 123.125(b)(1). This section, 40 CFR 123.127 (Authorization Plan), and EPA guidance on the Authorization Plan in Chapter 2.5, should be consulted in regard to this additional certification.
- (3) Sections headed "Citation of Laws and Regulations" should include identification in narrative form of, and citation to, all laws and regulations (including case law) covering the relevant requirement.
- (4) Sections headed "Date of Enactment of Enabling Legislation" are particularly important in light of the first sentence of

section 3006(c) of RCRA which States, "any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date of promulgation of regulations under Sections 3002, 3003, 3004 and 3005 may submit to the Administrator evidence of such existing program..."

- (5) The Sections headed "Remarks of the Attorney General" are provided to encourage the Attorney General: (a) to indicate any potential problems or peculiarities in State authority; (b) to identify requirements of the State program which are more stringent or more extensive than the Federal Phase I requirements; and (c) to identify requirements of the State program which are less stringent or less inclusive than the Federal Phase I requirements.
- (6) Lack of authority for the manifest system and associated generator/transporter standards should not cause denial of Phase I interim authorization. (See 40 CFR 123.128(d)) These requirements are noted by asterisks (\*) in the Model Attorney General's Statement.
- (7) For those requirements which must be "substantially equivalent" to the Federal requirements, Chapters 3.1-3.4 of this guidance should be consulted. Because we believe the Attorney General's statement should be as specific as possible, we encourage the attorney preparing it to address individually as many program elements which appear in the relevant guidance documents as possible.

#### MODEL ATTORNEY GENERAL'S STATEMENT FOR INTERIM AUTHORIZATION PHASE I

I hereby certify, pursuant to my authority as \_\_\_\_\_ and in accordance with Section 3006(c) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended (42 USC 6901, et seq.), and 40 CFR 123 that in my opinion the laws of the State [Commonwealth] of \_\_\_\_\_ provide adequate authority to carry out the program set forth in the "Program Description" submitted by the \_\_\_\_\_. I further certify that the enabling legislation for the program was in existence within 90 days after the May 19, 1980, promulgation date of 40 CFR 123. The specific authorities provided, which are contained in statutes or regulations lawfully adopted at the time of this Statement and which are or shall be in full force and effect at the time the program is approved, include those identified below. I further certify that in my opinion the authorization plan submitted by \_\_\_\_\_ pursuant to 40 CFR 123.127(a), if carried out, would provide the State [Commonwealth] with the legal authority to meet the requirements for final authorization contained in Phase I.



I. IDENTIFICATION AND LISTING

State statutes and regulations provide control over a universe of hazardous waste generated, transported, treated, stored and disposed of in the State at the time of program approval which is nearly identical to that which would be controlled by the Federal program under 40 CFR 261.

[Federal Authority: RCRA §3001(b) (42 USC 6921); 40 CFR 261, 123.128(a).]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

II. STANDARDS FOR GENERATORS OF HAZARDOUS WASTE\*

- A. State statutes and regulations provide coverage of all the generators of hazardous waste which is regulated under the State program.

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262., 123.128(b)(2)]

Citations of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

- B. State statutes and regulations require all generators of waste to determine whether their waste is hazardous.

[Federal Authority: RCRA §3002 (42 USC 6922), 40 CFR 262.11.

Citations of Laws and Regulations

Date of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

- C. State statutes and regulations require all generators covered by the State program to comply with reporting and recordkeeping requirements substantially equivalent to those found at 40 CFR 262.40 and 40 CFR 262.41.

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.40, .41, 123.128(b)(3)]

Citations of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

- D. For hazardous wastes that are accumulated by such generators for short periods of time prior to shipment, State statutes and regulations require that such generators accumulate such wastes in a manner that does not present a hazard to human health or the environment.

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.34, 123.128(b)(4)]

Citations of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

- E. Respecting international shipments, State laws and regulations provide requirements which are substantially equivalent to those at 40 CFR 262.50, except that advance notification of international shipment, as required by 40 CFR 262.50(b)(1), shall be filed with the Administrator.

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.50, 123.128(b)(5)]

Citations of Laws and Regulations

Date of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

- F. State statutes and regulations require that such generators of hazardous waste who transport (or offer for transport) such hazardous waste off-site use a manifest system that ensures that inter- and intrastate shipments of hazardous waste are designated for delivery and, in the case of intrastate shipments, are delivered only to facilities that are authorized to operate under an approved State program or the Federal program.

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.20, 123.128(b)(6)]

Citations of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

G. The State manifest system requires that:

1. The manifest itself identify the generator, transporter, designated facility to which the hazardous waste will be transported, and the hazardous waste being transported.

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.21  
123.128(b)(7)(i)]

Citations of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

2. The manifest accompany all wastes offered for transport except in the case of shipments by rail or water specified in 40 CFR 262.23(c) and 263.20(e).

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.23,  
123.128(b)(7)(ii)]

Citations of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

3. Shipments of hazardous waste that are not delivered to a designated facility are either identified and reported by the generator to the State in which the shipment originated or are independently identified by the State in which the shipment originated.

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.42,  
123.128(b)(7)(iii)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

4. There is notification of undelivered interstate shipments to the State in which the facility designated on the manifest is located and to the State in which the shipment may have been delivered (or EPA for unauthorized States).

[Federal Authority: RCRA §3002 (42 USC 6922); 40 CFR 262.42, 123.128(b)(8)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

### III. STANDARDS FOR TRANSPORTERS OF HAZARDOUS WASTE\*

- A. State statutes and regulations provide coverage of all the transporters of hazardous waste which is regulated under the State program.

[Federal authority: RCRA §3003 (42 USC 6923); 40 CFR 263.10, 123.128(c)(2)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

- B. State statutes and regulations require all transporters covered by the State program to comply with recordkeeping requirements substantially equivalent to those found at 40 CFR 263.22.

[Federal Authority: RCRA §3002 (42 USC 6923); 40 CFR 263.22, 123.128(c)(3)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

- C. State statutes and regulations require such transporters of hazardous waste to use a manifest system that ensures that inter- and intrastate shipments of hazardous waste are delivered only to facilities that are authorized under an approved State program or Federal program.

[Federal Authority: RCRA §3003 (42 USC 6923); 40 CFR 263.20, 123.128(c)(4)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

- D. State statutes and regulations require that such transporter carry the manifest with all shipments except in the case of shipments by rail or water specified in 40 CFR 263.20(e).

[Federal Authority: RCRA §3003 (42 USC 6923); 40 CFR 263.20(e), 123.128(c)(5)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

- E. For hazardous wastes that are discharged in transit, State statutes and regulations require such transporters to notify appropriate State, local, and Federal agencies of the discharges and to clean up such wastes or to take action so that such wastes do not present a hazard to human health or the environment. Such requirements are substantially equivalent to those found at 40 CFR 263.30 and .31.

[Federal Authority: RCRA §3003 (26 USC 6922); 40 CFR 263.30, 123.128(c)(6)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

IV. STANDARDS FOR STORAGE, TREATMENT AND DISPOSAL FACILITIES

State statutes and regulations provide standards applicable to storage, treatment and disposal facilities which are substantially equivalent to 40 CFR 265. State law prohibits the operation of facilities not in compliance with such standards. These standards include:

- A. Preparedness for and prevention of releases of hazardous waste controlled by the State and contingency plans and emergency procedures to be followed in the event of a release of such hazardous waste.

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 264 Subparts C and D, 123.128(e)(1)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

- B. Closure and post-closure requirements.

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 265 Subparts G and H, 123.128(e)(2)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

C. Groundwater monitoring.

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 265 Subpart F, 123.128(e)(3)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

D. Security to prevent unknowing and unauthorized access to the facility.

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 265.14, 123.128(e)(4)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

E. Facility personnel training.

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 265.16, 123.128(e)(5)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

F. Inspection, monitoring, recordkeeping, and reporting.

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 265.15, 123.128(e)(6)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

- \* G. Compliance with the manifest system including the requirement that the facility owner or operator or the State in which the facility is located must return a copy of the manifest to the generator or to the State in which the generator is located indicating delivery of the waste shipment.

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 265.71, 123.128(e)(7)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

- H. Other facility standards to the extent that they are included in 40 CFR 264, 265, and 266.

[Federal Authority: RCRA §3004 (42 USC 6924); 40 CFR 123.128(e)(8)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

## V. INSPECTIONS

State law provides authority for officers engaged in compliance evaluation activities to enter any conveyance, vehicle, facility or premises subject to regulation or in which records relevant to program operation are kept in order to inspect, monitor, or otherwise investigate compliance with the State program including compliance with permit terms and conditions and other program requirements. (States whose law requires a search warrant prior to entry conform with this requirement.)

[Federal Authority: RCRA §3007 (42 USC 6927), 40 CFR 123.128(g)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

## VI. ENFORCEMENT REMEDIES

State statutes and regulations provide the following:

- A. Authority to restrain immediately by order or by suit in State court any person from engaging in any unauthorized activity which is endangering or causing damage to public health or the environment.

[Federal Authority: RCRA §3006 (42 USC 6926); 40 CFR 123.128(f)(1)(i)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

- B. Authority to sue in courts of competent jurisdiction to enjoin any threatened or continuing violation of any program requirement;

[Federal Authority: RCRA §3006 (42 USC 692\_); 40 CFR 123.128(f)(1)(ii)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

- C. Authority to assess or sue to recover in court civil penalties in at least the amount of \$1,000 per day for any program violation or seek criminal remedies including fines in at least the amount of \$1,000 per day for any program violation.

[Federal Authority: RCRA §3006 (42 USC 692\_); 40 CFR 123.128(f)(1)(iii)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

## VII. PUBLIC PARTICIPATION IN THE STATE ENFORCEMENT PROCESS

State laws and regulations provide for public participation in the State enforcement process by providing either:

- A. Authority which allows intervention as of right in any civil or administrative action to obtain the remedies specified in VI above by any citizen having an interest which is or may be adversely affected; or
- B. Assurances that the state agency or enforcement authority will:
  - (1) Investigate and provide written response to all citizen complaints duly submitted.
  - (2) Not oppose intervention by any citizen where permissive intervention may be authorized by statute, rule, or regulation; and



- (3) Publish and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

[Federal Authority: RCRA §7004, 40 CFR 123.128(f)(2)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

VIII. AUTHORITY TO SHARE INFORMATION WITH EPA

State statutes and regulations provide authority for any information obtained or used in the administration of the State program to be available to EPA upon request without restriction.

[Federal Authority: RCRA §3007(b) (42 USC 6927); 40 CFR 123.132(a)]

Citation of Laws and Regulations

Date of Enactment of Enabling Legislation \_\_\_\_\_

Remarks of the Attorney General

IX. AUTHORITY OVER INDIAN LANDS

Where a State seeks authority over Indian lands appropriate analysis of the State's authority should be included here.

[Federal Authority: 40 CFR 123.125(c)]

Seal of Office

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Type or Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

## CHAPTER 2.4

### MEMORANDUM OF AGREEMENT (MODEL)

#### Federal Requirement

##### § 123.126 Memorandum of Agreement.

(a) The State Director and the Regional Administrator shall execute a Memorandum of Agreement (MOA). In addition to meeting the requirements of paragraph (b) of this section, and, if applicable, paragraph (c) of this section, the Memorandum of Agreement may include other terms, conditions, or agreements relevant to the administration and enforcement of the State's regulatory program which are not inconsistent with this subpart. No Memorandum of Agreement shall be approved which contains provisions which restrict EPA's statutory oversight responsibility. In the case of a State applying for interim authorization for Phase II, the Memorandum of Agreement shall be amended and re-executed to include the requirements of paragraph (c) of this section and any revisions to the requirements of paragraph (b) of this section.

(b) The Memorandum of Agreement shall include the following:

(1) Provisions for the prompt transfer from EPA to the State of information obtained in notifications made pursuant to section 3010 of RCRA and received by EPA prior to the approval of the State program, EPA identification numbers for new generators, transporters, and treatment, storage, and disposal facilities, and any other information relevant to effective program operation not already in the possession of the State Director (e.g., pending permit applications, compliance reports, etc.).

(2) Provisions specifying the frequency and content of reports, documents, and other information which the State is required to submit to EPA. The State shall allow EPA to routinely review

State records, reports, and files relevant to the administration and enforcement of the approved program. State reports may be combined with grant reports when appropriate.

(3) Provisions on the State's compliance monitoring and enforcement program, including:

(i) Provisions for coordination of compliance monitoring activities by the State and EPA. These may specify the basis on which the Regional Administrator will select facilities or activities within the State for EPA inspection. The Regional Administrator will normally notify the State at least 7 days before any such inspection; and

(ii) Procedures to assure coordination of enforcement activities.

(4) Provisions for modification of the Memorandum of Agreement in accordance with this Part.

(5) A provision allowing EPA to conduct compliance inspections of all generators, transporters, and HWM facilities during interim authorization. The Regional Administrator and the State Director may agree to limitations regarding compliance inspections of generators, transporters, and non-major HWM facilities.

(6) A provision that no limitations on EPA compliance inspections of generators, transporters, and non-major HWM facilities under paragraph (b)(5) of this section shall restrict EPA's right to inspect any HWM facility, generator, or transporter which it has cause to believe is not in compliance with RCRA; however, before conducting such an inspection, EPA will normally allow the State a reasonable opportunity to conduct a compliance evaluation inspection.

(7) A provision delineating respective State and EPA responsibilities during the interim authorization period.

(c) In the case of a State applying for interim authorization for Phase II, the Memorandum of Agreement shall also include the following:

(1) Provisions for prompt transfer from EPA to the State of pending permit applications and support files for permit issuance. Where existing permits are transferred to the State for administration, the Memorandum of Agreement shall contain provisions specifying a procedure for transferring responsibility for these permits. If a State lacks the authority to directly administer permits issued by the Federal government, a procedure may be established to transfer responsibility for these permits.

(2) Provisions specifying classes and categories of permit applications and draft permits that the State Director will send to the Regional Administrator for review and comment. The State Director shall promptly forward to EPA copies of permit applications and draft permits for all major HWM facilities. The Regional Administrator and the State Director may agree to limitations regarding review of and comment on permit applications and draft permits for non-major HWM facilities. The State Director shall supply EPA copies of final permits for all major HWM facilities.

(3) Where appropriate, provisions for joint processing of permits by the State and EPA for facilities or activities which require permits under different programs, from both EPA and the State.

## Content

MEMORANDUM OF AGREEMENT  
BETWEEN  
THE STATE OF \_\_\_\_\_  
AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
REGION \_\_\_\_\_

## I. GENERAL

This Memorandum of Agreement (hereafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR 123.126 for the State of \_\_\_\_\_ Hazardous Waste Management Program (hereafter "State Program") authorized under Section 3006(C) of the Resource Conservation and Recovery Act (hereafter "RCRA" or "the Act") of 1976 (Pub. L. 94-580, 42 USC 6901, et seq.) and the United States Environmental Protection Agency (hereafter "EPA") Regional Office for Region \_\_\_\_\_. This Agreement further sets forth the manner in which the State will coordinate with EPA in administering the State Program.

This Agreement is entered into by the Director [or other title as appropriate] of \_\_\_\_\_ [State Agency] (hereafter "Director" or "the State"), the lead agency for the State Program (as designated by the State pursuant to 40 CFR 123.124(b) [add other State Agency heads here if appropriate], and the Regional Administrator, EPA, Region \_\_\_\_\_ (hereafter "Regional Administrator" or "EPA").

Nothing in this Agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under RCRA.

The parties will review this Agreement jointly at least once a year (and at other times as appropriate) during preparation of the annual State Grant Work Program (hereafter "State Work Program"), in connection with grant funding under section 3011 of RCRA.

In computing any period of time prescribed by the Agreement, the day on which the designated period of time begins shall not be included. However, the last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday. In that case, the period will extend until the end of the next non-holiday weekday. When the period of time is less than seven (7) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.

Brackets [] indicate details or directives for the State in completing the MOA.

This Agreement will be amended and re-executed by the parties for Interim Authorization Phase II. Final Authorization will require the execution of a new Memorandum of Agreement.

This agreement may be modified upon the initiative of either party in order to ensure consistency with State program modifications or for any other purpose mutually agreed upon. Any revisions or modifications must be in writing and must be signed by the Director and the Regional Administrator.

This Agreement will remain in effect until such time as State program authorization is withdrawn by EPA, according to the provisions of 40 CFR 123.136, or reverts to EPA according to the provisions of 40 CFR 123.137, or automatically expires (24 months after the effective date of Phase II of the Federal regulations).

Unless otherwise stipulated, this Agreement, and any subsequent modifications made, will take effect immediately upon being signed by the Director and the Regional Administrator.

## II. RESPONSIBILITIES OF PARTIES

### A. Policy Statement

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. The Director and the Regional Administrator agree to maintain a high level of cooperation and coordination between State and EPA staffs in a partnership to assure successful and effective administration of the State Program.

The State has primary responsibility for all aspects of the program and for coordination of the program with other authorized State programs and with the Federal program in States without authorization.

EPA will keep the Director informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the State Program. EPA also will provide general technical guidance to the State.

### B. Information Sharing

#### 1. EPA

EPA agrees to provide copies of EPA Form 8700-12, including EPA identification numbers, received by EPA prior to the date of this Agreement from generators and transporters of hazardous waste and from owners and operators of hazardous waste treatment, stor-

age, and disposal facilities located in the State. Such copies will be provided to the Director or his designee within thirty (30) days of this Agreement.

EPA will also provide, within thirty (30) days of receipt, copies of EPA Form 8700-12, including EPA identification numbers, submitted by persons located in the State who file such forms after the date of this Agreement.

EPA will transfer to the Director or his designee copies of all pending hazardous waste management facility permit applications together with copies of any pertinent file information.

EPA will make available to the Director other information as requested which the State needs to implement its approved program.

The above will be provided subject to the terms of 40 CFR 2 which implements the Trade Secrets Act, 18 USC 1905.

## 2. State

a. The State agrees to submit to the Regional Administrator the following documents, reports, and other information:

- Quarterly statistical noncompliance reports for generators transporters, and facilities (Report Format #1 in Chapter 2.9);
- Annual program reports containing information on the number of generators and facilities in the State and the quantities of wastes handled (Report Format #2 in Chapter 2.9);
- Semi-annual progress reports;

(For details and suggested formats see Chapter 2.9 this Manual.)

[Specific dates for submittal of reports should be delineated here.]

b. The State agrees to require new generators, transporters and hazardous waste management facilities to obtain EPA identification numbers from the State. [Details for accomplishing this should be noted here.]

c. Any other information requested by the Regional Administrator.

## 3. Emergency Situations

Upon receipt of any information that the handling, storage, treatment, transportation, or disposal of hazardous waste is endangering human health or the environment, the party in receipt

of such information shall immediately notify by telephone the other party(ies) to this Agreement of the existence of such situation. [Include details here for information sharing, names of individuals, telephone numbers, etc.]

C. State Program Review

The Regional Administrator will assess the Director's administration and enforcement of the State program on a continuing basis for consistency with RCRA, with this Agreement, and with all applicable Federal requirements and policies. This program evaluation will generally be accomplished by an EPA review of the information submitted by the Director in accordance with this Agreement and the State Work Plan. The Regional Administrator may also consider, as part of this regular assessment, written comments about the State's program administration and enforcement that are received from regulated persons, the public, and Federal, State, and local agencies. Copies of any such comments received by the Regional Administrator will be provided to the Director.

To ensure effective program review, the Director agrees to allow EPA access to all files and other information requested by the Regional Administrator and deemed necessary for evaluating State program administration and enforcement.

Review of [State Agency] files may be scheduled at quarterly intervals. Program review meetings between the Director and the Regional Administrator or their assignees will be scheduled at reasonable intervals not less than annually to review specific operating procedures and schedules, to resolve problems, and to discuss mutual program concerns. These meetings must be scheduled at least fifteen (15) days in advance unless agreed to differently. A tentative agenda for the meeting must be prepared by EPA.

D. Enforcement

1. Identification of Major Hazardous Waste Management Facilities and Generators

The Director agrees to develop with EPA a list of major hazardous waste management facilities and selected generators and transporters located within the State. This list is a part of the Agreement. EPA or the State may add facilities, generators or transporters to the list and shall notify the other party in writing. However, the deletion of any facility, generator or transporter must be agreed to in writing by both parties. This list will be reviewed and updated at least annually by both the State and EPA as part of the State Work Program process. This review and update does not require a formal amendment to this agreement.

(Among the factors that may be considered in developing such lists are: the size of the physical plant; the location; the

amount of waste generated/handled; the hazard characteristics of the waste(s) generated/handled; whether the generator/facility/transporter is regulated under another program; and the number of generators/facilities/transporters within the State.)

## 2. Compliance Monitoring

The State agrees to operate a timely and effective compliance monitoring system to assess and monitor compliance with facility standards and generator and transporter requirements.

The State will monitor, evaluate, and take appropriate action for violations of all reporting requirements by hazardous waste generators, transporters, and facilities under the State program. This shall include a timely substantive review of such reports to determine the compliance status of persons filing the reports. Priorities for reviewing these reports will be specified in the annual State Work Program. The State agrees to retain all records for at least three years unless there is an enforcement action pending. In that case all records will be retained until such action is resolved.

The State agrees to carry out a program for monitoring the compliance by generators, transporters, and facilities with applicable program requirements (See 40 CFR 123.128). Compliance inspections will be done to ascertain whether a generator, transporter or facility is meeting manifest requirements, generator and transporter requirements, and facility standards for recordkeeping, operation and maintenance, self-monitoring, reporting, and other activities as defined in the annual State Work Program.

EPA may conduct compliance inspections of all hazardous waste generators, transporters, and facilities. EPA will not ordinarily conduct such inspections of non-major hazardous waste generators, transporters, and facilities; however, nothing in this Agreement shall be construed to restrict EPA's right to inspect any facility, generator, or transporter that it believes is not in compliance with Program requirements.

Before conducting an inspection of a generator, transporter or facility, the Regional Administrator will normally give the Director seven (7) days notice of the intent to inspect in accordance with 40 CFR 123.126. [The Regional Administrator and State Director may agree on a longer period of time to allow the State to conduct the inspection.] If the Director performs a State compliance inspection and submits a report and data relevant thereto within that time, no EPA inspection will be made, unless the Regional Administrator deems the State report and data to be inadequate. In case of an imminent hazard to human health and the environment, the Regional Administrator may shorten or waive the notice period.

The parties agree to make available to each other within 60 days of compliance inspections any reports and data resulting therefrom.

### 3. Enforcement Actions

The State agrees to take timely and appropriate enforcement action against persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements. This includes violations detected by State or Federal compliance inspections. In instances where EPA determines that the State has not initiated timely and appropriate enforcement action against a violator, EPA shall proceed with any or all of the enforcement options available under RCRA or any other applicable statute.

The State agrees to take the enforcement lead with appropriate enforcement action against persons in violation of any State program requirement, including but not limited to violations detected by State or Federal inspections. The State will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public.

Appropriate State enforcement response may include not more than two warning letters for any violation followed by timely initiation and prosecution of enforcement proceedings which may be, as determined on a case-by-case basis, administrative or judicial in nature, or other administrative remedies as prescribed by State laws.

The Regional Administrator may take enforcement action against any person determined to be in violation of RCRA in accordance with Section 3008(a)(2). EPA will take enforcement action only upon determining that the State has not taken timely and appropriate enforcement action. Prior to issuing a Notice of Violation under Section 3008 EPA will give notice to the State.

#### E. Other State/EPA Procedures Unique to a Region/State

### III. COOPERATIVE ARRANGEMENTS FOR A MANIFEST SYSTEM WHERE APPLICABLE

[STATE AGENCY]

U.S. ENVIRONMENTAL PROTECTION  
AGENCY, REGION \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_



## CHAPTER 2.5

### AUTHORIZATION PLAN

#### Federal Requirement

##### § 121.127 Authorization plan.

The State must submit an "authorization plan" which shall describe the additions and modifications necessary for the State program to qualify for final authorization as soon as practicable, but no later than the end of the interim authorization period. This plan shall include the nature of and schedules for any changes in State legislation and regulations; resource levels; actions the State must take to

control the complete universe of hazardous waste listed or designated under section 3001 of RCRA as soon as possible; the manifest and permit systems; and the surveillance and enforcement program which will be necessary in order for the State to become eligible for final authorization.

(a) In the case of a State applying only for interim authorization for Phase I, the authorization plan shall describe the additions and modifications necessary

for the State program to meet the requirements for final authorization contained in Phase I.

(b) In the case of a State applying for interim authorization for Phase II, the authorization plan under paragraph (a) of this section shall be amended to describe the further additions and modifications necessary for the State program to meet all the requirements for final authorization.

#### Content

The Authorization Plan identifies the gaps that exist in a State's program when the State receives Interim Authorization. These gaps, which must be filled in order to receive Final Authorization, may be in the legislation, regulations, resource allocations, or surveillance and enforcement program. For each identified gap the plan specifies: (1) how it will be filled, and (2) when it will be filled. Note that all gaps must be filled no later than 24 months after the effective date of the Phase II regulations under RCRA Section 3004. Additional gaps may be identified by the State at Phase II (based on Phase II requirements) and the Authorization Plan then must be amended accordingly.

The Plan serves two purposes:

- A. It is a tool for the States to use in planning their efforts toward qualifying for Final Authorization. It should help the State to anticipate all the steps that must be taken and particularly to anticipate problems that may be associated with each step so that these problems can be avoided or overcome.
- B. It provides EPA with milestones against which to check the State's progress toward Final Authorization and with the information needed to permit continued Interim Authorization.

The Authorization Plan relates to other documents the State must submit as follows:

- A. The Program Description: By comparing the Program Description to EPA's regulations describing the requirements for Final Authorization, one can identify the program element gaps that must be addressed in the Authorization Plan.

8. The Attorney General's Statement: After identifying all the elements that are missing from the program, as described in A above, an analysis should be undertaken to determine whether the legislation and regulations cited in the Attorney General's Statement as supporting the Phase I Interim program will also support the expanded program necessary to receive Final Authorization. This will identify the gaps in the legislation and regulations that must be filled to provide adequate legal authority for the program.

After the Authorization Plan is completed, the Attorney General's Statement should certify that if the gaps are filled as indicated in the Plan, the State will have adequate authority to implement the Final program.

#### LEGAL AND IMPLEMENTING AUTHORITY

In order to receive final authorization, it is essential that the State have comprehensive legislative and regulatory authority over hazardous wastes which is equivalent to the authority in the Federal program. The authorization plan should contain a detailed time schedule and a narrative description for obtaining necessary legislative, regulatory, or administrative changes.

- A. List each specific legislative authority that is needed, and indicate the process for obtaining that authority. This schedule (with proposed dates) should include:

1. Drafting of the legislation;
2. Submission to the legislature;
3. Consideration in the legislature; and
4. Final passage into law.

The plan should discuss any other pertinent issues relating to the legislation that may cause delays in its implementation, e.g., the State budgetary process, the need for a separate appropriation bill, etc.

List the steps the State will take to ensure consideration of similar legislation as soon as possible if the legislation fails to be enacted.

- B. List, in as much detail as possible, the regulations (to implement both existing and new legislation) that must be promulgated to allow the State to qualify for final authorization. This schedule (with proposed dates) could include:

1. Informal discussion of the regulations with interested groups;
2. Formal regulation approval procedures and milestones including public hearings as required by:

- a. The State's administrative procedures law; and
  - b. The legislative and/or administrative oversight committees; and
3. The anticipated effective date of the regulations.

### III. RESOURCE ANALYSIS AND PROJECTIONS

Resource levels, in terms of staff and dollars, for implementing the State program "in lieu of" the Federal program under final authorization are key elements that must be described in the Authorization Plan. Even though precise resource needs may not be determined until after guidance is issued on the definitions of "equivalence" and "consistency" for final authorization, existing information should be sufficient to make an estimate of the resources and budget needed in FY 83. The State in its Authorization Plan must describe the processes by which it intends to increase its staffing levels and budget from the present allocation to the projected needs under final authorization.

### IV. CHANGES IN EPA REGULATIONS AND GUIDANCE

During the initial stages of the program, it is inevitable that there will be revisions or additions to EPA's regulations as well as development of detailed guidance to clarify regulatory language in defining an acceptable State program. With the issuance of the Federal Phase II regulations, a second guidance manual will be forthcoming that will provide assistance in understanding the specific regulations with which a State must comply to qualify for final authorization. The introduction of Phase II regulations will require an amendment to the Authorization Plan which should be submitted as part of the amended application for Phase II.

## CHAPTER 2.6

### RESOURCE ADEQUACY

#### I. INTRODUCTION

This guidance provides State program planners with suggested estimates of the resources needed to conduct a hazardous waste management program in a State. Estimates are based on EPA's Operations/Resource Impact Analysis (April, 1980) for RCRA Subtitle C. A State must demonstrate that it has adequate resources to manage such a program under interim authorization and must further develop the program so that it is comprehensive enough to be granted final authorization. States will need to define the specific tasks to be undertaken and estimate the resources needed (both projected costs and manpower requirements).

This guidance is intended to provide States with information on: 1) the estimated level of effort required to carry out program activities; 2) the suggested level of each activity under interim authorization; and 3) suggested personnel needs. The resource estimates in this chapter are as accurate as possible given the data available to the agency. The numbers should be considered only as order of magnitude estimates for programs of varying size. States may have better data which will result in a different estimate than is reflected in this chapter. It is the responsibility of a State to demonstrate, based on the data which it has, that a different estimate more closely approximates the State's actual resource needs. States should remember that they need not have all personnel resources within the hazardous waste branch itself. They may, for example, use contractors to perform certain tasks or share personnel with other State agencies, etc.

The resource estimates presented are for both Phase I and Phase II of interim authorization. Although permitting activities are not to be undertaken until Phase II of interim authorization, the importance of this task requires the inclusion of resource estimates for permitting activities in this manual. This will allow States to estimate resources in a broad enough time frame to provide for additional funding (due to the extensive resource needs for this activity) and staff recruiting for Phase II permit activities.

Resource needs for certain program activities, such as legislation development, are constant regardless of the size of the State program. Resource needs for others, however, are clearly dependent on the size of the State program. States are divided into five size categories based on the EPA formula for distributing hazardous waste grants to the States. The EPA formula provides a minimum allocation of one-half of one percent (0.5%) and is a composite measure, a weighted average of the ratio of State-specific data to national totals in the following four areas: State population (weighted 40%), amount of hazardous waste generated in the State (weighted 40%), the number of hazardous waste generators in the State (weighted 15%), and the State's land area (weighted 5%). Because the formula was developed

in early 1978, much of the allocation data are estimates. Once nationally-applicable "hard data" become available, the formula will be revised. Table 1 indicates the size category of each State or jurisdiction.

To determine the proportion of resources required to conduct activities dependent on State complexity, we compared the median grant ratios from each category. As shown below, resources required vary considerably, with the largest States requiring over twelve times the resources needed by the smallest States to conduct the same activities. The range of program sizes within a category is also significant. This is especially true in Category A where the average deviation from the median value (of State complexity) is much greater in percentage terms when compared to the median than in larger categories. When using the median value for the category, then, the smallest and largest States in the category may need significantly different resource levels than estimated by the model to effectively implement the program. Within category A, for example, the smallest States may need significantly less than the estimated resource levels while the larger States in the category may need more than the estimated resource levels in order to effectively implement the program.

<u>Size Category</u>	<u>Grant Ratio</u>	<u>Number of States</u>	<u>Multiplier</u>
A	.00500 - .00501	16	.25
B	.00554 - .00684	7	.3
C	.00861 - .01560	14	.6
D	.01704 - .03280	12	1.0
E	.04096 - .09977	7	3.0

The Operations/Resource Impact Analysis, on which the resource estimates in this chapter are based, attempts to estimate the dates on which different States will be authorized. In order to avoid the limitations of such an assumption, the resource estimates presented here are annual estimates for the interim program only. A State can compare its first or second year program budgets with these estimates to determine whether they are reasonably close to EPA's estimates. If a State does not anticipate beginning these program activities until the middle of the fiscal year, for example, the estimates should be adjusted accordingly.

TABLE 1

## State Program Size

<u>State</u>	<u>Size Category</u>
Alabama	D
Alaska	C
American Samoa	A
Arizona	C
Arkansas	B
California	E
Colorado	C
Connecticut	C
Delaware	A
District of Columbia	A
Florida	D
Georgia	D
Guam	A
Hawaii	A
Idaho	B
Illinois	E
Indiana	D
Iowa	C
Kansas	C
Kentucky	D
Louisiana	D
Maine	A
Maryland	C
Massachusetts	D
Michigan	E
Minnesota	C
Mississippi	B
Missouri	C
Montana	B
Nebraska	A
Nevada	A
New Hampshire	A
New Jersey	D
New Mexico	A
New York	E
Northern Marianas	A
North Carolina	D
North Dakota	A
Ohio	E
Oklahoma	C
Oregon	C

TABLE 1 Continued

<u>State</u>	<u>Size Category</u>
Pennsylvania	E
Puerto Rico	B
Rhode Island	B
South Carolina	C
South Dakota	A
Tennessee	D
Texas	E
Utah	B
Vermont	A
Virginia	C
Virgin Islands	A
Washington	C
West Virginia	D
Wisconsin	D
Wyoming	A

## II. STATE PROGRAM ADMINISTRATION

State program administration includes five major activities. These are: development of legislation and regulations; development of authorization applications; development of an acceptable hazardous waste program; negotiation of a hazardous waste grant; and program management.

A. Development of Legislation and Regulations. Several States have drafted enabling legislation and regulations in anticipation of the Subtitle C regulations, while other States have waited to see the final requirements before beginning work. The Office of Solid Waste recently assessed the status of State legislation and regulations. They concluded that every State required some additional legislation and/or regulation to establish the authority and capability for operating hazardous waste programs fully equivalent to the Federal program.

Each State will conduct the same general activities and tasks to develop and improve its legislation and regulations:

1. Develop State legislation
  - a. Review Federal legislation and regulations
  - b. Review model State legislation
  - c. Draft legislation
  - d. Work for passage of legislation
2. Develop State regulations
  - a. Review Federal legislation and regulations
  - b. Draft regulations
  - c. Work for promulgation of regulations
  - d. Assure public participation

Each State should plan to devote one (1) workyear of effort per year to the development of legislation and regulations during the interim authorization period, regardless of program size in order to qualify for final authorization.

B. Development of Authorization Application. To receive interim authorization or final authorization, each State must demonstrate that its program meets the requirements of the Federal regulations. The State shows that its program is adequate in its applications for authorization.

The activities and tasks related to developing authorization include the following:

1. Apply for interim authorization
  - a. Review EPA conditions for interim authorization
  - b. Review legislation and regulations
  - c. Prepare authorization application



2. Negotiate interim authorization

- a. Meet with EPA to review application
- b. Meet with regulated community
- c. Revise application if necessary
- d. Negotiate Memorandum of Agreement

3. Apply for final authorization

- a. Review EPA conditions for final authorization
- b. Review legislation, regulations
- c. Prepare authorization application

4. Negotiate final authorization

- a. Meet with EPA to review interim performance and application
- b. Negotiate Memorandum of Agreement

A State that is applying for Phase I and Phase II interim authorization will prepare authorization applications for each Phase. Approximately one-half (0.5) work-year will be required for development of each application.

C. Hazardous Waste Program Development. Each State must convert enabling legislation and regulations into an effective hazardous waste program. The activities involved typically are "front end" efforts relating to strategy formulation and capacity expansion. After the initial program development period from FY 79 to FY 83, any continuing activities in this area would become part of general program administration.

The State activities and tasks related to program development include the following:

1. Hire and train staff

2. Develop State-specific program strategies

- a. Review data collected on State needs for hazardous waste program
- b. Consider alternative strategies to meet State needs and Federal guidance
- c. Develop preferred strategy
- d. Consult with Regional Office

3. Prepare program procedures

- a. Review Federal guidance
- b. Draft operating procedures and review with Regional Office personnel
- c. Prepare State hazardous waste management plan
- d. Establish hazardous waste program including manifest and permit procedures

4. Develop public participation procedures
  - a. Plan procedures to inform public of hazardous waste
  - b. Determine need for and location of hearings
  - c. Schedule and plan agenda for hearings
  - d. Plan procedures for using public comments
5. Develop ADP or other information system
  - a. Work with Regional Office to adapt ADP system to State needs
  - b. Implement system

It is assumed that these activities are dependent on program size and will be completed by the end of FY 83. The following resource needs are estimated:

<u>Size Category</u>	<u>Resources</u>
A	1 wy
B	1.2 wy
C	2.4 wy
D	4.0 wy
E	12.0 wy

D. Grant Negotiation. Financial assistance is available to all States. Each State will be eligible for a hazardous waste grant each year. Priorities for the use of State grants are established in EPA's annual guidance for the development of State work programs.

The State activities and tasks related to grant negotiation and award include the following:

1. Apply for grant
  - a. Review EPA conditions for hazardous waste grants
  - b. Prepare initial application
2. Negotiate/award grant
  - a. Meet with EPA at State offices to discuss program and grant
  - b. Coordinate with other SEA programs
  - c. Make final application
3. Administer grant
  - a. Process grant funds
  - b. Prepare progress reports
  - c. Participate in review meetings

Pricing for this key activity is based on OSW's estimates of time required to negotiate hazardous waste grants in FY 79 and 80. According to those estimates, each State will require 0.5 workyears to apply for and negotiate grants and receive awards.

E. Program Management. Program administration includes day-to-day management of the hazardous waste management activities and special problem-solving.

1. Manage program (generally)
  - a. Conduct and attend meetings
  - b. Receive visitors
  - c. Respond to inquiries
  - d. Maintain correspondence
  - e. Hire and develop staff
2. Manage contracts
  - a. Issue requests for proposals
  - b. Review proposals
  - c. Review technical aspects of contracts
  - d. Manage financial aspects of contracts
3. Manage budget system
  - a. Develop budget and justification consistent with State budgeting procedures
  - b. Manage budget
4. Evaluate personnel and program performance
  - a. Identify performance objectives
  - b. Review performance with State personnel
  - c. Review State progress with Regional Office
  - d. Recommend awards and sanctions
5. Conduct public awareness activities
  - a. Identify appropriate media
  - b. Issue press releases, hold meetings, etc.
6. Maintain ADP system
  - a. Modify design and program as needs change
  - b. Input data and run reports
7. Provide support services
  - a. Provide maintenance, housekeeping, communications services
  - b. Provide laboratory services

Pricing for this key activity is based on the categorizations by State size. The annual resource needs estimates for program management are:

<u>Size Category</u>	<u>Resources</u>
A	1.25 wy
B	1.5 wy
C	3.0 wy
D	5.0 wy
E	15.0 wy

The activities that make up program administration are summarized by program size in Table 2 below.

TABLE 2

Total Annual Resource Needs for Program Administration  
(Work-years)

<u>Size Category</u>	<u>Activity</u>					
	Legislation/ Regulations	Authorization Application	Program Development	Grants	Program Management	Total
A	1	0.5	1	0.5	1.25	4.25
B	1	0.5	1.2	0.5	1.5	4.7
C	1	0.5	2.4	0.5	3.0	7.4
D	1	0.5	4	0.5	5.0	11.0
E	1	0.5	12	0.5	15.0	29.0

### III. MANIFEST SYSTEM

The manifest system is the process for tracking hazardous wastes from generation to the point of ultimate disposition, e.g., disposal. The system is a required part of all authorized programs, although it is an optional part of a State program under interim authorization. Activities included here relate only to operation of the manifest system. Development of strategy and procedures is included in "program development;" enforcement is under its own activity.

The State activities and tasks related to the manifest system include:

1. Provide technical assistance to generators, transporters, and owners/operators of treatment, storage, or disposal facilities (TSDFs).
2. Review reports
  - a. Receive exception reports
  - b. Receive annual reports
  - c. Process for ADP system
  - d. Review ADP reports and forward summary reports to Regional Office
  - e. Evaluate data
  - f. Respond to discrepancies (shared with enforcement)

The following is a list of the assumptions and estimates relating to the manifest system:

- Each State will begin implementing a manifest system in November 1980. Those States which do not intend to operate a manifest system during interim authorization should disregard the resource needs for this activity.
- Exception reports are processed by hand or computer. The data compiled are used in setting enforcement priorities.

The annual resource needs for the manifest system based on the State size are estimated to be:

<u>Size Category</u>	<u>Resources</u>
A	1 wy
B	1 wy
C	2 wy
D	3 wy
E	9 wy

#### IV. PERMIT PROCESSING

After the Phase II Section 3004 regulation (facility permitting standards) becomes effective in May, 1981, all hazardous waste treatment, storage, and disposal facilities must obtain permits to continue or begin operation. RCRA permits are a mechanism for controlling hazardous waste by imposing performance standards on all such facilities. The Agency currently estimates that some 30,000 sites will require permits. Better information on numbers, types, and location of these sites is expected after the notification process is completed in summer, 1980.

Permits will be issued for three general types of facilities: off-site treatment and disposal facilities; on-site treatment and disposal facilities; and storage facilities. Evaluating the performance of off-site treatment and disposal facilities is the highest priority because of the need to assure adequate capacity for proper waste management and because these facilities are the most likely to cause severe environmental problems. Second priority is on-site treatment and disposal facilities, again because of the possibility of environmental problems. Within each general facility type, new facilities are a higher priority than existing facilities. Permitting activities are assumed to be distributed evenly over the first six years of a State program.

The State activities and tasks related to processing permits include the following:

1. Provide assistance to applicants
2. Receive and review application
3. Conduct site evaluation
4. Analyze air, water, or soil samples as necessary
5. Issue draft permit and fact sheet or statement of the basis for permit determination
6. Open comment period and hold public hearings
7. Process final permit
8. Conduct further proceedings if necessary

The following is a list of the assumptions relating to State processing of permits:

- Each off-site treatment and disposal facility permit requires 177 workdays of effort by State personnel.
- Each on-site treatment and disposal facility permit requires 119 workdays of effort by State personnel.

- Each storage facility permit requires 47 workdays of effort by State personnel.

Annual resource needs estimates for these activities are based on State program size as follows:

<u>Size Category</u>	<u>Resources</u>
A	12.5 wy
B	15 wy
C	30 wy
D	50 wy
E	150 wy

#### V. ENFORCEMENT

Each State must ensure compliance with manifest, permit and reporting requirements. Enforcement against reporting and manifest violations will begin in November, 1980; before June, 1981, States will not enforce against permit violations as part of the approved program, unless the States' permit standards are the standards corresponding to EPA's interim status standards for facilities. As permits are issued (beginning in June, 1981), States will begin enforcing against permit violations. The outline below reflects the Federal enforcement activities and tasks which have been used to estimate resource needs. States need not have identical procedures.

The State activities and tasks related to enforcement include the following:

1. Manifest enforcement (as applicable)
  - a. Review exception reports
  - b. Issue letters of warning
  - c. Issue notices of violation
  - d. Issue compliance orders
  - e. Follow-up compliance inspections
2. Generator enforcement (affirmative inspections)
  - a. Perform compliance inspections of high priority generators
  - b. Conduct compliance inspections of other generators with significant discrepancies
  - c. Issue letters of warning
  - d. Issue notices of violation
  - e. Issue compliance orders
  - f. Follow-up affirmative inspections
3. TSD facility enforcement (interim status and permit violations)

- a. Conduct compliance evaluation inspections of facilities
  - b. Issue letters of warning
  - c. Issue notices of violation
  - d. Issue compliance orders
  - f. Follow-up inspection
  - e. Prepare case, if necessary
4. Generator, transporter and facility reports
- a. Review reports
  - b. Follow up to assure completeness and accuracy
  - c. Identify non-notifiers
  - d. Issue letters of warning
  - e. Issue notices of violation
  - f. Issue compliance orders
  - g. Follow-up compliance evaluation inspections

The annual resource needs for enforcement activities vary according to program size as indicated below.

<u>Size Category</u>	<u>Resources</u>
A	2 wy
B	3 wy
C	6 wy
D	10 wy
E	24 wy

The activities that make up implementation are summarized by program size in Table 3.

Table 4 presents the estimated totals of the individual program area annual resource needs for each State. Numbers have been rounded to the nearest workyear. It should be reiterated that these are projected estimates and should be used as guidance in the development of projected State resource requirements.



TABLE 3

## Total Annual Resource Needs for Implementation of State Hazardous Waste Programs

Resources Required  
(Work-years)

<u>Program Size Category</u>	<u>Program Administration</u>	<u>Manifest System Activities</u>	<u>Permit Activities*</u>	<u>Enforcement Activities</u>	<u>Phase I Total</u>	<u>Phase Total</u>
A	4.25	1.0	12.5	2.0	7.25	19.75
B	4.7	1.0	15.0	3.0	8.7	23.7
C	7.4	2.0	30.0	6.0	15.4	45.4
D	11.0	3.0	50.0	10.0	24.0	74.0
E	29.0	9.0	150.0	24.0	62.0	212.0

\*Phase II only

TABLE 4

Total Estimated Annual Resource Needs by State  
(Work-years)

<u>State</u>	<u>Phase I Resources</u>	<u>Phase II Resources</u>
Alabama	24	74
Alaska	15	45
American Samoa	7	20
Arizona	15	45
Arkansas	9	24
California	62	212
Colorado	15	45
Connecticut	15	45
Delaware	7	20
District of Columbia	7	20
Florida	24	74
Georgia	24	74
Guam	7	20
Hawaii	7	20
Idaho	9	24
Illinois	62	212
Indiana	24	74
Iowa	15	45
Kansas	15	45
Kentucky	24	74
Louisiana	24	74
Maine	7	20
Maryland	15	45
Massachusetts	24	74
Michigan	62	212
Minnesota	15	45
Mississippi	9	24
Missouri	15	45
Montana	9	24
Nebraska	7	20
Nevada	7	20
New Hampshire	7	20
New Jersey	24	74
New Mexico	7	20
New York	62	212
Northern Marianas	7	20
North Carolina	24	74
North Dakota	7	20
Ohio	62	212
Oklahoma	15	45
Oregon	15	45
Pennsylvania	62	212

TABLE 4 Continued

<u>State</u>	<u>Phase I Resources</u>	<u>Phase II Resources</u>
Puerto Rico	9	24
Rhode Island	9	24
South Carolina	15	45
South Dakota	7	20
Tennessee	24	74
Texas	62	212
Utah	9	24
Vermont	7	20
Virginia	15	45
Virgin Islands	7	20
Washington	15	45
West Virginia	24	74
Wisconsin	24	74
Wyoming	7	20

## CHAPTER 2.7

### Checklist for Completeness of Submission

DOCUMENT	CHAPTER	INTERIM		40 CFR Cite
		Phase I	Phase II	
I. Governor's Letter Requesting Authorization (A) Signature				123.123 (a)(1)
II. Complete Program Description	2.2	*	0	123.124
(A) Narrative, Scope, Structure, and Processes (Including Identity of Lead Agency)	2.2	*	0	123.124(a)
(B) Description	2.2	*	0	123.124(b)
(C) State Agency Structure	2.2	*	0	123.124(b)
(D) Description of Staff	2.2, 2.6	*	0	123.124(b)(1)
(E) Budget	2.2, 2.6.	*	0	123.124(b)(2)
(F) Sources of Funds and Restrictions	2.2, 2.6.	*	0	123.124(b)(3)
(G) Description of Permit- ting and Appellate Review Procedures	2.2	*	0	123.124(c)
(H) Description of Compliance and Enforcement Program	2.2, 2.6.,	*	0	123.124(e)
(I) Description of Manifest Tracking System	2.2	*	0	123.124(f)

DOCUMENT	CHAPTER	INTERIM		40 CFR Cite
		Phase I	Phase II	
(J) Estimated Number of Generators, Transporters On-Site and Off-Site Treatment Storage and Disposal Facilities and Their Permit Status	2.2	*	0	123.124(g)
(K) Quantities of Hazardous Waste Generated In State Transported In and Out of State, and Treated or Disposed of Within the State On-and Off-Site (if available)	2.2	-	-	
(L) Forms (Note of Intent to Use Uniform National forms) or States:		*	0	123.124(d)
1. °Permit Application Form(s)		-	0	
2. °Final Permit Form(s)		-	0	
3. Manifest Form		*	0	
4. Report Form(s)		*	0	
III. Attorney General's Statement (A) Signature	2.3	*	0	123.125
IV. Memorandum of Agreement (MOA)	2.4	*	0	123.126
(A) Frequency and Content of Reports	2.4, 2.9	*	0	123.126(b)(2)
(B) Conditions for Record Reviews		*	0	123.126(b)(2)
(C) Provisions for Compliance Monitoring		*	0	123.126(b)(3)(i)
(D) Provisions for Joint Permit Review		-	*	123.126(c)(3)

°Either Permit Application Forms or Final Permit Forms will be reviewed, as appropriate, for enforcement of State's Preliminary Facility Standards analogous to Interim Status Standards.

DOCUMENT	CHAPTER	INTERIM		40 CFR Cite
		Phase I	Phase II	
(J) Estimated Number of Generators, Transporters On-Site and Off-Site Treatment Storage and Disposal Facilities and Their Permit Status	2.2	*	0	123.124(g)
(K) Quantities of Hazardous Waste Generated In State Transported In and Out of State, and Treated or Disposed of Within the State On-and Off-Site (if available)	2.2	-	-	
(L) Forms (Note of Intent to Use Uniform National forms) or States:		*	0	123.124(d)
1. °Permit Application Form(s)		-	0	
2. °Final Permit Form(s)		-	0	
3. Manifest Form		*	0	
4. Report Form(s)		*	0	
III. Attorney General's Statement (A) Signature	2.3	*	0	123.125
IV. Memorandum of Agreement (MOA)	2.4	*	0	123.126
(A) Frequency and Content of Reports	2.4, 2.9	*	0	123.126(b)(2)
(B) Conditions for Record Reviews		*	0	123.126(b)(2)
(C) Provisions for Compliance Monitoring		*	0	123.126(b)(3)(i)
(D) Provisions for Joint Permit Review		-	*	123.126(c)(3)

°Either Permit Application Forms or Final Permit Forms will be reviewed, as appropriate, for enforcement of State's Preliminary Facility Standards analogous to Interim Status Standards.

DOCUMENT	CHAPTER	INTERIM		40 CFR Cite
		Phase I	Phase II	

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KEY: \* Required Document  
 0 Document Amendment

#### GUIDANCES

Program Description	2.2
Attorney General Statement Model	2.3
Memorandum of Agreement (sample)	2.4
Authorization Plan	2.5
Resource Adequacy	2.6
State Legislation Checklist	2.8
State Reporting	2.9

## CHAPTER 2.8

### STATE LEGISLATION CHECKLIST

#### Introduction

The checklist which follows is provided to aid attorneys and others reviewing state legislation in documenting their preliminary assessment of the legislation. States are advised to look broadly to their legislative authorities in assessing their programs.

The elements included in the checklist are not necessarily required elements for Phase I Interim Authorization. This checklist is intended for use as a working paper and need not be submitted as part of the application for Interim Authorization. Rather, this checklist should be of use in identifying appropriate citations and comments to aid in developing the Attorney General's statement which is an essential element of the application.



CHAPTER 2.8  
STATE LEGISLATION CHECKLIST

State \_\_\_\_\_  
 Enacted/Draft Legislation \_\_\_\_\_ Date \_\_\_\_\_  
 Reviewed by \_\_\_\_\_ Date \_\_\_\_\_

STATUTORY ELEMENT	RCRA CITE	COVERAGE Y/N?	STATE CITE	COMMENT
<u>DEFINITIONS</u>				
Disposal	1004(3)			
Generation	-----			
Generator	-----			
Hazardous Waste	1004(5)			
Manifest	1004(12)			
Person	1004(15)			
Storage	1004(33)			
Transport	-----			
Treatment	1004(34)			
Treatment, Storage, or Disposal Facility	1004(29)			
Waste (Solid)	1004(27)			

HAZARDOUS WASTE  
IDENTIFICATION AND  
LISTING

1. Criteria for identifying HW characteristics and listing	3001(a)			
2. HW characteristics	3001(b)			
3. HW list	3001(b)			

STATUTORY ELEMENT	RCRA CITE	COVERAGE Y/N?	STATE CITE	COMMENT
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#### STANDARDS FOR GENERATORS

Authority to promulgate  
regulations on:

1. Recordkeeping practices	3002(1)			
2. Labeling practices	3002(2)			
3. Use of appropriate containers	3002(3)			
4. Furnishing information	3002(4)			
5. Use of manifest consistent with DOT	3002(5)			
6. Designation of permitted facilities	3002(5)			
7. Submission of reports	3002(6)			

#### STANDARDS FOR TRANSPORTERS

Authority to promulgate  
regulations on:

1. Recordkeeping	3003(a)(1)			
2. Labeling	3003(a)(2)			
3. Compliance with manifest system	3003(a)(3)			
4. Transportation to permitted facility	3003(a)(4)			
5. Consistency with DOT regulations	3003(b)			

STATUTORY ELEMENT	RCRA CITE	COVERAGE Y/N?	STATE CITE	COMMENT
<u>STANDARDS FOR HW STORAGE, TREATMENT AND DISPOSAL FACILITIES</u>				
Authority to promulgate regulations on:				
1. Recordkeeping	3004(1)			
2. Reporting	3004(2)			
3. Monitoring	3004(2)			
4. Inspecting	3004(2)			
5. Compliance with manifest system	3004(2)			
6. Operating methods	3004(3)			
7. Location, design, construction	3004(4)			
8. Contingency plans	3004(5)			
9. Training	3004(6)			
10. Ownership	3004(6)			
11. Post-closure monitoring & care/ financing	3004(2) 3004(6)			
12. Continuity of operation	3004(6)			
13. Financial responsibility	3004(6)			

PERMITS FOR HW  
STORAGE, TREATMENT  
AND DISPOSAL FACILITIES  
(PHASE II)

1. Require Permit for TSD Facility	3005(a)			
2. Require permit application infor- mation	3005(b)			
3. Provide for permit modifications	3005(c)			

STATUTORY ELEMENT	RCRA CITE	COVERAGE Y/N?	STATE CITE	COMMENT
4. Provide for compliance schedule	3005(c)			
5. Revoke a permit	3005(d)			
6. Universe of permittees ---				
7. Emergency Authorization ---				
INSPECTIONS	3007			
1. Right to enter, inspect and obtain samples	(a)			
2. Availability to public	(b)			
3. Confidentiality	(b)			
ENFORCEMENT	3008			
1. Compliance order	(a) (1)			
2. Civil penalty	(a) (3)			
3. Criminal penalty/imprisonment	(d)			
4. Citizen Intervention	7002b 7004b			
PUBLIC PARTICIPATION	7004(b)			
IMMINENT HAZARD	7003			
SUBPOENA POWER	----			
LOCAL VETO	----			
INTEGRATION CLAUSE	1006(a) & (b)			
INTERSTATE COOPERATION	1005(a)			
SEPARABILITY CLAUSE	7005			
NOTIFICATION	3010			
INTERIM STATUS	3005(e)			

## CHAPTER 2.9

### STATE REPORTING GUIDANCE

The MOA shall include the frequency and content of reports, documents and other information which the State is required to submit to EPA. For Phase I interim authorization the MOA should specify that the following reports are to be submitted to the Regional Administrator:

1. Noncompliance Reports. Quarterly Statistical Noncompliance Reports for TSD facilities, generators and transporters. These reports are based upon compliance inspections and reports received (see Report Format #1).

2. Annual Program Report. This contains information on the number of generators and facilities in the State and estimates the quantities of wastes handled (see Report Format #2).

The reporting period for the above reports is based on the calendar year, and the reports are to be submitted as follows: first quarter report (January - March) by May 31; second quarter (April - June) by August 31; third quarter (July - September) by November 30; fourth quarter (October - December) by February 28; and Annual Reports by April 1.

3. Semi-Annual Progress Report. There is a requirement, set forth in 40 CFR 123.131(a), that the State submit semi-annual progress reports summarizing "the States's efforts in meeting the requirements of the authorization plan, the reasons and proposed remedies for any delay in meeting milestones, and the anticipated problems and violations for the next reporting period." This report should be in narrative form, accompanied by any charts or tables which the State or Regional Administrator believes would be helpful in presenting the information required. This report is due "within four weeks of the date six (6) months after Phase I of interim authorization commences and at six-month intervals thereafter until the expiration of interim authorization."

4. Changes in Installations with EPA Identification Numbers. The MOA shall describe procedures for the State to obtain from EPA identification numbers for generators, transporters, and treatment, storage, and disposal facilities. In order to obtain EPA identification Numbers, the State must provide EPA with:

- a) The name of the installation
- b) The installation mailing address
- c) The name of a contact person at the installation
- d) The telephone number of the contact person at the installation

- e) The type of installation, i.e., generator, transporter, and/or treatment, storage or disposal facility
- f) Whether the facility is authorized to operate (i.e., permitted) under the authorized State program.

The State must also inform EPA of any updates or changes in the above information within 30 days.

REPORT FORMAT #1

Quarterly Statistical Noncompliance Reports

Number of major facilities required to meet State  
standards substantially equivalent to 40 CFR 265

\_\_\_\_\_

Number of major facilities receiving Compliance  
Inspections during reporting period

\_\_\_\_\_

Number of non-major facilities required to meet State  
standards substantially equivalent to 40 CFR 265

\_\_\_\_\_

Number of non-major facilities receiving Compliance  
Inspections during reporting period

\_\_\_\_\_

Number of generators required to meet State  
standards substantially equivalent to  
40 CFR 262

\_\_\_\_\_

Number of generators receiving Compliance  
Inspections during report-  
ing period

\_\_\_\_\_

Number of transporters required to meet State  
standards substantially equivalent to  
40 CFR 263

\_\_\_\_\_

Number of transporters receiving Compliance  
Inspections during reporting  
period

\_\_\_\_\_

Number of Manifest Exception Reports (see 40  
CFR 262.42), Unmanifested Waste Reports  
(see 40 CFR 265.76), and Manifest Discre-  
pancy Reports (see 40 CFR 265.72) or the  
State program equivalent of such reports

\_\_\_\_\_

Number of follow-up actions (investigations)  
taken based on such reports during  
reporting period

\_\_\_\_\_

REPORT FORMAT #1 (Continued)

Total number of facilities, generators and  
transporters found to be out of com-  
pliance with standards during report-  
ing period

\_\_\_\_\_

Number of Actions commenced on violations dur-  
ing reporting period:

\_\_\_\_\_

a. Letters of Warning issued

\_\_\_\_\_

b. Notices of Violation issued

\_\_\_\_\_

c. Compliance Orders issued

\_\_\_\_\_

d. Civil actions initiated

\_\_\_\_\_

e. Criminal actions initiated

\_\_\_\_\_

[Note: State should substitute its own types of  
enforcement action where variations exist.]

Total number of unresolved violations carried  
over from previous reporting period

\_\_\_\_\_

Total number of violations resolved this report-  
ing period

\_\_\_\_\_

Total number of violations unresolved at end  
of reporting period

\_\_\_\_\_



REPORT FORMAT #2

Reporting Period: \_\_\_\_\_  
Date of Report: \_\_\_\_\_

RCRA  
STATE ANNUAL PROGRAM REPORT

ESTIMATED AMOUNT OF HAZARDOUS  
WASTE GENERATED IN STATE  
(metric tons)

ESTIMATED AMOUNT OF HAZARDOUS WASTE  
TREATED OR DISPOSED IN STATE PER YEAR  
(metric tons)

ESTIMATED AMOUNT OF  
HAZARDOUS WASTE IN  
IN STORAGE AT END OF YEAR  
(metric tons)

On-site

Off-site

Total

Total number of generators in State \_\_\_\_\_

Total number of treatment, storage, and disposal  
facilities in State \_\_\_\_\_

### 3.0 SUBSTANTIAL EQUIVALENCE GUIDANCE

## CHAPTER 3.1

### SUBSTANTIAL EQUIVALENCE - Section 3001 RCRA

#### Purpose

The purpose of this chapter is:

- 1) to assist States in defining the universe of hazardous waste controlled by the State program and
- 2) to assist EPA in determining whether the State program is substantially equivalent to the Federal program with respect to the universe of wastes controlled.

#### Introduction

Paragraph 123.128(a) of 40 CFR Part 123 states that in order to be considered substantially equivalent to the Federal program with respect to the identification and listing of hazardous waste:

"The State program must control a universe of hazardous waste generated, transported, 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 best way for a State to demonstrate that its program is substantially equivalent to the Federal program in this area is by promulgating a State regulation that is as extensive as 40 CFR 261 and similar in content and structure. If such a State regulation listed all the same wastes and used the same characteristics as 40 CFR 261, and did not exclude wastes that are not excluded in the Federal regulation, the State program would clearly be substantially equivalent to the Federal program. This is the simplest and preferred method of demonstrating substantial equivalence (or equivalence for final authorization).

However, recognizing that States have taken different approaches towards identification of hazardous wastes, and that the promulgation of new State regulations will take some time, this guidance document sets forth a second method of demonstrating substantial equivalence. This second method allows a State to demonstrate that it controls virtually all those hazardous wastes that are generated, transported, treated, stored, or disposed of in the State. This second method will involve using information from:

- 1) the State and Federal statutory and regulatory provisions;
- 2) the Notifications submitted pursuant to RCRA Section 3010 and Part A permit applications submitted pursuant to 40 CFR 122;
- 3) State hazardous and industrial waste surveys; and

- 4) the technical support documents for 40 CFR 261 which identify the geographic distribution and capacity of major hazardous waste sources.

It is recognized that this demonstration may be imprecise when data are not available that accurately identify which specific wastes or generators are covered by the EPA characteristics and lists or are excluded by the small generator exemption levels. Therefore, the goal is for the State to demonstrate that there are no major gaps in the State program coverage. When authorized, the State program operates in lieu of the Federal program. Therefore, if the State program fails to control a significant quantity of hazardous waste (as defined by 40 CFR 261) that is known to be generated, treated, stored or disposed of in the State, the State program will not be considered substantially equivalent to the Federal program. On the other hand, if it appears that the State program covers virtually all of the hazardous wastes (as defined by 40 CFR 261) that are known to be generated, treated, stored or disposed of in the State, the State program will be considered to be substantially equivalent to the Federal program if the State meets the additional requirement discussed below.

During interim authorization EPA will allow State programs to vary from the Federal program in their listing and characteristic methods; the State program may, therefore, in fact cover a smaller universe even though that might not be clear at the time of approval. This would occur, for example, if a hazardous waste not covered by the State program is generated or transported in the State in the future. Therefore, if a State uses the second method of demonstrating substantial equivalence the State must also commit to promulgate, within a reasonable time frame, a regulation that is at least as extensive as 40 CFR 261 in terms of scope and coverage. This commitment must be reflected in the Authorization Plan and the Memorandum of Agreement. In general EPA considers a reasonable time frame to promulgate such a regulation to be one year (or two years if significant legislative change is necessary) but in any case before the State applies for final authorization.

As was indicated previously the preferred approach would be for such a regulation to be structured along the same lines as 40 CFR 261 in terms of listed wastes, characteristics and exclusions. All States are encouraged to develop a regulation along these lines as this will simplify decisions on final authorization where the State program must be found to be both equivalent to and consistent with the Federal program. While other regulatory approaches may well be consistent with the Federal program, the burden will be on the State program to demonstrate this fact. A State regulation may list additional wastes, use additional or broader characteristics and have lower exemption levels; however, these aspects would be beyond the scope of the Federally authorized portion of the State program.

#### Procedure

The first step is to compare the State regulation to 40 CFR 261 by use of Checklists #1, #2 and #3. Checklist #1 covers the Federal statutory and regulatory definitions of solid and hazardous wastes, items included in and excluded from the Federal definition, and exemption levels. Checklist #2 covers the Federal characteristics for comparison with State regulations. Checklist #3 covers the Federal listed wastes. For each item on those

checklists the State should cite the appropriate State regulatory provision that addresses that particular aspect of the Federal regulation. The comments column should be used to highlight and explain any differences between the State and Federal regulations with particular emphasis on gaps in the State coverage. The State program may, of course, be more stringent than the Federal program and need not, for example, contain the same exclusions as the Federal program.

## Discussion

### 1. Listed Hazardous Waste

If a State does not have regulatory coverage over a listed waste in 40 CFR 261 the next step is to determine whether such a waste is generated in the State. This can be done from a review of industrial and other sources in the State and from State surveys. It may be necessary to use Section 3010 notification data if the State doesn't have other adequate means to make the determination. If a listed waste is generated in a State and not controlled by the State program, the State program cannot be considered "substantially equivalent" to the Federal program (assuming the waste is generated in quantities in excess of the small generator exemptions). If a listed waste is not generated in the State the next step is to determine whether it is treated, stored or disposed of in the State. This is a more difficult determination which may involve review of disposal facility records, State survey reports and Section 3010 Notification and Part A permit application data. If it is determined that such a waste is generated, treated, stored or disposed of in the State and the waste is not controlled by the State program, the State program cannot be considered substantially equivalent. On the other hand, if there is no evidence that the listed waste is generated, treated, stored or disposed of in a significant quantity in the State, the State program can be considered substantially equivalent to the Federal program if, in addition, the State commits to changing its regulation to assure regulatory coverage over such a waste in a timely manner.

### 2. Characteristics of Hazardous Wastes

The procedure is similar to that for listed wastes. If the State does not have regulatory control over wastes with the characteristics identified in 40 CFR 261, a determination must be made whether wastes with such characteristics are generated, treated, stored or disposed of in the State. This will be a difficult determination since information on generators and facilities handling wastes that are hazardous because they meet the characteristics will not be available until the Section 3010 notifications are received and compiled.

### 3. Exclusions

The procedure for dealing with wastes excluded in the State regulations is similar to that discussed above with one additional consideration. If a State regulation excludes a particular waste, e.g., sewage sludge, from its hazardous waste definition, the State may be able to show that the sewage sludges generated in the State fall well below extract procedure toxicity

levels. Sludge or influent/effluent tests obtained from wastewater treatment plants would be useful in this regard. Therefore, an excluded waste may not be a hazardous waste by virtue of 40 CFR 261. Similar consideration needs to be given to the other exclusions.

#### 4. Use of Notification and Part A Permit Application Data

The notification and Part A permit application information should be very valuable in evaluating State regulatory coverage. This information will define the generators, transporters, and facilities that would be subject to the Federal program in the State (not including non-notifiers and non-applicants). If a State can show regulatory coverage over the wastes and persons specified on the notifications and applications, this would support a State's demonstration that it controls a substantially equivalent universe of wastes.

Timing is of concern in the use of these data. It is expected that it will take approximately six months from May 1980 to tabulate and have available for analysis complete computer printouts of all notification data. The Part A permit application data compilations will be available several months after that. Therefore, the complete notification and application information will not be available for decisions on interim authorization of State programs by November 1980. However, the Regional Offices may be able to provide partial listings of this information which could be used for preliminary assessments. While this data will be subject to additions and further refinement, it could be a basis for a substantial equivalence determination when combined with information from State surveys.

If a State's regulatory coverage is significantly less than the coverage in 40 CFR 261 and if the State does not have other information or data on the wastes generated, treated, stored or disposed of in the State, then the State must at least demonstrate that it covers virtually all the wastes and persons who have notified. While this may delay some interim authorization decisions for a few months beyond November 1980, it is the minimum acceptable demonstration of substantial equivalence with respect to the universe of wastes controlled.

#### 5. Demonstration in Program Description

The State program has the responsibility to show that it controls a universe of hazardous waste that is nearly identical to the universe that would be controlled under the Federal program. This demonstration, along with supporting analysis, should be incorporated in the Program Description part of the State application and should include: 1) completion of the checklists, 2) analysis of State surveys and other information, and, if used, 3) analysis of the notification and Part A application data.

CHECKLIST #1  
REQUIREMENTS FOR INTERIM AUTHORIZATION

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EPA Requirements	State Coverage Cite	Comments
------------------	------------------------	----------

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Definition of Solid Waste

40 CFR 261.2

- a) A solid waste is any garbage, refuse or sludge\*
- b) A solid waste is any other waste material\*\* which
  - 1) is discarded or being handled prior to being discarded;
  - 2) has served original intent and is sometimes discarded; or
  - 3) is a mining or manufacturing by-product and is sometimes discarded.\*\*\*

\*See 40 CFR 260.10(a)(63) for definitions of sludge

\*\*See 40 CFR 261.2(b) for explanation of other waste material

\*\*\*See 40 CFR 261.2(c) for definitions of discarded and mining or manufacturing by product

EPA Requirements	State Coverage Cite	Comments
------------------	------------------------	----------

Definition of Hazardous Waste

40 CFR 261.3

- a) A solid waste is a hazardous waste if it:
  - 1) is not excluded and
  - 2) is listed or is a mixture containing a listed waste; or
  - 3) meets characteristics
- b) A solid waste becomes a hazardous waste when:
  - 1) it first meets the listing description;
  - 2) when it first contains a listed waste; or
  - 3) when it first exhibits characteristics
- c) Unless paragraph (d) below applies:
  - 1) a hazardous waste remains a hazardous waste and
  - 2) any solid waste generated from treatment storage or disposal of hazardous waste is a hazardous waste.
- d) A solid waste is not a hazardous waste if:
  - 1) it does not exhibit characteristics; or
  - 2) it has been delisted (for listed wastes or mixtures).



EPA Requirements	State Coverage Cite	Comments
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### Exclusions

#### Section 261.4

1. Domestic sewage.
2. Industrial discharges regulated as point sources.
3. Irrigation return flows.
4. Special nuclear source or by-product materials under Atomic Energy Act of 1954.
5. In-situ mining waste.
6. Overburden returned to mines.
7. Household waste including residual waste and recovered material from recycling garbage or refuse.
8. Agricultural wastes (crops, silviculture crops, and manures) returned to soil.
9. Utility wastes (fly ash, bottom ash, etc.)
10. Drilling muds and oils

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EPA Requirements	State Coverage Cite	Comments
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Special Requirements for Hazardous  
Waste Generated by Small Quantity  
Generators

Section 261.5

1. General exemption for generators of less than 1000 kilograms of hazardous waste per month.
2. Specific exemptions for generators of:
  - a. Less than one kilogram per month of any commercial product listed in 261.33(e);
  - b. Less than one kilogram per month of any off-specification commercial chemical product listed in 261.33(e);
  - c. Containers identified in 261.33(c) less than 20 liters in capacity;
  - d. Less than 10 kilograms of inner liners from containers listed in 261.33(c);
  - e. Less than 100 kilograms of residue or contaminated soil, water or other debris from clean-up of a spill of any commercial product or manufacturing chemical intermediate listed in 261.33(e);

EPA Requirements	State Coverage Cite	Comments
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3. Specific exemptions for all those wastes listed in 1 and 2 above even when mixed with non-hazardous wastes resulting in a mixture exceeding the quantity limitations noted above.

Special Requirement for Hazardous Waste Which is Used, Re-used, Recycled or Reclaimed

Section 261.6

1. Specific exemption for hazardous waste which is beneficially used or reused or legitimately recycled or reclaimed.
2. Specific exemption for hazardous waste accumulated, stored or physically, chemically or biologically treated prior to beneficial use or re-use or legitimate recycling or reclamation.
3. Hazardous wastes which are sludges or are listed in or contain wastes listed in Subpart D and are transported or stored prior to use, reuse or recycling are subject to requirements in 261.6(b).

CHECKLIST 2  
Hazardous Waste Characteristics

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EPA Characteristic	State Characteristic Yes/No/Unknown	State Cite	Comment
--------------------	---	---------------	---------

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Corrosivity

1. Aqueous

- pH-2, pH-12.5
- pH meter, using "Methods for Chemical Analysis of Water and Wastewater" (current edition)

2. Liquid: Corrosion

- corrodes SAE 1020 Steel
- >0.25 inch/year
- @ 55°C (130°F)
- NACE Standard TM-01.69

---

## CHECKLIST 2

### Hazardous Waste Characteristics

EPA Characteristic	State Characteristic Yes/No/Unknown	State Cite	Comment
<u>Reactivity</u>			
1.   -   normally unstable -   reacts with water -   forms explosives with water -   toxic gases with water -   cyanide or sulfide that forms toxic gases between pH 2 - 12.5			
2.   Detonation or explosive reaction by initiation			
3.   Detonation or explosive reaction at STP			
4.   Forbidden explosive			
-   49 CFR 173.58			
Class A explosive			
-   49 CFR 173.53			
Class B explosive			
-   49 CFR 173.58			

## CHECKLIST 2

### Hazardous Waste Characteristics

EPA Characteristic	State Characteristic Yes/No/Unknown	State Cite	Comment
<u>Toxicity (E)</u>			
- based on EPA Extraction Procedures			
o pH at 5.0 $\pm$ 0.2.			
o Sample Preparation (grinding 9.5 mm Sieve) or Structural Integrity Procedure			
o Agitation			
o 20 Fold liquid to solid ratio			
o 24 hour contact time			
o Temperature 20-40°C			
o EPA analytical <u>methods</u> for metals and pesticides			
- based on IPDWS (100 fold dilation)			
o Arsenic (5.0) mg/l			
o Barium (100.0) mg/l			
o Cadmium (1.0) mg/l			
o Chromium (5.0) mg/l			

## CHECKLIST 2

## Hazardous Waste Characteristics

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EPA Characteristic	State Characteristic Yes/No/Unknown	State Cite	Comment
<hr/> <ul style="list-style-type: none"><li data-bbox="228 655 500 685">o Lead (5.0) mg/l</li><li data-bbox="228 719 545 749">o Mercury (0.2) mg/l</li><li data-bbox="228 783 561 812">o Selenium (1.0) mg/l</li><li data-bbox="228 846 532 876">o Silver (5.0) mg/l</li><li data-bbox="228 910 545 940">o Endrin (0.02) mg/l</li><li data-bbox="228 974 545 1004">o Lindane (0.4) mg/l</li><li data-bbox="228 1038 639 1068">o Methoxychlor (10.0) mg/l</li><li data-bbox="228 1102 574 1132">o Toxaphene (0.5) mg/l</li><li data-bbox="228 1166 532 1195">o 2,4 D (10.0) mg/l</li><li data-bbox="228 1229 667 1259">o 2,4,5 TP-Silvex (1.0) mg/l</li></ul> <hr/>			

## CHECKLIST 2

### Hazardous Waste Characteristics

<u>EPA Characteristics from 40 CFR Subpart C</u>	<u>State Characteristic (if any)</u>	<u>Identify Alternative State Regulatory control over wastes with such characteristics (cite and attach regulations)</u>	<u>Comment (Major differences between Federal and State coverage)</u>
<u>Ignitability</u>			
3.1-14	1. Liquid		
	- flashpoint 60°C		
	- Pensky-Martens closed cup tester, ASTM Stan- dard D-93-72		
	or		
	- Setaflash closed cup tester, ASTM		
	2. Not a liquid		
	- can cause fire under STP through friction, absorption of moisture or spontaneous chemi- cal changes, and when ignited burns so vigor- ously and persistently		
	3. Compressed Gas		
	- ignitable by 49 CFR 173.300		
	4. Oxidizer		
	- defined by 40 CFR 173.151		

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# CHECKLIST 3

## Hazardous Waste Listing Non-Specific Sources (40 CFR 261.31)

<u>Column 1</u> <u>List wastes from</u> <u>40 CFR 261.31 listed in</u> <u>State regulation*</u>	<u>Column 2</u> <u>List wastes from</u> <u>40 CFR 261.31 not listed</u> <u>in State regulation*</u>	<u>For each waste in Column 2</u> <u>identify alternative</u> <u>State regulatory control</u> <u>(cite and attach regulations)</u>	<u>Comment</u> <u>(major differences</u> <u>between Federal</u> <u>and State coverage)</u>
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3.1-15

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\*Can use waste numbers or groups of numbers

### CHECKLIST 3

#### Hazardous Waste Listing Specific Sources (40 CFR 261.32)

<u>Column 1</u> <u>List wastes from</u> <u>40 CFR 261.31 listed in</u> <u>State regulation*</u>	<u>Column 2</u> <u>List wastes from</u> <u>40 CFR 261.31 <u>not</u> listed</u> <u>in State regulation*</u>	<u>For each waste in Column 2</u> <u>identify alternative</u> <u>State regulatory control</u> <u>(cite and attach regulations)</u>	<u>Comment</u> <u>(major differences</u> <u>between Federal</u> <u>and State coverage)</u>
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3.1-16

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\*Can use waste numbers or groups of numbers

### CHECKLIST 3

#### Hazardous Waste Listing Discarded Chemical Products (40 CFR 261.33)

<u>Column 1</u> List wastes from 40 CFR 261.31 listed in State regulation*	<u>Column 2</u> List wastes from 40 CFR 261.31 <u>not</u> listed in State regulation*	For each waste in Column 2 identify alternative State regulatory control (cite and attach regulations)	Comment (major differences between Federal and State coverage)
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3.1-17

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\*Can use waste numbers or groups of numbers

## CHAPTER 3.2

### SUBSTANTIAL EQUIVALENCE--Section 3002 RCRA

#### Introduction

Federal regulations at 40 CFR 123.128 contain the requirements which State programs must meet in order to receive interim authorization (Phase I). This chapter presents these State Program Requirements pertaining to Section 3002 of RCRA and provides a checklist for review of State program elements against the requirements. States are advised to look broadly to their authorities in order to demonstrate that their overall programs meet the requirements.

The regulation provides that where a State does not have legislative authority or regulatory control over certain activities which do not occur in the State, the State can receive interim authorization. This provision is conditional in that the State's authorization plan must provide for the development of a complete program as soon as practicable after the granting of interim authorization.

The checklist in this chapter focuses on Section 123.128(b), "Requirements for generators of hazardous waste", of the regulations. The regulations allow flexibility in the manner or approach States employ in meeting the requirements. While some provisions of 123.128(b) are self-evident, others require interpretation. For purposes of interim authorization determinations, the checklist serves to describe the minimum State Program Requirements against which the overall State program is to be assessed, thereby defining State programs "substantially equivalent" to the Federal program pertaining to generators of hazardous waste.

Section 123.128(d) of the Federal regulation provides limited exceptions from the State Program Requirements in the case of States which do not have statutory or regulatory authority for the manifest system or other generator or transporter requirements of Sections 123.128(b) and (c). In this case, the State may be granted interim authorization if:

1. the State meets all other requirements for interim authorization; and
2. the State's authorization plan delineates the necessary steps for obtaining the necessary statutory or regulatory authority by the end of the interim authorization period.

Until the State manifest system and other generator and transporter requirements are approved by EPA, all Federal requirements for generators and transporters (including use of the Federal manifest system) will apply.

## GENERATORS

Federal Cite (40 CFR 123)	State Program Requirement	State Coverage	Reviewers Comments
	1. <u>GENERAL</u>		
.128(b)(2)	1.1 All generators of hazardous waste controlled by the State must be covered by the program. (See previous chapter of this manual).		
.126(b)(1) & .128(b)(6)	1.2 Provide system whereby generators must receive EPA identification numbers prior to treating, storing, disposing, transporting, or offering to transport.		
.128(b)(6) & (7) .128(e)(7)	1.3 Require that generators not offer hazardous waste to transporters or to treatment, storage, or disposal facilities which have not received EPA identification numbers.		
.128(b)(2)	1.4 If the State exempts farmers from control, the exemption must be conditioned in accordance with the Federal exemption at 40 CFR 262.51.		
	2. <u>MANIFEST</u>		
.128(b)(6)	2.1 Generators who transport or offer for transport off-site must be required to use a manifest system.		
	2.1.1 Manifest system must ensure that inter- and intrastate shipments are designated for delivery only to facilities authorized to operate under an approved State program or the Federal program.		
	2.1.2 Manifest system must ensure that intrastate shipments are delivered only to facilities authorized by the State to operate.		

Federal Cite  
(40 CFR 123)

State Program Requirement

State  
Coverage

Reviewers  
Comments

.128(b)(7)(i)

2.2 Manifest employed must identify the generator, transporter, designated delivery point, and the hazardous waste being transported.

.128(b)(7)(ii)

2.3 Must require that the manifest accompany all waste offered for transport. This requirement need not apply to shipments by rail or water described in 40 CFR 262.23(c) and 40 CFR 263.20(e).

.128(b)(7)(iii)

2.4 Manifest system must provide that undelivered shipments are:

(a) identified independently by the State in which the shipment originated; or

(b) identified by the generator and reported to the State in which the shipment originated.

.128(b)(8)

2.5 In the case of an interstate shipment for which the manifest has not been returned within 45 days of acceptance by the initial transporter, provide for notification to (1) the State in which the manifest-designated facility is located and (2) the State in which the shipment may have been delivered. In the case of unauthorized States, notification is to be directed to EPA.

.128(b)(4)

3. SHORT-TERM ACCUMULATION

3.1 Generators who accumulate hazardous waste for short periods of time prior to shipment must be required to do so in a manner that does not present a hazard to human health or the environment.

**Federal Cite  
(40 CFR 123)**

**State Program Requirement**

**State  
Coverage**

**Reviewers  
Comments**

.128(b)(5)

**4. INTERNATIONAL SHIPMENTS**

- 4.1 Importers of hazardous wastes must be required to meet the State's manifest requirements.
- 4.2 Manifest must identify the importer as the "generator" and include the importer's EPA identification number.
- 4.3 Exporters of hazardous wastes must be required to meet the State's manifest requirements.
- 4.4 Manifest must identify the name and address of the foreign consignee for exported wastes.
- 4.5 Must provide for confirmation of delivery by the foreign consignee for exported wastes. Confirmation may be directed to either the generator or the State.
- 4.6 Must provide for notification to EPA in those cases where confirmation by the foreign consignee for exported wastes is not received within 90 days of acceptance of the waste by the initial transporter. [NOTE: Advance notification of international shipment is required by §262.50 (b)(1) to be filed with the Administrator. This control measure will not be delegated to States, and there is no State Program Requirement in this regard].

.128(b)(3)

**5. RECORDKEEPING/REPORTING**

- 5.1 Generators must be required to retain copies of all manifests for at least 3 years from the date of acceptance of the waste by the initial transporter.

Federal Cite  
(40 CFR 123)

State Program Requirement

State  
Coverage

Reviewers  
Comments

- 5.2 If the State requires generators to submit reports to enable the State to meet its Federal reporting requirements, the generators must be required to retain copies of the reports for at least 3 years.
- 5.3 Records associated with undelivered shipments must be required to be retained for at least 3 years.
- 5.4 The program must provide for extension of the required period of record retention during the course of unresolved enforcement action regarding the regulated activity.



## CHAPTER 3.3

### SUBSTANTIAL EQUIVALENCE--Section 3003 RCRA

#### Introduction

Federal regulations at 40 CFR 123.128 contain the requirements which State programs must meet in order to receive interim authorization (Phase I). This chapter presents these State Program Requirements pertaining to Section 3003 of RCRA and provides a checklist for review of State program elements against the requirements. States are advised to look broadly to their authorities in order to demonstrate that their overall programs meet the requirements.

The regulation provides that where a State does not have legislative authority or regulatory control over certain activities which do not occur in the State, the State can receive interim authorization. This provision is conditional in that the State's authorization plan must provide for the development of a complete program as soon as practicable after the granting of interim authorization.

The checklist in this chapter focuses on Section 123.128(c), "Requirements for transporters of hazardous waste", of the regulations. The regulations allow flexibility in the manner or approach States employ in meeting the requirements. While some provisions of 123.128(c) are self-evident, others require interpretation. For purposes of interim authorization determinations, the checklist serves to describe the minimum State Program Requirements against which the overall State program is to be assessed, thereby defining State programs "substantially equivalent" to the Federal program pertaining to transporters of hazardous waste.

Section 123.128(d) of the Federal regulation provides limited exceptions from the State Program Requirements in the case of States which do not have statutory or regulatory authority for the manifest system or other generator or transporter requirements of Sections 123.128(b) and (c). In this case, the State may be granted interim authorization if:

1. the State meets all other requirements for interim authorization; and
2. the State's authorization plan delineates the necessary steps for obtaining the necessary statutory or regulatory authority by the end of the interim authorization period.

Until the State manifest system and other generator and transporter requirements are approved by EPA, all Federal requirements for generators and transporters (including use of the Federal manifest system) will apply.

## TRANSPORTERS

<u>Federal Cite</u> <u>(40 CFR 123)</u>	<u>State Program Requirement</u>	<u>State Coverage</u>	<u>Reviewers Comments</u>
	1. <u>GENERAL</u>		
.128(c)(2)	1.1 Must cover all transporters of hazardous waste controlled by State.		
.128(c)(3)	2. <u>RECORDKEEPING/REPORTING</u>		
	2.1 Transporters must be required to keep copies of signed manifests or shipping papers for at least three years.		
	2.2 If the State requires transporters to submit reports to enable the State to meet its Federal reporting requirements, the generators must be required to retain copies of the reports for at least 3 years.		
	2.3 The program must provide for extension of the required period of record retention during the course of unresolved enforcement action regarding the regulated activity.		
	3. <u>MANIFEST</u>		
.128(c)(4)	3.1 Transporters must be required to use a manifest system.		
	3.1.1 Manifest system must ensure that inter- and intrastate shipments are designated for delivery only to facilities authorized to operate under an approved State program or the Federal program.		
.128(c)(5)	3.2 Must require that transporters carry the manifest with all shipments. This requirement need not apply to shipments by rail or water described in 40 CFR 262.20(e).		

Federal Cite  
(40 CFR 123)

State Program Requirement

State  
Coverage

Reviewers  
Comments

.128(c)(6)

4. DISCHARGES IN TRANSIT

- 4.1 Must require transporters to notify appropriate State, local, and Federal agencies.
- 4.2 Must require transporters to clean-up the wastes or take action so that the wastes do not present a hazard to human health or the environment.
- 4.3 Provide that appropriate officials may authorize removal of waste without use of a manifest.
- 4.4 Provide for immediate notice to the National Response Center and for reports in writing to DOT. [See 49 CFR 171.15]

5. EPA IDENTIFICATION NUMBER

.126(b)(1)

- 5.1 Transporters may not transport hazardous waste without an EPA I.D. number which will be obtained through procedures established in the Memorandum of Agreement.

## Chapter 3.4

### SUBSTANTIAL EQUIVALENCE--Section 3004 RCRA

#### Introduction

Federal regulations at 40 CFR 123.128 contain the requirements which State programs must meet in order to receive interim authorization (Phase I). This chapter presents these State program requirements pertaining to Section 3004 of RCRA and provides a checklist for review of State program elements against the requirements. States are advised to look broadly to their authorities in order to demonstrate that their overall programs meet the requirements.

The regulation provides that where a State does not have legislative authority or regulatory control over certain activities which do not occur in the State, the State can receive interim authorization. This provision is conditional in that the State's authorization plan must provide for the development of a complete program as soon as practicable after the granting of interim authorization.

Section 123.128(e) requires that States have standards applicable to hazardous waste management facilities (HWMF's) which are substantially equivalent to 40 CFR Part 265. It further requires that State law prohibit the operation of facilities not in compliance with such standards. The checklist in this chapter focuses on §123.128(e), "Requirements for hazardous treatment, storage, and disposal facilities." The regulations allow flexibility in the manner or approach States may employ in meeting the requirements. While some provisions of §123.128(e) are self-evident, others require interpretation. For purposes of interim authorization determinations, the checklist serves to summarize the minimum Federal requirements of 40 CFR Part 265, noting areas where flexibility should be considered in defining State programs "substantially equivalent" to the Federal program pertaining to hazardous waste treatment, storage, and disposal facilities.

#### Discussion

1. Where an asterisk(\*) appears on the checklist, flexibility in meeting the Federal requirements may be particularly appropriate. However, each State must clearly identify those areas where flexibility is needed and must document the reasons in the "Comment" column. In certain instances it will be necessary to substantiate that adequate protection of human health and the environment is being afforded by the more "flexible" requirement.
2. Where a double asterisk(\*\*) appears in the checklist (relative to the manifest system), it should be recognized that 40 CFR 123.128(e)(7) requires State programs to provide manifest tracking systems with requirements for HWMF's substantially

equivalent to those of 40 CFR 265, including requirements for return of the manifest. 40 CFR 123.128(d) allows States to receive interim authorization if legal authority does not exist to provide manifest tracking systems with requirements respecting generators and transporters only. In the event that the State receives interim authorization in accordance with the exclusion provision of 40 CFR 123.128(d), it must still meet the HWMF manifest tracking requirement of 40 CFR 123.128(e)(7) by requiring that facility owners and operators return a copy of the manifest to the generator or to the State in which the waste originated in accordance with the Federal requirements (40 CFR 265.71) in order for the generator to be able to comply with the Federal timing and procedural requirements for exception reports. The provision of 40 CFR 123.128(e)(7) which allows States to require facility owners or operators to return a copy of the manifest solely to the State where the generator is located applies only in those instances where the State in which the operator is located operates a complete manifest tracking system covering generators, transporters, and HWMF's and in which the State Director, not the generator, is responsible for the tracking of shipments.

3. It should be noted that Part 265 establishes requirements for underground injection control of hazardous waste. However, it is optional for the purpose of interim authorization of State programs as to whether or not the State controls the underground injection of hazardous waste.

## FACILITIES

<u>Federal Cite</u> <u>(40 CFR 123)</u>	<u>State Program Requirement</u>	<u>State Coverage</u>	<u>Reviewers Comments</u>
.128.(e)	<p>1.0 <u>GENERAL</u></p> <p>All TSD facilities in "existence" pursuant to RCRA Section 3005(e) must comply with requirements substantially equivalent to the following:</p>		
.128.(e)(1)	<p>2.0 <u>PREPAREDNESS AND PREVENTION</u></p> <p>2.1 Pursuant to 265.30-265.37, facilities must be maintained and operated for preparedness for and prevention of releases of hazardous wastes controlled by the State.</p> <p>2.2 Facilities must have contingency plans and emergency procedures to be followed in the event of a release of hazardous waste.</p>		
.128.(e)(2)	<p>3.0 <u>CLOSURE AND POST-CLOSURE</u></p> <p>3.1 The owner or operator must close his facility in a manner that:</p> <p style="padding-left: 40px;">(a) minimizes the need for future maintenance, and</p> <p style="padding-left: 40px;">(b) controls, minimizes, or eliminates post-closure escape of hazardous waste.</p> <p>3.2 The owner or operator must have a written closure plan on the effective date of Part 265.</p> <p>3.3 The closure plan must include:*</p> <p style="padding-left: 40px;">(a) A description of how and when the facility will be partially closed, if applicable, and ultimately closed.</p>		

Federal Cite  
(40 CFR 123)

State Program Requirement

State  
Coverage

Reviewers  
Comments

- (b) An estimate of the maximum inventory of wastes in storage or treatment at any given time.
- (c) Steps to decontaminate facility equipment.
- (d) A schedule for final closure which must include, as a minimum:
  - (i) anticipated dates when wastes will no longer be received
  - (ii) anticipated date for completion of final closure
  - (iii) intervening milestone dates
- 3.4 Closure must be initiated within 90 days after receiving the final volume of hazardous wastes.\*
- 3.5 The owner or operator must complete closure activities within six months after receiving the final volume of wastes.\*
- 3.6 §265.114 Upon completion of closure, all equipment and structures must be properly disposed of or decontaminated.
- 3.7 §265.115 The owner or operator and an independent registered professional engineer must certify that the facility has been closed in accordance with the approved closure plan.
- 3.8 Post closure care must consist of at least:
  - (a) Groundwater monitoring
  - (b) Maintenance of the contaminant system

Federal Cite  
(40 CFR 123)

State Program Requirement

State  
Coverage

Reviewers  
Comments

3.9 The owner or operator must have a post-closure plan on the effective date of Part 265 and it must include:\*

(a) Groundwater monitoring activities and frequency.

(b) Maintenance activities and frequencies to ensure:

(i) the integrity of the cap, final cover, or other containment structures, and

(ii) functions of the facility's monitoring equipment.

3.10 Within 90 days after closure, the owner or operator must submit a survey plat of the facility.\*

3.11 The owner or operator must record a notice on the deed that the land has been used to manage hazardous waste.

.128.(e)(3)

4.0 GROUNDWATER MONITORING

4.1 Owner or operator must implement a groundwater monitoring program capable of determining the facility's impact on the quality of the upper aquifer within one year of the effective date of 265.90.

4.2 The owner and operator must install, operate, and maintain a groundwater monitoring system which meets the requirements of §265.91-265.94.\*



Federal Cite  
(40 CFR 123)

State Program Requirement

State  
Coverage

Reviewers  
Comments

4.3 All of the groundwater monitoring requirements may be waived if the owner or operator can demonstrate that there is a low potential for migration of hazardous waste constituents from the facility via the uppermost aquifer below the facility to water supply wells or to surface water.

.128.(e)(4)

5.0 SECURITY TO PREVENT UNKNOWNING AND UNAUTHORIZED  
ACCESS TO THE FACILITY

5.1 The owner or operator must prevent the unknowning entry and minimize the possibility for unauthorized entry unless:

- (a) physical contact with the waste, structures, or equipment will not be injurious
- (b) disturbance of the waste or equipment will not violate the requirements of Part 265.

5.2 Unless exempt under 5.1(a) or 5.1(b), a facility must have:\*

- (a) a 24-hour surveillance system
- (b) an artificial or natural barrier which completely surrounds the active portion of the facility
- (c) a means to control entry
- (d) a sign warning of the danger of intruding into the facility

Federal Cite  
(40 CFR 123)

State Program Requirement

State  
Coverage

Reviewers  
Comments

.128.(e)(5)

6.0 FACILITY PERSONNEL TRAINING

- 6.1 Facility personnel must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of Part 265.
- 6.2 The training program must be completed within six months of the effective date of Part 265.\*
- 6.3 There must be an annual review of the initial training in 6.1 above.\*
- 6.4 The owner or operator must maintain records of training.\*
- 6.5 Training records on current personnel must be kept until closure of the facility.\*

.128.(e)(6)

7.0 INSPECTION, MONITORING, RECORDKEEPING, and REPORTING.

- 7.1 The owner or operator must inspect the facility for malfunctions and deterioration, operator errors, or discharges which may be causing or lead to:
  - (a) release of hazardous waste constituents to the environment or
  - (b) a threat to human health
- 7.2 The owner or operator must develop and follow a schedule and plan for inspections.

Federal Cite  
(40 CFR 123)

State Program Requirement

State  
Coverage

Reviewers  
Comments

- 7.3 The owner or operator must take remedial action upon the detection of malfunction or the deterioration of equipment and structures when a hazard is imminent.
- 7.4 The owner or operator must record inspections in an inspection log and must keep the records for at least three years from the date of inspection.\*
- 7.5 The owner or operator must keep a written operating record at the facility which meets the requirements of §265.73(b).\*
- 7.6 All records must be furnished upon request and available at all times for inspection by EPA.
- 7.7 A copy of records of waste disposal locations and quantities must be submitted to the Director and the local land authority upon closure of the facility.\*<sup>++</sup>
- 7.8 The owner or operator must submit an annual report to the Director in compliance with the requirements of §265.75.\*<sup>++</sup>
- 7.9 The receipt of any unmanifested waste must be reported to the Director.<sup>++</sup>
- 7.10 The owner or operator must submit a report to the Director if any of the following occur:<sup>++</sup>
- (a) releases
  - (b) fires
  - (c) explosions
  - (d) groundwater contamination
  - (e) facility closure

Federal Cite  
(40 CFR 123)

State Program Requirement

State  
Coverage

Reviewers  
Comments

.128.(e)(7)

8.0 MANIFEST SYSTEM\*\*

- 8.1 If a facility receives hazardous waste accompanied by a manifest, the owner or operator must meet the requirements of §265.71 a(1)-(5).\*
- 8.2 If a facility receives, from a rail or water transporter, hazardous waste which is accompanied by a shipping paper, the owner or operator must meet the requirements of §265.71.\*
- 8.3 Upon discovery of a significant manifest discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter.
- 8.4 If a significant manifest discrepancy is not resolved, the owner or operator must notify the Director.

.128.(e)(8)

9.0 OTHER FACILITY STANDARDS

9.1 EPA Identification Number

Every facility owner or operator must apply for an EPA identification number.\*

9.2 Required Notices

- (a) The facility owner or operator must notify the Director at least four weeks in advance of receipt of wastes from a foreign source.\*
- (b) Before transferring ownership or operation of a facility, the facility's owner or operator must notify the new owner or operator of the requirements of 40 CFR 265 and 122.\*

9.3 General Waste Analysis

Before treating, storing, or disposing of hazardous waste, the facility owner or operator must obtain a detailed chemical and physical analysis of wastes. The analysis must contain all the information which must be known to treat, store, or dispose the waste in accordance with the Federal requirements.

9.4 General Requirements for Ignitable, Reactive or Incompatible Wastes

- (a) The owner or operator must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste.
- (b) Treatment, storage, or disposal of ignitable or reactive waste and the mixture or commingling of incompatible wastes must be conducted so that it does not:
  - (i) Generate extreme heat or pressure, fire or explosion, or violent reaction;
  - (ii) Produce uncontrolled toxic mists, fumes, dusts, or gases in sufficient quantities to threaten human health;
  - (iii) Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosions;
  - (iv) Damage the structural integrity of the device or facility containing waste; or

- (v) Through other like means threaten human health or the environment.

9.5 Financial Requirements

The owner or operator must develop and maintain a current estimate of closure and post-closure costs.

9.6 Use and Management of Containers

- (a) The container must be compatible with the waste to be stored.
- (b) Containers holding hazardous waste must be kept closed and must not be opened, handled, or stored in a manner which may cause a rupture or leak.
- (c) Areas where containers are stored must be inspected weekly.\*
- (d) Containers holding ignitable or reactive waste must be located at least 15 meters from the facility's property line.\*
- (e) Incompatible wastes must not be placed in the same container.
- (f) A storage container holding a hazardous waste that is incompatible with any waste or other materials stored nearby must be separated or protected from the other materials.

9.7 Tanks

- (a) Hazardous wastes must not be placed in a tank if they could cause the tank or its liner to leak.

- (b) Uncovered tanks must have at least two feet of freeboard unless other containment structures, a drainage control system, or other diversion structures with a capacity that equals or exceeds the volume of the top two feet of the tank.
- (c) Tanks which have a continuous feed system must be equipped with a means to stop the inflow.
- (d) Waste analysis must be conducted pursuant to §265.13 and §265.193(a).\*
- (e) Tanks must be inspected in accordance with §265.194.\*
- (f) At closure, all hazardous waste and hazardous waste residues must be removed from the tanks.
- (g) Ignitable or reactive waste should not be placed in a tank unless §265.198 is complied with.
- (h) Incompatible wastes must not be placed in the same tank unless §265.17(b) is complied with.

9.8 Surface Impoundments

- (a) Must maintain at least two feet of freeboard.
- (b) Earthen dikes must have protective cover.
- (c) Must conduct waste analyses and trial tests in accordance with §265.225.\*

Federal Cite  
(40 CFR 123)

State Program Requirement

State  
Coverage

Reviewers  
Comments

- (d) Must inspect the freeboard level at least once each operating day.
- (e) Must inspect the surface impoundment at least once a week to detect any leaks, deterioration, or failure.\*
- (f) The surface impoundment must close in accordance with §265.228.
- (g) Ignitable or reactive waste must not be placed in a surface impoundment unless §265.229 is complied with.
- (h) Incompatible wastes must not be placed in the same surface impoundment unless §265.17(b) is complied with.

9.9 Waste Piles

- (a) A waste pile must be protected and managed to control wind dispersal.
- (b) An owner or operator must conduct waste analyses unless the facility meets the exemptions of §265.252.
- (c) Within one year after the effective date of the regulations, leachate or run-off from a pile must be controlled pursuant to §265.253.\*
- (d) Ignitable or reactive waste must not be placed in a waste site unless §265.265 is complied with.
- (e) The requirements of §265.257 for incompatible wastes must be complied with.



9.10 Land Treatment

- (a) Hazardous waste must not be placed at a land treatment facility unless it can be made less hazardous or non-hazardous.
- (b) Run-on must be diverted away from other active portions as of one year after the effective date of Part 265.\*
- (c) Run-off from active portions must be collected as of one year after the effective date of Part 265.\*
- (d) Waste analyses must be conducted pursuant to §265.273.\*
- (e) An owner or operator must notify the State Director within 60 days after the effective date of Part 265 if food chain crops are grown on the land treatment facility.\*
- (f) Food chain crops must not be grown on the treated area of a hazardous waste land treatment facility unless §265.276(b) is complied with.\*
- (g) Food chain crops must not be grown on a land treatment facility receiving waste that contains cadmium unless §265.275(c) is complied with.\*
- (h) The owner or operator must have in writing and must implement an unsaturated zone monitoring plan pursuant to §265.278.\*

- (i) The owner or operator must keep records of the application dates, application rates, quantities, and location of each hazardous waste placed in a facility.
- (j) A land treatment facility must meet the closure and post-closure requirements of §265.280.
- (k) Ignitable or reactive waste must not be placed in a land treatment facility unless §265.281 is complied with.
- (l) Incompatible wastes must not be placed in the same land treatment area unless §265.17 is complied with.

9.11 Landfills

- (a) Run-on must be diverted away from the active portions within one year after the effective date of Part 265.\*
- (b) Run-off from active portions must be collected within one year after the effective date of Part 265.\*
- (c) Must control wind dispersal.
- (d) The owner or operator must meet the surveying and recordkeeping requirements of §265.309.\*
- (e) A landfill must comply with closure and post-closure requirements of §265.310.\*
- (f) Ignitable or reactive waste must not be placed in a landfill unless §265.312 is complied with.

- (g) Incompatible wastes must not be placed in a landfill unless §265.17(b) is complied with.
- (h) Bulk or non-containerized liquid waste, waste containing free-liquids, or containers holding liquid waste should not be placed in a landfill unless the requirements of §265.314 are complied with.
- (i) Empty containers must be reduced in volume as of one year after the effective date of Part 265.\*

9.12 Incinerators

- (a) Must be at steady state conditions before adding hazardous waste.
- (b) Waste analyses must be conducted pursuant to §265.345.\*
- (c) Monitoring and inspections must be conducted as delineated in §265.347.\*
- (d) At closure, the owner or operator must remove all hazardous waste and hazardous waste residues.

9.13 Thermal Treatment

- (a) Must be at steady state conditions before adding hazardous wastes.
- (b) Waste analyses must be conducted pursuant to §265.375.\*
- (c) Monitoring and inspections must be conducted as delineated in §265.377.\*

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(d) At closure, the owner or operator must remove all hazardous waste and hazardous waste residues.

(e) Open burning of hazardous waste is prohibited except for the open burning and detonation of waste explosives.

9.14 Chemical, Physical, and Biological Treatment

(a) Must comply with §265.17(b).

(b) Hazardous waste must not be placed in the treatment process or equipment if any failure of equipment or the process would occur.

(c) A continuously - fed process must be equipped with a means to stop the inflow.

(d) Waste analyses and trial tests must be conducted pursuant to §265.402.\*

(e) Inspections must be made pursuant to §265.403.\*

(f) At closure, all hazardous waste and hazardous waste residues must be removed.

(g) Ignitable or reactive waste must not be placed in a treatment process unless §265.405 is complied with.

(h) Incompatible wastes must not be placed in the same treatment process unless §265.17 is complied with.

Federal Cite  
(40 CFR 123)

State Program Requirement

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9.15 Underground Injection\*

- (a) Underground injection of hazardous waste is not subject to the closure and post-closure or financial requirements of Part 265. Underground injection is subject to the other requirements of Part 265.

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- \* Indicates areas where flexibility of Federal requirements may be particularly appropriate.
- \*\* It should be noted that State programs are required to provide manifest tracking systems with requirements for HWMF's substantially equivalent to Part 265. However, 123.128(d) allows States to receive interim authorization if legal authority does not exist to provide manifest tracking systems with requirements respecting generators and transporters only. See the discussion in the text.
- + Underground injection controls are optional for the purpose of interim authorization of State programs.
- ++ Although the Federal requirements actually require notification and reporting to the Regional Administrator, States should require notification and reporting to the State Director for purposes of "substantial equivalence" under the interim authorization program.

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