

US EPA ARCHIVE DOCUMENT

**MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF MARYLAND
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 Maryland'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 (Public Law 94-580, 42 USC §6901 *et seq.*) 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 of the State Program.

This Agreement is entered into by the Assistant Secretary for Environmental Programs, Department of Health and Mental Hygiene (hereinafter "Assistant Secretary" or "the State") 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. Further, nothing in this agreement shall be construed to restrict the State in the administration of the State Program as required in Health-Environmental Article §7-201 through §7-268 *et seq.*, and as required in COMAR 10.51 entitled "Disposal of Controlled Hazardous Substances."

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 (hereinafter "State 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 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This Agreement will remain in effect until such time as State program authorization is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR 271.22 and 40 CFR 271.23.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 be executed by the State and the Regional Administrator and shall become effective at the time the State's authorization takes effect, which shall be two (2) weeks after the date of publication in the Federal Register of EPA's decision to grant authorization to the State.

II. POLICY STATEMENT

Each of the parties of this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon granting Final Authorization by EPA, the State assumes primary responsibility for implementing 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 in the event the State is unable to act. The State and the Regional Administrator agree to maintain a high level of cooperation and coordination between their respective staffs in an equal partnership to assure successful and effective administration of the State Program.

EPA assumes an oversight role upon granting Final Authorization to the State. EPA will oversee State Program implementation 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 status of the hazardous waste program, and to encourage the State and the EPA to agree on desirable solutions to technical 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 State's programs.

Procedures used by the State in approving variances, waivers or petitions to COMAR 10.51.01-.10 must be equivalent to those used by EPA in granting variances, waivers or petitions to the Federal regulations. The State will transmit a copy of all variances, waivers and petitions at the time they are approved.

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, with this Agreement, and with all applicable Federal requirements and policies for State program implementation, 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 Work Program, permit overview, compliance and enforcement overview, and quarterly and semi-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 in a timely manner.

To ensure effective program review, the State agrees to allow EPA access to all files and other information requested by the Regional Administrator and deemed necessary for reviewing State program administration and enforcement.

Review of Department of Health and Mental Hygiene files will normally be scheduled at quarterly intervals; however, the State agrees to allow EPA access to specific files more frequently as warranted, i.e., enforcement actions. 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 meeting will be prepared by EPA.

Provisions for reporting and processing delisting petitions are described in Section VIII A of this Agreement.

B. Identification of Major Hazardous Waste Handlers

The State agrees to develop with EPA a list of hazardous waste facilities, generators and transporters in the State designated as "major" hazardous waste handlers. This designation is intended to identify, for administrative purposes, environmentally significant hazardous waste handlers, and to be used in concentrating inspection, permitting and reporting resources on those handlers. The list shall be submitted as a part of this Agreement. It shall be reviewed and updated annually and more often as necessary. Changes to the list do not require a formal amendment to this Agreement so long as both the State and EPA agree in writing to any changes.

From the list of "major" handlers the State agrees to develop and annually review with the Regional Administrator a list of facilities whose permit applications and draft permits will be reviewed by EPA. This smaller list constitutes major facilities for purposes of EPA permit overview. The issuance of permits will be in accordance with the same priorities.

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

2. EPA agrees to provide the State notification information from EPA Form 8700-12 obtained prior to the effective date of this Agreement. A copy of the original notification forms and/or a computer print-out containing all the notification information will be provided. Such information will be provided to the Assistant Secretary 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 Assistant Secretary within ten days of each month for the preceding month.
3. 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 to the State after the effective date of this Agreement. EPA will do this after receiving a copy of the notification information from the State as provided in Section IV C.7 of this Agreement.
4. EPA agrees to transfer to the State any pending Part A and Part B hazardous waste management facility permit applications originally submitted to EPA pursuant to 40 CFR 270.10 by facilities located in the State and which have not already been transferred to the State, together with all pertinent file information. Pertinent file information includes applications (including accompanying narratives, plans, maps, etc.), draft permits, public notices, administrative notices, fact sheets and correspondence. Such materials will be provided within thirty days after the effective date of this Agreement and according to any arrangements the State and the Regional Administrator may make regarding the priority of transfer.
5. EPA will also provide to the State, within five days of receipt, Part A and Part B permit applications submitted directly to EPA by persons in the State after the effective date of this Agreement.
6. EPA agrees to make available to the State copies of any reports and data resulting from compliance inspections within sixty days of completion of the inspections, including any enforcement actions taken by EPA against hazardous waste handlers in the State.
7. EPA will make available to the State other relevant information as requested which the State needs to implement its approved program.
8. EPA-Region III responsibilities regarding the maintenance and operation of the Hazardous Waste Data Management System (HWDMS) are as follows:
 - (a) The Region agrees to provide and maintain current documentation to HWDMS.
 - (b) Promptly alert the State to any changes in the HWDMS requirements which affect its usage.

- (c) Update data submitted to HWMDS by the State and assure that the HWDMS error listing is available to the State for corrections. (Note: If errors are the result of hardware or software problems, EPA will correct problems and resubmit data in the next scheduled update.)
- (d) Provide HWDMS training to State personnel. This training shall include, at a minimum, source document coding, data entry procedures, quality control and usage of System 2000 (S2K) Natural Language.
- (e) Provide specialized reports upon request within the Region's resource constraints.
- (f) Conduct periodic quality checks of HWDMS to ensure that the information in the system accurately represents an installation's hard copy file located in the State. EPA shall work with the State to improve data handling procedures if necessary and as needed.
- (g) Establish an account at the National Computer Center for the State and provide a quarterly report on the monthly accounting of the timesharing costs.

C. State

1. The State agrees to inform the Regional Administrator of any proposed or adopted 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 memorandum 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.
2. The State agrees to submit the following reports to the Regional Administrator within the specified time periods:
 - Biennial report summarizing the quantities and types of hazardous waste generated, transported, treated, stored, and disposed of in the State, by October 1 of each even-numbered year.
 - A copy of the report entitled "State's Compliance with Financial Assurance Requirements." This report is due by June 30, of every year.
 - On a monthly basis, copies of formal enforcement actions for Class I violations at Department of Defense facilities.

- By December 31, 1984, a State Compliance/Enforcement Strategy.
 - By December 31, 1984, a multi-year Permit Strategy which will be reviewed and modified as necessary.
 - Additional reports as negotiated in the State Work Program.
3. The State agrees to submit to the Regional Administrator the following information as frequently as noted below:

<u>ITEM DESCRIPTION</u>	<u>FREQUENCY OF SUBMISSION</u>
a. A copy 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 major hazardous waste management facilities in the State unless EPA has been copied by the facility. The State may want to re-request an additional copy of the permit application from facilities for forwarding to EPA.	Within 15 days of their receipt by the State.
b. A copy of selected non-major permit applications for which the State may be issuing or denying a permit in that particular year.	Upon request
c. Copies of all trial burn plans (if different from the application) and trial burn plan approvals.	Within one week of their receipt/transmittal by the State.
d. Copies of (a) draft permits and (b) proposed permit modifications (c) permit denials and (d) accompanying explanatory material for	Two weeks prior to public notice.

all major hazardous waste management facilities in the State. EPA also may request a copy of completeness and technical reviews for selected permits being worked on during the fiscal year.

- e. For non-major facilities the State agrees to submit to EPA a copy of the fact sheet with the public notice of the intention to issue or deny the permit. In addition, the State will send EPA copies of notices of public hearings. For selected non-major facilities which are targeted to be issued during the fiscal year, EPA may request a copy of completeness and technical reviews, and draft permits (prior to public notice issuance).

At the time they are sent out for public comment.
- f. For all major facilities the State agrees to submit to EPA a copy of all final permits issued, denied, modified, reissued or terminated. EPA may request a copy of final documents for non-major permits being worked on during the fiscal year.

Within 7 working days of their completion.
- g. The State agrees to submit the following closure/post-closure data to EPA:

 - (1) Copy of public notice announcing receipt of closure/post-closure plans and public hearing, if applicable.
 - (2) Copy of the approved closure and post-closure plans for all major facilities.
 - (3) Copy of the State's approval of the closure plan for all non-major facilities.

Within 2 weeks of receipt/transmittal.

- (4) Copy of the closure certifications by the independent registered engineer (or independent qualified soil scientist in cases of land treatment facilities) and the owner or operator.
 - (5) Copy of the revised Part A reflecting partial facility closures (i.e., where a cell or unit of the facility is closed) of interim status units (or cells).
 - (6) Copy of the State's reports of inspections conducted during closure and after receipt of closure certification.
 - (7) Copy of the certified survey plot of the closed disposal facility/unit or cell prepared by a professional land surveyor and filed with the local land authority.
 - (8) Copy of the notice placed in the property deed, or other instrument which is normally examined during title search, for closed disposal facility/unit or cell.
 - (9) Copy of letters sent to facilities requiring post-closure permit applications for those facilities requiring a post-closure permit.
- h. The State agrees to notify EPA of all new facility permit applications for the purpose of determining facility classification. Within 5 days via telephone call to the Waste Management Branch.
 - i. Copy of all variances. Upon issuance.
 - j. The State agrees to provide telephone notification to the RCRA Permits Section of all emergency permits prior to issuance if feasible owing to the nature of the emergency. Copies of these permits shall be forwarded to EPA upon issuance. As soon as possible.

The State may request technical assistance in the review of permit applications, draft permits, permit modifications, emergency permits, closure/post-closure plans, etc. The priorities for permitting will be reviewed annually during the development of the State Work program.

4. So that EPA can issue EPA identification numbers and maintain a national inventory of all hazardous waste handlers, the State agrees to provide EPA with the following notification information submitted to the State after the effective date of this Agreement by new hazardous waste generators, transporters and treatment, storage and disposal facilities in the State:
- name and location of the handler
 - mailing address of the handler
 - name and telephone number of a contact person
 - type of hazardous waste activity
 - process codes and amounts (if the handler is a TSDF)
 - change of ownership
 - increases in capacity
 - changes in status

The State will also submit any updates or changes in previously submitted notification information. This information will be provided to the Regional Administrator within ten days of receipt of the information.

5. The State agrees to adhere to established procedures, both present and future, for accessing and maintaining the Hazardous Waste Data Management System (HWDMS) as specified in the State Work Program and will ensure that the activities listed below are conducted in a timely manner:
- a. Enter data elements information into HWDMS for which data is required. The data shall be transmitted to Region III in the HWDMS transaction format for direct entry into the data system, in a timely manner.
 - b. The State will periodically review the HWDMS data for completeness and accuracy, make necessary corrections, and update HWDMS with any missing information or new information.
 - c. The State shall have access to HWDMS for data retrieval for all Region III States for use in the management of the State Program.
 - d. The State agrees to conduct meetings as needed with Regional personnel to review HWDMS operation, identify problems and incorporate any changes to improve the process.
 - e. The State understands that data entered into HWDMS is considered Federal data. As such the Freedom of Information Act and other Federal laws govern access to the data.
 - f. The State agrees to enter into a Interagency Agreement with EPA and the National Computer Center for a timeshare account and user identification number.

- g. The State agrees that data received under a claim of confidentiality and approved by the State will not be entered into the data system.

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 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 the receipt of such information shall immediately notify by telephone the other party to this Agreement of the existence of such situation.

1. For the State, the twenty-four (24) hour response number is (301) 243-8700.
2. For the EPA, the twenty-four (24) hour response number is (215) 597-9898.

F. Confidentiality

1. Any information obtained or used in the administration of the State Program shall be available to EPA upon written request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to the EPA when providing information. Any information obtained from a State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2.
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.

V. PERMIT ISSUANCE

A. EPA Permitting

Upon Final Authorization of the State Program EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities in the State.

EPA intends to add permitting standards for processes not currently covered by the Part 264 standards. For example, the Part 264 standards do not currently cover treatment and storage of hazardous waste in certain types of underground tanks. When EPA does promulgate standards for additional processes, EPA will process and enforce RCRA permits in the State in the new areas until the State receives Final 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 in conformance with the conditions of this agreement.

B. EPA Overview of State 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 State and EPA as major facilities for permit overview.

EPA may comment on State permit applications, draft permits, and proposed permit modifications as follows:

<u>ITEM DESCRIPTION</u>	<u>FREQUENCY OF SUBMISSION</u>
<p>EPA will comment in writing in accordance with §271.19 to inform the State and the facility of any deficiency in the content of any permit applications, draft permits and proposed permit modifications for major facilities.</p>	<p>Within 60 days of receipt or will request an extension for these comments as warranted. In the case of draft permits, receipt should be two weeks prior to public notice.</p>
<p>As resources allow, EPA agrees to provide comments on permit applications, draft permits, and proposed permit modifications for non-major facilities which have been deemed complete.</p>	<p>Within 60 days of receipt or will request an extension for these comments as warranted. In the case of draft permits, receipt should be two weeks prior to public notice.</p>

EPA will review all trial burn permit applications and provide comments to the State.

Within 60 days of receipt.

EPA will select and evaluate closure and post-closure plans, and cost estimates, and provide comments to the State.

Immediately if the plan appears to present an unreasonable risk to human health or the environment. Otherwise on a mutually agreed upon schedule.

EPA may 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 shall provide such information within one week of request.

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, within forty-five days of its receipt. Where EPA indicates in a comment that issuance 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 sections of the State regulations that support the comment); and
- (b) the 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 the Regional Administrator).

EPA will send a copy of any written comments on the permit application, draft permit or proposed permit modification to the permit applicant. The State will be notified of this action.

EPA will withdraw any comment in writing when satisfied that the State has met or refuted the Agency's concerns and also EPA shall inform the permit applicant of any comments withdrawn.

The Assistant Secretary and the Regional Administrator agree to meet or confer whenever necessary to resolve a disagreement between their staffs on the terms of any State RCRA permit to be issued by the State.

Under Section 3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of 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 all hazardous waste treatment, storage and disposal facilities in the State, and shall do so in a manner consistent with RCRA, with this Agreement, with all applicable Federal requirements, and with the State's Program Description.

The State agrees to assume the issuance of any permit being jointly developed with the EPA and to assume primary responsibility to enforce these permits as State RCRA permits upon receipt of Final Authorization.

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 issue, modify and reissue all permits in accordance with Hazardous Waste Regulations COMAR 10.51.01-.10 under authority of the Health-Environmental Article, Subtitle 2. This Agreement also applies to permits issued after Final Authorization but for which the processing may have begun before Final Authorization.

The State agrees to consider all comments EPA makes under §271.19 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.

VI. PERMIT ADMINISTRATION AND ENFORCEMENT

A. EPA

EPA will administer the RCRA 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. 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 primarily rely on the State to enforce those terms and conditions.

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

B. State

The State agrees to 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 Health-Environmental Article 7, Subtitle 2, and COMAR 10.51.01-.10. The State agrees to modify or revoke and reissue these State permits as RCRA permits in accordance with the following schedule.

- 1) All facilities required to have groundwater monitoring by September 30, 1985.
- 2) All hazardous waste incinerators by March 30, 1986.
- 3) All remaining facilities by September 30, 1987.

VII. COMPLIANCE MONITORING AND ENFORCEMENT

A. EPA

Nothing in this Agreement shall restrict EPA's right to inspect any hazardous waste generator, transporter or facility or bring enforcement action against any person believed to be in violation of the State hazardous waste program. Before conducting an inspection of a generator, transporter or facility, the Regional Administrator will give the State at least seven days notice of the intent to inspect in accordance with 40 CFR 271.8(b)(3)(i). If the State performs a compliance inspection and submits a report and data relevant thereto within that time to EPA, no EPA inspection will be made, unless the Regional Administrator deems the State report and data to be inadequate. In case of an imminent hazard to human health and the environment, the Regional Administrator may shorten or waive the notice period.

The frequency of EPA oversight and training inspections will be specified in the annual State Work Program. EPA will conduct oversight inspections on approximately 10% of the State's compliance inspections, based on the Federally recommended inspection frequency.

The Regional Administrator may take enforcement action in lieu of the State or in conjunction with the State against any person determined to be in violation of RCRA in accordance with Section 3008(a)(2). EPA will take enforcement action only upon determining that the State has not taken timely and appropriate enforcement action in accordance with EPA's Enforcement Response Policy. Prior to issuing a compliance order under Section 3008 EPA will give notice to the State. EPA also retains its rights to issue orders and bring actions under Sections 3013 and 7003 of RCRA and any other applicable Federal statute.

B. State

The State agrees to carry out a timely and effective program for monitoring the compliance by generators, transporters, and facilities with

applicable program requirements (see 40 CFR 271.15). As part of this program, the State will conduct compliance inspections to assess compliance with generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements.

The State agrees to take timely and appropriate enforcement action in accordance with the Interim National Criteria for a Quality Hazardous Waste Management Program under RCRA against all persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements, including violations detected by State or Federal compliance inspections. The State will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public.

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

Appropriate State enforcement response shall be conducted in accordance with EPA's Interim National Criteria for a Quality Hazardous Waste Management Program under RCRA and may include not more than two warning letters for any violation, followed by timely initiation and prosecution of enforcement proceedings which may be, as determined on a case-by-case basis, administrative or judicial in nature. Any civil penalty assessed, sought, or agreed upon by the State shall be appropriate to the violation, as defined in 40 CFR 271.16(c).

The State agrees not to oppose intervention by persons otherwise having standing under Maryland Rule 208 (a), on the grounds that the interest of the proposed intervenor is already adequately represented by the State.

The State agrees to retain all records for at least three years unless there is an enforcement action pending. In that case all records will be retained until such action is resolved.

VIII. STATE SPECIFIC AGREEMENTS

A. Delisting

Upon receipt of a request to delist a hazardous waste, the State agrees to the following:

1. The State will provide EPA with a copy of the request.
2. 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.)

3. The State will notify the generator and EPA of the delisting decision.
4. Upon request from the State, EPA agrees to evaluate the delisting petition within a schedule jointly established with the State.
5. 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 the facility's waste from Federal regulatory control, the State's regulatory control is not affected by Federal delisting.)

6. 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.
7. If EPA receives a request to delist a hazardous waste and the petitioner indicates that he is knowledgeable of the State's role in the delisting process, but specifically requests an EPA decision, EPA will:
 - a. Provide the State a copy of the request;
 - b. Evaluate the request and determine whether the waste should be delisted; and
 - c. Discuss with the State EPA's determination.
 - (i) If the State agrees with the EPA decision, EPA will publish the results of the decision in the Federal Register.
 - (ii) 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.

B. State Permitting

The State agrees that when facilities are issued "equivalent permits", as provided for in Maryland Code §7-232 (b), the owners or operators will be obligated to comply with all the requirements which would be imposed by the Department pursuant to a "Controlled Hazardous Substance Facility" permit issued under Maryland Code §7-232(a) and its implementing regulations, COMAR Title 10, Subtitle 51. The Assistant Secretary agrees that when issuing "equivalent permits", he will carry out all of the responsibilities set forth in COMAR Title 10, Subtitle 51, that he would undertake for the issuance of "Controlled Hazardous Substance Facility" permits. Furthermore, all provisions contained in this Memorandum of Agreement will be fully applicable to "equivalent permits" as defined in Maryland Code §7-232 (b).

In accordance with the requirements of 40 CFR Part 124.10 (c)(2)(ii), the State agrees to issue public notice of permit activities in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations. If free public service radio broadcasting time is not available, the State agrees to use other commercially available time at the State's and/or the applicant's expense. As required by 40 CFR Part 124.10(c)(1)(ix)(A), the State will also notify, in writing, the chief executive officer of each county and municipality having jurisdiction over the area in which a facility is proposed to be located of applicable permit activities. In accordance with 40 CFR Part 124.10(c)(3) the State will issue public notice of applicable permit activities in a manner constituting legal notice to the public under State law. Additionally, the State agrees to conform with 40 CFR Part 124.10(c)(4) and provide notice of applicable permit activities to persons potentially affected by them, including press releases or any other forum or medium to elicit public participation. Applicable permit activities are described in COMAR 10.51.07.03 G(1) and include permit applications denials, prepared draft permits, scheduled public hearings or informational meetings, and permit appeals. All public notices shall be issued in accordance with the provisions of COMAR 10.51.07.03 G.

As long as it is consistent with Health-Environmental Article 7-238, the State agrees to permit facilities in the following general order of priority; 1) all new facilities, 2) all facilities requiring groundwater monitoring, 3) all hazardous waste thermal destruction facilities, 4) all major storage facilities, 5) all major treatment facilities, 6) all minor storage facilities, and 7) all minor treatment facilities.

C. Capability Assessment

As a result of EPA's capability assessment of Maryland's hazardous waste program, the State and EPA agree to the following objectives in order to evaluate and improve, where necessary, the State's program over time, so as to be consistent with EPA's "Interim National Criteria for a Quality Hazardous Waste Management Program under RCRA" (hereinafter "Criteria").

1. EPA

EPA will provide to the State, as needed, specific guidance, which details how the State can best attain the objectives of the Criteria. Annual grant guidance will reflect the basic principles of the Criteria and grant work programs will be designed to enhance State program capability to the greatest extent possible. EPA will also provide training, and technical and financial assistance, as available, to assist the State in developing a quality program. Through formal and informal State program evaluations, EPA will continuously assess the State's program for consistency with the Criteria, and related guidance, in order to identify areas of the State's program which may require attention.

When the State demonstrates that it consistently meets the performance Criteria, EPA may reduce its degree of oversight, i.e., reporting frequency, scope and frequency of program reviews, etc.

2. State

The State does not believe the "Interim National Criteria for a Quality Hazardous Waste Management Program under RCRA" should be the sole basis for evaluating its hazardous waste management program. However, in so far as the State believes its program exemplifies the basic principles defined by the Criteria, the State agrees to implement a program which is consistent with the Criteria to the greatest extent possible and within the scope of State authority. In addition, the State agrees to develop by December 31, 1984, and implement, a compliance and enforcement strategy based on Lee Thomas' memorandum of June 12, 1984, entitled, "Compliance/Enforcement Program Descriptions in Final Authorization Application and State Compliance/Enforcement Strategies". The State agrees to comply with provisions of the EPA-approved RCRA Quality Assurance Project and Program Plans when implementing it's hazardous waste program. The State will also develop by December 31, 1984, and implement, a multi-year permit strategy based on EPA's August 1984 "National Permits Strategy". In order to implement that strategy the State will seek to fill two vacant positions in the Hazardous Waste Division, Permits Section, as soon as administratively possible. The State agrees to consider recommendations made by EPA as a result of program evaluations and which are consistent with the Criteria. The State recognizes the need to inform EPA of authorized program activities and agrees to report to EPA in accordance with Section IV C of this Agreement and will do so as accurately as possible and in a timely manner.

STATE OF MARYLAND
OFFICE OF ENVIRONMENTAL PROGRAMS

BY: 

TITLE: Assistant Secretary for
Environmental Programs

DATE: 12/10/84

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION III

BY: 

TITLE: Regional Administrator

DATE: JAN 9 1985