

US EPA ARCHIVE DOCUMENT

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

**I. GENERAL**

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

This MOA further sets forth the manner in which the Commonwealth and EPA will coordinate in the Commonwealth's administration and enforcement of the Commonwealth Program and, pending Commonwealth authorization, EPA's administration of the provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA). For purposes of this MOA, references to "RCRA" include HSWA.

This MOA is entered into by the Secretary of the Pennsylvania Department of Environmental Protection (hereinafter "Secretary") and the Regional Administrator, EPA Region III (hereinafter "Regional Administrator" or "EPA").

Nothing in this MOA shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under RCRA. Nothing in this MOA shall be construed to contravene any provision of 40 CFR Part 271.

Further, nothing in this MOA shall be construed to restrict the Commonwealth in the administration of the Commonwealth Program required in 25 Pa. Code Chapters 260a - 266a, 266b and 268a - 270a.

The Parties will review the MOA jointly at least once a year (and at other times as appropriate) during preparation of the annual Commonwealth grant work plan, in connection with grant funding under Section 3011 of RCRA.

This MOA supersedes the Agreement which was effective on January 30, 1986. This MOA may be modified upon the initiative of either party in order to ensure consistency with Commonwealth

Program modifications made or for any other purpose mutually agreed upon. Any revisions or modifications to this MOA must be in writing and must be signed by the Secretary and the Regional Administrator. This MOA will remain in effect until such time as Commonwealth Program authorization is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR Section 271.22 and 40 CFR Section 271.23.

This MOA is being executed because the Commonwealth is seeking authorization for all RCRA program elements except corrective action, used oil, and the previously authorized base program. This MOA shall be signed by the Secretary and the Regional Administrator and shall become effective at the time the Commonwealth's authorization takes effect, which shall be the date set out in the Federal Register notice of the Regional Administrator's decision to grant authorization to the Commonwealth.

## II. POLICY STATEMENT

Each of the Parties to this MOA is responsible for ensuring that its obligations under RCRA are met. Upon granting of final authorization by EPA, the Commonwealth assumes primary responsibility for implementing the authorized provisions of the RCRA hazardous waste program within its boundaries. EPA retains its responsibility to ensure full and faithful execution of the requirements of RCRA, including direct implementation of HSWA in the event the Commonwealth is not authorized to act. The Secretary and the Regional Administrator agree to maintain a high level of cooperation between their respective staffs in a partnership to assure successful and effective administration of the Commonwealth Program. The Commonwealth will conduct its hazardous waste program consistent with EPA program policies and guidance.

Section 3006(g) of RCRA provides that hazardous waste requirements and prohibitions promulgated pursuant to HSWA are applicable in authorized States at the same time that they are applicable in unauthorized States with the exception of Section 3006(f), Availability of Information, which cannot be implemented by EPA in authorized States. While EPA retains responsibility for the direct implementation of those provisions of HSWA which the Commonwealth is not authorized to implement, it is the intention of EPA and the Commonwealth to coordinate the implementation of such provisions to the greatest degree possible.

EPA will execute its required oversight functions of the authorized Commonwealth Program in order to ensure full execution of the requirements of RCRA, to promote national consistency in the implementation of the hazardous waste program, to allow EPA to report to the President and Congress on the achievements of the hazardous waste program, and to encourage States and EPA to agree on the desirable technical support and targets for joint efforts to prevent and to mitigate environmental problems associated with the improper management of hazardous wastes.

Oversight functions will be accomplished by EPA through written reporting requirements, permit overview, compliance and enforcement overview, and mid-year and annual reviews of the Commonwealth's program.

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

The Commonwealth has excluded 40CFR 260.20(c)-(e), relating to the petition process, from incorporation by reference into its hazardous waste regulations because it already has equivalent policies in place as set forth in the document entitled "Public Participation in the Development of Regulations and Technical Guidance" issued by the Secretary on August 15, 1996 (Document Number 012-1920-001), under the authority of the Regulatory Review Act of 1989.

The policies providing for public participation in the petition process call for the Department to publish a "Notice of Receipt" in the *Pennsylvania Bulletin* as soon as possible following the receipt of a petition. This "Notice of Receipt" provides for a public comment period and an informal public hearing upon written request. A subsequent decision by the Environmental Quality Board ("Board") to grant the petition will be published in the *Pennsylvania Bulletin* as a rulemaking. A subsequent Board decision to deny a petition will similarly be published in the *Pennsylvania Bulletin* as a rulemaking stating that no regulatory change is necessary because the petition is denied. The Department intends to incorporate these policies into Title 25, Chapter 23: "Environmental Quality Board Policy Processing Petitions -- Statement of Policy" within the next year. In fact, the Department is currently following these procedures in a rulemaking process to add mercury containing devices to the Commonwealth's analog to the Universal Waste Rule.

### III. STATE PROGRAM REVIEW

#### A. General

The Regional Administrator will assess the Commonwealth administration and enforcement of the hazardous waste program on a continuing basis for equivalence and consistency with RCRA, with this MOA, and with all applicable Federal requirements and policies for the adequacy of enforcement. This assessment will be accomplished by EPA review of information submitted by the Commonwealth in accordance with this MOA and the Commonwealth grant work plan, permit overview, compliance and enforcement overview, and mid-year and end of year reviews of Commonwealth Program activities.

The Regional Administrator may also consider, as part of this regular assessment, written comments about the Commonwealth's program administration and enforcement that are received from regulated persons, the public, and Federal, Commonwealth and local agencies. Copies of any such comments received by the Regional Administrator will be provided to the Commonwealth.

To ensure effective program review, the Commonwealth agrees to allow EPA access to all files and other information requested by the Regional Administrator, or his/her designee, that is deemed

necessary by EPA for reviewing and evaluating Commonwealth Program administration and enforcement.

Review of Commonwealth files may be scheduled at quarterly intervals; however, the Commonwealth agrees to allow EPA access to specific files more frequently as warranted, e.g., for enforcement actions. Program review meetings between the Secretary and the Regional Administrator, or their designees, will be scheduled at reasonable intervals not less than annually to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. These meetings will be scheduled at least fifteen (15) days in advance unless otherwise agreed to by EPA and the Commonwealth. A tentative agenda for the meeting will be prepared in advance by EPA.

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

The Commonwealth and EPA agree to develop, on an annual basis as a part of the Commonwealth grant work plan, criteria for priority activities, including activities regarding handlers of hazardous waste. These criteria will be based on Agency program guidance and priorities of the Commonwealth of Pennsylvania, and will serve to identify those activities which should receive the highest priority during the grant period.

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

### **IV. INFORMATION SHARING**

#### **A. General**

1. As the respective information needs of the Commonwealth and EPA evolve, changes to this section of the MOA may be appropriate. During the annual review of this MOA, the Secretary and the Regional Administrator or their designees will carefully examine the following information sharing provisions for needed revision.
2. EPA and State responsibilities regarding the maintenance and operation of the Resource Conservation and Recovery Information System (RCRIS) are specified in the RCRIS Memorandum of Understanding (MOU) negotiated between EPA Region III and the Commonwealth and in the annual Commonwealth work plan. It is expected that RCRIS will be replaced by "RCRAInfo" in March 2000. Examples of responsibilities that will be addressed in the RCRIS MOU include, but are not limited to, the following:
  - a. Processing hazardous waste notification forms.
  - b. Issuing EPA identification numbers.



### C. Commonwealth

1. The Commonwealth agrees to inform the Regional Administrator in advance of any proposed program changes which would affect the Commonwealth's ability to implement the authorized program. Program changes of concern include modifications of the Commonwealth's legal authorities (i.e. statutes, regulations, and judicial or legislative actions affecting those authorities), modifications of Memoranda of Agreement or Understanding with other agencies, and modifications of resource levels (i.e., available or budgeted personnel and funds). The Commonwealth recognizes that program revisions must be made in accordance with the provisions of 40 CFR Section 271.21, and that until approved by EPA, revisions are not authorized as RCRA Subtitle C requirements.
2. EPA and the Commonwealth will agree on the type and frequency of reports the Commonwealth will make in order for EPA to maintain oversight of the implementation of the Commonwealth's authorized program. A specific enumeration of reports and their frequency shall be included in the annual grant work plan and shall be regarded as a grant commitment for the Commonwealth. Such reporting shall include, but not be limited to, the following:
  - a. RCRIS/RCRAInfo permitting forms.
  - b. Government Performance and Results Act (GPRA) goals and accomplishments.
  - c. Biennial report summarizing the quantities and types of hazardous waste generated, transported, treated, stored, and disposed of in the Commonwealth as specified in the RCRA Guidance by October 1 of each even-numbered year.
  - d. Copies of inspection reports, record reviews, and sampling results, along with a RCRIS/RCRAInfo reporting form, for all land disposal facilities, commercial facilities, TSFs, Large Quantity Generators (LQG), Federal facilities and non-notifiers. For small quantity generators (SQG), the above reports need only be submitted where there are detected violations.
  - e. Copies of all enforcement actions, orders and judgments, along with a RCRIS/RCRAInfo reporting form, regarding land disposal facilities, commercial facilities, non-notifiers, TSFs, Federal facilities, generators and SQGs.
  - f. Reports containing statistical summaries of each quarter's accomplishments, listed by category and EPA ID number, for compliance and enforcement. One report that incorporates statistical information from all Commonwealth Regional Offices should be submitted.

- g. Submittal of information to correct data problems and information which is incomplete or inaccurate.
  - h. Compliance monitoring and inspection commitment charts.
  - I. Additional reports as negotiated in the annual Commonwealth grant work plan.
3. Pursuant to 40 CFR § 271.8, EPA reserves the right to request any information it deems necessary (relative to the Commonwealth's approved program) in a manner to be specified in the annual grant work plan.
  4. The Commonwealth agrees to notify EPA of all delisting petitions received and will transmit to EPA a copy of all final actions. The Commonwealth agrees to inform delisting petitioners of their need to petition EPA for a delisting action for interstate activities. The Commonwealth agrees to inform EPA at the beginning of any public notice or public comment period for a proposed delisting action.
  5. Upon receipt of a request to delist a hazardous waste, the Commonwealth and EPA agree to the following delisting process:
    - a. The Commonwealth will provide EPA with a copy of the request.
    - b. The Commonwealth will evaluate the request and determine whether the waste should be delisted. (The Commonwealth understands that if delisting actions result in the Commonwealth Program no longer being equivalent to EPA's, the Agency may begin proceedings to withdraw authorization of the Commonwealth's program.)
    - c. The Commonwealth will notify the generator and EPA of the delisting decision.
    - d. EPA will only publish its decision of the delisting request in the Federal Register if the petitioner requests an EPA determination. (While the effect of Federal delisting is to exclude a waste from Federal regulatory control, the Commonwealth's regulatory control is not affected by Federal delisting.)
    - e. If EPA receives a request to delist a hazardous waste, EPA will forward the request to the Commonwealth. The request will then be handled as described above. And
    - f. If EPA receives a request to delist a hazardous waste and the petitioner indicated that it is knowledgeable of the Commonwealth's role in the delisting process, but specifically requests and EPA decision, EPA will:
      - (i) Provide the Commonwealth a copy of the request,

- (ii) Invite the Commonwealth to enter into a work sharing agreement with the Agency to evaluate the request and determine whether the waste should be delisted, and

- \* If the Commonwealth and EPA agree on the decision, EPA will publish the results of the decision in the Federal Register and note that the Commonwealth's decision is the same as EPA's.

- \* If the Commonwealth disagrees with the EPA decision, EPA and the Commonwealth will seek to resolve the issue. If no agreement can be reached, EPA will publish EPA's decision in the Federal Register and note that the Commonwealth disagrees with the EPA decision

- 6. The Commonwealth agrees to provide EPA with a copy of each Commonwealth decision [if applicable] regarding waivers, variances and delisting petitions at the time such requests are granted

- 7. The Commonwealth agrees to provide permit and closure information to EPA as specified in the annual Commonwealth grant work plan. A listing of the required information and a submittal schedule will be included in the annual Commonwealth grant work plan and shall be regarded as a grant commitment for the Commonwealth. Examples of the required information include, but are not limited to, the following:

- a. Copies of permit applications originally submitted to the Commonwealth and subsequent revisions or additions to these applications on or after the effective date of this MOA, by all hazardous waste management facilities in the Commonwealth, unless EPA has been copied by the facility;
- b. Copies of trial burn plans, trial burn plan approvals, trial burn reports, risk assessment protocols, and risk assessment reports;
- c. Copies of (a) draft permits, (b) proposed permit modifications, (c) draft permit denials, and (d) accompanying explanatory material for all hazardous waste management facilities in the Commonwealth. EPA also may request copies of completeness and technical reviews for selected permits being worked on during the fiscal year;
- d. Copies of all final permits issued, denied, modified, reissued or terminated,
- e. The following closure/post-closure data:



- (i) Copies of the public notices announcing receipt of closure/post-closure plans and public hearings, if applicable;
  - (ii) Copies of the approved closure and post-closure plans for all facilities;
  - (iii) Copies of the closure certifications for facilities by an independent registered professional engineer (or an independent qualified soil scientist in cases of land treatment facilities) and the owner or operator;
  - (iv) Copies of the Commonwealth's reports of inspections conducted during closure and after receipt of closure certification; and
  - (v) Copies of the notice placed in the property deed, or other instrument which is normally examined during a title search, for closed disposal facility/unit or cell.
8. The Commonwealth may request technical assistance in the review of permit applications, draft permits, permit modifications, closure/post-closure plans, variances, waivers, etc. EPA will honor such requests as resources allow. The priorities for permitting will be reviewed annually during the development of the Commonwealth work plan.
9. The Commonwealth agrees to provide EPA with copies of reports on data resulting from any compliance inspection and subsequent enforcement actions, when EPA requests such copies.
10. The Commonwealth agrees to provide any pertinent information requested by the Regional Administrator or his designee within a mutually agreed upon time frame, as necessary, for EPA to carry out its oversight responsibilities. Unless otherwise agreed upon, or specified, the above information shall be sent to:

U.S. Environmental Protection Agency  
Region III  
Pennsylvania Program Manager, 3WC21  
1650 Arch Street  
Philadelphia, PA 19103-2029

#### **D. Site Visits**

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

will share with the Commonwealth any national reports developed by EPA as a result of such information collection.

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

Upon receipt of any information that the handling, storage, treatment, transportation, or disposal of hazardous waste is endangering human health or the environment, the party in receipt of such information shall immediately notify, by telephone, the other party(ies) to this MOA of the existence of such situation. The Department's Regional Solid Waste Manager, or his/her designee, will notify the 24-hour EPA hotline of the emergency situation. Commonwealth regional contact information is as follows:

LOCATION	COUNTIES COVERED
Southeast Regional Office (610) 832-6212	Bucks, Chester, Delaware, Montgomery and Philadelphia
Northeast Regional Office (570) 826-2516	Carbon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton, Pike, Schuylkill, Susquehanna, Wayne, Wyoming
Southcentral Regional Office (717) 705-4706	Adams, Bedford, Berks, Blair, Cumberland, Dauphin, Franklin, Fulton, Huntingdon, Juniata, Lancaster, Lebanon, Mifflin, Perry, York
Northcentral Regional Office (570) 321-6525	Bradford, Cameron, Clearfield, Centre, Clinton, Columbia, Lycoming, Montour, Northumberland, Potter, Snyder, Sullivan, Tioga, Union
Southwest Regional Office (412) 442-4000	Allegheny, Armstrong, Beaver, Cambria, Fayette, Greene, Indiana, Somerset, Washington, and Westmoreland
Northwest Regional Office (814) 332-6117	Butler, Clarion, Crawford, Elk, Erie, Forest, Jefferson, Lawrence, McKean, Mercer, Venango, Warren

1. For the Commonwealth, the twenty-four (24) hour response number is (717) 787-4343.
2. For the EPA, the twenty-four (24) hour response number is (215) 814-9016.

#### **F. Confidentiality**

1. Any information obtained or used in the administration of the Commonwealth Program shall be available to EPA upon request without restriction. If the information has been submitted to the Commonwealth under a claim of confidentiality, the Commonwealth must submit that claim to EPA when providing information. Any information obtained from the

Commonwealth subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2.

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

## **V. PERMIT ISSUANCE**

### **A. EPA Permitting**

Upon authorization of the Commonwealth Program, EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities for which the Commonwealth is receiving authorization. If EPA promulgates standards for additional regulations mandated by HSWA that are not covered by the Commonwealth's authorized program, EPA will issue and enforce RCRA permits in the Commonwealth for these new regulations until the Commonwealth receives final authorization for equivalent and consistent Commonwealth standards. If EPA promulgates new standards requiring a permit modification, then EPA may, pursuant to 40 CFR 270.42(b)(6)(vii), extend the time period for final approval or denial of a modification request until such time that the Commonwealth receives authorization for the new standards. At the time the Commonwealth Program is approved in the new areas, EPA will suspend issuance of Federal permits in the Commonwealth.

Whenever EPA adds permitting standards for processes not currently covered by Federal regulations, EPA will process and enforce RCRA permits in the Commonwealth in the new areas until the Commonwealth receives authorization of equivalent and consistent Commonwealth standards. At the time the Commonwealth Program is approved in the new areas, EPA will suspend issuance of Federal permits in the Commonwealth. EPA will also transfer any pending permit applications, completed permits or pertinent file information to the Commonwealth within thirty (30) days of the approval of the Commonwealth Program or other mutually agreed upon schedule in conformance with the conditions of this MOA.

The Commonwealth and EPA have agreed to a joint permitting process for the joint processing and enforcement of permits for those provisions of HSWA for which the Commonwealth does not have authorization. As the Commonwealth receives authorization for additional provisions of HSWA, EPA will suspend issuance of Federal permits in the Commonwealth for those provisions.

## **B. EPA Overview of Commonwealth Permits**

While EPA may comment on any permit application or draft permit, EPA's overview function will focus primarily on those facilities identified by the State or EPA in the annual Commonwealth grant work plan or anything identified as a priority in EPA National Guidance.

In accordance with 40 CFR Section 271.19, EPA may comment in writing on any draft permit or proposed permit modification, whether or not EPA commented on the permit application. EPA shall notify the Commonwealth of its intent to comment on a Commonwealth draft permit within thirty (30) days of receipt. EPA will comment within forty-five (45) days of receipt or will request an extension for those comments as warranted. Where EPA indicates in a comment that issuance, modification, reissuance, termination or denial of the permit would be inconsistent with the approved State Program, EPA shall include in the comment:

- a. a statement of the reasons for the comment (including the section of the Commonwealth law or regulations that support the comment); and
- b. the actions that should be taken by the Commonwealth in order to address the comments (including the conditions which the permit would include if it were issued at EPA.)

EPA shall send a copy of its written comments to the permit applicant.

The Commonwealth and EPA will usually reach concurrence on permit conditions prior to issuance of the draft permit or approval of proposed permit modifications. EPA shall withdraw such comments if satisfied that the Commonwealth has met or refuted its concerns and shall also provide the permit applicant with a copy of such withdrawal.

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

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

EPA may review file information at Commonwealth offices or request a copy of any permit application, draft permit or proposed permit modification, statement of basis or fact sheet, and any supporting documentation that went into the development of the draft permit. The Commonwealth will provide such information within one (1) week of request, or within a mutually agreed-upon time frame.

### C. Commonwealth Permitting

The Commonwealth is responsible for expeditiously drafting, circulating for public review and comment, issuing, modifying, reissuing and terminating RCRA permits for those hazardous waste treatment, storage and disposal facilities contained in the authorized provisions of the Commonwealth's program. The Commonwealth shall do so in a manner consistent with RCRA, as amended by HSWA, this MOA, all applicable Federal requirements, the Commonwealth's Program Description, and the annual Commonwealth grant work plan and other Commonwealth requirements.

The Commonwealth commits to meet toward achieving the 2005 GPRA RCRA permitting goal, which requires that at least 90% of existing hazardous waste management facilities have approved controls in place to prevent dangerous releases to air, soil, and groundwater.

The Commonwealth agrees to issue, modify or reissue all permits contained in the authorized portions of the Commonwealth's program in accordance with 35 P.S. §§ 6018.502 - 506, 25 Pa. Code § 270a.10 (relating to general application and permit issuance procedures) and § 270a.41 (relating to procedures for modification, termination or revocation and reissuance of permits) and to include as permit conditions all applicable provisions of 25 Pa. Code § 270a.32 (relating to establishing permit conditions), and 40 CFR §§ 270.31, 270.33(a) and 270.50 as incorporated at 25 Pa. Code 270a.1(a). This MOA also applies to permits issued after final authorization but for which the processing may have begun before final authorization.

In permits issued pursuant to the Commonwealth's authorized Program, the Department will ensure that compliance tasks are described in clear, unambiguous and plain language to the extent practicable. The compliance tasks should be clearly measurable and definable thereby lending themselves to greater enforceability.

The Commonwealth's permitting process will conform to 25 Pa. Code Chapter 270a which is analogous to 40 CFR Parts 270 and 124.

In the event circumstances arise which warrant such action, the Commonwealth may exercise the variance authorities established in 40 CFR 260.30-260.33 as incorporated by reference at 25 Pa. Code Section 260a.1, and 40 CFR 270.1(c)(3)(A)-(D) as incorporated by reference at 25 Pa. Code Section 270a.1. The Commonwealth agrees that it will exercise its variance authority, including emergency administrative orders, so the result is not less stringent than the Federal program, and consistent with the Federal and other State programs. The result of a variance granted by the Commonwealth will not be less stringent than one granted by EPA.

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

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



#### **D. Joint Permitting Process**

Pursuant to Section 3006 (g)(1), and in accordance with the HSWA, EPA has the authority to issue or deny permits or those portions of permits to facilities in Pennsylvania for the requirements and prohibitions in or stemming from HSWA, until the Commonwealth's program is amended to reflect those requirements and prohibitions, and authorization is received for the portion or portions of the program.

EPA and the Commonwealth have agreed to establish a joint permitting process for the issuance of RCRA permits in Pennsylvania. This joint permitting process is established in accordance with Section 3006(c)(3) of RCRA. Details of joint permitting activities will be negotiated yearly through the annual Commonwealth grant work plan. The duties and responsibilities of EPA and the Commonwealth for joint permitting shall also be specified in the annual Commonwealth grant work plan.

The details of the joint permitting process as contained in the Commonwealth grant work plan shall be reviewed and revised as often as necessary, but no less often than annually to assure its continued appropriateness.

Upon authorization of the Commonwealth for any of the provisions of the HSWA, the specifics of the Joint Permitting Agreement as set out in the annual Commonwealth grant work plan shall be amended to reflect the authorization. Amendment of this Memorandum of Agreement or the execution of a separate Memorandum of Agreement may be required for authorization of any of the provisions of the HSWA.

EPA oversight of Commonwealth corrective action activities will be performed on an ongoing basis throughout each grant fiscal year in accordance with work sharing responsibilities established in the annual grant work plan as resources allow. The Commonwealth agrees to assist EPA in meeting Pennsylvania's share of EPA's 2005 GPRA goals for corrective action environmental indicators, details of which will be established in the annual grant work plan.

### **VI. PERMIT ADMINISTRATION**

#### **A. EPA**

EPA will administer the RCRA permits or portions of permits it has issued to facilities in the Commonwealth until they expire or are terminated. EPA will be responsible for enforcing the terms and conditions of the Federal portions of the permits while they remain in force. Upon authorization of HSWA regulations, the EPA and the Commonwealth will work toward establishing Commonwealth authorities that will allow Commonwealth oversight and enforcement in addition to the Federal. Prior to authorization of additional authorities, EPA and the Commonwealth may establish interim agreements which will allow Commonwealth work sharing activities. When the Commonwealth either assumes full responsibility of an EPA permit or incorporates the terms and conditions of the Federal permits in Commonwealth RCRA permits or issues Commonwealth RCRA permits to those facilities, EPA will terminate those permits pursuant to 40 CFR Part 270 and rely

on the Commonwealth to enforce those terms and conditions subject to the terms of an acceptable Commonwealth/EPA Enforcement Agreement as provided in Section VII.

## **B. Commonwealth**

The Commonwealth agrees to review all hazardous waste permits which were issued under Commonwealth law prior to the effective date of this MOA in accordance with 40 CFR 271.13(d), and to modify, or revoke and reissue, such permits as necessary to require compliance with the amended Commonwealth Program. The Commonwealth shall notify EPA of any permits not equivalent to Federal permit requirements, including any permits that have been issued but are pending administrative or judicial appeal. Except for these non-equivalent permits, once EPA has determined that the Commonwealth has fulfilled the requirements of 40 CFR 271.13(d), EPA will terminate the applicable Federal permit, or Federal portion of the permit, pursuant to the procedures in 40 CFR 124.5(d), notify the Commonwealth that the permit is terminated, and no longer administer those permits or portions of permits for which the Commonwealth is authorized.

Where the Commonwealth permit is not equivalent to Federal permit requirements, the Commonwealth may modify, or revoke and reissue, its permit as necessary to require compliance with its authorized program in a manner consistent with RCRA as amended by HSWA. If the Commonwealth does not modify, or revoke and reissue, a permit equivalent to the Federal permit, EPA will administer and enforce its permit until it expires or is terminated.

Subsequent to the effective date of an equivalent Commonwealth permit, EPA will terminate the Federal permit pursuant to 40 CFR 271.8(b)(6) and 124.5 (d). EPA will notify the permittee by certified mail of its intent to terminate the Federal permit, and give the permittee 30 days in which to agree or object to termination of the permit.

The Commonwealth agrees to resolve all Commonwealth permit appeals in a manner consistent with its authorized RCRA program.

## **VII. COMPLIANCE MONITORING AND ENFORCEMENT**

Both EPA and the Commonwealth are committed to maintaining a level playing field and establishing a credible deterrence to non-compliance throughout the regulated community. As a result, EPA and the Commonwealth will work together to develop and implement a plan to coordinate compliance monitoring and enforcement activities. These activities may include but are not limited to identifying Federal and Commonwealth priorities, developing and implementing inspection targeting methods, developing targeted inspection lists, exchanging information regarding ongoing Federal and Commonwealth enforcement actions against significant non-compliers (SNC) and Secondary Violators as defined in the EPA's current Enforcement Response Policy dated March 1996, or its subsequent amendments.

Enforcement and compliance monitoring activities/priorities will be outlined in the Office of Enforcement and Compliance Assurance's MOA guidance and the Commonwealth's annual grant

work plan, which is consistent with all applicable Federal requirements and with the Commonwealth's Program Description.

## **A. EPA**

### **1. Compliance Monitoring**

Nothing in the MOA shall restrict EPA's right to inspect any regulated hazardous waste facility. Before conducting an inspection of a regulated facility, the Agency will normally give the Commonwealth at least seven days notice of EPA's intent to inspect in accordance with 40 CFR 271.8(b)(3)(i). In case of an imminent hazard to human health or the environment, the Regional Administrator may shorten or waive the notice period. The Commonwealth may participate in all inspections conducted by EPA. EPA oversight and training inspections will be coordinated with the Commonwealth.

In an effort to improve enforcement coordination and clarify roles and responsibilities between EPA and the Commonwealth, the lead agency of an inspection will routinely be the lead in any enforcement action, and will address any RCRA violations discovered during the inspection. However, it is recognized that it may be more appropriate in some cases to defer action to the other agency. Discussion and mutual agreement will be sought in such cases.

### **2. Enforcement**

EPA may take enforcement action against any person determined to be in violation of RCRA in accordance with Section 3008. EPA may also take enforcement action at facilities upon determining that the Commonwealth has not taken timely or appropriate enforcement in accordance with the current 1996 Hazardous Waste Enforcement Response Policy, or its subsequent amendments. EPA reserves its right to take independent enforcement actions in the Commonwealth. In instances where the Commonwealth has referred an enforcement case to EPA, the Agency will review the information provided and determine the appropriate Federal action. Prior to issuing a complaint, compliance order or referral to the Department of Justice, EPA will give prior notice to the Commonwealth.

After notice to the Commonwealth, EPA may take action against any person found to be in violation of RCRA pursuant to Sections 3008, 3013, and/or 7003 including the holder of a Commonwealth-issued permit on the ground that the permittee is not complying with a condition of that permit. In addition, EPA may take action under Sections 3008, 3013, and/or 7003 of RCRA against a holder of a Commonwealth-issued permit on the ground that the permittee is not complying with a condition that the Regional Administrator, in commenting on that permit application or draft permit, stated was necessary to implement approved Commonwealth Program requirements, whether or not that condition was included in the final permit. EPA may take action under RCRA Sections 3008, 3013, and/or 7003 in accordance with the U.S. EPA Hazardous Waste Enforcement Response Policy or the EPA Region III Non-Compliance Response Policy for RCRA, Oil and EPCRA/CERCLA Section 103.

EPA may take corrective action enforcement against any person in accordance with Section 3008(h). Prior to taking enforcement, EPA and the Commonwealth shall negotiate the lead agency for oversight. In the annual grant work plan, facilities will be prioritized and oversight activities established. EPA and the Commonwealth shall coordinate the negotiations, issuance, and oversight of compliance orders issued under Section 3008(h).

## **B. Commonwealth**

### **1. Compliance Monitoring**

The Commonwealth agrees to carry out a timely and effective program for monitoring compliance by regulated hazardous waste facilities with applicable program requirements (see 40 CFR 271.15). As part of this program, the Commonwealth will conduct compliance inspections to assess compliance with hazardous waste regulations, permit requirements, compliance schedules, and all other program requirements. Commonwealth specific activities and priorities for compliance monitoring will also be included in the annual grant work plan.


### **2. Enforcement**

The Commonwealth agrees to take timely and appropriate enforcement action and agrees to make significant non-complier (SNC) determinations in accordance with EPA's 1996 Hazardous Waste Enforcement Response Policy, or its subsequent amendments, against all persons in violation of hazardous waste regulations, permit requirements, compliance schedules, and all other program requirements.

The Commonwealth will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public. The Commonwealth agrees to retain all records for at least three years unless there is an enforcement action pending. In that case, all records will be retained until three years after such action is resolved

**COMMONWEALTH OF PENNSYLVANIA**

BY:

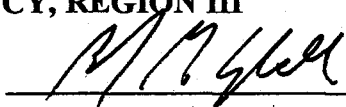


TITLE: Secretary, Pa DEP


DATE: August 10, 2000

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

BY:



TITLE:



DATE:

