

US EPA ARCHIVE DOCUMENT

ATTORNEY GENERAL'S STATEMENT

Attachment 2

*§3006(f) Checklist:
Availability Of Information*

RCRA REVISION CHECKLIST FOR
SECTION 3006(f): AVAILABILITY OF INFORMATION

November 8, 1984

FEDERAL REQUIREMENT	RCRA CITE 40 CFR	STATE AUTHORITY STATUTE/REGULATION/MOA	REQUIRED AUTHORITY
1. PROCEDURAL REQUIREMENTS			
1.1 Scope of records subject to State requests as broad as scope of records defined by EPA	2.100(b)	7 Delaware Code, 6304(c) HWDR Section 2.02 and 5.01	Statute/ Regulation
1.2 Certain materials routinely available without formal FOI	2.104(b)	7 Delaware Code, 6304(c) HWDR Section 2.02	MOA
1.3 Reasonable effort to assist requestor	2.109(b)	7 Delaware Code, 6304(c) HWDR Section 2.03	MOA
1.4 Respond to request within 20 days. Failure to do so is basis for judicial or administrative review	2.112	7 Delaware Code, 6304(c) HWDR Section 4.02	Statute/ Regulation
1.5 If request denied, provide basis for denial and notice of judicial/administrative appeal procedures	2.113(f) and 2.114(a)	29 Delaware Code, 10005(b) 7 Delaware Code, 6304(c) HWDR Section 4.05	MOA
1.6 Denial of judicial appeal because of untimely filing, provide 30 days to file timely appeal		29 Delaware Code, 10005(b) 7 Delaware Code, 6304(c) HWDR Section 4.05	Statute/ Regulation
1.7 Decision on administrative appeal within 30 days or by next meeting of appellate body	2.117	29 Delaware Code, 10005(b) 7 Delaware Code, 6304(c) HWDR Section 4.05	Statute/ Regulation

HWDR - Hazardous Waste Disclosure Regulations

Section 3006(f) Checklist (continued)

FEDERAL REQUIREMENT	RCRA CITE 40 CFR	STATE AUTHORITY STATUTE/REGULATION/MOA	REQUIRED AUTHORITY
1.8 Failure to decide on appeal by deadline constitutes final agency action and requestor's right to judicial review	5 U.S.C. 552 (a)(6) (C)	7 Delaware Code, 6304(c) HWDR Section 4.02(c)	Statute/ Regulation
1.9 Opportunity for judicial review of any final agency action denying request	2.116	7 Delaware Code, 6304(c) HWDR Section 4.04 & 4.05	Statute/ Regulation
1.10 Consider waiver of fees for copies of information	2.120(d)	7 Delaware Code, 6304(c) HWDR Section 6.01(g)	MOA
1.11 Attorney's fees and expenses	5 U.S.C. 552(a)(4) (E)	7 Delaware Code, 6304(c) HWDR Section 4.06	Statute/ Regulation

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Section 3006(f) Checklist (continued)

FEDERAL REQUIREMENT	RCRA CITE 40 CFR	STATE AUTHORITY STATUTE/REGULATION/MCA	REQUIRED AUTHORITY
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2. SUBSTANTIVE REQUIREMENTS

Based on statute, regulation or case law, the Attorney General must certify that:

2.1 All records are available to the public unless exempt from disclosure	See 5 U.S.C. 552 for exemptions	7 <u>Delaware Code</u> , 6304(c) HWDR Section 2.02	Attorney General Statement as part of applica- tion for authoriza- tion for §3006(f)
2.2 All non-exempt records available to the public regardless of whether any justification or need for records shown by requestor	See 2.1	7 <u>Delaware Code</u> , 6304(c) HWDR Section 2.03	
2.3 Same types of records available as EPA provides*	See 2.1	7 <u>Delaware Code</u> , 6304(c) HWDR Section 2.02 and 5.00	
2.4 State agrees to fullest possible disclosure of records to public	§3006(f)	7 <u>Delaware Code</u> , 6304(c) HWDR Section 2.01, 2.02 and 5.00	MCA

* Examples of records subject to release: Permit applications and modifications; Biennial reports; Closure plans; Notification of a facility closure; Contingency plan incident reports; Delisting petitions and other petitions for variances or waivers; Financial responsibility instruments; Environmental monitoring data (exemption 5 U.S.C. 522 (b)(9) of the FOIA generally applies to such wells as oil and gas, rather than to ground-water wells); Transporter spills reports, International shipment reports; Manifest exception, discrepancy and unmanifested waste reports; EPA facility identification numbers; General correspondence with facility; Enforcement orders, Inspection reports; and Corrective action investigation results.

Section 3006(f) Checklist (continued)

FEDERAL REQUIREMENT	RCRA CITE 40 CFR	STATE AUTHORITY STATUTE/REGULATION/MOA	REQUIRED AUTHORITY
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3. CONFIDENTIAL BUSINESS INFORMATION (CBI)

3.1 CBI not defined any more broadly than 40 CFR Part 2, Subpart A and B	2.201(e) and 2.208	7 Delaware Code, 6304(c) HWDR Section 5.03	Statute/ Regulation
3.2 If no claim of CBI at first opportunity, release information	270.12	7 Delaware Code, 6304(c) HWDR Section 5.03	Statute/ Regulation
3.3 If CBI claim cannot be resolved within 20 days of request, requestor must be notified of claim within 20 days and told that State denied claim so as to resolve CBI	2.204(d)(1) (ii)	MOA Section VIII C	MOA

4. OVERSIGHT OF STATE PROGRAM

4.1 State must keep log or file of denials of requests available for inspection		MOA Section VIII D.1	MOA
4.2 State informs EPA of proposed modification of its basic statutory/regulatory authority, forms, procedures, or priorities	271.21(a)	MOA Section VIII D.2	MOA