

US EPA ARCHIVE DOCUMENT

EPA REGION III
MEMORANDUM OF AGREEMENT BETWEEN
THE DISTRICT OF COLUMBIA
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

I. GENERAL

This Memorandum of Agreement (hereinafter "MOA") establishes policies, responsibilities, and procedures pursuant to 40 CFR §271.8 for the District of Columbia (hereinafter "District") Hazardous Waste Program (hereinafter "District Program" or "Program") authorized under Section 3006 of the Resource Conservation and Recovery Act (hereinafter "RCRA" or "the Act") of 1976 Public Law No. 89-272, § 1002 *et seq.* 90 Stat. 2796 (1976) (42 U.S.C. 6901 *et seq.*), as amended (Public Laws 94-580, 95-609, 96-482, 98-616), and the United States Environmental Protection Agency Regional Office for Region III (hereinafter "EPA").

This MOA further sets forth the manner in which the District and EPA will coordinate in the District's administration and enforcement of the District's program and, pending additional authorization, EPA's administration of the non-authorized provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA). For purposes of this MOA, references to "RCRA" include HSWA.

This MOA is entered into by the Director of the District of Columbia Department of Health (hereinafter "Director") and the Regional Administrator, EPA Region III (hereinafter "Regional Administrator" or "EPA").

Nothing in this MOA shall be construed to restrict in any way EPA's authority under RCRA. Nothing in this MOA shall be construed to contravene any provision of 40 CFR part 271.

Further, nothing in this MOA shall be construed to restrict the District in the administration of the District Program required in Title 20 of the District of Columbia Municipal Regulations (DCMR), Chapters 40-54.

The District and EPA (hereinafter "Parties") will review the MOA jointly at least once a year (and at other times as appropriate) during preparation of the annual District grant work plan, in connection with grant funding under Section 3011 of RCRA.

This MOA supersedes the MOA that became effective on March 22, 1985. This MOA may be modified upon the initiative of either party in order to ensure consistency with District program modifications or for any other purpose mutually agreed upon. Any revisions or modifications to this MOA shall be in writing and must be signed by the Director and the Regional Administrator. This MOA shall remain in effect until such time as EPA withdraws District program

authorization or the District voluntarily transfers authority to EPA according to the criteria and procedures established in 40 CFR §271.22 and 40 CFR § 271.23.

The Parties are executing this MOA because the District is seeking authorization for non-HSWA Clusters I through VI; HSWA Clusters I and II; and RCRA Clusters I through VIII. This MOA shall be signed by the Director and the Regional Administrator and shall become effective at the time the District's authorization takes effect, which shall be the date set out in the Federal Register notice of the Regional Administrator's decision to grant authorization to the District.

II. POLICY STATEMENT

Each of the Parties to this MOA is responsible for ensuring that its obligations under RCRA are met. Upon granting of final authorization by EPA, the District shall assume primary responsibility for implementing the authorized provisions of the RCRA hazardous waste program within its boundaries. EPA shall retain its responsibility to ensure full and faithful execution of the requirements of RCRA, including direct implementation of HSWA in the event the District is not authorized to act. The Director and the Regional Administrator agree to maintain a high level of cooperation between their respective staffs in a partnership to assure successful and effective administration of the District program. The District will conduct its hazardous waste program in accordance with EPA program policies and guidance.¹ While EPA retains responsibility for the direct implementation of those provisions of HSWA for which the District is not authorized, EPA and the District intend to coordinate the implementation of these provisions to the greatest degree possible.

Section 3006(g) of RCRA provides that hazardous waste requirements and prohibitions promulgated pursuant to HSWA are applicable in authorized States at the same time that they are applicable in unauthorized States, with the exception of Section 3006(f), Availability of Information, which cannot be implemented by EPA in authorized States.

EPA will execute its required oversight functions of the authorized District program in order to ensure full execution of the requirements of RCRA, to promote national consistency in the implementation of the hazardous waste program, to allow EPA to report to the President and

¹ These policies and guidance include, at a minimum, the OSWER Consolidated Guidance; the Office of Enforcement and Compliance Assurance MOA guidance; RCRA Civil Penalty Policy dated October 26, 1990; National Criteria for a Quality Hazardous Waste Program; revised Hazardous Waste Civil Enforcement Response Policy (March 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).

Congress on the achievements of the hazardous waste program, and to encourage States and EPA to agree on the desirable technical support and targets for joint efforts to prevent and to mitigate environmental problems associated with the improper management of hazardous wastes.

EPA will conduct oversight functions through written reporting requirements, permit overview, compliance and enforcement overview, and mid-year and annual reviews of the District's program.

Procedures the District uses in approving variances, waivers or petitions in District regulations shall be at least equivalent to those EPA uses in granting variances, waivers or petitions to the Federal Regulations. The District will transmit to EPA a copy of all variances, waivers and petitions at the time each is approved.

EPA recognizes that the District refers petitioners for variances from the classification as a solid waste to the EPA Administrator. EPA may elect not to process such variances.

EPA will continue to process delisting petitions; however, EPA agrees to include the District in all pre-petition discussions with petitioners, and EPA will notify the District within a reasonable time of receiving a petition to delist a waste from a specific facility in the District, pursuant to 40 CFR Part 260.22. The Director, or his designee, will inform EPA in writing of the District's intent to participate in EPA's review and evaluation of the delisting petition. Delisting petitioners in the District will submit delisting petitions to the Regional Administrator. In the event that these petitions are submitted to the District in lieu of EPA, the District will immediately forward the petition to EPA. Should EPA require the assistance of the District in the review of the petition, this work sharing activity will be negotiated at the time the annual grant work plan is being negotiated, or subsequently as an additional element to be added to or substituted into the work plan.

EPA will notify the District prior to publishing a proposed delisting determination in the Federal Register, and again notify when the final determination is made. A copy of the Federal Register Notice announcing EPA's tentative determination will be provided to the District. EPA will notify the District if any public comments are received on EPA's tentative determination and provide copies if requested. As necessary, and if requested, EPA agrees to coordinate with the District in the development of any response to comments. A copy of EPA's final determination on the petition, as published in the Federal Register, will be provided to the District. If the District concurs with an affirmative EPA decision on a delisting petition, the Director agrees to follow appropriate state procedures to officially incorporate EPA's rulemaking decision into the District's program. When EPA approves a delisting petition after the appropriate public comment period, the District will notify the facility that it must petition the District for a variance from the definition of hazardous waste. The District will review and reach a case decision on the variance requests, so that the District can recognize EPA's approved exclusion until such time as the District is able to propose incorporation of the exclusion into its regulations during the next District rulemaking opportunity. The District will inform the Regional Administrator when the final action has been completed.

III. STATE PROGRAM REVIEW

A. General

The Regional Administrator will assess the District's administration and enforcement of the hazardous waste program on a continuing basis for equivalence and consistency with RCRA, with this MOA, and with all applicable Federal requirements and policies for the adequacy of enforcement. EPA will assess the District's administration and enforcement by reviewing information the District submits in accordance with this MOA and the District grant work plan, permit overview, compliance and enforcement overview, and mid-year and end of year reviews of the District's program activities.

The Regional Administrator may also consider, as part of this regular assessment, written comments about the District's program administration and enforcement that are received from regulated persons, the public, and Federal, District and local agencies. Copies of any comments received by the Regional Administrator will be provided to the District.

To ensure effective program review, the District agrees to allow EPA access to all files and other information the Regional Administrator, or his/her designee, requests that EPA deems necessary for reviewing and evaluating District program administration and enforcement.

Review of the District's files may be scheduled at quarterly intervals; however, the District agrees to allow EPA access to specific files more frequently as circumstances warrant, i.e., for enforcement actions. Program review meetings between the Director and the Regional Administrator, or their designees, 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 (15) days in advance unless EPA and the District agree to a different length of time. A tentative agenda for the meeting will be prepared in advance by EPA.

B. Identification of Priority Activities

The District and EPA agree to develop, on an annual basis as a part of the District's grant work plan, criteria for priority activities, including activities regarding handlers of hazardous waste. These criteria will be based on EPA program guidance and priorities of the District of Columbia, and will serve to identify activities that should receive the highest priority during the grant period.

Activities that could be considered high priority include, but are not limited to, facilities to be inspected, facilities to be permitted, and enforcement against facilities with known or suspected contamination that pose a risk to human health or the environment.

IV. INFORMATION SHARING

A. General

1. As the respective information needs of the District and EPA evolve, changes to this section of the MOA may be appropriate. During the annual review of this MOA, the Director and the Regional Administrator will carefully examine the following information sharing provisions for needed revision.
2. EPA and District responsibilities regarding the maintenance and operation of the Resource Conservation and Recovery Information System (RCRIS/RCRAInfo) are specified in the RCRIS Memorandum of Understanding (MOU) negotiated between EPA Region III and the District and in the annual District work plan. When RCRIS is replaced by EPA's new hazardous waste data management system, "RCRAInfo," a new RCRAInfo MOU will be executed. Examples of responsibilities that will be addressed in both MOUs include, but are not limited to, the following:
 - a. Processing hazardous waste notification forms.
 - b. Issuing EPA identification numbers.
 - c. Submission and use of compliance and enforcement information.
 - d. Submission and use of corrective action information.
 - e. Processing hazardous waste permitting information.

B. EPA

1. EPA will keep the District informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the District's Program. EPA will also provide general technical guidance to the District. EPA will share with the District any national reports EPA develops from the data submitted through District reporting requirements.
2. The District and EPA have agreed to a joint permitting process (see Section V.D. of this MOA, "Joint Permitting Process"). Under this process, the District and EPA have established policies and procedures by which each will pursue its respective and/or joint responsibilities under HSWA.
3. The District and EPA agree to share information as specified in this MOA and in the annual District grant work plan. Specifically included shall be the procedures for sharing and coordinating the exchange of information on the following:

- a. Part A and Part B Permit Applications, whether received prior to the effective date of this MOA or subsequent to the effective date of this MOA and whether first received by the District or EPA;
 - b. Other information necessary to support the foregoing information;
 - c. Copies of draft permits, proposed permit modifications, public notices;
 - d. Copies of final permits and permit modifications; and
 - e. Notices of permit denials.
4. EPA will make available to the District other relevant information, as requested, which the District needs to implement its approved program. Information provided to the District will be subject to the terms of 40 CFR part 2.
 5. As resources allow, EPA agrees to provide training to the District whenever the District requests it.
 6. As resources allow, EPA agrees to provide technical assistance to the District in the review of permit applications, draft permits, permit modifications, closure/post-closure plans, etc. whenever the District requests it.

C. District

1. The District agrees to inform the Regional Administrator in advance of any proposed program changes that would affect the District's ability to implement the authorized program. Program changes of concern include modifications of the District'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). The District 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.
2. EPA and the District will agree on the type and frequency of reports the District will make in order for EPA to maintain oversight of the implementation of the District's authorized program. A specific enumeration of reports and their frequency shall be included in the annual grant work plan and shall be regarded as a grant commitment for the District. Reporting shall include, but not be limited to, the following:
 - a. Government Performance and Results Act (GPRA) goals and accomplishments.
 - b. Information required pursuant to 40 CFR §270.5.

- c. Biennial report summarizing the quantities and types of hazardous waste generated, transported, treated, stored, and disposed of in the District by October 1 of each even-numbered year.
 - d. Copies of inspection reports, record reviews, and sampling results for all commercial facilities, treatment and storage facilities (TSFs), large quantity generators (LQG), Federal facilities and non-notifiers. For small quantity generators (SQG), the above reports need only be submitted where there are detected violations.
 - e. Copies of all enforcement actions, orders and judgments regarding commercial facilities, non-notifiers, TSFs, Federal facilities, generators and SQGs.
 - f. Reports containing statistical summaries and charts of each quarter's accomplishments for compliance and enforcement, listed by category and EPA ID number.
 - g. Submittal of information to correct data problems and information which is incomplete or inaccurate.
 - h. Additional reports as negotiated in the annual RCRA §3011 District grant work plan.
3. Pursuant to 40 CFR §271.8, EPA reserves the right to request any information it deems necessary (relative to the District's approved program) in a manner to be specified in the annual grant work plan.
4. The District agrees to notify and transmit to EPA all delisting petitions received. The District agrees to inform delisting petitioners of their need to petition EPA for a delisting action. The District agrees to follow the delisting procedures outlined in Section II of this MOA.
5. The District agrees to provide EPA with a copy of each District decision regarding waivers and variances at the time such requests are granted.
6. The District agrees to provide permit and closure information to EPA as specified in the annual District grant work plan. A listing of the required information and a submittal schedule will be included in the annual grant work plan and shall be regarded as a grant commitment for the District. Examples of the required information include, but are not limited to, the following:
- a. Copies of permit applications originally submitted to the District, and subsequent revisions or additions to these applications on or after the effective date of this MOA, by all hazardous waste management facilities in the District, unless EPA has been copied by the facility;

- b. Copies of draft permits, proposed permit modifications, draft permit denials, and accompanying explanatory material for all hazardous waste management facilities in the District. EPA also may request copies of completeness and technical reviews for selected permits being worked on during the fiscal year;
 - c. Copies of all final permits issued, denied, modified, reissued or terminated;
 - d. The following closure/post-closure data:
 - (i) Copies of the public notices announcing receipt of closure/post-closure plans and public hearings, if applicable;
 - (ii) Copies of the approved closure and post-closure plans for all facilities;
 - (iii) Copies of the closure certifications for facilities by an independent registered professional engineer (or an independent qualified soil scientist in cases of land treatment facilities) and the owner or operator;
 - (iv) Copies of the District's reports of inspections conducted during closure and after receipt of closure certification; and
 - (v) Copies of the notice placed in the property deed, or other instrument that is normally examined during a title search, for closed disposal facility/unit or cell.
7. The District may request technical assistance in the review of permit applications, draft permits, permit modifications, closure/post-closure plans, variances, waivers, etc. EPA will honor these requests as resources allow. The priorities for permitting will be reviewed annually during the development of the District work plan.
8. The District agrees to provide EPA with copies of reports on data resulting from any compliance inspection and subsequent enforcement actions, when EPA requests the copies.
9. The District agrees to provide any pertinent information requested by the Regional Administrator or his designee within a mutually agreed upon time frame, as necessary, for EPA to carry out its oversight responsibilities. Unless otherwise agreed upon, or specified, the above information shall be sent to:

U.S. Environmental Protection Agency
Region III
District of Columbia Program Manager, 3WC21
1650 Arch Street
Philadelphia, PA 19103-2029

10. In accordance with the provisions of 40 CFR §§271.14 and 124.10(c) the District agrees to develop and maintain a public mailing list and have it readily available for EPA before public notice of a facility action. An acceptable list may be specific to certain facilities, areas, or concerns; or the list may be a general District-wide list used in all cases. This list should be kept current and accurate.

D. Access to National Data

EPA is responsible for maintaining reliable national data on hazardous waste management. These data are 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 such data, EPA will first seek to gain such data from the District. The District of Columbia agrees to supply the Regional Administrator with this information if readily available and as resources allow. If the District is unable to provide the information or if it is necessary to supplement the District information, EPA may conduct a special survey or perform information collection site visits after notifying the District. EPA will share with the District any national reports developed by EPA as a result of such information collection.

E. 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 this information shall immediately notify, by telephone, the other party to this MOA of the existence of the situation.

1. For the District, the twenty-four (24) hour response number is (202) 727-6161 (Mayor's Command Center).
2. For the EPA, the twenty-four (24) hour response number is (215) 814-9016.

F. Confidentiality

1. Any information obtained or used in the administration of the District's program shall be available to EPA upon request without restriction. If the information has been submitted to the District under a claim of confidentiality, the District must submit that claim to EPA when providing information. Any information obtained from the District subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR part 2.
2. EPA agrees to furnish to the District information in its files that is not submitted under a claim of confidentiality that the District needs to implement its program. Subject to the conditions in 40 CFR part 2, EPA will furnish the District information submitted to EPA under a claim of confidentiality that the District needs to implement its program. All information EPA agrees to transfer to the District will be transferred in accordance with

the requirements of 40 CFR part 2. EPA will notify affected facilities when the information is sent to the District.

V. PERMIT ISSUANCE

A. EPA Permitting

Upon authorization of the District program, EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities for which the District is receiving authorization. If EPA promulgates standards for additional regulations mandated by HSWA that are not covered by the District's authorized program, EPA will issue and enforce RCRA permits in the District for these new regulations until the District receives final authorization for equivalent and consistent District standards. 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 District receives authorization for the new standards. At the time the District program is approved in the new areas, EPA will suspend issuance of Federal permits in the District.

Whenever EPA adds permitting standards pursuant to HSWA for processes not currently covered by Federal regulations, EPA will process and enforce RCRA permits in the District in the new areas until the District receives authorization of equivalent and consistent District standards. At the time the District program is approved in the new areas, EPA will suspend issuance of Federal permits in the District. EPA will also transfer any pending permit applications, completed permits or pertinent file information to the District within thirty (30) days of the approval of the District program or other mutually agreed upon schedule in conformance with the conditions of this MOA.

The District and EPA have agreed to a joint permitting process for the joint processing and enforcement of permits for those provisions of HSWA for which the District does not have authorization. As the District receives authorization for additional provisions of HSWA, EPA will suspend issuance of Federal permits in the District for those provisions.

B. EPA Overview of District Permits

While EPA may comment on any permit application or draft permit, EPA's overview function will focus primarily on those facilities identified by the District or EPA in the annual District grant work plan or anything identified as a priority in EPA National Guidance.

In accordance with 40 CFR §271.19, EPA may comment in writing on any draft permit or proposed permit modification, whether or not EPA commented on the permit application. EPA shall notify the District of its intent to comment on a District draft permit within thirty (30) days of receipt. EPA will comment within forty-five (45) days of receipt or will request an extension for those comments as warranted. Where EPA indicates in a comment that issuance, modification, reissuance, termination or denial of the permit would be inconsistent with the approved District program, EPA shall include in the comment:

- a. A statement of the reasons for the comment (including the section of the District law or regulations that support the comment); and
- b. The actions that should be taken by the District in order to address the comments (including the conditions which the permit would include if it were issued at EPA.)

EPA shall send a copy of its written comments to the permit applicant.

The District and EPA will attempt to reach concurrence on permit conditions before the District issues the draft permit or approves proposed permit modifications. EPA shall withdraw its comments if satisfied that the District has met or refuted its concerns and shall also provide the permit applicant with a copy of the withdrawal.

The Director and the Regional Administrator agree to meet or confer whenever necessary in a timely manner to resolve a disagreement between their staffs on the terms of any RCRA permit to be issued by the District. Unless otherwise agreed to, the District and EPA will work towards resolving all issues within thirty (30) days.

Under §3008(a)(3) of RCRA, EPA may terminate a District-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 District program requirement. In exercising these authorities, EPA will observe the conditions established in 40 CFR§271.19(e), and any other applicable authorities.

EPA may review file information at District offices or request a copy of any permit application, draft permit or proposed permit modification, statement of basis or fact sheet, and any supporting documentation that went into the development of the draft permit. The District will provide this information within one (1) week of request.

C. District Permitting

The District is responsible for expeditiously drafting, circulating for public review and comment, issuing, modifying, reissuing and terminating RCRA permits for those hazardous waste treatment and storage facilities contained in the authorized provisions of the District's program. The District shall do so in a manner consistent with RCRA, as amended by HSWA, this MOA, all applicable Federal requirements, the District's Program Description, the annual District grant work plan, and other District requirements. The District commits to meet the 2005 GPRA RCRA permitting goal, which requires that at least 90% of existing hazardous waste management facilities have approved controls in place to prevent dangerous releases to air, soil, and groundwater.

The District agrees to issue, modify or reissue all permits contained in the authorized portions of the District's program in accordance with DC Code §§1-1501 *et seq.*, 6-703 and 6-705, and 20 DCMR, Chapter 44, and to include as permit conditions all applicable provisions of 20 DCMR

Chapters 46 and 47. This MOA also applies to permits issued after final authorization but for which the processing may have begun before final authorization.

In permits issued pursuant to the District's authorized program, the Department will ensure that compliance tasks are described in clear, unambiguous and plain language to the extent practicable. The compliance tasks should be clear, measurable and definable, thereby lending themselves to greater enforceability. For example: "Conduct periodic inspections" should be replaced with "Inspect on a daily/weekly/biweekly/monthly basis. A log book documenting inspections shall be maintained at the facility for a period of 3 years."

The District's permitting process will conform to 20 DCMR Chapters 46 and 47, which are analogous to 40 CFR parts 270 and 124. When circumstances arise that warrant extraordinary action, the District may exercise the variance authorities established in DC Code, §§6-701(a) 1 & 2; 6-703-(b); 6-705-(a); 6-706 and 6-709 (1995 Repl. Vol.). The District agrees that it will not exercise its variance authority, including emergency administrative orders, unless the result is as stringent as, and consistent with, the Federal program, and consistent with other State programs.

The District agrees that any compliance schedules contained in permits it issues will require compliance with applicable standards as soon as possible.

The District agrees to consider all comments EPA makes on permit applications and draft permits. The District 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

Pursuant to § 3006 (g)(1), and in accordance with HSWA, EPA has the authority to issue or deny permits or those portions of permits to facilities in the District of Columbia for the requirements and prohibitions in or stemming from HSWA, until the District's program is amended to reflect those requirements and prohibitions, and authorization is received for the portion or portions of the program.

EPA and the District have agreed to establish a joint permitting process for the issuance of RCRA permits in the District of Columbia. This joint permitting process is established in accordance with §3006(c)(3) of RCRA. Details of joint permitting activities will be negotiated yearly through the annual District grant work plan. The duties and responsibilities of EPA and the District for joint permitting shall also be specified in the annual District grant work plan.

The details of the joint permitting process as contained in the District grant work plan shall be reviewed and revised as often as necessary, but no less often than annually to assure its continued appropriateness.

Upon authorization of the District for any of the provisions of the HSWA, the specifics of the Joint Permitting Agreement as set out in the annual District grant work plan shall be amended to

reflect the authorization. Amendment of this MOA or the execution of a separate Memorandum of Agreement may be required for authorization of any of the provisions of the HSWA.

EPA will perform oversight of District corrective action activities on an ongoing basis throughout each grant fiscal year in accordance with work sharing responsibilities established in the annual grant work plan as resources allow. The District agrees to assist EPA in meeting the District's share of EPA's 2005 GPRA goals for corrective action environmental indicators, details of which will be established in the annual grant work plan.

VI. PERMIT ADMINISTRATION

A. EPA

EPA will administer the RCRA permits or portions of permits it has issued to facilities in the District until they expire or are terminated. EPA will be responsible for enforcing the terms and conditions of the Federal portions of the permits while they remain in force. Upon authorization of HSWA regulations, the EPA and the District will work toward establishing District authorities that will allow District oversight and enforcement in addition to Federal oversight and enforcement. Prior to authorization of additional authorities, EPA and the District may establish interim agreements that will allow District work sharing activities. When the District assumes full responsibility of an EPA permit, or incorporates the terms and conditions of the Federal permits in District RCRA permits, or issues District RCRA permits to those facilities, EPA will terminate those permits pursuant to 40 CFR part 270 and rely on the District to enforce those terms and conditions subject to the terms of an acceptable District/EPA Enforcement Agreement as provided in Section VII.

B. District

The District agrees to review all hazardous waste permits that were issued under District law before the effective date of this MOA in accordance with 40 CFR §271.13(d), and to modify, or revoke and reissue, those permits necessary to require compliance with the amended District Program. The District 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 District 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 District that the permit is terminated, and no longer administer those permits or portions of permits for which the District is authorized.

Where the District permit is not equivalent to federal permit requirements, the District may modify, or revoke and reissue, its permit as necessary to require compliance with its authorized program in a manner consistent with RCRA as amended by HSWA. If the District 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.

Subsequent to the effective date of an equivalent District permit, EPA will terminate the federal permit 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 District agrees to resolve all District permit appeals in a manner consistent with its authorized RCRA program.

VII. COMPLIANCE MONITORING AND ENFORCEMENT

Both EPA and the District are committed to maintaining a level playing field and establishing a credible deterrence to noncompliance throughout the regulated community. As a result, EPA and the District will work together to develop and implement a plan to coordinate compliance monitoring and enforcement activities. These activities may include but are not limited to identifying Federal and District priorities, developing and implementing inspection targeting methods, developing targeted inspection lists, exchanging information regarding ongoing Federal and District enforcement actions against significant noncompliers (SNC) and Secondary Violators as defined in the EPA's Enforcement Response Policy dated March 1996, or its subsequent amendments.

Enforcement and compliance monitoring activities/priorities will be outlined in the Office of Enforcement and Compliance Assurance's MOA guidance and the District's annual grant work plan, which is consistent with all applicable Federal requirements and with the District's Program Description.

A. EPA

1. Compliance Monitoring

Nothing in the MOA shall restrict EPA's right to inspect any regulated hazardous waste facility. Before conducting an inspection of a regulated facility, EPA will attempt to give the District at least seven days notice of EPA's intent to inspect in accordance with 40 CFR §271.8(b)(3)(i). In case of an imminent hazard to human health or the environment, the Regional Administrator may shorten or waive the notice period. The District may participate in all inspections EPA conducts. EPA will coordinate oversight and training inspections with the District.

In an effort to improve enforcement coordination and clarify roles and responsibilities between EPA and the District, the lead agency of an inspection will routinely be the lead in any enforcement actions to address RCRA violations discovered during the inspection. However, it is recognized that it may be more appropriate in some cases to defer enforcement action to the other agency. Discussion and mutual agreement will be sought in such cases.

2. Enforcement

EPA may take enforcement action against any person determined to be in violation of RCRA in accordance with §3008. EPA may also take enforcement action at facilities upon determining

that the District has not taken timely or appropriate enforcement in accordance with the 1996 Hazardous Waste Enforcement Response Policy. EPA reserves its right to take independent enforcement actions in the District. When the District refers an enforcement case to EPA, the Agency will review the information provided and determine the appropriate Federal action. Before issuing a complaint, compliance order or referral to the Department of Justice, EPA will give notice to the District.

After notice to the District, EPA may take action pursuant to RCRA §3008, including action against the holder of a District-issued permit, on the ground that the permittee is not complying with a condition of that permit. In addition, EPA may take action under §3008 of RCRA against a holder of a District-issued permit on the ground 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 District program requirements, whether or not that condition was included in the final permit. EPA may take action under RCRA §3008 in accordance with the U.S. EPA Hazardous Waste Enforcement Response Policy or the EPA Region III Non-Compliance Response Policy for RCRA, Oil and EPCRA/CERCLA Section 103.

EPA may take corrective action enforcement against any person in accordance with § 3008(h). Before taking enforcement, EPA and the District shall negotiate the lead agency for oversight. In the annual grant work plan, facilities will be prioritized and oversight activities established. EPA and the District shall coordinate the negotiations, issuance, and oversight of compliance orders issued under §3008(h).

B. District

1. Compliance Monitoring

The District agrees to carry out a timely and effective program for monitoring compliance by regulated hazardous waste facilities with applicable program requirements (see 40 CFR §271.15). As part of this program, the District will conduct compliance inspections to assess compliance with hazardous waste regulations, permit requirements, compliance schedules, and all other program requirements. District specific activities and priorities for compliance monitoring will also be included in the annual grant work plan.

2. Enforcement

The District agrees to take timely and appropriate enforcement action and agrees to make significant non-complier (SNC) determinations in accordance with EPA's 1996 Hazardous Waste Enforcement Response Policy against all persons in violation of hazardous waste regulations, permit requirements, compliance schedules, and all other program requirements.

The District will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public. The District 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 three years after the action is resolved.

DISTRICT OF COLUMBIA

BY: TITLE: Chief Health Officer for the District of Columbia
Director, Department of HealthDATE: 2/13/01

U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III

BY: TITLE: Regional AdministratorDATE: August 24, 2001