

US EPA ARCHIVE DOCUMENT

MEMORANDUM OF AGREEMENT
BETWEEN
COMMONWEALTH OF PENNSYLVANIA
AND
UNITED STATES E.P.A.

AR190001

MEMORANDUM OF AGREEMENT
BETWEEN
THE COMMONWEALTH OF PENNSYLVANIA
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

I. GENERAL

This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR § 271.8 for the Commonwealth of Pennsylvania's Hazardous Waste Program (hereinafter "Commonwealth") authorized pursuant to Section 3006 of the Resource Conservation and Recovery Act (hereinafter "RCRA" or "the Act") of 1976, as amended, (Public Law 94-580, Public Law 96-482 and Public Law 98-616) 42 USC § 6901 *et seq.* and the United States Environmental Protection Agency (hereinafter "EPA") Regional Office for Region III. This Agreement further sets forth the manner in which the Commonwealth and EPA will coordinate in the Commonwealth's administration of its program.

This Agreement is entered into by the Secretary of the Department of Environmental Resources (hereinafter "Secretary" or "the Commonwealth") and the Regional Administrator, EPA Region III (hereinafter "Regional Administrator" or "EPA").

Nothing in this Agreement shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under RCRA. Nothing in this Agreement shall be construed to contravene any provision of 40 CFR Part 271. The parties will review the Agreement jointly at least once a year (and other times as appropriate) during preparation of the annual Pennsylvania Grant Work Program (hereinafter "State Work Program"), in connection with grant funding under Section 3011 of RCRA. Nothing in this Agreement affects the responsibility of EPA to issue permits with provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA) prior to Commonwealth authorization for specific HSWA amendments.

This Agreement may be modified upon the initiative of either party in order to ensure consistency with Commonwealth program modifications made or for any other purpose mutually agreed upon. Any revisions or modifications must be in writing and must be signed by the Secretary and the Regional Administrator.

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This Agreement will remain in effect until such time as Commonwealth program authorization is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR § 271.22 and 40 CFR § 271.23.

This Agreement shall be executed by the Secretary and the Regional Administrator and shall become effective at the time the Commonwealth's authorization takes effect, which shall be two weeks after the date of publication in the Federal Register of EPA's decision to grant authorization to the Commonwealth.

II. POLICY STATEMENT

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon granting final authorization by EPA, the Commonwealth assumes primary responsibility for implementing the RCRA hazardous waste program within its boundaries, except for those aspects imposed pursuant to HSWA. EPA retains its responsibility to ensure full and faithful execution of the requirements of RCRA and to implement HSWA until the Commonwealth receives authorization to do so, including direct implementation in the event the Commonwealth is unable to act. The Secretary and the Regional Administrator agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective administration of the Commonwealth's program.

EPA assumes an oversight role upon granting final authorization to the Commonwealth. EPA will oversee Commonwealth program implementation in order to ensure full execution of the requirements of RCRA, to promote national consistency in implementation of the hazardous waste program, to allow EPA to report to the President and Congress on the achievements of the hazardous waste program, and to encourage the Commonwealth and the EPA to agree on desirable technical support and targets for joint efforts to prevent and mitigate environmental problems associated with the improper management of hazardous wastes. Oversight will be accomplished by EPA through written reporting requirements, permit overview, compliance and enforcement overview, and quarterly and semi-annual review of the Commonwealth's program.

Procedures used by the Commonwealth in approving variances, waivers or petitions to 25 PA. Code CH 75.260 - .282 and 75.301-.336 must be equivalent to those used by EPA in granting variances, waivers or petitions to the Federal regulations. The Commonwealth will transmit a copy of all variances, waivers, and petitions at the time they are approved. The Commonwealth will not grant any variance, waiver or petition which would create a result which is less stringent than the Federal program.

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III. STATE PROGRAM REVIEW

A. General

The Regional Administrator will assess the Commonwealth administration and enforcement of the hazardous waste program on a continuing basis for equivalence and consistency with RCRA, with this Agreement, and with all applicable Federal requirements and policies and for adequacy of enforcement. This assessment will be accomplished by EPA review of information submitted by the Commonwealth in accordance with this Agreement and the State Work Program, permit overview, compliance and enforcement overview, and quarterly and semi-annual review of Commonwealth program activities. The Regional Administrator may also consider, as part of this regular assessment, written comments about the Commonwealth's program administration and enforcement that are received from regulated persons, the public, and Federal, State and local agencies. Copies of any such comments received by the Regional Administrator will be provided to the Commonwealth.

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

Review of Department of Environmental Resources (DER) files will normally be scheduled at quarterly intervals; however, DER agrees to allow EPA access to specific files more frequently as warranted, i.e., enforcement actions. Program review meetings between the Secretary and the Regional Administrator or their assignees will be scheduled at reasonable intervals not less than annually to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. These meetings will be scheduled at least fifteen days in advance unless otherwise agreed to by EPA and the Commonwealth. A tentative agenda for the meeting will be prepared by EPA.

The Commonwealth agrees to notify EPA of all delisting petitions received and will transmit to EPA a copy of all final actions. The Commonwealth agrees to inform delisting petitioners of their need to petition EPA for a delisting action.

The Commonwealth agrees to allow EPA to have access to all delisting submissions and related information so EPA can evaluate the Commonwealth's program.

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B. Identification of Major Hazardous Waste Handlers

The Commonwealth agrees to develop with EPA a list of hazardous waste facilities, generators and transporters in the Commonwealth designated as "major" hazardous waste handlers. "Major" hazardous waste handlers are identified in Program Implementation Guidance 83-1 entitled "Definition of "Major Handlers" of Hazardous Waste" from Lee M. Thomas, Assistant Administrator for Solid Waste and Emergency Response, dated July 11, 1983. The "major" handlers designation is intended to identify, for administrative purposes, environmentally significant hazardous waste handlers, and to be used in concentrating inspection, permitting and reporting resources on those handlers. The list shall be submitted as part of this Agreement. It shall be reviewed and updated annually and more often as necessary. Changes to the list do not require a formal amendment to this Agreement so long as both the Commonwealth and EPA agree in writing to any change.

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

IV. INFORMATION SHARING

A. General

As the national hazardous waste program matures, the respective roles and responsibilities in this Commonwealth/Federal partnership will become clearer. As the respective information needs of the Commonwealth and EPA evolve, changes to this section of the Agreement may be appropriate. During the annual review of this Agreement the Secretary and the Regional Administrator will carefully examine the following information sharing provisions for needed revision.

B. EPA

1. EPA will keep the Commonwealth informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the Commonwealth's Program. EPA will provide the Common-

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wealth with copies of applicable documents. EPA will also provide general technical guidance to the Commonwealth. EPA will share with the Commonwealth any national reports developed by EPA from the data submitted through Commonwealth reporting requirements.

2. EPA agrees to provide the Commonwealth notification information from EPA Form 8700-12 obtained prior to the effective date of this Agreement. A copy of the original notification forms and/or a computer printout containing all the notification information will be provided. Such information will be provided to the Secretary within thirty days of the effective date of this Agreement. EPA will also forward, on a monthly basis, notification information (including newly assigned EPA identification numbers) submitted by persons in the Commonwealth who file such forms after the effective date of this Agreement. This information will be submitted to the Secretary within ten days of the end of each month for the preceding month.
3. EPA agrees to assign EPA identification numbers to generators and transporters and to owners and operators of hazardous waste treatment, storage, and disposal facilities submitting notifications to the Commonwealth after the effective date of this Agreement. EPA will do this after receiving a copy of the notification information from the Commonwealth as provided in this Agreement.
4. EPA agrees to transfer to the Commonwealth any pending Part A and Part B hazardous waste management facility permit applications originally submitted to EPA pursuant to 40 CFR § 270.10 by facilities located in the Commonwealth and which have not already been transferred to the Commonwealth, together with all pertinent file information. Pertinent file information includes applications (including accompanying narratives, plans, maps, etc.), draft permits, public notices, administrative notices, fact sheets and correspondence. Such materials will be provided within thirty days after the effective date of this Agreement and according to any arrangements the Secretary and the Regional Administrator may make regarding the priority of transfer.
5. EPA will also provide to the Commonwealth, within five days of receipt, Part A and Part B permit applications submitted directly to EPA by persons in the Commonwealth after the effective date of this Agreement.

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6. EPA agrees to make available to the Commonwealth copies of any reports and data resulting from compliance inspections within sixty days of completion of the inspections, including any enforcement actions taken by EPA against hazardous waste handlers in the Commonwealth.
7. EPA will make available to the Commonwealth other relevant information as requested which the Commonwealth needs to implement its approved program.
8. EPA - Region III responsibilities regarding the maintenance and operation of the Hazardous Waste Data Management System (HWDMS) are as follows:
 - a. The Region agrees to provide and maintain current documentation to HWDMS.
 - b. Promptly alert the Commonwealth to any changes in the HWDMS requirements which affect its usage.
 - c. Update data submitted to HWDMS by the Commonwealth and assure that the HWDMS error listing is available to the Commonwealth for corrections. (Note: If errors are the result of hardware or software problems, EPA will correct problems and resubmit data in the next scheduled update.)
 - d. Provide HWDMS training to the Department of Environmental Resources personnel. At a minimum this training shall include source document coding, data entry procedures, quality control and usage of System 2000 (S2K) Natural Language.
 - e. Provide specialized reports upon request within the Region's resource constraints.
 - f. Conduct periodic quality checks of HWDMS to ensure that the information in the system accurately represents an installation's hard copy file located in the Commonwealth. EPA shall work with the Commonwealth to improve data handling procedures if necessary and as needed.
 - g. Establish an account at the National Computer Center for the Commonwealth and provide a quarterly report on the monthly accounting of the time-sharing costs.

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9. As resources allow, EPA agrees to provide training to the Commonwealth whenever the Commonwealth requests it.
10. As resources allow, EPA agrees to provide technical assistance to the Commonwealth in the review of permit applications, draft permits, permit modifications, closure/post-closure plans, etc. whenever the Commonwealth requests it.

C. Commonwealth

1. The Commonwealth agrees to inform the Regional Administrator of any proposed or adopted program changes which would affect the Commonwealth's ability to implement the authorized program. Program changes of concern include modification of the Commonwealth's legal authorities (i.e., statutes, regulations and judicial or legislative actions affecting those authorities), modifications of memoranda of agreement or understanding with other agencies, and modifications of resource levels (i.e., available or budgeted personnel and funds). The Commonwealth recognizes that program revisions must be made in accordance with the provisions of 40 CFR § 271.21.
2. The Commonwealth agrees to submit the following reports to the Regional Administrator within the specified time periods:
 - o Biennial report summarizing the quantities and types of hazardous waste generated, transported, treated, stored, and disposed of in the Commonwealth as specified in the RCRA Guidance by October 1 of each even-numbered year.
 - o A copy of the report entitled "Commonwealth's Compliance with Financial Assurance Requirements". This report is due by June 30 of every year.
 - o On a monthly basis, copies of formal enforcement actions for Class I violations at Department of Defense facilities. Class I violations are defined in EPA's December 1984 "Enforcement Response Policy".
 - o The multi-year Permit Strategy will be reviewed and modified as necessary.
 - o Additional reports as negotiated in the State Work Program.

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3. The Commonwealth agrees to submit to the Regional Administrator the following information as frequently as noted below:

<u>ITEM DESCRIPTION</u>	<u>FREQUENCY OF SUBMISSION</u>
a. A copy of permit applications originally submitted to the Commonwealth and subsequent revisions or additions to these applications on or after the effective date of this Agreement by all major hazardous waste management facilities in the Commonwealth unless EPA has been copied by the facility.	Within 15 days of receipt by the Commonwealth.
b. A copy of selected non-major permit applications for which the Commonwealth may be issuing or denying a permit in that particular year.	Upon request.
c. Copies of all trial burn permit applications, trial burn plans (if different from the application) and trial burn plan approvals.	Within two weeks of their receipt by the Commonwealth.
d. Copies of (a) draft permits, (b) proposed permit modifications, (c) draft permit denials, and (d) accompanying explanatory material for all major hazardous waste management facilities in the Commonwealth. EPA also may request a copy of completeness and technical reviews for selected permits being worked on during the fiscal year.	Two weeks prior to public notice.

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

At the time they are sent out for public comment.

f. For all major facilities the Commonwealth agrees to submit to EPA a copy of all final permits issued, denied, modified, reissued or terminated. EPA may request a copy of final documents for non-major permits being worked on during the fiscal year.

Within 7 working days of completion.

g. The Commonwealth agrees to submit the following closure/post-closure data to EPA:

Within 2 weeks of receipt/transmittal.

- (1) Copy of the public notice announcing receipt of closure/post-closure plans and public hearings, if applicable.
- (2) Copy of the approved closure and post-closure plans for all major facilities.
- (3) Copy of the Commonwealth's approval of the closure plan for all non-major facilities.
- (4) Copy of the closure certifications for major and non-major facilities by the independent registered engineer (or independent qualified soil scientist in cases of land treatment facilities) and the owner or operator.
- (5) Copy of the revised Part A reflecting partial facility closures (i.e., where a cell or unit of the facility is closed) of interim status units (or cells).

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- (6) Copy of the Commonwealth's reports of inspections conducted during closure and after receipt of closure certification.
- (7) Copy of the certified survey plot of the closed disposal facility/unit or cell prepared by a professional land surveyor and filed with the County Recorder of Deeds Office or the local land authority.
- (8) Copy of the notice placed in the property deed, or other instrument which is normally examined during title search, for closed disposal facility/unit or cell.
- (9) Copy of letters sent to facilities requiring post-closure permit applications for those facilities requiring a post-closure permit.

h. The Commonwealth agrees to notify EPA of all new facility permit applications for the purpose of determining facility classification. Within 5 days via telephone call to the Waste Management Branch.

i. Copy of all variances. Upon issuance.

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

4. So that EPA can issue EPA identification numbers and maintain a national inventory of all hazardous waste handlers, the Commonwealth agrees to provide EPA with the following notification and Part A information submitted to the Commonwealth after the effective date of this Agreement by new hazardous waste generators, transporters and treatment, storage and disposal facilities and interim status facilities change requests in the Commonwealth:

- name and location of the handler
- mailing address of the handler
- name and telephone number of a contact person
- type of hazardous waste activity
- process codes and amounts (if the handler is a TSDF)
- changes of ownership requiring a new Part A
- increases in capacity
- changes in status

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The Commonwealth will also submit any updates or changes in previously submitted notification information. This information will be provided to the Regional Administrator within ten days of receipt of the information utilizing a copy of the Commonwealth's Form ER-SWM-53: Rev. 3/82.

5. Hazardous Waste Data Management System (HWDMS)

The Commonwealth agrees to adhere to established procedures, both present and future, for accessing and maintaining the Hazardous Waste Data Management System as specified in the State Work Program and to ensure that the activities listed below are conducted in a timely manner:

- a. Required data shall be provided to Region III in the HWDMS transaction format for direct entry into the data system in a timely manner.
- b. The Commonwealth will periodically review the HWDMS data for completeness and accuracy, make necessary corrections and update HWDMS with any missing information or new information.
- c. The Commonwealth shall have access to HWDMS for data retrieval for all Region III States for use in the management of the Commonwealth program.
- d. The Commonwealth agrees to conduct meetings as needed with Regional personnel to review HWDMS operation, identify problems and incorporate any changes to improve the process.
- e. The Commonwealth understands that data entered into HWDMS is considered Federal data. As such, the Freedom of Information Act and other Federal laws will govern access to the data.
- f. At the Commonwealth's discretion, the Commonwealth will enter into an Inter-Agency Agreement with EPA and the National Computer Center for a timeshare account and user identification number in order to access HWDMS.
- g. The Commonwealth agrees that data received under a claim of confidentiality will not be entered into the data system.

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6. The Commonwealth agrees to provide information to EPA, as resources allow, according to a mutually agreeable time schedule, in order for EPA to execute its responsibilities under HSWA.
7. In the case of interstate shipments for which the manifest has not been returned, the Commonwealth agrees to provide notification thereof to the State in which the facility designated on the manifest is located and to the State in which the shipment may have been delivered (or to EPA in the case of an unauthorized State).

D. Site Visits

EPA is responsible for maintaining reliable national data on hazardous waste management. This data is used to report to the President and Congress on the achievements of the hazardous waste program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information, EPA will first seek to gain this information from the Commonwealth. The Commonwealth agrees to supply the Regional Administrator with this information if readily available and as resources allow. If the Commonwealth is unable to provide the information or if it is necessary to supplement the Commonwealth information, EPA may conduct a special survey or perform information collection site visits after notifying the Commonwealth in accordance with Section VII of this Agreement. EPA will share with the Commonwealth any national reports developed by EPA as a result of such information collection.

E. Emergency Situations

Upon receipt of any information that the handling, storage, treatment, transportation, or disposal of hazardous waste is endangering human health or the environment, the party in receipt of such information shall immediately notify by telephone the other party to this Agreement of the existence of such situation. Persons to be notified are:

EPA: Chief, Emergency Response Section,
24-hour Hotline (215) 597-9898 or
National Response Center toll free number
(800) 424-8802

Commonwealth: Pennsylvania Department of Environmental
Resources
24-hour Hotline (717) 787-4343

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F. Confidentiality

1. Any information obtained or used in the administration of the Commonwealth program shall be available to EPA upon request. If the information has been submitted to the Commonwealth under a claim of confidentiality, the Commonwealth must submit that claim to EPA when providing information. Any information obtained from the Commonwealth and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2.

Any information which the Commonwealth would not disclose to a party because it constitutes the mental impressions, conclusions, opinions or legal theories of an attorney or other representative of the Commonwealth, concerning litigation to which the Commonwealth is a party, which would be protected by a court under Fed. R. Civ. P. 26(b)(3), need not be photocopied and sent to EPA, if so determined in writing by the Chief Counsel. Such information will be made available to EPA on request, for inspection, without a right to copy or transcribe such information in a manner that would render it discoverable by other parties, at DER's Philadelphia or appropriate regional office or by telephone, as specified by EPA. Nothing in this paragraph shall be construed to require a DER attorney to disclose information in contravention of Canon 4 of the Code of Professional Responsibility.

2. EPA agrees to furnish the Commonwealth information in its files which is not submitted under a claim of confidentiality and which the Commonwealth needs to implement its program. Subject to the conditions in 40 CFR Part 2, EPA will furnish the Commonwealth information submitted to EPA under a claim of confidentiality which the Commonwealth needs to implement its program. All information EPA agrees to transfer to the Commonwealth will be transferred in accordance with the requirements of 40 CFR Part 2.

V. PERMIT ISSUANCE

- A. Upon final authorization of the Commonwealth program EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities in the Commonwealth, except for those provided for in the Hazardous and Solid Waste Amendments of 1984.

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EPA intends to add permitting standards for processes not currently covered by the Part 264 standards. For example, the Part 264 standards do not currently cover treatment and storage of hazardous waste in certain types of underground tanks. When EPA does promulgate standards for additional processes, EPA will process and enforce RCRA permits in the Commonwealth in the new areas until the Commonwealth receives authorization of equivalent and consistent Commonwealth standards. At the time the Commonwealth program is approved in the new areas, EPA will suspend issuance of Federal permits in the Commonwealth. EPA will also transfer any pending permit applications, completed permits or pertinent file information to the Commonwealth within thirty days of the approval of the Commonwealth program in conformance with the conditions of this Agreement.

B. EPA Overview of Commonwealth Permits

While EPA may comment on any permit application or draft permit, EPA's overview function will focus primarily on those facilities identified by the Commonwealth and EPA as major facilities for permit overview.

EPA will comment on Commonwealth permit applications, draft permits, and proposed permit modifications as follows:

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

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

Within 60 days of receipt.

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

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

EPA may review file information at Commonwealth offices or request a copy of any permit application, draft permit or proposed permit modification, statement of basis or fact sheet, and any supporting documentation that went into the development of the draft permit. The Commonwealth shall provide such information within one week of request.

In accordance with § 271.19, EPA may comment in writing on any draft permit or proposed permit modification, whether or not EPA commented on the permit application, within forty-five days of its receipt. Where EPA indicates in a comment that issuance of the permit would be inconsistent with the approved Commonwealth program, EPA shall include in the comment:

1. a statement of the reasons for the comment (including the sections of the Commonwealth regulations that support the comment); and
2. the actions that should be taken by the Commonwealth in order to address the comments (including the conditions which the permit would include if it were issued by the Regional Administrator).

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

EPA will withdraw any comment in writing when satisfied that the Commonwealth has met or refuted the Agency's concerns and EPA will inform the permit applicant of any comments withdrawn as soon as possible.

The Commonwealth and EPA agree to meet or confer whenever necessary to resolve a disagreement on the terms of any Commonwealth RCRA permit to be issued by the Commonwealth.

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Under Section 3008(a)(3) of RCRA, EPA may terminate a Commonwealth-issued permit in accordance with the procedures of Part 124, Subpart E, or bring an enforcement action in accordance with the procedures of 40 CFR Part 22 in the case of a violation of a Commonwealth program requirement. In exercising these authorities, EPA will observe the conditions established in 40 CFR § 271.19(e).

C. Commonwealth Permitting

The Commonwealth is responsible for expeditiously drafting, circulating for public review and comment, issuing, modifying/reissuing and terminating RCRA permits for all hazardous waste treatment, storage and disposal facilities in the Commonwealth which it is authorized to permit, and shall do so in a manner consistent with RCRA, with this Agreement, with all applicable Federal and Commonwealth requirements, and with the Commonwealth's Program Description.

The Commonwealth agrees that any compliance schedules contained in permits it issues will require compliance with applicable standards as soon as possible.

The Commonwealth agrees to issue, modify and reissue all permits in accordance with Hazardous Waste Regulations 25 PA. Code CH 75.260-.282 and 75.301-.336 under authority of the Pennsylvania Solid Waste Management Act of July 7, 1980 (P.L. 380, No. 97). This Agreement also applies to permits issued after final authorization, but for which the processing may have begun before final authorization. This Agreement does not apply to provisions of a permit issued by EPA under HSWA prior to Commonwealth authorization thereof.

The Commonwealth agrees to consider all comments EPA makes on permit applications and draft permits. The Commonwealth will satisfy or refute EPA's concerns on a particular permit application, proposed permit modification, or draft permit in writing before issuing the permit or making the modification.

VI. PERMIT ADMINISTRATION AND ENFORCEMENT

A. EPA

EPA will administer the RCRA permits it has issued to facilities in the Commonwealth until they expire or are terminated. EPA will be responsible for enforcing terms and conditions of the Federal permits while they remain in force. When the Commonwealth either incorporates the terms and conditions of the Federal

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permits in Commonwealth RCRA permits or issues Commonwealth RCRA permits to those facilities, EPA will primarily rely on the Commonwealth to enforce those terms and conditions. For permits jointly issued by EPA and the Commonwealth before final authorization, EPA will primarily rely on the Commonwealth to enforce those permit terms and conditions which are identical to EPA's. Federal permits will not be considered for termination unless and until the Commonwealth issues Commonwealth RCRA permits to those facilities. (See Section B below)

After notice to the Commonwealth, EPA may take action under Section 3008 of RCRA against a holder of a Commonwealth-issued permit on the ground that the permittee is not complying with a condition of that permit.

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

B. Commonwealth

The Commonwealth agrees to review all hazardous waste permits which were issued under Commonwealth Law prior to the effective date of this agreement and to modify or revoke and reissue such permits as necessary to require compliance with 25 PA. Code CH 75.260-.282 and 75.301-.336. The Commonwealth agrees to modify or revoke and reissue these Commonwealth permits as RCRA permits in accordance with schedules established in the annual State Work Program. The Commonwealth agrees to make final permit determinations on all existing facilities requiring ground water monitoring by October 1988, all existing incinerators by October 1987, and all remaining existing facilities by October 1992.

VII. COMPLIANCE MONITORING AND ENFORCEMENT

A. EPA

Nothing in this Agreement shall restrict EPA's right to inspect any hazardous waste generator, transporter or facility or bring enforcement action against any person believed to be in violation of the Commonwealth hazardous waste program. Before conducting an inspection of a generator, transporter or facility, the Regional Administrator will normally give the Commonwealth at least seven days notice of the intent to inspect in accordance with 40 CFR § 271.8(b)(3)(1).

If the Commonwealth performs a compliance inspection and submits a report and data relevant thereto within that time to EPA, no EPA inspection will be made, unless the Regional Administrator deems the Commonwealth report and

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data to be inadequate. In case of an imminent hazard to human health and the environment, the Regional Administrator may shorten or waive the notice period. The frequency of EPA oversight and training inspections will be specified in the annual State Work Program. EPA will conduct oversight inspections on a maximum of 10% of the Commonwealth's compliance inspections.

The Regional Administrator may take enforcement action in lieu of the Commonwealth or in conjunction with the Commonwealth against any person determined to be in violation of RCRA in accordance with Section 3008(a)(2). EPA will take enforcement action upon determining that the Commonwealth has not taken timely and appropriate enforcement action in accordance with EPA's Enforcement Response Policy or upon mutual agreement. In some cases it may be beneficial for the Commonwealth to request direct Federal enforcement. EPA agrees to assist the Commonwealth in such instances to the maximum extent possible. EPA and the Commonwealth shall provide each other technical assistance in developing and enforcing cases. Prior to issuing a compliance order under Section 3008 EPA will give notice to the Commonwealth. EPA also retains its rights to issue orders and bring actions under Sections 3013 and 7003 of RCRA and any other applicable Federal statute. Prior to taking any enforcement action, EPA will give one week's notice to the Commonwealth. In case of an imminent hazard to human health and the environment, the Regional Administrator may shorten or waive this notice period.

B. Commonwealth

The Commonwealth agrees to carry out a timely and effective program for monitoring the compliance of generators, transporters, and facilities with applicable program requirements (see 40 C.F.R. § 271.15). As part of this program, the Commonwealth will conduct compliance inspections to assess the compliance with generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules and all other program requirements.

The Commonwealth agrees to take timely and appropriate enforcement action as defined in the State-EPA Enforcement Agreement currently in effect against all persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements, including violations detected by Commonwealth or Federal compliance inspections. The Commonwealth will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public.

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

Appropriate Commonwealth enforcement response shall be conducted as defined in the State-EPA Enforcement Agreement currently in effect and may include not more than two notices of violation letters for any violation, followed by timely initiation and prosecution of enforcement proceedings which may be, as determined on a case-by-case basis, administrative or judicial in nature. Any civil penalty assessed, sought, or agreed upon by the Commonwealth shall be appropriate to the violation, as defined in 40 CFR § 271.16(c).

The Commonwealth agrees to retain all records for at least three (3) years unless there is an enforcement action pending. In that case all records will be retained until such action is resolved.

VIII. State Specific Agreements

A. General

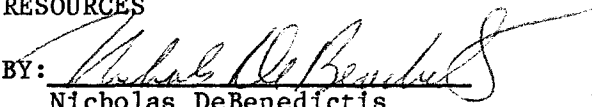
Whenever the cost estimate for closure and post-closure care increases for a facility, the Commonwealth will require, pursuant to its authority in 25 PA. Code § 75.321(a), the owner or operator to augment the bond in an amount at least equal to the increase and to submit evidence of such bond increase to the Commonwealth; the Commonwealth will approve or disapprove the facility's compliance with the additional bonding requirement within 60 days of the increase of the cost estimate.

B. Commonwealth Permitting

As long as it is consistent with 25 PA. Code CH 75.260-.282 and 75.301-.336, the Commonwealth agrees to permit facilities in the following general order of priority; 1) all new facilities, 2) all facilities requiring ground water monitoring, 3) all hazardous waste incineration facilities, 4) all major storage facilities, 5) all major treatment facilities, 6) all minor storage facilities, and 7) all minor treatment facilities.

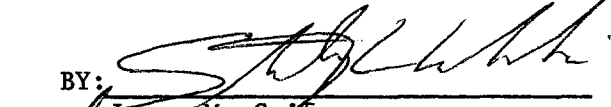
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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL
RESOURCES

BY: 
Nicholas DeBenedictis
Secretary

DATE: 10/15/85

U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION III

BY: 
James M. Seif
Regional Administrator

DATE: 12/23/85

US EPA ARCHIVE DOCUMENT

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