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RCRA, Superfund & EPCRA Hotline Training Module

Introduction to:

RCRA State Programs

Updated October 1999

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STATE PROGRAMS

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1. INTRODUCTION

The Resource Conservation and Recovery Act (RCRA) addresses an enormous problem - how to safely manage the huge volumes of solid and hazardous waste generated in this country. In the Statute, Congress established the framework for a program that would address this problem by establishing regulations for identifying and managing hazardous waste.

Congress delegated the responsibility to develop and oversee the implementation of these regulations to EPA. However, Congress intended that states would assume the responsibility for day-to-day implementation of the regulations and that EPA's role would be to provide federal oversight for such state programs. The rationale was that states are more familiar with the regulated community and are therefore able to administer the programs in a way that responds to specific state and local needs.

In order to ensure that state programs are at least equivalent to and consistent with the federal regulations, RCRA requires states to become authorized to meet minimum federal standards. Once a state has met the federal standards and gone through the authorization process, the state implements and enforces its program in lieu of the federal government. This prevents overlapping or duplicative state and federal regulations.

This module outlines the requirements and procedures for a state to become authorized to manage and oversee its own RCRA program. It also describes how the state authorization system can affect the applicability of certain rules. When you have completed this module you will be familiar with the state authorization process for hazardous waste management programs. Specifically, you will be able to:

- Specify why states are authorized by EPA and list the elements of an authorized state program
- Identify components of an authorization application and outline the stages of EPA's approval process
- Specify the applicability of Hazardous and Solid Waste Amendments (HSWA) and non-HSWA provisions in authorized and unauthorized states
- Define the effect of the "cluster rule."

Use this list of objectives to check your knowledge after you complete the training session.

2. ELEMENTS OF STATE AUTHORIZATION PROCESS

To become authorized to implement the hazardous waste regulations found in Subtitle C, states must develop their own hazardous waste program and receive EPA approval for it. Initially, a state typically adopts the federal rules in some manner. The state can write federal rules into the state regulations or simply incorporate them by reference. The state may then submit an application for final authorization to the EPA Administrator. The application must contain certain elements that are described in 40 CFR Part 271. These elements are discussed below.

2.1 STATE AUTHORIZATION AUTHORITY

RCRA §3006 gives EPA the authority to authorize qualified states to administer and enforce the RCRA hazardous waste program within the state. Following authorization, state regulations operate in lieu of the federal regulations in that state (with some limits). In order to receive authorization, a state's statute(s) and regulations must be equivalent to federal authorities, consistent with the federal program, and at least as stringent as the federal program. The state program must address requirements for permitting, compliance evaluation, enforcement, public participation, and sharing of information. As part of the consistency requirement, state programs may not restrict the free movement of hazardous waste across state borders to or from treatment, storage, or disposal facilities (TSDFs) permitted to operate under RCRA or any approved state program. Although many of the state programs closely parallel the federal program, some states do adopt requirements more stringent or broader in scope for generators, transporters, or other facilities handling hazardous waste.

While authorized states have primary enforcement responsibility under state law, EPA retains enforcement authority under RCRA §§3007, 3008, 3013, and 7003. When EPA does enforce in authorized states (called "overfiling"), it enforces the authorized state programs where appropriate.

2.2 STATE AUTHORIZATION APPLICATIONS

Any state that seeks authorization for its hazardous waste program must submit an application to EPA for review and approval. The state program application must include the following items:

- Letter from the governor
- Description of the state’s program

- Statement from the state attorney general
- Memorandum of agreement between state and Region
- Provisions for public involvement for initial program authorization.

GOVERNOR'S LETTER

In order to become authorized, a state must indicate a desire to implement its own RCRA program. The state does this by submitting a letter from the governor of the state requesting program approval (§271.5(a)(1)). The governor's letter transmits the state's application and is the formal request for program approval.

PROGRAM DESCRIPTION

The state must demonstrate to EPA that its program meets minimum federal requirements. To become authorized, the state must submit a copy of the state statutes and regulations that will act in place of the federal RCRA regulations. A document is often included with the application highlighting where federal requirements are incorporated in the state code (§271.5(a)(5)). Any state that seeks approval to administer its own RCRA program must also submit a description of the proposed program (§271.5(a)(2)). Pursuant to §271.6, the program description must include:

- Scope, structure, coverage, and processes of the state program
- Description of the organization or state agency that will manage the program
- Estimate of the cost of administering the program, as well as sources and amounts of funding available
- Description of the applicable state procedures, such as procedures for permitting or judicial review
- Copies of any forms used to administer the program under state law
- Description of the state's compliance tracking and enforcement program
- Description of the state's manifest tracking system
- Estimation of the size of the regulated community in the state (i.e., number of generators, transporters, and TSDFs)
- Estimate of the annual quantities of hazardous waste generated, transported, stored, treated, or disposed of within the state, if available.

ATTORNEY GENERAL'S STATEMENT

Before EPA can grant authorization to a state, it must be clear that the state has the necessary legal authority to be able to implement and enforce the regulations. This is demonstrated by a statement, signed by the state attorney general, certifying that the state has the legal authority to implement and enforce the regulations submitted in the application and that the submitted regulations are adequate to meet authorization standards (§271.7).

MEMORANDUM OF AGREEMENT

A memorandum of agreement (MOA) serves as a contract between the state and the Regional Administrator. This agreement identifies each party's roles and responsibilities and how the state and Region plan to measure achievements. According to §271.8, the MOA must address:

- Cooperative activities in areas for which the state is not authorized (e.g., joint permitting)
- Transitional activities (e.g., transfer of permit or delisting applications)
- Enforcement and oversight authorities that EPA retains after authorization (e.g., routine and emergency inspections by EPA)
- Administrative procedures (e.g., sharing information between state and EPA)
- Any state commitments to carry out administrative procedures or variances and waivers to ensure state's adherence to authorization standards.

PUBLIC INVOLVEMENT

A state must demonstrate that the public was allowed to participate in the state's decision to seek final authorization. Prior to submitting the application to EPA, a state seeking program approval must give public notice across the state (e.g., by publication in major newspaper). The notice must allow for a 30-day public comment period, as well as a public hearing if comments are extensive. The state must document public involvement by compiling copies of comments submitted as well as transcripts, recordings, or summaries of any public hearings held by the state on program approval. The state must also address the comments received from the public in the application (§271.20).

2.3 EPA APPROVAL PROCESS

Once the state has followed the regulatory procedures for submitting an application for authorization, EPA begins a process to determine whether or not authorization should be granted. Some states are not able to receive final authorization immediately because their programs do not meet minimum federal requirements. As a result, these states can obtain interim authorization. Other states with programs that are fully equivalent to the federal program receive final authorization directly.

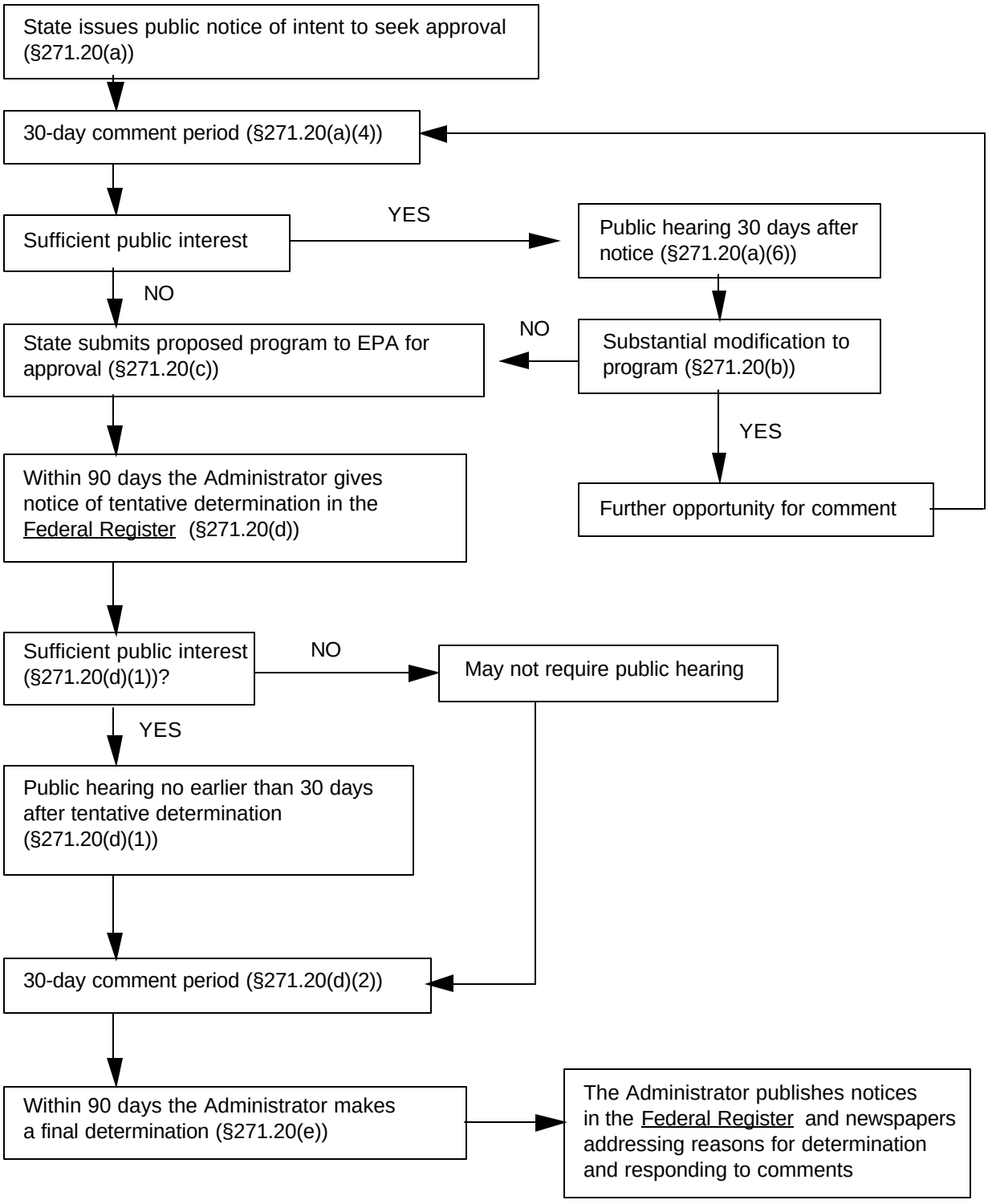
INTERIM AUTHORIZATION

To provide for smoother transitions from federal to state implementation, Congress allowed interim authorization under both RCRA (§3006(c)) and HSWA (§3006(g)) statutory provisions (§271.24(a)). Interim authorization was established to allow states to continue operating their own hazardous waste programs while striving to achieve the requirements for final authorization. This provides states with a transition period to adopt all the changes necessary to implement programs equivalent to the federal requirements. A state with interim authorization can temporarily implement the state hazardous waste program in lieu of the federal program. Although RCRA program interim authorization expired on January 31, 1986, interim authorization still exists for HSWA provisions. Interim authorization for the HSWA provisions expires January 1, 2003 (§271.24(c)). Any state with HSWA interim authorization must obtain final authorization by this date or the HSWA program will revert to EPA.

FINAL AUTHORIZATION PROCESS

In order to grant final authorization to a state, the EPA Regional Administrator (RA) must determine whether or not the state's program meets the federal requirements (See Figure 1). The RA will review the application and must be satisfied that the program is consistent with and at least as stringent as the federal program before approval. After receipt of the state program application, the RA has 90 days to make a tentative determination in the Federal Register (then there is an additional 30-day public comment period). Within 90 days of the tentative determination, the RA must make a final determination and publish a notice in the Federal Register and major newspapers within the state. The notice must include the reasons for making any determination and responses to significant comments received (§271.20(e)).

Figure 1
INITIAL PROGRAM APPLICATIONS
STATE PROGRAM APPROVAL
PROCESS



2.4 SUBSEQUENT PROGRAM REVISIONS

Once a state has gained final authorization, it must continually amend and revise its program to reflect changes in the federal regulations and maintain its authorization status. To revise its authorized program, a state must submit documentation similar to the documents used in the initial authorization applications discussed above. The actual documentation required will vary, depending on the scope of the state modifications and previously submitted application materials. EPA generally uses a streamlined process for issuing an immediate final rule for subsequent revision approvals. This means that authorization is automatically effective in 60 days unless adverse comment is received within 30 days (§271.21(b)(3)(iii)).

THE CLUSTER RULE

The federal RCRA program is constantly evolving. If states were required to adopt every federal change into their program as soon as it occurred, they would be continually changing their requirements. To avoid the burden this would place on state lawmakers and the regulated community, RCRA only requires that states modify their programs on a yearly basis. Therefore, a state can incorporate all of the changes of a year into the program at one time. EPA groups new federal rules into annual clusters (See Figure 2). A state may revise its program by adopting and becoming authorized for the entire cluster, or may request authorization for parts of a cluster, provided the state eventually adopts all of the required provisions.

States that have adopted the basic cluster of RCRA regulations, those promulgated before January 26, 1983, are considered to be "base authorized." Rules issued after January 26, 1983, are each assigned a checklist number, and are grouped into clusters based on the period of time in which they were promulgated. Each cluster has a name as well as due dates by which authorized states must submit applications to revise their program to include that group of rules (§271.21(e)). See Appendix G of the State Authorization Manual for a complete list of all clusters.

To become authorized for new regulations, a state must adopt those regulations in its state program before applying for authorization. Usually the state needs only to amend its regulations to reflect the new rules. When this is the case, states have one year from the closing date of the cluster in which the rule was placed to apply for revisions. Sometimes, however, the implementing agency lacks the statutory authority from the state legislature to write certain regulations. If a state statutory change is required before regulations can be issued, a second year is allowed (§271.21(e)(2)(v)).

Figure 2
THE CLUSTER SYSTEM

	Cluster Number*	Cluster Period	State Modification Deadline**	State Revision Application Deadline	Program Areas Affected
Non-HSWA Clusters	I	July 1, 1984, to June 30, 1985	July 1, 1986	September 1, 1986	Non-HSWA Rules and HSWA §3006(f)
	II	July 1, 1985, to June 30, 1986	July 1, 1987	September 1, 1987	Non-HSWA Rules
	III . . . V	July 1, 1986, to June 30, 1987, etc.	July 1, 1988, etc.	September 1, 1988, etc.	Non-HSWA Rules
	VI	July 1, 1989, to June 30, 1990, etc.	July 1, 1991	September 1, 1991	Non-HSWA Rules
HSWA Clusters	I	November 8, 1984, to June 30, 1987	July 1, 1989	September 1, 1989	HSWA Provisions
	II	July 1, 1987, to June 30, 1990	July 1, 1991	September 1, 1991	HSWA Provisions
RCRA Clusters	I	July 1, 1990, to June 30, 1991	July 1, 1992	September 1, 1992	All HSWA and Non-HSWA Provisions
	II	July 1, 1991, to June 30, 1992	July 1, 1993	September 1, 1993	All HSWA and Non-HSWA Provisions
	III . . . VII	July 1, 1992, to June 30, 1993, etc.	July 1, 1994, etc.	September 1, 1994, etc.	All HSWA and Non-HSWA Provisions
	VIII	July 1, 1997, to June 30, 1998	July 1, 1999	September 1, 1999	All HSWA and Non-HSWA Provisions
	IX	July 1, 1998, to June 30, 1999	July 1, 2000	September 1, 2000	All HSWA and Non-HSWA Provisions

* Checklists 1-8 were issued prior to establishment of the cluster system. State modification deadlines for these rules are one year from the promulgation date of each rule, or two years if a statutory change is required.

** One additional year provided if statutory change is needed. Can be extended by up to 18 months (see §§271.21(e) and (g)).

ABBREVIATED REVISION PROCESS

On November 30, 1998, EPA promulgated an abbreviated program revision process in §271.21(h) (63 FR 65874). EPA believes it is appropriate to have an abbreviated authorization process for minor or routine rules to be used by states that have already received authorization for the significant parts of the RCRA program that are being revised. In the future, as EPA proposes rulemakings, the Agency will also propose to list additional minor or routine rules in Table 1 to §271.21(h). EPA is developing guidance to enable states and Regions to make proper decisions regarding which previously promulgated rules should be included in an authorization application that uses the abbreviated procedures (63 FR 65929; November 30, 1998).

3. STATE AUTHORIZATION AND EFFECTIVE DATES

The state authorization process and the effective dates of rules depend upon whether EPA promulgated a rule pursuant to HSWA or RCRA authority, and whether the rule is less stringent or more stringent than current regulations.

3.1 EFFECT OF RCRA/HSWA AUTHORITY

Prior to the enactment of HSWA, a state with final authorization administered its hazardous waste program entirely in lieu of the federal program. This meant the federal requirements no longer applied in an "authorized" state. When a new, more stringent, federal requirement was enacted, the state was obligated to enact equivalent authorities within specified time frames, but the new federal requirements were not effective in the authorized state until the state adopted the new requirements as state law and received authorization for them. Some federal rules are still issued based on the original pre-HSWA authority and become effective in authorized states only when the state adopts the provisions as state law. These rules are known as "non-HSWA" rulemakings.

In contrast, HSWA amended RCRA by adding §3006(g). Under this section, new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time that they take effect in unauthorized states. These regulations are known as "HSWA" provisions. EPA implements these requirements in authorized states until the state is granted authorization to implement the new regulation(s). While states must still adopt HSWA provisions as state law to maintain authorization, HSWA requirements are implemented by EPA in authorized states until they do so.

The underlying statutory authority is explained with each new rule in the Federal Register on the first page under "Summary" and at the end of the preamble in a special section titled "Applicability of Rules in Authorized States." Until authorized states obtain approval for HSWA-based requirements, there will be joint state/EPA permitting of facilities in the authorized state. The MOA must discuss joint permitting responsibilities and procedures.

One example of the applicability of HSWA provisions and non-HSWA provisions in authorized and non-authorized states is illustrated by the rulemaking that promulgated the wood preserving listings (F032, F034, and F035). These wood preserving wastes were promulgated pursuant to both HSWA and non-HSWA authorities. The F032 listing is a HSWA provision, and is applicable in all states, both authorized and non-authorized. The F034 and F035 listings are non-HSWA provisions.

The F034 and F035 listings are effective only in states that are not authorized for the RCRA program and in states that have incorporated the listings into their state programs and have received EPA approval for their revised state programs. The F034 and F035 listings are not applicable in authorized states that have not yet modified their state programs to include the listings.

3.2 LESS STRINGENT PROVISIONS

In order to maintain the authority to administer the federal hazardous waste program, authorized states are generally required to revise their state hazardous waste programs as new federal regulations are promulgated. Sometimes, however, federal rulemakings are less stringent than the existing federal standards. In such instances, authorized states are not required to incorporate the less stringent standards into the state hazardous waste program, and they retain authorization for the RCRA program. For example, if EPA were to promulgate an exemption for some forms of a currently listed hazardous waste, authorized states would be under no obligation to adopt the less stringent rule. The rule would be effective in the authorized state only if adopted by the state.

4. WITHDRAWAL OF AUTHORIZATION

Neither RCRA nor HSWA requires that states apply for initial authorization. Once a state has been granted authorization, however, it must regularly modify its program to incorporate new federal requirements in order to maintain full authorization (§271.21(e)(1)). An authorized state must modify its program and submit authorization applications according to the schedule in the cluster rule, described above. If a state falls behind the schedule set out by the cluster rule, the Region may grant the state an extension or put it on a compliance schedule (§271.21(g)). An important exception to this requirement is for changes in the federal program that are deemed less stringent than previous requirements. States are not required to incorporate less stringent provisions into their hazardous waste programs.

The Administrator may withdraw program approval of any authorized state when the state no longer complies with the requirements of Part 271. Withdrawal of program approval may occur for the following reasons: the state's legal authority no longer meets the requirements of Part 271, the operation of the state program does not comply with the Part 271 requirements, the state's enforcement program fails to comply with Part 271, or the state program fails to comply with the terms of the MOA (§271.22). The program withdrawal authority is discretionary, however, and EPA encourages Regions to approve states' authorization applications, even when there are elements of a cluster that are incomplete or overdue.

If an authorized state determines that it can no longer comply with the requirements of Part 271, the state may voluntarily transfer program responsibilities to EPA. In doing so, the state must give the Administrator 180 days notice of the proposed transfer of all relevant program information. At least 30 days before the approved transfer occurs, the Administrator must publish notices of the transfer in the Federal Register and major newspapers within the state.

A transfer of program responsibilities may also occur after the Administrator orders withdrawal proceedings to begin. Commencement of the proceedings may be under the Administrator's own initiative or in response to a petition from an interested person alleging failure of the state to comply with the requirements of Part 271. A more detailed description of the procedures for withdrawing approval of a state program is codified in §271.23.