

US EPA ARCHIVE DOCUMENT

MEMORANDUM

SUBJECT: Pilot Delegation of RCRA Subtitle C State Program
Revision Authorizations to the Regions

FROM: Don R. Clay
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General Counsel

TO: Regional Administrators, Regions I-X

In response to a request made by the Regional Waste Management Division Directors as well as the recommendation of the RCRA Implementation Study, we are fully delegating the responsibility for RCRA Subtitle C State program revision application review and authorization decisions to the Regions on a two year pilot basis. We look upon this delegation as an opportunity to make EPA more responsive in authorizing RCRA State programs while, at the same time, developing an expanded cooperative role between the Regions and Headquarters. This pilot delegation will allow the Regions to review and make decisions on program revision applications without HQ consultation or concurrence. However, Headquarters review and concurrence will still be required for those few States, and in the future, Indian Tribes, applying for base RCRA program authorization. This delegation is effective immediately.

In setting up the Subtitle C program, Congress envisioned the Agency would expeditiously authorize qualified States. A quality authorization program requires a significant commitment to enhance State capability and actively delegate programs to the States. In order to support this commitment, we are asking that

each Region submit an annual "State Enhancement and Authorization Plan" outlining what the Region is doing to build State capability and encourage authorization. Guidance for developing this plan will be in the FY 92 RCRA Implementation Plan to be issued by April 1, 1991, and will indicate when these plans will be due.

Each Region will be fully responsible for maintaining the integrity of the authorization decision process, including explaining those decisions to the public and Agency oversight bodies such as Congress. In addition, delegation of this authorization responsibility to the Regions is contingent on Regional commitment to raise issues of national significance to Headquarters on a timely basis and to adhere to basic guidance and policy as well as to the underlying statutory and regulatory requirements for authorization. To that end, each Regional Waste Management Division Director must certify prior to the Regional Administrator approving an application that national issues have been brought to Headquarters' attention.

As it is critical that the Office of the Regional Counsel be fully involved, the Regional Counsel must also provide assurances that all legal issues have been reviewed and satisfactorily addressed. The Offices of Regional Counsel and the Office of the General Counsel will share responsibility for any defensive litigation arising from delegated approvals. The Offices of Regional Counsel must notify OGC promptly when litigation is filed. OGC will determine whether the case raises any issues of national significance and retain responsibility for litigating such issues. The Offices of Regional Counsel will be responsible for all other issues.

Headquarters will issue broad national guidance outlining potential issues of national significance. However, since many of the issues that arise in a revision application are of first impression, increased Regional alertness to potential national issues is critical and Regions should err on the side of prudence in raising issues to Headquarters.

At the end of the two year delegation pilot, we will decide, based on our review of each Region's authorization performance, whether to continue the delegation. In the near future, Headquarters will establish oversight criteria by which we will measure Regional success in achieving the national authorization goals of enhancing State capability and delegating programs to the States. There will be regular evaluation of Regional performance, possibly through annual audits and Headquarters attendance at end-of-year and mid-year State evaluations. Regions will also be expected to maintain accurate and timely authorization data.

Each Region undertaking this delegated review and

authorization role must fully recognize the significantly increased responsibility of Regional authorization program staff and the need for active ORC involvement. In addition, each Region is responsible for providing adequate staffing and training for authorization. Headquarters will provide two

authorization training workshops beginning in the Spring of 1991 and be available for technical (policy and legal) assistance to the Regions upon request.

The success of this delegation is dependent upon all of us taking our responsibilities seriously, in full realization of the critical implications of authorization decisions. We know we can count on you and your staff to give RCRA authorization careful attention so that we can all be proud of our accomplishments and maintain a track record that withstands careful public and Congressional scrutiny.

cc: Hazardous Waste Management Division Directors, Region I-X
Regional Counsels, Regions I-X
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