

US EPA ARCHIVE DOCUMENT

[Please note that this document is only a model. Regions are welcome to modify the language and contents of this model to meet their own specific needs and concerns. Sections marked with asterisks discuss provisions required under 40 C.F.R. §271.8. In general, the regulations on crafting the MOA are very flexible, but some impose minimum requirements (for example, §271.8(b)(5) does not allow restrictions on EPA inspection authority over non compliant facilities; §271.8(a) does not allow restrictions on EPA's statutory oversight authority). Check §271.8 when modifying the model. Also, make sure that other regulations apart §271.8 don't apply. (for example, any exchange of information from EPA to the State is subject to the CBI regulations in 40 CFR part 2; commenting on draft permits is subject to §271.19.)

Note that Regions used different documents to enter into agreements in the States, and use different procedures in coordinating permit issuance and administration with the States. The MOA should name the agreements used in your Region and should describe the procedures used in your Region.]

MEMORANDUM OF AGREEMENT BETWEEN

THE STATE OF []

AND

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION []

I. GENERAL

****This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR 271.8 for the State of *[State Name]*'s Hazardous Waste program (hereinafter "State Program") authorized under Section 3006 of the Resource Conservation and Recovery Act (hereinafter "RCRA or "the Act") of 1976 (42 USC 6901 et seq.), as amended (Public laws 94-580, 96-482, 98-616), and the United States Environmental Protection Agency (hereinafter EPA) Regional Office for Region *[insert number]*. This Agreement further sets forth the manner in which the State and EPA will coordinate in the State's administration of the authorized State program and, pending State authorization, EPA's administration of the provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA). For purposes of this Agreement, references to "RCRA" include HSWA.**

This Agreement is entered into by the Director *[or other title as appropriate]* of *[State Agency]* (hereinafter "Director" or "the State") and the Regional Administrator, EPA Region *[insert number]* (hereinafter "Regional Administrator" or "EPA"). *[Where State program responsibility is shared among two or more agencies, each of the agencies is to be identified here as a party to the Agreement, the Director of each is to sign the Agreement, and the Agreement must identify which of the agencies is responsible for each provision of the*

Agreement. The Agreement should also indicate which State agency will be the lead agency communicating and coordinating with EPA.]**

****Nothing in this Agreement shall be construed to restrict in any way EPA's oversight and enforcement authority under RCRA. Nothing in this Agreement shall be construed to contravene any provision of 40 CFR Part 271.****

****The parties will review the Agreement jointly at least once a year (and other times as appropriate) during preparation of the annual State Grant work program or Performance Partnership Grant (hereinafter "Grant") [or insert appropriate name of State grant agreement], in connection with grant funding under section 3011 of RCRA.****

****[indicate how EPA and the State can modify the agreement in the future, e.g.:]This Agreement may be modified upon the initiative of either party in order to ensure consistency with State program modifications made or for any other purpose mutually agreed upon. Any revisions or modifications to this Agreement must be in writing and must be signed by the State and the Regional Administrator. This Agreement will remain in effect until such time as State program authorization is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR 271.22 and 40 CFR 271.23.****

This Agreement is being executed (or revised) because the State is seeking authorization for **[insert description of relevant changes]**. This Agreement shall be signed by the State and the Regional Administrator and shall become effective **[Insert either: 1) at the time the State's authorization takes effect, on (date of the Federal Register notice of the Regional Administrator's decision to grant authorization to the State,); or 2) after being signed by both parties.] [Insert either: 1) This Agreement shall modify and be incorporated by reference into the Agreement dated ____.; or 2) This Agreement shall supersede the Agreement dated ____.]**

II. POLICY STATEMENT

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon granting of final authorization by EPA, the State implements the authorized provisions of the RCRA hazardous waste program within its geographic boundaries, except in Indian country **[Modify accordingly if the State has explicitly demonstrated its authority and has been expressly authorized by EPA to implement the RCRA program in part or all of Indian country. Remove reference to Indian country if the State does not contain Indian country.]** The State will conduct its hazardous waste program in accordance with EPA program policies and guidance.¹ While EPA is responsible for the implementation of those provisions of

¹**[Insert any applicable policies, such as those listed here. Tailor as appropriate]** These policies and guidance include, at a minimum, the OSWER Consolidated Guidance; the Office of Enforcement and Compliance Assurance MOA

HSWA for which the State is not authorized, it is the intention of EPA and the State to coordinate the implementation of such provisions to the greatest degree possible. The State and the Regional Administrator agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective administration of the State program.

EPA will oversee implementation of the authorized State program in order to ensure full execution of the requirements of RCRA, to promote national consistency in the hazardous waste program, and to allow EPA to report to the President and Congress on the achievements of the hazardous waste program. EPA will conduct oversight through written reporting requirements, permit overview, compliance and enforcement overview, and annual review of the State's programs.

III. STATE PROGRAM REVIEW

The Regional Administrator will assess the State administration and enforcement of the hazardous waste program on a continuing basis for equivalence and consistency with RCRA, this Agreement, and all applicable Federal requirements and policies, and for adequacy of enforcement. EPA will conduct this assessment by reviewing information submitted by the State in accordance with this Agreement and the State grant work program, permit overview, compliance and enforcement overview, and annual review of State program activities. 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 State.

****The State agrees to allow EPA access to all files and other information requested by the Regional Administrator or his or her designee and deemed necessary by EPA for reviewing State program administration and enforcement.**** File reviews may be conducted at any time. Program review meetings between the State 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 will be scheduled at least fifteen days ***[or any other appropriate period of time]*** in advance unless mutually agreed to differently. A tentative agenda for the meeting will be prepared by EPA.

guidance; RCRA Civil Penalty Policy dated October 26, 1990; National Criteria for a Quality Hazardous Waste Program; revised Hazardous Civil Enforcement Response Policy (April, 15, 1996); and the EPA Policy on Performance Based Assistance (May 31, 1985); and the May 1, 1996 Advanced Notice of Proposed Rulemaking for the Corrective Action Program, Setting Customer Service Standards (E.O. 12862, September 11, 1993); Improving Customer Service (Fred Hanson, April 8, 1998); Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations (E.O. 12892, February 11, 1994); EPA OSWER Environmental Justice Action Agenda (EPA 540/R-95/023, 1995).

The State and EPA agree to develop, on an annual basis as a part of the State grant work program, criteria for priority activities, including activities regarding handlers of hazardous waste. These criteria will be based on guidance issued by EPA in the annual Agency Operating Year Guidance *[or whatever agency document sets such criteria]*, other guidance documents as may be appropriate, and State specific concerns, and will serve to identify those activities which should receive the highest priority during the grant period.

IV. INFORMATION SHARING

A. General

This Section covers information sharing on miscellaneous elements of the RCRA program, including notification, RCRIS data, etc. Specific information sharing requirements for the other major program elements are covered in their respective Sections: **V. Permit Issuance, VI. Permit Administration, and VII. Enforcement.** ****Detailed tables describing the flow of documents between the State and EPA for Sections V., VI., and VII. of the MOA are included at the end of this document. *[Or the MOA can refer to other agreement listing documents, as long as such list includes all the relevant documents as listed in the note to the table]*****

-As the respective information needs of the State and EPA evolve, changes to this section of the Agreement or the tables may be appropriate. During the annual review of this Agreement the State and the Regional Administrator will carefully examine the information sharing requirements for needed revision.

Information related to Sections V. and VI., Permitting, shall be sent by the State to: *[EPA contact address.]* EPA shall send permit related information to: *[State specify.]* Information related to Section VII., Enforcement, shall be sent to: *[EPA contact address.]* EPA shall send enforcement related information to: *[State specify.]*

1. EPA will keep the State 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 will also provide general technical guidance to the State. EPA will share with the State any reports developed by EPA from the data submitted through State reporting requirements.
2. EPA will make available to the State other relevant information as requested which the State needs to implement its approved program. Information provided to the State will be subject to the terms of 40 CFR Part 2, which requires authorization of the State to receive confidential business information in accordance with the procedures of Part 2.
3. The State agrees to inform the Regional Administrator of any proposed program changes which would affect the State's ability to implement the authorized program with as much advance notice as possible. Program changes of concern include modification of the State's legal authorities (i.e., statutes, regulations and judicial or legislative actions affecting those authorities), modifications of Memoranda of Agreement or Understanding with other

agencies, and modifications of resource levels (i.e., available or budgeted personnel and funds). Program changes also include legal changes that would affect compliance monitoring and enforcement, such as privileges and immunities laws. The State recognizes that program revisions must be made in accordance with the provisions of 40 CFR 271.21, and that until approved by EPA, revisions are not authorized as RCRA Subtitle C requirements. EPA agrees to support the State with timely review of proposed State legislation that might have a significant potential to affect the authorized hazardous waste program.

4. ****The State agrees to provide any pertinent information requested by the Regional Administrator or his or her designee within a mutually agreed upon time frame, *[or specify time limit, if appropriate]* as necessary for EPA to carry out its oversight responsibilities.****
5. ****The State agrees to submit the following reports and documents to the Regional Administrator or his or her designee within the specified time periods: *[specify relevant reports, for example:]* a) Midyear and End-of-Year reports on the dates set in the Grant and b) Additional reports and documents as specified by the Grant.****
6. The State agrees to provide EPA with a copy of any decisions regarding requests made by hazardous waste handlers to change their classifications (e.g., requests to be deleted as generators but to retain facility status) and facility requests to make on-site changes prior to permit issuance (e.g., requests to handle additional wastes not identified on the facility's original notification and RCRA Part A Permit Application.)
7. ***[Optional:]*** EPA agrees to adhere to the schedules in the Grant and the schedules specified by the Grant, including the Document Flow Tables.

B. Site Visits

EPA is responsible for maintaining reliable national data on hazardous waste management. This data is used to report to the President and Congress on the achievements of the hazardous waste program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information, EPA generally will first seek to gain this information from the States. The State of ***[insert name]*** agrees to supply the Regional Administrator with this information if readily available and as resources allow. If the State is unable to provide the information or if it is necessary to supplement the State information, EPA may conduct a special survey or perform information collection site visits after notifying the State (normally with at least seven days advance notice) and inviting the State to participate in the site visit. EPA will share with the State any reports developed by EPA as a result of such information collection.

C. 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. EPA shall call *[State specify]* at *[State specify]*. The State shall call EPA's Emergency Response Branch at *[EPA specify]*.

D. Confidentiality

1. Any information obtained or used in the administration of the State program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2, Public Information.
2. EPA agrees to furnish to the State information in its files which is not submitted under a claim of confidentiality and which the State needs to implement its program. Subject to the conditions in 40 CFR Part 2 (including authorization to receive confidential information pursuant to 40 CFR 2.305(h)), EPA will furnish to the State information submitted to EPA under a claim of confidentiality which the State needs to implement its program. All information EPA agrees to transfer to the State will be transferred in accordance with the requirements of 40 CFR Part 2. EPA will notify affected facilities when such information is sent to the State. The State will handle such information consistent with its authorized program.

E. Delisting *-[Optional: The Region may wish to insert a delisting agreement]*

[Example of delisting agreement when a State is authorized for delisting:] The State shall send a copy of the delisting petition, and all subsequent revisions, to EPA within 15 days of receipt. Please consult the Enforcement and Compliance document flow table, attached to the Grant, for additional information on delisting documents the State should share with EPA.

****F. Notification**

[Suggested language if EPA assigns identification numbers:]

EPA agrees to assign EPA identification numbers to generators and transporters and to owners and operators of hazardous waste treatment, storage and disposal facilities submitting notifications after the effective date of this Agreement.

[Suggested language if EPA receives Notifications:]

EPA agrees to provide the State with notification information from EPA Form 8700-12 obtained prior to the effective date of this Agreement if such information has not already been provided to the State. The Director and EPA shall agree on the format in which the information will be provided and

the information will be provided within thirty days of the effective date of this Agreement. EPA will also forward, on a monthly basis, notification information (including newly assigned EPA identification numbers) submitted by persons in the State who file such forms after the effective date of this Agreement. This information will be submitted to the Director within 10 days of the end of each month for the preceding month.

[Suggested language for States that receive Notifications but where EPA assigns i.d. number:]

Pursuant to section 3010 and according to agreements between EPA and the State, the State is responsible for receiving, processing, and verifying information on notification forms (Form 8700-12) and for forwarding such information to EPA for the assignment of EPA identification numbers.

[Suggested language for States that assign EPA identification numbers:]

EPA and the State have jointly decided that the State will assign all EPA I.D. numbers and enter all notification data into RCRIS. If the applicant sends a notification form (8700-12 or equivalent) directly to EPA, EPA will forward the form to the State for the assignment of an I.D. number within 30 days of receipt. If the State receives a notification form from EPA or from the applicant, the State will assign an I.D. number to the applicant and inform the applicant of its number.**

G. Variances and Waivers [if applicable, where the State's variance authority is broader than the Federal authority, and where the State and the Region enter into an agreement to limit the State's waiver authority]

[Example of EPA-State agreement for EPA's review of proposed variances:] The State will obtain concurrence from the Regional Administrator on all variances to assure that the State program is as stringent as the Federal program. EPA agrees to evaluate these requests for concurrence within forty-five (45) days of receipt. All public notices of intent to issue variances or waivers should be sent to EPA within fourteen (14) days of issuance. The State will transmit a copy of all variance or waiver approvals to EPA within ten (10) days of issuance.

H. RCRA Data Management [Specify procedures for management on RCRIS. For example:]

1. The State agrees to use, maintain, and enter data into, the national RCRA data management systems (currently RCRIS).
2. The State is responsible for the correctness of the data it enters. The State will timely correct any State data errors in the RCRIS edit reports generated by the merge procedure. The State will provide all core data to RCRIS, as defined by EPA Headquarters, plus non-core data as agreed to with Region ***[insert number]*** program offices. EPA is responsible for the correctness of the data it enters, and will timely correct any data errors that EPA has created.
3. The State will provide to EPA by the 20th of every month RCRIS data representing the previous month's activities. The State will run data assessment reports provided by EPA on the Region

[insert number] RCRIS Reports menu at least once a quarter and make indicated corrections promptly.

4. The State will collect Biennial Reporting data and provide the data to EPA for loading into the national Biennial Report System (BRS) according to the schedule promulgated by EPA Headquarters, and the schedule in the Grant.
5. EPA will be responsible for maintenance and clean-up of all EPA data entered in the RCRIS corrective action module prior to the State's authorization for HSWA corrective action.
6. EPA will inform the State promptly when changes are made to RCRIS that might affect the State's implementation of RCRIS. EPA will assist the State in RCRIS consulting and training as resources allow.
7. EPA will help the State maximize usefulness of RCRIS and BRS data by enhancing existing reports or writing new report programs to fit specifications of the State. These reports will be available on the EPA mainframe computer. EPA will also assist the State in resolving BRS data quality problems according to the schedule promulgated by EPA Headquarters.
8. Neither the State nor the Region will unilaterally change its RCRIS implementer system in any way without advance consultation with, and agreement of, the other party.
9. Both the Region and the State have the right, as implementers of RCRIS, to choose and to change their RCRIS hardware platforms to optimize system efficiency, but will not do so in such a way as to affect the merged data base, access to the merged data base reports, or the potential for updating their implementer databases with the other party's data.

V. PERMIT ISSUANCE

A. EPA Permitting

Upon authorization of the State program, EPA will suspend issuance of new Federal permits imposing requirements for hazardous waste treatment, storage, and disposal facilities for which the State is receiving authorization. EPA will continue to issue new RCRA permits imposing requirements mandated by HSWA that are not covered by the State's authorized program, until the State receives final authorization for equivalent and consistent State standards. **[Add if appropriate:** If EPA promulgates new standards requiring a permit modification, then EPA may, pursuant to 40 CFR 270.42(b)(6)(vii), extend the time period for final approval or denial of a modification request until such time that the State receives authorization for the new standards. At the time the State receives authorization for the new standards, EPA will suspend issuance of new Federal permits imposing those standards in the State.]

****EPA will transfer any pending permit applications, completed permits *[EPA may want to keep permit files for issued permits which EPA will continue to administer –tailor appropriately]* or pertinent file information to the State within thirty days of the approval of the State program in conformance with the conditions of this Agreement. —**

[Each Region should try to make special arrangements with the State for the State to assume responsibility for issuing particular permits EPA has been working on. The State will need specific authority to assume responsibility in the midst of the process, unless the proceedings have been joint, with both the same Federal and State administrative procedures followed up to the time the State assumes full responsibility.] **

The State and EPA have agreed to a joint permitting process (see section V.D. of this Agreement) for the joint processing and enforcement of permits for those provisions of RCRA for which the State does not have authorization. As the State receives authorization for additional provisions of RCRA, EPA will suspend issuance of new Federal permits in the State for those provisions.

B. EPA Overview of State Permits

****While EPA may comment on any permit application, draft permit or proposed permit modification, EPA's overview function will focus primarily on those facilities identified by the State and EPA in *[specify document, for example:]* the State's Multi-Year Permit Strategy and annual State Grant Work Program.**

EPA may comment on any draft permit or proposed permit modification, within forty five days of its receipt ***[or specify appropriate time]***, whether or not EPA commented on the permit application. Where EPA indicates in a comment that issuance, modification, reissuance, termination or denial of the permit would be inconsistent with the approved State program, EPA shall include in the comment:

- a. a statement of the reasons for the comment (including the section of the State law or regulations that supports the comment), and
- b. the actions that should be taken by the State in order to address the comment (including the conditions which the permit would include if it were issued by EPA).

[Insert here any agreement the Region makes with the State regarding resolution of EPA comments on draft permits before final permit issuance by the State, e.g., the State and the RA agree to meet or confer whenever necessary to resolve a disagreement between their staffs on the terms of any RCRA permit to be issued by the State. The Region may want to add a specific time limit within which the State and RA will meet. Example:] The State and EPA will usually reach concurrence on permit conditions prior to issuance of the draft permit or approval of proposed permit modifications. EPA shall withdraw such comments if satisfied that the State has met or refuted its concerns and shall also provide the permit applicant with a copy of such withdrawal.******

Under section 3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of 40 CFR Part 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, EPA will observe the conditions established in 40 CFR 271.19(e) and any other applicable authorities.

C. State Permitting

****The State is responsible for expeditiously drafting, circulating for public review and comment, issuing, modifying, reissuing and terminating RCRA permits for those hazardous waste treatment, storage and disposal facilities subject to the authorized provisions of the State's program and shall do so in a manner consistent with RCRA as amended by HSWA, this Agreement, all applicable Federal requirements, and the State's Program Description. *[Insert here any agreement the State makes regarding the adoption or reissuance of EPA-issued RCRA permits or portions of permits. Note that the State must have specific authority either to assume administration and enforcement of EPA-issued permits or portions of permits or to adopt them as State permits; otherwise, the State must reissue the permits as State RCRA permits.]* The State agrees to issue, modify and reissue all permits subject to the authorized portions of the State's program in accordance with *[insert citation to relevant State procedural environmental statutes and regulations and administrative procedures act and regulations]* and to include as permit conditions all applicable provisions of *[insert citation to relevant State environmental regulations]*. This agreement also applies to permits issued after final authorization but for which the processing may have begun before final authorization.****

[Insert here any agreement the State makes that is necessary to carry out the permitting procedures analogous to those at 40 CFR Parts 270 and 124.]

The State agrees to consider all comments EPA makes on permit applications and draft permits. The State will satisfy or refute EPA's concerns on a particular permit application, proposed permit modification, or draft permit in writing before issuing the permit or making the modification.

****D. Joint Permitting Process *[insert if there is a joint permit agreement]***

Pursuant to section 3006(g)(1), and in accordance with RCRA, as amended, EPA has the authority to issue or deny permits to facilities in **[Name of State]** for the requirements and prohibitions in or stemming from HSWA, until the State amends its program to reflect those requirements and prohibitions and receives authorization for those amendments.

EPA and **[Name of State]** hereby establish this joint permitting process for the issuance of RCRA permits in **[Name of State]**. This joint permitting process is established in accordance with section 3006(c)(3) of RCRA. The administrative details of the joint permitting process shall be incorporated into the annual State grant work program ***[or appropriate document]***. The duties and

responsibilities of EPA and the State for joint permitting, including worksharing agreements, shall also be specified in the annual State grant work program ***[or appropriate document]***.

The details of the joint permitting process, as contained in the State Grant Work Program ***[or appropriate document]***, shall be reviewed and revised as often as necessary, but no less often than annually to assure its continued appropriateness.

Upon authorization of the State for any of the provisions of RCRA, the specifics of the Joint Permitting Agreement as set in the annual State grant work program ***[or appropriate document]*** shall be amended to reflect the authorization. Amendment of this Memorandum of Agreement or the execution of a separate Memorandum of Agreement may be required for authorization of any of the provisions of HSWA.**

VI. ** PERMIT ADMINISTRATION**

A. EPA

[If the State has authority to directly administer permits issued by the Federal government, this section may be inapplicable and the Region should insert provisions for transferring responsibility for all Federal permits to the State.]

EPA will administer, pursuant to 40 CFR Parts 124 and 270, the RCRA permits or portions of permits it has issued to facilities in the State until they expire or are terminated. When the State either incorporates the terms and conditions of the Federal permits in State RCRA permits or issues State RCRA permits to those facilities, EPA will terminate those permits pursuant to 40 CFR Parts 124 and 270. ***[Specify process by which EPA will terminate existing permits - for example, per notification of State? per petition of facility?]***

B. State

The State agrees to review all hazardous waste permits which were issued under State law prior to the effective date of this Agreement in accordance with 40 CFR 271.13(d), and to modify, or revoke and reissue, such permits as necessary to require compliance with the authorized State Program. ***[Are States actually doing this? If not, modify the agreement accordingly.]*** The State shall notify EPA of any permits not equivalent to Federal permit requirements, including any permits that have been issued but are pending administrative or judicial appeal. Except for these non-equivalent permits, once EPA has determined that the State has fulfilled the requirements of 40 CFR 271.13(d), EPA will terminate the applicable Federal permit, or Federal portion of the permit, pursuant to the procedures in 40 CFR 124.5(d), notify the State that the permit is terminated, and no longer administer those permits or portions of permits for which the State is authorized. ***[Is this how you terminate permits in your Region? Once the State notifies EPA? or does the permittee have to apply for termination? Describe how this process happens in your Region.]***

Where the State permit is not equivalent to Federal permit requirements, the State may modify, or revoke and reissue the State permit as necessary to require compliance with its authorized program in a manner consistent with RCRA as amended by HSWA. If the State does not modify, or revoke and reissue, a permit equivalent to the Federal permit, EPA will administer and enforce its permit until it expires or is terminated.

Upon the effective date of an equivalent State permit, EPA will terminate the Federal permit ***[at its own initiative? or do your Region require a petition from the permittee?]*** pursuant to 40 CFR 271.8(b)(6) and 124.5 (d). EPA will notify the permittee by certified mail of its intent to terminate the Federal permit, and give the permittee 30 days in which to agree or object to termination of the permit.

The State agrees to resolve all State permit appeals in a manner consistent with its authorized RCRA program.

****VII. COMPLIANCE MONITORING AND ENFORCEMENT****

A. EPA

****Nothing in this Agreement shall restrict EPA's right to inspect any hazardous waste generator, transporter or facility or bring enforcement action against any person believed to be in violation of the State or Federal hazardous waste program or believed to have a release of hazardous waste or constituent. Before conducting an inspection of a generator, transporter or facility, the Regional Administrator will normally give the State at least seven days notice of the intent to inspect in accordance with 40 CFR 271.8(b)(3)(i),** and will invite the State to participate in the inspection. In case of an imminent hazard to human health and the environment, the Regional Administrator may shorten or waive the notice period. EPA agrees to make available to the State copies of any reports and data resulting from compliance inspections within a reasonable time from completion of the inspections.**

****The frequency of EPA oversight and training inspections will be specified in the annual State grant work program[or specify appropriate document]. EPA will negotiate on an annual basis with the State the number or percentage of the State's compliance inspections on which EPA will accompany the State.****

****EPA may take enforcement action against any person determined to be in violation of RCRA in accordance with section 3008(a). Generally EPA will take enforcement action upon determining that the State has not taken timely and appropriate enforcement action or upon request by the State. Prior to issuing a compliance order under section 3008(a) EPA will give notice to the State. EPA also maintains authority to issue orders and bring actions under sections 3008, 3013 and 7003 of RCRA and any other applicable Federal statute.****

Also EPA maintains authority to bring an action under section 3008(a)(3) of RCRA against a holder of a State-issued permit on the grounds that the permittee is not complying with a condition of

that permit. In addition, EPA may take action under section 3008(a)(3) of RCRA against a holder of a State-issued permit on the grounds that the permittee is not complying with a condition that the Regional Administrator, in commenting on that permit application or draft permit, stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit.

B. State

The State agrees to carry out a timely and effective program for monitoring compliance by generators, transporters, and facilities with applicable program requirements (see 40 CFR 271.15). As part of this program, the State will conduct inspections to assess compliance with generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements. Compliance monitoring activities and priorities will be specified *[specify appropriate document used in your Region, for example:]* in the Office of Enforcement and Compliance Assurance's bi-annual MOA guidance and the annual State grant work program and shall be consistent with all applicable Federal requirements and with the State's Program Description. State specific activities and priorities for compliance monitoring will also be included in the annual grant work plan.

[Insert any agreement the Region makes with the State regarding inspections at EPA-permitted facilities. Individuals in the State program may be designated as EPA representatives under section 3007 of RCRA so that they can inspect facilities for violations of the terms and conditions of Federal permits.]

The State agrees to take timely and appropriate enforcement action as defined in the 1996 Hazardous Waste Enforcement Response Policy *[update, if appropriate]* against all persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements, including violations detected by State or Federal compliance inspections. The State will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public.

The State agrees to provide EPA with copies of reports on data resulting from any compliance inspection and subsequent enforcement actions, when EPA requests such copies. 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.

VIII. AVAILABILITY OF INFORMATION

[This Section of the MOA must be carefully tailored to each State. Some or all of the requirements in this Section may be N/A if the State legislation and/or regulations previously have been determined to be equivalent to the Federal requirements at the time of authorization for 3006(f). Please consult the 3006(f) checklist in the individual States' authorization file and determine which of the requirements, if any, given below are needed for that particular State.]

In other words, some States may need one or more of the statements below to fill a legislative or regulatory gap in their 3006(f) State equivalent program.]

A. General

Section 3006(f) of RCRA requires an authorized State to provide for the public availability of information obtained by the State regarding facilities and sites for treatment, storage and disposal of hazardous waste. Such information must be available to the public in substantially the same manner as, and to the same degree as, that available under Federal law.

B. Requests for Information

1. The State agrees to make certain materials routinely available without a formal information request. Examples of these materials are final opinions or orders in case adjudication, State regulations, statements of Agency policy, and administrative staff manuals affecting the public. In addition, records prepared for routine public distribution will also be made available. Examples of such records are press releases, copies of speeches, pamphlets, and educational materials.
2. The State Agency agrees to make reasonable efforts to assist a requestor in identifying records (including electronic records) being sought, and to help the requestor formulate his or her request.
3. If a request for information is denied, the State agrees to provide the requestor the basis for the denial and to notify the requestor of any State judicial, administrative procedures, or statutes of limitation.
4. The State agrees to make the fullest possible disclosure of records to the public, except where the record would qualify for any of the exemptions under the Federal Freedom of Information Act, 5 U.S.C. 552(a)(2), if such exemption is recognized by the State.
5. ***[The following shall be included if the State charges a fee to provide copies of information: A reduction or waiver of fees will be considered in connection with each request from a representative of the press or other communication medium, or from a public interest group. The State agrees to reduce or waive the fee if it determines that a reduction or waiver of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.]***

C. Confidentiality of Business Information

If a claim of confidentiality is asserted and cannot be resolved in the time period provided for an agency response to a request, the State agrees to notify the requestor of the confidentiality claim within the maximum 20-day time limit provided for an agency response. In addition, the requestor will be told that the request was initially denied in order to resolve the business confidentiality claim.

D. Oversight

1. The State agrees to keep a log of denials of requests for information (or a file containing copies of denial letters sent to requesters) which will be made available to EPA during the State review.
2. The State agrees to keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities, as applied to section 3006(f).

IX. CORRECTIVE ACTION

A. State Role.

The State will conduct the RCRA Corrective Action Program in a manner that promotes rapid achievement of cleanups while protecting human health and the environment. Specifically, the State will, to the extent practicable:

1. Embrace flexible, practical, results-based approaches that focus on control of human exposure and contaminated groundwater migration in the short term, with final cleanup being the long term goal;
2. Provide ready public access to information and meaningful opportunities for public involvement in the cleanup process;
3. Foster a culture of innovation, creativity, communication and technical expertise, focused on accelerating cleanups and meeting program goals; and
4. Carefully consider key program guidance (and any updates) in conducting the RCRA Corrective Action Program. (See attached)

B. EPA Role.

EPA will assist the State with all aspects of the cleanup program and support its efforts to conduct faster, focused and more flexible RCRA cleanups.

STATE OF _____

U.S. ENVIRONMENTAL PROTECTION
AGENCY

REGION _____

BY: _____

BY: _____

DATE: _____

DATE: _____

[Tailor the following tables to the particular State-EPA MOA. However, the following tables must include: permit applications; draft permits; proposed permit modifications; public notices on draft permits and permit modifications; copies of final permits and permit modifications; notices of permit denials; and information on corrective action, closure/post closure, and groundwater monitoring activities.]

BASE PERMITTING DOCUMENT FLOW

BETWEEN EPA AND _____

Item	Item Description	State Action	EPA Action
1	New and revised Part A application	Copy to EPA with monthly submittals	Review and become familiar with document
2	a) LDF <u>Operating</u> Permit Part Bs, and subsequent revisions b) Combustion Operating Permit Part Bs, including trial burn plans, and subsequent revisions, and risk assessment protocols and risk assessments c) Subpart X Part B's, risk assessment protocols, and risk assessments	Copy to EPA within 30 days of receipt.	Review and become familiar with documents. Comment as appropriate at State request
3	Copies of warning letter and first Notice of Deficiency (NOD) for all TSDFs	Copy to EPA with monthly submittals	Review for HSWA applicability, e.g. CC.
4	Copies of 2nd and subsequent NODs/Order for facilities in item 2.	Send draft 30 days prior to issuance if comments requested; final when issued.	Comments, if any, w/in 30 days of receipt
5	Completeness determinations for all TSDFs	Send 30 days prior to issuance	Monitor progress. Comments, if any, due within 30 days of receipt.
6	Draft permits and draft modifications for TSDFs in item 2, with fact sheets and public notices	Send to EPA 30 days before start of public comment period.	Comment to State w/in 30 days of receipt.
7	Draft permits and draft modifications for all other TSDFs, with fact sheets and public notices	Copy to EPA with monthly submittals	Review and comment to State/facility if cursory review indicates problems.
8	Final permits and final modifications for all TSDFs, and notices of permit denials	Copy to EPA with monthly submittals	Review if EPA commented on draft.
9	Emergency Permits	Notify EPA by telephone ASAP, then send copy of permit with monthly submittal	Monitor situation.

10	a) Clean Closure Plans for LDFs b) Closure Plans for Tank Units	Send to EPA with monthly submittals	Become familiar with plans, particularly clean closure submittals
11	Closure Plan NODs for item 10 facilities	Copy to EPA with monthly submittals	Review and provide comments to State, if requested.
12	Closure Plan public notices, approval letters and closure acceptance letters for all TSDFs	Copy to EPA with monthly submittals	Comment during public comment period.
13	Closure equivalency petitions and all associated documents	Copy to EPA with monthly submittals	Review and provide comments to State during comment period.
14	Other documents at State's request	Per State schedule	Assist State to maximum extent possible.

**CORRECTIVE ACTION DOCUMENT FLOW
BETWEEN EPA AND _____**

Item	Item Description	State Action	EPA Action
1	Visual Site Inspection notification letters sent to facilities	cc: EPA	Review letter or supply standard letter for State use. Accompany State, if appropriate.
2	Draft RFA Reports generated by State	Send to EPA in draft form when sent to facility for comment	Comments to State w/in 30 days of receipt, or tell State will not review.
3	Final RFA Reports sent to facilities	Copy to EPA with monthly submittals	Review if EPA commented on draft.
4	Final EI evaluations and NCAPS worksheets	Send to EPA with monthly submittals	Review if EPA commented on draft
5	Stabilization Evaluation Questionnaires (GPRA Universe)	Copy to EPA with monthly submittals	Comments, if any to State w/in 30 days of receipt
6	All work plans and reports that address investigation and corrective action requirements for SWMUs at facilities with high NCAPS ranking.	Copy to EPA with monthly submittals unless comments requested on expedited schedule.	Become familiar with documents.
7	Notices of Technical Inadequacy (NOTIs) and NOVs and Orders on Corrective Action Documents in item 7	cc: EPA	EPA review, if requested.

8	Remedy Selection Documents (Permit mods., Orders, SOBs, etc.)	Copy to EPA 30 days before issuance of draft. copy of final to EPA upon issuance.	Review and comment w/in 30 days of receipt of draft. Review final for conformity to EPA comments.
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ENFORCEMENT AND COMPLIANCE DOCUMENT FLOW
BETWEEN EPA AND _____ (Items in Italics show varying requirements between States)

Item	Item Description	State Action	EPA Action
1	List of all <i>facilities / TSDFs / significant generators</i> that State will inspect each <i>quarter/year</i>	Send list to EPA prior to start of <i>quarter / year</i>	Review list and notify State which facilities EPA will inspect.
2A ²	<i>State draft inspection reports for joint EPA/State inspections prior to finalization</i>	<i>Send to EPA for review</i>	<i>Comment to State w/in 15 days of receipt.</i>
2B	<i>EPA draft report for joint EPA/State inspections; EPA final inspection report for independent inspections</i>	<i>Review draft EPA joint inspection report and provide comments to EPA</i>	<i>Final reports to be sent to facility with cc to State w/in 45 days after inspect.</i>
3	For all <i>inspections / inspections of Significant Non-Compliers (SNCs)</i> , copies of inspection reports, and any follow-up reports, warning letters, NOV's, and administrative orders, etc.	Send to EPA upon <i>issuance / specified time frame</i>	Monitor State Action for timeliness and appropriate action.
4	All enforcement referrals from district offices to central office	Send copy to EPA	(Same as above)
5	Notice of Intent to receive hazardous waste from a foreign source pursuant to 40 CFR 265.12	Send copy to EPA upon <i>receipt / within 5 days of receipt</i>	Region review and take action as necessary
6	Notification of State that EPA will take enforcement action	Receive notification and take appropriate response, if required	<i>Notification prior to issuing 3008(a) Order by telephone and /or writing within a specified time frame</i>

²Provisions for coordinating inspection findings for joint EPA/State inspections in Items 2 and 3 vary greatly procedurally and in degrees of formality between States.

7	Notification of EPA of any determination that a <u>CERCLA off-site facility</u> is a SNC or may be posing significant threat to public health, welfare or the environment or otherwise affect the satisfactory operation of the facility.	State notifies EPA within 5 days of determination	EPA reviews per off-site rule, consults with State, and takes appropriate action.
8	<u>For all TSDFs receiving CERCLA off site waste</u> , Inspection Reports, NOV's, Orders, Civil and or Criminal actions and corrective action requirements when significant RCRA violations occur and a formal enforcement response is initiated.	State will send within 15 days of issuance	EPA reviews per off-site rule, consults with State, and takes appropriate action.
9	Draft and final delisting decisions, where State is authorized for delisting	Send draft to EPA 30 days before public notice. Send final decision to EPA 15 days before mailing to applicant	EPA review and provide comments to State within 30 days of receipt of draft decision. EPA notify State before State mails final decision to applicant if EPA finds serious technical deficiencies.
10	Citizen concerns referred to State by EPA	State investigate <i>and report results to EPA w/in 30 days of referral from EPA.</i>	EPA refer to State.

OPTIONAL For States with Corrective Action

March 2001

Top-Ten EPA Office of Solid Waste References for RCRA Corrective Action

This list represents EPA's "top-ten" recent and/or commonly used guidance documents that individuals should be aware of and turn to for guidance on implementing RCRA corrective action. This list is not all-inclusive; there are other EPA guidance documents that may be appropriate at a specific facility. Program implementers should recognize that guidance documents do not substitute for EPA's statutes or regulations; furthermore, certain guidance documents may not apply to a particular situation based upon the circumstance. In the future, EPA may change existing guidance and develop new guidance as appropriate. These top-ten items are listed in reverse chronological order. A more comprehensive list of corrective action related guidance is available at <http://www.epa.gov/epaoswer/hazwaste/ca/resource/guidance.htm>

EPA, 2001. RCRA Cleanup Reforms II: Fostering Creative Solutions (EPA530-F-01-01; January 2001). Available at <http://www.epa.gov/epaoswer/hazwaste/ca/reforms/reforms2.pdf>

EPA, 2000. Institutional Controls: A Site Manager's Guide to Identifying, Evaluating and Selecting Institutional Controls at Superfund and RCRA Corrective Action Cleanups. OSWER Policy Directive 9355.0-74-FS-P. Available at <http://www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/ics/icfactfinal.pdf>.

EPA, 1999. Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities (64 FR 54604, October 7) - [partial withdrawal of proposed Subpart S regulations]. Available at http://www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/gen_ca/withdrwl.htm

EPA, 1999. RCRA Cleanup Reforms (EPA530-F-99-018; July 1999). For more information, refer to <http://www.epa.gov/epaoswer/osw/factsheet1.pdf>

EPA, 1999. Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action and Underground Storage Tank Sites (April 21). OSWER Policy Directive 9200.4-17P. Available at <http://www.epa.gov/swrust1/directiv/d9200417.htm>

EPA, 1999. Interim Final Guidance for RCRA Corrective Action Environmental Indicators (February 5). Available at www.epa.gov/epaoswer/osw/ei_guida.pdf

EPA, 1998. Management of Remediation Waste Under RCRA (EPA530-F-98-026). Available at http://www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/remwaste/pspd_mem.pdf

EPA, 1996. Memorandum from Steven A. Herman and Elliott P. Laws to RCRA/CERCLA Senior Policy Managers titled, "Coordination between RCRA Corrective Action and Closure and CERCLA Site Activities" (September 24). Available at http://www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/gen_ca/coordmem.pdf

EPA, 1996. Advance Notice of Proposed Rulemaking (61 FR 19432, May 1). Available at <http://www.epa.gov/docs/fedrgstr/EPA-WASTE/1996/May/Day-01/pr-547.pdf>

EPA, 1994. RCRA Corrective Action Plan. OSWER Directive 9902.3-2A. Available at http://www.epa.gov/epaoswer/hazwaste/ca/resource/guidance/gen_ca/rcracap.pdf

