

US EPA ARCHIVE DOCUMENT

**MEMORANDUM OF AGREEMENT BETWEEN****THE STATE OF DELAWARE****AND****THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY****REGION III****I. GENERAL**

This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR 271.8 for the State of Delaware'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 III. This Agreement supersedes the Agreement which was effective on June 22, 1984 and further sets forth the manner in which the State and EPA will coordinate in the State's administration and enforcement of the 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 Secretary of Department of Natural Resources and Environmental Control (hereinafter "Secretary" or "the State" or "DNREC") and the Regional Administrator, EPA Region III (hereinafter "Regional Administrator" or "EPA").

Nothing in this Agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities 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, in connection with grant funding under section 3011 of RCRA.

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 This Agreement will remain in effect until such time as State program authorization is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR 271.22 and 40 CFR 271.23.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 shall become effective at the time the State's additional authorization takes effect, which shall be the date set out in the Federal Register notice of the Regional Administrator's decision to grant additional authorization to the State.

## **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 assumed primary responsibility for implementing the authorized provisions of the RCRA hazardous waste program within its boundaries. EPA retains its responsibility to ensure full and faithful execution of the requirements of RCRA, including direct implementation of HSWA in the event the State is not authorized to act. 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.

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. While EPA retains responsibility for the direct implementation of those provisions of HSWA which the State is not authorized to implement, it is the intention of EPA and the State to coordinate the implementation of such provisions to the greatest degree possible.

The State agrees to provide EPA with a copy of each State variance or waiver at the time it is granted. The State agrees that it will not exercise its variance authority, including emergency administrative orders, unless the result would remain not less stringent than and consistent with the Federal program, and consistent with the other State programs.

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 implementation of the hazardous waste program, to allow EPA to report to the President and Congress on the achievements of the hazardous waste program, and to encourage States and EPA to agree on desirable technical support and targets for joint efforts to prevent and mitigate environmental problems associated with the improper management of hazardous wastes. Oversight will be accomplished by EPA through written reporting requirements, permit overview, compliance and enforcement overview, and annual review of the State's programs.

## **III. STATE PROGRAM REVIEW**

### **A. General**

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. This assessment will be accomplished by EPA review of 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.

To ensure effective program review, 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.

Review of DNREC files may be scheduled at quarterly intervals. 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 in advance unless agreed to differently. A tentative agenda for the meetings will be prepared by EPA.

#### **B. Identification of Priority Activities**

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 Agency program guidance, and will serve to identify those activities which should receive the highest priority during the grant period.

Examples of activities which will be considered high priority will include, but not be limited to, facilities to be inspected, facilities to be permitted, and enforcement against facilities with known or suspected contamination which poses a risk to human health or the environment.

### **IV. INFORMATION SHARING**

#### **A. General**

As the national hazardous waste program matures, the respective roles and responsibilities in this State/Federal partnership will become more clear. As the respective information needs of the State and EPA evolve, changes to this section of the Agreement may be appropriate. During the annual review of this Agreement the State and the Regional Administrator will carefully examine the following information sharing provisions for needed revision.

#### **B. EPA**

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 forward copies of all documents affecting the State program.
2. The State and EPA have agreed to a joint permitting process (see Section V.D of this Agreement). Under this process the State and EPA have established policies and procedures by which each will pursue their respective and/or joint responsibilities under HSWA.

The State and EPA agree to the sharing of information as specified under "V.D Joint Permitting Process" and the annual State grant work program. 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 Agreement or subsequent to the effective date of this Agreement and whether first received by the State or EPA;
  - b. Such 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.
3. EPA agrees to make available to the State copies of any reports and data resulting from compliance inspections when the State requests such copies.
  4. 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 Secretary 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.
  5. 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. 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.
  6. 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.

The State wishes information to be forwarded to:

Department of Natural Resources and  
Environmental Control Division of Air and Waste Management  
Hazardous Waste Management Branch  
P.O. Box 1401  
89 Kings Highway  
Dover, Delaware 19903

**C. State**

1. The State agrees to inform the Regional Administrator in advance of any proposed program changes which would affect the State's ability to implement the authorized program. 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). 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.

2. Annually, through development of the State grant work program, EPA and the State will agree on the type and frequency of reports the State will make in order for EPA to maintain oversight of the implementation of the State's authorized program. Frequency of such reports shall be outlined in the yearly grant work plan. Such reporting shall include, but not be limited to, the following:
  - a. Compliance monitoring and enforcement information;
  - b. Information indicating the status of the State's permitting, closure, post-closure, and ground-water monitoring and corrective action activities;
  - c. Various reports designed to accurately describe the status of the State's authorized program including biennial reports summarizing the quantities and types of hazardous waste generated, transported, treated, stored and disposed in the State; and
3. 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.) In addition, the State agrees to notify EPA of all waivers or variances granted by the State.
4. 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.
5. 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, as necessary for EPA to carry out its oversight responsibilities. Unless otherwise agreed upon, the above information shall be sent to:

U.S. Environmental Protection Agency  
 Region III  
 Delaware Hazardous Waste Program Manager, 3HW52  
 841 Chestnut Building  
 Philadelphia, Pennsylvania 19107

6. State and EPA Data Management via the Resource Conservation and Recovery Information System (RCRIS), will occur per the RCRIS Memorandum of Understanding (MOU). The MOU will be reviewed as considered necessary by EPA or the State.

#### D. 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 will first seek to

gain this information from the States. The State of Delaware 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. EPA will share with the State 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 such information shall immediately notify by telephone the other party(ies) to this Agreement of the existence of such situation. State contacts: Hazardous Waste Management Branch - (302) 739-3689, Environmental Response Branch - (302) 739-3694, 24 Hrs (302) 739-5072, (800) 662-8802 in-state. EPA contacts: Regional Response Center - 24 Hrs (215) 597-9898, or the National Response Center -(800) 424-8802.

#### **F. 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 established in 40 CFR Part 2.
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, EPA will furnish 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.

### **V. PERMIT ISSUANCE**

#### **A. EPA Permitting**

Upon authorization of the State program EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities for which the State is receiving authorization. In issuing or modifying permits covering non-authorized regulations, the State and EPA agree to maximize the effectiveness of the joint permitting process. To supplement the joint process, the State and EPA may agree to delegation of specific authorities. Planning and performance of specific commitments will be established in the annual State grant work plan.

Whenever EPA adds permitting standards for processes not currently covered by Federal regulations, EPA will process and enforce RCRA permits in the State in the new areas until the State receives final authorization for them. At the time the State program is approved in the new areas, EPA will suspend issuance of Federal permits in the State. EPA will also transfer any pending permit applications, completed permits or pertinent file information to

the State within thirty days of the approval of the State program, or other mutually agreed upon schedule, in conformance with the conditions of this Agreement.

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 HSWA for which the State does not have authorization. As the State receives authorization for additional provisions of the HSWA, EPA will suspend issuance of Federal permits in the State for those provisions.

#### **B. EPA Overview of State Permits**

While EPA may comment formally or informally on any permit application or draft permit, EPA's overview function will focus primarily on those facilities identified by the State and EPA in the State's Multi-Year Permit Strategy, annual State Grant Work Program and the State's Program Description.

EPA may review and formally comment in writing on all draft permits or proposed permit modifications prior to the close of the State public participation process. The EPA may state that "the EPA has no comments at this time" or provide specific comments. 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).

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

EPA shall withdraw such comments when satisfied that the State has met or refuted its concerns and shall also provide the permit applicant with a copy of such withdrawal.

The State and EPA agree to meet or confer whenever necessary to resolve any disagreement on the terms of any action in a timely manner. Unless otherwise agreed to the State and EPA will work towards resolving all issues within thirty (30) days.

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).

#### **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 contained in the authorized provisions of the State's program. The State shall do so in a manner consistent with RCRA as amended by HSWA, this Agreement, all applicable Federal requirements, the State's Program Description and as established in the annual State grant work program. The State agrees to issue, modify and reissue all permits contained in the authorized portions of the State's program in



accordance with 7 Del. Code Chapter 63 and Delaware Regulations Governing Hazardous Waste (DRGHW) and to include as permit conditions all applicable provisions of DRGHW Part 122. This agreement also applies to permits issued after final authorization but for which the processing may have begun before final authorization.

The State's permitting process will conform to the Delaware Regulations Governing Hazardous Waste Parts 122 and 124 which are analogous to 40 CFR Parts 270 and 124.

In the event circumstances arise which warrant extraordinary action, the State may exercise the variance authorities established in 7 Del. Code, Chapter 63 section 6314.

The State agrees to provide EPA with a copy of each State decision regarding waivers, variances, delisting petitions at the time such requests are granted. The State agrees that it will not exercise its variance authority, including emergency administrative orders, unless the result would remain not less stringent than and consistent with the Federal program, and consistent with the other State programs.

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

The State agrees to consider all comments EPA makes on permit applications and draft permits. The State will satisfy or refute formal 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 section 3006(g)(1), and in accordance with the Hazardous and Solid Waste Amendments of 1984, EPA has the authority to issue or deny permits or those portions of permits to facilities in Delaware for the requirements and prohibitions in or stemming from HSWA until the State's program is amended to reflect those requirements and prohibitions, and authorization is received for that portion or those portions of the program.

EPA and Delaware hereby establish this joint permitting process for the issuance of RCRA permits in Delaware. This joint permitting process is established in accordance with section 3006(c)(3) of RCRA. The details of the joint permitting process shall be incorporated into the annual State grant work program. The duties and responsibilities of EPA and the State for joint permitting shall also be specified in the annual State grant work program.

The details of the joint permitting process as contained in the State Grant Work Program 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 HSWA, the specifics of the Joint Permitting Agreement as set in the annual State grant work program 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**

EPA will administer the RCRA permits or portions of permits it has issued to facilities in the State until they expire or are terminated. EPA will be responsible for enforcing the terms and conditions of the Federal permits while they remain in force. Upon authorization of HSWA regulations, the EPA and the State will work toward establishing State authorities that will allow State oversight and enforcement. EPA and the State may establish interim agreements which will allow State oversight. 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 Part 270 and rely on the State to enforce those terms and conditions subject to the terms of an acceptable State/EPA Enforcement Agreement as provided in section VII.

### **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 and to modify or revoke and reissue such permits as necessary to require compliance with the amended State Program, 7 Del. Code Chapter 63 and DRGHW Part 264. The State agrees to modify or revoke and reissue these permits in accordance with a strategy and timetable as negotiated in the State annual work 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 Treatment, Storage or Disposal 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 notify the State of its intent to inspect. Under normal circumstances the Regional Administrator will give the State 7 days notice accordance with 40 CFR 271.8(b)(3)(i). In the event of an imminent hazard, less than 7 days notice may be given. The State reserves the right to participate in all inspections conducted by EPA.

The frequency of EPA oversight and training inspections will be specified in the annual State grant work program. 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 an enforcement action against any person determined to be in violation of RCRA in accordance with section 3008(a)(2). EPA may take an enforcement action upon determining that the State has not taken a timely and appropriate enforcement action or upon request by the State. EPA shall provide at least 7 days notice to the State prior to issuing a compliance order under section 3008(a). EPA also retains its rights to issue orders and bring actions under sections 3013 and 7003 of RCRA and any other applicable Federal statute.

After notice to the State, EPA may take action against any person found to be in violation of RCRA section 3008(a) including 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

**B. Requests for Information**

1. Pursuant to the Federal Freedom of Information Act (FOIA), 5 U.S.C. 552(a)(2), the State agrees to make certain materials routinely available without a formal FOIA 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 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 State judicial (or, if they exist, administrative) procedures, including statutes of limitation.
4. The State agrees to make the fullest possible disclosure of records to the public, subject to any of the exemptions under the Federal FOIA recognized by the State.
5. A reduction or waiver of fees may 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.
6. The State agrees to continue the development and maintenance of a public mailing list.

**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 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 requestors) 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).

STATE OF DELAWARE DEPARTMENT  
OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL

BY: Nicholas J. Pasquale

DATE: 4/9/96

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
REGION III

BY: John W. Decker

DATE: 7/26/96