

US EPA ARCHIVE DOCUMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

**SUBJECT:** Maryland RCRA Final Authorization for the Hazardous  
Waste Program (Subtitle C)

SEP 10 2001

**FROM:**   
John J. Humphries, III  
Chief, RCRA States Program Branch (3WC21)

**TO:** See Distribution

The State of Maryland has received final authorization of its Hazardous Waste Program per the Federal Register Notice dated June 1, 2001. This final authorization took effect on July 31, 2001. As a result of this delegation of authority, the Maryland Department of the Environment (MDE) will be granted primary responsibility for the implementation of the majority of RCRA Subtitle C program revisions through June 1994.

Since Maryland has received Final Authorization we, as an Agency, must recognize this shift of authority and appropriately modify our relations with the MDE with respect to the hazardous waste program. I suggest you take a few moments to review the attached Memorandum of Agreement (MOA) between EPA Region III and the MDE. We are also providing you with a chart (second attachment) which characterizes areas of responsibility within the MOA for both the State and EPA.

State MOA's are reviewed on an annual basis for possible revision. If at any time (particularly during the grant negotiation process) you believe the Maryland MOA does not reflect existing policies or unique operating agreements which have been or are being negotiated with the State, please notify Carol Johnson, the Maryland State Program Manager, in writing, so formal amendments to the MOA can be arranged.

Please file this Hazardous Waste Program MOA for quick reference. If you have any questions regarding either of these attachments, please contact Carol Johnson at 4-3378.

Attachments



Distribution: Lawrence Bass (3RC43)  
Diane Ajl (3RC43)  
Mary Coe (3RC30)  
Wayne Naylor (3WC11)  
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cc: Thomas Voltaggio (3DA00) (w/o attachment)  
James Newsom (3PM00) “  
John Armstead (3ED00) “  
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Samatha Fairchild (3EC00) “  
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Maria Vickers (3WC00) “  
Harry Daw (3WC32) “  
Aquanetta Dickens (3WC33) “

MOA PROVISION & SECTION REFERENCE	STATE/EPA RESPONSIBILITIES		SUMMARY OF TASK, DUTY OR RESPONSIBILITY	SPECIFIC TIMEFRAME (IF APPLICABLE)	COMMENTS
	S	E			
		X	Right to take independent EPA enforcement action	As appropriate	Notice to state.
		X	Right to take corrective action enforcement action pursuant to 3008(h)	As appropriate	
	X	X	Negotiate lead agency for issuance and oversight of corrective action compliance orders	As appropriate	
"EPA" Enforcement	X	X	Negotiate and prioritize oversight activities in grant work plan	Annually	
"State" Compliance Monitoring	X		Carry out timely and effective program	Ongoing	
State "Enforcement"	X		Pursue timely and appropriate enforcement actions and make SNC determinations in conformance with EPA's 1996 ERP	Ongoing	
	X		Maintain procedures to follow-up on violations alleged by public	Ongoing	If enforcement action is pending 3 years after action is resolved
	X		Record retention	3 Years	If enforcement action is pending 3 years after action is resolved

MOA PROVISION & SECTION REFERENCE	STATE/EPA RESPONSIBILITIES		SUMMARY OF TASK, DUTY OR RESPONSIBILITY	SPECIFIC TIMEFRAME (IF APPLICABLE)	COMMENTS
	S	E			
VII. COMPLIANCE MONITORING	X	X	Through the annual grant work plan coordinate enforcement activities and compliance monitoring	Annual	Consistent with EPA's Enforcement Response Policy (ERP) 3/96
"EPA" Compliance Monitoring		X	Right to inspect any regulated facility	7 days notice to state.	May shorten or waive notice period if imminent hazard.
	X		Participation in all EPA inspections, if desired	Ongoing	
"EPA" Compliance Monitoring		X	Coordination with state in oversight and training inspections	Ongoing	
	X	X	Lead "inspecting" agency will routinely be lead in enforcement action or seek mutual agreement and promote discussion	Ongoing	
"EPA" Enforcement		X	EPA may take enforcement action for any RCRA violations in accordance with Section 3008 or at any facility where the state has not taken timely or appropriate action in accordance with ERP	As appropriate	

MOA PROVISION & SECTION REFERENCE	STATE/EPA RESPONSIBILITIES		SUMMARY OF TASK, DUTY OR RESPONSIBILITY	SPECIFIC TIMEFRAME (IF APPLICABLE)	COMMENTS
	S	E			
	X	X	Establish state oversight enforcement, worksharing agreements	Ongoing	In addition to Federal oversight and enforcement
		X	Termination of Federal permits	As appropriate	When state assumes full responsibility or incorporates terms and conditions of Federal permits
	X		Review all hazardous permits issued under State law prior to effective date of MOA	As appropriate	Notify EPA of any non-equivalent permits.
	X		Modify or revoke and reissue any state permit not equivalent to federal regulations	As needed	
		X	Enforce federal permit until expiration or termination	Ongoing	If state does not modify, revoke or reissue
		X	Notify permittee of intent to terminate federal permit	Subsequent to effective date of state permit.	Permittee has 30 days to agree or object
	X		Resolve all State permit appeals consistent with authorized program	As needed	

MOA PROVISION & SECTION REFERENCE	STATE/EPA RESPONSIBILITIES		SUMMARY OF TASK, DUTY OF RESPONSIBILITY	SPECIFIC TIMEFRAME (IF APPLICABLE)	COMMENTS
	S	E			
	X		*Exercise variance authority, including emergency administrative orders, so result is not less stringent or inconsistent with Federal or other State Programs	When expected	
	X		Consider all EPA comments on permit applications and draft permits	As provided	
	X		Satisfy or refute formal EPA concerns in writing before issuing a permit or making modifications	As provided	
(Joint Permitting)	X	X	Establish joint permitting process and review and revise as necessary to reflect State authorization	Annually	- Negotiated and specified in annual state grant workplan  - Amend or execute a separate MOA as needed
	X		Assistance in meeting EPA's 2005 GPRA goals for Corrective Action environmental indicators as resources allow and as specified in annual grant workplan	Ongoing	
VI. PERMIT ADMINISTRATION		X	Administer RCRA permits EPA has issued to state facilities	Until expiration or termination.	

MOA PROVISION & SECTION REFERENCE	STATE/EPA RESPONSIBILITIES		SUMMARY OF TASK, DUTY OF RESPONSIBILITY	SPECIFIC TIMEFRAME (IF APPLICABLE)	COMMENTS
	S	E			
		X	<b>"Overview of State Permits"</b>  - Notify State of EPA's intent to comment  - Comment on State draft permit and provide Permit applicant a copy of EPA's comments  - Resolve any issues or disagreements  - Allow EPA to review file information at state office or provide EPA with copies	30 days of receipt  45 days  30 days  W/7 days or mutually agreed alternate schedule	
(State Permitting)	X		Drafting, circulating, issuing, modifying, reissuing, and terminating RCRA permits contained in the authorized provisions of the state's program	Ongoing	- Do so in a manner consistent with; RCRA (as amended by HSWA) - MOA - All other Federal req. - State's Program Description - Grant work plan - Other applicable state req.
	X		Ensure all compliance tasks are described in clear, unambiguous and plain language	Ongoing	

MOA PROVISION & SECTION REFERENCE	STATE/EPA RESPONSIBILITIES		SUMMARY OF TASK, DUTY OF RESPONSIBILITY	SPECIFIC TIMEFRAME (IF APPLICABLE)	COMMENTS
	S	E			
		X	Confidentiality	As needed	<ul style="list-style-type: none"> <li>- Furnish file information to the state which is not submitted under a confidentiality claim and which the state needs to implement its program</li> <li>- Will notify affected facilities when confidential information is sent to the state</li> </ul>
V. PERMIT ISSUANCE (EPA Permitting)		X	Suspend issuance of Federal permits for which the state is receiving authorization	As appropriate	
		X	Issue and enforce RCRA permits for regulations mandated by HSWA that are not covered by the state's authorized program	Ongoing	
		X	Transfer any pending permit applications, completed permits or pertinent file information to state	Within 30 days of approved state program or alternate mutually agreed upon schedule	

MOA PROVISION & SECTION REFERENCE	STATE/EPA RESPONSIBILITIES		SUMMARY OF TASK, DUTY OF RESPONSIBILITY	SPECIFIC TIMEFRAME (IF APPLICABLE)	COMMENTS
	S	E			
	X		Provide any pertinent information as requested within mutually agreed timeframe  Develop and maintain a public mailing list	As requested  Keep current	
		X	EPA Site Visits		<ul style="list-style-type: none"> <li>- Maintain reliable national data.</li> <li>- Share with state any national reports as to allow the state to identify discrepancies or errors</li> <li>* - Draft reports to Maryland</li> </ul>
	X	X	Emergency Situations  State: 7:30 am - 5:00 pm Weekdays (410) 333-2950 State 24 hour response: (410) 974-3351 EPA 24 hour response: (215) 814-9016	As appropriate	<ul style="list-style-type: none"> <li>- In the event of an emergency situation the party in receipt of such information shall immediately notify the other parties in this agreement</li> </ul>
	X		Confidentiality	As needed	<ul style="list-style-type: none"> <li>- Furnish file information to the state which is not submitted under a confidentiality claim and which the state needs to implement its program</li> <li>- Will notify affected facilities when confidential information is sent to the state</li> </ul>

MOA PROVISION & SECTION REFERENCE	STATE/EPA RESPONSIBILITIES		SUMMARY OF TASK, DUTY OF RESPONSIBILITY	SPECIFIC TIMEFRAME (IF APPLICABLE)	COMMENTS
	S	E			
	X		Inform state of content and meaning of statutes, regulations, guidelines, standards, policy decisions, directives	As requested or as needed	
	X	X	Coordinate joint permitting responsibilities and exchange of information	Ongoing	
	X		Provide technical support, assistance and training as resources allow	As requested	
	X		Advise EPA of any proposed program changes	As they occur	e.g. statutes regulations judicial actions, etc.
	X		Follow reporting requirements specified in annual grant work plan	As specified	<ul style="list-style-type: none"> <li>- GPRA goals and accomplishments.</li> <li>- Biennial reports.</li> <li>- Inspection reports.</li> <li>- Enforcement actions.</li> <li>- RCRIS/RCRA info reporting forms</li> <li>- Quarterly accomplishments.</li> <li>- Compliance monitoring &amp; inspection commitment charts.</li> <li>- Any additional reports as negotiated in §301l work plan pursuant to 40 CFR 271.8</li> <li>- Provide copies of all variances, waivers &amp; delistings</li> <li>- Permitting, closure/post closure information</li> </ul>

MOA PROVISION & SECTION REFERENCE	STATE/EPA RESPONSIBILITIES		SUMMARY OF TASK, DUTY OF RESPONSIBILITY	SPECIFIC TIMEFRAME (IF APPLICABLE)	COMMENTS
	S	E			
	X		* Delisting petitions (Discuss general arrangements e.g., State authorized, EPA does alone or EPA does with State's coordination)	As appropriate	*- Except for wastes that are listed as state hazardous but not by EPA. - Notify & provide state with all actions regarding delisting - EPA processes the delisting - MDE temporarily adopts delisting - MDE eventually adds to their regulations
III. STATE PROGRAM REVIEW	X		Assess the state administration and enforcement of their Hazardous Waste Program for equivalence and consistency with RCRA and the MOA. Provide any comments to the state	Ongoing	
		X	Allow EPA access to all files and other information	Ongoing	
		X	Review state files	As needed	
		X	Program Reviews	Per grant work plan	At least 15 days notice unless otherwise agreed by EPA & state
	X	X	Negotiate priority program activities as part of State grant work plan	Annually	
IV. INFORMATION SHARING	X	X	Review the information sharing provisions of MOA for revisions	Annually	- RCRIS. - Notification Forms - Compl/Enf data - Corrective action information

# STATE/EPA RESPONSIBILITIES PURSUANT TO RCRA SUBTITLE C AUTHORIZATION MOA

State: Maryland

Date: 07/31/01

MOA PROVISION & SECTION REFERENCE	STATE/EPA RESPONSIBILITIES		SUMMARY OF TASK, DUTY OR RESPONSIBILITY	SPECIFIC TIMEFRAME (IF APPLICABLE)	COMMENTS
	S	E			
I. GENERAL	X	X	Joint Reviews to access need for updates or revisions	Annually/grant preparation	
II. POLICY STATEMENTS	X		Implement authorized provisions	Ongoing	
		X	Ensure execution of RCRA requirements through oversight of authorized program	Ongoing	
	X		Follow EPA policies/guidelines	Ongoing	
	X		Implement HSWA provisions for which the state is not authorized	Ongoing	- Coordinate with state the implementation of provisions

**EPA REGION III**  
**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" or MOA) establishes policies, responsibilities, and procedures pursuant to 40 CFR Section 271.8 for the State of Maryland (hereinafter "the State") Hazardous Waste Program (hereinafter "State Program") authorized under Section 3006 of the Resource Conservation and Recovery Act (hereinafter "RCRA" or "the Act") of 1976 (42 U.S.C. 6901 et seq.), as amended (Public Laws 94-580, 96-482, 98-616), and the United States Environmental Protection Agency Regional Office for Region III (hereinafter EPA).

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 Secretary of the Maryland Department of the Environment (hereinafter "Secretary" or "the State") and the Regional Administrator, EPA Region III (hereinafter "Regional Administrator" or "EPA").

For the purposes of this agreement, "Secretary" means the Maryland Secretary of the Environment or his or her designee. "Director" means the Director of the Waste Management Administration, Maryland Department of the Environment.

Nothing in this Agreement shall be construed to restrict in any way EPA's authority 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 the Code of Maryland Regulations (COMAR), Title 26, Subtitle 13 Department of the Environment (COMAR 26.13.01 through 26.13.10).

The Parties will review the Agreement jointly at least once a year (and at other times as appropriate) during preparation of the Annual State Grant Work Plan, in connection with grant funding under Section 3011 of RCRA.

This Agreement supercedes the Agreement that was effective on January 9, 1985 and any subsequent amendments or revisions. 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 Director and 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 Section 271.22 and 40 CFR Section 271.23.

This Agreement shall be executed by the Secretary and the Regional Administrator and shall become effective at the time the State's authorization takes effect, which shall be the date set out in the Federal Register notice of the Regional Administrator's decision to grant authorization to the 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 Secretary and the Regional Administrator agree to maintain a high level of cooperation between their respective staffs in a partnership to assure successful and effective administration of the State program. The State will conduct its hazardous waste program consistent 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 Section 3006(f), Availability of Information, which cannot be implemented by EPA in authorized States. While EPA retains responsibility for the direct implementation of those provisions of HSWA which the State is not authorized to implement, it is the intention of EPA and the State to coordinate the implementation of such provisions to the greatest degree possible.

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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 (April, 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).

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 the desirable technical support and targets for joint efforts to prevent and to 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, and mid-year and annual reviews of the State's program.

Procedures used by the State in approving variances, waivers or petitions in the Code of Maryland Regulations (COMAR) 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.

EPA will continue to process delisting petitions for federally regulated hazardous wastes; however, EPA agrees to include the State in all pre-petition discussions with petitioners, and EPA will notify the State within a reasonable time of receiving a petition to delist a waste from a specific facility in Maryland, pursuant to 40 CFR Part 260.22. The Director or the Director's designee will inform EPA in writing of the State's intent to participate in EPA's review and evaluation of the delisting petition.

Delisting petitioners in the State will submit delisting petitions for federally regulated hazardous wastes to the Regional Administrator and to the Director. In the event these petitions are submitted to the State in lieu of EPA, the State will retain a copy and immediately forward the petition to EPA. When a petition is submitted to EPA, EPA will notify the petitioner of the need to submit a copy of the petition to the State. Should EPA require the assistance of the State in the review of the petition, this work sharing activity will be negotiated at the time the annual grant work plan is being negotiated, or subsequently as an additional element to be added or substituted into the work plan.

EPA will notify the State prior to publishing a proposed delisting determination in the Federal Register, and again notify it when the final determination is made. A copy of the Federal Register Notice announcing EPA's tentative determination will be provided to the State. EPA will notify the State if any public comments are received on EPA's tentative determination and will provide copies to the State if requested. As necessary, and if requested, EPA agrees to coordinate with the State in the development of any response to comments. A copy of EPA's determination on the petition, as published in the Federal Register, will be provided to the State.

If the State concurs with an affirmative EPA decision on a delisting petition, the Director agrees to follow appropriate State procedures to officially incorporate EPA's rulemaking decision into the State's program. When EPA approves a delisting petition after the appropriate comment period, the State will view that approval as a de facto petitioning of the State by the generator for a variance from the definition of hazardous waste. The State will review and approve the variance request in accordance with the provisions of COMAR 26.13.01.04C. In order to recognize

EPA's approved exclusion until the State is able to incorporate the exclusion into its regulations during the next State rulemaking opportunity, the State will grant a temporary exclusion under the provisions of COMAR 26.13.01.04C(11). The State will inform the Regional Administrator when the final action has been completed.

### **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 the adequacy of enforcement. This assessment will be accomplished by EPA review of information submitted by the State. The information is submitted in accordance with this Agreement and the State grant work plan, permit overview, compliance and enforcement overview, and mid-year and end of year 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 regulated persons, the public, and Federal, State and local agencies. Copies of any 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 State files may be scheduled at quarterly intervals; however, the State agrees to allow EPA access to specific files more frequently as warranted, i.e., for enforcement actions. Program review meetings between the Director and the Regional Administrator, or their designees, will be scheduled at reasonable intervals not less than annually to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. These meetings will be scheduled at least fifteen (15) days in advance unless otherwise agreed to by EPA and the State. A tentative agenda for the meeting will be prepared in advance by EPA.

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

The State and EPA agree to develop, on an annual basis as a part of the State grant work 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 Maryland, and will serve to identify those activities which should receive the highest priority during the grant period.

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

#### **IV. INFORMATION SHARING**

##### **A. General**

1. 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 Secretary and the Regional Administrator, or their designees, will carefully examine the following information sharing provisions for needed revision.
2. EPA and Maryland responsibilities regarding the maintenance and operation of the Resource Conservation and Recovery Information System (RCRIS/RCRAInfo) are specified in the RCRIS MOU negotiated between EPA Region III and Maryland in the annual Maryland work plan. When RCRIS is replaced by EPA's new hazardous waste data management system, "RCRAInfo", a new RCRAInfo MOU will be executed. Examples of responsibilities that will be addressed in 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; and
  - e. Processing hazardous waste 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 share information as specified in this agreement and in the Annual State Grant Work Plan. Specifically included shall be the procedures for sharing and coordinating the exchange of information on the following:

- a. Part A and Part B Permit Applications, whether received prior to the effective date of this 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, including electronic data elements shown on RCRAInfo data entry screens;
  - c. Copies of draft permits, proposed permit modifications, public notices;
  - d. Copies of final permits and permit modifications; and
  - e. Notices of permit denials.
4. EPA will make available to the 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.
  5. As resources allow, EPA agrees to provide training to the State whenever the State requests it.
  6. As resources allow, EPA agrees to provide technical assistance to the State in the review of permit applications, draft permits, permit modifications, closure/post-closure plans, variances, waivers, etc., on request.
  7. EPA agrees to follow the delisting procedures as outlined in the last paragraph of Section II, Policy Statement.

**C. State**

1. The State agrees to inform the Regional Administrator in advance of any proposed program changes that would affect the State's ability to implement the authorized program. Program changes of concern include modifications 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 Section 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 included in the annual grant work plan and shall be regarded as a grant commitment for the State. Such reporting shall include, but not be limited to, the following:
  - a. RCRIS/RCRAInfo permitting forms;

- b. Government Performance and Results Act (GPRA) goals and accomplishments;
  - c. 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;
  - d. Copies of inspection reports, record reviews, and sampling results for all land disposal facilities, commercial facilities, TSFs, Large Quantity Generators (LQG), Federal facilities and non-notifiers. For small quantity generators as defined in 40 CFR §260.10 (SQG), the above reports need only be submitted where there are detected violations;
  - e. Copies of all enforcement actions, orders and judgments regarding land disposal facilities, commercial facilities, non-notifiers, TSFs, Federal facilities, generators and SQGs.
  - f. Submittal of information to correct data problems and information that is incomplete or inaccurate;
  - g. Compliance monitoring and inspection commitment charts; and
  - h. 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 inform delisting petitioners of their need to petition EPA for all delisting actions.
5. 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.
6. 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 State 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, and 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; and
  - 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; and
    - (v) Copies of the notice placed in the property deed, or other instrument that is normally examined during a title search, for closed disposal facility/unit or cell.
7. The 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.
  8. The State agrees to provide EPA with copies of reports on data resulting from any compliance inspection and subsequent enforcement actions, when EPA requests such copies.
  9. 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, or specified, the above information shall be sent to:
 

U.S. Environmental Protection Agency  
Region III  
Maryland Program Manager, 3WC21  
1650 Arch Street  
Philadelphia, PA 19103-2029
  10. 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. The State's procedures for developing a mailing list are given in COMAR 26.13.07.20G(5)(a)(iv).

#### **D. Access to National Data**

EPA is responsible for maintaining reliable national data on hazardous waste management. These data are used to report to the President and Congress on the achievements of the hazardous waste program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain such data, EPA will first seek to gain such data from the State. The State of Maryland 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. EPA will also provide to the State, to the greatest extent practicable and consistent with applicable law and regulations, draft versions of such reports to allow the State to identify discrepancies or errors.

#### **E. Emergency Situations**

Upon receipt of any information that human health or the environment is endangered by the handling, storage, treatment, transportation, or disposal of hazardous waste within the State's jurisdiction, 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.

1. For the State, the emergency response number is -  
from 7:30 AM- 5:00 PM weekdays (410) 333-2950;  
the 24 hour response number is (410) 974-3351
2. For the EPA, the twenty-four (24) hour response number is (215) 814-9016.

#### **F. Confidentiality**

1. Any information obtained or used in the administration of the State program shall be available to EPA upon request without restriction, as provided in COMAR 26.13.01.02E. 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 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 that 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 (30) 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 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 HSWA, EPA will suspend issuance of Federal permits in the State for those provisions.

### **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 or EPA in the Annual State Grant Work Plan or anything identified as a priority in EPA National Guidance.

In accordance with 40 CFR Section 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 should notify the State of its intent to comment on a State draft permit within thirty (30) days of receipt. EPA will comment within forty five (45) days of receipt or will request an extension for those comments as warranted. Where EPA indicates in a comment that issuance, modification, reissuance, termination, or denial of the permit would be inconsistent with the approved state program, EPA shall include in the comment:

- a. A statement of the reasons for the comment (including the section of the State law or regulations that support the comment); and
- b. The actions that should be taken by the State in order to address the comment (including the conditions which the permit would include if it were issued at 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 if satisfied that the State has met or refuted its concerns and shall also provide the permit applicant with a copy of such withdrawal.

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

Under Section 3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of 40 CFR Part 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a State program requirement. In exercising these authorities, EPA will observe the conditions established in 40 CFR Section 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, the annual State Grant Work Plan, and other applicable State requirements. The state agrees to structure the Annual State Grant Work Plan in a manner that supports the attainment of the 2005 GPRA RCRA permitting goal, which requires that at least 90% of existing hazardous waste management facilities have approved controls in place to prevent dangerous releases to air, soil and groundwater.

The State agrees to issue, modify, or reissue, all permits contained in the authorized portions of the State's program in accordance with Section 1-604 of the Environment Article, and COMAR 26.13.07, and to include as permit conditions all applicable provisions of COMAR 26.13.01 through 26.13.10. This Agreement also applies to permits issued after final authorization but for which the processing may have begun before final authorization.

In permits issued pursuant to the State's authorized hazardous waste management program, the Department will ensure that compliance tasks are described in clear, unambiguous and plain language to the extent practicable. The compliance tasks should be 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 log book documenting inspections shall be maintained at the facility for a period of 3 years"

The State's permitting process will conform to COMAR 26.13.07, which is analogous to 40 CFR Parts 270 and 124.

In the event circumstances arise which warrant such action, the State may exercise the variance authorities established in COMAR 26.13.01.04B through I. 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, if doing so would result in the State program being less stringent than the federal program, inconsistent with the federal program, or inconsistent with 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.

### **C. Joint Permitting Process**

Pursuant to Section 3006 (g)(1) of RCRA, and in accordance with the HSWA, EPA has the authority to issue or deny permits or those portions of permits to facilities in Maryland 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 Maryland have agreed to establish this joint permitting in accordance with Section 3006(c)(3) of RCRA. The details of the joint permitting process shall be incorporated into the Annual State Grant Work 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 of the provisions of the HSWA, the specifics of the Joint Permitting Agreement as set out in the Annual State Grant Work Plan shall be amended to reflect the authorization. Amendment of this Memorandum of Agreement or the execution of a separate Memorandum of Agreement may be required for authorization of any of the provisions of the 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. As resources allow the State agrees to assist EPA in meeting Maryland's share of EPA's 2005 GPRA goals for corrective action environmental indicators, details of which will be established in the annual grant work plan.

## **VI. PERMIT ADMINISTRATION**

### **A. EPA**

EPA will administer the RCRA permits or portions of permits it has issued to facilities in the State until they expire or are terminated. EPA will be responsible for enforcing the terms and conditions of the Federal portions of the permits while they remain in force. Upon authorization of HSWA regulations, the EPA and the State will work toward establishing State authorities that will allow State oversight and enforcement in addition to the Federal oversight. Prior to authorization, EPA and the State may establish interim agreements which will allow State oversight. 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. 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. Except for these non-equivalent permits, once EPA has determined that the State has fulfilled the requirements of 40 CFR 271.13(d), EPA will terminate the applicable Federal permit, or Federal portion of the permit, pursuant to the procedures in 40 CFR 124.5(d), notify the State that the permit is terminated, and no longer administer those permits or portions of permits 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.

Upon 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.

## **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-compliers (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 program, which is consistent with all applicable Federal requirements and with the State's Program Description.

### **A. EPA**

#### **1. Compliance Monitoring**

Nothing in the Agreement shall restrict EPA's right to inspect any regulated hazardous waste facility. Before conducting an inspection of a regulated facility, the Agency will normally 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 may 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 action 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 enforcement action against any person determined to be in violation of RCRA in accordance with Section 3008. EPA may also take enforcement action at facilities upon determining that the State has not taken timely or appropriate enforcement in accordance with the

1996 Hazardous Waste Enforcement Response Policy. EPA reserves its right to take independent enforcement action 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 pursuant to RCRA Section 3008, including actions against 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 Section 3008 of RCRA against a holder of a State-issued permit on the ground that the permittee is not complying with a condition that the Regional Administrator, in commenting on that permit application or draft permit, stated was necessary to implement approved State program requirements, whether or not that condition was included in the final permit. EPA may take action under RCRA Section 3008 in accordance with the U.S. EPA Hazardous Waste Enforcement Response Policy or the EPA Region III Non-Compliance Response Policy for RCRA, Oil and EPCRA/CERCLA Section 103.

EPA may take corrective action enforcement against any person in accordance with Section 3008(h). Prior to taking enforcement action, 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 Section 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 inspections to assess compliance with hazardous waste regulations, permit requirements, compliance schedules, and all other program requirements. 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 of 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. STATE SPECIFIC AGREEMENTS AS APPROPRIATE**

### **A. Noncompliance and Program Reporting by the State**

The State agrees to prepare reports and information required by 40 CFR 270.5 to submit to the Regional Administrator or the Regional Administrator's designee. For the purposes of reporting, the terms "permittees" or facilities" will include interim status facilities, when appropriate. The specific format and frequency for submitting such reports and information to EPA will be detailed in the annual RCRA grant workplan.

### **B. Citizen Intervention in Enforcement Cases**

In accordance with 40 CFR 271.16(d)(ii), the State agrees that it will not oppose intervention by any citizen when permissive intervention is authorized by statute, rule or regulation.

### **C. State Permitting – "Equivalent Permits"**

The State agrees that when a facility is issued an "equivalent permit", as provided for in §7-232(b) of the Environment Article, Annotated Code of Maryland, the owner or operator will be obligated to comply with all the requirements that would be imposed by the State pursuant to a Controlled Hazardous Substance Facility permit issued under §7-232(a) of the Environment Article, Annotated Code of Maryland, to the degree that implementing regulations under COMAR 26.13 impose such requirements on a facility with the particular type of "equivalent permit" in question.

The State agrees that, when issuing an "equivalent permit", the State will carry out all of the responsibilities set forth in COMAR 26.13 that the State would undertake for the issuance of a Controlled Hazardous Substance Facility permit, to the degree that regulations under COMAR 26.13 impose such requirements on the particular type of "equivalent permit" in question.

The State agrees that provisions contained in this Memorandum of Agreement will be applicable to "equivalent permits" as defined in §7-232(b) of the Environment Article, Annotated Code of Maryland, to the extent that regulations under COMAR 26.13 require actions subject to this Memorandum of Agreement for given types of "equivalent permits".

### **D. State Permitting – Public Notice Requirements**

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. The State agrees to conform to 40 CFR Part 124.10(c)(4) by providing notice of applicable permit activities to persons potentially affected by them through the use of press releases or any other forum or medium to elicit public participation. Applicable permit activities are described in COMAR 26.13.07.20G(1) and include permit application denials, prepared draft permits, scheduled public hearings or informational meetings, and granting of permit appeals. All public notices shall be issued in accordance with the provisions of §1-602 of the Environment Article, Annotated Code of Maryland.

In accordance with the requirements of 40 CFR Part 124.10(c)(2)(ii), the State agrees to issue public notice of permit activities by publication in a daily or weekly major local newspaper of general circulation and broadcast over local radio stations. As required by 40 CFR Part 124(c)(1)(x)(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.

**STATE OF MARYLAND  
MARYLAND DEPARTMENT OF  
THE ENVIRONMENT**

BY: *Jane Nishida*

TITLE: Secretary of the Environment

DATE: 12/14/2000

**U.S. ENVIRONMENTAL PROTECTION  
AGENCY REGION III**

BY: *B. M. Campbell*

TITLE: Regional Administrator

DATE: January 17, 2001