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PROGRAM DESCRIPTION

MARYLAND DEPARTMENT OF THE ENVIRONMENT

HAZARDOUS WASTE PROGRAM

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I. INTRODUCTION

The Maryland Department of the Environment, Waste Management Administration (MDE/WAS) is the agency responsible for administering all solid and hazardous waste regulations for the State of Maryland. This document provides a description of the hazardous waste regulatory program administered by the Department, as authorized under the federal Resource Conservation and Recovery Act (RCRA). It replaces the Program Description (PD) previously submitted as a part of the State's application for base program authorization.

This document reflects the evolution of the State's program since the base program was authorized. It includes information on implementation of base program requirements and requirements beyond the base program. This program description has been prepared in accordance with the requirements of 40 CFR §271.6.

The report is organized as follows:

Section II describes the Scope, Structure, Coverage, and Processes of the State's hazardous waste regulatory program. This section identifies the elements of the State's authorized program (including elements for which authorization is being sought in the authorization request that this document supports.) It includes a discussion of the differences between Federal and Maryland laws and regulations.

Section III provides a description of the Waste Management Administration (WAS) with the aid of an organizational chart. The WAS has assigned responsibility for the oversight of hazardous waste management in the State to the HWP. The specific divisions which comprise the HWP are discussed and their individual responsibilities are detailed. This section also includes a discussion of the procedures for coordination among various State agencies and EPA, and the responsibilities of these various groups. Checklists are included to provide information on both HSWA and non-HSWA activities to provide a concise, definitive statement of which program areas the State has (or is seeking) authorization for as well as the program areas for which EPA remains responsible.

Section IV deals with staffing and funding. It identifies hazardous waste staff and funding resources that are available to carry out the activities that are the subject of this program revision. This section distinguishes between new resources and existing resources being assigned to the new responsibilities. The impact on the existing authorized program of adding requirements beyond the base program is also examined.

Section V describes the State Procedures that are used to implement the program revision. It discusses regulatory development, various tracking functions (notification, transporter certification, manifesting, biennial reporting, etc.), permitting, interim status, enforcement, groundwater monitoring, and waste minimization/pollution prevention.

Section VI examines Maryland's compliance tracking and enforcement processes and resources in greater detail. Section VII provides information on regulated activities as of the date of the Program Description. Section VIII contains copies of State Forms and provides a discussion of coordination with Other Agencies.

II. PROGRAM SCOPE, STRUCTURE, COVERAGE, AND PROCESSES

A. Scope and Coverage of Program Revision

The regulatory program described in this document reflects the base program for which the State is already authorized, newly added interim status requirements, authority to regulate the hazardous component of mixed (radioactive and hazardous) waste, and the regulations identified in the following table. The State has adopted these additional provisions and is seeking authorization to implement the regulatory program for them in lieu of the U.S. Environmental Protection Agency. (In checklist 54, Maryland is only seeking authorization for the parts of the checklist applicable to "minor" and "major" modifications. In checklist 126, the State is seeking authorization of all requirements except for the ASTM Standard Test Method for Preparing Refuse Derived Fuel. The State has been unable to find any text that references this method, and has decided to adopt this method when regulations incorporate this method.)

Rules Beyond the Base Program for Which the State is Seeking Authorization	
Checklist Number	Subject
1	Biennial Report
2	Permit Rule
3	Interim Status Standards
4	Chlorinated Aliphatic Hydrocarbons
5	National Uniform Manifests
6	Permit Rule – Deficient Part A Applications
7	Listing Warfarin and Zinc Phosphide
8	Lime Stabilized Pickle Liquor Sludge
9	Exclusion of Household Waste
10	Interim Status Standards – Applicability
11	Corrections to Test Methods Manual
12	Satellite Accumulation Standards
13	Definition of Solid Waste
15	Interim Status Standards for Treatment, Storage and Disposal Facilities
16	Paint Filter Test
17A	Small Quantity Generators (superceded – see checklist 23)
17C	Household Waste
17D	Waste Minimization
17F	Liquids in Landfills I
17G	Dust Suppression
17H	Double Liners
17J	Cement Kilns
17O	Omnibus Provisions
17P	Interim Status
17R	Hazardous Waste Exports
18	Listing of TDI, TDA, DNT
20	Spent Solvents Listing
21	EDB Waste Listing
22	Four Spent Solvent Listings

Rules Beyond the Base Program for Which the State is Seeking Authorization	
Checklist Number	Subject
23	Small Quantity Generators
24	Financial Responsibility: Settlement Agreement
25	Paint Filter Test – Correction
26	Listing of Spent Pickle Liquor
27	Corporate Guarantee – Liability Coverage
28	Hazardous Waste Storage and Tank Systems
29	Correction – Commercial Chemical Products and Appendix VIII
30	Biennial Reports; Corrections
31	Exports of Hazardous Wastes
32	Standards for Generators – Waste Minimization Certificates
33	Listing of EDBC
35	Revised Manual SW 846
36	Closure/Post Closure Care for Interim Status Surface Impoundments
37	Definition of Solid Waste – Technical Corrections
38	Amendments, Part B – Information Requirements for Disposal Facilities
40	List (Phase I) of Hazardous Constituents for Ground-water Monitoring
41	Identification and Listing of Hazardous Waste
42	Exception Reporting for Hazardous Waste Generators
43	Liability Requirements; Corporate Guarantee
45	Hazardous Waste Miscellaneous Units
46	Technical Correction – Identification and Listing of Hazardous Waste
47	Small Quantity Generators; Technical Correction
48	Farmer Exemption; Technical Correction
49	Treatability Studies Sample Exemption
52	Standards for Hazardous Waste Storage and Treatment Tank Systems
53	Identification and Listing of Hazardous Waste (K064, K065, K066, K088, K090, K091)
54	Permit Modifications for Waste Management Facilities
55	Statistical Methods for Evaluating Ground-water Monitoring Data
56	Removal of Iron Dextran from the Lists of Hazardous Wastes
57	Removal of Strontium Sulfide from the Lists of Hazardous Wastes
58	Standards for Generators of Hazardous Waste; Manifest Renewal
59	Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators
60	Amendment to Requirements for Hazardous Waste Incinerator Permits
61	Changes to Interim Status Facilities; Modifications of Hazardous Waste Management Permits; Procedures for Post-closure Permitting
64	Delay of Closure Period for Hazardous Waste Management Facilities
65	Mining Exclusion I
67	Testing and Monitoring Activities
68	Reportable Quantity Adjustment Methyl Bromide Production Waste
69	Reportable Quantity Adjustment
70	Changes to Part 124 Not Accounted for by Present Checklists
71	Mining Waste Exclusion II
72	Modification of F019 Listing
73	Testing and Monitoring Activities, Technical Correction
74	Toxicity Characteristic Revisions

Rules Beyond the Base Program for Which the State is Seeking Authorization	
Checklist Number	Subject
75	Listing of 1,1-Dimethylhydrazine Production Waste
76	Criteria for Listing Toxic Wastes; Technical Amendment
81	Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038)
84	Toxicity Characteristic; Chlorofluorocarbon Refrigerants
86	Removal of Strontium Sulfide from the Lists of Hazardous Wastes; Technical Amendment
89	Revision to F037 and F038 Listings
90	Mining Exclusion III
97	Exports of Hazardous Waste; Technical Corrections
99	Amendments to Interim Status Standards for Downgradient Groundwater Monitoring Locations
104	Used Oil Filter Exclusion
105	Recycled Coke By-product Exclusion
107	Used Oil Filter Exclusion; Technical Corrections
108	Toxicity Characteristic Revisions; Technical Corrections
110	Coke By-products Listings
113	Consolidated Liability Requirements
115	Chlorinated Toluenes Production Waste Listing
119	Toxicity Characteristic Revision; TCLP Correction
126	Testing and Monitoring Activities
128	Wastes from the Use of Chlorophenolic Formulations in Wood Surface Protection
131	Recordkeeping Instructions; Technical Amendment
132	Wood Surface Protection; Corrections
133	Letter of Credit Revision
134	Correction of Beryllium Powder (P015) Listing
139	Testing and Monitoring Activities Amendment
141	Testing and Monitoring Activities Amendment II
C6	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities
-	Legislation Checklist
-	Statutory Checklist – Hazardous and Solid Waste Amendments of 1984
end	

Each application for program authorization prepared by the State includes regulatory checklists for each provision for which the State seeks authorization. These checklists identify the citation in the Code of Maryland Regulations (COMAR) for each provision and the corresponding federal citation in the Code of Federal Regulations. It also specifies whether the State's provision is equivalent to, more stringent than, or broader in scope than the corresponding federal provision.

As demonstrated in the State Procedures Section of this Program Description, the State's hazardous waste program is at least as stringent as the federal program. However, there are a few significant differences between the Maryland and the federal program, which are discussed in the next subsection. The universe of generators regulated by the State program is generally equivalent to the federal program's universe of generators. However, the State has identified a small number of additional wastes that are

regulated as hazardous waste as a matter of State law. The State has an expanded transporter program for hauler, driver, and vehicle certification that is in addition to the program contained in 40 CFR 263.

The agency is committed to fulfilling all grant commitments and deadlines by submitting the relevant reports to EPA.

B. Differences Between Federal and State Regulations

The State's base program is generally equivalent to the federal program. However, there are areas where the State program is either more stringent or broader in scope than the federal program. These differences are identified in a comprehensive way in the Attorney General's Statement and the Program Revision Checklists that are part of the State's authorization application submitted to EPA. Notable differences between the State and the federal program include:

- The EPA program regulates "hazardous waste" while the State of Maryland regulates "Controlled Hazardous Substances" (CHS). In addition to wastes defined in 40 CFR Part 261, CHS can include any hazardous substance that the Department chooses to identify as a CHS (Environment Article 7-201(b)). Table 1 lists the Controlled Hazardous Substances that the State of Maryland regulates beyond the federal program. (Note that some of these wastes may be regulated under the federal program to the extent that they exhibit a hazardous characteristic under 40 CFR Part 261 Subpart C.)

TABLE 1
MARYLAND-SPECIFIC CONTROLLED HAZARDOUS SUBSTANCES

<i>WASTE CODE</i>	<i>CHS</i>
K067	Electrolytic anode slimes/sludges from primary zinc production
K068	Cadmium plant leachate residue (iron oxide) from primary zinc production
K122	Wastewater from stream regeneration of activated alumina catalyst used in the production of diphenylamine by the condensation of aniline
K133	Ammonia produced as a by-product in the production of diphenylamine by the condensation of aniline
K134	Heavy and light ends from the distillation/purification of diphenylamine by the condensation of aniline
K991	Waste ethyl dimethylamidocyanophosphate, also known by the common names GA and Tabun and the following alternate chemical names: Ethyl N,N-dimethylphosphoramidocyanidate Dimethylamidoethoxyphosphoryl cyanide
K992	Waste isopropyl methanefluorophosphonate, also known by the common names GB and Sarin and the following alternate chemical names: Isopropyl methylphosphonofluoridate Isopropyl ester of methylphosphonofluoridic acid
K993	Waste 3,3-dimethyl-n-but-2-yl methylphosphonofluoridate, also known by the common names GD and Soman and the following alternate chemical names: Pinacolyl methyl-phosphonofluoridate 1,2,2-trimethyl, methylphosphono-fluoridate Pinacoloxymethylphosphoryl fluoridate.
K994	Waste O-ethyl S-2-diisopropyl-aminoethyl, methylphospho-nothioate also known by the common name VX.
K995	Waste chlorovinylarsine dichloride, also known by the names L and Lewisite and the following alternate chemical names: Dichloro (2-chlorovinyl) arsine 2-chlorovinylidichlorarsine
K996	Waste phenarsazine chloride, also known by the common name Adamsite.
K997	Waste bis(2-chloroethyl) sulfide, also known by the common name sulfur mustard and HD.

K998	Waste 2,2-di(3-chloroethylthio)-diethyl ether, also known by the common name T and the following alternate chemical name : Bis-(2-chloroethylthioethyl) ether.
K999	Waste military chemical warfare agents (chemical surety agents) having any substances K991 through K998 as their active or principal ingredient or ingredients, or mixture of K991 through K998 with any characteristic or listed hazardous waste.
M001	Polychlorinated Biphenyls above 500ppm
MT01	Polychlorinated Biphenyls between 50ppm to 500ppm
MX01	Polychlorinated Biphenyls as a clean-up residue or contaminated soil
MD01	Organic Chemical waste from API separators, generated during the production of phthalate esters.
MD02	Military residues from the treatment of wastes K991 - K999, except as listed in COMAR 26.13.02.26

- The State hazardous waste generator regulations are different from federal regulation when considering accumulation time allowed for small quantity generators.
 1. A Maryland small quantity generator (SQG) is equivalent to a federal *conditionally exempt* SQG. They are both defined as anyone who produces *less than* 100kg of hazardous waste in a calendar month, and does not accumulate more than this amount at any time (among other requirements). In the Maryland regulation there is no time limit for anyone who meets the SQG qualification.
 2. Maryland's regulations do not have a separate regulatory category for generators that is equivalent to the federal SQG. The federal SQG is anyone producing between 100kg to 1000kg of hazardous waste in a calendar month.
 3. In Maryland, anyone generating more than 100 kg of hazardous waste in a calendar month or accumulating more than this amount at any time is fully regulated. Operationally, they are equivalent to the federal large quantity generator (LQG) category (anyone producing more than 1000 kg of hazardous waste in a calendar month.)
 4. A Maryland generator who has accumulated 100 kg to 500 kg of hazardous waste at the generating site may store it for up to 180 days without having to obtain a storage facility permit, provided the generator does not generate 1000 kg or more of hazardous waste in a calendar month.
 5. If a Maryland generator accumulates more than 500kg of hazardous waste, Maryland regulations allow the hazardous waste to be stored for up to 90 days. The federal regulation allows a federal SQG to store up to 6000 kg of hazardous waste at the generating site for up to 180 days (270 days if the waste must be transported 200 miles or more for off-site treatment, storage or disposal).
- The State does not have a provision for the granting of an extension of the 90-day limit on accumulation of hazardous waste without a permit.
- The EPA enforcement system uses the permit as the sole enforcement tool upon its issuance.

The State, on the other hand, does not use the issued permit as the only mechanism for ensuring the compliance of facilities with regulatory changes. The State uses either the permit or the regulations for enforcement purposes at any time during the term of the permit. This is also applicable if the regulations change during the term of the permit.

- The federal government issues permit to Treatment, Storage, and Disposal (TSD) facilities for a term of 10 years. At the time of base program authorization, the State issued CHS permits to TSD facilities for a term of 3 years. During the 1996 legislative session the term length of the TSD CHS facility permit was increased to 5 years.
- The federal government requires all Generators and Treatment, Storage, and Disposal facilities to file biennial activity reports. At the time of base program authorization, the State required all Generators and Treatment, Storage, and Disposal facilities to file annual activity reports. Through recent regulatory changes, the State has altered the requirement to be equivalent to the federal government's.
- The State operates a certification program for hazardous waste haulers, drivers domiciled in Maryland, and vehicles. The federal program does not.
- Maryland has a classification of either a minor or a major permit modification, where the federal government denotes modifications as class 1, class 2, or class 3. EPA offered the minor/major modification system as an alternative system in the preamble to its rule on permit modifications (52 FR 45788, 12/1/87).

Differences in Public Participation.

The federal regulations for incorporating public participation in the RCRA hazardous waste permitting process are outlined in 40 CFR 124 Subpart A-General Program Requirements, and Subpart B-Specific Procedures Applicable to RCRA Permits. The State statutory requirements regarding public participation in the hazardous waste permitting process appear in Sections 1-601 through 1-606 of the Environment Article, Annotated Code of Maryland. Note, however that the State has not yet adopted analogs to 40 CFR part 124 (revision checklist 148). Additional areas where the State program differs from the federal program are identified in the consolidated checklists and revision checklists included as Appendix A. The significance of these differences is discussed in detail in the Attorney General's Statement. Table 2 shows the general correspondence between the State's regulations and Federal regulations.

TABLE 2
GENERAL CORRESPONDENCE BETWEEN STATE REGULATIONS
AND FEDERAL REGULATIONS

EPA REGULATION Code of Federal Regulations (CFR)	STATE REGULATION	DESCRIPTION
PART 260	COMAR 26.13.01	Hazardous Waste Management System: General
PART 261	COMAR 26.13.02	Identification and Listing of Hazardous Waste
PART 262	COMAR 26.13.03	Standards Applicable to the Generators of Hazardous Wastes
PART 263	COMAR 26.13.04	Standards Applicable to the Transporters of Hazardous Wastes
PART 264	COMAR 26.13.05	Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities Who Have a Maryland Permit.
PART 265	COMAR 26.13.06	Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities.
PART 270 and PART 124	COMAR 26.13.07	Permits for CHS Facilities

* Certain elements of 40 CFR part 266 appear in COMAR 26.13.10.

III. STATE AGENCY RESPONSIBILITIES

A. Organization and Structure of the Hazardous Waste Program

The Maryland Department of the Environment (MDE), a cabinet level agency of the State government, was created by an act of the State legislature on July 1, 1987. Responsibility for the regulation of hazardous waste was transferred to the new department from the Department of Health and Mental Hygiene. Figure 1 shows an organizational chart of the Maryland Department of the Environment.

The Waste Management Administration (WAS) is the unit within the Department of the Environment that is solely responsible for regulation of hazardous waste management within the State. This responsibility includes regulation of hazardous waste generators, transporters, and treatment, storage and disposal facilities. Figure 2 shows an organizational chart for the Waste Management Administration.

B. The Hazardous Waste Program

Within the WAS, regulatory authority over hazardous waste is assigned to the Hazardous Waste Program (HWP). This program handles all aspects of hazardous waste management including permitting and enforcement. Additional support is provided by the Groundwater Support Team, the Pollution Prevention Team, and the Environmental Crimes Unit. Figure 3, page III-4, shows an organizational chart for the HWP. The HWP communicates with EPA, and works with the Attorney General's Office on matters such as the review of proposed regulations and enforcement actions.

As seen in Figure 3, the HWP is divided into three Divisions: the Regulations/Permitting Division, the Tracking/Certification Division, and the Hazardous Waste Enforcement Division. The Groundwater Support Group is part of the Enforcement Division and provides technical assistance to the Division. The Pollution Prevention team is also part of the Enforcement Division. It provides waste minimization information to the HWP. The Environmental Crimes Unit (ECU), as part of the Office of the Secretary, provides support for all programs within MDE, including the Hazardous Waste Program. The ECU is not featured on the included charts. Information on the Hazardous Materials Compliance Section (formerly the Transportation Section of the Tracking/Hazardous Materials Transportation Division) is included in the Program Description document, but most of the work of the Hazardous Materials Compliance Section is non-RCRA related. The principle RCRA-related work that the Hazardous Materials Compliance Section performs is inspections of hazardous waste transporters. The responsibilities of the groups that make up the Hazardous Waste Program are discussed in separate subsections below.

FIGURE 1 MDE Organizational Chart

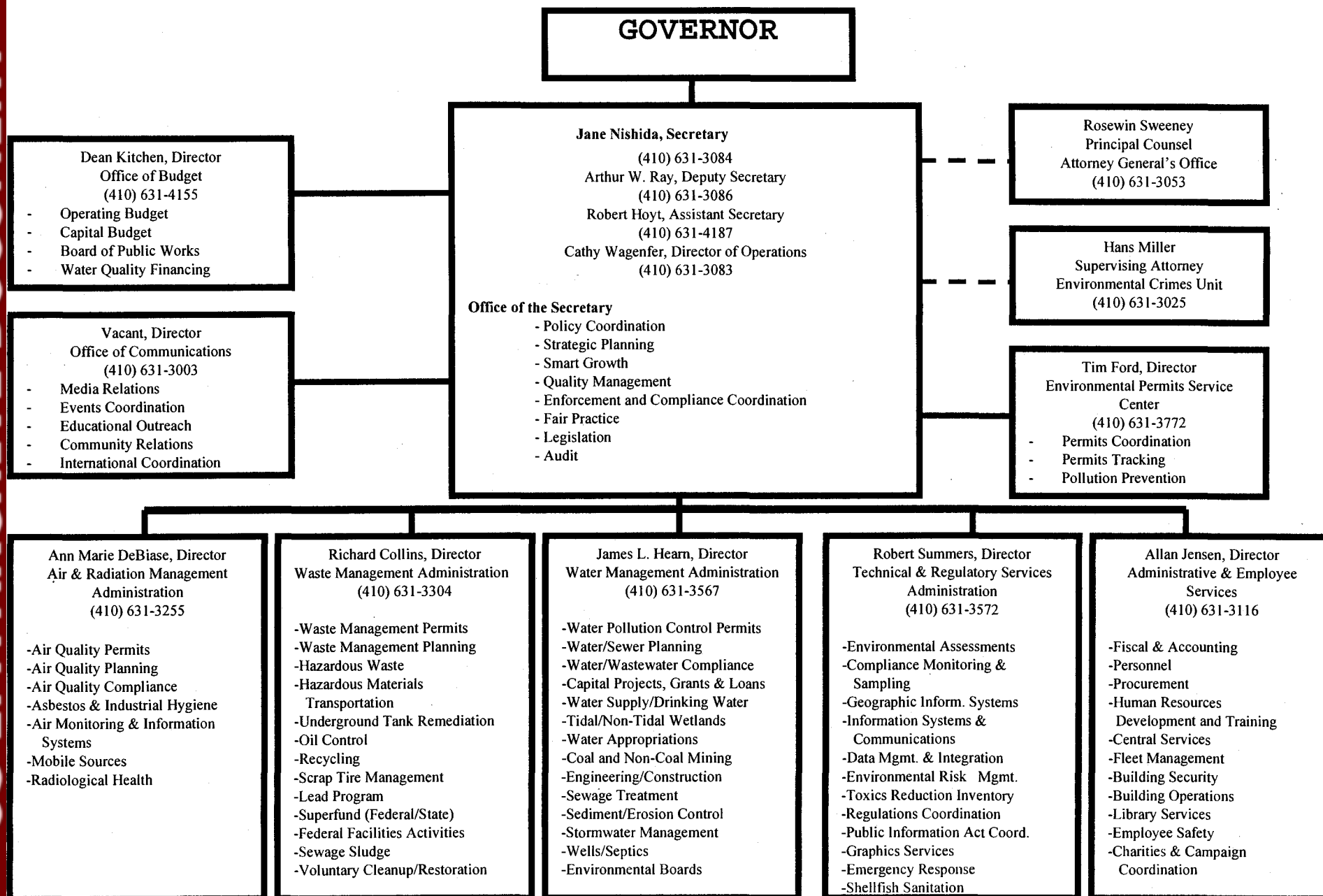


FIGURE 2 - Waste Management Administration Organization Chart

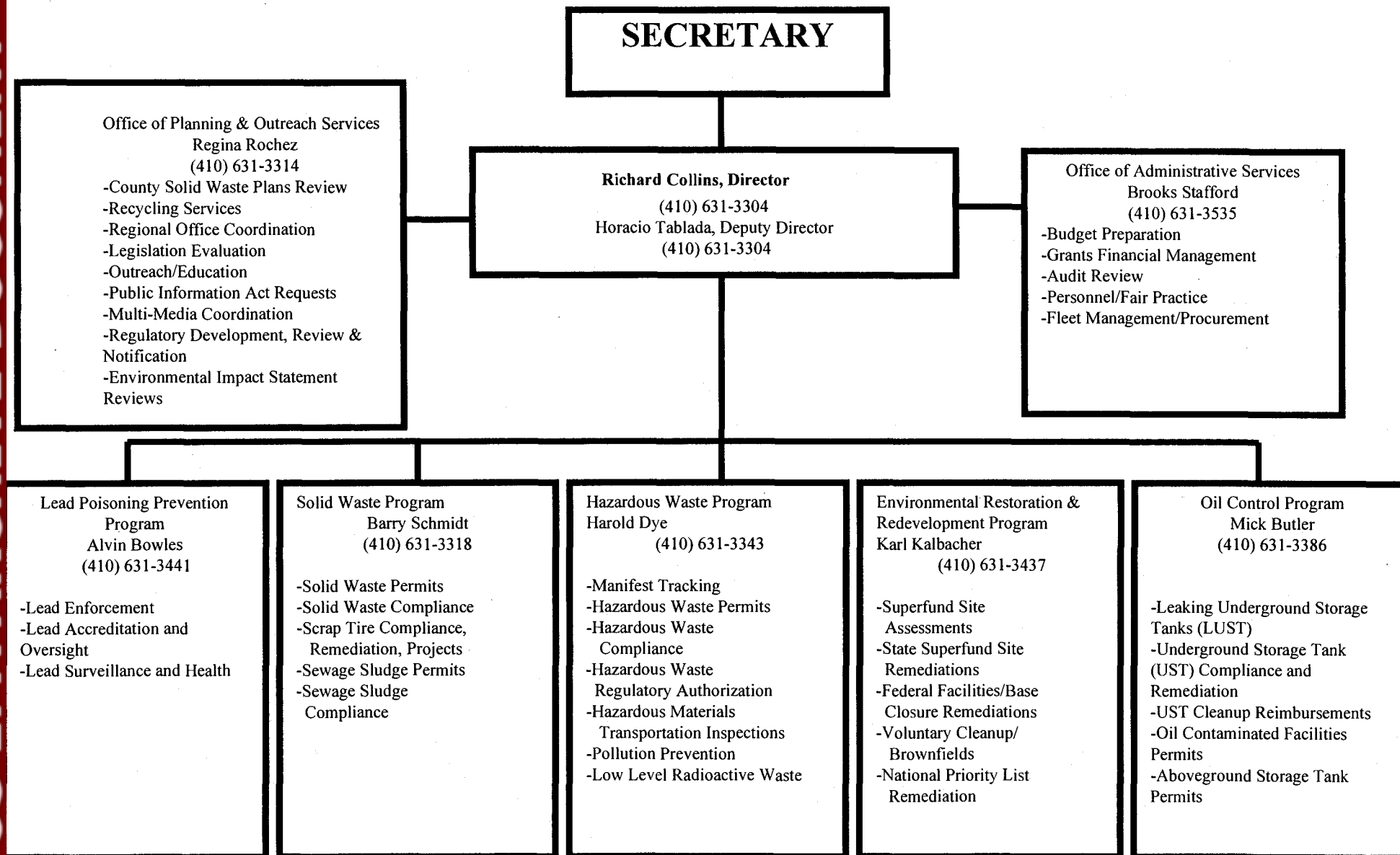
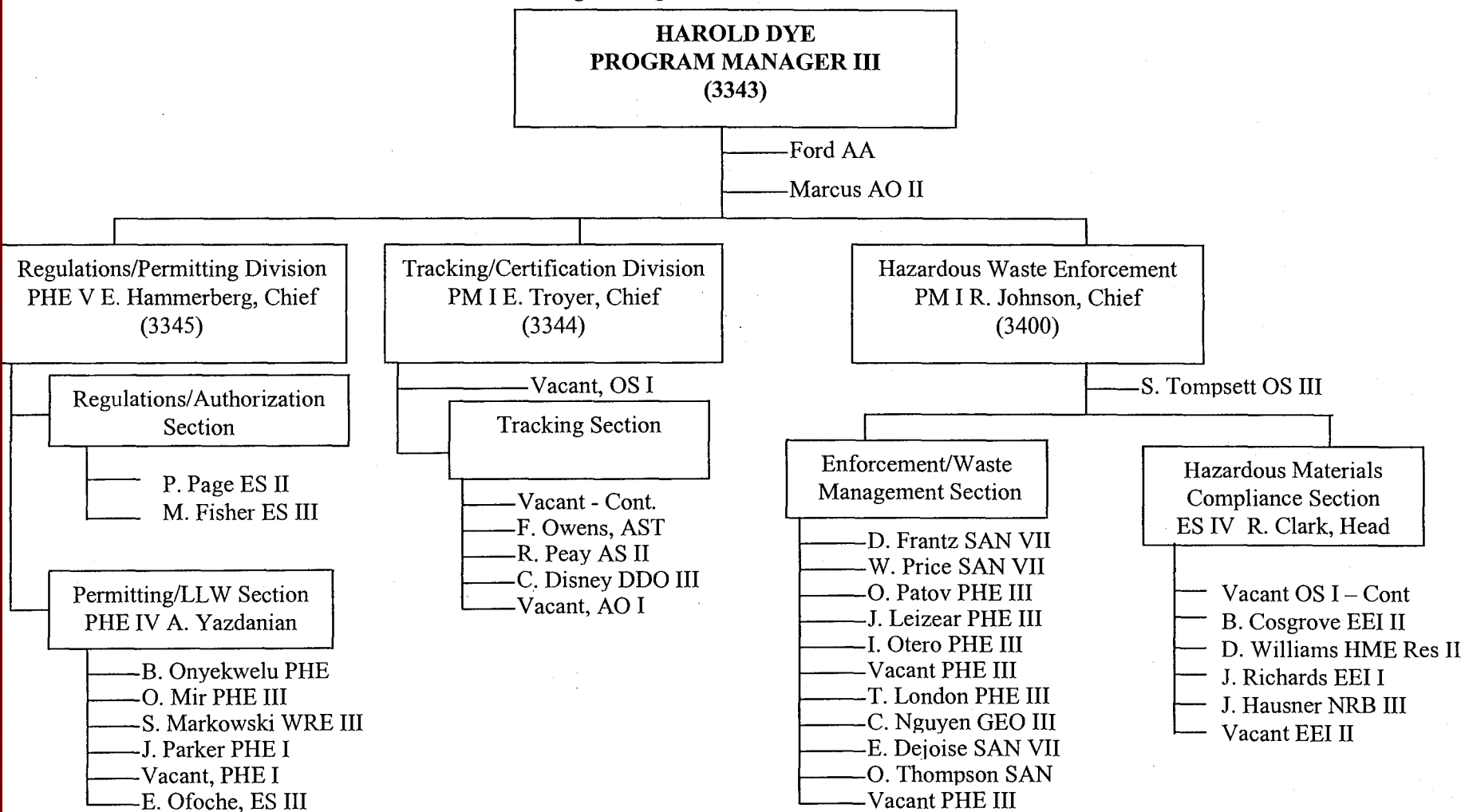


FIGURE 3 Hazardous Waste Program Organizational Chart



AA	Administrative Assistant	GEO	Geologist	PHE	Public Health Engineer
AO	Administrative Officer	HME Res	Hazardous Materials Emergency Response	PM	Program Manager
AS	Administrative Specialist	NRB	Natural Resources Biologist	SAN	Sanitarian
DDO	Data Device Operator	OS	Office Secretary	WRE	Water Resources Engineer
EEI	Environmental Enforcement Inspector				

C. The Regulations/Permitting Division

The Regulations/Permitting Division is organized into two sections--the Regulations/Authorization Section and the Permitting/Low Level Radioactive Waste (LLW) Section.

The Regulations/Authorization Section is responsible for developing all of the State of Maryland's regulations on hazardous waste management and for demonstrating to EPA the State's ability to implement an effective hazardous waste regulatory program. The Section prepares hazardous waste regulations based on State and Federal statutory requirements, in accordance with guidelines established by the Maryland Division of State Documents. The various duties performed by this Section in support of the RCRA program are as follows:

- Drafting regulations on hazardous waste to maintain consistency with the federal regulatory program and in keeping with the State goal to provide an ample measure of protection for human health and the environment;
- Educating the program staff, other MDE personnel, the regulated community and the general public on regulatory requirements;
- Demonstrating to EPA the ability of the program to implement hazardous waste regulations in the State in lieu of the federal government; and
- Responding to inquiries from industries and the general public.

EPA is responsible for review and approval of requests for authorization of the State program.

The Permitting/LLW Section is responsible for administering the State's permitting program for hazardous waste treatment, storage and disposal facilities. The various duties performed by the Section in support of the RCRA program are:

- To review CHS permit applications;
- To issue, whenever necessary, Notices of Deficiency (NODs) that inform applicants of deficiencies in the permit applications;
- To conduct inspections of permitted sites and sites seeking permits for the purpose of verifying the accuracy of information provided by the applicant;

The Permitting/LLW Section is also responsible for implementation of the State's regulations on waste Radioactive Hazardous Substances. This activity is not conducted under RCRA authority, and is not discussed in this Program Description.

The Regulations/Permitting Division is responsible for issuing CHS permits, while EPA is responsible for implementing Corrective Action requirements under §3004(u) of RCRA. EPA also is responsible for issuing permits for other requirements promulgated under authority of the Hazardous and Solid Waste Amendments (HSWA) of 1984 for which the State has not received authorization.

D. Tracking/Certification Division

The MDE Tracking/Certification (T/HMT) is responsible for certifying Controlled Hazardous Substances (CHS) haulers and vehicles and Maryland-domiciled CHS Drivers as required by COMAR 26.13.04.01F. There are currently 135 companies with approximately 3500 vehicles certified by MDE.

From the time of base program authorization until 1992, annual reports on waste quantities were generated by the Department and made available to the general public and EPA. The State now requires generators to report biennially, consistent with federal regulations. Information from these reports is made available through EPA's Biennial Reporting System (BRS) data base.

The Division also served as a liaison between the persons seeking ID numbers and EPA at the time of base program authorization. Now, the Division has obtained the authority from EPA to assign ID numbers. This program plays an important role as the State's information clearing house by storing up-to-date information on RCRAInfo and CWMIS.

The Tracking/Certification Division manually processes transporters' initial registrations, permit renewals, and compliance checks with other states. The Division also processes certification of Maryland-domiciled drivers of hazardous waste transport vehicles.

In summary, the Tracking/Certification Division performs the following core functions:

- Certifies Controlled Hazardous Substance (CHS) haulers, vehicles and Maryland-domiciled drivers;
- Manages data, including monthly update of permit data for the Hazardous Waste Permitting Division in the Resource Conservation and Recovery Act Information System (RCRAInfo);
- Maintains information on hazardous waste generators in the Consolidated Waste Management and Information System (CWMIS) database;
- Provides relevant information to EPA for assignment of U.S. EPA ID numbers for generators, transporters, and treatment, storage and disposal facilities (TSDs), including collection of Notification of Hazardous Waste Activity Forms;
- Provides ID numbers for one-time shippers of hazardous wastes;
- Collects and generates reports of hazardous waste activity and submission of Biennial Report data to EPA Region III;
- Responds to inquiries from industries and the general public; and
- Oversees the cradle-to-grave tracking of hazardous waste generated in the State and/or delivered to a treatment, storage, disposal or recycling facility within the State. This oversight includes the tracking of hazardous waste shipments via manifests, manifest processing, data management and data entry.

E . Hazardous Waste Enforcement Division

The Enforcement Division is responsible for enforcing hazardous waste rules and regulations in the state. It ensures that regulated entities comply with regulatory and statutory requirements concerning hazardous waste management. The focus of the Enforcement Division's efforts is those TSD facilities, generators, and transporters who pose the greatest threat to public health and the environment, or those which show disregard for the regulatory program. The Division is also responsible for inspecting commercial vehicles that transport hazardous materials as mandated in COMAR 26.13.04.01C.

Note that the Maryland Department of Transportation (MDOT) is the lead agency for the regulation of the transport of hazardous materials. MDOT created the Governor's Task Force for Motor Safety and Uniformity, Subcommittee for Hazardous Materials, which coordinates transportation activities with state and federal agencies. State law provides for the adoption of federal regulations regarding hazardous waste transportation.

In accordance with EPA's Enforcement Response Policy (Dated 3-15-96) and the Hazardous Waste Non-Compliance Response Policy, the Division takes timely and appropriate action against all persons in violation of the hazardous waste regulations, permit requirements, compliance schedules, and all other program requirements. Appropriate enforcement action is taken in a manner consistent with the Enforcement Response Policy. This is accomplished by enforcement inspectors from the Division periodically inspecting all permitted facilities, hazardous waste generators, and transporters. They also investigate complaints and reports of illegal activities. The Enforcement personnel are assisted by three Assistant Attorneys General from the Office of the Attorney General, who handle all civil and administrative actions that are brought by the HWP.

Specific duties performed by the Division in support of the RCRA program are:

- Conducting inspections of permitted CHS facilities;
- Enforcing permits issued by the Hazardous Waste Program;
- Conducting inspections of generators, transporters and treatment, storage and disposal facilities to determine compliance with regulatory and permit requirements;
- Identifying non-notifiers;
- Investigating complaints or reports regarding hazardous waste activities;
- Developing expertise by performing inspections on behalf of EPA for non-delegated requirements promulgated by EPA under the Hazardous and Solid Waste Amendments of 1984 (HSWA);
- Overseeing groundwater extent of contamination and remediation projects, including CME (Comprehensive Monitoring Evaluation)/O&M (Operation and Maintenance) and other inspections;
- Initiating actions to bring violators into compliance, including informal actions, administrative orders, civil actions, and criminal actions; and

- Responding to spills and monitoring spill clean up (as a secondary role, since MDE's Emergency Response Division has primary responsibility).

The Division may also perform other duties in support of EPA initiatives. An example is support that was provided to EPA in evaluating whether corrective action was necessary at facilities identified as high priority on the National Corrective Action Priority System (NCAPS) list. These special activities will be identified through the development of the State's annual RCRA grant work plan.

The Hazardous Materials Compliance Section (HMCS) inspects commercial vehicles with a staff of one Section Head and five inspectors. With their expert knowledge of hazardous materials, they assist the Maryland State Police and the Maryland Transportation Authority Police with commercial vehicle inspections at various truck weigh stations. The HMCS staff also assists local law enforcement officials with numerous special assignments throughout the state. They work in coordination with the Hazardous Waste Program's Enforcement/Waste Management Section to verify that all certified CHS vehicles are in compliance with all State and federal safety regulations. The HMCS is designated to administer the federal training grant for commercial vehicle safety inspectors statewide.

Priorities for inspecting TSD facilities have been set based on an evaluation of the facilities' impact on public health and the environment. The highest priority is assigned to the facilities that meet the following criteria:

- Demonstrated contamination of groundwater which is currently utilized as a drinking water source;
- Large industrial facilities which fall into at least two of the following categories:
 - Facilities known to have contaminated groundwater and/or surface water;
 - Facilities that store, treat or dispose of relatively large quantities of hazardous wastes;
 - Facilities that have been targets of frequent enforcement actions.

No other agencies perform duties of the Hazardous Waste Enforcement Division in lieu of Division personnel. (This is not intended to imply a restriction of EPA authority.)

The division of enforcement responsibilities between the State of Maryland and EPA are described in the Memorandum of Agreement (MOA), which is a part of the State's application for Program Authorization. The State has the lead on enforcement of the authorized base program. As a matter of State law, the State also has the lead on additional program elements in the COMAR 26.13 for which the State has not yet received authorization from the EPA. The State, however, recognizes that EPA retains independent authority to conduct inspections and take enforcement actions in accordance with the notification requirements listed in the MOA.

EPA has the lead on corrective action, land disposal restrictions (LDR), and other regulations adopted by EPA under HSWA authority for which the State has not yet been authorized. The State HWP reserves the right to use State authority to achieve compliance and remediation at hazardous waste sites currently under Corrective Action with EPA. In the case of the LDR regulations, the State checks for compliance. If any violations are found, the State refers them to EPA for action.

The federal role includes evaluating state programs, conducting compliance inspections and follow-up enforcement actions, as well as ensuring a level playing field among states. MDE carries out the bulk of inspections, enforcement and compliance actions that occur in the State of Maryland. HWP

will continue to employ civil and criminal enforcement actions where appropriate, as well as additional innovative enforcement tools. Evaluation of compliance with Land Ban, TCLP, Waste Minimization, and Organic Air Emissions will be included as important components of all RCRA CEI inspections. Enforcement activities are conducted in accordance with the performance expectations set forth in EPA's "National Criteria for a Quality Hazardous Waste Management Program Under RCRA". (EPA/530/SW 86-021, July 1986)

Enforcement and Compliance has been recognized in the Environmental Performance Partnership Agreement in that both MDE and Region III agree that enforcement and compliance actions are important tools for achieving agreed-upon environmental goals and strategic priorities. Recognizing that they each have limited resources to devote to their respective strategic priorities aimed at achieving overall environmental improvement, the Partners will continue to develop a consultative relationship. They will also discuss opportunities to improve data management, coordination, and integration.

F. Groundwater Support Group

The Groundwater Support Group (GWSG) provides support to program regulatory efforts on issues involving contamination of soils and groundwater. It helps ensure that groundwater protection requirements are met. GWSG maintains an in-house tracking system of groundwater projects. GWSG provides technical support for approximately ninety-four RCRA related projects. Ten of the projects are land disposal facilities that need periodic monitoring. The remaining are generators of hazardous waste who, because of release of hazardous constituents, may need remedial action at their facilities. To help assure that the groundwater protection requirements are met, this group provides support for Comprehensive Monitoring Evaluation (CME) inspections, as well as Operation and Maintenance (O&M) inspections at land disposal facilities. GWSG also provides technical support for groundwater investigations. They also provide technical support for remedial actions at hazardous waste generators' facilities. In some instances, GWSG personnel accompany enforcement personnel on site visits.

As a result of a discharge or release of hazardous waste, the Hazardous Waste Enforcement Division may require a site owner or operator to take action. Required actions could include characterization of the nature and extent of contamination at the site; development of a plan for remediation; or implementation of a remedial plan. In support of this, GWSG may review various required reports, such as:

- Work plans for site assessment;
- Groundwater contamination reports;
- Work plans related to proposed remediation at the facility;
- Progress reports on the on-going remediation process.

GWSG reviews the various reports for technical sufficiency. Inadequate reports are returned for revisions and are not approved until the deficiencies are corrected. The State uses the National Contingency Plan (40 CFR Part 300) as guidance in managing groundwater projects. Additional guidance is provided by EPA documents supporting the RCRA Corrective Action Program.

GWSG functions as part of the enforcement process. They evaluate groundwater only on sites where enforcement of hazardous waste violations is an issue. Then, when necessary, GWSG performs oversight of all groundwater-monitoring tasks. For sites where EPA has enforcement lead relative to RCRA corrective action, GWSG provides technical review to assure that the States' concerns are addressed.

G. Waste Minimization/Pollution Prevention Group

COMAR 26.13.03.06B(1)(b)(vi) and (vii), in keeping with RCRA §3002, require generators of CHS wastes to identify in their biennial reports the efforts undertaken to reduce volume and toxicity of waste generated as well as identify reductions in volume and toxicity that have actually been achieved. Moreover, generators are required by COMAR 26.13.03.04G to certify on their manifests that they have a waste reduction program in place. The Waste Minimization/ Pollution Prevention Group (WM/P2), located within the Hazardous Waste Enforcement Division, is responsible for aiding generators in making these volume and toxicity reductions as economically as possible. The WM/P2 Group helps to maximize the opportunities available for recycling, as well. This Group is the primary Department contact for a number of activities, including:

- Pollution Prevention Outreach Program
- Pollution Prevention Clearing House
- Pollution Prevention Programs
- Household Hazardous Waste Program (in coordination with the Regulations/Permitting Division)
- Waste Minimization National Plan
- Toxics in Packaging Program
- State Capacity Assurance Program

These activities are discussed in detail in the State Procedures Section. MDE's compliance assistance program is described in detail in Section V H, Enforcement General Inspections.

The Pollution Prevention Division coordinates action with inspectors in the Enforcement Division. This coordination includes a review by the Pollution Prevention (P2) staff of all compliance reports submitted by field inspectors and also includes joint inspections made by combined teams of P2 and Compliance inspection personnel.

The Pollution Prevention Division schedules all work around the RCRA grant work plan. The plan has adopted a "hands on" approach to promoting pollution prevention and waste minimization by Maryland businesses. EPA is responsible for offering supportive training outside the business setting for both hazardous waste handlers and MDE staff.

H. Environmental Crimes Unit

The Environmental Crimes Unit (ECU) is a division within the Office of the Secretary which provides support for all programs within MDE, not just the Hazardous Waste Program. The ECU is responsible for investigating any environmental crimes cases that are referred to them, and for prosecuting any environmental criminal cases in the criminal court system. A case is typically referred to the ECU when an offender has been uncooperative in responding to a notice of violation or when the offense is viewed as a blatant criminal act. When a case is referred to the ECU, it is the responsibility of the ECU to begin a criminal investigation, which is conducted apart from any Program's investigation. Once a case is referred to the ECU it is no longer a Program matter, but a Departmental matter.

IV. STAFFING AND FUNDING RESOURCES

A. Description of Agency

The Hazardous Waste Program has a total of forty personnel positions. Thirty three HWP employees work on Resource Conservation and Recovery Act (RCRA) related projects. These employees are listed in Table 3A under the Divisions to which they belong. 32 of these are funded under the State's RCRA grant from EPA. The remaining seven employees work for the Hazardous Materials Compliance Section. They conduct safety inspections of transportation vessels and are not RCRA funded. A summary of job responsibilities for Program staff follows.

B. Overall Changes in Existing Program Resources

At the time of the base program authorization, the Waste Management Administration was part of the Department of Health and Mental Hygiene (DHMH). Maryland's regulated community consisted of 5750 generators (estimated), 58 Treatment, Storage, and Disposal facilities, and 203 transporters. In 1987, the State of Maryland reorganized its environmental agencies. Responsibilities for pollution control functions were placed in a newly created Maryland Department of the Environment (MDE). The Waste Management Administration, including the Hazardous Waste Program was made a part of MDE.

In the time since the State received base program authorization, there has been a decline in the size of the regulated community subject to oversight by the Hazardous Waste Program. As the size of regulated community has declined, the Hazardous Waste Program has also seen a decline in revenues generated by permit and transporter fees. In addition, there has been a decline in General Funds appropriated by the State legislature. The result of these changes has been a decline in the number of personnel. Despite these constraints, the Program has continued to meet its statutory mandates.

The State has made many amendments to its regulations since the base program was authorized to maintain consistency with the federal program. These amendments have been implemented and enforced as a matter of State law pending completion of the authorization process under RCRA. The State has built capability to implement these requirements through reference to EPA guidance, participation in EPA-sponsored training, work sharing arrangements with EPA, and on-the-job training. This has allowed the State to prepare for a smooth transition as EPA approves program authorization requests.

Currently, the Program is regulating 5788 generators (federal small quantity and federal large quantity), 162 haulers and 24 Treatment, Storage and Disposal (TSD) facilities. The subsections which follow address the overall estimated costs as well as examine the staffing and funding resources for each of the five major Divisions/Groups which administer Maryland's hazardous waste program.

C. Itemization of Estimated Costs and Sources of Funding

The total costs for HWP personnel for Fiscal Years 2001, 2002, and 2003 are shown in Tables 3A, B, and C, respectively. These costs are broken out by Division/Group. The responsibilities of each of the listed personnel are discussed in the subsections which follow. As for overhead costs, it is very difficult to break these costs down for each individual division and therefore they have been entered on Tables 3A, B, and C as a total amount for the overall Hazardous Waste Program.

Table 4 provides an itemized listing of the Federal and State funding for work performed in support of Subtitle C of the Resource Conservation and Recovery Act Program (RCRA). The majority of these resources (approximately 98%) are dedicated to the federally required portion of the program. It has

been indicated to the department that overall, funds are to remain unchanged over the next two years. Federal funding accounts for 75 percent of the budgeted RCRA grant fund while the State covers the remaining 25 percent. The various items that are funded by the RCRA grant are shown in Table 4. There are no specific limitations or restrictions on State or Federal funding other than the requirement that the State meet its grant commitments.

In addition to the standard funding, Maryland has submitted proposals when EPA has made supplemental funds available. For example, in 1994, Maryland received \$ 620,000.00 in support of the Chesapeake Bay geographic initiative. In subsequent years Maryland has received continued federal support to fund this program. However, receipt of these funds are subject to yearly EPA reviews and availability of these funds. The Chesapeake Bay Project is administered by the HWP in consultation with the Technical and Regulatory Services Administration (TARSA).

TABLE 3A ITEMIZATION OF ESTIMATED COSTS (Fiscal Year 2001)

COSTS (FY 2001)	RCRA GRANT (Includes State match)	OTHER FUNDS
PERSONNEL COSTS*		
Program Admin. II	\$66,291.00	\$0
Administrative Aide General	\$30,383.00	\$0
SUBTOTAL	\$96,674.00	\$0
REGULATIONS/PERMITTING DIV.		
Public Health Engineer V	\$58,062.00	\$0
Environmental Specialist II	\$35,266.00	\$0
Environmental Specialist III	\$30,560.00	\$0
PERMITS SECTION		
Public Health Engineer IV	\$53,307.00	
Water Resources Engineer III	\$47,377.00	\$0
Public Health Engineer III	\$49,902.00	\$0
Public Health Engineer III	\$48,014.00	\$0
Public Health Engineer I	\$33,514.00	\$0
Public Health Engineer I	\$28,350.00	\$0
SUBTOTAL	\$384,352.00	\$0
TRACKING DIVISION		
Administrator III	\$40,876.00	\$17,186.00
Office Secretary II	\$20,579.00	\$0
Office Secretary	\$23,146.00	
Administrative Specialist II	\$24,262.00	
Data Device Operator	\$22,618.00	\$0
Data Processing Oper. Tech I	\$30,624.00	\$0
SUBTOTAL	\$162,105.00	\$17,186.00
ENFORCEMENT DIVISION		
Administrator III	\$58,062.00	\$0
Office Secretary III	\$28,478.00	\$0
Administrative Officer	\$31,543.00	\$7,886.00
Sanitarian VII	\$49,902.00	\$0
Sanitarian VII	\$49,902.00	\$0
Sanitarian VII	\$49,902.00	\$0
Public Health Engineer III	\$48,014.00	
Public Health Engineer III	\$48,014.00	\$0
Public Health Engineer III	\$44,455.00	\$0
Public Health Engineer III	\$49,902.00	\$0
Public Health Engineer III	\$49,902.00	\$0
Administrative Officer II	\$21,458.00	\$21,458.00
SUBTOTAL	\$508,076.00	\$29,344.00
GROUNDWATER SUPPORT		
Geologist IV	\$48,949.00	\$0
SUBTOTAL	\$48,949.00	\$
POLLUTION PREVENTION		
Sanitarian VII	\$12,476.00	\$37,426.00
Public Health Engineer I	\$8,379.00	\$25,135.00
SUBTOTAL	\$20,855.00	\$62,561.00
TOTAL	\$1,256,244.00	\$109,091.00
OVERHEAD COSTS		
Travel	\$30,195.00	\$0

COSTS (FY 2001)	RCRA GRANT (Includes State match)	OTHER FUNDS
Fringe Benefits	\$342,266.68	
Equipment	\$0.00	\$0
Supplies	\$10,298.00	\$0
Contractual Services	\$118,013.00	\$0
Other	\$45,520.00	\$0
TOTAL	\$546,292.68	\$0
GRAND TOTAL	\$2,211,436	\$109,091.00

TABLE 3B ITEMIZATION OF ESTIMATED COSTS (Fiscal Year 2002)

COSTS (2002 - est.)	RCRA GRANT	OTHER FUNDS
PERSONNEL COSTS*		
Program Admin. II	\$68,942.64	\$0
Administrative Aide General	\$31,598.32	\$0
SUBTOTAL	\$100,540.96	\$0
REGULATIONS/PERMITTING DIV.		
Public Health Engineer V	\$60,384.48	\$0
Environmental Specialist II	\$36,676.64	\$0
Environmental Specialist III	\$31,782.40	\$0
PERMITS SECTION		
Public Health Engineer IV	\$55,439.28	\$0
Water Resources Engineer III	\$49,272.08	\$0
Public Health Engineer III	\$51,898.08	\$0
Public Health Engineer III	\$49,934.56	\$0
Public Health Engineer I	\$34,854.56	\$0
Public Health Engineer I	\$29,484.00	\$0
SUBTOTAL	\$399,726.08	\$0
TRACKING DIVISION		
Administrator III	\$42,511.04	\$17,873.00
Office Secretary II	\$21,402.16	\$0
Office Secretary	\$24,071.84	\$0
Administrative Specialist II	\$25,232.48	\$0
Data Device Operator	\$23,522.72	\$0
Data Processing Oper. Tech I	\$31,848.96	\$0
SUBTOTAL	\$168,589.20	\$17,873.00
ENFORCEMENT DIVISION		
Administrator III	\$60,384.48	\$0
Office Secretary III	\$29,617.12	\$0
Administrative Officer	\$32,804.72	\$8,201.00
Sanitarian VII	\$51,898.08	\$0
Sanitarian VII	\$51,898.08	\$0
Sanitarian VII	\$51,898.08	\$0
Public Health Engineer III	\$49,934.56	\$0
Public Health Engineer III	\$49,934.56	\$0
Public Health Engineer III	\$46,233.20	\$0
Public Health Engineer III	\$51,898.08	\$0
Public Health Engineer III	\$51,898.08	\$0
Administrative Officer II	\$22,316.32	\$22,316.00
SUBTOTAL	\$528,399.04	\$30,517.00
GROUNDWATER SUPPORT		

COSTS (2002 – est.)	RCRA GRANT	OTHER FUNDS
Geologist IV	\$50,906.96	\$0
SUBTOTAL	\$50,906.96	\$
<u>POLLUTION PREVENTION</u>		
Sanitarian VII	\$12,975.04	\$38,923.00
Public Health Engineer I	\$8,714.16	\$26,140.00
SUBTOTAL	\$21,689.20	\$65,063.00
TOTAL	\$1,306,493.76	\$113,453.00
<u>OVERHEAD COSTS</u>		
Travel	\$31,402.80	\$0
Fringe Benefits	\$355,957.35	
Equipment	\$0.00	\$0
Supplies	\$10,709.92	\$0
Contractual Services	\$122,733.52	\$0
Other	\$47,340.80	\$0
TOTAL	\$568,144.39	\$0
GRAND TOTAL	\$2,299,893.44	\$113,453.00

TABLE 3C ITEMIZATION OF ESTIMATED COSTS (Fiscal Year 2003)

COSTS (2003 – est)	RCRA GRANT	OTHER FUNDS
<u>PERSONNEL COSTS*</u>		
Program Admin. II	\$71,700.35	\$0
Administrative Aide General	\$32,862.25	\$0
SUBTOTAL	\$104,562.60	\$0
<u>REGULATIONS/PERMITTING DIV.</u>		
Public Health Engineer V	\$62,799.86	\$0
Environmental Specialist II	\$38,143.71	\$0
Environmental Specialist III	\$33,053.70	\$0
<u>PERMITS SECTION</u>		
Public Health Engineer IV	\$57,656.85	\$0
Water Resources Engineer III	\$51,242.96	\$0
Public Health Engineer III	\$53,974.00	\$0
Public Health Engineer III	\$51,931.94	\$0
Public Health Engineer I	\$36,248.74	\$0
Public Health Engineer I	\$30,663.36	\$0
SUBTOTAL	\$415,715.12	\$0
<u>TRACKING DIVISION</u>		
Administrator III	\$44,211.48	\$18,588.00
Office Secretary II	\$22,258.25	\$0
Office Secretary	\$25,034.71	
Administrative Specialist II	\$26,241.78	
Data Device Operator	\$24,463.63	\$0
Data Processing Oper. Tech I	\$33,122.92	\$0
SUBTOTAL	\$175,332.77	\$18,588.00
<u>ENFORCEMENT DIVISION</u>		
Administrator III	\$62,799.86	\$0
Office Secretary III	\$30,801.80	\$0
Administrative Officer	\$34,116.91	\$8,529.00
Sanitarian VII	\$53,974.00	\$0
Sanitarian VII	\$53,974.00	\$0

COSTS (2003 - est)	RCRA GRANT	OTHER FUNDS
Sanitarian VII	\$53,974.00	\$0
Public Health Engineer III	\$51,931.94	
Public Health Engineer III	\$51,931.94	\$0
Public Health Engineer III	\$48,082.53	\$0
Public Health Engineer III	\$53,974.00	\$0
Public Health Engineer III	\$53,974.00	\$0
Administrative Officer II	\$23,208.97	\$23,209.00
SUBTOTAL	\$549,535.00	\$31,738.00
<u>GROUNDWATER SUPPORT</u>		
Geologist IV	\$52,943.24	\$0
SUBTOTAL	\$52,943.24	\$0
<u>POLLUTION PREVENTION</u>		
Sanitarian VII	\$13,494.04	\$40,480.00
Public Health Engineer I	\$9,062.73	\$27,186.00
SUBTOTAL	\$22,556.77	\$67,666.00
TOTAL	\$1,358,753.51	\$117,993.00
OVERHEAD COSTS		
Travel	\$32,658.91	\$0
Fringe Benefits	\$370,195.64	
Equipment	\$0.00	\$0
Supplies	\$11,138.32	\$0
Contractual Services	\$127,642.86	\$0
Other	\$49,234.43	\$0
TOTAL	\$590,870.16	\$0
GRAND TOTAL	\$2,391,889.18	\$91,905.00

TABLE 4 TOTAL FEDERAL AND STATE FUNDING FOR RCRA BUDGET ALLOWANCE

ITEM	FISCAL YEAR 2001	FISCAL YEAR 2002	FISCAL YEAR 2003
<u>DIRECT COSTS</u>			
PERSONNEL	\$1,256,244	\$1,306,494	\$1,358,754
FRINGE BENEFITS	\$342,267	\$355,958	\$370,196
TRAVEL	\$30,195	\$31,403	\$32,659
EQUIPMENT	\$0	\$0.00	\$0
SUPPLIES	\$10,298	\$10,710	\$11,138
CONTRACTUAL	\$118,013	\$122,734	\$127,643
CONSTRUCTION	\$0	\$0.00	\$0
OTHER	\$45,520	\$47,341	\$49,234
SUBTOTAL	\$1,802,537	\$1,874,638	\$1,949,624
INDIRECT COSTS	\$408,899	\$425,255	\$442,265
GRAND TOTAL	\$2,211,436	\$2,299,893	\$2,391,889

D. Staffing and Funding by Division/Group

All personnel costs for one year, itemized by employee, are found in Tables 3A-3C. Overhead costs are entered in these Tables as a total amount for the entire department, since it is difficult to break down costs by individual division.

1. Regulations/Permitting Division--Regulations Section

The Regulations Section staff consists of two full time employees devoted to hazardous waste regulations and authorization activities. One full time secretary shared with the Tracking/Certification Division performs secretarial duties. Supervision is provided by the chief of the Regulations/Permitting Division, who also has certain responsibilities associated with regulatory development and authorization duties (see the organizational chart Figure 3, page III-4). The responsibilities for each of these positions are outlined in Table 5.

It is anticipated that the authorization of the rules included in the State's first application for authorization beyond the base program will not have any significant effect on this group. The principle job duty that could be affected is the regulatory interpretation function that these personnel provide. However, authorization will not increase this group's workload, since staff members provide regulatory interpretation for all rules beginning when each rule is adopted. The State will continue regulatory development and authorization activities to maintain consistency with the federal program.

2. Regulations/Permitting Division--Permitting Section

The Permitting Section has a total of seven employees, including six permit writers and a section head. One full time secretary shared with the Tracking/Certification Division performs secretarial duties. The Division Chief provides overall supervision. The Section Head provides day-to-day supervision. (see the organizational chart figure 3, page III-4). The responsibilities for each of these positions are outlined in Table 5.

There are no procedural changes between the old program and the new program. Although the Division will now be regulating miscellaneous units managing hazardous waste, current permit writers have the training and resources necessary to write permits for these new facilities. The Division also has the necessary expertise to address the statistical requirements of Revision Checklist 55. The division will not need to add any new permit writers to the staff as a result of the requirements beyond the base program.

Maryland has adopted the Chlorinated Aliphatic Hydrocarbon listing and the Warfarin and Zinc Phosphide listing into the Code of Maryland Regulations (COMAR). When these wastes were added, it was unnecessary to add any Treatment, Storage, and Disposal (TSD) facilities to the existing universe of regulated TSD facilities. Permits for existing facilities have been modified as needed to address these wastes.

The Agency is committed to fulfilling all grant commitments and deadlines by submitting the relevant reports to EPA.

TABLE 5

Regulations/Permitting Division Staff Responsibilities**Responsibilities for the Regulations Section:**Division Chief - Responsibilities include:

- Work assignments and staff supervision;
- Review and sign-off on division correspondence;
- Assisting the Hazardous Waste Program Administrator with setting priorities for regulatory development and program authorization;
- Interpretation of regulatory requirements for Program staff, the regulated community, and the general public;
- Liaison with the Office of the Attorney General on matters concerning regulatory development and authorization;
- Liaison with EPA Region III on authorization issues; and
- Coordination of training for the program.

Environmental Specialist - Responsibilities include:

- Drafting of regulations related to Hazardous Waste Management;
- Preparation of documentation needed for the final action on proposed regulations;
- Preparation of documentation for requests for program authorization including the Program Description document; and
- Preparing written responses to public inquiries regarding new regulations.

Responsibilities for the Permitting Section:Division Chief - Responsibilities (Many of which are delegated to the section head) include:

- Work Assignments and Staff supervision;
- Supervision of staff review of facility permit applications for completeness;
- Conducting periodic site visits;
- Attending public information meetings and public hearings involving CHS permit applications;
- Interaction with the office of the Attorney General on permit matters;
- Generation of monthly reports of division activities for EPA as required under terms of current cooperative agreement; and
- Maintaining appropriate records to ensure that payments due are billed and paid in a timely manner.

Public Health Engineer (PE) and Water Resources Engineer (WRE) - Responsibilities include:

- Interpretation of State and Federal standards, procedures and policies applicable to Hazardous Waste Permitting;
- Reviewing applications for CHS facility permits to determine completeness and technical sufficiency;
- Preparation of draft permits for review by the Section Head and Chief, RCRA Permitting Division;
- Assisting in compiling and maintaining a permit file for each permit being processed, issued or renewed;
- Participation in public meetings and public hearings related to facility permits;
- Calculation of fees and charges to be assessed against permittee;
- Preparation of draft responses to general queries concerning the Permitting Program and specific questions on permitted facilities for which the staff member serves as the project manager; and
- Assisting in the review of Biennial Hazardous Waste Reports during peak periods in the reporting cycle.

3. Tracking/Certification Division

The Tracking/Certification Division has a staff of two full time employees devoted to hazardous waste activities, and 1.5 secretary positions who perform general secretarial duties (see the organizational chart that appears as Figure 3). The responsibilities for these staff positions are outlined in Table 6.

TABLE 6

TRACKING/CERTIFICATION DIVISION STAFF RESPONSIBILITIES	
<u>Division Chief</u> – Responsibilities include:	
·	Distributing work assignments;
·	Reviewing hauler files;
·	Entering all notification forms received by the program in a log book;
·	Generating summaries of annual CHS reports;
·	Performing quality control checks on the RCRIS and CWMIS;
·	Responding to emergencies by visiting hazardous waste spill sites; and
<u>Administrative Specialist</u> - Responsibilities include:	
·	Reviewing applications for transporters and drivers.
<u>Data Device Operator</u> – Responsibilities include:	
·	Entering all data from annual reports;
·	Issuing provisional EPA numbers; and

- Performing random checks on drivers and vehicle notification numbers.

Data Processing Operations Technician – Responsibilities include:

- Supervising contractual data entry staff;
- Preparing documents for data entry;
- Using automated equipment to scan documents for downloading into CWMIS;
- Performing random checks in manifest files for Tracking Program, Environmental Crimes Unit and other agencies within MDE; and
- Responding to inquiries from out-of-state environmental agencies concerning activities under the Division's purview.

Data Entry Personnel – Responsibilities include:

- Entering all manifest data received by the Program; and
- Filing and maintaining all manifest data

Secretary – Responsibilities include:

- General secretarial duties (support also provided to Regulations/Permitting Division).

4. Hazardous Waste Enforcement Division

The Hazardous Waste Enforcement Division has 20 full time employees, including an office secretary (see the Hazardous Waste Program Organizational Chart provided as Figure 3 of this document). 13 employees are devoted to enforcement, groundwater support activities, and pollution prevention/waste minimization. 7 employees are assigned to hazardous materials transportation compliance activities.

The Enforcement Division receives support from the State Police and the Attorney General's (AG) office. The attorneys from the AG's office review civil cases for the HWP. A special team of three criminal prosecutors form the Environmental Crimes Unit (ECU), which prosecutes criminal violations of the Maryland Environment Article.

The size of the regulated community is currently 5974 handlers of CHS wastes (federal small quantity generators plus federal large quantity generators plus TSD facilities plus hazardous waste haulers). This compares to approximately 6000 handlers of CHS waste at the time of base program authorization (see Table 14, Regulated Hazardous Waste Activities).

The State has made many amendments to its regulations since the base program was authorized in order to maintain consistency with the federal program. These amendments have been implemented and enforced as a matter of State law pending completion of the authorization process under RCRA. The State has built capability to enforce these requirements through reference to EPA guidance, participation in EPA-sponsored training, work sharing arrangements with EPA, joint inspections with EPA, and on-the-job training. This has allowed the State to prepare for a smooth transition as EPA approves program authorization requests. It is not expected that authorization of these additional program elements will require the hiring of additional personnel.

Analyses of Controlled Hazardous Substances (CHS) waste samples are conducted for the HWP

by the Maryland Department of Health and Mental Hygiene (DHMH) and one other private laboratory within the State. The DHMH was originally the only facility that conducted the sample analyses. Although the number of samples has remained about the same, downsizing within the DHMH made the workload too great for DHMH to handle. As a result, DHMH had to contract some samples out. Before a contracted lab was chosen, DHMH performed reference checks to insure that the lab was capable of conducting all analyses required. The contracted laboratory has an agreement with the WAS to perform analyses as needed. They charge from \$75 to \$200 per sample analysis based on the urgency and the type of material to be analyzed.

The lab conducts analyses of CHS wastes (such as: metals, organic and other inorganic wastes) according to analytical procedures outlined in the EPA document, "Test Methods for Evaluating Solid Waste (SW-846)". Generally, the time taken to conduct the testing of various CHS wastes samples varies between one week to three months depending on the type of waste and the test procedure.

TABLE 7

HAZARDOUS WASTE ENFORCEMENT DIVISION STAFF RESPONSIBILITIES

(Information on the Hazardous Materials Compliance Section is not included in this Table. See Table 8 for Ground Water Support and Waste Minimization/Pollution Prevention Staff responsibilities)

Division Chief – Responsibilities include:

- Assignments of Work and Staff supervision;
- Review of Inspection Reports;
- Review of draft permits to assess enforceability;
- Monitoring of Enforcement Actions;
- Periodic Inspections – to audit inspectors;
- Attending enforcement action hearings;
- Liaison with the Attorney General's Office;
- Generating in-house and EPA monthly reports based on data from the Resource Conservation and Recovery Act Information System (RCRAInfo);
- Coordinates enforcement activities within the division;
- Prepares and Analyses Statistics;
- Prepares reports for Program Administrator and EPA; and
- Liaison with various committees within the Department.

Administrative Specialist – Duties include:

- Inspection tracking that includes database development and management of the State's enforcement data on (RCRAInfo);
- Generation of monthly reports from RCRAInfo;
- Database development for fiscal accountability;
- Accounts management including the production of balance sheets; and
- Managing an in-house computer system to track requests related to the Freedom of Information Act (FOIA).

Sanitarians and Public Engineers (PHE) –

There are 3 sanitarians and 5 PHEs serving as enforcement officers whose job duties include:

- Interpretation of State and federal laws and regulations concerning hazardous waste, waste pollution control, air pollution control, and industrial and solid waste management;
- Conducting inspections at chemical and other facilities;
- Assisting in planning and evaluation of inspection programs, as they relate to environmental enforcement;
- Coordinating, directing, and initiating various enforcement related activities and projects including conducting major facility inspections and investigations, sampling surveys, special surveillance of facilities, some aspects of program management and development.
- Review of technical documents associated with enforcement actions related to the following:
 - chemical treatment systems;
 - facility design plans and blueprints;
 - ground water and other pollution remediation work plans; and
 - treatment, storage and disposal facility permit applications.
- Planning, organizing and developing special statewide programs for Hazardous Waste Management;
- Corrective action oversight;
- Drafting technical and enforcement documents such as Notices of Violation, Civil Penalties, Site Complaints, Complaint & Orders, etc.;
- Responding to emergency incidents where technical expertise is needed to evaluate the impact on public health and the environment, and
- Responding to citizens' complaints regarding unlawful activities related to improper hazardous waste management.

Office Secretary II – Responsibilities include general secretarial duties.

5. Groundwater Support

The Groundwater Support group currently consists of one permanent employee in the Enforcement/Waste Management Section (see the organizational chart shown in Figure 3). The responsibilities for this position are shown in Table 8.

Prior to October 1992, the Groundwater Support Program was a part of a larger group that provided technical support to Hazardous Waste, Solid Waste, and other Programs in the Waste Management Administration. Currently, the GWSG provides support solely for the Hazardous Waste Program. The adoption of Checklist 55 has required more groundwater sampling to take place. Maryland regulations require the facilities to conduct most of their own sampling, with the State performing oversight and review of the work. This oversight may be performed by Groundwater Support personnel, inspectors from the Hazardous Waste Enforcement Division, or permit writer's from the Regulation/Permitting Division.

The agency is committed to fulfilling all grant commitments and deadlines by submitting the relevant reports to EPA.

6. Waste Minimization/Pollution Prevention Section

The Waste Minimization/Pollution Prevention Initiative for the State was formally initiated in February 1990 as a function of the Hazardous Waste Program. A reorganization in 1995 shifted the Waste Minimization/Pollution Prevention Section to the Regulatory and Technical Assistance Program within the Waste Management Administration. Recently, this function was returned to the Hazardous Waste Program under the Hazardous Waste Enforcement Division.

The staff is comprised of one public health engineer and one sanitarian. The duties of these positions are found in Table 8. The team is committed to fulfilling all grant requirements and meeting all deadlines.

7. Environmental Crimes Unit

As described in Section III, as part of the Office of the Secretary, the Environmental Crimes Unit provides support for ALL programs within MDE. Staffing and funding responsibility for the Environmental Crimes Unit is a Departmental rather than a Program concern.

or renewal of existing permits. An example of a major modification is a request for an increase in the amount of waste that may be managed at the facility.

8. Interaction with Enforcement Personnel

There is a day-to-day interaction between permitting and enforcement personnel. The enforcement personnel are continually working to identify non-notifiers and handlers of CHS that are operating without a permit. This information is provided to the Permitting Section personnel. Permit writers assist enforcement personnel in the interpretation of permit conditions and regulatory requirements. Enforcement personnel inform permitting staff of changes in facility operations that may require permit modifications and ambiguous situations that require clarification.

9. Routine Review of Facility Operation

Permit writers review the closure cost estimate that the facility is required to update annually. The permit writer also verifies that the facility has the required financial assurance mechanism in place to cover the cost of closure or post-closure care. The permit writer for a facility reviews the facility's annual report of hazardous waste activities to assess its accuracy and completeness.

10. Permitting Reports Required by RCRA Grant

The RCRA grant requires the following computer generated reports, shown in Table 11, as an essential part of the Permitting Division's reporting requirements:

TABLE 11
TYPES OF REPORTS AND DUE DATES

REPORT NAME	FREQUENCY/DUE DATES
RCRAInfo Permitting Forms	Monthly by the 5th
Permit Tracking Chart	Monthly

11. Miscellaneous Units--Subpart X Permits

COMAR 26.13.05.16-1 establishes management standards for "miscellaneous unit". Miscellaneous units are waste management units for which specific technical standards have not been established in COMAR 26.13.05 (i.e., is not a container, tank, surface impoundment, etc.) The management standards for miscellaneous units are in the form of general performance standards, requiring that the units be located, designed, constructed, operated, maintained and closed in a manner that will ensure protection of human health and the environment.

V. STATE PROCEDURES

This section outlines some of the major activities and procedures of the HWP. Included are discussions of: the regulatory development process, notification of hazardous waste activity, certification of transporters, international shipments, manifest tracking, permitting, enforcement, groundwater monitoring inspections, pollution prevention, biennial reporting and interim status. Each is discussed in a separate section below. In general, the State has modified the procedures described in its base program Program Description to reflect the changes described in Table IIA, and the adoption of interim status requirements.

A. Regulatory Development

The authority for the State regulations on hazardous waste management is derived from Title 7, Subtitle 2 of the Environment Article, Annotated Code of Maryland. The State's regulations appear as Title 26, Subtitle 13 of the Code of Maryland Regulations (COMAR 26.13). They have been structured to be at least as stringent as the federal program. The Regulations Section has the primary responsibility for regulation development.

A draft copy of the regulations is prepared, with the appropriate revisions to the federal language to satisfy the style requirements of the Division of State Documents. The draft is reviewed by the Attorney General's office. Then, it is distributed for comments to:

- Other MDE administrations
- Maryland county governments
- The Governor's Controlled Hazardous Substance Advisory Council, and
- EPA.

After reviewing the comments made by these groups, a formal draft is prepared for submission to the Maryland Register. The text of the regulations is accompanied by a Statement of Purpose which summarizes the proposed action, a Comparison to Federal Standards, an Estimate of Economic Impact, a Statement of Economic Impact on Small Businesses, a statement of opportunity for Public Comment, and an Impact Statement, which states the effects on the promulgating agency.

The draft is then sent to the Maryland Department of Business and Economic Development (DBED), in accordance with Governor Parris Glendening's February 1, 1996 Executive Order on Regulatory Standards and Accountability. The submittal to DBED includes a statement from MDE that the draft regulation is equivalent to corresponding federal regulations, or, if certain provisions are more stringent than corresponding federal requirements, a statement providing justification.

DBED must review the proposed regulation and accompanying analysis and forward the results of the review to the promulgating agency within ten working days. DBED may either agree or disagree with the promulgating agency's assessment that the proposed regulations are no more stringent than corresponding federal regulations. If DBED disagrees, they are required to provide comments explaining their reasoning, and recommendations for further action.

For regulations that are more stringent than corresponding federal regulation, DBED forwards the justification prepared by the promulgating agency and a copy of the promulgating agency's proposed regulation to the Governor's Office for review (the Governor's Office of Legal Counsel and Regulatory Affairs, and the Governor's Legislative Office). The Governor's Office and the promulgating agency then resolve any concerns the Governor's Office may have.

The draft is submitted to the Joint Committee on Administrative, Executive and Legislative Review (AELR), a standing committee of the Maryland General Assembly, for their review. The AELR Committee does not have veto power over proposed regulations (unless the regulations are being adopted on an emergency basis.) However, State agencies attempt to address concerns raised by the AELR. If MDE and the AELR Committee are unable to agree on changes the Committee would like to see made, the Committee may formally vote to oppose the adoption of the regulation. The Governor is notified and further negotiations take place. If the issue cannot be resolved the Department may still adopt the regulation, but only with the explicit approval of the Governor.

After review by the Administrative Executive Legislative Review (AELR) Committee, the regulations are reviewed by staff of the Division of State Documents for conformance to style requirements. Revisions may have to be made in response to comments of the Division of State Documents. Once any concerns are addressed, the proposed regulations are published in the Maryland Register, a State publication that serves the same function as the Federal Register for federal regulations. There is a 30-day comment period that includes a minimum of 15 days notice for a public hearing.

Comments received during the comment period are reviewed and responses to all substantive comments are prepared. If no substantive changes are required in response to the comments, a Notice of Final Action containing the proposed regulations is prepared for publication in the Maryland Register. The regulation becomes effective 10 days after publication of the Notice of Final Action, unless the Secretary specifies a later date. If substantive changes are made to the proposal, the regulations must be formally reprocessed, following the same process as a new proposal. A time line for the State regulatory development process is shown in Table 9.

Once the State regulations have been adopted, the State seeks EPA authorization for the amendments. The State follows the procedures outlined in the EPA's State RCRA Authorization Manual and the regulations of 40 CFR Part 271.

TABLE 9 REGULATORY DEVELOPMENT PROCESS

<u>Action</u>	<u>Time Required</u>
• Regulations development	Variable
• Preliminary review by the Attorney General's Office	2-3 weeks
• Preliminary draft distributed to Counties, interested parties, Governor's Controlled Hazardous Substances Advisory Council and EPA Region III for review	30-45 days
• Revisions to preliminary draft made, drafts put into format required by Division of State Documents, proposal reviewed and approved by AG's office and the Secretary	Variable
• Review by DBED	10 days max.
• Review by AELR	16 days min.
• Review by Division of State Documents	variable
• Publication in Maryland Register, Opportunity for public comment, Public hearing	30 days
• Comments on proposal addressed	Variable
• Preparation of Notice of Final Action	Variable
• Review and approval by AG's Office and the Secretary	4-6 weeks typical
• Review by Division of State Documents	10 days
• Publication in Maryland Register	
• Action becomes effective (minimum)	10 days

B. Notification of Hazardous Waste Activity

Any person who intends to generate, transport, treat, store, recycle or dispose of a Controlled Hazardous Substance (CHS) must notify the Secretary of MDE and the Administrator of EPA. The proper procedure is to use a Notification of Hazardous Waste Activity form, EPA Form # 8700-12.

The information on the form is entered into the RCRAInfo and CWMIS systems when the Department receives the completed Notification of Hazardous Waste Activity form. RCRAInfo is a federal database, while CWMIS is an MDE database. Quality assurance checks by MDE are then conducted on the information. Finally, the permanent identification number is issued by MDE in accordance with the RCRAInfo Memorandum of Understanding (MOU) between MDE and EPA. The

whole Notification of Hazardous Waste Activity process takes approximately one week to complete. A detailed listing of the Standard Operating Procedures (SOP) established for notification of hazardous waste activity is included in Appendix B. The RCRAInfo MOU is found in Appendix C.

C. Certification of Hazardous Waste Transporters

Certification of hazardous waste drivers, haulers, and vehicles is an aspect of the State's program that is broader in scope than the federal program. If CHS is to be transported from a source within the State, or to a destination within the State, under State law the driver (if a resident of Maryland) and the transport vehicle must be certified by the HWP. The company that owns the vehicle (the "hauler") must also be certified. There are specific application forms for each authorization.

The standard operating procedures (SOP) for obtaining hauler certifications, vehicle certifications and driver certifications, as well as the SOP for processing applications for the certifications are presented in Appendix B. Copies of the applications for hauler certification, vehicle certification and driver certification can be found in Appendix D.

D. International Shipments

MDE requires that persons responsible for exporting CHS outside of the United States submit copies of the Notification of Intent to Export to the Department and to EPA. This notification details:

- the primary exporter
- the waste intended for export
- the method of export
- the receiving country, and
- any countries that the waste may pass through on the way.

MDE further requires that the exporter use an EPA Acknowledgement of Consent form to obtain written consent of the receiving country. This form accompanies the shipment, along with the manifest or shipping paper.

E. Manifest Tracking System

A manifest is the shipping document originated and signed by the generator of CHS that contains the information required by COMAR 26.13.03.04. The Department requires generators to use the Maryland State manifest, which is equivalent to EPA form 8700-22, for shipments within the State of Maryland unless the destination state requires the use of its own manifest. COMAR 26.13.03.04B offers guidelines for manifest acquisition for shipments other than in-state. Information on the number of manifest copies is provided in COMAR 26.13.03.04D. The manifest consists of eight copies and these are distributed as follows:

- The generator shall keep a copy, in accordance with Regulation .06A(1) of COMAR 26.13.03.04.
- Each transporter shall keep a copy in accordance with COMAR 26.13.04.02C;
- The designated facility shall keep a copy in accordance with COMAR 26.13.05.05B;
- The designated facility shall forward one copy each to the generator, generator state, and consignment state in accordance with COMAR 26.13.05.05B; and

- The generator shall forward one copy each to the generator state and the consignment state in accordance with §E(1) and (2) of COMAR 26.13.03.04.

A copy of the completed manifest document is forwarded by the generator to the Tracking Division. There it is processed, reviewed, and entered on the computer for record keeping. The various procedures followed by the Tracking Division are:

- Receipt of manifests -- When the manifests are received by mail, they are forwarded to a staff person to sort by copy, to be assigned control numbers and to be divided into different batches for effective data management and accountability. Each copy of the manifest is then assigned a unique control number.
- Processing the manifests--The manifest copies for the current year and the two preceding years are filed by year in numeric order in filing cabinets in the Division's offices where they are easily retrievable. Manifests for the preceding 3 years are stored in the State's records retention facility located in Jessup MD. These procedures are explained in detail in the SOP presented in Appendix B.
- Review of manifest forms--Review of the filed manifests is performed on a random basis around the 20th of each month. Special review forms have been created to check for accuracy and thoroughness of manifests. Incomplete documents and/or omissions will be forwarded for enforcement action.

In situations when other States contact MDE seeking information on hauler certification, the Tracking/Certification Division provides the relevant information and guides the outside agency through the State Certification procedures.

F. Annual/Biennial Reporting

The State, at the time of base program authorization, required all Generators and Treatment, Storage, and Disposal Facilities to file an annual report. In 1996, this requirement was changed to be equivalent to the federal biennial reporting requirements. The State's established procedures for processing and reviewing the annual reports have been adapted for processing and reviewing the biennial reports. The various procedures followed by the Tracking Division are described below. They are:

- Labels are generated for Large Quantity Generators, Small Quantity Generators, Conditionally Exempt Small Quantity Generators and Periodic or Occasional Generators. Reports are packaged with a cover letter and a list of State waste codes and information showing who must file. The report forms are then mailed.
- Receipt - Upon receiving the reports, the tracking staff logs the reports into CWMIS according to the EPA ID number, the report year and the date received at MDE.
- Technical Review - All individual forms are reviewed for completeness and accuracy. Any discrepancies and/or questions are noted, and addressed to the submitter. Accurate and complete reports are sent to the data entry staff for input into the BRS database. Submitters are contacted for all Hazardous Waste Reports that did not pass the reviews.

G. Permitting

The Hazardous Waste Program is responsible for the permitting of CHS treatment, storage, and disposal (TSD) facilities in the State. CHS facility permits are issued for both operating facilities and for closed facilities required to maintain post-closure care. Although these are the most frequent types of permits issued, the State's regulations provide for several other types of CHS permits. These include:

- Post-closure permits for closed land disposal units at which hazardous waste remains after the cessation of active operations;
- Emergency permits to address situations where there is an imminent and substantial threat to human health or the environment;
- Research, Development and Demonstration (RD&D) Permits for innovative and experimental treatment technologies or processes;
- Short-term and phased permits for land treatment units; and
- Limited facility permits for persons burning hazardous waste for energy recovery.

Table 10 shows the overall steps in the State of Maryland's permitting process. These steps are discussed in detail later in this section. The list of permitted hazardous waste facilities can be found in Appendix E.

TABLE 10
PERMITTING PROCESS

- The applicant notifies the Department of Regulated Waste Activity;
- The applicant submits Parts A and B of permit application;
- The State begins procedures for public participation by publishing a notice that an application has been received; the notice includes an opportunity to request a public informational meeting on the application;
- A public informational meeting on the application is held if requested, or , in the absence of a request, if the State believes that holding one would be beneficial;
- The State conducts a completeness review of the application;
- If applicable, the State issues a Notice of Deficiency (NOD) to applicant, identifying deficiencies in the application;
- The State conducts a technical review of the complete application;
- The State sends a second NOD identifying the deficiencies revealed by the technical review; if required
- The State prepares a draft permit or Notice of Denial;
- The State advertises this action and gives the public a minimum of 45 days to comment;
- If it believes there is sufficient interest to warrant one, or if requested to by the public, the State conducts a public hearing.
- The State makes final decision to issue or deny the permit. If adverse comments on the Tentative Determination were received, it publishes a Notice of Final Determination; otherwise, the tentative determination becomes the final decision;
- If a Notice of Final Determination is published, the State provides an opportunity for aggrieved parties to request a contested case hearing within 15 days. Section D3 describes the procedures that are followed if a contested case hearing is to be held.
- Unless a request for a contested case hearing is granted, the State issues a 5-year permit.
- EPA issues a 10 year term Corrective Action portion of the permit.
- The two parts of application from the State and EPA are combined to form the RCRA permit.

1. Permit Application

In order to obtain a permit, the facility owner or operator must first submit a completed Notification of Regulated Waste Activity form to the Department. Then the owner/operator has to submit a two-part state application. Part A is a standard EPA form that provides general facility information. Part B includes detailed site-specific information. Part B also incorporates the specific information requirements listed in COMAR 26.13.07.02 and .03, as well as information that demonstrates how the applicant will comply with the substantive requirements of COMAR 26.13.05. A

copy of the application is provided to EPA. The information required by the State in Parts A and B is equivalent to the information required by the federal program.

Before an application is submitted, a permit writer offers to meet with the prospective applicant to explain the requirements for submitting a complete application, and to provide guidance in satisfying the requirements. The applicant is provided with a copy of a checklist for completing Part B of the application. The applicant is informed of the relevant sections of the Code of Maryland regulations that the applicant will have to address in the application. The applicant is also made aware of the technical guidance documents that are available for reference. Applicants are invited to visit the offices of the HWP to review material useful in completing an application, and also to meet with the permitting staff for assistance in completing applications.

2. The Permit Review Process

When the permit application is received, the permit writer reviews it for completeness. The application is compared to the specific application requirements outlined in COMAR 26.13.07.02 and COMAR 26.13.05. Although the focus of the initial review is to determine whether the application is complete, if technical inadequacies are evident, the permit writer makes note of them for future action.

After the permit writer has become familiar with the material in the permit application, a site visit is scheduled. The permit writer discusses the facility with Enforcement Division personnel who are familiar with the facility. The permit writer also reviews Enforcement Division files for relevant information. The permit writer may be accompanied on the site visit by the Enforcement Program staff member who is assigned to the facility. The primary purpose of this visit is to verify the completeness and accuracy of information in the application. While at the site, the permit writer also notes any evident technical problems with the proposed waste management activities.

3. Permit Completeness Review

Based on the review of the application and information obtained during the site visit, the permit writer drafts a Notice of Deficiency (NOD). A NOD is a letter addressed to the applicant that clearly identifies all deficiencies discovered in the initial review of the application. It provides guidance on how to address these deficiencies. A final review of the application and the NOD is made by the permit writer's supervisor who makes any necessary modifications to the NOD.

Generally, the applicant is given 45 to 60 days to address the issues raised in the NOD. The applicant is encouraged to meet with the permitting staff to seek clarification on any issue related to the permit, and to lessen the chances of misunderstanding the State's requirements.

The permit writer reviews the applicant's response to the NOD and prepares notes on any outstanding issues. The permit writer also identifies any technical issues that the applicant must address to demonstrate capability to operate the facility in accordance with regulatory requirements. Any issues that are identified are communicated to the facility in a second NOD. The applicant is again encouraged to meet with the permitting staff to resolve issues, thereby resulting in quick processing of the application.

If the applicant's response to the second NOD does not address all issues raised by the State, a third NOD may become necessary. If the applicant does not resolve all outstanding issues, the State could take one of two courses of action:

- Imposing certain conditions in the permit to obtain the required degree of protection; or
- Denial of the permit application.

Unless there are extenuating circumstances, the state expects that the applicant's response to the third NOD will resolve all outstanding issues.

Once the permit applicant has addressed all concerns raised by the State in reviewing the application, the permit writer prepares a draft CHS facility permit. This is a legally binding document that identifies the requirements the applicant must comply with in managing CHS at the permitted facility.

4. The Draft Permit

The draft permit is comprised of a main body and a series of attachments.

- The Main Body--The main body of the permit consists of the standard conditions and general conditions that are applicable to all hazardous waste facilities, and special conditions designed specifically for the particular facility. These special conditions include:

1. identification of the waste codes of the wastes that may be managed;
2. quantities of wastes that may be managed; and,
3. processes that may be used to manage wastes.

The special conditions also include any provisions needed to address any special hazards posed by the particular wastes managed at the facility or any conditions necessitated by the particular circumstances of facility operations (restrictions on hours of operations, special testing or certification requirements, etc.).

The special conditions are generally organized so that special conditions applicable to a particular process are grouped within a discrete section of the permit. For example, conditions specific to operation of an incinerator would all be grouped together in a separate section.

- Permit Attachments--The attachments to the permit include detailed descriptions of the facility design and construction, and how the facility will be operated to comply with the State's hazardous waste regulations. Examples include facility description, waste analysis plan, contingency plan, training plan, plans and specifications of waste management units, groundwater monitoring plan, treatability demonstration plan, trial burn plan, construction quality assurance/quality control plan, special requirements for managing ignitable or reactive wastes, and closure plan. Other attachments may be included depending on the nature of the regulated activity. The bulk of the information in the permit attachments comes from the permit application. However, information from the application may be modified by the permit writer to assure that information that is made a part of the permit is adequate from both a technical and regulatory standpoint.

When the draft permit is completed, the permit writer prepares a fact sheet for the draft permit. The fact sheet describes the facility, summarizes the conditions in the draft permit and lists the regulatory basis for each permit condition.

The permit writer submits the permit draft to the supervisor (Section Head, Permits Section) for review. The supervisor notes any concerns and instructs the permit writer to address them. This could involve redrafting of permit language, obtaining additional information from the applicant, or demonstrating the appropriateness of permit conditions.

Once the Section Head's concerns have been addressed, the Section Head forwards copies of the draft permit to the Chief of the Regulations/Permitting Division, the Hazardous Waste Enforcement Division, and the Office of the Attorney General for review. When all concerns of the reviewers have been addressed, the Section Head forwards the draft permit to the Administrator of the Hazardous Waste Program for review and approval. After any required changes have been made, a Tentative Determination to issue the permit is prepared and forwarded to the Director of the Waste Management Administration for approval. Once the Director approves, the draft permit, fact sheet, and a public notice are forwarded to the Waste Management Administration's public outreach coordinator. The public outreach coordinator arranges for publication of the public notice, distribution of copies of the draft permit, scheduling of any public hearings or public informational meetings, and notification of persons on the mailing list for the facility.

The Hazardous Waste Program also arranges to have the draft permit made available for public review at the time the Notice of Tentative Determination is published. A copy of the draft permit and fact sheet is generally placed in a public library in the vicinity of the facility that is the subject of the draft permit. Copies are also available for review in the offices of the Hazardous Waste Program. The public notice includes information on where and when the draft permit may be reviewed.

A tentative determination to deny a permit application follows the same steps as a tentative decision to issue a permit. However, instead of preparing a draft permit, the Hazardous Waste Program prepares a "basis for denial" which explains why the Hazardous Waste Program believes that denial of the application is appropriate. The "basis for denial" takes the place of the draft permit in the procedures discussed above. The decision to deny the permit application would be subject to public comment, and any aggrieved party eligible to do so could appeal a final decision through the contested case hearing process.

5. Administrative Procedures for Permitting

In 1993, the Maryland legislature revised the administrative procedures applicable to various permits issued by the Department, including Controlled Hazardous Substance permits. The main effects of the statutory revisions were to involve the public in the permitting process at an earlier stage, provide for additional public notice of permitting activities, and clarify requirements for adjudication of permit decisions. The State's regulations do not completely reflect these revised statutory provisions, but the Hazardous Waste Program follows the statutory provisions in conducting permitting activities. The specific statutory provisions concerning public participation are described in the next section.

6. Public Participation

This section briefly discusses the procedures that the Hazardous Waste Program follows to involve the public in permitting decisions. These procedures are required by Title 1, Subtitle 6 of the Environment Article, Annotated Code of Maryland.

When a permit application is received in the Hazardous Waste Program, the Program is required to publish a notice announcing receipt of the application and offering an opportunity for a public

informational meeting. The Program is also required to make the application available for public inspection.

The Hazardous Waste Program is required to hold an informational meeting on the permit application if a written request is received within 10 working days after the publication of the notice of application received. The Program may also, at its discretion, schedule an informational meeting in the absence of a request. The informational meetings provides an opportunity for the public to learn more about what the permit applicant is proposing. The meeting includes a discussion of the permit application itself, as well as a discussion of the entire permit review process, including a tentative schedule for review process completion. The meeting is used to advise the public of all opportunities to participate in the permitting process.

The statute gives the Department authority to require an applicant to attend informational meetings on the permit application. If the applicant fails to appear as required, the Department has the authority to deny the permit.

When an applicant is applying for more than one permit simultaneously, it is MDE's policy to combine informational meetings whenever possible. By combining informational meetings, the applicant and the public will be better able to discuss all aspects of a particular facility. These meetings require careful coordination across the Department's air, waste, and water management programs. The respective administrations will designate an individual who is responsible for maintaining this coordination.

Once the draft permit is prepared, the public is notified through a newspaper notice. The public notice is published a minimum of twice (once in each of two consecutive weeks) in a newspaper of general circulation serving the area where the facility is located. The public notice is also broadcast on a radio station serving the general area where the facility is located, twice in consecutive weeks. The notice:

- Provides a brief summary of activities that are the subject of the draft permit;
- Provides an opportunity for public comment;
- Describes procedures for submitting comments;
- Offers an opportunity for a public hearing if one has not already been scheduled; and,
- Identifies an agency contact person as a source for further information.

A minimum 45-day period allows time for public comment on the draft permit. The draft permit and fact sheet are made available for review in the offices of the Waste Management Administration and in a public library close to the facility.

During the comment period, the public may request a hearing on the draft permit. If a request is made, the hearing must be held. A hearing may also be held without a request from the public if the Department feels that one is warranted. Notice of a public hearing is published in a newspaper of general circulation serving the area where the facility is located, and summaries of the notice are given on radio announcements. If a public hearing is held, the time allowed for public comments is extended to at least 5 days after the close of the hearing.

Once a hearing is scheduled, the Waste Management Administration designates a hearing officer whose duty is to conduct the public hearing. Any person is allowed to submit oral or written statements and data concerning the draft permit at the hearing. The hearing officer may extend the comment period by so stating at hearing. A written transcript of the hearing is made part of the administrative record and is made available for the public to review.

After the comment period ends, responses to public comments are prepared. Based on a review of the permit file and public comments, the hearing officer makes a recommendation to issue the permit as drafted, modify the draft permit, or deny the draft permit. The final decision on action on the permit is made by the Director of the Waste Management Administration.

If no adverse comments were received on the draft permit during the comment period, the permit becomes effective on the date designated by the Director.

Adverse Comments/Contested Case Hearings

If adverse comments are received, the Waste Management Administration publishes a "Notice of Final Determination." Within 15 days after publication of the Notice of Final Determination the public (including the permit applicant) may request a contested case hearing. However, requests for a contested case hearing must include factual allegations demonstrating that the person requesting the contested case hearing is aggrieved by the final determination and that the final determination is either "legally inconsistent with any provision of law" applicable to the permit or is "based upon an incorrect determination of a relevant or material fact." A party may not challenge a facility's compliance with zoning and land use requirements in a contested case hearing.

If a request for a contested case hearing is too vague for the Department to determine whether it satisfies the conditions above, the Department may require the person making the request to file a more definite statement with specific allegations within 15 days. If more specific allegations are not provided, the Department may dismiss the request.

Contested Case hearings are conducted in accordance with the Title 10, Subtitle 2 of the State Government Article, Annotated Code of Maryland. Before the hearing, a presiding officer is appointed by the Chief Administrative Law Judge to preside over the hearing and all parties are sent written notification of the contested case hearing. During the hearing, documented evidence, witness testimony, witness cross-examination, and rebuttal of evidence may be entered into record.

The presiding officer evaluates the presented evidence and arrives at a proposed finding of fact, conclusion of law, or order which the Office of Administrative Hearings sends to the parties involved in the hearing and the Department. The Department then has 60 days to review the proposed findings, conclusions or orders and issue a proposed decision. This proposed decision is developed by a "final decision maker" designated by the Secretary of the Environment. The proposed decision may include the Office of Administrative Hearing's proposed findings, conclusions or orders with or without modification.

If the proposed decision contains modifications to the proposed finding of the Office of Administrative Hearings, it must be accompanied by an explanation of the basis for the modification. The Department sends the proposed decision and a copy of the Office of Administrative Hearing's proposed findings, conclusions or orders to all parties involved in the hearing.

The proposed decision notice includes an explanation of time limits and procedures for filing

exceptions to the proposed decision. The final decision maker is required to issue in writing a final decision that is adverse to a party, and include a written statement of appeal rights with the decision.

A contested case hearing is the final means of administrative appeal that an aggrieved party has in a case. If an aggrieved party contestant is not satisfied with the final verdict of the contested case hearing, he would have to take the issue to civil court.

By providing citizens with early opportunities to participate in the permitting process, the Department strives to limit the need for contested case hearings. By working closely with the applicant and interested parties throughout the permitting process, the Department attempts to settle disagreements over factual issues before reaching this stage in the permitting process. Contested case hearings, however, remain an option for citizens who believe that a final determination by the Department was made in error.

To keep the public informed of and involved in permitting decisions, the Environment Article, Annotated Code of Maryland requires the Department or the applicant to "publish notice" throughout the permit review process. In either case, the applicant would incur all costs associated with publishing notice. The Department will publish public notice when a draft permit has been prepared or in the event that a permit application is denied. Public Notice is not required, however, when a request for permit modification, revocation and reissuance, or termination is denied.

The Environment Article, Annotated Code of Maryland also requires that each notice be published at least once a week for two consecutive weeks in a daily or weekly newspaper of general circulation in the geographical area in which the proposed facility is located. The Department may also require the applicant to send notices directly to each person requesting a meeting or hearing, and may require that the notice be posted at the site or at other public facilities in the area of the proposed facility.

7. Permit Modifications

Revision Checklist 54 was finalized by EPA on September 28, 1988. The final rule on permit modifications for hazardous waste facilities identified three classes of modifications. In the preamble to the rule, EPA affirmed that authorized states are not required to modify their programs to adopt requirements equivalent to the provisions of the rule. Also in the preamble, EPA gives States the option of retaining the minor/major process for permit modifications, and adopting selected portions of the rule.

The State of Maryland has not adopted all provisions of this rule. The State has a system of two types of permit modifications, minor or major, a system of classification that is somewhat more stringent than federal requirements. "Minor" indicates a class of State permit modification that is equal to the EPA Class I. All other permit modifications are designated as "Major" under the State system.

Minor modifications are those modifications that involve minor changes to keep the permit current with routine changes to the facility or its operation, do not require substantial alterations of permit conditions, and do not reduce the capacity of the facility to protect human health and the environment. Minor modifications under the State's regulations are equivalent to Class I modifications under 40 CFR 270.42. Additionally, under COMAR 26.13.07.13-3, a person may request that other modifications be considered and processed as minor. Minor permit modifications are processed through agency correspondence without the public participation requirements of major modifications.

Major modifications follow the same administrative procedures as applications for new permits

or renewal of existing permits. An example of a major modification is a request for an increase in the amount of waste that may be managed at the facility.

8. Interaction with Enforcement Personnel

There is a day-to-day interaction between permitting and enforcement personnel. The enforcement personnel are continually working to identify non-notifiers and handlers of CHS that are operating without a permit. This information is provided to the Permitting Section personnel. Permit writers assist enforcement personnel in the interpretation of permit conditions and regulatory requirements. Enforcement personnel inform permitting staff of changes in facility operations that may require permit modifications and ambiguous situations that require clarification.

9. Routine Review of Facility Operation

Permit writers review the closure cost estimate that the facility is required to update annually. The permit writer also verifies that the facility has the required financial assurance mechanism in place to cover the cost of closure or post-closure care. The permit writer for a facility reviews the facility's annual report of hazardous waste activities to assess its accuracy and completeness.

10. Permitting Reports Required by RCRA Grant

The RCRA grant requires the following computer generated reports, shown in Table 11, as an essential part of the Permitting Division's reporting requirements:

TABLE 11
TYPES OF REPORTS AND DUE DATES

REPORT NAME	FREQUENCY/DUE DATES
RCRIS Permitting Forms	Monthly by the 5th
Permit Tracking Chart	Monthly

11. Miscellaneous Units--Subpart X Permits

COMAR 26.13.05.16-1 establishes management standards for "miscellaneous unit". Miscellaneous units are waste management units for which specific technical standards have not been established in COMAR 26.13.05 (i.e., is not a container, tank, surface impoundment, etc.) The management standards for miscellaneous units are in the form of general performance standards, requiring that the units be located, designed, constructed, operated, maintained and closed in a manner that will ensure protection of human health and the environment.

To draft a permit for this type of facility, the permit writer first reviews the regulations for any similar standards applicable to the particular miscellaneous unit under consideration. EPA is then consulted for any specific guidelines for permitting the miscellaneous unit. Guidance documents, technical reports, and independent technology assessments may be consulted in evaluating the permit application.

In reviewing the application, the permit writer uses best engineering judgement to assess whether the applicant can operate the unit in accordance with the performance standards embedded in the miscellaneous unit regulations. The permit writer then drafts the permit to incorporate any relevant guidelines or suggestions of EPA and any Departmental concerns.

Permit conditions are drafted to assure that the general performance standards for miscellaneous units will be met. This could include such things as limitations on types or quantities of wastes managed in the unit, specification of pollution control equipment, establishment of treatment criteria that the units must achieve, specification of operating limits on critical process parameters, establishment of specific inspection and maintenance requirements, etc. For innovative treatment technologies, the permit may specify that performance must be successfully demonstrated in trial tests before full-scale operations are allowed.

Once the permit has been drafted, further processing of the permit follows the administrative process previously described.

12. Joint Permitting

The State and EPA are involved in joint permitting for corrective action permits. The amount of joint involvement varies depending on the facility and the permit needed. In general, EPA has primary authority to issue corrective action permits. However, for some facilities, MDE will agree to draft the corrective action permit under the annual federal grant work plan, and to send the draft to EPA for review. EPA may also include conditions in the permit relating to federal regulations promulgated under authority of the Hazardous and Solid Waste Amendments of 1984 for which the State has not yet received authorization to implement in lieu of EPA.

H. Interim Status

1. Background

The federal hazardous waste regulatory program includes a concept called "interim status". It addresses existing operations that become newly subject to permitting requirements because of a regulation or statutory change. By complying with the interim status requirements, a facility is allowed to continue to operate as if it had a permit until the permit is either issued or denied (or the facility closes or has its interim status revoked.)

At the time of Base Program Authorization, the State did not have a direct analog to the federal interim status regulations (40CFR Part 265, and 40 CFR Part 270 Subpart G, among others). In situations where, under federal regulations, a generator would have had to comply with the requirements of 40 CFR Part 265 in order to temporarily be allowed to continue a particular activity, Maryland generators were required to comply with the State analog to the final permitting standards of 40 CFR Part 264. This was generally handled by issuing a Consent Order to the generator which allowed the generator to operate as if it had a hazardous waste facility permit, provided that the generator complied with the State's standards for permitted facilities. This was the process used when the State's regulatory

program for hazardous waste first took effect and no permits had yet been issued.

Although this approach was adequate at the time of Base Program Authorization, as the State's regulatory program has matured, some difficulties have become evident. For example, ambiguities can arise because the regulations for permitted facilities sometimes require the owner or operator to do something in accordance with conditions specified in the facility's permit. Such a requirement could cause confusion for a facility that has been temporarily sanctioned to operate without having been issued a permit.

2. Revisions to the Base Program

The State has modified its regulations to eliminate potential problems in the State's hazardous waste regulatory program with respect to interim status facilities. The State's regulations now more closely follow federal regulations. This has been accomplished by adding a new Chapter 6 (Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities) to COMAR 26.13 as the analog to 40 CFR Part 265, and by adding provisions to COMAR 26.13.07 to serve as the analog to 40 CFR Part 270 Subpart G. Minor changes were also made to other parts of COMAR 26.13 to maintain consistency with the federal interim status standards.

In general, the State attempted to be equivalent to the federal interim status program. There are areas where the State is more stringent, however. For example, the State requires interim status facilities that manage hazardous waste in containers to maintain secondary containment around the containers to capture spills or leaks, as permitting standards would require. Areas where the State's regulations are more stringent than the corresponding federal regulations are identified on the regulatory checklists that are part of the State's application for program authorization.

In writing its regulations for interim status facilities, the State took three main approaches. If the final permitting standards and the interim status standards for a given regulation were nearly the same, the regulation in COMAR 26.13.06 (interim status standards) was written to make a cross-reference to the corresponding regulation in COMAR 26.13.05 (permitted facility standards), with the addition of whatever qualifiers were needed. If there were major differences between final permitting standards and interim status standards, and it was felt that the regulation would affect a small number of facilities, the regulation in COMAR 26.13.06 was written to incorporate, by reference, the corresponding federal regulation in 40 CFR Part 265. In instances where the State felt the different interim status requirements affected a significant number of facilities (i.e., closure and post-closure rules), the corresponding federal regulation was rewritten in the style required by the Maryland Division of State Documents for incorporation into COMAR 26.13.

3. Implementation of the Interim Status Program

a. General Considerations.

Interim Status could become an issue for a regulated entity in a number of ways. First, the facility could currently be managing a waste that becomes newly regulated as a hazardous waste, with the existing management activity being one that is now subject to permit requirements. Second, additional regulatory requirements affecting a permitted unit could become effective, making modification of the facility's permit necessary, with interim status standards applying until such modification is completed. Finally, the facility could be operating a unit that, because of new regulations, suddenly becomes subject to permit requirements.

In these instances, unless some provision were made, a facility would have to cease operations

that it had previously conducted until permit issues are resolved. The interim status program is a way of addressing this problem. By qualifying for Interim Status and complying with the applicable regulations, a facility can continue operations pending final action on a permit for the facility or until the Department otherwise terminates the facility's interim status.

To qualify for interim status under the State's regulations, a person must do the following:

- Comply with notification requirements under Section 3010(a) of RCRA;
- Meet requirements in COMAR 26.13.06 concerning submission of a permit application ("Part A" permit application requirements); and
- Comply with the management standards of COMAR 26.13.06 (the analog to 40 CFR Part 265).

Note that the State is not retroactively applying the notification requirement to facilities that were covered by the procedures that the State followed as an alternative to interim status prior to October 16, 2000 (the effective date of the State's interim status regulations). Similarly, the State is not retroactively applying the requirement that facilities submit a Part A permit application. The State's regulations do not absolve a facility of its responsibility to have complied with federal notification requirements for regulations that EPA promulgated or will promulgate under authority of the 1984 Hazardous and Solid Waste Amendments.

At some point, the Hazardous Waste Program will request that a facility operating under interim status submit an application for an operating permit (or permit modification, if appropriate). This request will specify a deadline for submitting the application. Failure to submit an application by the deadline may be grounds for the Department to terminate the facility's interim status. This would require the facility to cease the operations that are the subject of the interim status requirements in question.

The decision to request the submission of a permit application depends on the specifics of the situation. Examples of things that may be considered in making such a decision include the environmental benefit of the final permitting standards versus the interim status standards for a given rule, general policy considerations defining the priority for permitting the affected class of facilities, and the permitting workload of the Hazardous Waste Program.

Review of the permit application is conducted as described in the sections of this document dealing with permitting. The standard administrative procedures that are followed, including those involving public participation, are also described in the sections of this document dealing with permitting.

Interim status for a facility terminates when a final operating permit is issued, a request for a permit for the activities covered by interim status is denied, the facility closes, or the Department revokes the facility's interim status. Interim status could be revoked if the facility fails to submit a Part B application by the deadline specified by the Department in its request for the application. Interim status may also be lost by a facility if a given rule provides for a loss of interim status in situations where a facility fails to take some specified action (e.g., install a liner for a waste management unit by some specified date.)

b. Implementation.

Implementing interim status requirements for a new rule involves the following activities: education and outreach concerning new requirements, identification of the affected facilities, determination of whether requirements to obtain interim status have been met, and compliance assistance/enforcement activities.

Effective education and outreach concerning new regulatory requirements is essential in obtaining maximum compliance. Since generalizations cannot be made about who will be affected by any given regulation, an outreach strategy must be developed on a case-by-case basis for each new regulation. Outreach can take many forms.

For example, in developing the regulation, the Department (or EPA) may have consulted industry trade associations or other groups and may have asked them to comment on the prospective requirements. This allows these organizations to provide early notification to their membership that new requirements are on the horizon.

The Department may also generate publicity concerning the new requirements through press releases, notices on the Department's web site, presentations at various conferences or meetings, and articles in the Department's newsletter.

Another option is the direct approach. Mailings may be targeted at the affected members of the regulated community explaining the new requirements and what must be done to comply. The Department may also sponsor its own seminars or training sessions on new regulatory requirements.

Information that may be used in educational efforts include guidance documents or compliance guides prepared by EPA. The State may also prepare its own educational material, especially if there are elements of the regulations that are more stringent than the corresponding federal regulation.

There are a variety of means through which the Hazardous Waste Program can identify the members of the regulated community affected by a new regulation. Analysis of the regulation may identify the affected parties as being some clearly identified subset of the regulated community for whom the Program's databases can be searched. For example, interim status provisions of a new regulation may only affect permitted facilities managing F-listed solvents in aboveground tanks. The affected facilities could be gleaned from the Program's permit information. Other means that are employed are the same ones used to identify members of the regulated community, as discussed in Section VI A (Compliance Tracking and Enforcement, Identification of Members of the Regulated Community.)

Once the affected parties have been identified, and appropriate outreach has been conducted, the Hazardous Waste Enforcement Division has the responsibility of determining whether requirements to obtain interim status have been met. The method used will vary depending on the nature of the regulation that triggered interim status requirements to be met. In some instances, it would involve a search of the Department's files to determine if facilities made proper notifications, with site visits made as needed to determine if requirements are being met. In other cases, the regulation may involve facility operating requirements, which would require a facility inspection.

Various strategies may be used to target facilities for checks of compliance. For example, if the regulation affects a single industry with a limited number of facilities, a special initiative to inspect all the facilities at an early date may be undertaken. If the regulation involves a large number of facilities that are not concentrated in any particular industry, compliance may just be checked as part of routine compliance inspections. If these routine inspections turn up patterns of violations, special initiatives can be undertaken to target likely violators.

I. Enforcement--General Inspections

Each year, as part of the federal grant process, the Hazardous Waste Program develops a set of inspection priorities for the federal fiscal year. These inspection targets are chosen to meet State priorities, inspection mandates under RCRA and priorities identified by EPA through its RCRA implementation plan and initiative process.

The Hazardous Waste Program reviews all of the facilities that it regulates to identify those facilities that should be accorded the highest priority for inspection. The following characteristics are used to determine those facilities that require special attention:

- Sites at which an aquifer has been contaminated, especially when it is utilized as a drinking water resource. These sites are assigned the highest priority, since contaminated aquifers may create an acute threat to the public health, requiring immediate attention and remedial action.
- Sites at which contaminants are being discharged to surface waters in excess of limits set by NPDES permits; and
- Sites at which there have been major enforcement actions and/or repeated noncompliance. These sites include facilities that are currently the target of significant enforcement actions, including remedial action, permit revocation, and major fines; and/or facilities demonstrating frequent noncompliance and patterns of violation.

Additionally, the Division assigns a high priority to activities in support of the Hazardous Waste Program's Chesapeake Bay Initiative. HWED also continues to support efforts in multi-media enforcement, Environmental Justice, and Pollution Prevention.

The RCRA Work Plan describes how inspection priorities are set for facilities that do not warrant special attention under the above criteria. According to the biennial Office of Enforcement and Compliance Assistance MOA and the RCRA Statute, the State has the following inspection commitments: core activities, national priority sectors, community based sectors, and media specific activities that are reflected in the State work plan. Specifically, the State currently has the following annual inspection goals:

- Inspect all TSDFs that were not inspected in the previous year, including any newly regulated TSDF.
- Inspect any federal TSDF that have a CEI due.
- Inspect twice a year commercial TSDFs accepting CERCLA waste.
- Inspect state and local TSDFs that were not inspected in the previous year, or have not returned to compliance.
- Inspect all LDFs not inspected (CME of O&M) in the previous 2 years.
- Accompany EPA on large quantity BIF inspection to receive on-the-job training.

- Continue efforts towards inspecting every LQG that has never received a CEI with a particular focus in Federal LQGs.

- Conduct delisting inspections as required.

- Annually inspect all hazardous waste incinerators in Maryland.

In addition, the Hazardous Waste Program adapts its inspection program to priorities identified annually by EPA. Examples from recent years include sector-based initiatives (electroplating and coating), geographic initiatives (the Chesapeake Bay), and community-based initiatives (the Anacostia watershed.)

The Hazardous Waste Program also is involved in compliance assistance activities and has developed compliance incentives. Currently, compliance assistance activities focus on newly regulated handlers, handlers subject to new regulations, small businesses in the priority industrial sectors, and other small businesses with compliance problems. Compliance incentives include the encouragement of the regulated community to voluntarily discover, disclose, and correct violations before being identified by the regulatory agencies. The Department's Environmental Audit Policy can be found in its Annual Enforcement and Compliance Report for State Fiscal Year 1999, as well as in Appendix J of this document.

The Hazardous Waste Program recognizes the importance of the environmental objectives developed by EPA in response to the Government Performance and Results Act (GPRA). Activities performed by the Enforcement Division support the following GPRA objectives:

Goal 9 – A Credible Deterrent to Pollution and greater Compliance with the Law

Objective 1 – Reduce non-compliance in targeted areas (enforcement)

Objective 2 – Ensure at least 50 per cent of all civil and criminal enforcement actions are conducted at high priority areas of non-compliance.

The Enforcement Division makes provisions for its inspectors to receive the training they need to be effective. The following courses are routinely provided to new inspectors:

- Basic Inspector Training (Fundamentals of Environmental Compliance Monitoring Inspections);
- OSHA 40-Hour Hazardous Waste Cleanup Course; and
- Advanced RCRA Inspector Institute.

As the need arises, the inspectors get training for the various courses outlined in the EPA manual "The OSWER Source Book," Volume I: (EPA/542/B-92a/005), and also from training courses offered by universities and other private organizations. The new inspectors also get an opportunity to visit various facilities with experienced inspectors to conduct inspections. This process provides on the job training to new inspectors.

Training is also provided on new regulations that are a significant expansion of the State's regulatory program. This may be either training offered by EPA or in-house training.

J. Groundwater Monitoring Inspections

There are various types of Groundwater Monitoring Inspections developed by EPA. Of these, the Groundwater Support group has adopted two EPA inspection procedures. They are the Comprehensive Groundwater Monitoring Evaluation (CME) and the Operation and Maintenance Inspection (O&M)

The Comprehensive Groundwater Monitoring Evaluation (CME) is a detailed evaluation of the adequacy of the design and operation of ground water monitoring systems at RCRA facilities. The various activities involved in this inspection are:

- Pre-CME Planning
- CME Office Evaluation
- CME Field Evaluation
- CME Report Preparation
- Review of CME Report
- Follow-up Inspection

The personnel involved in the various activities associated with a CME are technical enforcement staff, geologists, field inspectors, hydrogeologists and geotechnical engineers.

Operation and Maintenance Inspection (O&M) inspections are conducted once the monitoring system at a site is shown to be adequate by means of a CME. O&M inspections are performed once every three years to evaluate the performance of the monitoring system. The O&M inspection focuses on how owners and operators conduct operations and maintain their ground water monitoring systems. An O&M inspection involves review of records, inspection of wells, and verification that the sampling crew follow the "Sampling and Analysis Plan" while collecting ground water samples.

The sampling procedure is different for each of the two inspections. For more information on either of these procedures, the details are provided in the EPA manual "RCRA Comprehensive Ground-Water Monitoring Evaluation Document", OSWER Directive 9950.2 (December, 1986). Other documents that are used as references by the inspectors in checking for compliance are the "Ground-Water Monitoring Guidance for Owners and Operators of Interim Status Facilities", OMB clearance No. 2000-0423 (1982), and the RCRA Ground-Water Monitoring Technical Enforcement Guidance Document, OSWER-9950.1 (September, 1986).

When appropriate, the HWP will split samples with the facility owner or collect samples to verify the levels of contaminants present.

The groundwater support group conducts follow-up inspections to verify that recommendations from previous inspections have been carried out. Failure to implement any requirements will result in a referral to the Enforcement Division for further action.

The adoption of Checklist 55 has required more groundwater sampling to take place, but Maryland regulations require the facilities to conduct most of their own sampling, with the Enforcement Division geologist performing oversight and reviews of the work.

K. Waste Minimization/Pollution Prevention Program

COMAR 26.13.03.06B(1)(d) and B(4), in keeping with §3002 of RCRA (and in addition to EPA requirements), requires generators of CHS to identify in their biennial reports of hazardous waste activities the efforts they have undertaken to reduce volume and toxicity of waste generated and the reductions in volume and toxicity that have actually been achieved. Moreover, generators are required by COMAR 26.13.03.04G to certify on their manifests that they have a waste reduction program in place to reduce the volume or toxicity of waste as far as economically practicable. The Hazardous Waste Program is working in support of the Waste Minimization National Plan's goal of reducing by 50% the volume & toxicity of the most persistent, bio-accumulative, and toxic chemicals in hazardous waste by the year 2005.

Maryland's Waste Minimization/Pollution Prevention Program, as overseen by the Hazardous Waste Enforcement Division, was developed to help generators meet these requirements. The Waste Minimization/Pollution Prevention staff engage in a variety of activities. These include:

Outreach Program - This program is a continuing effort by the Pollution Prevention (P2) team to visit and determine the status of industrial generators of hazardous waste throughout Maryland, and evaluate their contributions to waste minimization and pollution prevention. A part of the outreach program includes assistance to small businesses. The outreach program expands the assistance program to other sectors of business not previously addressed. This assistance will include, but is not limited to, the best available technology and the review and explanation of state regulations that pertain to the particular sector of business. The data collected from site visits as a part of the outreach program will be expanded and computer oriented to support the MDE GIS database associated with the Chesapeake Bay Program.

Pollution Prevention Clearinghouse - Information will be continuously added to the clearinghouse data bank to ensure the information represents the latest acceptable techniques for the remedy of pollution problems. This is a valuable Outreach Program service to all generators of hazardous waste in the state.

Pollution Prevention Seminars - Seminars are to be presented in various areas of the state that will relate to industry and business and will also be extended to government agencies in an attempt to assist in development of inventory control plans. For instance, the pharmacy concept is frequently promoted as an effective measure to control the incoming supply of household chemicals to a military base. Military families arriving to live in base housing are given access to accumulated cleaning products (many of which are hazardous); these products are deposited by families departing the base, since moving companies will not accept opened containers for shipment. Thus we have waste minimization and recycling combined in one initiative.

Household Hazardous Waste Program - The Pollution Prevention Team will expand upon the presentations to be given within the state that will include educational institutions. An effort will be made to assemble a multi-media team comprised of personnel from hazardous/ solid waste, air and water. School presentations are very well received, and often result in the message being carried home to the parents. This program is also a link to our telephone hot line, which advises the public on acceptable ways for disposing of household hazardous waste.

Hazardous Waste Hotline - The Pollution Prevention Program provides guidelines to private citizens and businesses seeking information concerning proper disposal of hazardous waste.

Coordination with Compliance Activities - The Pollution Prevention Program will continue to coordinate its activities with the compliance activities of MDE's Hazardous Waste Program. This action includes a review by the P2 staff of all compliance reports submitted by field inspectors and also includes joint inspections made by combined teams of P2 and compliance inspection personnel. This type of interaction, coupled with routine site inspections, will also provide an atmosphere of training and education for participants of both programs. Pollution Prevention personnel, compliance inspectors and hazardous waste permit writers have also participated in P2 seminars sponsored by EPA.

Toxics in Packaging - The P2 program has responsibility for administering the Maryland Reduction of Toxics in Packaging law which is designed to reduce or eliminate certain toxic substances from being introduced during the manufacturing or distribution process. The program receives and evaluates requests for waivers pending adoption of changes in packaging to bring the business into compliance.

State Capacity Assurance Plan - The P2 team gathers and compiles statistical data concerning recovery, treatment, disposal, and transfer/ storage of hazardous waste quantities throughout the state. These statistics are used in the preparation of the State Capacity Assurance Plan, which has been a requirement under CERCLA.

L. Mixed Waste

"Mixed waste" refers to waste that meets the definition of hazardous waste but also has a radioactive component. Maryland's Hazardous Waste Program regulates the hazardous component of mixed waste under the Program's general statutory authority to regulate hazardous waste. The fact that mixed waste has a radioactive component in no way limits or restricts the Hazardous Waste Program's ability to regulate the hazardous component of the waste.

The State also has regulatory responsibilities concerning radioactive wastes and radioactive materials. However, these functions are beyond the scope of the RCRA program and are not to be considered part of the State's authorized program for the purposes of 40 CFR Part 271. These responsibilities include:

- Issuance of radioactive material users licenses to non-federal facilities (as an Agreement State with the U.S. Nuclear Regulatory Commission);
- Regulating the packaging for shipment of low-level radioactive waste; and
- Implementing requirements on waste classification and reporting applicable to generators of low-level radioactive waste.

The licensing of users of radioactive material is the responsibility of MDE's Radiological Health Program, a unit of the Department's Air and Radiation Management Administration. The Hazardous Waste Program implements the State's regulations concerning classification, packaging, and reporting for low-level radioactive waste.

The Hazardous Waste Program follows the same procedures with respect to mixed waste as it does with respect to general hazardous waste. Personnel from the Department's Radiological Health Program may be consulted on technical questions concerning radioactive materials.

The universe of mixed waste generators consists primarily of medical and research institutions, biotechnology firms, Department of Defense installations, and the State's only nuclear power plant. Approximately 175 generators of mixed waste are known to the Hazardous Waste Program. Of these, three have hazardous waste storage facility permits that include provisions for mixed waste storage (the National Institutes of Health, Bethesda, MD; Towson University, Towson, MD; and the University of Maryland, College Park, MD).

Generators of mixed waste were identified by using information from the Department's Radiological Health Program on holders of radioactive materials user's licenses, and from U.S. Department of Energy information on shipments of mixed waste for disposal or treatment.

VI. COMPLIANCE TRACKING AND ENFORCEMENT

A. Identification of Members of the Regulated Community

Maryland's hazardous waste regulatory program has reached a mature phase of development. The core of the universe of facilities that require permits has long since been identified through the initial notification and call-in process. The identification process involved two elements:

1. Analysis of notifications by generators seeking to qualify for federal interim status, or satisfy notification requirements of §3010 of RCRA;
2. Investigation of generators identified by the Enforcement Program as possibly needing a permit, or managing hazardous waste without having complied with notification requirements.

Additional facilities that are required to obtain a permit or notify MDE of regulated waste activity are identified through a system of voluntary notification by the facility, review of annual reports of hazardous waste activities, and information received by the Enforcement Program. Facilities may be required to obtain permits as a result of their handling wastes that are newly identified as CHS. Newly promulgated regulations are publicized through rule making notices so the regulated community is made aware they may be required to notify the Department of their activities.

There are different strategies followed in identifying new CHS generators and transporters. The general strategy involves comparing the names of generators obtained from various sources with those listed in agency records. The following sources are used in identifying companies or individuals that have not been previously identified:

- The Directory of Maryland Manufacturers (State of Maryland, Department of Economic and Community Development). This document includes a listing of Maryland manufacturers by industry. Based on the industrial category of a company (such as printing or plating) an opinion is formed as to whether the company is likely to generate hazardous waste.
- Maryland Hazardous Waste Manifest. A comparison is made to a list of all Maryland companies that have used a Maryland Hazardous Waste Manifest.
- Federal Agencies. Information received from various Federal agencies (e.g., DOT, EPA, and Coast Guard) providing information on companies that generate hazardous waste.
- Information received from State agencies (Motor Vehicles Administration, Department of Natural Resources, Department of Agriculture, etc.) as to their knowledge of companies that generate hazardous waste.

The state identifies non-notifiers through a strategy similar to the one used to identify newly regulated handlers as described above.

B. Data Management Systems

Two main Data Management Systems are used by the Program: the federal government's Resource Conservation and Recovery Act Information System (RCRAInfo), and the State's Consolidated Waste Management Information System (CWMIS).

The EPA developed RCRIS as a replacement for the Hazardous Waste Data Management System (HWDMS) and the Corrective Action Reporting System (CARS). Its purpose is to promote more effective tracking and reporting of hazardous waste activities. Recently, RCRIS has been migrated to RCRAInfo, an Oracle based architecture delivering information, reports and permit data entry via a web interface. EPA and the State have entered into a Memorandum of Understanding (MOU), which clearly outlines the State's responsibilities with RCRAInfo. A copy of the MOU is enclosed in Appendix C. RCRAInfo stores information related to regulated entities, identifying various actions taken. The Hazardous Waste Compliance Division enters compliance, monitoring and enforcement data in RCRAInfo. MDE issues EPA identification numbers to generators and hazardous waste treatments, storage and disposal facilities.

Until October 1993, data on compliance was submitted to EPA for entry into the RCRIS. Currently, inspection data is entered in-house into the RCRAInfo database and reports are generated monthly for assessing program goals. MDE issues an EPA identification number to each generator and TSD facility. Data from RCRA facility inspections pertaining to evaluations, violations, and enforcement actions are entered weekly into the RCRAInfo database and kept current. The HWP performs QA/QC on RCRAInfo information to ensure the utmost accuracy of the data.

The HWP identifies and reports to EPA on significant non-compliers (SNCs). Significant non-compliers (SNCs) are those facilities that have caused actual exposure or a substantial likelihood of exposure to hazardous waste constituents; are chronic or recalcitrant violators; or that deviate substantially from the terms of a permit, order, agreement, or from RCRA statutory or regulatory requirements. Environmental impact alone is sufficient to cause a facility to be a SNC, particularly when the environmental media affected require special protection (e.g. wetlands or sources of underground drinking water).

CWMIS is a State-developed database. It contains information related to hauler and vehicle certification, notification, a module for permit data, and a module for driver information.

C. Inspections and Compliance Monitoring

The main difference between inspecting TSDs and inspecting generators and transporters is, whereas the generator and transporter are inspected *only* for compliance with applicable laws and regulations, a TSD gets inspected for applicable laws and regulations *and* for compliance with a permit. Previously, there were two sections in the Enforcement Division. One section inspected the TSDs, while the other inspected the generators. The State currently performs RCRA Compliance Evaluation Inspections (CEI) of both generators and TSD facilities under the united Division, so that each inspector is assigned a few TSDs. The State uses EPA's "RCRA Inspection Manual" (OSWER Directive 9938.02b, October 1993) as guidance for performing inspections. Priorities for inspections are set according to the RCRA Work Plan.

As an integral part of Compliance Monitoring, Enforcement Division personnel inspects the various CHS permitted facilities, and the generators and transporters of CHS. If the inspector finds a

violation, the facility or generator is either verbally notified or issued a site complaint and the inspector conducts a follow up inspection.

For facilities with groundwater monitoring systems, the State performs Comprehensive Groundwater Monitoring Evaluations (CMEs), as well as Operation and Maintenance Inspections (O&M). When performing inspections of groundwater monitoring systems, the State follows the procedures outlined in the EPA manual "RCRA Groundwater Monitoring Systems" (OSWER Directive 9950.2, March, 1988).

The State does not currently perform Case Development Inspections (CDI). Under EPA procedures, a CDI is performed to gather data in support of a specific enforcement action.

The Enforcement Division also engages in various compliance assistance activities. This is viewed as being both a valuable customer service and an efficient, effective way to improve environmental safeguards.

The remainder of this subsection is organized into four parts. The first discusses the different types of inspections and how the Enforcement Division determines who will be inspected. The second section discusses the inspection itself and how it is conducted. Next, there is a discussion of compliance assistance activities. The final section discusses the level and mix of resources the State has to carry out compliance monitoring and how the addition of non-HSWA Clusters I-VI has affected the State's program in this area.

1. Types of Inspections

Inspections of Hazardous Waste Permitted Facilities--A listing of the universe of permitted hazardous waste facilities is provided in Appendix E. There are currently 23 permitted facilities (including operating facilities and facilities under post-closure care). Each of these facilities gets inspected on a frequency established in the annual grant work plan. The work plan is developed so that it is consistent with inspection frequencies required by statute under RCRA. In addition, the following criteria are used in setting inspection frequency, as outlined in Environment Article §7-245, of the Annotated Code of Maryland:

- The size of the facility;
- The amount of hazardous waste handled by the facility;
- The nature of the waste handled by the facility; and
- The record of compliance of the facility.

Inspections are also performed on an as-needed basis to determine if construction was performed in accordance with permit conditions. Inspections are also conducted to determine if a facility has been closed in accordance with an approved closure plan.

Hazardous Waste Generator Inspections--All generators of CHS are prioritized for inspection scheduling in-house. The amount of waste the generator produces is among the criteria used to determine inspection priority. The EPA's Office of Enforcement and Compliance Assistance (OECA) MOA provides the State with a percentage of the generators identified in the RCRIS/RCRAInfo database as generating more than 1000 kgs per month of hazardous waste that are to be inspected every year. These large quantity generators (LQGs) totaled 2206 as of December, 2000. If a generator has been inspected within the

preceding three years, the generator is not targeted for inspection unless failure to meet other criteria indicates an inspection is needed.

Hazardous Waste Transporters – Of the 162 certified transporters of CHS, only 26 have headquarters in Maryland. In accordance with EPA requirements, the HWP inspects the transporters headquartered in Maryland at least once every year. The frequency of inspection increases with a proportional increase in aggravating factors, such as those found for CHS facilities (i.e., violations determined through manifest review, Department of Transportation (DOT) non-compliance, etc.). The State's regulations governing the transportation of CHS are found in COMAR 26.13.04.

Special Case Inspections--The Enforcement Program performs various special case inspections, as circumstances require. These include:

- Responding to citizen complaints regarding suspected violations of hazardous waste laws and regulations;
- Responding to reports from other government agencies with information on possible hazardous waste problems at a site;
- Conducting follow-up inspections to determine compliance on previous HWP enforcement actions; and
- Responding to reported spills or discharges of hazardous materials.

Other Routine Inspections--A newly constructed or modified permitted facility is required to notify the Secretary prior to beginning operations in the new portion of the facility. Within 15 days of this notification, an inspector and the permit writer for the facility perform an inspection to determine whether the construction was conducted in compliance with the conditions of the permit. For facilities that are closing, an inspector and the permit writer perform the final inspection to determine if the facility has been closed in accordance with the approved closure plan.

CHS and Pollution Complaints--As soon as a citizen complaint is received, relevant details are recorded in an Incident Report Form. Based on the provided facts, a decision is made regarding the validity of the information received and if necessary, it is assigned to an inspector or referred to another agency. Based on data collected, the case is either closed or another follow-up is performed.

Spills/Clean-ups--Response to incidents involving Controlled Hazardous Substances has top priority in the Administration, due to its imminent and direct threat to both the public's health and to the environment. During a spill response, inspectors from the Hazardous Waste Enforcement Division have responsibilities concerning enforcement of the State's hazardous waste regulations. Assistance in mitigating the effects of a spill or release is provided by personnel from the Department's Emergency Operations Program.

2. Inspection Procedures

Enforcement Division personnel routinely inspect hazardous waste generators, transporters, and permitted facilities for compliance with the State's hazardous waste regulations. These inspections involve pre-inspection preparation, the actual inspection, and any post-inspection activities necessary in response to

non-compliance with regulatory requirements. Table 12 summarizes the activities an inspector performs in conducting an inspection. The paragraphs following Table 12 provide a detailed description of these activities.

TABLE 12 - SUMMARY OF INSPECTION PROCEDURES

- Inspector determines if the inspection will be announced or unannounced;
- If the inspection is to be announced, all relevant checklists are mailed to the facility for completion;
- The inspector reviews annual reports, files from previous inspections, and the facility permit (if applicable);
- The inspector conducts the inspection, collecting pertinent data and making notes;
- The appropriate checklists are completed;
- Warnings (verbal or written) are issued for violations noted during the inspection; and,
- The formal report, describing the inspection and the results of the inspection, is submitted to the Division Chief;
- Follow-up inspections are scheduled to insure compliance with all actions the inspector requires of the facility.
- Failure to comply could result in more formal action and/ or other enforcement actions.

Pre-inspection Preparation

Inspections may be announced or unannounced. In some cases, the facility is informed of the impending inspection, although the exact date of the inspection is not revealed. The inspector may provide relevant checklists to the facility before the inspection for informational purposes. In other cases, the inspection is not announced.

Prior to the inspection, the inspector reviews biennial reports for information on the type and quantity of CHS managed by the waste handlers. The inspector also reviews files from previous inspections. For permitted facilities, the inspector reviews the facility permit and meets with the permit writer to determine if the permit writer has any particular concerns about the facility.

Inspection

The first step in determining a course of action is to conduct a site inspection, audit, record review, or spot check.. The purpose of such activity is to determine whether a facility is in compliance with all applicable permits, regulations, and statutes. During an inspection, an inspector may conduct a visual observation of a facility's operation, review records, take samples for analysis, or any combination thereof. At the conclusion of an inspection, a written record of these findings is prepared.

During the on-site inspection a broad range of actions may be performed. These include:

- Pre-inspection conference with the facility representative;

- Inspection of the facility perimeter prior to entry;
- Physical inspection of the facility;
- Collection of evidence of violations, including samples and photographs;
- Vehicle inspections;
- Facility records review;
- Closing conference with the facility representative; and
- Writing of inspection reports.

While conducting site inspections, the enforcement officials use different checklists including TSD facilities checklist, generator facilities checklist and Land Disposal Restrictions checklist. Along with the checklist, the inspectors complete a Report of Observations, a Pollution Reduction Compliance report and a Site Complaint form if any violation is observed. A written inspection report will also be prepared to summarize inspection findings.

Post-Inspections Activities

The inspector reviews his or her findings, either while the inspector is on site or at a later time, to determine whether the facility is in compliance with all applicable permit requirements. The need to review inspection findings may also arise through non-inspection activities, such as periodic submittals of self-monitoring reports by permittees. If a facility is found to be in compliance, no further action is necessary. If, however, a post inspection review turns up a violation of a permit condition, the Department determines the seriousness of that violation. Different administrative responses are warranted for different levels of significance. In most violation situations the facility is served with a violation report, which can be a written inspection report or a separate document.

The Hazardous Waste Program identifies two categories of violation: Minor violations and Significant (Major) violations.

Minor Violations A violation that is not serious in nature and does not have the potential to affect human health or the environment is considered to be minor. Such violations were previously known as Class II violations. Examples include:

- Minor excursions from prescribed numerical standards;
- Minor record keeping violations or lack of adherence to deadlines
- First-time offences that do not present potential or imminent harm to public health or the environment;
- Minor violations that can be corrected immediately or in short order.

Technical violations are not necessarily minor. Repeat violations or recalcitrant management behavior can be elevated to significant (major) status, causing an appropriate enforcement response. Intentional falsification of self-monitoring reports is considered significant. Technical violations involving mixed-waste could be considered significant.

Minor violations become significant if they are part of a recurring pattern. Such a violation could become serious if it remains uncorrected or is only partially corrected at the time of the follow-up inspection. Whether this occurs is left to the judgement of the inspector and/or his supervisor, considering factors such as, past compliance history, willfulness of the violation, the degree of harm or potential harm, the ability of the facility to make timely corrections, and any other appropriate factors.

If a facility's management is cooperative about a minor violation, the inspector may set a deadline for correction of the violation. The inspector can request that certain corrections be carried out before he leaves the site, in which case no follow-up inspection is necessary. Follow-up inspections or other measures are taken to ensure corrective action was completed.

For certain technical matters, MDE may provide assistance to help the facility achieve compliance. The inspector may provide the assistance in correcting a minor violation directly, or may help arrange for assistance to be provided later.

If a minor violation results in a Report of Observation, it is not counted as a violation for the purposes of the Department's enforcement statistics. Many documented minor violations are tracked under the category of Compliance Assistance.

Significant (Major) Violations

A violation is considered to be "significant" or "major" if there is an actual or potential threat to the public health or environment that is immediate or imminent, and that threatens to cause serious, chronic or irreversible damage. Examples are leaking or swollen drums or excessive pressure build up in vessels. The inspector encountering such a situation will order immediate action to address the situation. Additional criteria for classifying a violation as "significant" or "major" are discussed below.

In order to classify a violation as a major violation, various factors are considered. These include whether violations of requirements that are central to the protection of public health and the environment have occurred. Examples of these violations include: actions that result in a release or serious threat of release of hazardous waste to the environment; or involve a failure to assure that groundwater will be protected; that proper closure and post closure activities will be undertaken; or that hazardous waste will be destined for and delivered to permitted facilities.

Certain violations are by their nature considered significant:

- Major excursions from prescribed standards.
- Offences that present a potential or imminent threat to public health or the environment.
- Violations that require a significant amount of time or capital to correct.
- Offences that are part of a pattern of chronic noncompliance.
- A violation deemed significant under federal criteria.

As discussed above under "minor violations", minor violations may be re-categorized as significant if they are recognized as part of a recurring pattern of events.

Evaluation of Enforcement Options—Once a violation has been qualified as significant, appropriate enforcement action is usually initiated. An evaluation of the available enforcement options is conducted to determine the most appropriate course of conduct given the particulars of the situation. Generally, the options are:

- Issue a directive;
- Issue a show-cause order;
- Issue a corrective order;

- Enter into a consent order;
- Seek judicial relief;
- Make a criminal referral;
- Assess a penalty (can be done in conjunction with any of the other options shown above),

The enforcement option that is pursued depends on a variety of factors and circumstances. They include:

- Whether certain actions are prescribed by state/federal delegation or enforcement agreements;
- The severity of the violation;
- The degree of harm or potential harm to public health or the environment;
- The willingness of the facility to correct the violation
- Past compliance history; and,
- Willfulness of the act.

If a penalty is thought to be warranted, there are statutory factors that must be considered as part of the decision-making process. These factors are discussed in §7-266 of the Environment Article, Annotated Code of Maryland.

There are rare occasions where circumstances require the Department to decline to take further action. It may be that upon a review of the available evidence, the Department's case is found to be too weak, or is precluded by statute of limitations or other legal defense. It is also possible that the case is more appropriately pursued by a federal oversight agency, such as EPA.

3. Compliance Assistance

Compliance Assistance--

One specific form of contact between businesses and MDE's enforcement and compliance inspectors is counted in the program's performance measures charts under the category "compliance assistance". As an element of MDE's enforcement process, an inspector renders an identifiable and countable act of compliance assistance when he or she:

- (a) Documents a specific past or present violation that the regulated entity corrects in the absence of a formal enforcement action; or,
- (b) Documents a specific action (or actions) that the entity has the option of undertaking:
 - to prevent the likelihood of future violations or potential future violations, and
 - voluntarily, in a manner and within a time period as deemed acceptable by MDE in the absence of a formal enforcement action.

In either (a) or (b) the MDE inspector must document the manner in which the regulated entity voluntarily achieved compliance. This definition of "compliance" has the advantages of being measurable and being objectively verifiable by a third party. (Note that if a facility is allowed to correct a minor violation during an inspection without initiating an enforcement action, it is considered "enforcement discretion" rather than "compliance assistance.")

Although compliance assistance may be offered by an inspector during a routine inspection, the principal focus of such visits is the determination of compliance status. "Compliance assistance visits" are separate visits conducted by the Hazardous Waste Program's Pollution Prevention/Waste Minimization staff.

Beyond the enforcement process, the concept of compliance assistance also involves MDE's public outreach and assistance activity which helps the regulated community understand the law, and assists the regulated community in complying with the law's requirements. Examples of these activities include:

- The Environmental Permits Service Center (EPSC), which helps businesses or individuals that need MDE permits to understand their responsibilities under the law. The EPSC establishes lines of communication between applicants and the Department, through which assistance may be sought and rendered.
- The Small Business Assistance Program (SBAP), which helps small businesses understand and comply with Maryland's environmental programs and regulations. SBAP provides pollution prevention and waste minimization information to businesses. It explains how businesses can save money and reduce environmental liabilities, as well as the need for permits, by changing their operations to avoid creating pollution in the first place. In the past, the SBAP has conducted site visits and workshops targeted at dry cleaners, auto body shops, printers, and metal platers. The SBAP is developing new outreach programs to focus on small business sectors that, cumulatively, have potential to significantly impact the environment
- The Department publishes and distributes *A Business Guide to Environmental Permits and Approvals* which provides detailed information about each category of permit issued by MDE. Information provided includes: the purpose of the permit, its requirements, the permit application process, the standard turnaround time, term of certification, the permit fee, and the Departmental contact for more information and assistance. The Department has made a number of permit applications and instructions for completing the application available through the Internet at MDE's website. The Department is also working to enable businesses to submit their permit applications via the Internet.

4. Inspection Resources and Workload

The Hazardous Waste Program's (HWP) Hazardous Waste Enforcement Division (HWED) is committed to RCRA violation discovery and compliance activities. Under this program, violations are classified as described in the Enforcement Response Policy.

Although Maryland's regulatory program has not been authorized for the regulatory program beyond the Base Program, the Enforcement Division has continually revised its inspection procedures to incorporate new regulations as they have been adopted. In addition, MDE has received compliance training from EPA on elements beyond the Base Program through seminars and joint inspection efforts. While workload has increased since the Base Program was authorized, the increase is difficult to measure. Nevertheless, the State has been able to meet its inspection commitments.

The Hazardous Waste Program makes provisions for its inspectors to receive EPA training as the opportunity arises. The inspectors get training for the various courses outlined in the EPA manual "The

OSWER Source Book," Volume I: (EPA/542/B-92a/005). They also receive training from courses offered by universities and other private organizations.

New inspectors receive the following courses as a matter of routine:

- Basic Inspector Training (Fundamentals of Environmental Compliance Monitoring Inspections);
- OSHA 40-Hour Hazardous Waste Operation Course.

New inspectors also visit various facilities with experienced inspectors to conduct inspections, for the purpose of providing on-the-job training

Analyses of CHS waste samples are conducted for the Hazardous Waste Program by the Maryland Department of Health and Mental Hygiene (DHMH) and by private, sub-contracted laboratories. The labs conduct analysis of CHS wastes (such as: metals, organics and other inorganic wastes) according to analytical procedures outlined in the EPA document "Test Methods for Evaluating Solid Waste (SW-846)". Generally, the time taken to test various CHS wastes samples varies, depending on the number of samples, type of waste, and the test procedure.

The Hazardous Waste Enforcement Division is the organization within State government that is solely responsible for enforcing all of the State hazardous waste statutes and regulations. (This is not intended to imply a restriction of EPA's authority.) All violations are pursued according to the procedures listed in Table 13. Any violations determined to be potentially criminal in nature are referred to the Attorney General's Environmental Crimes Unit (ECU) for further investigation and prosecution. Within the MDE organizational structure, ECU is assigned to the Office of the Secretary, based on fiscal considerations.

D. Enforcement Process

This subsection is organized into five parts examining the following topics: the Enforcement Division's enforcement procedures, enforcement of corrective conditions, penalties and violations, time frames for enforcement actions, and the resources needed to operate the enforcement program. The various steps in the enforcement process are shown in the flow chart in Appendix G and State forms relating to the enforcement program are found in Appendix H. These include Inspection Checklists, the Pollution Reduction Compliance Report, Field Notes, the Site Complaint Form and the Incident Report Form.

1. Enforcement Procedures

Enforcement Activities

Maryland will comply with the 1996 RCRA Enforcement Response Policy (ERP) by:

- Appropriately classifying all facilities meeting the definition of a Significant Non-complier (SNC);
- Taking timely and appropriate enforcement actions (all enforcement actions are taken in accordance with "timely and appropriate" criteria established in EPA's Enforcement Response Policy);

- Entering all appropriate data into RCRAInfo in a timely and appropriate manner;
- Implementing the enforcement process (as well as permitting and closures) in accordance with the performance expectations set forth in EPA's "National Criteria for a Quality Hazardous Waste Management Program Under RCRA (EPA / 530 / SW86-021, July 1986).

Inspections—The first step in determining a course of action is to conduct a site inspection, audit, record review, or spot check. The purpose of such activity is to determine whether a facility is in compliance with all applicable, permits, regulations and statutes. During an inspection, an inspector may conduct a visual observation of a facility, review records, or take samples for analysis. The results of these activities constitute the Department's findings. At the conclusion of an inspection, a written record of these findings is prepared, either at the time of the inspection or at a later date. A copy of the written record of findings is either provided to the facility before the inspector leaves, or at a later date.

Response Time--Failure to comply with the requirements can result in a formal enforcement action, such as a Site Complaint, if the minor violation has not been corrected within a reasonable time period that ranges between immediate compliance to thirty days. In some situations, extra time is provided to come into compliance.

Post-Inspection Evaluation—While the inspector is on the site or at a later date, the Department reviews the inspector's findings to determine whether the facility is in compliance with applicable requirements. The need to review the findings may also arise from other activities, such as the periodic submittal of self-monitoring reports by permittees. If the review determines that the facility is in compliance, no further action is warranted. If the review reveals that a violation of an applicable requirement has occurred, a determination is made of the seriousness of the violation. Different courses of action are recommended for significant violations versus those that are determined to be insignificant. In most situations where a violation has occurred, a report of the the violation is served on the facility. This report may be either the written record of the inspection, or a separate document.

Civil and Criminal Enforcement Procedures--The State of Maryland has the capacity to pursue both civil and criminal enforcement actions against non-complying handlers of Controlled Hazardous Substances. Authority for the pursuit of civil and criminal violations is found, respectively, in Section 7-266 (Civil Penalty) and Section 7-267 (Criminal Penalty) of the Environment Article, Annotated Code of Maryland.

Informal Enforcement Process—Informal enforcement actions are those actions, other than formal enforcement actions, that notify the facility of its non-compliance and establish a date by which the non-compliance is to be corrected. Once a Site Complaint is prepared, a Notice of Violation (NOV) can be issued. If the violator fails to comply within the time period specified in the Site Complaint, the Administration may pursue other enforcement actions including Administrative Orders, and civil and criminal actions including injunctions and closure. For example, if a particular activity at a TSD facility results in a violation, the enforcement staff may issue an NOV for the facility to cease engaging in the activity that caused the violation, mitigate any effects of the noncompliance, and demonstrate a return to compliance by a certain deadline.

Formal Enforcement Process (or Civil Enforcement Process)-- A formal enforcement action is an action that mandates compliance and initiates a civil, criminal, or administrative process that results in an enforceable agreement or order. An order requiring the CHS facility to obtain corrective action by a specific date is a formal action. The inspector documents all of his or her evidence (including waste

samples, photographs of observations, interviews and written reports) of each violation in the Facility Inspection Form or a Report of Observations. The Facility Inspection Form or Report of Observations is checked for accuracy and signed by a representative of the facility and a copy is left at the site. The Facility Inspection Form or Report of Observations is kept on file for possible use in future legal actions.

When repeated attempts to resolve problems by negotiation are unsuccessful, the Administration issues a formal Complaint and Order or issues a Civil Penalty Assessment. After an enforcement action document is prepared, it goes to the Attorney General's (AG) office for review. The AG's office reviews the document for legal sufficiency, signs it, and then it is issued to the CHS violator. If the violator contests the enforcement action, a hearing procedure is followed, as described in the Enforcement Process Flow Chart (Appendix G). If the Administrative remedies fail to achieve compliance, the case is referred to the Attorney General for civil or criminal action. A communication regarding a violation describes the nature of the violation, the permit condition being violated, the law or regulation section being violated, the evidence being submitted (when appropriate), and the corrective action being required for the violator to obtain compliance.

Criminal Enforcement Process--In identifying a case to be potentially criminal in nature, several criteria are taken into consideration. These criteria are outlined below in decreasing order of priority.

- The case is identified as being criminal in nature;
- The case involves a repeat offender;
- The case involves a substantial degree of environmental harm and there is evidence of criminal negligence or intent; and
 - The case is particularly important in providing overall deterrence - if there is a particular practice that the State is trying to put to an end, then criminal enforcement is a factor.

If intent is marginal, then the case is checked for a pattern of repeated offenses. If none of the above four criteria can be proved, then the case is referred for civil investigation.

There are three separate State agencies that develop cases for prosecution as environmental crimes within the State of Maryland. In order to prosecute environmental crimes, all three agencies with their combined resources are involved. These agencies and the relevant staff members are:

- Maryland Department of the Environment (MDE) - Inspectors have the technical background to evaluate the suspect's operations
- Maryland State Police - Police Officials have the powers necessary to investigate the alleged crime
- Environmental Crimes Unit (ECU)- ECU utilizes the prosecutorial authority of the Attorney General, the investigative and law enforcement authority of the Maryland State Troopers assigned to the unit, and the environmental expertise of MDE. The ECU is comprised of three criminal prosecutors who report to the Attorney General's office. They are responsible for providing the necessary legal tools and the prosecuting authority for prosecuting Environmental Crimes.

Once a case is identified as being potentially criminal in nature, the ECU is notified. Complaints can be received from members of the public or from other agencies, as well as from MDE staff.

The various steps involved in a criminal case are as follows:

- A call is received by ECU with information on a case that is potentially criminal in nature.

- the ECU staff fills out A form with a new referral number assigned to the case.
- A prosecutor and an investigator are assigned to the case.
- A 60-day target date is set up for the preliminary investigation.
- The investigator makes observations and collects evidence (such as samples and photographs) at the complaint site.
- The prosecutor and investigator discuss the case and make decisions.

Based on the criteria previously discussed, the case is categorized as being criminal or not criminal in nature. If the case is determined to be criminal in nature and there is enough evidence, the parties involved in the case can be prosecuted. If the case is determined to be non-criminal in nature, the State can pursue a civil suit. A civil suit can proceed at the same time a case is being assessed for criminal intent. Investigation is carried out simultaneously by both the civil and criminal investigators.

In a particular case, if there is enough evidence that a crime was committed, the prosecutors apply the criminal laws of Maryland in the prosecution procedure. There are four steps involved in the prosecution: formal investigation, filing criminal charges, criminal litigation, and sentencing. Both MDE and ECU are jointly involved in the prosecution, with work assignments clearly delineated between the two agencies.

a. The steps involved in the formal investigation are:

- Grand jury issues subpoenas;
- Investigators interview witnesses;
- Investigators collect information; and
- Search warrants are served.

b. The steps involved filing criminal charges are:

- Indictment from grand jury;
- Filing of criminal information; and
- District court statement of charges.

Based on proceedings of the case, litigation can take the form of either a plea bargain or a trial resulting in a verdict of guilty or not guilty. The case would come to rest if the verdict is not guilty. Otherwise, sentencing follows. The judge hands the sentence and it can be jail and/or fine and/or probation. The defendant can appeal the sentence.

An important enforcement tool is the Administrative Search Warrant. The Environment Article §7-256.1 provides the statutory authority for issuing Administrative Search Warrants. The statute provides the authorized official the legal authority to enter any facility that deals with CHS waste to determine compliance with applicable requirements concerning hazardous waste management. A judge or court may issue a warrant if the inspector requires access to the property for making an inspection and is unable to do so. This usually occurs in the following two instances:

- An inspector has been denied access by the owner, tenant or other person in charge of the property after requesting access at a reasonable time; or
- After making a reasonable effort, the inspector has been unable to locate the owner, tenant, or other person in charge of the property.

The Administrative search warrant authorizes the inspector of the HWP to enter the specified

property to perform the inspection, sampling, and other functions authorized by law to determine compliance with the State's statutory and regulatory provisions relating to CHS.

An administrative search warrant is to be executed and returned to the judge by the inspector to whom it was issued within the time specified in the warrant. The time within which the warrant can be used is not to exceed 30 days, or if no date is specified, 15 days from the date of its issuance.

2. Enforcement of Corrective Action Conditions Outlined in Operating and Post-Closure Permits

The State is not authorized for the federal corrective action program under the Hazardous and Solid Waste Amendments of 1984 (HSWA). Therefore, this is not applicable to the State. However, the State does have corrective actions on-going under State authorities, and performs inspections to assess compliance with consent agreements or orders under which the corrective actions are being conducted.

As a prerequisite for receiving a permit for a land disposal unit, the facility owner/operator has to submit a post-closure plan that outlines specific requirements as required by COMAR 26.13.17.02D(29). The inspectors overseeing the closure and post-closure operations must make sure that all steps outlined in the permit are satisfied.

3. Penalties and Violations

Appropriate Enforcement Response

The selection of an appropriate enforcement response is an integral component of the State's enforcement and compliance enforcement program. An appropriate response will achieve a timely return to compliance and serve as a deterrent to future non-compliance by eliminating any economic advantage received by the violator.

Formal Enforcement Response

The designation of Significant Non-Complier (SNC) is intended to identify non-compliant facilities for which formal enforcement is appropriate. Facilities are evaluated on a multi-media basis to determine whether they are chronic violators or recalcitrant. However, facilities may also be found to be chronic violators or recalcitrant violators based solely on prior RCRA violations and behavior.

Due to the nature of their violations, a SNC is addressed through a formal enforcement response. This response **mandates** compliance and initiates a civil, criminal, or administrative process which results in an enforceable agreement or order. The formal enforcement response also seeks injunctive relief if **necessary** to ensure that the non-compliant facility expeditiously returns to full physical compliance.

An enforcement response against a SNC by the Division will be considered appropriate when economic sanctions in the form of penalties or alternative punitive mechanisms are incorporated in the formal enforcement response. **In deciding on appropriate monetary penalties or alternate mechanisms, consideration is given to recovering the economic benefit the violator gained through non-compliance plus some appreciable amount reflecting the gravity of the violation.** The portion of the penalty which does not account for the economic benefit of non-compliance may be addressed through the use of Supplemental Environmental Projects or Pollution Prevention Projects as deemed appropriate.

The recouping of the full amount of the economic benefit of non-compliance plus some appreciable portion of gravity may not be possible in every case. A lesser penalty amount may be appropriate where, for example, the violator demonstrates an inability to pay the full penalty. In addition, there may be circumstances where the nature of the violation and the manner of correction advance important policy objectives, such that substantial mitigation is warranted (e.g., where the violation was discovered by the violator during an audit or self-evaluation, and thereafter promptly and voluntarily disclosed to the Division and corrected, or, where the violation by a small business was disclosed and corrected pursuant to a Department-approved compliance assistance program).

The Division may impose other measures against a non-compliant facility. Examples of non-penalty measures include Supplemental Environmental Projects (SEPs), permit decisions, suspension and debarment proceedings, receivership or special masters.

Informal Enforcement Response

If a facility is found to be in violation but is not designated a SNC, it is designated a Secondary Violator (SV). An informal enforcement response is the minimally appropriate enforcement response for all SVs. An informal enforcement response consists of a recitation of the violations and a schedule for returning the facility to full compliance with all substantive and procedural requirements of applicable regulations, permits, and statutes. Violations which are corrected during the course of an inspection will be documented in the inspection report and the national data system.

A facility that fails to return to compliance within the deadline established as part of the informal enforcement response is reclassified as a SNC. The appropriate enforcement response for a reclassified facility is an immediate escalation to formal enforcement.

If the violator does not respond to the inspector's immediate order, an injunction may be used to force termination of the practice that is causing the major violation. Additional enforcement action may be pursued, including issuance of Complaint and Orders with penalties or criminal referrals. These steps are carried out until relief or compliance is achieved along with the assurance of safety to public health and the environment. The various steps of the enforcement process are outlined in the flow chart shown in Appendix G.

A Site Complaint is usually initially issued after collaboration between the inspector and the enforcement supervisor. If the supervisor can not be immediately consulted, the inspector will act independently to evaluate the situation and begin enforcement proceedings, or compel mitigation activities to reduce threats to human health or the environment.

Following the issuance of the Site Complaint by an inspector, preparation of a Complaint and Order with may begin. Preparation of a Complaint and Order is begun if there is a failure to comply. A criminal referral may also be made to the AG's office. Depending on the sensitivity and urgency of the situation, the Secretary of the Department and the EPA may collaborate in order to solve the problem.

Once a Site Complaint is issued against a facility, depending upon the severity of the violation and the time period needed for a violator to return to compliance, the owner or operator may request a conference with the HWP. The conference may be to clarify the nature of the violation or the owner/operator's understanding of the applicable RCRA regulations. If a conference is requested, it can be

noted in the Site Complaint and specified through correspondence between the Administration and the facility representatives.

The Site Complaint identifies the violation and advises the violator that he or she may be subject to prosecution and penalty. The violator is advised that certain corrective actions must be undertaken to remedy the violation. The violator is also advised that the Department may seek legal sanctions, including the imposition of civil and/or criminal penalties. Sanctions include penalties as well as other tangible obligations, beyond returning to compliance, that are imposed upon the owner/operator. Usually, the violator is requested in the Report of Observations to provide a follow-up report or letter describing the actions taken by the facility operator to correct or reduce the violation. A follow-up inspection must be made by the inspector to determine if the facility returned to compliance as specified in the Site Complaint.

Facilities will be deemed to have returned to compliance when they are in full compliance with regulatory and/or statutory requirements or when they are in full compliance with a compliance schedule established in a formal enforcement action. A formal enforcement action is either an order or an agreement. If a certain timetable for a series of corrective actions is required, a Consent Order can be written that includes a timetable of compliance actions or milestones, which the violator must meet.

Methods used by the HWP to document a facility's continued noncompliance may include:

- field inspections,
- violator self-report,
- violator admission at conference, and
- surveillance activities.

If the violator fails to comply with the Site Complaint, the HWP may pursue additional enforcement actions including Administrative Orders, and other civil or criminal actions, such as injunctions. For example, if a facility holds a TSD permit, and a particular handling practice is in violation, the enforcement staff may issue a Complaint and Order for that violation. Part of the facility may also be ordered closed under the closure requirements of COMAR 26.13, or injunctive relief may be pursued.

During a facility inspection, the inspector will make decisions for any enforcement or compliance action under the constraints of the laws and regulations for the State of Maryland. The inspector's site observations will dictate the nature of compliance actions that are deemed necessary. In reality, the severity of any violation is situation specific, and a field inspector must rely on a variety of factors such as number of offenses, chronic violations, magnitude of violations and attitude of the offender and act on those factors. Suggestions are made to the operator for correcting violations that the inspector notes in the Report of Observations.

If the condition or violation is such that it cannot be immediately remedied during the inspection, the inspector will describe these violations in the inspection report. A written corrective action is included with a timetable that is to be met by the facility owner/operator. Often, the owner/operator will be required to submit a report detailing the steps taken by the operator to bring the facility operation into compliance and assurances made for continued compliance.

If necessary, a letter from the Administration to the facility owner/operator is written summarizing the inspection and those actions that must be pursued by the owner/operator to reach and maintain compliance. The letter may request a meeting between the facility and the Enforcement Division to discuss the problems and solutions. If these minor violations continue or are not corrected by the time a follow-up inspection is conducted or within a time frame as required by correspondence or any agreements, then further action may be taken against the facility, including additional Site Complaints and/or a formal

enforcement action.

The first step is to assign to the violation a Site Complaint number that is logged in the Enforcement Division's log book and to issue a Site Complaint against the facility owner/operator. Compliance actions calling for issuance of a Complaint and Order will involve the inspectors conferring with the immediate supervisor and on occasion with the Division Chief, Program Administrator or the Director.

The decision on a course of action is dictated by the gravity of the noncompliance and the violated rule or regulation. If, in fact, the facility or the site operator is in violation of any aspect of the regulation or law, the facility inspector will note that deficiency and make a decision regarding further enforcement action. As always, the important criteria for an appropriate response are the effects of the violation on public health and the environment.

In a situation where an inspector must consult with his immediate supervisor or chief, the establishment of facts of the case decides a course of action. However, the inspector carries out immediate action on a violation in the absence of supervisor availability when there is a serious threat to public health or the environment.

Penalty Policy

When the Department assesses penalties in administrative cases, it must consider certain factors specified by statute. The factors that are to be used in determining civil penalties in cases involving Controlled Hazardous Substances are given in §7-266(b)(2)(ii) of the Environment Article, Annotated Code of Maryland. The Department is required to use these factors to determine the appropriate penalty amount. The factors are:

1. The willfulness of the violation, the extent to which the existence of the violation was known to but uncorrected by the violator, and the extent to which the violator exercised reasonable care;
2. Any actual harm to the environment or to human health, including injury to or impairment of the use of the waters of this State or the natural resources of this State;
3. The cost of cleanup and the cost of restoration of natural resources;
4. The nature and degree of injury to or interference with general welfare, health, and property;
5. The extent to which the location of the violation, including location near waters of this State or areas of human population, creates the potential for harm to the environment or to human health or safety;
6. The available technology and economic reasonableness of controlling, reducing, or eliminating the violation;
7. The degree of hazard posed by the particular waste material or materials involved; and
8. The extent to which the current violation is part of a recurrent pattern of the same or similar type of violation committed by the violator.

The Department will consider each of the specific factors on a case-by-case basis. While all of the factors in the statute will be considered, it is not necessary for all factors to be applicable before a maximum penalty may be assessed. Additionally, it is the Department's policy not to reward those who can afford to remediate the harm they caused by assessing a lesser penalty or no penalty.

4. Environmental Audit Policy

Environmental Audit Policy

MDE recognizes the benefit from companies that regularly evaluate their internal work processes for compliance with State environmental requirements. Equally as important as identifying violations is the reporting of such violations to MDE for proper and complete remediation and abatement. The Department encourages self-auditing as an effective environmental management technique. The Department's Environmental Audit Policy is presented in Appendix J.

MDE will not assess a civil penalty if a self-disclosing entity meets specific conditions outlined in MDE's Audit Policy. Although not specifically discussed in the Audit Policy, MDE believes it retains the option to recapture economic benefit derived from the period of noncompliance."

5. Time frames for Enforcement Actions

A. Response Time Guidelines

This section establishes response time guidelines for formal and informal enforcement actions. The guidelines are designed to expeditiously return non-compliant facilities to compliance with all applicable requirements of the federal RCRA program or the authorized State equivalent. Response times are divided into two categories; formal enforcement actions and informal actions.

B. Evaluation Date

The Evaluation date will be defined as the first day of any inspection or record review, regardless of the duration of the inspection, or the stage in the inspection at which the violation is identified. The first day of the inspection is the evaluation date, regardless of the duration of the inspection, or the stage in the inspection at which the violation is discovered.

For violations detected through some method other than record reviews or inspection, the evaluation date will be the date upon which the information (e.g., self-reporting violators) becomes available to the implementing agency. In the case of a State referral to EPA, the evaluation date will be considered the date of referral to EPA. In the case of SV facilities which are reclassified for failure to return to full compliance, the evaluation date will be considered the first day of discovery of non-compliance with the compliance schedule established through the informal enforcement response.

C. Formal Response Time

There are target response times for enforcement pursuant to RCRA. Target response times for

three types of formal enforcement are:

- Final or consent orders;
- Unilateral orders; and
- Referrals to the Attorney General's Office.

Final or consent orders are those documents for which no appeal remains before the trier of fact. These orders represent the agreement of the parties involved or the decision of a trier of fact.

Unilateral or initial orders are issued by the implementing agency and assert the agency's position that violations have occurred. However, the respondent/defendant is afforded the opportunity to appeal the agency's determination of violations to an administrative law judge through a formal hearing.

For the purposes of EPA's Enforcement Response Policy, a referral to the Attorney General's Office occurs when the matter is officially transmitted to that office for action. The MDE has established a formal process for requesting that the Attorney General's Office initiate enforcement proceedings on behalf of the State. Completion of that process would constitute referral to the Attorney General's Office.

D. Exceeding the Formal Enforcement Response Time

Response times are adhered to, to the greatest extent possible. There are recognized circumstances which may dictate exceeding the standard response time. In EPA's Enforcement Response Policy, a ceiling of 20% per year has been established for consideration of cases involving unique factors which may preclude the State from meeting the standard response times. The 20% exceedance figure is calculated on the total number of civil cases existing in the State at any given time.

In cases where the response times will be exceeded due to case-specific circumstances, the State must prepare a brief justification for the delay, and also develop an alternative schedule for case resolution. In the event the Region does not find adequate basis for the State's delay in enforcement, the State recognizes the EPA's right to initiate federal action. The Department agrees the EPA may conduct periodic evaluations of State enforcement response times for the purpose of determining appropriate ceiling levels. The State's Authorized State Program will have response time reviews performed during evaluations conducted by the Region.

The Department will strive to comply with the standard response times contained in EPA's Enforcement Response Policy. However, when the following considerations exist, the Department understands up to 20% of the State enforcement cases may exceed the standard response times:

- Cases involving violations of two or more media:
- Cases involving more than one facility:
- Cases involving potential criminal conduct that is under investigation:
- Cases involving enforcement initiatives:
- Cases involving nationally significant issues:
- Cases involving novel legal issues or defenses;
- Cases involving site abandonment;
- Cases for which additional sampling or information requests are required to confirm the violation(s);
- Cases involving a need for outside technical expertise.

Circumstances may arise where the enforcement response times may be insufficient to prepare and initiate the appropriate enforcement response as set forth in the federal policy. Instances may occur where immediate action is appropriate. The Department will take priority enforcement action in the following situations:

- A release or other violation poses an immediate threat to human health or the environment;
- Activities of the owner / operator must be stopped or redirected, such as in cases in which the State seeks to immediately halt improper construction or installation of a regulated unit;
- The threat of a dissipation of assets would undermine closure, post- closure, or corrective action activities.
- There is an imminent statute of limitations or bankruptcy deadline.

E. Informal Enforcement Response Time

The objective of an informal enforcement response is to compel the violator to cease its non-compliant activity and ensure that full physical compliance is achieved in the shortest time possible. Once a determination is made to utilize an informal enforcement mechanism, a violator is given a notice of its non-compliance and the implementing agency will establish a date by which time all violations must be corrected.

At the time a violator is formally notified of the violation determination, it is given a compliance date establishing a deadline for the violator to correct all known violations. The correction period of less than 90 days is established as the time period during which the violator has to correct all violations. Violations must be of a nature that will allow a prompt return to compliance with all rules and regulations for a violator to be considered as a candidate for informal enforcement. Violators should not have a history of recalcitrant or non-compliant conduct in order for the violation to be addressed through an informal response.

Violations that will require an extended compliance schedule in order to achieve full physical compliance are addressed through a formal enforcement response. The compliance date reflects the minimum period of time necessary for the violator to return to full physical compliance. A violator that has corrected its violations on or before the assigned compliance date is officially recognized as having returned to full compliance.

If a violator is unable to meet the assigned compliance deadline, it must notify the Department immediately. The violator must also provide the Department with documentation explaining the violator's inability to correct violations by the prescribed compliance date. The Department will only make a decision to extend the prescribed compliance date if doing so is supported by sufficient documentation.

Failure of the violator to achieve full physical compliance by the compliance date, or failure of the violator to notify the Department of the violator's inability to correct violations shall result in escalation to formal enforcement. The first day after the compliance date is considered the evaluation date for the purpose of escalating the action to a formal response. However, for liability and penalty purposes, nothing in this policy should be taken to imply precluding the assessment of penalties for any violations that occur in the correction period.

TABLE 13 - ENFORCEMENT PROCESS

Step	Action	Time Required ¹
Inspections to determine compliance with applicable laws or regulations.	Inspection Checklist – copy of this is left at the site	Immediately
Minor/Secondary Violation Detected	Report of Observations OR Site Complaint (uses a tracking number, follow-up is performed, and a Return to Compliance letter is issued when appropriate.)	Immediately (with follow-up conducted after appropriate amount of time.)
Failure to correct a Minor Violation	Notice of Violation is issued. (Considered informal enforcement action. Fine or penalty usually associated. Negotiated settlement.)	
Major Violation/ Chronic Violator/ Repeated Failure to Correct a Minor Violation Failure to Comply - Dispute Resolution, appeals	Complaint and Order issued. (May be preceded by a Site complaint, and/or a NOV) 1. Issue goes before a hearing officer. Judicial Decision sought. 2. Goes before the Secretary of the Environment for a final decision. 3. Goes to a circuit court for an injunction 4. Failure to comply with a circuit court's decision may result in contempt charges being filed.	

6. Enforcement Resources

Please refer to section C.3. of this chapter for a discussion of Enforcement Resources.

¹ Timeframes for the State enforcement functions match those in the EPA Enforcement Response Policy (Dated 3/15/96).

VII. ESTIMATED REGULATED ACTIVITIES

A. Regulated Waste Activities

Table 14 compares the number of regulated waste activities and the quantity of CHS wastes, in Maryland, in 1985 (the time of base program authorization) to 2000.

TABLE 14 - REGULATED WASTE ACTIVITIES

Type of Activity	(1985-Base Program)	(2000)
Generators ^{Note 1} :	Number	Number
Large }	5750 ^{Note 2}	2206
Small		3582
Conditionally Exempt	Data not available	3614
Transporters:	203	162
RCRA Waste Generated (tons)	93,570 ^{Note 3}	66,290 ^{Note 4}

Note 1: These are categories as defined in federal RCRA regulations. Under the State's regulations federal "large quantity" and "small quantity" generators are treated identically as fully regulated generators, and federal "Conditionally Exempt Small Quantity" generators are referred to as "Small Quantity" generators.

Note 2: This is an estimate of the number of federally defined large quantity and federally defined small quantity generators. It is derived from the FY 1986 grant work plan in which the State committed to inspect 2% of generators and transporters, which was stated to equal 120 in the 1986 work plan. Since the number of transporters at the time of base program authorization was 203, the number of generators can be estimated as $(120 - (0.02 \times 203)) / 0.02 = 5750$.

Note 3: This figure is based on 1987 biennial report data, as corrected in connection with the Capacity Assurance Planning (CAP) process, and reported in the State's CAP report.

Note 4: This figure is the number reported in EPA's State Summary Analysis based on 1995 biennial report data, corrected by substituting data for Bethlehem Steel Corporation's Sparrows Point plant from 1997 for its 1995 data reported in the EPA summary.

B. Permits

There are different categories of permits. Table 15 compares the current number of permits with the number of permits at the time of base program authorization.

TABLE 15
NUMBER & TYPE OF PERMITS

Type of Permit	Total (1985-Base Program)	Total (2000)
Operating Permit	58	21
Post Closure	0	7
Total Permits	58	24

* Note: "Total Permits" is less than "Operating Permits" plus "Post Closure" because some facility permits include both operating requirements and post-closure requirements. A comprehensive list of permitted facilities appears in Appendix E.

VIII. COPIES OF STATE FORMS AND COORDINATION WITH OTHER AGENCIES

Copies of applicable state forms may be found in the Appendices, as listed below:

- Appendix B contains the Tracking Division's Standard Operating Procedures (SOP) on the following subjects,
 - The Notification of Hazardous Waste Activity
 - Driver Certification Applications
 - CHS Hauler/Vehicle Certification Applications
 - Processing of Annual/Biennial Hazardous Waste Reports
- The forms utilized by the Tracking Program are enclosed in Appendix D. These include:
 - Application for CHS Driver's Certification
 - Application for CHS Vehicle Certification
 - Hazardous Waste Manifest
 - Notification of Regulated Waste Activity
- The permit application forms used by the Permitting Division is found in Appendix F. (This is the federal "Part A" form. There is not a standard form for the other information that applicants must submit – the so-called "Part B" application.)
- Copies of State Forms relating to the Enforcement Program are found in Appendix H. These include:
 - Inspection Checklists
 - Pollution Reduction Compliance Report
 - Field Notes
 - Site Complaint Form
 - Incident Report Form
 - Hazardous Waste Laboratory Organic Waste Analysis form

The Memorandum of Agreement outlines how the State of Maryland and EPA will coordinate activities. A copy of this document is a separate element of the State's application for Program Authorization.

The Memorandum of Agreement which outlines how MDE and MDOT will coordinate hazardous waste tracking activities may be found in Appendix I.