



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Partnering with states and other stakeholders

Incomplete Oversight of State Hazardous Waste Rule Authorization Creates Regulatory Gaps and Human Health and Environmental Risks

Report No. 18-P-0227

July 31, 2018



Report Contributors:

Tina Lovingood
Steve Hanna
Alisha Chugh
Naomi Rowden

Abbreviations

CFR	Code of Federal Regulations
EPA	U.S. Environmental Protection Agency
GPRA	Government Performance and Results Act
HSWA	Hazardous and Solid Waste Amendments
OIG	Office of Inspector General
OLEM	Office of Land and Emergency Management
ORCR	Office of Resource Conservation and Recovery
RCRA	Resource Conservation and Recovery Act

Cover Image: RCRA cleanup of potential hazardous waste at the Nogales Wash in Arizona.
(EPA photo)

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At a Glance

Why We Did This Project

We audited the U.S. Environmental Protection Agency's (EPA's) oversight of the implementation of new Resource Conservation and Recovery Act (RCRA) regulations by authorized state hazardous waste programs.

RCRA Subtitle C specifies requirements for the management of hazardous waste. Congress gave the states the option to assume primary responsibility for implementing the hazardous waste rules, with oversight from the federal government. For a state to assume the regulatory lead as the implementing agency, it must be authorized by the EPA to do so. Once a state has received EPA authorization for the base hazardous waste program, the state must continue to revise its program to authorize any additional required rules promulgated by the EPA. All states except Alaska and Iowa have been authorized by the EPA to implement the hazardous waste program.

This report addresses the following:

- *Partnering with states and other stakeholders.*

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Incomplete Oversight of State Hazardous Waste Rule Authorization Creates Regulatory Gaps and Human Health and Environmental Risks

What We Found

Most states are authorized to implement the majority of new required hazardous waste rules promulgated by the EPA. However, states and the EPA have taken many years to authorize rules—from less than 1 year to more than 31 years. No state has been authorized by the EPA for all required rules. For the 173 required rules, the number not authorized ranges from six to 98 per state; eight states have not been authorized for more than 50 rules. Although states may have valid reasons for not seeking authorization for a rule, these rules are nonetheless unauthorized.

The lack of timely authorization of hazardous waste rules by states creates human health and environmental risk.

The EPA lacks internal controls to validate the completeness and accuracy of state authorization information, and does not collect sufficient data to identify reasons for delays or lack of authorization of RCRA rules. Further, the EPA has not defined authorization goals to track program performance.

For Hazardous and Solid Waste Amendments of 1984 (HSWA) rules, EPA regions can administer the requirements if a state has not received authorization. However, for non-HSWA rules, the EPA cannot administer a rule when a state has not yet been authorized for the rule, which creates regulatory gaps. Unauthorized non-HSWA rules create risks to human health and the environment.

Recommendations and Planned Agency Corrective Actions

We recommend that the Office of Land and Emergency Management work with regions to identify and track rules for which states have not sought authorization and then prioritize those rules, collect information to improve the authorization process, improve data collection, and implement performance measures. The recommendations are resolved with agreed-to actions pending.

Noteworthy Achievements

The EPA has taken steps to improve the state authorization process, including conducting a Lean effort to reduce the backlog and time required for authorization, implementing monthly conference calls with regions, and identifying state authorization as a priority in the fiscal years 2018–2019 National Program Managers' Guidance.



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

THE INSPECTOR GENERAL

July 31, 2018

MEMORANDUM

SUBJECT: Incomplete Oversight of State Hazardous Waste Rule Authorization Creates Regulatory Gaps and Human Health and Environmental Risks
Report No. 18-P-0227

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Barry Breen, Acting Assistant Administrator
Office of Land and Emergency Management

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OPE-FY16-0033. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position.

The Office of Resource Conservation and Recovery, within the Office of Land and Emergency Management, is responsible for implementing the Resource Conservation and Recovery Act.

In accordance with EPA Manual 2750, your office provided acceptable corrective actions and milestone dates in response to OIG recommendations. All recommendations are resolved and no final response to this report is required. However, if you submit a response, it will be posted on the OIG's website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at www.epa.gov/oig.

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Chapter 1

Introduction

Purpose

The Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) conducted this audit to determine what oversight the EPA provides to ensure that states implement new¹ Resource Conservation and Recovery Act (RCRA) rules.

Background

RCRA, enacted in 1976 and subsequently amended, created the framework for a waste management program for hazardous and non-hazardous solid wastes. Facilities that generate, transport, treat, store or dispose of hazardous waste are regulated under RCRA Subtitle C. RCRA protects human health and the environment in two ways:

1. **Prevention:** Preventing future environmental problems from being caused by waste.
2. **Corrective Action:** Cleaning up current environmental problems caused by the mismanagement of waste.

State Authorization Overview

Under RCRA, states and territories may assume primary responsibility for implementing the hazardous waste program, with oversight from the federal government. For a state or territory to assume this responsibility, the state must first obtain authorization from the EPA. To receive authorization from the EPA, RCRA requires a state or territory program to be at least equivalent to and consistent with the federal program. A state or territory that has received final authorization from the EPA for the base hazardous waste program²—known as an authorized state or territory—can then implement and enforce hazardous waste rules under RCRA. Authorized state rules act “in lieu of” federal rules.

States use different methods to adopt federal hazardous waste rules. States may adopt the federal rules verbatim, incorporate by reference by citing the federal

¹ For the purpose of this report, we use the term “new rules” to refer to hazardous waste rules created by the EPA after the rules comprising the base program were promulgated.

² According to EPA staff, the base hazardous waste program is defined by eight consolidated regulation checklists created by the EPA in 1983 to reflect hazardous waste regulations covering generators, transporters and handlers.



Scientists sampling an oil spill as part of a RCRA Corrective Action. (EPA photo)

hazardous waste rule in the state regulations, or re-write the federal rules as state hazardous waste rules that are equivalent to or more stringent than the federal rules.

The Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA and added provisions including land disposal restrictions, RCRA corrective action for solid waste management units and regulation of small-quantity generators. When the EPA creates new hazardous waste rules, it does so under the authority of either or both of these laws. Rules promulgated under HSWA authority are immediately effective in all states and are

administered by the EPA until states become authorized for those rules. In contrast, rules promulgated under RCRA authority (non-HSWA rules) cannot be enforced by the EPA in states with an authorized base program and do not go into effect until these states become authorized for the rules.

While authorized states bear the primary responsibility for implementing the RCRA hazardous waste program, the EPA still plays a role by offering financial assistance to states to help them develop and implement their hazardous waste programs, by establishing broad national priorities, and by making certain that states properly carry out the RCRA program. In addition to 48 states, Guam and the District Columbia are also authorized for the base RCRA program. The EPA administers RCRA in states and territories that do not have base program authorization, such as Alaska, Iowa and Puerto Rico.³

HSWA Rules: EPA rules promulgated under HSWA authority are *administered by EPA* until states become authorized for these rules. An example of a HSWA rule is Corrective Action.

Non-HSWA Rules: Rules promulgated under RCRA authority *do not go into effect under RCRA and cannot be enforced by EPA* until states become authorized for these rules. An example of a non-HSWA rule is the Definition of Solid Waste.

Updating Authorized State Programs

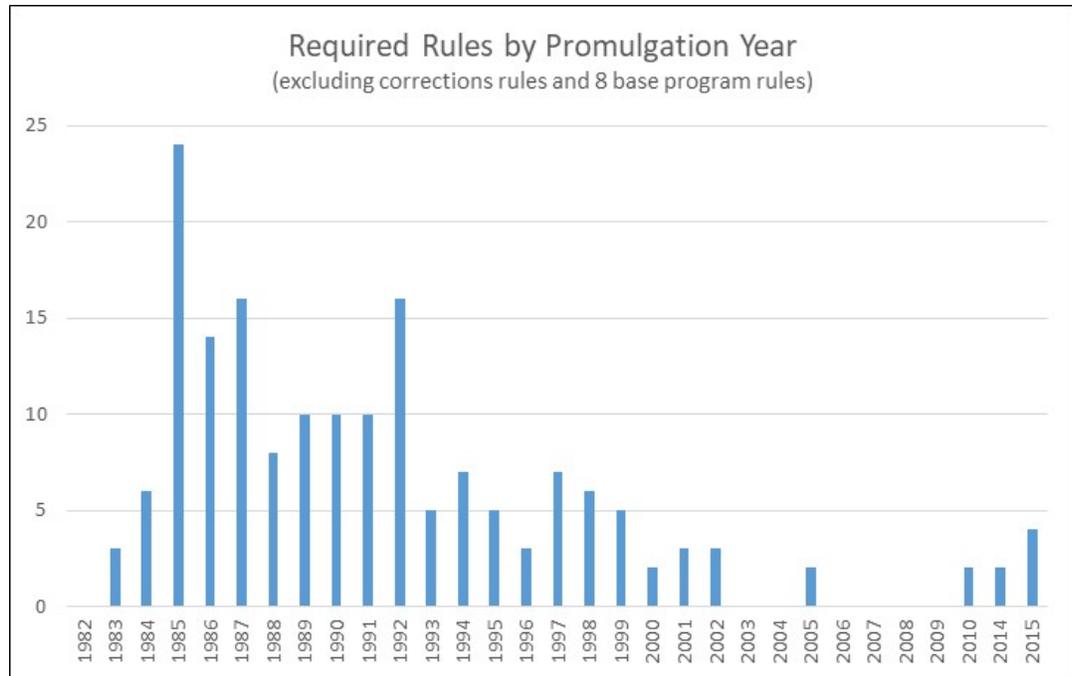
As the federal hazardous waste program changes, authorized state programs may need to be revised to remain in compliance. New federal rules that are more stringent or broader in scope than the existing rules always require states to update their programs. Federal rules that are less stringent or reduce the scope of the existing federal program are optional for states to adopt and are noted as such in the Federal Register.

From 1980 through 2015, the EPA promulgated 335 federal rules implementing the RCRA hazardous waste program. Of these, 220 are more stringent than prior

³ RCRA defines states as “any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.” For the remainder of this report, we use the term “states” to refer to authorized states, including Guam and the District of Columbia.

existing rules and are required to be adopted by authorized states, while 115 are less stringent than prior rules and are therefore considered optional. Excluding 39 rules that are corrections to rules and the eight base program rules, there are 173 rules that need to be authorized by the EPA for states already authorized for the base RCRA program. Most of the RCRA rules were promulgated by the EPA before 2000; only eight required rules have been promulgated from 2010 through 2015 (Figure 1).

Figure 1: Required RCRA rules promulgated by EPA each year



Source: OIG analysis of EPA data.

The three basic steps in the program modification process include:

- Updating the program,
- Submitting a revision application, and
- Receiving EPA approval.

An authorized state must modify its program every July 1 to reflect changes to the federal program occurring during the 12 months preceding the previous July 1. For example, states needed to modify their programs by July 1, 2016, to reflect rule changes from July 1, 2014, to June 30, 2015. An additional year is allowed if state statutory changes are required, and the EPA Regional Administrator may extend the time requirement by another 6 months if certain conditions are met. After modifying its program, a state has 30 days to submit a copy of the change to the EPA and 60 days to submit a package for approval to the EPA. There is no time requirement in the statute or rules that specifies when the EPA must approve or otherwise respond to state submissions for revisions to their program.

EPA's Oversight Role, Grants and Priorities

To verify that states properly implement their hazardous waste programs, EPA staff have oversight responsibilities to:

- Promote national consistency in RCRA implementation.
- Encourage coordination and agreement between the EPA and states on technical and management issues.
- Verify proper enforcement by the state.
- Verify appropriate expenditure of federal grant funds.

The EPA provides grants to states to assist them in developing or implementing authorized hazardous waste programs. Each EPA regional office receives an allotment based upon multiple factors, such as population and the number of various types of waste management facilities in each state within the EPA region. States then submit proposed work plans that outline planned activities in the upcoming year, including permitting, enforcement and program management. EPA regions negotiate with each state over the specific work to be accomplished with these grant funds. States may receive up to 75 percent of their program costs from the RCRA grant fund.



Liner being installed in base of RCRA cell at the Malone Service Company hazardous waste cleanup site, Texas. (EPA photo)

Responsible Office

The Office of Resource Conservation and Recovery (ORCR), within the Office of Land and Emergency Management (OLEM), is responsible for implementing RCRA and ensuring responsible national management of hazardous and non-hazardous waste. EPA regional offices have the lead in reviewing state authorization applications.

Scope and Methodology

We conducted our work from September 2016 to May 2018. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We reviewed EPA documents, including the EPA’s National Program Managers’ Guidance, RCRA Orientation Manual, Introduction to State Authorization Training Manual, and EPA memoranda on state authorization. We also reviewed relevant portions of RCRA and 40 CFR Part 271 applicable to the RCRA state authorization program. In addition, we reviewed documents related to the agency’s Lean efforts that were conducted for the RCRA state authorization program.

We interviewed EPA headquarters staff and management in ORCR, as well as EPA regional staff in Regions 1, 3 and 9. We analyzed state authorization data provided by ORCR staff in December 2016 in Microsoft Access format, using Microsoft Excel to identify rules not authorized by states and to measure the elapsed time from rule publication to state authorization. Using a representative sample of this dataset population, we completed data reliability testing to determine the accuracy and completeness—as well as the usability—of the data. Based on the results of our data reliability assessment, we verified the accuracy of data we used for timeliness calculations, which included the following fields: (1) federal rule descriptions, (2) federal rule publication dates, (3) initial final authorization dates for state base programs, (4) dates for when a state rule was authorized by the EPA, and (5) HSWA/non-HSWA designation for each rule.

Noteworthy Achievements

According to EPA staff, the agency has tried to improve the authorization process for state RCRA rules through Lean efforts. Goals for the June 2016 Lean event were to reduce the amount of time to get rules to and through the state authorization process, and to reduce the backlog of pending authorizations. As a result of the Lean event, EPA staff said they identified and removed 10 non-value-added steps. EPA staff said they also identified technological opportunities to increase efficiency in the authorization program, such as by submitting draft state authorization packages and their components online, and including EPA and state interaction on draft rules and checklists through the EPA Sharepoint system. The EPA also conducted a pilot program in two states (in Regions 1 and 4) to test the improvements identified in their Lean event. According to EPA staff, implementing the Lean process nationwide is the ORCR’s main authorization priority, and one outcome of the Lean event was the RCRA Authorization Training and Conference held March 20–22, 2018.

Chapter 2

EPA Has Not Ensured States' Compliance with Timelines for RCRA Rule Authorizations

Most states are authorized to implement a majority of new required hazardous waste rules promulgated by the EPA. However:

- States and the EPA have taken many years to authorize rules—from less than 1 year to more than 31 years.
- No state has been authorized by the EPA for all required rules. For the 173 required rules,⁴ the number of rules not authorized ranges from six to 98 per state; eight states have not been authorized for more than 50 rules.

Although states may have valid reasons for not seeking authorization for a rule, these rules are nonetheless unauthorized. EPA oversight did not result in timely state authorization of all required new hazardous waste rules. The EPA lacked internal controls to validate the completeness and accuracy of state authorization information, and did not collect sufficient data to identify reasons for delays or lack of authorization of RCRA rules. Further, the EPA has not defined authorization goals to track program performance. For HSWA rules, EPA regions can administer the requirements if a state has not received authorization for the rule. However, for non-HSWA rules, the EPA cannot administer the rule when a state has not yet been authorized for the rule, which creates regulatory gaps. Unauthorized non-HSWA rules create risks to human health and the environment.

States Have Received Authorization for Most Rules, but Authorization Often Takes Many Years

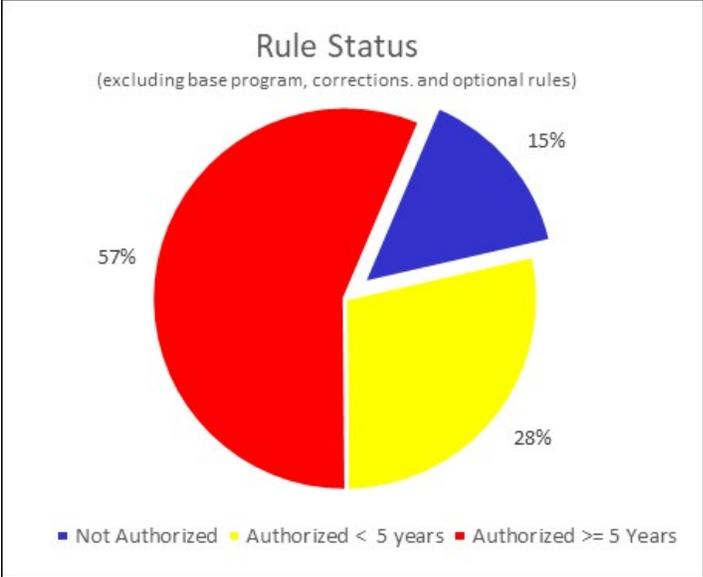
Most states are authorized for a majority of the required hazardous waste rules, but it often takes many years for states to become authorized for the new rules. In addition, all states have at least some rules for which they are not authorized.

The EPA promulgated 173 federal hazardous waste rules required for authorized states to implement, not including base program rules or corrections to rules. Each state incorporates the federal requirements into its own rules and obtains authorization from the EPA for these rules. Excluding the base program and corrections rules, nationally, about 85 percent of hazardous waste rules have been authorized in states. Specifically, for the 50 authorized states, of a total of 8,650 rules to be authorized, 7,351 have been authorized.

⁴ There are 220 required hazardous waste rules. Excluding 39 rules that are corrections to rules and the eight base program rules, there are 173 rules that need to be authorized by the EPA for states already authorized for the base RCRA program.

For many new rules, states have taken years to obtain authorization from the EPA. About 28 percent were authorized in less than 5 years while 57 percent required 5 years or more, as shown in Figure 2.

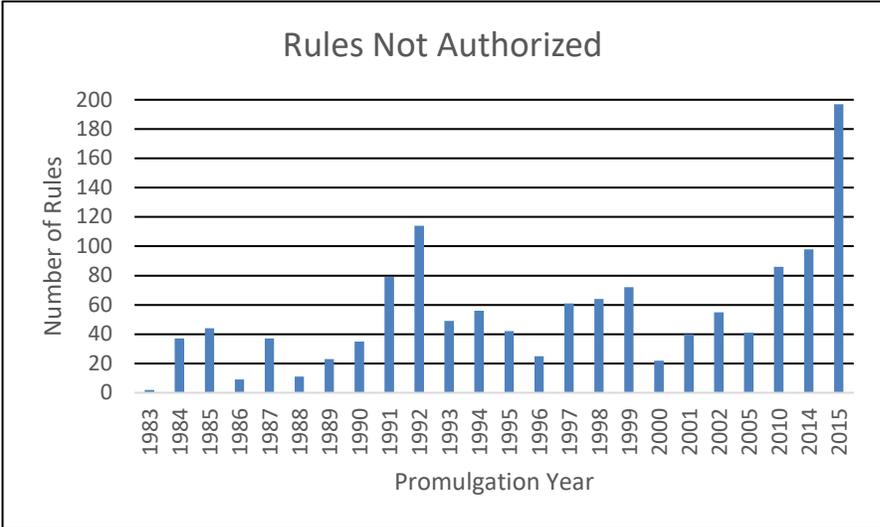
Figure 2: Years from rule promulgation to state authorization



Source: OIG analysis of EPA data.

Authorization of new hazardous waste rules can take less than 1 year to more than 31 years. The average time for rules to be authorized by the EPA is 7.7 years. Regions vary in the average time they take to authorize rules—from 5 to 12 years. Many of the rules not authorized were promulgated years ago, including some promulgated more than 30 years ago. Figure 3 provides details.

Figure 3: Number of rules not authorized – by promulgation year



Source: OIG analysis of EPA State Authorization Tracking System data.

There is no time requirement in the statute or rules that specifies when the EPA must approve or otherwise respond to state submissions for revisions to their program. States can vary considerably in the number of rules that are waiting to be authorized by the EPA. No states are authorized for all rules; the number of unauthorized rules per state range from as few as six to as many as 98 rules; eight states have not been authorized for more than 50 rules.

EPA regional staff we interviewed gave a variety of reasons for why states may delay or not pursue adoption of certain hazardous waste rules or portions of rules:

- **No impacted industry in the state:** A state would be unlikely to adopt a rule impacting industries that do not exist in the state. For example, Region 1 said that the Boiler and Industrial Furnace rule impacts only two of their six states.
- **Loss of staff resources:** Some states have also been negatively impacted by a loss of experienced staff with institutional knowledge of how to assemble RCRA state authorization packages.
- **State legislative issues:** Region 9 said some states have moratoriums in their state legislatures that do not allow regulatory changes for a specified time, or the state cannot place the rule on the legislative calendar.
- **Reluctance to pursue authorization for rules being challenged in court:** Many states are waiting for court rulings before proceeding with authorization of the 2015 Definition of Solid Waste rule. Federal courts just ruled against portions of the rule on July 7, 2017. Only one state has received authorization for the entire rule.
- **Little incentive for states to proceed with the formal authorization process:** If states have similar or equivalent rules in place that have already been adopted through their state legislative process, they do not receive any added benefit in going through the additional workload to have their rules authorized by the EPA.

Although the EPA has identified this list of practical concerns encountered by states anecdotally, the EPA does not collect data to track the rates at which these problems are encountered. Improved data will allow the EPA to better understand the reasons for delays in state authorization and better enable the EPA to provide solutions to improve the program.

Better Oversight Is Needed to Identify Reasons for Delays and to Track Performance of State Authorization

Although the EPA has some oversight efforts in place to track states' progress in becoming authorized for new rules, we found that EPA oversight does not result

in timely state authorization of all required new hazardous waste rules. More steps can be taken to improve EPA oversight, such as having better controls in place to verify the completeness and accuracy of collected state authorization data, collecting better data that identifies reasons for state authorization delays, and defining target goals for this program to improve program performance.

Limited Oversight Tools Are Available to EPA

RCRA created the framework for a comprehensive waste management program and directed the EPA to develop specific rules to implement the law, including providing the option for states to become authorized to implement the law through state hazardous waste programs. RCRA requires that authorized state programs be at least equivalent to and consistent with the federal program, even as the federal rules change.

However, there are no consequences for state programs if they do not keep their hazardous waste rules up to date with the federal rules. The RCRA statute does not authorize the EPA to assess penalties against the states for noncompliance. The EPA can withdraw authorization from a state not in compliance, but EPA staff said that it would be too extreme to withdraw the program. In addition, the EPA has few tools to encourage state implementation of federal rules.

The EPA currently uses the hazardous waste grant process to provide some oversight and monitoring of state authorization progress. States receive grant funding for implementation of state hazardous waste management programs, and in some regions states' goals and progress for authorization activities are included in grant agreements and discussed in meetings between the EPA and states. However, the EPA's grant distribution methodology does not take into account states' authorization status—that is, grant funding is not tied to state authorization progress. States that are not implementing the full program or delaying adoption of rules are still receiving the same amount of grant funding as states taking full and timely action. EPA staff expressed differing opinions as to whether it would be helpful to take state authorization status into account in the grant funding amounts—they said this was briefly considered during development of the 2015 state grant distribution methodology but was rejected. Further, EPA staff said that although state authorization status is not a factor in the allocation methodology for the distribution to regions, the regions can (and do) consider authorization status as they provide funds to individual states.

The EPA also implemented a few other oversight efforts. For example, OLEM staff hold bi-monthly conference calls with EPA regions and states to discuss state authorization topics. According to the EPA, these calls are OLEM's main direct point of contact with state staff on authorization issues, and are an important communication tool where the Lean process efforts are discussed, issues are addressed, and new authorization products are presented. Also, ORCR issued a memo in December 2014 regarding the scope of state rules, to assist EPA regions

in determining whether state rules are more stringent or broader in scope than federal rules. The EPA also recently identified state authorization as a priority in its OLEM National Program Manager Guidance for fiscal years 2018 to 2019. Further, EPA staff said state authorization issues are routinely discussed at the national RCRA Division Directors' meetings.

EPA Can Take More Steps to Improve Oversight

The EPA does not track the reasons for delays in state authorization in its state authorization database, nor does it define target goals for this program to help improve program performance. Taking these steps would enable the EPA to improve its oversight and better establish a consistent playing field for the regulated community.

The Government Accountability Office's 2014 *Standards for Internal Control in the Federal Government* says that management should design information systems⁵ to obtain and process information to respond to an entity's objectives and risks. Management is also expected to design appropriate types of control activities in its information system, such as application controls. Application controls are those controls that are incorporated directly into the computer applications to achieve validity, completeness and accuracy of data. These include controls over data input and processing. The standards also state that management uses quality information or data to make informed decisions and evaluate the entity's performance in achieving key objectives and addressing risks.

The EPA maintains a database that tracks state authorization progress. However, the current database does not readily identify where in the authorization process delays are occurring. Data are incomplete for when states have adopted new RCRA rules and submitted packages to the EPA regions for approval. Further, the agency has not implemented controls to verify the accuracy and completeness, and therefore the quality, of information collected in the database. As a result, the EPA has insufficient data to determine whether the lengthy amount of time is occurring during the state modification of its program or during EPA review and approval of the program revision. Improving the collection of state authorization data will allow the EPA to track program performance to make informed decisions and necessary improvements in the authorization process.

The Government Performance and Results Act of 1993 (GPRA), as amended by the GPRA Modernization Act of 2010, also requires agencies, among other things, to develop a federal government performance plan, and requires such a plan to establish government performance goals for the current and next fiscal years, as well as identify activities, entities and policies contributing to each goal. It also requires each plan to describe how performance goals contribute to

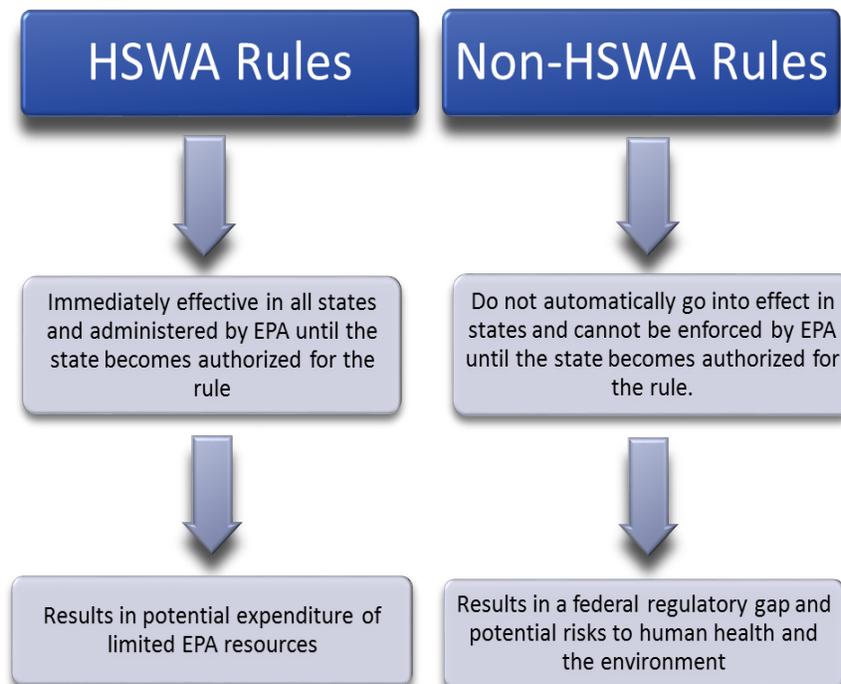
⁵ According to the Government Accountability Office's standards, "An information system is the people, processes, data, and technology that management organizes to obtain, communicate, or dispose of information. ... An information system includes both manual and technology-enabled information processes."

objectives of the agency’s strategic plan. For example, the RCRA Corrective Action program’s 2005 GPRA goals measured two interim cleanup milestones known as the Human Exposures and Groundwater Environmental Indicators. The Human Exposures Environmental Indicator measured whether all human exposure pathways were currently under control or blocked. The Groundwater Environmental Indicator measured whether the migration of contaminated groundwater had been stopped. However, the EPA has not defined goals for the RCRA state authorization program. Establishment of such goals would create accountability for the program and further improve the EPA’s oversight of the program by identifying targeted goals for measuring program performance.

Rules Not Authorized Have Impacts on EPA Resources and Environmental Protection

The impact of the lack of authorization of hazardous waste rules by states varies by the type of rule. For HSWA rules, the EPA carries the workload to implement them in states that have not been authorized for the particular rule. For non-HSWA rules, the rule does not go into effect until states adopt the rule, and cannot be enforced by the EPA until the states are authorized for the rule. This creates a regulatory gap and risk to human health and the environment, and an inconsistent regulatory landscape across the states. The HSWA/non-HSWA distinction is illustrated in Figure 4.

Figure 4: Distinction between HSWA and non-HSWA rules



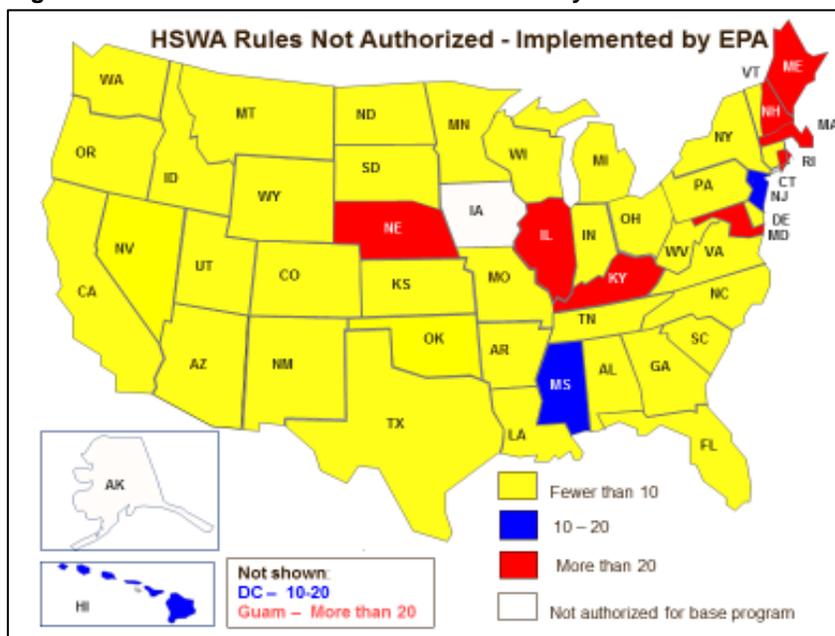
Source: OIG analysis.

If a state is not authorized for a HSWA rule, the EPA implements that rule. However, this requires the expenditure of EPA resources to manage a program intended for state management. For example, according to EPA staff, Pennsylvania has not been authorized for corrective action although it has 355 hazardous waste facilities listed on the 2020 Corrective Action Baseline—more than any other state. EPA Region 3 staff informed us that they have approximately 10 full-time staff managing the Pennsylvania corrective action program.

If a state is not authorized for a non-HSWA rule, the EPA cannot administer the rule, which results in a regulatory gap. The state could have a similar rule in place that it is administering; if not, the lack of authorization for the federal rule creates a risk to human health and the environment and an inconsistent playing field for the regulated community. EPA Region 1 enforcement staff told us they had to stop or delay two enforcement cases when they realized the state was not authorized for the non-HSWA rule.

We determined that there are almost 1,300 instances of required rules for which various state hazardous waste programs have not been authorized. Of the rules for which states have not received authorization, there are about 500 each of HSWA and non-HSWA rules, and about 300 rules that have components of both. States vary in the number of HSWA and non-HSWA rules not authorized (see Figures 5 and 6).⁶

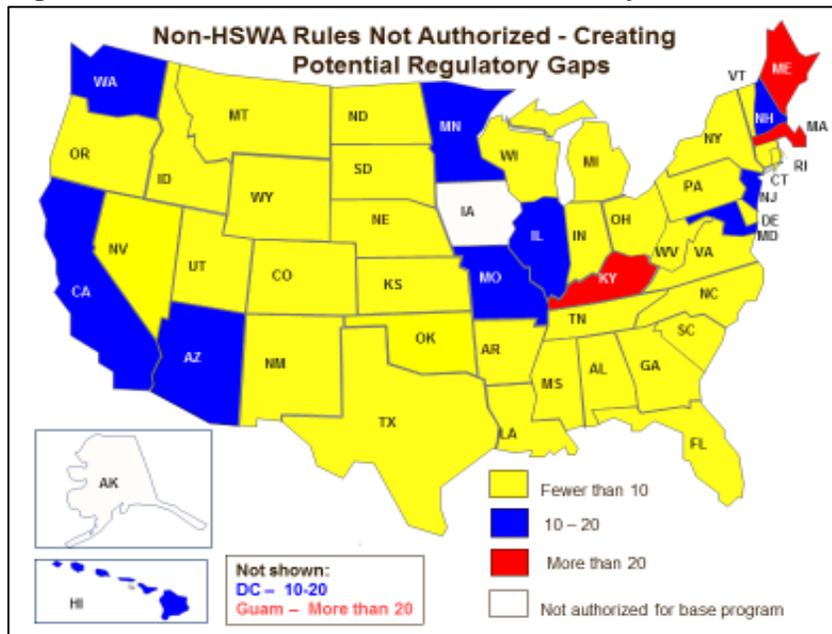
Figure 5: Number of HSWA rules not authorized by state



Source: OIG analysis of EPA data.

⁶ Figures 5 and 6 do not include rules not authorized that have both HSWA and non-HSWA components. The HSWA/non-HSWA/both designations are determined by EPA staff and are identified at the [Rule Checklists for Applications for State Authorization](#) website.

Figure 6: Number of non-HSWA rules not authorized by state



Source: OIG analysis of EPA data.

All states have at least one HSWA rule and at least five non-HSWA rules for which they have not received authorization. The range is from one to 49 HSWA rules and from five to 27 non-HSWA rules. Nine states are not authorized for more than 20 HSWA rules, which means that the EPA is responsible for implementing and enforcing the rules in those states. Four states are not authorized for at least 20 non-HSWA rules, which means that those rules are not in effect under RCRA in those states, resulting in a regulatory gap.

Conclusions

For the RCRA hazardous waste program, EPA oversight does not result in states becoming authorized for new hazardous waste rules in a timely manner. Although most of the rules have been authorized, some remain unauthorized in all 50 states. Further, for many new rules, states have taken years to obtain authorization from the EPA. When states do not keep their hazardous waste programs up to date, it creates an inconsistent playing field for the regulated community and means citizens in different states are unevenly protected from hazardous waste risks. With improved oversight, the EPA can focus its resources to create consistency for the regulated community and better protect human health and the environment.

Recommendations

We recommend that the Assistant Administrator for Land and Emergency Management:

1. Work with EPA regions to identify and track rules for which states have not sought authorization under the Resource Conservation and Recovery Act Subtitle C hazardous waste program and identify the reason authorization has not been pursued by the state, and then prioritize rules for authorization by the states.
2. Develop and implement a plan to collect the necessary data on state authorizations to identify the cause of delays and make informed decisions on how to improve the process.
3. Improve data quality for state authorizations under the Resource Conservation and Recovery Act Subtitle C hazardous waste program by implementing internal controls to verify the accuracy and completeness of the data.
4. Develop and implement state authorization performance measures for the Resource Conservation and Recovery Act Subtitle C hazardous waste program to track annual progress.

Agency Response and OIG Evaluation

The acting Assistant Administrator for OLEM provided a response. OLEM stated that it appreciates the OIG's attention to the authorization of state hazardous waste management programs under RCRA, and that the report and its recommendations will fit in well with its ongoing efforts to improve the RCRA state authorization process. OLEM agreed with all recommendations, and the recommendations are resolved with agreed-to actions pending.

Appendix A contains OLEM's response to our draft report. We reviewed the response and revised the report as appropriate.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	14	Work with EPA regions to identify and track rules for which states have not sought authorization under the Resource Conservation and Recovery Act Subtitle C hazardous waste program and identify the reason authorization has not been pursued by the state, and then prioritize rules for authorization by the states.	R	Assistant Administrator for Land and Emergency Management	3/31/19	
2	14	Develop and implement a plan to collect the necessary data on state authorizations to identify the cause of delays and make informed decisions on how to improve the process.	R	Assistant Administrator for Land and Emergency Management	3/31/19	
3	14	Improve data quality for state authorizations under the Resource Conservation and Recovery Act Subtitle C hazardous waste program by implementing internal controls to verify the accuracy and completeness of the data.	R	Assistant Administrator for Land and Emergency Management	3/31/19	
4	14	Develop and implement state authorization performance measures for the Resource Conservation and Recovery Act Subtitle C hazardous waste program to track annual progress.	R	Assistant Administrator for Land and Emergency Management	9/30/19	

¹ C = Corrective action completed.
R = Recommendation resolved with corrective action pending.
U = Recommendation unresolved with resolution efforts in progress.

OLEM Response to Draft Report and OIG Comment

(Dated June 19, 2018)

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. OPE-FY16-0033
“Incomplete Oversight of State Hazardous Waste Rule Authorization Creates
Potential Regulatory Gaps and Human Health and Environmental Risks,” dated
May 21, 2018

FROM: Barry Breen
Acting Assistant Administrator

TO: Arthur A. Elkins, Jr., Inspector General
Office of Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject audit report. Following is a summary of the agency’s overall position, along with its position on each of the report recommendations. The agency agrees with all the recommendations, and thus for each recommendation we have provided high-level intended corrective actions and estimated completion dates to the extent we can.

AGENCY’S OVERALL POSITION

The Office of Land and Emergency Management (OLEM) appreciates the Office of Inspector General’s (OIG’s) attention to the authorization of state hazardous waste management programs under the Resource Conservation and Recovery Act (RCRA). Effective management of this program is essential for ensuring that environmental obligations are met. In fact, as explained to the OIG at the initiation of this review, the Office of Resource Conservation and Recovery and EPA’s regional offices were already involved in a broad array of substantial state authorization program performance improvement efforts which continue and remain ongoing. As such, this report and its recommendations will fit in well with our ongoing efforts to improve the RCRA state authorization process.

OLEM believes that the report should discuss in greater detail that in many cases even though a state has not been authorized for a federal hazardous waste rule, the state has nonetheless adopted the rule. States have adopted 40% of the universe of rules for which they are not authorized. In this situation the state has full regulatory authority for implementation and enforcement. Further, in these instances it is likely that EPA has already reviewed the state rules. Therefore, the state would have incorporated EPA comments that ensure that rules are at least as stringent as the federal rules. EPA recommends that states seek and reflect EPA review before

the final promulgation of state rules. The report falls short of a full acknowledgement and discussion of this critical point and as such the report's characterization of potential regulatory gaps could be misleading.

OIG Response 1: While states may have adopted rules, it is not clear that the adopted rules meet the authorization criteria without formal approval by the EPA. We have no basis for determining if the adopted rules are equivalent to the authorized rule without extensive analysis.

Another overall concern that OLEM has is the report fails to define the scope and significance of the cited regulatory gaps. Rules vary in their significance and impact and by essentially treating all the rules as though they have the same reach and importance the OIG report, in some cases, does not accurately gauge the impact of the cited regulatory gaps. For example, most of the unauthorized non-Hazardous and Solid Waste Amendments (HSWA) rules are minor in nature and many are less stringent. We also note that in many instances, where a state has not been authorized for a HSWA rule, states are conducting some implementation activities, lessening the impact on EPA resources.

OIG Response 2: Determining the impact of lack of implementation of rule authorization, such as defining whether a rule is "minor," is beyond the scope of this report. However, we wish to clarify that "less stringent" rules are not considered in our analysis, as these would be considered optional for authorization. Our analysis included only the required rules, and excluded optional rules and rules that were corrections to prior rules.

Finally, we would like to provide clarification regarding the report's reference to the RCRA authorization bi-monthly conference call that OLEM conducts. This call is an important tool that is used to manage the RCRA state authorization process. The call includes not just the EPA regions but the states as well, and is OLEM's main direct point of contact with state staff on authorization issues. This is an important communication tool where the Lean process efforts are discussed, issues are addressed, and new authorization products are presented.

OIG Response 3: We modified the report to include this additional information.

OLEM appreciates the acknowledgement of the Agency's Lean management efforts to improve the efficiency of the RCRA authorization process. We also note that the recommendations do not touch upon steps and interactions within the RCRA authorization process between EPA and the states. We continue to believe that national implementation of the authorization process reforms identified in the recent Lean Pilot streamlining efforts will have a significant impact on the time and effort needed for states to adopt and gain authorization for the many EPA rulemakings under the RCRA hazardous waste management program. Therefore, we plan to implement the recommendations in a pragmatic and efficient way that preserves the resources essential to maintain our primary state authorization program focus, which is continuing the national development and rollout of the Lean process reforms. With these considerations in mind, OLEM accepts the OIG's recommendations in the draft report as described below and agree that actions undertaken in response to these recommendations will support our ongoing efforts.

AGENCY’S RESPONSE TO REPORT RECOMMENDATIONS

Agreements

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by Quarter and FY
1	Work with EPA regions to identify and track rules for which states have not sought authorization under the Resource Conservation and Recovery Act Subtitle C hazardous waste program and identify the reason authorization has not been pursued by the state, and then prioritize rules for authorization by the states.	OLEM will interview regional staff from all ten EPA regions and document the reasons why states have not pursued authorization for specific rules. OLEM will also prioritize rules for authorization by the states as appropriate and track them.	2 nd Quarter FY 2019
2	Develop and implement a plan to collect the necessary data on state authorizations to identify the cause of delays and to make informed decisions on how to improve the process.	OLEM will interview staff from all ten EPA regions and document the cause of delays in authorization. These data will be factored into the Agency’s Lean process reform efforts, which will include national recommendations to improve the authorization process.	2 nd Quarter FY 2019
3	Improve data quality for state authorizations under the Resource Conservation and Recovery Act Subtitle C hazardous waste program by implementing internal controls to verify the accuracy and completeness of the data.	OLEM will develop data reporting standards and deadlines for the regional offices to ensure that new data events are fully reported and entered into the State Authorization Tracking System (StATS).	2 nd Quarter FY 2019
4	Develop and implement state authorization performance measures for the Resource Conservation and Recovery Act Subtitle C hazardous waste program to track annual progress.	OLEM will develop and implement RCRA state authorization performance measures to track annual progress.	4 th Quarter FY 2019

CONTACT INFORMATION

If you have any questions regarding this response, please contact Wayne Roepe, in OLEM's Office of Resource Conservation and Recovery, at (703) 308-8630.

Attachments

cc: Nigel Simon
Steven Cook
Kathleen Salyer
Sonya Sasseville
Kevin Christensen
Tina Lovingood

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