

US EPA ARCHIVE DOCUMENT

Pennsylvania Program Description for

RCRA Final Authorization

PROGRAM DESCRIPTION (\$271.6)

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PROGRAM DESCRIPTION FOR RCRA FINAL AUTHORIZATION

I. Introduction

A. Program Description: Purpose & Content:

This document, and its appendices, represent a description of the Hazardous Waste Management program currently functioning in the Commonwealth of Pennsylvania under the administration of the Department of Environmental Resources (DER). This program description is required by the U.S. Environmental Protection Agency (reference 40 C.F.R. §271.6) as part of the Department's application for final authorization to administer the Pennsylvania Hazardous Waste Management program described herein in lieu of the Environmental Protection Agency (EPA).

This program description sets forth a short history of the Hazardous Waste Management program in Pennsylvania, describes Pennsylvania's laws and regulations which are effectively used to govern comprehensive Hazardous Waste Management in the Commonwealth, and details the organization of the DER, including the role of the Bureau of Solid Waste Management's program lead, describing the Bureau's staff and budget resources, and its coordination with its six Regional offices and with other agencies. Additionally, this document indicates the number of hazardous waste generators, transporters, and treatment/storage/disposal facilities which are currently regulated by the Department. Specific sections of this program description have been dedicated to detail the Pennsylvania manifest system, treatment/storage/disposal facility operation/design requirements, the Pennsylvania Hazardous Waste Management permit program, Financial Responsibility requirements, the Pennsylvania Compliance and Enforcement Program, and Quality Assurance Program.

Generally, this Program Description shows that the Pennsylvania DER program, as designed and detailed herein, either meets or exceeds the standards set by the U.S. EPA for administration of a Hazardous Waste Management program.

B. Brief History of Hazardous Waste Management in Pennsylvania:

In 1966, the Commonwealth of Pennsylvania enacted the first solid waste management statute, entitled "Act 241." This act set forth permitting, operation and planning requirements for municipal and residual waste management to be carried out by the Pennsylvania Department of Health. In 1970, the Department of Environmental Resources was authorized, with the Division of Solid Waste Management, Bureau of Land Protection being the lead agency in enforcement of Act 241. In 1979, the Division of Solid Waste Management became the Bureau of Solid Waste Management, as it is known to date. (Currently, the Bureau of Solid Waste Management is pending a re-organization, after which it will be referred to as the Bureau of Waste Management. After this re-organization is formally confirmed, this document can be revised to reflect this change.)

Over the last nineteen years, the Commonwealth has been involved in regulation of solid wastes in Pennsylvania. With enactment of Act 97 in 1980 (see Appendix I), the scope of our program has changed significantly to address comprehensive Hazardous Waste Management. Within the last five years, development of regulatory and management programs as a result of enactment

of Act 97 and significant increases in agency staff and staff training to implement the hazardous waste management program in Pennsylvania have been eminent Commonwealth priorities.

On May 26, 1981, DER received Phase I Interim Authorization from the Environmental Protection Agency to administer the Department's Hazardous Waste program in lieu of the Environmental Protection Agency. Since that time, numerous revisions to both the Federal and State Hazardous Waste regulatory programs have taken place. The Department has amended and revised its regulations several times in response to changes in the Federal standards. Most recently, the regulations were officially revised on September 4, 1982 (enabling the Department to obtain Phase II interim authorization), March 9, 1985 (Financial Responsibility Requirements) and June 1, 1985 (conforming Pk #1). Conforming Pk #2 is expected to be published in the fall of 1985. The DER regulatory process is a lengthy one (It is described in detail in Section II.D. and Appendix IV, herein). At the present time, DER's regulations either meet or exceed the standards set by the Environmental Protection Agency for Hazardous Waste Management.

With the development of the regulatory program in Pennsylvania, much has been accomplished to control hazardous waste within the Commonwealth:

As of November 19, 1980, all persons generating hazardous waste in Pennsylvania were required to notify the EPA and DER of their activities. All persons generating and/or managing hazardous waste in Pennsylvania were assigned permanent Identification numbers which are consistently referenced by the agencies. Since July 7, 1982, all persons transporting hazardous waste in Pennsylvania are required to be licensed by DER. Persons shipping hazardous waste offsite, transporting and/or treating/storing/disposing wastes from offsite sources are required to use the "manifest system," which is further described in Section V, herein. The manifest system provides "cradle-to-grave" tracking of hazardous waste activities in the State. (Pennsylvania's manifest system fully complies with Environmental Protection Agency and U.S.DOT uniform manifest requirements published in the Federal Register on March 20, 1984). As of November 19, 1981, all persons who were treating/storing/disposing of hazardous waste in the Commonwealth (prior to November 19, 1980) were either required to submit permit applications (according to the requirements set forth in §75.265(z)) and operate sites in compliance with DER standards (set forth in §75.265) as interim status facilities or close (according to the requirements of §75.265(o)). Facilities not in existence prior to November 19, 1980 cannot operate in Pennsylvania without first obtaining a permit from DER (as set forth in §75.264).

Notifications from 3,400 generators, 350 transporters and 700 storage, treatment, or disposal facilities have been received and processed, and this information has been incorporated into the Department's automated data system and is used in inspection and compliance efforts. Many of these entities immediately notified, or submitted the first portion of a permit application (Part A) to guarantee compliance with RCRA and Act 97. After examination of the regulatory requirements, many dropped out of the system when it was determined that the laws did not actually apply to their activities. (See Section IV. C., herein, for further discussion regarding changes in the Pennsylvania Hazardous Waste Universe since its beginning in 1980).

As a result, since July, 1984, Pennsylvania regulated more than 2,600 entities that either generated, transported, stored, treated, or disposed of hazardous waste; approximately 2,000 were generators, 250 were transporters, and 370 were treatment, storage and disposal facilities.

The Hazardous and Solid Waste Amendments of 1984 (HSWA) to the Federal Resource Conservation Recovery Act (RCRA) will drastically increase the regulated community by covering approximately 5,000 additional small quantity generators in the Commonwealth.

C. The Pennsylvania Hazardous Waste Management Program: Projections

The following elements are expected to be completed following final authorization of DER to administer the Hazardous Waste Management program in Pennsylvania:

Hazardous Waste Facilities Plan:

The Department has contracted to draft a Hazardous Waste Facilities Plan. This plan is required by Act 97 to establish an inventory of existing disposal facilities, determine current rates of generation of hazardous waste, identify ways to reduce the level of hazardous waste, and clearly define future needs for hazardous waste facilities. The plan is intended to focus on two key areas. The Department needs accurate information on the amount of waste generated and the need for new disposal facilities. This will be a critical element in siting new facilities.

The second major aspect of the plan is to address strategies to encourage greater source reduction, detoxification, and resource recovery with less reliance on the landfilling of hazardous wastes. Given the strong opposition to landfilling and the long-term liabilities associated with land disposal of wastes, these alternative technologies must be closely examined in Pennsylvania. The plan will identify those groups of industries which can substantially benefit from these alternatives, and the means available to the Commonwealth to encourage them.

Environmental Siting Criteria:

A significant part of the Hazardous Waste Facilities Plan is the development of siting criteria for new hazardous waste facilities. The Department has placed a high emphasis on completing the regulatory development of these criteria. Proposed criteria which was released for publication in 1983 has been rewritten to address public concerns. One of the most significant changes to the criteria deals with the protection of both public and private water supplies. The criteria make a strong statement that future hazardous waste facilities should not be sited near public or private water supplies. The Department believes this assurance is vitally important to Pennsylvanians and will be an important element in the success of future siting efforts for hazardous waste facilities.

Adoption of the Environmental Siting Criteria is scheduled to be completed during the fall of 1985. Three (3) public hearings and six (6) public informational meetings were held to discuss the Environmental Siting Criteria and, a comprehensive responsiveness document was prepared. The criteria was revised, considering public comments, and proposed as final rulemaking, to the Environmental Quality Board. The proposed criteria were approved by EQB, and

are expected to be published in the Pennsylvania Bulletin in September or October of 1985 as final rulemaking.

Public Participation in the Hazardous Waste Program:

An integral part of the Department's efforts to site needed hazardous waste facilities is a strengthened public participation program.

The Solid Waste Advisory Committee includes representatives of industry, environmental groups, and local elected officials. The Department has charged the Committee to assist it in completing the Environmental Siting Criteria and the Hazardous Waste Facilities Plan.

In April of 1984, the Department began an overall review of its public participation and public information procedures in its hazardous waste management program. A review was conducted by a nationally prominent public participation consultant and all segments of the public were involved in this program: industry, government leaders, and environmental groups. A draft report is complete and includes recommendations for public participation programs in siting and permitting of hazardous waste facilities. After review by our Advisory Committees, the recommendations will be considered in the RCRA Public Participation Program. The recommendations are also being evaluated to strengthen participation efforts in other Departmental programs.

Environmental assessment reviews of permit applications in response to the requirements of Article I, Section 27 of the Pennsylvania Constitution have been established and local government reviews of permit applications according to the Act's requirements were initiated beginning in July of 1980.

II. Program Scope and Overview: Pennsylvania Statutory and Regulatory Powers, Duties, and Processes.

The Department of Environmental Resources is the Commonwealth agency responsible for administration of all statutes and programs related to the protection of the Commonwealth's air, water and land resources. The Department's structure provides discrete organizational responsibilities for solid waste management, air quality control, water quality management, radiation protection and toxicology, mining and reclamation, deep mine safety, dams and waterways management, soil and water conservation, resources management, planning and administration, and legal services. The Bureau of Solid Waste Management is the entity within the Department with primary responsibility for implementation of Pennsylvania's hazardous waste program. Further explanation of the Bureau of Solid Waste Management's lead role and roles of other agencies is provided in Section III, herein.

The Bureau of Solid Waste Management administers and enforces a comprehensive state hazardous waste program in line with all requirements of Subtitle C, Resource Conservation and Recovery Act of 1976. In some respects, Act 97 gives the Department broader scope than provided for under RCRA, and, in some areas, the Department's regulations may be more stringent than the U.S. Environmental Protection Agency's. These differences are discussed in Sections II.B.2. and IV.C., herein.

A. Act 97 "The Pennsylvania Solid Waste Management Act (1980)"/Chapter 75 Solid Waste Management Rules and Regulations:

Administration and enforcement of this program is conducted according to the provisions of the Pennsylvania "Solid Waste Management Act" of 1980 and "Chapter 75 Solid Waste Management Rules and Regulations".

The Pennsylvania Solid Waste Management Act provides for the planning and regulation of solid and hazardous waste storage, collection, transportation, processing, treatment and disposal, provides for regulation of the management of municipal, residual and hazardous waste, requires permits for operating hazardous waste storage, treatment and disposal facilities, solid waste processing, and licenses for the transportation of hazardous waste, and provides remedies and prescribes civil and criminal penalties for violations of the Act.

The Pennsylvania Solid Waste Management Act provides for the identification of the characteristics and listing of hazardous waste; standards for the generation and transportation of hazardous waste; interim standards for existing facilities, permits for both new and existing storage, treatment, and disposal facilities; and penalty provisions in line with all requirements of the Federal Resource Conservation and Recovery Act ("RCRA").

Chapter 75 Solid Waste Management Rules and Regulations provide for notification of hazardous waste activities; criteria, identification and listing of hazardous waste; standards for generators and transporters; and standards and interim status standards for owners and operators of existing hazardous waste treatment, storage, and disposal facilities. These regulatory provisions are equivalent to the Federal standards as published in the May 19, 1980 Federal Register and were the basis for Phase I interim authorization granted to the Commonwealth in May 1981.

Rules and regulations regarding the criteria and listing of hazardous waste were promulgated on July 15, 1980 and became effective August 2, 1980. The remainder of the hazardous waste regulations cited above (Phase I) were proposed to the Environmental Quality Board on September 17, 1980 and became effective on November 29, 1980. Revisions to the Federal Program required substantial revisions to the "Phase I" regulations. On September 4, 1982, the Department revised its regulations, bringing its standards into conformity with these federal revisions and enabling the Department to obtain "Phase II" authorization. In response to additional changes to the Federal Program, the Department again proposed amendment to the regulations in 1985. These amendments took the form of two conforming packages referred to as Pk #1 and Pk #2. Pk #1 was published as final rulemaking on June 1, 1985. Pk #2 was published as proposed rulemaking on June 8, 1985, but has not been published as final rulemaking, to date. Pk #2 has been approved by the Environmental Quality Board, and is expected to be published as final rulemaking in September/October of 1985. The Department's financial responsibility requirements were published as final rulemaking on March 9, 1985. Upon the effective date, all rules and regulations are self-executing and enforceable and compliance with such rules and regulations is required of all existing facilities. (Copies of all adopted regulatory packages, and PK #2, may be found in Appendix V).

The Department's hazardous waste management program assures that no person or municipality shall store, transport, treat, or dispose of hazardous waste within this Commonwealth unless such storage, transportation, treatment, or disposal is authorized by the rules and regulations of the Department; that no person or municipality shall own or operate a hazardous waste storage, treatment or disposal facility unless such person or municipality has first obtained a permit from the Department for the storage, treatment and disposal of hazardous waste or is operating under the interim status; and that no person or municipality shall transport hazardous waste within the Commonwealth unless such person or municipality has first obtained a license for the transportation of hazardous waste from the Department.

Persons or municipalities who generate, transport, store, or dispose of hazardous waste are required to:

- a.) Maintain such records as are necessary to accurately identify the quantities of hazardous waste generated, the constituents thereof which are significant in quantity or are potentially harmful to human health or the environment, the method of transportation and the disposition of such wastes, and where applicable, the source and delivery points of such hazardous waste.
- b.) Label any containers used for the storage, transportation or disposal of such hazardous waste to accurately identify such waste.
- c.) Use containers appropriate for such hazardous waste and for the activity undertaken.
- d.) Furnish information on the general chemical composition of such hazardous waste to persons transporting, treating, storing or disposing of such wastes.
- e.) Use a manifest system as required by the Department to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in such facilities (other than facilities on the premises where the

waste is generated, or where the use of a manifest system is not necessary) approved by the Department.

- f.) Transport hazardous waste for treatment, storage or disposal to such treatment, storage or disposal facilities which the shipper has designated on the manifest form 1) as a Pennsylvania facility permitted to receive such waste or 2) as a facility authorized to operate under an approved State program or Federal program not within the Commonwealth.
- g.) Submit reports to the Department at such times as the Department deems necessary listing:
 - (i) the quantities of hazardous waste generated during a particular time period; and
 - (ii) the method of disposal of all hazardous waste.
- h.) Carry out transportation activities in compliance with the rules and regulations of the Department and the Pennsylvania Department of Transportation.
- i.) Treat, store and dispose of all such waste in accordance with the rules and regulations of the Department and permits, permit conditions and orders of the Department.
- j.) Develop and implement contingency plans for effective action to minimize and abate hazards from any treatment, storage, transportation or disposal of any hazardous waste.
- k.) Maintain such operation, train personnel, and assure financial responsibility for such storage, treatment or disposal operations to prevent adverse effects to the public health, safety, welfare, and the environment, and to prevent public nuisances.
- l.) Immediately notify the Department and the affected municipality or municipalities of any spill or accidental discharge of such waste in accordance with a contingency plan approved by the Department and take immediate steps to contain and clean up the spill or discharge.
- m.) Notify the Environmental Protection Agency and the Department of activities conducted and obtain an Environmental Protection Agency identification number.
- n.) Require treatment, storage, and disposal facilities to post specified bonds and obtain liability insurance for sudden and nonsudden accidental pollutional occurrence arising out of facility operation.

In conducting this program, the Department may issue, deny, revoke and reissue, modify, or revoke permits or licenses on the basis of compliance or noncompliance with any provision of the Pennsylvania Solid Waste Management Act; the act of June 22, 1937 (P.L. 1937, No. 394), known as "The Clean Streams Law"; the act of January 8, 1960 (1959 P.L. 2119, No. 787), known as the "Air Pollution Control Act"; and the act of November 26, 1978 (P.L. 1375, No. 325), known as the "Dam Safety and Encroachment Act"; or any other state or Federal

statute relating to environmental protection or to the protection of the public health, safety and welfare, or any rule or regulation or order of the Department or any condition of any permit or license issued by the Department.

Hazardous waste facilities and transporters are required to mechanisms file adequate bonds with the Department. Maintain financial for facility closure and post-closure care and monitoring and for sudden and nonsudden occurrences arising out of operation of the facility.

In carrying out its duties, the Department may issue orders, institute suits in equity, assess civil penalties and seek the following criminal penalties:

- a.) Summary offense - \$100 minimum fine, \$1,000 maximum, or a maximum of 30 days imprisonment.
- b.) Misdemeanor, 3rd degree - \$1,000 minimum fine, \$50,000 maximum, and/or a maximum of 2 years imprisonment.
- c.) Misdemeanor, 2nd degree - \$2,500 minimum fine, \$50,000 maximum, and/or a maximum of 2 years imprisonment.
- d.) Felony, 2nd degree - \$2,500 minimum fine, \$100,000 maximum, and/or between 2 and 20 years imprisonment.
- e.) Felony, 1st degree - \$10,000 minimum fine, \$500,000 maximum, and/or between 2 and 20 years imprisonment.

In carrying out this program, the Department has the power and duty to:

- a.) Administer the solid waste management program;
- b.) Cooperate with appropriate Federal, State, interstate and local units of government and with appropriate private organizations in carrying out its duties;
- c.) Develop a statewide solid waste management plan in cooperation with local governments, the Department of Community Affairs, the Department of Commerce and the State Planning Board; emphasis shall be given to area-wide planning;
- d.) Provide technical assistance to municipalities including the training of personnel;
- e.) Initiate, conduct, and support research, demonstration projects, and investigations, and coordinate all State agency research programs, pertaining to solid waste management systems;
- f.) Regulate the storage, collection, transportation, processing, treatment, and disposal of solid waste;
- g.) Issue permits, licenses and orders, and specify the terms and conditions thereof; conduct inspections and abate public nuisances;

- h.) Require the payment of a fee according to a standard uniform schedule of permit and license fees for the processing of any permit or license application;
- i.) Serve as the agency of the Commonwealth for the receipt of monies from the Federal government, public agencies, or private agencies and expend such monies for studies and research;
- j.) Institute in a court of competent jurisdiction proceedings against any person or municipality to compel compliance with the provisions of the Solid Waste Act, any rule or regulation issued thereunder, any order of the Department, or the terms and conditions of any permit;
- k.) Institute prosecutions against any person or municipality;
- l.) Appoint such advisory committees as the secretary deems necessary and proper to assist the Department in carrying out its program;
- m.) Do any and all other acts and things not inconsistent with any provision of the Solid Waste Management Act which it may deem necessary or proper for the effective enforcement of the act and the rules and regulations which may be promulgated thereunder.

B. Coverage:

1.) Pennsylvania Statutory, Regulatory, and Program Provisions:

This section expands upon the previous section, with its intent to illustrate how the Commonwealth's statute and regulations effectively cover the required elements of the Hazardous Waste program:

a.) Definitions (Section 75.260):

Definitions applicable to the Commonwealth's hazardous waste regulations are found within the section referenced above. Note that additional definitions are found in the Financial Regulations at 25 PA. Code §75.301.

In addition Section 75.260 contains procedures to be followed for a determination of whether a waste is a hazardous waste. Procedures for petitioning the Department for determinations of equivalent testing or analytical methods are also contained therein.

The Commonwealth's regulations referenced above are equivalent to and no less stringent than the Federal requirements found at 40 C.F.R. Part 260.

b.) Classification of Wastes (Section 75.261):

This Section relates to the identification of hazardous waste. The Commonwealth controls essentially the same universe of wastes as the Federal lists of wastes and appendices by reference; this allows the Department to automatically keep pace with the Federal program. In addition, the commonwealth has incorporated the

Federal program's set of characteristics for identifying hazardous wastes. The Commonwealth's regulations as referenced above are equivalent to and no less stringent than the Federal requirements found at 40 C.F.R. Part 261. Some regulatory differences are cited below:

- i.) The Commonwealth does not exclude mixtures of solid waste and one or more hazardous wastes when the mixture consists of wastewater and its discharge is subject to either §402 or §307(b) of the Clean Water Act.
- ii.) The Commonwealth conditionally excludes waste scrap leather from a hazardous waste classification in accordance with the Federal program. In contrast, the Commonwealth does not recognize the additional Federal chrome waste exclusions in 40 C.F.R. §261.4(6)(6).
- c.) Generators and Transporters of Hazardous Waste (Sections 75.262 and 75.263):

Section 75.262 comprises the requirements for generators of hazardous wastes. These regulations cover all generators that are regulated by the Federal program. The regulations specify that generators must comply with reporting and record keeping requirements, EPA uniform manifest requirements, pre-transport requirements (i.e.: packaging, labelling, marking, and placarding), and intrastate, interstate, and international off-site shipping requirements. The Commonwealth's regulations as referenced above are equivalent to and no less stringent than the Federal requirements found at 40 C.F.R. Part 262. Some regulatory differences are cited below:

- i.) Generators within the Commonwealth must designate on the manifest one facility which is permitted to handle the waste described on the manifest. If the transporter is unable to deliver the hazardous waste to the designated facility, the generator shall instruct the transporter to return the waste. In contrast, the Federal program allows the generator to designate an alternate facility on the manifest; also, if the transporter is unable to deliver the hazardous waste to the designated or alternate facility, the generator can either designate another facility or instruct the transporter to return the waste.
- ii.) In the Commonwealth, a generator who accumulates hazardous waste for more than ninety (90) days - even if the generator is a less than ninety (90) day storage facility handling wastes beyond the allowable period due to unforeseen, temporary, and uncontrollable circumstances is subject to the facility standards of Sections 75.264 and 75.265. In contrast, the Federal program authorizes a discretionary thirty (30) day extension.
- iii.) Generators within the Commonwealth must retain certain records for twenty years (20) and report specific information on

a quarterly basis; captive facilities report on an annual basis. In contract, the Federal program requires record retention for three (3) years reporting on a biennial basis.

Section 75.263 comprises the requirements for transporters of hazardous wastes. These regulations cover all transporters that are regulated by the Federal program. The regulations specify that transporters must contact the Commonwealth and obtain an EPA identification number prior to accepting hazardous waste for transport. Transporters must also comply with record keeping requirements, EPA uniform manifest requirements, shipping paper requirements (for bulk shipments by rail or water) and immediate action and clean up requirements in conjunction with hazardous waste discharges. The Commonwealth's regulations as referenced above are equivalent to and no less stringent than the Federal requirements found at 40 C.F.R. Part 263. Some regulatory differences are cited below:

- i.) Commonwealth transporters who store containerized hazardous waste for periods not greater than 3 days, or not greater than 5 days when the transporter and transfer facility have in-transit storage preparedness, prevention, and contingency plans, are not subject to regulation as facilities under Sections 75.264 through 75.282. In contrast, the Federal program allows storage at a transfer facility for up to 10 days.
- ii. As noted in the Section 75.262 discussion, an alternate facility may not be designated on the manifest.

d.) TSD Requirements for Interim Status Facilities (Section 75.265(a) through (y)):

In accordance with the Federal program, Commonwealth facilities must have been in existence on November 19, 1980 to qualify as interim status facilities. These hazardous waste management facilities are required to receive HWM permits from the Commonwealth and must comply with the interim status standards under the section referenced above until a permit is issued. Section 75.265(a) through (y) identifies the following requirements for interim status facilities: general facility standards, preparedness and prevention requirements, contingency plan and emergency procedures, manifest system requirements, recordkeeping and reporting requirements, groundwater monitoring requirements, closure and post-closure requirements, financial requirements and specific process requirements. The Commonwealth's regulations as referenced above are equivalent to and no less stringent than the Federal requirements found at 40 C.F.R. Part 265. Some regulatory differences are cited below:

- i.) Unmanifested waste cannot be transported within the Commonwealth. Therefore, the Commonwealth does not have an unmanifested waste report requirement as found in the Federal program.

e.) Permitting and Permit Applications (Sections 75.265(z) and 75.270 through 75.27

The Commonwealth requires that all owners and operators of hazardous waste management facilities contact the Commonwealth and obtain an EPA identification number before commencing treatment, storage or disposal of hazardous wastes; in addition, these owners and operators must obtain HWM permits. The Commonwealth prohibits the operation of any hazardous waste management facility without such a permit except that the Commonwealth may authorize owners and operators of any facility which would qualify for interim status to remain in operation until a final decision is made on the permit application.

The regulatory sections referenced above contain general permitting information including the permit application procedure, permit conditions, permit modification procedures permit termination procedures, permit duration, permits by rule, interim status qualification, interim status operation, interim status termination, and general Commonwealth program requirements (i.e., draft permits, fact sheets, public notices, public comments, and public hearings).

The Commonwealth's regulations referenced above are equivalent to and no less stringent than the Federal requirements found at 40 C.F.R. Parts 270 and 124. Some regulatory differences are cited below:

- i.) The Commonwealth will not issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit for all existing units at the facility. In contrast, the Federal program provides for the permitting of individual units.
- ii.) The Commonwealth lists the contents of a Part B application within Pennsylvania's Hazardous Waste TSD Application Checklist. This checklist is found in Appendix XV and has the legal force of regulations equivalent to the Federal regulations at 40 C.F.R. §§270.15 through 270.21.
- iii.) A permit is not transferable or assignable to another person or municipality. In contrast, the Federal program allows the transfer of permits by major or minor modification of the permit or by revocation and reissuance of the permit.
- iv.) The Commonwealth does not grant emergency permits as provided for in the Federal program. As an alternative, the Commonwealth will waive the HWM permit requirements for treatment, cleanup, or containment activities if it finds these actions were taken during an immediate response to an imminent and substantial threat of a discharge of hazardous waste.
- v.) Changes in the type of hazardous wastes handled, design capacity, or treatment, storage, or disposal processes at

interim status HWM facilities are not allowed. In contrast, the Federal program allows various changes during interim status if the owner or operator submits a revised Part A permit application prior to such change.

- vi.) The Commonwealth has reporting regulations requiring the permittee to give advance notice to the Department of any planned changes at the facility that may result in noncompliance with permit requirements. Upon notification the Department conducts inspections at each stage of construction and a registered professional engineer must certify the completed construction. These requirements are found at §§75.275(b)(20) and 75.264(e)(6) and are comparable to the Federal requirements at 40 C.F.R. §270.30(1)(2)(ii)(A) and (B). The Commonwealth does not have a provision waiving inspection by the Department if the Department fails to act.

f.) TSD Requirements for Permitted Facilities (Section 75.264):

Section 75.264 identifies operating requirements for permitted facilities. Note that new facilities cannot be constructed and cannot receive hazardous waste until the facility has received a HWM permit in accordance with Section 75.264 requirements. The Commonwealth's regulations as referenced above are equivalent to and no less stringent than the Federal requirements found at 40 C.F.R. Part 264. Some regulatory differences are cited below:

- i.) The Commonwealth's regulations do not contain seismic location standards (as included in the Federal program) since Pennsylvania is not located in an area affected by faults.
- ii.) Although the Commonwealth's groundwater monitoring program is not patterned after the Federal program, the Commonwealth's regulations contain all the requirements within the Federal program. The Commonwealth's background values, detection dam, groundwater quality assessment program, and abatement plan are comparable to the Federal program's concentration limits, detection monitoring program, compliance monitoring program, and correction action program, respectively.

g.) Notification of Hazardous Waste Activity (Section 75.267)

Section 75.267 applies to any person or municipality who generates, transports, stores, treats, or disposes of hazardous waste within the Commonwealth. Procedures and time limitations for notification are established. Upon receiving notification, the Department assigns an EPA identification number.

h.) Financial Responsibility Requirements for Hazardous Waste Storage, Treatment and Disposal Facilities (Section 75.311-330):

Financial Responsibility Regulations were adopted by the Environmental Quality Board as final regulations in December, 1984 and became effective March 9, 1985 with publication in the Pennsylvania Bulletin. (See Appendix V)

The regulations establish standards for demonstrating financial responsibility to operate a hazardous waste storage, treatment and disposal facility by requiring: (1) surety or collateral bond guarantees for the operation, closure and post-closure care of hazardous waste facilities, and (2) liability insurance coverage for personal injury and property damage arising from operation of hazardous waste facilities.

The regulations were adopted for two reasons. First, the regulations would fulfill the requirements of Sections 502(e), 505 and 506 of the Solid Waste Management Act (35 P.S. §§6018.502(e), 6018.505 and 6018.506). Second, the regulations would meet minimum Federal requirements for the Commonwealth to receive primary enforcement responsibility of the hazardous waste regulatory program under the Resource Conservation and Recovery Act.

Section 502(e) of the Act requires that each permit applicant certify that the operator has in force a public liability insurance policy in an amount to be prescribed by rules and regulations. Consistent with the Federal requirements, the Department adopted Sections 75.311 through 75.336 of the regulations governing liability insurance requirements for hazardous waste storage, treatment and disposal facilities. Section 75.332 requires facility operators to have in force certain minimum amounts of liability insurance for sudden and non-sudden accidental occurrences arising out of operation of the facility. Section 75.333 provides that insurance coverage extends from the initiation of hazardous waste activities until the effective date of closure certification, unless the Department otherwise determines that the facility presents a significant risk to the public health, safety or welfare and the environment in which case it is extended. The insurance regulations also establish the proof of liability insurance required by the Department (§75.334), the conditions for requiring additional amounts of insurance coverage (§75.335), and the conditions for termination of insurance coverage (§75.336).

Section 505 of the Act requires that each operator shall file with the Department a bond sufficient to cover the total estimated cost to the Commonwealth of completing final closure of the hazardous waste facility, including such measures as may be necessary to prevent adverse effects on the environment. Consistent with the Federal requirements, the Department proposed Sections 75.311 through 75.330 of the regulations. Section 75.311 establishes the requirement for all new and existing hazardous waste facilities to file a bond. Section 75.312 prescribes the terms and conditions of the bond forms to be furnished to operators by the Department. The regulations provide for the use of both surety and collateral bonds, including the

deposit of certificates of deposit, government securities and letters of credit (§§75.313 - 75.315). The regulations also establish the basis on which the Department will rely in making the bond amount determination (§75.318), including information supplied by the permittee or the cost of closure and post-closure care (§75.319). Liability on the bond extends for the duration of the operation, plus thirty years of post-closure activities, plus one year thereafter, except that water pollution liability shall extend for ten years after final closure (§75.323). The regulations establish the conditions for bond release (§75.325), and ensure public notification for each major action affecting the liability of a hazardous waste facility (§75.327). The regulations establish standards and procedures for the forfeiture of bond amounts (§75.328). Finally, Section 75.329 establishes certain dates and responsibilities of permittees and financial institutions in the case of either party's ability to carry on business within the Commonwealth.

The DER bonding forms, which have been approved by the Environmental Protection Agency, and the financial responsibility worksheets (used for bond calculation) are available from the Department upon request (See Appendix XXX).

2.) Comparison of U.S. Environmental Protection Agency/Pennsylvania Department of Environmental Resources Programs:

The Department of Environmental Resources regulates a larger hazardous waste universe than the Environmental Protection Agency. The Department accepted the Environmental Protection Agency's notifications and Part A permit applications in accordance with Chapter 75.265(z)(4) of the Department's regulations. In addition, the DER also regulates certain facilities that are considered to re-use, recycle, or reclaim hazardous waste, or are permit-by-rule facilities, and are thereby excluded from the Federal program. A more detailed discussion of the differences between the DER/EPA regulated hazardous waste facility universe is found in Section IV.C., herein.

The Department of Environmental Resources believes that its Hazardous Waste Management Program is equivalent, consistent, and, in fact, broader in scope and more stringent than the Federal RCRA program. The term "broader in scope" means that more entities are regulated by the DER than the EPA. The term "more stringent" means that the magnitude of regulation is greater in the Pennsylvania program than in the Federal program (i.e.: when the same entity is regulated by both the State and Federal agencies, the standards imposed by the DER are greater). A line-by-line comparison of DER regulations to Federal Standards may be found in Appendix XIII (via the Regulatory checklists).

Areas in which the Pennsylvania program is more stringent than the Federal program, are detailed as follows:

1. Pennsylvania requires that all recycled, reused or reclaimed wastes must be transported with a manifest, and the generators of these wastes must notify and submit quarterly reports.

2. Pennsylvania requires that total chromium must be considered rather than hexavalent chromium in certain waste listings as specified in Appendix VII (Basis for Listing Hazardous Waste) of Chapter 75.261.
3. The Pennsylvania manifest must be used for all intrastate shipments and for all interstate shipments to states which do not have a State Manifest System.
4. The Pennsylvania Manifest does not allow designation of an alternate TSD facility, as does the Federal program.
5. Pennsylvania requires that generators and TSD's (commercial) must submit quarterly reports rather than biannual reports.
6. Pennsylvania requires that a hazardous waste disposal plan may be required by the Department for generators to evaluate alternatives to landfill disposal.
7. For spills at generator sites, Pennsylvania requires that quantities of hazardous waste spilled or discharged onsite must be reported as set forth in §75.262(m), Table 1. Quantities below these values need not be reported.
8. Pennsylvania requires that transporters of hazardous waste in Pennsylvania are required to be licensed and to post a bond.
9. Transporters in Pennsylvania must also submit a contingency plan.
10. Variances to Pennsylvania regulations governing landfills may be requested if the variance will not result in less stringent requirements than those imposed by the Environmental Protection Agency.
11. Pennsylvania requires each new waste to be treated, stored or disposed of by a TSD facility which must be approved by the Department.
12. Liner compatibility testing is required by Pennsylvania regulation.
13. Pennsylvania requires that each phase of construction of a TSD facility must be inspected by the Department, and a schedule of construction must be submitted. Upon completion of construction, all work must be certified by a registered P.E. in accordance with §75.264(e)(6).
14. Pennsylvania ground-water monitoring regulations require that a facility move immediately into an assessment mode if contamination is found in the normal ground-water monitoring program. If the assessment shows that the facility caused the problem, then an abatement plan must be submitted and implemented. In contrast, the Environmental Protection Agency may modify the permit by setting alternate concentration limits (ACL's) to allow for the contamination.

15. Pennsylvania has set limits on the total maximum container height and width for container storage areas. It has also set minimum aisle space standards.
16. Pennsylvania requires that all surface impoundments must be double lined. Also many specific design standards are required by Pennsylvania which the Environmental Protection Agency does not have.
17. Pennsylvania requires that surface impoundments used for disposal must be equipped with a leachate collection system and designed and operated very similarly to landfills. They must also have treatment facilities designed to meet minimum standards specified in the regulations.
18. Pennsylvania regulations require specific isolation distances between the liner and ground-water table for surface impoundments, waste piles, landfills and land treatment facilities. (The Environmental Protection Agency only requires this for land treatment.)
19. Pennsylvania prohibits crops to be used for direct human consumption to be grown on land treatment facilities.
20. Like surface impoundment regulations, landfill regulations in Pennsylvania have very similar design standards which are more detailed and stringent than the Environmental Protection Agency regulations.
21. Pennsylvania requires more detailed information on the facility design to be submitted with the permit application than the Environmental Protection Agency.
22. Pennsylvania has a fee schedule for submitting applications for permits.
23. Pennsylvania requires a compliance history and an environmental assessment the submittal of with each application.
24. At the current time, Pennsylvania does not allow the corporate "Financial Test" and the formation of trust funds for closure bonds. Additionally, coverage required for sudden and non-sudden liability is greater in Pennsylvania standards.

C. Other Statutes: (See Appendix II)

Coordination of Act 97 "The Pennsylvania Solid Waste Management Act" with the statutes described herein is also discussed in Section III. Copies of the Clean Streams Law and Air Pollution Control Act may be found in Appendix II.

1.) Clean Streams Law:

The Clean Streams law is enforced primarily by the Bureau of Water Quality Management. This law interfaces with the hazardous waste program in that it requires NPDES permits for industrial waste discharges,

and "Part II" permits for operation of industrial waste treatment facilities. "Permit-by-Rule" and further program coordinations between the Bureau of Solid Waste Management and the Bureau of Water Quality Management are discussed in detail in Section III.F. of this program description.

2.) Air Pollution Control Act:

The Air Pollution Control Act is enforced primarily by the Bureau of Air Quality Control. Its purpose is to provide for the protection of the health, general welfare and property of the people of the Commonwealth by the control, abatement reduction and prevention of the pollution of the air by smokes, dusts, fumes, gases, odors, mists, vapors, pollens and similar matter, or any combination thereof; to impose certain powers and duties on the Department of Environmental Resources, the Environmental Quality Board and the Environmental Hearing Board; to establish procedures for the protection of health and public safety during emergency conditions; to create a stationary air contamination source permit system; to provide additional remedies for abating air pollution; to reserve powers to local political subdivisions, and to define the relationship between this act and the ordinances, resolutions and regulations of counties, cities, boroughs, towns and townships; to impose Penalties for violation of this act; to provide for the power to enjoin violations of this act; and to confer upon persons aggrieved certain rights and remedies.

This law interfaces with the Hazardous Waste program in that it requires the Bureau of Air Quality Control permits for incinerators of Hazardous Waste. A description of the coordination which occurs between the Air Pollution Control Act and the Pennsylvania Solid Waste Management Act (1980) and the Bureau of Air Quality Control and the Bureau of Solid Waste Management, is further described in Section III.F. of this Program Description.

3.) Rules and Regulations of the Pennsylvania Department of Transportation:

The Pennsylvania Department of Transportation's (PennDOT) Hazardous Substances Division cooperates with the Department of Environmental Resources' Bureau of Solid Waste Management in several ways. DER notifies PennDOT of applicants for Hazardous Waste Transporter Licenses. If PennDOT has knowledge that a given transporter has a significant history of non-compliance with DOT regulations, they will so inform DER. The PennDOT division also can provide us with interpretations of DOT regulations, certain reports, and other documents which aid DER in evaluating compliance by transporter license applicants or licensees. In the past, they have also conducted inspections of license applicants to evaluate the applicant's equipment.

D. Pennsylvania Hazardous Waste Regulatory Development Process:

During the course of review of the Commonwealth's applications for program authorization, the Environmental Protection Agency identified those Federal regulations for which equivalent State regulations did not exist. The regulations now in effect are equivalent Pennsylvania rules for those Federal regulations identified by Environmental Protection Agency not previously included in the

Commonwealth's hazardous waste program (Pkg #1). Further changes to conform the State regulations to Federal requirements enacted after the proposal of these regulations were adopted by the EQB as proposed regulations on December 18, 1984. Upon final adoption of this second set of conforming regulations (Pkg. #2) (expected to occur in late September/early October 1985), Pennsylvania will become eligible for final authorization.

After EQB approval as proposed rule, both the Governor's Office and the Attorney General's Office must approve the regulations before they can be published in the Pennsylvania Bulletin. These two reviews and publication in the Pennsylvania Bulletin normally take an additional four months.

Thirty days are allowed for public comment. If requested, a public hearing can also be held. DER then reviews and considers the public comment. The proposed regulations are amended accordingly and a response to public comment is included with the final rule.

After the rules are amended the process begins again allowing for informal reviews, EQB action, Governor's Office and Attorney General's Office review and finally publication in the Pennsylvania Bulletin as final regulations. The whole process normally takes eight to twelve months, but can be lengthened in cases of controversial regulations.

A flow chart, illustrating the regulatory development process, is found in Appendix IV.

III. DER Structure, Organization, and Staff Resources.

A. Organizational Structure - DER and the Bureau of Solid Waste Management:

The organizational structure of the Department of Environmental Resources is detailed in Appendix VI, Figure 1, and the organizational structure of the Bureau of Solid Waste Management is detailed in Appendix VI, Figure 2. The organization of the Division of Compliance and Monitoring and Division of Facilities Management are detailed in Appendix VI, Figures 3 and 4.

Please note that these appendices reflect the projected (and pending) Bureau reorganization, and are subject to change.

B. Lead Agency for Hazardous Waste Management Program Development and Implementation:

The Bureau of Solid Waste Management within the DER is the lead agency in the Commonwealth of Pennsylvania regarding development and implementation of the Commonwealth's Hazardous Waste (RCRA) Management program. Although nearly all the work to be done in this program will be accomplished by this Bureau, other bureaus within the Department and other Commonwealth agencies may become involved in RCRA functions, either to provide technical support or as a result of regulatory interface. The following sections describe the Bureau of Solid Waste Management, and its internal coordination, as well as coordination between the Bureau of Solid Waste Management and other bureaus within the Department.

C. Bureau of Solid Waste Management:

1.) Staff Description:

The Bureau of Solid Waste Management staff, who will be engaged in carrying out the Commonwealth's program of (RCRA) hazardous waste management, is detailed in Appendix VII. All Bureau staff, including Central and Regional office technical, administrative, and clerical staff, perform duties for the RCRA hazardous waste program and such duties comprise 71 man-years of effort. 50 man-years are federally funded, while 21 man-years represent state matching funds. Although only 71 man years are funded by the federal grant and dedicated state match, the Department shows that its personnel have produced 120 man-years of work effort. This productively maybe due, in part, to involvement of Department personnel not funded by RCRA monies in RCRA activities due to the high priority status placed on such activities. It also may represent increased productively on the part of RCRA funded employees due to increased training, guidance and experience in the RCRA program since its beginnings in Pennsylvania in 1980.

Appendix VIII details the breakdown of personnel into Central and Regional office work locations.

2.) Coordination between Bureau of Solid Waste Management: Central Office and Regional Offices (for general Central/Regional Office organization/chain of command, also reference Appendix VI):

Central office personnel in both the Division of Compliance and Monitoring and the Division of Facilities Management are committed to the RCRA program. Generally, personnel in these divisions develop program elements, guidelines and regulations, set Bureau goals and priorities, and provide regional program implementation oversight. The appendices referenced show the actual number and type of employees in each Division, as well as the actual responsibilities of each Division. Personnel best qualified to develop/coordinate division responsibilities will most likely function in those capacities (ie: Engineers in the Division of Facilities Management - Central Office will oversee Engineering reviews of Part B permit applications conducted by Regional Engineers).

In FY 85, a Central Office Program Oversight/Quality Assurance team was established to facilitate regional hazardous waste permitting efforts. Headed by the Hazardous Waste Facilities Management Section Chief, each region has been assigned a Regional Liaison from the Central office staff. The primary function of the team was to review draft permit for quality and consistency and to provide technical assistance. As the permit program has developed, the liaison have become more involved in representing the regions in grant negotiations and policy issues. The Program Oversight/Quality Assurance program is discussed in detail in Appendix XXII.

Regional office personnel are divided into two sections - Facilities and Operations. Personnel in the Facilities section are composed of a Facilities Supervisor, Engineers, Hydrogeologists, Soil Scientists, Chemists, and Facilities Specialists. These persons conduct all technical permit and plan reviews in the hazardous waste program, including examination of the financial instruments, ground water assessments, and in depth closure/post closure plan reviews. These persons also assist inspectors when professional scientific expertise/opinions are required. Facilities Chiefs serve a supervisory/management function. Facilities specialists serve as assistants to the Facilities Chiefs, and specifically review bonding proposals and operating plans, and conduct the environmental assessment process.

Personnel in the Operations section include Operations Chiefs and Field Supervisors, Solid Waste Specialists (Inspectors) and Compliance Specialists. Solid Waste Specialists conduct inspections, assist in preparation of legal instruments, conduct record reviews, etc. Each Solid Waste Specialist is assigned a field area for which he/she is responsible. Compliance specialists (usually one per regional office) work specifically with the development and coordination of all litigation in the region. This person prepares legal documents, compliance and monitoring evaluations, enforcement action reports, etc. Operations Chiefs/Field Supervisors serve a supervisory/management function.

By the end of FY 85, all six regions are also expected to have a Hazardous Waste Coordinator. This person will be directly supervised by the Regional Manager or Facilities Chief, and maintains records of all enforcement/compliance and permitting activities specific to the Hazardous Waste Management Program in that region.

As discussed in the preceding paragraphs, Central Office and Regional Offices personnel in the Bureau of Solid Waste Management do not serve the same function. A decentralized program which allows regional administrative and technical staff to accomplish permit reviews, inspection monitoring and enforcement activities and to assist industry, local government and private citizens has been established. A centralized program to establish permitting priorities, policies and procedures and to oversee the permitting inspection, surveillance, monitoring and enforcement programs has also been established.

The "Chain of Command" in Central Office is as follows: Department Secretary - Deputy Secretary for Environmental Protection - Bureau (of Solid Waste Management) Director - Division Chief - Section Chief - technical or program specialist staff members. The Regional Office "Chain of Command" is generally as follows: Regional Environmental Protection Director - Solid Waste Manager - Section (Facilities or Operations) Chief - technical or operations staff members. The Regional E.P. director answers to the Deputy Secretary in Central Office. The Bureau Director directly transmits Bureau Policy and Procedure and program priorities/guidance to Regional Managers for implementation by regional staff. Other Central Office Bureau personnel work directly with regional staff in assisting/overseeing RCRA permitting and compliance activities. The Bureau Director, who is ultimately responsible for RCRA program development and management, is not the immediate supervisor of the Solid Waste Manager, who is the person responsible for regional RCRA program implementation action. However, both persons, ultimately, answer to the same authority - the Deputy Secretary. This convoluted chain-of-command between the Bureaus Central and Regional office staff is established in such a way as to facilitate conflict resolution and provide for effective interface with other Bureaus, with the Deputy Secretary as the focal point. Directives, policies and procedures from or through the Deputy Secretary's office must be adhered to by both regional and central office staff.

D. Bureau of Solid Waste Management Staff and Financial Resources Committed to RCRA Implementation:

1.) Staff Resources:

About 80% of DER's solid waste management resources have been devoted to hazardous waste, which makes up only about 12% of all solid wastes generated in the State. This emphasis has pulled resources from our efforts to manage municipal and residual wastes. This emphasis has been necessary because of the seriousness of our hazardous waste problem, the need to devote substantial resources to the technical review of hazardous waste permit applications, the public demand for a significant inspection and enforcement program, and the Federal requirements of the Environmental Protection Agency.

Gaining final authorization at the Federal level for our hazardous waste management program has been an important priority of the Department. Environmental Protection Agency funds are a substantial source of

resources for our hazardous waste management program. Pennsylvania currently receives approximately \$2.4 million from the Federal government to support staff to operate its hazardous waste management program.

The Department has had to cope with two key issues in maintaining authorization for its RCRA program: allocation of manpower to meet the permitting requirements of Environmental Protection Agency while maintaining an adequate inspection program; and, adopting hazardous waste management regulations which conform to Federal law.

The Environmental Protection Agency has placed a major emphasis on permitting new hazardous waste management facilities. The Commonwealth, however, has always placed a high emphasis on inspection and monitoring of hazardous waste activities. Pennsylvania's citizens have supported this emphasis and called for increased inspections. Such a highly visible inspection and enforcement effort is necessary to ensure the public that the Commonwealth is taking effective steps to protect public health. Public credibility of our inspection and enforcement activities will certainly be a key effort in overcoming public opposition to the siting of new, needed facilities.

In Appendix VIII, FY 85 RCRA Grant funding of the hazardous waste program elements and personnel commitments/costs are further detailed. Projected staff needs are also reflected on charts in this Appendix. Section V.B.2.f. herein, and Appendix XX, describe the FY 85 Permit Program and Compliance and Enforcement Program Plans and Resources.

2.) Budget for the Pennsylvania Hazardous Waste Management Program.

a. Actual Costs and Projections:

An itemization of the cost to administer Pennsylvania's base hazardous waste management (RCRA) program, including the cost of personnel, technical, and administrative support, but not including cost to administer the municipal or residual waste program, is itemized in the following table. Please note that this budget reflects only the base hazardous waste (RCRA) program, and does not consider any unanticipated or potential funding sources which may become available in the future.

RCRA Program Elements	Actual Budget FY 83	Actual Budget FY 84	Current Budget FY 85	Projected Budget FY 86	Projected Budget FY 87
Personnel	\$ 277,424	\$1,686,308	\$1,752,488	\$1,752,488	\$1,752,488
Fringe Benefits	487,337	633,047	666,751	666,751	666,751
Travel	112,119	138,000	145,000	145,000	145,000
Equipment	12,550	112,973	14,708	14,708	14,708
Supplies	51,875	100,000	105,000	105,000	105,000
Contracts	45,167	200,833	181,375	181,375	181,375
Construction					
Other	278,369	156,000	156,000	156,000	156,000
Indirect Cost	<u>191,102</u>	<u>194,972</u>	<u>200,851</u>	<u>200,851</u>	<u>200,851</u>
Federal Total	\$1,841,957	\$2,416,600	\$2,416,600	\$2,416,600	\$2,416,600
State Total	<u>613,986</u>	<u>805,533</u>	<u>805,553</u>	<u>805,553</u>	<u>805,553</u>
Total of State and Federal	\$2,455,943	\$3,222,133	\$3,222,133	\$3,222,133	\$3,222,133

*as stated previously, additional budget information for current budget FY 85 can be found in Appendices VIII and XI.

b. Financial Resources (base Pennsylvania Hazardous Waste (RCRA) Program)

<u>Actual</u>	<u>Federal</u>	<u>State</u>	<u>Total</u>
<u>FY 80</u>			
Subtitle C	\$ 866,753	\$288,918	\$1,155,671
Subtitle D	610,927	203,642	814,569
Total	<u>\$1,477,680</u>	<u>\$492,560</u>	<u>\$1,970,240</u>
<u>FY 81</u>			
Subtitle C	\$1,014,816	\$338,272	\$1,353,088
Subtitle D	762,900	254,300	1,017,200
Total	<u>\$1,777,716</u>	<u>\$592,572</u>	<u>\$2,370,288</u>
<u>FY 82</u>			
Subtitle C	\$2,275,152	\$758,384	\$3,033,536
<u>FY 83</u>			
Subtitle C	\$1,841,957	\$613,986	\$2,455,943
<u>FY 84</u>			
Subtitle C	\$2,416,600	\$805,533	\$3,222,133
<u>FY 85</u>			
Subtitle C	\$2,416,600	\$805,533	\$3,222,133
<u>Projected</u> (Based on HSWA)			
<u>FY 86</u>			
Subtitle C	* \$2,416,600	* \$805,533	* \$3,222,133
<u>FY 87</u>			
Subtitle C	* \$2,416,600	* \$805,533	* \$3,222,133

* These projections are extremely conservative, and do not consider potential funding sources which may become available to implement provisions of HSWA. In addition, no "cost of living" increases have been factored in - an increase of at least 5% should be anticipated each year. Also, the projected Federal budget leads one to believe that Federal funding of the Pennsylvania Program will increase over the next two years. Such speculation is also not included in these estimates.

E. Training:

The Department has provided in-house and out-service training for all of its employees involved in the Pennsylvania Hazardous Waste Management program in order to better implement RCRA goals. A list of some in-house training courses offered and the amount of funds expended on RCRA training of Department employees is found in Appendix IX. These courses are also offered to employees of other Bureaus and agencies which interface or become involved in the RCRA program.

F. Coordination Between Bureau of Solid Waste Management and other Agencies:

As stated in Section III.B., the Bureau of Solid Waste Management is the Commonwealth's lead agency for the Pennsylvania Hazardous Waste Management program. The section following will detail the coordination between this bureau and other interfacing agencies.

Permitting and enforcement activities taking place on the regional office level are coordinated by the Regional Environmental Protection director. Before the Bureau of Solid Waste Management begins permit application review or initiates an enforcement activity, notification of the project is circulated to all agencies which may require additional permits, approvals or information. The applicant is then notified by the EP Director of these additional responsibilities. The Bureau of Solid Waste Management permit may not be issued until these obligations are satisfied. All permits required are issued concurrently. Enforcement actions are coordinated between Regional Program Managers so that the resulting litigative tool reflects violations and abatement activities and penalties required by all laws violated.

Formal agreements between Bureaus and Policies and Procedures regarding inter Bureau coordination are developed in Central Office. The following sections illustrate the relationship that the Bureau of Solid Waste Management has developed with other agencies that may impact, or be impacted by, Pennsylvania's Hazardous Waste Management Program. These agreements, policies and procedures become standard practices across the State and are implemented uniformly by each Regional office:

1.) Bureau of Water Quality Management (Reference Appendix VI, Figure I)

In July, 1984, both Bureaus signed an agreement for coordinating permit reviews for hazardous waste leachate treatment facilities (see Appendix X). The guidelines were necessary for better permit and enforcement control and the elimination of duplicate permits for the same facility. The NPDES permit will be issued by Water Quality Management and the Water Quality Management Construction and Operation Permit for the leachate treatment facility will be issued by Solid Waste Management.

In March, 1982, both Bureaus agreed to procedural guidelines for certain hazardous waste facilities that could qualify for a Permit-by-Rule status. The procedure requires a coordinated review effort between the two Bureaus. Please reference the inter-bureau memoranda dated November 29, 1982 and July 6, 1984, addressing coordination between Bureau of Water Quality Management and Bureau of Solid Waste Management found in Appendix X.

2.) Bureau of Air Quality Control (Reference Appendix VI, Figure I).

In a Memorandum of Agreement (see Appendix III) signed by both Bureaus and in consideration of their previous experience in the review of incinerators, the Bureau of Air Quality Control has agreed to review the design and operational aspects, and to oversee the trial burns conducted on hazardous waste incinerators. The review is to consider the incinerator design, combustion performance, odor and noise requirements of Section 75.264(w), but not the waste handling requirements which are to be reviewed by Solid Waste Management. This review may result in the issuance or amendment of an Air Quality Permit (concurrent with issuance of the Bureau of Solid Waste Management hazardous waste permit), but would not necessitate issuance of an Air Quality Permit, if such a permit is not required by Chapter 127. If appropriate, the Air Quality Permit is to be amended with special operating conditions found necessary to maintain proper Destruction Removal Efficiency (DRE). A chart, describing the Bureau of Air Quality Control permit review process and a specimen Permit Form, are included in Appendix III. Where no Air Quality Permit or change in existing permits is required, the Bureau will prepare a written summary of their findings and recommendations for Solid Waste Management.

In either case, a Hazardous Waste Management permit will be issued by Solid Waste Management incorporating the Bureau of Air Quality Control conditions and recommendations. Since the Bureau of Air Quality Control will not issue a permit in all cases, the Bureau of Solid Waste Management will coordinate the Department's public notification activities. Local government officials are to be notified by the Regional Director in accordance with Department policy.

A description of BAQC personnel that will review hazardous waste incinerator permits is also found in Appendix III. These persons have received training in RCRA incinerator permit writing (EPA-Region III permit writers courses), and uniformly employ the "Guidance Manual for Hazardous Waste Incinerator Permits" and the "Engineering Handbook for Hazardous Waste Incineration", both EPA-RCRA publications, when writing permits. For example on October 22-24, 1984, DER sent select personnel within the Bureau of Air Quality Control to Philadelphia, PA for a training session entitled "Permitting Hazardous Waste Incinerators Under RCRA". This training session was conducted by W. L. O'Connell of Batelle Columbus Laboratories. The following DER offices were represented: Central Office (1) and Harrisburg (1), Meadville (1), Norristown (5), and Pittsburgh (2) Regional Offices. Bureau of Air Quality Control personnel were instructed on techniques to effectively evaluate hazardous waste incineration applications in accordance with the RCRA program. In 1983, a similar training session was held with representatives of the Bureau of Air Quality Control from the Wilkes Barre (1) and Williamsport (1) Regional Offices in attendance. BAQC Personnel will be continually educated in RCRA incinerator requirements, either by formal training, or as a result of coordination with the Bureau of Solid Waste Management -Central and Regional Offices.

In addition, the Bureau of Air Quality Control has established guidelines for their regional staff to insure that permit application review and writing

meets RCRA standards. A copy of these guidelines is included in Appendix III. The "chain of command" and Central/Regional Office coordination in the Bureau of Air Quality Control is similar to the system described for the Bureau of Solid Waste Management, detailed in Section III.C.2., herein. Permit Writing Policy/Procedure is coordinated between Bureaus at the Central Office level. Coordination of Permits written is orchestrated at the regional office level with Central office oversight.

The high degree of coordination between the bureau, the existence of detailed guidance between and within the Bureaus, the availability of RCRA technical permit writers guidance documents and training, and the continuing development of detailed procedures to effect smooth program management will guarantee high quality and consistent permits/permit conditions, which will meet or exceed RCRA standards.

3.) Bureau of Information Systems (Reference Appendix V, Figure I).

In conjunction with the Bureau of Information Systems, a management information system designed to assist the Department in the tracking of hazardous wastes was implemented in 1982. This system consists of information relating to companies involved in generating, transporting, treating, storing, and disposing of hazardous wastes, and compares the Part A (generator copy) of the manifest with the Part B (TSD) copy. The system produces manifest discrepancy reports for use in enforcement, statistical reports concerning waste types, amounts of wastes produced, and disposed of both in Pennsylvania and out of state. The statistical reports are used for planning purposes and to insure compliance with transporter license requirements. In addition, the Department has contracted with McDonnell Douglas Automation Company (McAuto) to develop "LUMIS," a comprehensive computer system which automates the permit application tracking, compliance monitoring, and enforcement functions of the hazardous waste program.

The system was partially funded by Environmental Protection Agency through Pennsylvania's RCRA Grant. The three major functions of the system are Application Tracking, Permit Inventory, Compliance Monitoring and Enforcement. The system tracks steps related to application review, contains a record of all TSD's, Generators, and Transporters and keeps a record of all inspections, violations and enforcement actions related to these facilities. The Bureau of Waste Management is attempting to perform as many of the RCRA reporting functions as possible by using LUMIS to cooperate with Environmental Protection Agency 85 reporting requirements by directly linking DER's computer with the Environmental Protection Agency's computer at Region III in Philadelphia.

4.) Bureau of Regulatory Counsel/Bureau of Litigation/Pennsylvania Office of the Attorney General.

The Bureau of Regulatory Counsel is the branch of the Department's Office of Chief Counsel which provides this Bureau with support in the development of regulations, policies and procedures which implement Act 97. Additionally, this Bureau provides legal opinions and interpretations of our law and regulations upon request. At this time,

several legal staff attorneys are committed to the Solid Waste Program, either part-time or full-time.

The Bureau of Litigation is the branch of the Office of Chief Counsel which handles development of litigative tools and advises/supports Bureau personnel when legal actions are brought against violators of Act 97. Three regional offices exist in Pittsburgh, Philadelphia and Harrisburg, serving respectively, Meadville/Pittsburgh, Norristown/Wilkes-Barre, Williamsport/Harrisburg Regional Offices of the Bureau of Solid Waste Management. The Bureau of Litigation has its Central Office headquartered in Harrisburg. Attorneys in each office are committed to the Department's Solid Waste program. Between April 2, 1984 and March 31, 1985, four (4) attorney work years (6,960 hours) have been devoted to the Pennsylvania Hazardous Waste Management (RCRA) program by the Office of Chief Counsel, although only one (1) attorney work-year is formally RCRA subsidized. The additional work hours are currently funded by state appropriations, due to the fact that more attorney time is required than the 1 work year appropriated under the RCRA grant. The need for more than 1 attorney is due to the great priority placed on Hazardous Waste Enforcement Activities in Pennsylvania, and the subsequent need for legal services and counsel. Substantiating this is the fact that 3 additional attorneys will be hired in January 1986 (using state appropriations) and dedicated solely in the Hazardous Waste Management program.

The Attorney General's Office becomes involved with the Hazardous Waste program as a result of coordination with the Toxic Waste Investigation and Prosecution Unit, which is described as an element of the Compliance Monitoring and Enforcement Program, described in Section V.D.7. herein.

5.) Bureau of Laboratories.

The Department's Bureau of Laboratories provides this Bureau with support in the following areas:

- a.) Analytical Services. The laboratory provides analytical services for the RCRA program. Most of the SW-846 methods are available for the RCRA program. Since the laboratory provides analytical support for all of the Department's regulatory programs, a wide variety of test methods are available to the RCRA program in addition to the specific methods provided in SW-846. It is anticipated that more screening protocols will be used in the future in order to cut analytical costs. An example of the use of such screening procedures can be found in the EPA proposed rule for Ground Water Testing and Monitoring Activities provided in FR VOL. 49, No. 191, OCT 1, 1984.
- b.) Consulting Services. The laboratory provides consulting services to the Bureau's field staff in the following areas:
 - i. Analytical parameter selection;
 - ii. Use of sample containers;
 - iii. Field and laboratory Quality Assurance/Quality Control activities;
 - iv. Interpretation of analytical results;
 - v. Use of field preservatives;

- vi. Sample shipment and logistics;
 - vii. Sample custody and chain-of-custody protocols;
 - viii. Scheduling of sampling projects and special analytical efforts;
and
 - ix. Program consulting specialists - specific laboratory personnel are assigned to act as the liaison person for each specific regulatory program.
- c.) Analyses Turnaround Times. Every effort is made in the Bureau of Laboratories to analyze samples and report the results in a timely and efficient manner. The specific turnaround time for a particular sample will be determined by the parameter requested, the type of sample (water, soil, etc.), the complexity of the matrix of the sample, and the priority assigned to the sample by the requesting Bureau. Requests for the priority handling of samples should be made either through the appropriate Division Chief or the Bureau Director.

The Bureau of Solid Waste Management also utilizes contractors for special investigations, sampling efforts, analytical efforts and studies. This expertise is used to supplement the Bureau's existing resources and to provide expertise when it is not available within the Department. The Bureau also utilizes resources and expertise found elsewhere within the Department of Environmental Resources, when necessary, for certain hazardous waste projects.

Laboratory liaison is the responsibility of the Bureau of Solid Waste Management Quality Assurance Officer. The QA Officer is a member of the Bureau of Laboratory's Quality Assurance Task Force and participates in regularly-scheduled and special meetings of this group. The Task Force is responsible for developing quality assurance/quality control guidelines, procedures and protocols for state-wide/program-wide implementation. The efforts of this Task Force address both field and laboratory quality assurance activities. The Bureau QA Officer is responsible for the overall coordination of the Bureau's quality assurance efforts.

Field quality assurance coordination with the Bureau of Laboratories is another liaison function involving inter-Bureau coordination. The Bureau of Solid Waste Management's Sampling Quality Control Officers have overall responsibility for the implementation of the field quality assurance requirements for the Bureau. Coordination with the Bureau of Laboratories is achieved in the following way.

The Bureau Quality Assurance Officer evaluates the results of the field-generated performance audits. Results which are unacceptable to the Bureau are discussed with the Laboratory Quality Assurance Officer. A joint review of Laboratory quality control procedures and/or field sampling procedures is made, and the appropriate corrective action is taken. The Bureau of Laboratories is subject to a laboratory system audit which is performed annually. The Bureau of Solid Waste Management's Quality Assurance Officer also acts as overall coordinator/troubleshooter for any type of laboratory/field problem. These on-going liaison activities are assigned within the Bureau's Division of Compliance and Monitoring. A complete discussion of the Department's Quality Assurance Program may be found in Section V.F., herein, and in Appendix XXXII.

6.) CERCLA/Superfund (Reference Appendix VI, Figure 5).

Currently, the Bureau of Solid Waste Management also maintains personnel to implement/oversee Emergency and Remedial Actions at abandoned Hazardous Waste sites under CERCLA. It is expected that this group will form the Division of Emergency and Remedial Response, which is illustrated in Appendix VI, Figure 5.

Personnel employed in the Division of Emergency and Remedial Response, and regional staff who are committed to CERCLA activities, are, in most cases, persons who were originally employed, in some capacity, to assist in the development or implementation of the Pennsylvania Hazardous Waste program. Therefore, these persons are well aware of RCRA requirements, since their commitment to sole CERCLA activities is extremely recent (less than six months). This fact, and the fact that RCRA and CERCLA personnel work in close professional and physical proximity in the Regional and Central offices, assures good communication, coordination, and inter-program understanding.

CERCLA and RCRA activities interface in two specific areas, at the present time, in the Commonwealth. Primarily, CERCLA personnel are aware that clean-up activities (i.e.: disposal of hazardous waste generated by a spill, or remedial action plan) must comply with RCRA standards (i.e.: disposal at a site with a hazardous waste permit which will allow disposal of the waste in question). Prior to approval of CERCLA related plans, project managers consult with hazardous waste permitting/enforcement personnel to assure their satisfaction. Comments are considered and incorporated as required.

Secondarily, Act 97, Section 503 provides that persons with unsuitable compliance histories, or outstanding violations of any Pennsylvania Environmental Statute may not be issued a permit prior to rectification of their compliance status. Therefore, if a RCRA permit applicant is also responsible for a Superfund site (anywhere in Pennsylvania), the permit may not be issued until the Superfund issue is brought into compliance. In this case, RCRA permit writers coordinate with CERCLA personnel prior to any permit issuance.

7.) Environmental Assessment Process.

Since July of 1980, The Bureau of Solid Waste Management has implemented the Environmental Assessment Process (EAP), which further coordinates permit projects with bureaus having intrinsic environmental interests. A copy of the "Module #9" is included in Appendix XV, showing all agencies involved. (The EAP is the predecessor of the Environmental Siting Criteria, which is discussed in Section I.C., herein.) Generally, EAP agencies which show interest in permit projects are given the opportunity to mitigate their concerns with the applicant. If mitigation is possible, the permit process may continue. If not, the applicant can be given an opportunity to show that significant economic/social benefits exist which outweigh potential environmental impacts. If such benefits are not proven, no permit may be issued.

Environmental assessment reviews of permit applications are in response to the requirements of Article I, Section 27 of the Pennsylvania Constitution (the "Environmental Rights Amendment").

IV. Pennsylvania Universe of (RCRA) Regulated Facilities

A. Current Hazardous Waste Generation:

Pennsylvania's Hazardous Waste Program must effectively control the current generation, treatment, and safe disposal of hazardous wastes. At the same time, it must also address the threats to public health and safety from improper disposal practices of the past at inactive and abandoned waste sites.

The Department estimates that Pennsylvania industries generate about 6 million tons of hazardous waste each year. The primary metals industry is the largest generator in the State (53%), with the chemical industry the second largest generator (30%). Overall, Pennsylvania is estimated to be the third largest producer of hazardous waste among the states.

Most of Pennsylvania's hazardous waste (about 80%) is treated or disposed on-site by the industries that generate it. Much of this is aqueous liquid wastes, which can be treated to reduce water content and to concentrate the hazardous constituents in a sludge that is later disposed.

About one million tons of hazardous waste (20% of Pennsylvania's total) is treated or disposed at off-site commercial facilities. Currently, about 145,000 tons (14% of off-site shipments) are exported to commercial treatment or disposal facilities in other states. These exports go to sites in as many as twenty-five different states and involve greater costs and uncertainties for Pennsylvania industries.

Increasingly, Pennsylvania industries have become concerned with the costs associated with their hazardous wastes. They are concerned with increasing short-term costs involving transportation and higher standards for treatment and disposal facilities. They are also aware of the long-term liabilities of improper treatment and disposal which have led to larger costs for clean up and repair of damages.

B. Estimated Number of Generators, Transporters, and TSD Facilities in Pennsylvania:

At the current time, it is estimated that approximately 2,000 generators, 250 transporters, and 370 TSD facilities exist in Pennsylvania. The status of TSD facility permit applications as of February 1985 is detailed by the "milestone" chart in Appendix XII. For more detailed information regarding these elements of the Pennsylvania hazardous waste program, please reference Section V, herein.

In addition, Pennsylvania's statute required that all transporters obtain a license by July 7, 1982. More than 500 applications were received before that time from transporters from as many as 27 different states. Bonds totalling more than \$8 million and insurance and other requirements were assessed. About one hundred twenty-five licenses were denied and about 175 applicants withdrew from the licensing system because they could not or would not meet Pennsylvania's requirements. Pennsylvania presently licenses in-state and out-of-state transporters.

C. Comparison of Regulated Hazardous Waste Facility Universes:

1.) Between 1980 and 1985 in Pennsylvania

Between 1980 and the present time, the Pennsylvania Hazardous Waste facility universe has undergone significant modification. For example, over 500 potential treatment/storage/disposal facility operators were originally requested by the Department, to submit hazardous waste permit applications. Approximately 175 such permit applications were actually submitted to the Department, and 146 of these are currently under active review by the Department (although the Department acknowledges the existence of approximately 370 regulated treatment/storage/disposal facilities in Pennsylvania).

There are a number of reasons for these apparent inconsistencies and changes. For example, upon enactment of RCRA, and of Act 97 in 1980, many persons generating and managing industrial and hazardous waste were not certain which (if any) of these activities were regulated by the new laws. Subsequently, many of these persons become "protective filers", notifying the Department of many activities which were not regulated by RCRA or Act 97 rather than risk potential violation of the law due to lack of notification of some element of hazardous waste activity. Before many of these "protective filers" were withdrawn from the universe of hazardous waste facilities, the Department requested them to submit hazardous waste permit applications (based solely on the fact that the company notified as such, correctly or otherwise). Following this, many "protective filers" formally withdrew from the system. In addition, many filers who were legitimately part of the universe (the laws did, in fact, apply to their activities) determined that they did not wish to continue to pursue hazardous waste permits, and also withdrew from the system. These companies were then required to close their hazardous waste facilities. The remaining balance make up the 175 entities who submitted permit applications. 146 are still actively pursuing permits, while 29 have since withdrawn their permit applications and are in the process of closing.

Another apparent inconsistency appears between the total number of treatment/storage/disposal facilities which the Department believes to exist in Pennsylvania (approximately 370) and the number of permit applications the Department has on file for treatment/storage/disposal facilities in Pennsylvania (146). It is true that approximately 370 treatment/storage/disposal facilities exist in Pennsylvania, yet only 146 are required to submit Part B permit applications under RCRA and Act 97. This is due to the fact that several types of treatment/storage/disposal facilities are exempt from Part B permit application requirements. Facilities determined to have "permit-by-rule" or certain facilities classified as "reuse/recycle/reclaim" facilities are exempt from Part B permit application requirements (but are not exempt from other permit requirements and/or operation and design requirements in Pennsylvania.) Approximately 200 Permit-by-Rule facilities and 10 "reuse/recycle/reclaim" facilities exist in Pennsylvania. Additionally, several of the 370 treatment/storage/disposal facilities are also in the process of withdrawing from the universe of facilities via closure. (In total, approximately 50 facilities are currently in the process of closing.)

2.) Between DER and EPA

There are a number of differences between the Pennsylvania and Federal government hazardous waste facility universes. Basically, the Pennsylvania universe is larger than the universe required to be regulated according to the EPA. This is primarily due to the fact that Pennsylvania does not allow Permit-by-Rule and certain reuse/recycle/reclaim facilities to be totally exempted from regulation under Act 97. The EPA allows total exemptions for these type facilities (as stated previously, Permit-by-Rule and reuse/recycle/reclaim facilities are exempt from Part B permit application requirements, but may still be subject to other Pennsylvania permit requirements and/or hazardous waste facility design/operational requirements under Act 97). In addition, Pennsylvania regulates more hazardous waste types, due to its more stringent requirements under Chapter 75.261 (identification criteria). Section II.B.2. of this program description provide a more detailed discussion of the differences between the Pennsylvania and Federal Programs (including areas where Pennsylvania is broader in scope or more stringent in standard) attributing to the generally larger universe of regulated facilities in the Commonwealth. This section should be referenced.

V. Pennsylvania Hazardous Waste Management Program Elements

A. Manifest System (40 CFR §§271.6(f), 271.10(f), 271.11(c)):

The uniform manifest system in compliance with Section 3002 of RCRA is intended to track the movement of hazardous waste from generation to disposal or reuse-recycle. Use of the uniform hazardous waste manifest system is required of persons or municipalities who generate, transport, or dispose of hazardous waste.

The objectives of the manifest are to: (1) provide "cradle to grave" tracking of hazardous wastes; (2) ensure generator responsibility of the entire waste disposal process; and (3) assure that the handling and disposition of hazardous waste occurs in a legal manner. The manifest system provides the State with the necessary means to enforce ultimate responsibility, monitor transportation, monitor disposal, and oversee the process.

A hazardous waste generator initiates the manifest. The generator must prepare a manifest according to the instructions supplied with the manifest if he transports or offers for transport hazardous waste destined for off-site treatment, storage, or disposal. The generator must obtain the manifest from the Department if the shipment is destined for a TSD located in Pennsylvania. If the waste is destined for a treatment, storage, or disposal facility (TSD) in another state, the generator must use that state's manifest form if it supplies state manifest forms; if it does not, the generator must obtain the manifest form from the Department.

The generator must designate on the manifest one TSD facility which is permitted to handle the waste described on the manifest. The generator must instruct the transporter to return the waste to the generator's facility if the transporter is unable to deliver the waste to the TSD designated on the manifest. An alternate TSD cannot be designated on the Pennsylvania manifest as is allowed in the Federal program.

In preparing the manifest, the following information is required: Environmental Protection Agency Identification (ID) Number, and telephone number of the generator; the unique five-digit manifest number assigned by the generator; the number of pages used to complete the manifest; each transporter's company name, Environmental Protection Agency ID Number, and phone number; the designated TSD's name, site address, Environmental Protection Agency ID Number, and phone number; the U.S. Department of Transportation Proper Shipping Name, Hazard Class, and ID Number (UN or NA); the number and type of containers and the total quantity of waste in the shipment; the Hazardous Waste Numbers for each waste; the physical state and Environmental Protection Agency Hazard Codes for each waste; and a generator's certification statement. The authorized representatives of the generator, each transporter, and the TSD must sign each manifest.

The manifest form consists of eight copies (identical pages separated by carbon paper) (see Appendix XIV). For interstate shipments, the Department is sent two copies of each manifest: one copy from the generator after he tenders the waste to the transporter and the other is sent from the TSD after they accept the waste. For intrastate shipments, the Department is not required to be sent copies of the manifest. Rather, the generator and TSD involved must submit

quarterly reports in which they report all off-site shipments. The generator is responsible to assure that the required information is legible on all copies.

For most shipments of hazardous waste, the generator gives the transporter all copies of the manifest remaining after he retains the copies he is to file or send to State agencies. The transporter then carries the remainder of the manifest and the waste to the TSD designated on the manifest. However, for bulk shipments of hazardous waste transported solely by rail or water, the generator sends the manifest to the TSD rather than giving it to the rail or water transporter. Shipping papers with similar information are then carried with the shipment. A transporter must accept a shipment of hazardous waste only if it is accompanied by a completed manifest.

A generator who exports waste from the Commonwealth to a foreign country must notify the Department and the United States Environmental Protection Agency in writing at least four weeks before the initial shipment of hazardous waste to each country in each calendar year. The generator in this notification must identify the waste by its Environmental Protection Agency identification number and its U.S. Department of Transportation Proper Shipping Name and give the name and address of the foreign consignee. Manifests are required to be used for these shipments.

Generators, transporters, and TSD's are required to retain their respective copies of manifests for at least 20 years. This retention period may be extended if enforcement or legal action is pending or underway at the end of the 20-year period. These records must be made available to the Department at its request.

A transporter must deliver the entire quantity of hazardous waste which he accepted from a generator or another transporter to the TSD facility designated on the manifest, or to the succeeding transporter on the manifest, or return the shipment to the generator if it cannot be delivered to the transporter or facility designated on the manifest. In this respect, the Pennsylvania program is more stringent than the Federal requirements, as an alternate TSD facility cannot be designated on the Pennsylvania manifest. The Federal program allows such a designation.

Regulations governing the transportation of hazardous waste are included as a component of the Hazardous Materials regulations of the United States Department of Transportation (U.S. DOT). Compliance with U.S. DOT regulations for shipping of hazardous waste is required by Sections 75.262 (requirements for generators of hazardous waste) and 75.263 (requirements for transporters of hazardous waste) of Chapter 75, Solid Waste Management Rules and Regulations. The Department has entered into a Cooperative Agreement with U.S. DOT to assist in exchange of information and resources in enforcement of hazardous waste/materials regulations. There is also cooperation with the Pennsylvania Department of Transportation, Hazardous Substance Division.

Over 400,000 manifest documents have been distributed to date and approximately 250-300 manifests for hazardous waste shipments are received and processed daily by Department staff. Reports listing each individual shipment of hazardous waste are being processed each quarter from approximately 2,000 Pennsylvania generators and facilities who manage hazardous waste within the Commonwealth. The Commonwealth's manifest system fully complies with the requirements of the Environmental Protection

Agency and USDOT in regard to the uniform manifest requirements published in the Federal Register on March 20, 1984.

A decentralized program has been established allowing regional administrative and technical staff to accomplish permit reviews, inspection, monitoring and enforcement activities and to assist industry, local government and private citizens. A centralized program has been conducted to establish permitting priorities, policies and procedures and oversee the permitting inspection, surveillance, monitoring and enforcement programs.

B. TSD Facility Requirements/Permit Program (\$75.264, \$75.265):

1. Current Treatment and Disposal Status:

Approximately 146 applications for permitting of off site facilities for storage, treatment and disposal of hazardous waste are currently being processed together with approximately 300 applications for licenses to transport hazardous waste within the Commonwealth.

Originally, the Department has also received final permit applications for 175 existing captive facilities. These are facilities owned by companies generating hazardous waste for treatment or disposal of that waste on-site. These captive hazardous waste facilities include approximately 9 incinerators, 109 treatment and storage sites, and 28 facilities classified as land disposal (landfills, waste piles, surface impoundments, and land treatment). Approximately 30 Part B applications have been withdrawn.

Public opposition and fear of new sites and increasing regulatory requirements forcing the closure of existing sites has lead to a shortfall of commercial hazardous waste disposal capacity in the Commonwealth.

Pennsylvania has only one commercial hazardous waste disposal site currently operating under interim status. None of these facilities were designed to meet the standards of the existing State and Federal regulations.

No new site has opened in Pennsylvania recently in large part due to public resistance.

However, the Department has received and is currently reviewing three permit applications for commercial hazardous waste disposal facilities. All of these facilities must not only meet the rigorous design standards of State and Federal regulations, but also overcome significant public apprehension and opposition to hazardous waste disposal facilities.

Pennsylvania has seven commercial hazardous waste treatment facilities currently operating under interim permit status. All of these facilities have submitted applications for final permits, are under review, and have the potential to meet the technical requirements to get a permit. As of June 14, 1985, three Hazardous Waste Facility permits were issued by DER. These permits are joint DER/EPA permits which are considered to be RCRA equivalent. As a result of final authorization by EPA, these DER permits become bona fide RCRA permits. Additionally, except for HSWA provisions permits issued after final authorization will not need to be

jointly issued by DER and EPA; DER is authorized to independently issue RCRA permits following final authorization, with EPA oversight.

2. **Pennsylvania Hazardous Waste Permit Program/Procedures (§75.264, §75.265(z)):**

The goal of the Hazardous Waste Permit Program is the protection of the environment via the action of the permitting cycle. All existing and proposed hazardous waste storage, treatment, incineration and disposal facilities are required to obtain a Department Hazardous Waste Permit. Proposed facilities (including expansions and modifications of existing facilities) must secure such a permit prior to the construction and operation of the facility.

Existing facilities possessing interim status may continue to operate until a final permit action has been taken by the Department, provided they have complied with the Department's request to submit its Part B Hazardous Waste Permit Application. Until a permit determination is made, interim status facilities are required to operate in a manner that will not cause a health hazard, public nuisance, or have an adverse effect on the environment. Compliance with Department Rules and Regulations in §§75.265 and 75.272 (relating to interim status facilities) which are equivalent to 40 CFR Part 265 is necessary to fulfill these requirements.

The Department will terminate a facility's interim status either as part of final administrative action on a permit application (§75.265(z)(7) and §75.272(d)(1) and (2)) or as part of an enforcement effort (§75.272(d)(3) and (4)).

When terminating interim status as part a permit action, procedures set forth in §§75.280-282 will be followed. When terminating iterim status as part of an enforcement effort, normal enforcement action procedure (ie: administrative orders) will be utilized. The Environmental Hearing Board has the authority to hear any appeals to an enforcement action.

a.) **The Hazardous Waste Permit Application (§75.265(z)):**

A Hazardous Waste Permit Application is a complex document involving several components. Because of this, applicants are encouraged to request a pre-application conference to familiarize them with the forms, regulations, procedures and approximate review times for the application. A detailed listing of the application requirements is contained in the Hazardous Waste TSD Application Checklist in Appendix XV.

Proposed land disposal facilities have the option of submitting their application in two parts, Phases I and II. The purpose of this is to allow the developer to determine early in the review process the suitability of the site. If the Phase I review indicates site conditions are conducive to land disposal, the Department will give the developer notice to proceed with the Phase II portion of the application. This two-phase process saves time for both the applicant and the Department by eliminating the obviously unsuitable

sites before the applicant makes a significant investment. This step is, of course, entirely optional.

At a minimum, all applications must include or address the following generic items:

1. Hazardous Waste Permit Application - Part A (Department Form ER-SWM-59) - See Appendix XV.
2. Environmental Assessment Report - Module 9 (Department Form ER-SWM-66) - See Appendix XV.
3. Compliance History Report - Module 10 (Department Form ER-SWM-58) - See Appendix XV.
4. Land Owner Consent Form - (Department Form ER-SWM-95) - See Appendix XV.
5. Certification.
6. Operational Concept Report.
7. Site Location Maps and General Arrangement Plans.
8. Waste Characteristics (Waste Analysis Plan).
9. Security.
10. Inspection/Monitoring.
11. Personnel Training.
12. Preparedness, Prevention and Contingency Plan - see instructions in Appendix XVI.
13. Ignitable/Reactive Wastes.
14. Financial Assurance on the Commonwealth's Financial Forms.
15. Closure.

In addition, disposal facilities must contain information on the following:

16. Groundwater monitoring.
17. Post-Closure.

Each specific type of facility must submit documents demonstrating compliance with the specific design and operating standards of § (consistent with 40 CFR 264) as they pertain to:

18. Containers.

19. Tanks.
20. Wastepiles.
21. Incinerators.
22. Landfills.
23. Surface Impoundments.
24. Land Treatment.

b.) **The Permit Application Review Process:**

The purpose of the permit review process is to afford DER, interested citizens and other governmental agencies the opportunity to evaluate the ability of the Permit Applicant to comply with the applicable hazardous waste management requirements. If, at any time, DER's review reveals that the facility will not meet the operating or design standards of §75.264 of the Pennsylvania Hazardous Waste Rules and Regulations, DER may proceed directly with a public notice of intent to deny the permit (Step 7 of flow chart - reference Appendix XVII).

The following narrative briefly describes the procedures followed by the DER Regional Offices and is represented in a flow chart contained in Appendix XVII.

1. Each applicant submits six (6) copies (8 copies for incinerators) of its permit application and the date of receipt is recorded.
 - a. The applications are distributed to the following list of agencies. The letter accompanying the application to the local agencies explains that if the application is determined to be incomplete, additional information will be sent at a later date.
 - i. Regional Office (two copies: original application for public document and one working copy).
 - ii. Central Office.
 - iii. Local municipality.
 - iv. Host County.
 - v. Local Planning Commission or County Health Department, as they exist.
 - vi. Two copies to Air Quality for incinerators.
 - b. The Region submits a notice of receipt of the application for publication in the Pennsylvania Bulletin (Act 97, Section 502).

- d. If no response is received from the facility, a Notice of Permit Denial is prepared (see 7, below).
5. When the application is technically acceptable, the region sends a letter to each local agency advising them of their 60-day review and comment period. At the same time, the region notifies the applicant that it will begin to prepare the draft permit.
6. The DER draft permit (or permit denial) and fact sheet are prepared and sent to the Central Office. Minimum requirements for the draft permit and fact sheet are contained in §75.280(i) and (j), as proposed. The Central Office permit oversight team reviews the draft permit for quality, consistency and completeness. (See Appendix XXII).
7. The Facilities Supervisor or Hazardous Waste Coordinator arranges for the local advertising (two radio announcements and one newspaper notice) of its Notice of Intent to Issue the Permit or Deny the Permit. Minimum requirements for the contents of a public notice are contained in 75.281(e), as proposed.
 - a. If a public hearing is requested, the Facilities Supervisor makes arrangements for a time and place. Notice of the hearing appears in the newspaper having the largest local circulation sixty (60) days prior to the public hearing. This notice may be combined with the Notice of Intent to Issue or Deny the Permit, if the hearing was requested earlier.
 - b. A public hearing is held. Specific requirements for public hearings are found in §75.282.
8. The region prepares a response to public comments which identifies any significant changes to the draft permit and its reasons for supporting such changes and also, describes and responds to all significant comments on the draft permit raised during the public comment period or during any hearing (§75.280(m)).
9. Taking the public comments into consideration, the final DER permit or permit denial is prepared.
 - a. A copy is sent to the owner/operator.
 - b. Copies are sent to the Central Office and involved Regulatory Agencies.
 - c. The permit action and any overrides to the public comments are published in the Pennsylvania Bulletin.
10. If the applicant chooses to withdraw the permit application before the Department has made a decision to issue/deny, the

Department will return the permit application to the applicant, and formally deny the permit according to the procedures described herein after consultation with the applicant. The denial will not be held against the applicant's compliance record if the withdrawal is solely due to the fact that the applicant no longer wants/needs the permit, provided that closure/post closure procedures which may be required are implemented as approved by the Department.

c.) **The DER Permit:**

DER is required to prepare a draft permit which sets forth in one concise document all the applicable requirements with which the State intends to require the Permittee to comply during the duration of the permit. In FY84, DER requested that supplemental Environmental Protection Agency funds be applied towards the development of a DER final permit and fact sheet. These documents were prepared by the contractor A.T. Kearney with the express purpose of being consistent with, and equivalent to, the Environmental Protection Agency model permit and fact sheet.

In November 1984, permit writers from the Regions came to Harrisburg to attend two days of training by A. T. Kearney in the preparation of the DER model permit and attachments and the fact sheet. Each Regional Office has the model permit and fact sheet on its Word Processing system.

The DER model permit for hazardous waste TSD facilities and fact sheet for Draft Permit are contained in Appendix XVIII.

d.) **Direction of the Permit Program:**

In January 1985, the Department submitted to Environmental Protection Agency Phase I of its Pennsylvania Hazardous Waste Permit Strategy (Multi-Year Permit Strategy) (Appendix XIX). This document outlines the philosophy of the permit program and reiterates the Department's commitment to a progressive and quality Hazardous Waste Permit Program.

e.) **The Post Closure Care Permit:**

All hazardous waste disposal facilities which meet the definition of "regulated unit," (i.e., received wastes after July 26, 1982), are required to obtain a permit for their post-closure care activities. Regulated units include the following types of facilities:

1. All land disposal facilities with operating permits.
2. Interim status disposal facilities which received wastes after July 26, 1982 regardless of the date of closure.

To obtain a Post-Closure Permit, the owner/operator of the disposal facility must submit a permit application similar to the Part B application for an operating permit (reference §75.264).

At a minimum, the post-closure permit must include:

- The post-closure plan.
- A post-closure cost estimate.
- Post-closure financial assurance information.
- Waste characteristics and locations.

Regulations covering post-closure permits are contained in §75.264. Detailed requirements for a post-closure permit application are contained in the post closure permit application checklist in Appendix XXXI.

The permit process for the post-closure permit will be similar to that followed for an operating permit, including public notice and comment periods.

f.) Permit Program Plan and Resources - FY85

DER attempts to closely align its permitting priorities with those outlined in the National Permit Strategy. Exceptions to the EPA priority scheme are, however, necessary to allow for maximum utilization of personnel resources, to meet regulatory timeframes (pertaining to closure reviews) and to meet the Department's policy on optional environmental protection whenever possible. To meet this last objective, DER relies on its regional offices to provide valuable input into the state priority scheme from their intimate knowledge of site conditions.

The following breakdown of personnel illustrates how the permit workload is distributed between the regions. In order to achieve our commitments, the following classes and/or skill mix of permitting resources will be used:

4/21/85

**PENNSYLVANIA
FY85 PERMITTING RESOURCES**

Staff 85

	<u>CO</u>	<u>N</u>	<u>WB</u>	<u>H</u>	<u>W</u>	<u>P</u>	<u>M</u>	<u>Total</u>	<u>Workyears</u>
Div Chief/Reg Mgr	1	1	1	1	1	1	1	7	
HW Permit time	0.10	0.10	0.10	0.10	0.10	0.10	0.10		0.70
Facilities Chief	1	1	1	1	1	1	1	7	
HW Permit time	0.75	0.60	0.60	0.60	0.60	0.60	0.60		4.35
Engineer	2	2	1	1	1	2	2	11	
HW Permit time	1.50	1.50	0.75	0.75	0.75	1.50	1.50		8.25
Chemist	1	1	1	1	1	1	1	7	
HW Permit time	0.75	0.70	0.70	0.70	0.70	0.70	0.70		4.95
Hydrogeologist	1	2	1	2	1	2	1	10	
HW Permit time	0.75	1.00	0.50	1.00	0.50	1.00	0.50		5.25
Soils Scientist	1	2	1	1	1	2	1	9	
HW Permit time	0.75	1.00	0.50	0.50	0.50	1.00	0.50		4.75
Fac. Spec/HW Coord.	0	2	0	1	1	1	0	5	
HW Permit time	<u>0.00</u>	<u>1.80</u>	<u>0.00</u>	<u>0.90</u>	<u>0.90</u>	<u>0.90</u>	<u>0.00</u>		<u>4.50</u>
TOTAL	<u>7</u>	<u>11</u>	<u>6</u>	<u>8</u>	<u>7</u>	<u>10</u>	<u>7</u>	<u>56</u>	
Available WY	4.60	6.70	3.15	4.55	4.05	5.80	3.90		33
Add Central Office		<u>0.30</u>	<u>0.30</u>	<u>0.30</u>	<u>0.30</u>	<u>0.30</u>	<u>0.30</u>		
Total WY		<u>7.00</u>	<u>3.45</u>	<u>4.85</u>	<u>4.35</u>	<u>6.10</u>	<u>4.20</u>		<u>30</u>

Where it appears that additional permitting resources are necessary or the skill mix is not in balance with the task the Bureau will notify EPA of the problem and request their assistance. Where direct EPA assistance or EPA contractor assistance cannot be provided, DER will utilize its administrative discretion in assigning additional resources, or overtime or renegotiate outputs, whichever is practical and possible, to get the "job done."

g.) Work Program/Permit Targets - FY 85

The Department's hazardous waste facility permit work program priorities will consist of permit application review and permit issuance for land disposal facilities, closure approvals of land disposal facilities, review and permitting of incinerators and the completion of the permit action for previously designated storage and treatment facilities. The FY 1985 permit commitments are as consistent with the draft EPA permit strategy as our resources will allow. EPA has again changed its priorities for permit review and issuance. For FY 85, top priority will be given to land disposal and especially new facilities or those accepting CERCLA wastes. It should also be noted that Pennsylvania advised EPA in FY 1984 that the permit sections that demanded priority because of their environmental sensitivity were land disposal facilities.

Because of the emphasis on land disposal permitting and closures in FY 85, the Department's hydrogeologist became a limiting factor in the number of such applications and plan approvals that can be processed. Further in FY 85 the Department has committed 5 years of effort from our hydrogeologists. Based on discussions with EPA, and to assure that technically accurate and quality outputs can result, we estimate that approximately 50% of the work load associated with processing land disposal facilities will require the expertise of our hydrogeologist. Therefore, in making our commitments for FY 85, the hydrogeologist were fully utilized on as many land disposal projects as resources would allow. All remaining resources were then applied to incineration and treatment/storage in accordance with EPA priorities.

A priority list of facilities needing a final determination was compiled in house and used as a basis to select facilities for processing this fiscal year. The outputs set forth on the attached charts (Appendix XX) are based upon our best estimate of the likelihood that the facility can be permitted or closed and not an artificial listing based on some unknown methods(s).

Since Pennsylvania will not obtain RCRA final authorization during FY 85, DER's efforts in the permitting of hazardous waste facilities are designed to be of direct assistance to EPA Region III. However, since a facility in Pennsylvania will have to obtain both a Federal (EPA) and State (DER) permit in order to be considered a permitted facility under both RCRA and Act 97, DER will concurrently prepare

both EPA and DER type draft permits. (This is especially important for new facilities, where DER's two stage approval process must be followed. The permit review process will include a completeness review and preparation of Notice of Deficiency or NOV letters as appropriate. These letters will be copied to EPA. Upon a determination that an application is technically complete, a letter will be sent to the applicant and copies to EPA. This letter will signal the beginning of the technical review stage which will culminate in the preparation of draft permit. EPA type draft permits including all attachment will be sent to EPA in accordance with the quarterly commitment charts attached in Appendix XX. At this point the Department will have to wait for EPA oversight review and concurrence on the draft permit. It is, therefore, difficult for DER to project Public Notice and Final Determination dates. Final Determination projections listed on the attached charts are only the Department's best estimate as to when EPA and DER permits can be issued. The Department cannot be held responsible for delays EPA may experience in Region III on the final sign-off and concurrence for draft and final permit issuances. The Department agrees to participate in joint public notices and joint public hearings. DER will, with some initial assistance from EPA, prepare responses in all public comments. As in the past the cost for public notices and public hearings will be shared by EPA and DER in accordance with the prior identification of some facilities which will be EPA lead and others which will be DER lead; approximately a 50-50 split.

A new initiative to be undertaken by EPA this fiscal year will be the preparation of public participation plans for environmentally significant facilities. Since DER is unfamiliar with what such planning will involve. The Department will not commit to independently preparing such plans. The Department will, however, assist EPA in identifying potentially environmentally significant facilities. The Department would also be willing to assist EPA in the drafting of these plans after appropriate training and guidelines are provided to the Department. DER will work cooperatively with EPA to implement these plans.

The Department will continue to submit the monthly milestone chart. The Department and EPA will discontinue the use of "Multi-Purpose Request Letters" in order to jointly process permit applications, because this coordination is being performed in the multi-year permitting strategy. In addition, the Project Status Sheets that were submitted quarterly in FY 84 will be discontinued as they are no longer needed.

C. Hazardous Waste Facility Closure/Post-Closure Procedure (See Appendix XXI):

Appendix XXI describes, in detail, the procedures to be followed when a disposal facility (which received wastes after July 26, 1982), or other TSD facilities (including disposal facilities not receiving waste after July 26, 1982) intend to

cease hazardous waste activity, and close. A detailed flow-chart, found in this section shows each step which will be followed by the Department in proceeding with facility closure. Briefly, the owner/operator notifies the Department of its intent to cease hazardous waste activity and the closure/post closure plan (as detailed in §75.264(o)), and post-closure permit application (as required) is submitted. The plans are subject to public notification and comment and Departmental technical review. The Regional Offices of the Bureau of Solid Waste Management coordinate this review and must approve/disapprove the closure plan within 90 days of receipt, as provided in §75.265(o)(6). After final approval, the facility closes according to its plan and submits its certification of "closure" and revised hazardous waste activity notification to the Department. Finally, a closure inspection is performed by Regional Office personnel. Facilities managing waste which does not accumulate for more than 90 days before shipment offsite may follow a modified procedure, as detailed in Appendix XXI.

D. Compliance and Enforcement Program:

1.) Compliance/Enforcement Philosophy:

The goal of the Hazardous Waste Compliance/Enforcement Program is to attain and maintain a high rate of compliance within the regulated community, thus preventing actual and reducing potential harm to the environment and the public.

To accomplish this goal a credible enforcement program must exist to effectively deter potential violators and to penalize and force violators to take timely corrective actions. Although enforcement action historically escalated upward over the course of bringing violators into compliance, the philosophy has been to issue a warning or Notice of Violation prior to more formal legal actions. The regulated community has been allowed a reasonable opportunity to come into compliance after initial violation discovery where the violator was counseled by the Department as to what was being done incorrectly, and what steps should be taken to correct the violation and avoid reoccurrence. This "education" approach has historically delayed the more formal legal actions.

The Hazardous Waste Compliance/Enforcement Strategy developed to fulfill a FY '85 RCRA grant commitment is anticipated to be phased into Pennsylvania's hazardous waste program. Some aspects of the strategy are currently being phased in while others require approval by the Office of Chief Counsel and the Secretary prior to being implemented. When all approvals are obtained and any necessary changes are made as a result of the Administrative review, the strategy will be adopted as Bureau policy for compliance and enforcement.

Under the enforcement strategy, formal enforcement actions including Administrative Orders and judicial actions will be mandated for certain classes of violations at hazardous waste facilities on specific time tables. Civil penalty assessment is obligatory for the more egregious violations.

Since enactment of Act 97 of 1980 (the Solid Waste Management Act), the Bureau and the Department have placed much emphasis on the Compliance History of owner/operators and have successfully utilized the compliance history review portion of the statute to remove "bad actors" from the solid waste management community and to compel compliance at existing facilities. The use of the compliance history review, for which authority is found under Section 503 of the Act, will remain a keystone of our enforcement and permit actions as this issue clearly overlaps the enforcement and technical areas of our regulatory program. Permit issuance cannot proceed until the applicant or owner/operator has demonstrated compliance with the Act and other applicable statutes and regulations.

Technical assistance and the education of the regulated community are important parts of the Bureau's regulatory program. In most cases, the technical assistance is offered on a case/facility-specific basis and is offered during site application development, permit review and also during formal litigation or settlement proceedings wherein the Department staff assists and gives constructive advice and guidance to correct the violations in question. More formal assistance is offered through an involvement in seminars, conferences and workshops held by trade associations, environmental organizations, etc. The Department's public relations effort has been formalized and increased substantially in an effort, in part, to highlight our enforcement efforts through media releases of enforcement taken and important judicial decisions. Community relation personnel in each of the six Regional Offices also are the focus of citizen input to enforcement actions, case settlements and prioritizing our enforcement efforts. Press releases are cleared through the Secretary's Public Relations Personnel.

The thrust of enforcement in hazardous waste has historically been toward the land disposal facilities. Legal actions regarding these facilities have taken a substantial portion of our enforcement efforts including settlement negotiations, Administrative Orders, and in-court litigation. Land disposal facilities were targeted because they are the single largest actual or potential sources of contamination to the environment and the public.

Virtually all Pennsylvania case law regarding solid and hazardous waste management and water pollution effects from those activities has been as a result of enforcement actions regarding land disposal facilities.

The Bureau will continue to focus its enforcement efforts on significant noncompliers and other high priority violations which in many cases are the land disposal facilities.

2.) **Compliance/Enforcement Program Organization:**

Compliance and enforcement is an integral part of the Bureau of Solid Waste Management organizational structure. At both the Central Office and Regional levels there are specific Enforcement/Compliance Sections or groups of individuals whose duties include enforcement or compliance.

The Central Office, Bureau of Solid Waste Management, has a Compliance Section which oversees, coordinates, and gives direction regarding commitment for the Hazardous Waste Enforcement/Compliance Program which is carried out through the six regional offices.

As previously stated, the regional offices of the Bureau of Solid Waste Management are presently divided in two sections under the management of the Regional Solid Waste Manager. These are the Facilities and Operations Sections. The Operations Section is responsible for compliance and enforcement. Laterally attached to the Regional Manager is the Hazardous Waste Coordinator (all regions will have a Hazardous Waste Coordinator by the end of FY 85). The Hazardous Waste Coordinator maintains records of all enforcement/compliance related matters within the region and may be involved to a limited extent with enforcement action or site compliance monitoring.

The Operations Section through the Solid Waste Specialist (i.e., field inspectors) conduct the field evaluation inspection and sampling. Within the Operations Section, there is a Regional Operations Supervisor and in some regions subordinate Field Supervisors. The Supervisor oversees the day-to-day inspection/compliance/enforcement actions of their Solid Waste Specialist Staff. The Supervisor maintains a Violation Docket which list all facilities which are presently in non-compliance and the reason why. They also assure that all RCRA Grant Commitments are carried out by the field staff in a manner commensurate with our quality assurance program and within the prescribed time frames. Most enforcement actions are initiated from the Operations Sections and are precipitated as the result of routine inspections, record or file reviews, sampling inspections, or compliance investigations. The Operations Supervisors are responsible for the initial development of all enforcement actions.

All enforcement actions escalated above Notices of Violation are handled in coordination with the Regional attorneys.

3.) Detection of Violations:

Violations come to the attention of Bureau of Solid Waste Management staff through inspections, citizens' complaints, applications, plans and record reviews, sampling inspections, and investigations.

The most frequent pathway of detecting violations at a hazardous waste management facility is through field inspection/sampling and inspections/record reviews of manifests, reports or analyzed data, all of which are a routine part of our regulatory oversight of the industry.

The violations are detected when the inspector (SWS or technical staff) evaluates the facility or its operation against the applicable statutes, standards, regulations, permits or Orders. Deviation from the statutes, standards, regulations, permits or Orders is by definition a violation.

The owner/operator is verbally notified of observed violations by the field inspector or technical staff (i.e., hydrogeologist) person at the time of the visit. These violations are also noted on the specified Department inspection report. A copy of the field inspection report is given to the owner/operator at the time of inspection (or mailed certified if he is not present). Other copies are maintained by the inspector, regional office, and central office.

For violations at other than established interim status TSD's, such as unlicensed transporters, closed sites, non-notified generators or non-interim status TSD's, notification of a violation is normally accomplished through General Inspections or Complaint Forms with a follow-up letter, NOV, or administrative order. Case files are maintained on all interim status facilities, generators, and non-routine cases such as noted above. Citizen complainants are made aware of the results of our investigations and importantly their identity is held confidential.

It is normally the field inspector or technical staff person who makes the initial determination of a violation by determining that the facility/operation is deviating from the statute, regulation, permit, etc. This violation determination is overseen by the field supervisor and any unique questions regarding violations are referred to the Regional Solid Waste Manager and/or Central Office Bureau of Solid Waste Management. Any violation detected by a Facility Section technical staff person is referred to the Operations Section for enforcement or remedial action.

4.) Violation Classification/Response:

a.) Classification System:

The Hazardous Waste Management program has adopted EPA definition for hazardous waste violations. Those being Class I and Class II with "High Priority Violations" being a subset of Class I. Class II violation is any violation not meeting the definition of a "High Priority Violation" or a Class I violation.

High priority violations are those violations that:

- pose a substantial likelihood of exposure to hazardous waste or have resulted in actual exposure, or
- realize a substantial economic benefit as a result of non-compliance, or
- have intentionally committed violations, or
- are chronic or recalcitrant violators, (including handlers that are violating schedules in Orders or decrees).

Class I violation is a violation that results in a release or serious threat of release of hazardous waste to the environment, or involves

the failure to assure that groundwater will be protected, that proper closure and post-closure activities will be undertaken, or that hazardous wastes will be destined for and delivered to permitted or interim status facilities. The likelihood of exposure posed by a violator should be evaluated on the basis of the case-specific facts. In evaluating the likelihood of exposure, the following questions should be considered:

- What is the quantity of waste?
- Is human life or health potentially threatened by the situation?
- Are animals potentially threatened by the situation?
- Are any environmental media potentially threatened by the situation?

The determination of whether the violator poses a substantial likelihood of exposure should focus on the potential for harm, as well as on whether harm actually occurred.

One example of a violator that could be considered as posing a substantial likelihood of exposure is an owner/operator that failed to install a groundwater monitoring system at a facility that overlies a nearby town's drinking water supply. Another example is an owner/operator who failed to prevent the unknowing entry of children onto the active portion of a surface impoundment facility.

While there is no firm threshold for determining whether a violator has triggered the second high-priority criterion, the substantial economic benefit of noncompliance, it is suggested that \$5,000 be used as a guideline. In estimating the economic benefit of a particular handler's noncompliance, both avoided costs and delayed costs should be considered. While it is difficult to identify specific sections of the regulations whose violation would reap substantial economic benefit, the following general areas are likely candidates for consideration:

- failure to install groundwater monitoring wells
- failure to initiate assessment monitoring
- failure of a land treatment facility owner/operator to monitor the unsaturated zone
- failure of an owner/operator to close a facility properly or to develop closure or post-closure plans
- failure of an owner/operator to establish and maintain a financial assurance instrument

- failure of an owner/operator to submit a timely and complete Part B permit application
- failure of a storage facility to install a secondary containment system
- failure of a facility to begin groundwater corrective action
- disposal at an unpermitted facility
- shipment of hazardous waste, by a generator, to an unpermitted facility.

b.) Type of Response:

An appropriate enforcement action shall be taken for every instance of known noncompliance. Penalties will be issued as necessary according to this strategy and they shall be uniform and commensurate with the seriousness of the violation. All enforcement actions shall cite authority, list violations, require a date for compliance and require the violation to certify ultimate compliance.

All violations shall be initially cited in the field inspection report. The violation discovery date is the date when the case development staff determines through review of the inspection report and/or data (i.e. lab sheets, manifests) that a violation has occurred. For tracking purposes, it is fixed at forty-five (45) days after the inspection.

For Class II violations, inspector must note a date for compliance on the inspection report. No further action will initially be necessary for Class II violations unless it is a reoccurring violation, large number of Class II violations, or is still in existence after the noted compliance date. If any of these occur, enforcement action by issuance of an NOV would be appropriate with escalation to Administrative Order thirty (30) to sixty (60) days after noncompliance with NOV is documented.

Class I - For Class I violations which are not abated within the time prescribed in the field inspection report an NOV (at minimum) must be issued no more than thirty (30) days after the Class I violation is discovered. This would dictate that facilities with Class I violations be partially reinspected within thirty (30) days to ascertain if the Class I violation was abated. If the Class I violation has not been abated at reinspection, an NOV should be immediately issued. Within ninety (90) days of the initial enforcement action, (i.e. NOV), the facility must be in compliance or on an enforceable compliance schedule (i.e. Consent Order and Agreement). Where there is no enforceable compliance schedule and there is continuing noncompliance an escalated enforcement action must be taken within

sixty (60) days of the date of this determination. That action will be either an Administrative Order or judicial complaint.

In deciding which enforcement action to take, we will consider if a negotiated agreement (i.e. Consent Order and Agreement) is more efficient than a unilateral order weighing our negotiating time versus time to be spent in defending a potential appeal of the Administrative Order. We must also consider that the Consent Order must be entered at maximum within 150 days after determining that the NOV id not bring the violator into compliance. This timeline of 150 days would be the same date by which a judicial complaint would have been filed.

If an NOV is not expected to result in compliance then an Administrative Order should be issued or a Consent Order entered within the same timeframe. Civil penalties will be assessed for Class I violations other than High Priority Violations on a case-by-case basis considering the factors noted in Appendix XXVII. However, civil penalty assessment use should increase if the lower echelon enforcement actions are unsuccessful with a particular violator or if violations reoccur. For example, if an owner/operator has a Class I violation record and escalating enforcement to Administrative Order or judicial action have been necessary in the past, civil penalty assessment would be appropriate as part of the initial enforcement step in any subsequent Class I violations.

- c.) High Priority Violation - require an enforcement action including the imposition civil penalties within ninety (90) days of the discovery date of the violation. No NOV should be issued for High Priority Violations. A consent order may be negotiated prior to an Administrative Order if that can be accomplished within ninety (90) days. This may be precipitated through telephone contact or field inspector contact at the time of discovery of the High Priority Violation. This initial negotiation should not, however, prevent or stretch out issuance time for an Administrative Order as this Order could act as an incentive for more timely and fruitful negotiated settlement especially regarding civil penalties.

If the Initial Administrative Order or Consent Order does not bring about compliance within ninety (90) days of issuance or entering the enforcement instrument then within 120 days of the determination of the violation of the Order the case must be referred for judicial action and the case must be filed within sixty (60) days of referral for legal action. Thus, maximum time between discovery of a High Priority Violation and filing of the case (if necessary) will be 360 days or 12 months assuming ninety (90) days additional administrative processing from date of initial Order to compliance determination date regarding the initial Order.

Civil Penalty issues or disputes should not be allowed to delay the escalating enforcement actions or timelines for High Priority Violations as the actual violation correction is of prime importance.

In deciding whether to respond to a high-priority violator with an Order or with a judicial referral, we will consider the owner/operator's compliance history and culpability. While administrative actions generally proceed more quickly than judicial actions, there are many instances in which judicial action is more appropriate. If the handler is a chronic violator and administrative action has not been successful in deterring repeated violations or if there are other reasons to believe that compliance with an administrative order is unlikely, the Region or State may choose to seek relief in the courts. Similarly, court action may be appropriate in the case of a handler that is in violation of a compliance schedule in an Order, agreement or decree. Judicial referrals may also be appropriate when a handler is believed to have intentionally committed violations and a civil, rather than criminal, action is planned. Judicial action in such cases is likely to serve as a more effective deterrent to other would be violators than an Administrative Order.

Timeframes for Response - It is the intent of the Department by this strategy to reduce time from discovery of violation to the point of compliance by requiring enforcement action on specific timelines.

These timeframes will be noted in the Compliance Monitoring and Enforcement Logs and the Regional Compliance Specialist shall be responsible for overseeing adherence with these stipulated enforcement timelines.

d.) **Setting Priorities:**

Priorities - Although certain enforcement actions are mandated by this strategy, it must be realized that because of time and staff constraints and emergency or unforeseen developments enforcement actions must be prioritized.

Cases involving imminent endangerment to humans must be given first priority. Significant noncompliers* cases may be prioritized ahead of some "High Priority" violations especially if the High Priority Violation is a "paper violation" while the violation may involve an actual or potential release of hazardous waste. It will be the Department's policy to prioritize enforcement action as follows:

1. Imminent and substantial endangerment situations.
2. Violations that pose a substantial likelihood of exposure to hazardous waste or have resulted in actual exposure to the public.

3. Violations that result in a release or serious threat of release of a hazardous waste to the environment (i.e. groundwater).
4. Intentionally committed violations (criminal violations).
5. Recalcitrant violators (i.e. owners/operators that are violating Compliance Orders or Decrees).
6. Class I and Class II Violations.

Significant noncompliers will be given priority in 2 through 6 above.

5.) **Inspection Practices and Procedures:**

- a.) **Major Facilities Determination:** (relate majors as inspection priorities)

The Department under the guidance of Region III Environmental Protection Agency and using the criteria set forth in the July 11, 1983 memorandum from Lee M. Thomas (known as PIG-83-1) developed a list of major handlers. This memorandum is attached in Appendix XXIII. The list is divided into Major TSD's, Major Generators and Major Transporters.

The major TSD's consist of all facilities subject to ground-water monitoring and/or protection requirements, all facilities that include an incinerator and up to 10% of the remaining facilities which include commercial treatment facilities, facilities with a poor compliance history, facilities that handle large volumes of waste, and facilities that are permitted.

Major Generators and transporters were "nominated" by the Department's regional offices based on volume of waste generated and compliance history. The list of "nominees" was then reduced to 3% of the total number through discussions among Region III Environmental Protection Agency, Department Central Office and Regional Offices.

The major list is reviewed and renegotiated annually at a minimum to eliminate TSD's that no longer require ground water monitoring (as through closure by total removal) or to add facilities that meet the criteria.

*Significant noncompliers are major facilities with Class I violations of groundwater monitoring, closure/post-closure or financial responsibility requirements.

b.) Inspection Frequency:

In the first five years of administering the Commonwealth's program, over 7,000 inspections of generators, transporters, and treatment and storage facilities were completed. More than 900 notices of violation, administrative orders and civil penalty actions were issued during the period, and compliance of all entities regulated exceeded 75%. Many of the remainder are under corrective action schedules.

Minimum inspection frequencies were established in September of 1982 as follows:

Generators - every three years
Transporters - quarterly
TSD's
 major - quarterly
 commercial - bi-monthly
 non-major semi-annually

This Schedule does not include necessary follow-up as the result of an initial inspection.

Program experience and Environmental Protection Agency grant requirements have effectively modified the frequencies in some categories. Generators that handle large amounts of waste or have had a poor compliance history, are inspected more frequently than once every three years. Generators that have been placed on the major generator list are required to be inspected at least once during the year. Major TSD's that are on the majors list solely due to ground-water monitoring requirements at post-closure are usually only inspected once during the year due to the lack of activity at such sites.

For Environmental Protection Agency grant purposes, inspection of a facility is counted as a single inspection even if the inspection of the facility consisted of more than one inspection type (such as a TSD facility that gets inspected as a generator and a transporter as well as a TSD). Inspection frequency quotas in the past counted inspections by type. This method used by Environmental Protection Agency for counting inspections has been phased-in during FY 84 and is being used for FY 85, exclusively.

Inspection priorities are as set forth in the FY 85 RCRA Grant Commitments for Compliance Monitoring Enforcement (see Appendix XXIV) but generally the order is imminent endangerment, High Priority and Class I violations at major handlers (in particular significant noncompliers). Environmental Protection Agency guidance is followed in setting these inspection priorities.

Environmental Protection Agency staff may accompany DER personnel on any inspections/investigations if Environmental Protection Agency notifies DER staff and during Part B review site visits Environmental Protection Agency and DER technical staff routinely make joint investigations.

On unique or complex problems such as ground-water monitoring at large land disposal sites, DER often requests Environmental Protection Agency technical input.

Generally, there is no advance notice given to a facility prior to an inspection. This is especially true of compliance evaluation inspections. If it is necessary to split samples with a facility (i.e., compliance, monitoring, and enforcement inspections or quarterly ground-water monitoring) then it is common that a mutually agreeable sample date is established, and prior notice is required. The field inspector/technical staff person notifies his or her superior through weekly activity logs as to what inspection activities are planned. This allows for scheduling timely reinspections or partial inspections.

The Solid Waste Management Act, Section 608(3) addresses right of entry as does Section 610(7). These two sections read respectively:

The Department employees or agents shall:

"(3) Enter any building, property, premises or place where solid waste is generated, stored, processed, treated or disposed of for the purposes of making such investigation or inspection as may be necessary to ascertain the compliance or noncompliance by any person or municipality with the provisions of this act and the rules or regulations promulgated hereunder. In connection with such inspection or investigation, samples may be taken of any solid, semi-solid, liquid or contained gaseous material for analysis. If any analysis is made of such samples, a copy of the results of the analysis shall be furnished within five business days to the person having apparent authority over the building, property, premises or place."

and

"It shall be unlawful for any person or municipality to:

(7) Refuse, hinder, obstruct, delay, or threaten any agent or employee of the Department in the course of performance of any duty under this Act, including, but not limited to, entry and inspection under any circumstances."

If the Department employees or agents are denied access, then it is policy not to force entrance but to obtain a search warrant. Search warrants are addressed in Section 609 of the Solid Waste Management Act as follows:

"An agent or employee of the Department may apply for a search warrant to any Commonwealth official authorized to issue a search warrant for the purposes of inspecting or examining any property, building, premise, place, book, record or other physical evidence, of conducting tests, or of taking samples of any solid waste. Such warrant shall be issued upon

probable cause. It shall be sufficient probable cause to show any of the following:

- (1) that the inspection, examination, test, or sampling is pursuant to a general administrative plan to determine compliance with this act;
- (2) that the agent or employee has reason to believe that a violation of this act has occurred or may occur; or
- (3) that the agent or employee has been refused access to the property, building, premise, place, book, record or physical evidence, or has been prevented from conducting tests or taking samples."

The types of inspections conducted by the hazardous waste staff are described in Appendix XXV, Instructions RCRA Hazardous Waste Monitoring and Enforcement Log. These include:

Compliance Evaluation Inspections are overall reviews of the handler's performance. The inspection includes an on-site examination of records and other documents maintained by the handler and an evaluation of the handler's compliance with all applicable technical and administrative requirements.

Sampling Inspections are inspections in which samples are collected for laboratory analysis. A sampling inspection may be conducted in conjunction with a Compliance Evaluation Inspection (or any other inspection).

A Record Review is a detailed examination of documents to determine adequacy. These are conducted independently of an inspection and occur in the Agency office. They do not normally occur on-site.

Comprehensive Ground-Water Monitoring Evaluations (previously defined as Special Inspections). This evaluation includes everything in a compliance evaluation inspection for facilities which require ground-water monitoring as well as more detailed investigation of the engineering features and effectiveness of the ground-water monitoring system, and the hydrogeologic conditions at the facility.

Follow-up Evaluation is an inspection or other activity conducted to confirm compliance with enforcement actions resulting from a previous evaluation. It may be a reinspection to review deficiencies noted in a previous inspection. It may also be a determination of the adequacy of documents such as closure plans for financial instruments previously found to be deficient.

Other Evaluation is an on-site inspection of a handler which does not meet any other definition.

Field inspections or field evaluations are documented by completion of an inspection checklist and narrative report. This may be supplemented by a memorandum. With the exception of Form 4 and Form 5 Ground-Water Inspections for Compliance Evaluation Inspections (CEI's), memorandum reports are the normal method of documenting technical staff field investigations and are similar to the Environmental Protection Agency trip report.

Copies of all inspection reports, memoranda, sample analyses, self-monitoring reports, photographs, etc. are maintained in hard copy at the regional office and field office for each regulated facility, investigation or complaint. These files are maintained in the Regional Central File Depositor and at the field office.

Enforcement compliance related information is maintained past the stipulated holding time and it is customary to maintain complete enforcement/monitoring files for more than fifteen (15) years.

The compliance/enforcement information for major handlers and Class I violators is also placed on the Hazardous Waste Compliance Monitoring and Enforcement Log (Appendix XXV) and submitted to Environmental Protection Agency Region III for input to the Federal HWDMS computer system. A computerized system known as LUMIS is presently on-line and contains all pertinent enforcement and compliance information on each site.

Compliance information is used daily by the Facility Section to evaluate the Compliance History of operator. This is necessary as no permit, approval or Module 1 approval can be granted to an operator who is in violation of Act 97.

Field inspector qualifications - All technical staff and field inspectors are Civil Service employees who meet minimum standards. Solid Waste Specialists must have a total of five (5) years experience and/or training in solid waste management related duties. College training in an appropriate major is acceptable on a year-to-year basis toward the minimum job requirements. Acceptable majors include: Environmental Resources Management, Environmental Sciences, biology and chemistry. An applicant having a bachelor's degree in an acceptable major supplemented by a master's degree also in an appropriate major would qualify for a Solid Waste Specialist.

Field inspectors are afforded in-house orientation and training including job safety training. State-wide training has been offered for several different topics including Sampling, Chemistry Review, Technical Drawing Interpretation and Safety Equipment Use. Environmental Protection Agency sponsored courses are also available as are paid conferences, seminars and training on a more select basis.

Field inspector positions are not devoted solely to hazardous waste work. But each deals with hazardous and nonhazardous waste; however, the aggregate hours worked on hazardous waste must meet the RCRA Grant Commitment.

Field inspectors are trained and have the ability to read and interpret engineering plans which are referred to during site inspections. They review each application within their field area (including Part B applications) and submit comments to the Facility staff. Their input is especially important on application plan reviews for existing sites and contingency plan review. Ground-water assessment plans, land disposal closure plans, and waste analysis plans are principally reviewed by the technical staff which includes hydrogeologists, soil scientists, engineers and chemists.

6.) Enforcement Process:

Litigation is utilized in the enforcement process after attempts by the Department's technical staff have been unsuccessful in achieving compliance or a legally-enforceable schedule for compliance (Administrative Consent Order and Agreement). The time frames for commencing some form of litigation are in accordance with the mandatory timelines for Class I and high priority violations contained in Enforcement Agreement (Appendix XXVI). It should be noted that under Pennsylvania law, Administrative Orders issued pursuant to Sections 104(7) and 602 of the Solid Waste Management Act, and various provisions of the Clean Streams Law and the Administrative Code constitute final appealable actions of the Department which gives right to any appeal and can be independently enforced by the Department in a civil proceeding in State court.

The request for legal action is made by the regional office, to the Office of Chief Counsel. Usually, such requests can be made verbally (by telephone, or in the scope of an enforcement conference), but the Regional staff also uses the "Request for Legal Action" form (Form #4). A copy of Form #4 is found in Appendix XXVII. The case is thereafter assigned to an attorney who immediately consults with the Regional Solid Waste Manager and other members of the regional solid waste staff. The actual decision, therefore, as to the nature of the litigation is made jointly by the litigation attorney and the program staff. It is based upon the seriousness of the violation, the likelihood of success in the particular forum, complexity of the factual and legal issues, and the likely speed of a result. Often times, an Administrative Order is issued followed by a civil action to enforce the Order to simplify the issues in one forum (State Court) while retaining the complex factual issues before the Environmental Hearing Board.

The action is initiated in accordance with the mandatory response timelines for high priority or Class I violations. Within this time frame, the Department will draft the legal documents and obtain all necessary approvals for the institution of a civil or administrative action.

The Department's attorneys are associated with the Office of Chief Counsel, an office independent of the Office of Attorney General as established by the Commonwealth Attorney General's Act (Act 164 of 1980) 71 P.S. §732-101 et seq. The Office of Attorney General has delegated to the Office of General Counsel (and hence to the Department's Chief Counsel) authority to institute certain civil cases, including all State Court equity actions (contempt actions and actions to enforce administrative orders). The Commonwealth Attorneys' Act provides that

even without delegation the Department's attorneys have responsibility for handling initial appeals brought by a regulatee or a citizen to the Environmental Hearing Board (EHB), an independent, quasi-judicial body consisting of three members, which adjudicates appeals of all Department actions (permit actions, orders, bond forfeitures) and hears civil penalty cases. The Department's attorneys have also been delegated the authority to represent the Department in any appeal of any adjudication of the EHB, appeals are brought in the Commonwealth Court.

In addition to civil actions, the Solid Waste Management Act provides for a wide range of criminal penalties, including summary criminal citations (Section 606(a)) and misdemeanors and felonies (Sections 606(b) through Section 606(h)). Summary criminal proceedings are brought in certain cases after an attorney for the Department has reviewed the form of the citation and the evidence supporting the charges.

Misdemeanor and felony actions are brought, for the most part, by the Attorney General's Toxic Waste Investigation and Prosecution Unit, a joint DER/Office of Attorney General Unit. Prosecution is usually brought by the member of the Office of Attorney General's staff. Specific delegation to a Department attorney is needed for a misdemeanor or felony case.

Civil Penalty assessments, pursuant to Section 605 of the Solid Waste Management Act, are initially instituted as Department actions subject to appeal by the regulatee to the EHB. Failure to appeal within thirty (30) days after receipt of notice of the action, as with all Department actions, renders the action final and enforceable. (The Department's Civil Penalty Assessment Process may be found in Appendix XXVII.)

Administrative actions that are instituted by the Department, such as administrative orders, are also immediately enforceable subject to the right of an affected party to apply to the Environmental Hearing Board for a supersedeas (to stay the effect of the Order pending appeal). This initial proceeding on the stay is scheduled expeditiously. (Where the Department issues an Oral Order, pursuant to Section 602(d) of the Solid Waste Management Act, a written order must follow within two (2) business days and then if a party appeals the order, it can request a supersedeas hearing within six (6) business days.)

Appeals of Administrative actions to the Environmental Hearing Board may take up to 1 - 1 1/2 years from the filing of an appeal to the adjudication by the Board. However, as stated above, this does not relieve the party from complying with the Order pending the litigation unless a supersedeas is obtained. During the course of an administrative appeal, pre-hearing discovery is often conducted, pre-hearing memoranda are filed and argued, hearings are held, transcripts are then filed followed by briefs and finally the adjudication by the EHB occurs. Failure to initially file a timely appeal of a Department action precludes an appeal in most circumstances and further precludes a collateral attack on the action in an enforcement proceeding.

If necessary, the Department may employ a number of enforcement tools to insure that a defendant complies with an administrative order during the time that it may be under appeal (this is provided that a Supersedeas has

not been granted). In such cases, the Department has available to it all administrative measures provided for by law (reference, particularly Act 97, Article VI), including Summary actions, Civil Penalty assessments, subsequent administrative orders, complaints in equity, etc. Additionally, the Department may petition the court to enforce the terms of an order. This would result in issuance of a court order, which is enforceable by state or local police authorities.

Court actions can be either criminal or civil, as well as appeals from both. Criminal actions are brought as follows:

Initially, charges are filed before a District Justice. He then holds a preliminary hearing which is usually set between three and ten days after the charges are filed, except with a corporation. The District Justice determines at the preliminary hearing whether probable cause exists to bind over the defendant for court. If the District Justice determines probable cause exists, he then transfers the case to the Court of Common Pleas where the case is assigned a number. The attorney for the Commonwealth thereafter takes the charges and files an Information with the Court. Then either one or two arraignments are held by the judge where the defendant is advised of his rights, a plea is taken and a trial date is set. The arraignment can be waived by the Defendant, and the parties can proceed directly to trial, pleas, or sentencing. Prior to trial, an omnibus pre-trial motion can be filed by the Defendant. A trial is held (either jury or non-jury) and after verdict but prior to sentencing, post-trial motions may be filed. After sentencing, appeals may be filed. The Commonwealth is required, unless waived by the Defendant, to bring the matter to trial within 180 days of the filing of charges.

In addition, Pennsylvania has what is known as the Investigating Grand Jury Act, 42 Pa. C.S.A. §4541 et seq., which provides for the Attorney General to petition the Supreme Court to appoint a multi-county grand jury to investigate organized crime and public corruption. 42 Pa. C.S.A. §4544. The Supreme Court may then convene the grand jury, and appoint a supervising judge. After the grand jury is convened, a grand jury notice is issued, which then would empower the grand jury to hold proceedings, hear evidence of specific cases, compel attendance of persons, and document the receipt of evidence through its power of subpoena. The Attorney General may also request immunity to testify. Further, the judge is empowered to punish the refusal to appear, the failure to produce documents and the failure to testify by finding a party in contempt. At the termination of an investigation, the Grand Jury may issue a presentment which amounts to a recommendation to the Attorney General to file charges. The presentment itself has no legal significance. Upon acceptance charges are prepared and filed and the above procedure is followed. This investigative grand jury has been used by the Commonwealth's Toxic Waste Investigation and Prosecution Unit of the Attorney General's Office for investigation cases and to bring charges.

Civil actions can take the form of equity actions, where the Department is (i) seeking a preliminary or permanent injunction (Section 604 Solid Waste Management Act), or (ii) seeking to find a party in contempt of an administrative order issued under the Solid Waste Management Act (Section 603).

These actions can be brought in either the Court of Common Pleas of the county where the violation occurred or the Commonwealth Court. A decision must be made as to which court to bring an action in, however, in most cases the action is brought in the Commonwealth Court which has statewide jurisdiction.

Hearings are often scheduled quickly on a motion for Preliminary Injunction or a petition for contempt. However, an equity action for a permanent injunction takes much longer to come to trial. Usually, the defendant has 20 days after receipt of service of Complaint to file a response. A hearing is often scheduled soon after in preliminary injunction matters. There have been cases where a Court has scheduled a hearing on a Preliminary Injunction expeditiously. A defendant can file preliminary objections prior to proceeding on the merits of the Department's action, however, the courts have often disposed of the preliminary objections quickly for the purpose of hearing the preliminary injunction action. Otherwise, a court en banc (usually a panel of judges) hears the preliminary objections which cause further delays. Further delays can result if an extensive discovery is undertaken. After discovery, pre-trial motions, as well as pre-trial stipulations, may be filed and a long involved hearing may follow. With a factually and legally complicated case, it is often impossible to ascertain how long after the complaint is filed that a final court order will be forthcoming. The Court calendar is yet another constraint on the time frame for achieving a result. Appeals may also complicate the process, especially if a stay is granted by an Appellate Court.

Litigation is often used as the first enforcement response where the merits of the case, the extent of the environmental or health hazard, and the nature of the violation necessitates that response.

While formal litigation reports are not prepared, the decisions with respect to litigation, as well as draft pleadings, are submitted to the Regional Solid Waste Manager and his technical staff, the attorney, Director of the Regional Office of Chief Counsel, the Litigation Coordinator and the Chief Counsel for review. This report, when accompanied by a copy of a complaint, does not take very long to prepare and review. It usually identifies the factual situation, the possible effects of the environmental problem, the need for action and, whenever possible, anticipation of the legal issues that may arise in the course of the litigation.

The Regional Solid Waste Manager, the Regional Director, the Director of the Regional Office of Chief Counsel, the Litigation Coordinator, the Chief Counsel and the Secretary are all notified of all major legal actions. The Secretary must approve the filing of all civil penalty matters and equity actions.

As stated above, the Attorney General's involvement in enforcement actions varies due to the nature of the action. Criminal actions, such as felonies and misdemeanors, are usually brought by the Office of Attorney General Toxic Waste Investigation and Prosecution (TWIP) Unit or Department attorneys that are assigned to work with the TWIP unit. The Attorney General's Office also delegates to Department attorneys on a case-by-case basis the right to represent the Commonwealth in criminal

actions. The Attorney General's Office has also given the Office of General Counsel -- and hence, the Department's attorneys -- a general delegation for Civil Actions and Bankruptcy Actions involving environmental problems. All actions brought by the Department's attorneys are handled by attorneys from one of the three regional offices located in Philadelphia, Harrisburg and Pittsburgh.

The responsibilities of the legal staff include the litigation described above as well as counselling the Department on various programs that the Department regulates pursuant to various State statutes, including the Solid Waste Management Act. Some of the Department's legal staff also draft and review regulations and advance draft legal opinions.

Consultation with the Department's legal staff is continuous both in the Central Office and in the Regional Offices. The relationship between the Department's Environmental Protection Staff and the Office of Chief Counsel is more fully described in the August 1983 memorandum from R. Harry Bittle and Douglas Blazey, Office of Chief Counsel/Environmental Protection Enforcement Policy and Procedures, (Appendix XXVII).

7.) Toxic Waste Investigation and Prosecution Unit (TWIP):

In cooperation with the Office of the Pennsylvania Attorney General, a special investigative effort against illegal hazardous waste activities has been undertaken. In less than three years, this unit has initiated or concluded seventeen prosecutions resulting in conviction of thirty-one different defendants for misdemeanors or felonies. Six individuals, including those responsible for creating four separate National Priority List sites, have been sentenced to prison terms. Criminal fines totalling almost \$1.6 million have been imposed. The unit has several other cases including the first environmental violations prosecuted under the state's anti-racketeering law. This appears to be the first time in the United States that racketeering charges have been brought in a hazardous waste case.

The TWIP unit is comprised of criminal investigators and attorneys from the Office of Attorney General as well as Solid Waste Specialists and attorneys from the Department.

8.) Compliance Monitoring and Enforcement - FY 85:

This section describes the commitments made to EPA by DER regarding compliance monitoring and enforcement activities to be conducted in FY 85. Appendix XXIV contains the FY-85 mid-year commitment chart, which illustrates both projected and actual commitment goals achieved in the first six months of the Fiscal year. Also in this Appendix is a memorandum from the Bureau of Solid Waste Management - Central Office to the Bureau of Solid Waste Management - Regional Staff, explaining our FY 85 commitments, and including the following information:

The implementation of this phase of Pennsylvania's Hazardous Waste Program requires 25 man-years of effort. The outputs are broken out into the separate categories of compliance monitoring and enforcement.

a.) Fundable Work Tasks:

1.) Inspections with emphasis on ground-water monitoring, closure, post-closure, financial responsibility, manifest system requirements and permit conditions.

- a. Compliance Evaluation Inspections (CEI)**
- b. Comprehensive Ground-Water Monitoring Evaluation (CME)**

2.) Record Reviews

- a. Closure/Post Closure Plans and Cost Estimates.**
- b. Financial instruments and documents.**

3.) Enforcement

b.) Work Program:

1.) Compliance monitoring efforts for FY 85 will emphasize inspection of all major handlers to evaluate compliance with applicable RCRA standards and requirements for ground-water monitoring facilities. These inspections will be compliance evaluation inspections or comprehensive ground-water monitoring evaluations.

CME's will include Department presence at one quarterly sampling to allow DER to assess and improve sampling and quality assurance procedures.

DER conducted 10 CME's in the second quarter of the 1985 grant year and 14 in the fourth quarter of the grant year. This period coincides with the existing DER inspection schedule. These CME's were documented on a new inspection form developed by Environmental Protection Agency Headquarters. Upon the availability of the new Environmental Protection Agency inspection form, DER will begin to use the form on a schedule agreeable to both Environmental Protection Agency and the Department. Environmental Protection Agency agrees to conduct any necessary training on the use of the form.

Facilities to be inspected during FY 85 were selected on the following basis:

- i. All facilities permitted in FY 84 will be inspected at least once.**
- ii. Since DER has called-in all Part-B's during FY 83 and FY 84, the new Environmental Protection Agency schedule calling for facility inspection within 90 days of call-in is not applicable, and inspection commitments, therefore, reflect no inspections. The Department will, however, cooperate with Environmental Protection**

Agency to perform joint inspections of facilities
Environmental Protection Agency has recently called-in
where such inspections will not negatively impact existing
inspection commitments and schedules. These inspections
will be recorded as call-in inspections on the Compliance
Monitoring and Enforcement Quarterly Commitment
Chart and an equal number of inspections will not be
performed in the "other" inspection category. The
purpose of these inspections will be to both bring interim
status facilities into compliance, and to provide technical
and process assistance to the applicant.

- iii. All facilities that close in FY 85.
 - iv. All facilities that closed in FY 84 and which were not inspected following submission of the certification of closure.
- 2.) Record reviews will include a detailed evaluation of closure/post-closure plans and cost estimates. The review is expected to take approximately three workdays. It will be more detailed than a simple completeness check, but will not be as in-depth as the review undertaken during Part B processing. Financial responsibility documents and instruments will be reviewed beginning six months after the promulgation of the financial responsibility regulation.
- 3.) The enforcement program for FY 85 will emphasize a quality program in order to establish a visible enforcement presence. The enforcement program will focus particular attention on violators of closure/post-closure, groundwater, and financial requirements (after promulgation), and significant noncompliers and increase the use of administrative orders where prudent and practical. The Department will make every effort to initiate timely and appropriate enforcement actions in accordance with Environmental Protection Agency guidelines. Any increase in legal actions will concurrently increase attorney time in the program. The Department will agree to a cooperative effort with Environmental Protection Agency in accordance with the Enforcement Agreement. The Department will cooperate with Environmental Protection Agency to minimize duplicative enforcement actions. This will be especially important should program reversion occur.

c.) **Outputs:**

1.) **Inspections - 12.6 work years.**

a. **100% of Major Handlers - 7.9 work years**

132	TSD's (Including 1 Permitted Facility)
59	Generators
<u>2</u>	Transporters
193	Total

The above inspections include ground-water monitoring facilities as follows:

Sixty-seven percent (67%) of the 73 ground-water monitoring facilities will receive intensive Compliance Evaluation Inspection (CEI) - 49

These inspections were designed to be conducted by the Regional Solid Waste Specialists. The inspectors will refer any violations on technically complex issues to the Regional Hydrogeologist for follow-up.

Thirty-three (33%) will receive Comprehensive Ground-Water Monitoring Evaluations (CME's) - 24. These inspections were designed to be conducted by Regional Hydrogeologists and will include Department sampling, as well as an evaluation of the facilities sampling protocols.

Nine CEI's and five CME's will be conducted at ground-water monitoring facilities closed during FY 84. (These are included in the above 49 CEI's and 24 CME's.) This mix of CEI's and CME's at existing and post-closure facilities is a projection based on present information. The actual mix is dependent on the time frame of closures, enforcement actions and other unforeseen status changes at the sites. A list of facilities targeted to receive CME's is attached in Appendix XXIV.

b. **Non-Majors - 2.7 work years**

25% of Non-major TSD's	60
7% of Non-major Generators	137
7% of Non-major Transporters	<u>8</u>
	205

c. **The Department will also inspect 100% of any certified closures in FY 84 that did not receive a follow-up inspection (8) -0.2 wy.**

2.) **Record reviews: 2 work years.**

100% of major facilities that did not receive closure/post-closure plan review and cost estimate: 122

33% of non-major facilities that did not receive closure/post-closure plan review and cost estimate: 29

3.) Enforcement actions: 12 work years.

It is anticipated that the Department will be required to perform two intensive sampling inspections to support enforcement actions. If it is determined that these intensive actions are not needed, five routine sampling inspections will be performed. This will require 0.2 work years.

Other enforcement Actions:

NOV's -	2.7 years
Settlement Letters -	1.5 work years
Administrative Orders -	1.0 work years
Consent Order and Agreements -	2.5 work years
Criminal Actions -	4.1 work years.

These projections were determined by comparing Environmental Protection Agency's workload model to DER's enforcement types, and projecting enforcement actions based on DER's past experience and Environmental Protection Agency's Grant Guidance.

During FY 84, DER issued 54 NOV's for late Part B's. During FY 85 the Department will continue to use this enforcement authority for late or incomplete Part B's.

4.) On October 30, 1984, Environmental Protection Agency and the State developed a list of facilities which had unresolved, significant Class I violations as of October 1, 1984.

The significant non-compliers list (Appendix XXVIII) was developed based on the definition of significant noncompliance; any major facility which had unresolved Class I violations in the area of ground-water monitoring, closure/post closure, or financial responsibility on October 1, 1984. Included were those sites at which enforcement actions had been taken but had not yet come into compliance.

Environmental Protection Agency and the State met and agreed upon quarterly enforcement targets for both agencies to bring these violating facilities into compliance as soon as possible. Progress toward meeting these targets shall be reported with the regularly monthly reports.

E. Financial Responsibility Requirements:

Chaper 75, Subchapter E, the Financial Responsibility Requirements for Hazardous Waste Storage, Treatment and Disposal Facilities, which appears in Appendix V Section II.B.1.h., herein, describes the Financial Responsibility Regulation in great detail. Copies of the worksheets (for calculation of liability amounts) and bonding forms appear in Appendix XXX.

F. Quality Assurance Program:

The Bureau of Solid Waste Management recognizes the importance of quality assurance and has made a commitment to incorporate quality insurance protocols into all programs which gather environmental data. The Bureau's quality assurance program is accomplished in two stages: a Quality Assurance Program Plan which outlines the Department's overall plan for and commitment to quality assurance activities; and, Quality Assurance Project Plans which contain specific quality assurance procedures for each funded activity that gathers environmental monitoring data.

The Quality Assurance Program Plan integrates all of the Bureau's quality assurance efforts into one comprehensive program. The Program Plan, which is included in Appendix XXXII, is a formal commitment by the Bureau to incorporate quality assurance into all of its RCRA activities.

The Environmental Protection Agency attached a Special Condition to the Bureau's FY 83 Assistance Agreement requiring a Quality Assurance Project Plan for each activity or project covered by this Agreement. In response, a generic Quality Assurance Project Plan was developed, which covers all customary activities involving sampling done by this Bureau. The Bureau's Quality Assurance Project Plan was approved by EPA on May 18, 1984. As part of the Quality Assurance Project Plan, a Bureau Field Sampling Procedure Manual (see Appendix XXXII) was prepared. In addition to sampling procedures, this Manual also includes procedures for containerization and preservation of samples. A separate chain of custody procedure document was prepared and incorporated into the Quality Assurance Project Plan (see Appendix XXXII) by reference.

The production of satisfactory environmental monitoring data requires the use of proper analytical procedures as well as proper field sampling procedures. The Bureau of Laboratories produced a Quality Assurance Handbook (see Appendix XXXII), that outlines the procedures for analysis, instrument calibration, data production, and internal quality control checks. This document is also incorporated into our Quality Assurance Project Plan by reference.

The Bureau's Quality Assurance Officer participates on a Quality Assurance Committee which consists of representatives from all Bureaus in the Department that conduct environmental sampling. The Committee is guided by the Quality Assurance Officer from the Bureau of Laboratories. The Quality Assurance Committee was used to coordinate preparation and submittal of Quality Assurance Plans.

EPA has made the Quality Assurance Program Plan a requirement of our FY 84 Grant. This document is now being finalized and signed, and approval by EPA is expected shortly.

A yearly Quality Assurance Report will be compiled and will discuss the Quality Assurance Program for the year and summarize the quality assurance audits performed during the year. The Report will discuss any problems and recommend corrective action.