

US EPA ARCHIVE DOCUMENT

SECTION B

**MEMORANDUM OF AGREEMENT**

**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 (hereinafter "State") Hazardous Waste Program (hereinafter "State Program") authorized under §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 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 Director of Division of Air and Waste Management, Department of Natural Resources and Environmental Control (hereinafter "Director" or "the State" or "DNREC") and the Regional Administrator, EPA Region III (hereinafter "Regional Administrator").

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.

Further, nothing in this agreement shall be construed to restrict the State in the administration of the State Program required in *Delaware Regulations Governing Hazardous Waste*.

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 plan, in connection with grant funding under §3011 of RCRA.

This Agreement supersedes the Agreements which were effective on October 7, 1996, and October 19, 1998. 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 271.23.

This Agreement shall be executed by the Director and the Regional Administrator and 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 assumes 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. The State will conduct its hazardous waste program in accordance with EPA program policies and guidance<sup>1</sup>.

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 §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 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.

EPA will execute its required oversight functions of the authorized State 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 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 functions will be accomplished by EPA through written reporting requirements, permit overview, compliance and enforcement overview, mid-year and annual reviews of the State's programs.

Procedures used by the State in approving variances, waivers or petitions in *Delaware Regulations Governing Hazardous Waste* must be equivalent to those used by EPA in granting variances, waivers or petitions to the Federal Regulations. The State will transmit to EPA a copy of all variances, waivers and petitions at the time they are approved. 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 to provide EPA, in a timely manner, a copy of each delisting request received from a hazardous waste handler. In addition, EPA agrees to provide technical assistance, when available, during the State's review process.

### **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 plan, permit overview, compliance and enforcement overview, mid-year and annual reviews 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

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<sup>1</sup> 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 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).

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/her designee that is deemed necessary by EPA for reviewing and evaluating State program administration and enforcement.

Review of DNREC hazardous waste files may be scheduled at quarterly intervals; however, DNREC agrees to allow EPA access to specific files more frequently as warranted, e.g., 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 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 annual State work plan, criteria for priority activities, including activities regarding handlers of hazardous waste. These criteria will be based on Agency program guidance and priorities of the State of Delaware, and will serve to identify those activities which should receive the highest priority during the grant period.

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

### **IV. INFORMATION SHARING**

#### **A. General**

1. 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 Director and the Regional Administrator, or their designees, will carefully examine the following information sharing provisions for needed revision.
2. EPA and State responsibilities regarding the maintenance and operation of the Resource Conservation and Recovery Information System (RCRIS) are specified in the RCRIS MOU negotiated between EPA Region III and Delaware and in the annual state work plan. It is expected that RCRIS will be replaced by "RCRAInfo" in the year 2000. Examples of responsibilities that will be addressed in the RCRAINFO MOU 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 data.
  - d. Submission and use of corrective action information.
  - e. Submission and use of permitting information.

#### **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 also provide general technical support to the State. EPA will share with the State any national reports developed by EPA from the data submitted through State reporting requirements.

2. The State and EPA have agreed to a joint permitting process (see Section V.D. of this Agreement, "Joint Permitting Process"). Under this process, the State and EPA have established policies and procedures by which each will pursue its respective and/or joint responsibilities under HSWA.
3. The State and EPA agree to the sharing of information as specified in this agreement and in the annual State 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 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.
4. As resources allow, EPA agrees to provide training to the State whenever the State requests it.
5. As resources allow, EPA agrees to provide technical assistance to the State in review of permit applications, draft permits, permit modifications, closure/post-closure plans, variances, waivers, etc. on request.
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  
Solid and Hazardous Waste Management Branch,  
ATTN: Program Manager II  
89 Kings Highway  
Dover, Delaware 19901

**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. 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. A specific enumeration of reports and their frequency shall be outlined in the annual grant work plan and shall be regarded as a grant commitment. Such reporting shall include, but not be limited to, the following:
  - a. Government Performance and Results Act (GPRA) goals and accomplishments.



- b. Biennial report summarizing the quantities and types of hazardous waste generated, transported, treated, stored, and disposed of in the State as specified in the RCRA Guidance by October 1 of each even-numbered year.
  - c. Reports containing statistical summaries of each quarter's accomplishments, listed by category and EPA ID number, for compliance and enforcement.
  - d. Submittal of information to correct data problems and information which is incomplete or inaccurate.
  - e. Compliance monitoring and inspection commitment charts.
  - f. Additional reports as negotiated in the Section 3011 State grant work plan.
3. Pursuant to 40 CFR §271.8 EPA reserves the right to request any information it deems necessary (relative to the State's approved program) in a manner to be specified in the annual grant work plan.
4. The State agrees to notify EPA of all delisting petitions received and will transmit to EPA a copy of all final actions. The State agrees to inform delisting petitioners of their need to petition EPA for a delisting action for interstate activities. The State agrees to inform EPA at the beginning of any public notice or public comment period for a proposed delisting action. Procedures for handling petitions for delisting are described in detail in the Program Description, Section V.K.
5. Upon receipt of a request to delist a hazardous waste, the State and EPA agree to the following:
- a. The State will provide EPA with a copy of the request;
  - b. The State will evaluate the request and determine whether the waste should be delisted; (The State understands that if delisting actions result in the State program no longer being equivalent to EPA's, the Agency may begin proceedings to withdraw authorization of the State's program.)
  - c. The State will notify the generator and EPA of the delisting decision;
  - d. EPA will only publish its decision of the delisting request in the Federal Register if the petitioner requests an EPA determination; (While the effect of Federal delisting is to exclude a waste from Federal regulatory control, the State's regulatory control is not affected by Federal delisting.)
  - e. If EPA receives a request to delist a hazardous waste EPA will forward the request to the State. The request will then be handled as described above; and
  - f. If EPA receives a request to delist a hazardous waste and the petitioner indicates that they are knowledgeable of the State's role in the delisting process, but specifically requests an EPA decision, EPA will:
    - (i) Provide the State a copy of the request;
    - (ii) Invite the State to enter into a work sharing agreement with the Agency to evaluate the request and determine whether the waste should be delisted; and
      - \* If the State and EPA agree on the decision, EPA will publish the results of the decision in the Federal Register, and note that the State's decision is the same as EPA's.
      - \* If the State disagrees with the EPA decision, EPA and the State will seek to resolve the issue. If no agreement can be reached, EPA will publish EPA's decision in the Federal Register and note that the State disagrees with the EPA decision.
6. The State agrees to provide EPA with a copy of each State decision [if applicable] regarding variances, waivers, and delisting petitions at the time such requests are granted.
7. The State agrees to provide permit and closure information to EPA as specified in the annual State 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 State. Examples of the required information include, but are not limited to, the following:

- a. Copies of permit applications originally submitted to the State and subsequent revisions or additions to these applications on or after the effective date of this Agreement, by all hazardous waste management facilities in the State, unless EPA has been copied by the facility;
  - b. Copies of trial burn plans, trial burn plan approvals, trial burn reports, risk assessment protocols and risk assessment reports;
  - c. Copies of (a) draft permits, (b) proposed permit modifications, (c) draft permit denials, and (d) accompanying explanatory material for all hazardous waste management facilities in the State. EPA also may request copies of completeness and technical reviews for selected permits being worked on during the fiscal year;
  - d. Copies of all final permits issued, denied, modified, reissued or terminated;
  - e. 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 State's reports of inspections conducted during closure and after receipt of closure certification;
    - (v) Copies of the notice placed in the property deed, or other instrument which is normally examined during a title search, for closed disposal facility/unit or cell.
8. The State may request technical assistance in the review of permit applications, draft permits, permit modifications, closure/post-closure plans, variances, waivers, etc. EPA will honor such requests as resources allow. The priorities for permitting will be reviewed annually during the development of the State work plan.
9. The State agrees to provide EPA with copies of reports on data resulting from any compliance assessment and subsequent enforcement actions, when EPA requests such copies.
10. The State 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, the above information shall be sent to:
- U. S. Environmental Protection Agency  
Region III  
Delaware Hazardous Waste Program Manager, 3WC21  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029
11. In accordance with the provisions of 40 CFR Sections 271.14 and 124.10(c) the State agrees to develop and maintain a public mailing list and have it readily available for EPA when a facility action is going to be public noticed. An acceptable list may be specific to certain facilities, areas, or concerns; or the list may be a general statewide list used in all cases. With corroboration between EPA and the State, this list should be kept current and accurate.



**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 State. 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)814-9016, 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 the 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. If EPA promulgates standards for additional regulations mandated by HSWA that are not covered by the State's authorized program, EPA will issue and enforce RCRA permits in the State for these new regulations until the State receives final authorization for equivalent and consistent State 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 State receives authorization for the new standards. At the time the State program is approved in the new areas, EPA will suspend issuance of Federal permits in the State.

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 authorization of equivalent and consistent State standards. 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 and Corrective Action Decisions**

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

In accordance with §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 State of its intent to comment on a State draft permit within 30 days of receipt. EPA will comment within 45 days of receipt or will request an extension for these 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 State program, EPA shall include in the comment:

1. a statement of the reasons for the comment (including the section of the State law or regulations that supports the comment), and
2. actions that should be taken by the State in order to address the comments (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.

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

Under §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.

EPA may review file information at State 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 State will provide such information within one (1) week of request or within a mutually agreed upon time frame.

#### **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 the annual State grant work plan and other State requirements. The State agrees to work cooperatively with EPA in

attainment of EPA's 2005 GPRA RCRA permitting goal which requires that at least 90% of existing hazardous waste facilities have approved controls in place to prevent dangerous releases to air, soil and ground water.

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 permits issued pursuant to Delaware's authorized hazardous waste management program, the Solid and Hazardous Waste Management Branch will ensure that compliance tasks are described in clear, unambiguous and plain language to the extent practicable. The compliance tasks should be clearly 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 written log book documenting inspections shall be maintained at the facility for a minimum period of 3 years and be made available upon request by DNREC staff during an annual compliance assessment."

In the event circumstances arise which warrant such action, the State may exercise the variance authorities established in 7 Del. Code, Chapter 63 §6314. The State agrees to provide EPA with a copy of each State decision regarding waivers, variances and 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 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 the HSWA, 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 the portion or portions of the program.

EPA and Delaware have agreed to establish a joint permitting process in accordance with Section 3006(c)(3) of RCRA. Details of joint permitting activities will be negotiated yearly through the annual State grant work plan. The duties and responsibilities of EPA and the State for joint permitting shall also be specified in the annual State grant work plan.

The details of the joint permitting process as contained in the State 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 State for any additional provisions of HSWA, the specifics of the joint permitting agreement as set out in the annual State grant work plan shall be amended to reflect that authorization. Amendment of this Memorandum of

Agreement or the execution of a separate Memorandum of Agreement may be required for authorization of any additional of the provisions of HSWA.

EPA oversight of State corrective action decisions will be performed on an ongoing basis throughout each grant fiscal year and will be in accordance with work sharing responsibilities established in the annual grant work plan. The State agrees to work cooperatively with EPA in achieving EPA's 2005 GPRA goals for corrective action indicators. Details of which will be established in the annual grant work plan. The State will submit to EPA copies of draft corrective action decision documents (e.g., approvals of reports/work plans, disapproval comment letters, permit modifications, permits and orders, statement of basis for proposed remedy and final remedy decision) within seven (7) days of EPA's request. The State will consider EPA comments in final corrective action decisions and will submit copies of all final corrective action decision documents to EPA within seven (7) days of issuance.

## **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 in addition to the Federal. Prior to authorization of additional authorities, EPA and the State may establish interim agreements which will allow State work sharing activities. When the State either assumes full responsibility of an EPA permit or 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 in accordance with 40 CFR 271.13(d), and to modify or revoke and reissue, such permits as necessary to require compliance with the amended State Program as resources allow or as otherwise negotiated in the annual grant work plan. At a minimum, the new requirements will be incorporated when these permits are reissued by the State. 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. Permits issued by EPA will remain in effect under EPA's administration until Federal permit responsibility is formally transferred to the State as described in the EPA/State Corrective Action Transition Plan in Section VI.C and EPA terminates the Federal permit (or Federal portion of the permit) pursuant to 40 CFR §124.5(d), or until each permit expires, at which time the State will reissue a new permit, incorporating all applicable requirements for which the State is authorized.

Where the State permit is not equivalent to federal permit requirements, the State 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 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.

Subsequent to the effective date of an equivalent State 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 State agrees to resolve all State permit appeals in a manner consistent with its authorized RCRA program.

Pursuant to its authorized program, the State will be responsible for the issuance and enforcement of any new corrective action permits. In general, EPA will continue to administer and enforce corrective action permits it has issued until they expire or are terminated by EPA because it is agreed the State has assumed full responsibility to administer EPA's permit, or has modified or issued a permit that is equivalent to EPA's corrective action permit. Administration of the corrective action facility universe will be divided between EPA and the State in accordance with the mutually agreed upon Corrective Action Transition Strategy and the annual grant work plan. The annual grant work plan will revise the division of the facility universe as necessary and detail the work to be performed on permit issuance and corrective action work sharing activities. The State agrees to work cooperatively with EPA to meet EPA's share of the 2005 GPRA goals for Corrective Action Environmental Indicators. The details of which will be established in the annual grant work plan.

### **C. EPA/State Corrective Action Transition Plan**

The following discussion addresses the strategy developed by EPA and Delaware to begin the transition of the responsibilities and workload for corrective action permits to the State of Delaware, pursuant to EPA authorization of Delaware's corrective action program. EPA's authorization of Delaware's corrective action program, and provisions of this MOA, relate to corrective action permitting responsibilities under RCRA §§3004 (u) and (v).

After authorization, EPA will initially retain responsibility for the administration of EPA-issued corrective action permits. Delaware will immediately begin preparing corrective action permits at the two hazardous waste treatment, storage, and disposal facilities currently permitted by the EPA, Motiva, and the Hercules Research Center. These State permits will be issued to the facilities as soon as possible.

Once authorized, the State of Delaware will identify and draft corrective action permits for any other high priority treatment, storage, and disposal facilities not currently involved in Corrective Action under EPA's RCRA §§3008(h) and 3013 authorities. Currently all of the known high priority NCAP RCRA facilities are being addressed under some form of EPA or State corrective action authority so this provision mainly applies to any unknown facilities which are operating illegal units.

Once all high priority RCRA sites are addressed and it is determined that GPRA goals will be achieved, facilities with medium and low priorities will be addressed.

Since the enactment of the Hazardous and Solid Waste Amendments (HSWA) of 1984, EPA has managed all RCRA corrective action activities in Delaware. Immediately after authorization of Delaware's corrective action program, EPA will begin the transfer of RCRA corrective action permit responsibilities and workload to the State. EPA intends to work with Delaware to determine when and how best to accomplish this task in order to minimize disruption of ongoing corrective action work and to achieve the best possible program outcomes. When making these determinations, EPA and Delaware will consider the following factors:

1. EPA's continued authority to administer EPA-issued corrective action permits after authorization,
2. EPA's investment in and knowledge of ongoing corrective action permit activities at several RCRA facilities in the State,
3. the need to attain national corrective action program goals established under the GPRA,
4. available resources,
5. skill and experience in Delaware's base program and corrective action program,
6. the existence of EPA corrective action authorities beyond those related to permits (i.e., RCRA §3008(h)).



For example, major decision points reached in the administration of an EPA permit (e.g., remedy selection), might suggest that EPA consider transferring lead permit responsibility to the State for the next phase of corrective action.

Regardless of which agency assumes a formal program leadership role on a site-by-site basis, under authorized authorities or not, both parties agree to continue to communicate about, and coordinate, respective corrective action activities at RCRA facilities. Where either party can offer management, programmatic or technical assistance to assist the other in meeting site-specific objectives or mutual program goals, such support will be provided to the extent resources and competing priorities allow. To the degree possible, specific plans and expectations to coordinate respective corrective action activities will be negotiated in annual RCRA grant workplans.

Although site-specific corrective action work sharing activities will be defined in annual grant work plans, the following is a general description of the universe of high priority RCRA facilities in Delaware subject to corrective action and the initial distribution of workload between EPA and Delaware:

There are 12 high priority RCRA facilities in Delaware.

The following 7 facilities are subject to corrective action under §§3008(h), 7003, or 3013 orders issued by EPA:

|    | <u>Facility</u>     | <u>EPA ID#</u> |
|----|---------------------|----------------|
| 1. | Akzo Chemical       | DED980551667   |
| 2. | Dupont Seaford      | DED002348845   |
| 3. | Dupont Glasgow      | DED042263764   |
| 4. | Dupont Exp. Station | DED003930807   |
| 5. | Johnson Controls    | DED002329738   |
| 6. | Occidental Chemical | DED003913266   |
| 7. | General Chemical    | DED154576698   |

The following 2 facilities have been issued EPA corrective action permits. Initially, EPA will retain responsibility for these 2 facilities, until the time in which the permits can be transferred to the State of Delaware or new permits are issued, whichever comes first.

|    | <u>Facility</u>        | <u>EPA ID#</u> |
|----|------------------------|----------------|
| 8. | Hercules Research Ctr. | DED001315647   |
| 9. | Motiva Enterprise      | DED003913266   |

The remaining 3 facilities, depending on their permit status, will be addressed under Delaware's authorized corrective action permit authority or another appropriate mechanism that will be determined on a facility specific basis. EPA and DNREC will mutually agree upon any alternative mechanism that is used for this purpose.

|     | <u>Facility</u>     | <u>EPA ID#</u> |
|-----|---------------------|----------------|
| 10. | Atlantic Aviation   | DED011028438   |
| 11. | Atlantic Coast Env. | DED000796300   |
| 12. | Seaboard Lumber     | DED057123648   |

**VII. COMPLIANCE MONITORING AND ENFORCEMENT**

Both EPA and the State are committed to maintaining a "level playing field" and establishing a credible deterrence to non-compliance throughout the regulated community. As a result, EPA and the State 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 State priorities, developing and implementing inspection targeting methods, developing targeted inspection lists, exchanging information regarding ongoing Federal and State enforcement actions against significant non-compilers (SNC) and Secondary Violators as defined in the EPA's Enforcement Response Policy dated March 1996.

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

## **A. EPA**

### **1. Compliance Monitoring**

Nothing in this Agreement shall restrict EPA's right to inspect any hazardous waste facility. Before conducting an inspection of a regulated facility, the Agency will give the State 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 State reserves its right to participate in all inspections conducted by EPA. EPA oversight and training inspections will be coordinated with the State.

In an effort to improve enforcement coordination and clarify roles and responsibilities between EPA and the State, 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 action to the other agency. Discussion and mutual agreement will be sought in such cases.

### **2. Enforcement**

EPA may take an enforcement action against any person determined to be in violation of RCRA in accordance with Section 3008. EPA may also take an enforcement action at facilities upon determining that the State has not taken a timely or appropriate enforcement in accordance with EPA's 1996 Hazardous Waste Enforcement Response Policy. EPA reserves its right to take independent enforcement in the State. In instances where the State has referred an enforcement case to EPA, the Agency will review the information provided and determine the appropriate Federal action. Prior to issuing a complaint, compliance order or referral to the Department of Justice, EPA will give notice to the State.

After notice to the State, EPA may take action against any person found to be in violation of RCRA pursuant to §§3008, 3013, and/or 7003 including the holder of a State-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, 3013, and/or 7003 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. EPA may take action under RCRA §§3008, 3013 and/or 7003 in accordance with the U. S. EPA Hazardous Waste Enforcement Response Policy or the EPA Region III Hazardous Waste Management Division 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). Prior to taking enforcement, EPA and the State shall negotiate the lead agency for oversight. In the annual grant work plan, facilities will be prioritized and oversight activities established. EPA and the State shall coordinate the negotiations, issuance, and oversight of compliance orders issued under §3008(h).

## **B. State**

### **1. Compliance Monitoring**

The State 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 State will conduct compliance assessments (DNREC Compliance Assessments are equivalent in every aspect as the Federal RCRA inspections) to ensure compliance with hazardous waste regulations, permit requirements, compliance schedules, and all other program requirements. Additionally, the State will conduct other activities as EPA's designee in order to build capacity as negotiated in the annual work plan during regular facility compliance assessments pending authorization for these provisions. State specific activities and priorities for compliance monitoring will also be included in the annual grant work plan.

### **2. Enforcement**

The State agrees to take timely and appropriate enforcement action and agrees to make significant non-compliance (SNC) determinations in accordance with the 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 State will maintain procedures for receiving and ensuring proper consideration or information about violations submitted by the public. 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 three years after such action is resolved.

## **VIII. AVAILABILITY OF INFORMATION (Sec. 3006(f))**

### **A. General**

Section 3006(f) of RCRA provides that States may be authorized by the Administrator under this section if the State program provides for the public availability of information obtained by the State regarding facilities and sites for treatment, storage and disposal of hazardous waste; and that such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator were carrying out the provisions of this subtitle in the State.

### **B. Requests for Information**

1. Consistent with 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 requester in identifying records being sought, and to help the requester formulate his or her request.
3. If a request for information is denied, the State agrees to provide the requester the basis for the denial and to notify the requester of State judicial (or, if they exist, administrative) procedures, including statutes of limitation.
4. 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 benefiting the general public.

5. 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.

**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 requester of the confidentiality claim within the maximum 20-day time limit provided for an agency response. In addition, the requester 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 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).

STATE OF DELAWARE DEPARTMENT  
OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL

BY:

*Devin J. Southard*

DATE:

*January 21, 2000*

U. S. ENVIRONMENTAL  
PROTECTION AGENCY  
REGION III

BY:

*Bruce M. Gyles*

DATE:

*June 19, 2000*

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