Overview

- When RCRA was written, it was Congress’ intent for States to assume primary responsibility for implementing the hazardous waste regulations. This is because the States are closer to, and more familiar with, the regulated community and better able to respond to local needs effectively.
In order for a State to assume the regulatory lead as the implementing agency, it must be authorized by EPA to do so.
Overview

- For a State to receive final authorization, it must be fully equivalent to, no less stringent than, and consistent with the Federal program.

- States may impose requirements that are more stringent and broader in scope than the federal requirements.
Program Revisions

- Once a State has gained final authorization, it must continually amend and revise its program to maintain its authorized status.

- A State with final authorization must modify its program on a yearly basis to reflect changes to the federal program resulting from the promulgation of new rules.
Program Revisions

- Either EPA or the approved State may initiate program revisions.

- Program revisions may be necessary when EPA or the State’s statutory or regulatory authority is modified or supplemented.
The State shall keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities.
Program Revision Clusters

- New Federal rules are grouped into annual clusters, and a State revises its program by adopting and becoming authorized for the entire cluster.

- A cluster begins on July 1 of each year and ends June 30 of the following year.
Program Revision Clusters

- There are two different types of hazardous rule promulgations - HSWA and Non-HSWA.
  - HSWA rules are promulgated pursuant to the 1984 amendments of RCRA.
  - Non-HSWA rules are promulgated pursuant to the 1976 amendments of RCRA.
Program Revision Clusters

- By July 1 of each year, an authorized state must adopt the cluster, which includes all changes to the federal program that occurred during the 12 months preceding the previous July 1.

- The deadlines for program modifications may also be extended for one year if statutory amendments are necessary.
Federal regulations promulgated that are less stringent than existing federal regulations are considered “optional” and states are not required to adopt the regulations.
Authorization Approvals

- The Administrator will publish his approval or disapproval of a State program revision in the FEDERAL REGISTER.

- Approval or disapproval of a State program revision shall become effective 60 days after the date of publication in the FEDERAL REGISTER.
Express Authorization Process

- To reduce the substantial level of effort and length of time required to prepare, review and approve State applications for RCRA authorization; EPA developed an initiative, called Express Authorization, to make the authorization process more efficient.
Express Authorization Process

- Express Authorization allows States to prepare a one page Attorney General’s Statement which summarizes a State’s statutory authority.

- Express Authorization establishes a goal for granting authorization 60 days after receipt of final application from States that Incorporate by Reference and has an Approved Statutory Checklist.
RCRA/HSWA Rules Authorized

- AL: 92%
- FL: 93%
- GA: 99%
- KY: 44%
- MS: 87%
- NC: 98%
- SC: 91%
- TN: 98%
In April 2003 a workgroup consisting of Regional Offices, Office of General Counsel, the Office of Enforcement and Compliance Assurance, the Office of Solid Waste and the Office of Policy Economics and Innovation was formed to examine potential improvement to the authorization process.
In particular the workgroup examined whether the authorization process could be flexible enough to consider innovative state approaches that did not compromise environmental protection or violate statutory or regulatory requirements.
Rather than focusing on whether state and federal requirements match up verbatim, this approach focuses on whether the state requirements provide equal environmental results as the federal counterparts.
Functional Equivalency

- Under this approach a State need not always track every requirement in the federal regulations with a corresponding state requirement, provided that the related sets of state requirements are equal in effect to the related set of federal requirements.
Functional Equivalency

- While a line by line review remains necessary to assure there is equal effect, there can be different structure or method for achieving environmental effects.
EPA will analyze any different State approaches on a case by basis and determine that it provides equivalent, if not greater protection to human health and the environment as the federal approach.