

US EPA ARCHIVE DOCUMENT

MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF WEST VIRGINIA
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III

I. GENERAL

This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR 271.8 for the State of West Virginia's Hazardous Waste Program (hereinafter "State Program") authorized under Section 3006 of the Resource Conservation and Recovery Act of 1976 42 USC 6901 et seq., as amended (PL 94-580, PL 96-482, and PL 98-916) (hereinafter "RCRA" or "the Act") and the United States Environmental Protection Agency Regional Office for Region III (hereinafter EPA). This Agreement further sets forth the manner in which the State and EPA will cooperate in the State's administration of the program.

This Agreement is entered into by the Director of the Department of Natural Resources (DNR) (hereinafter "Director" or "the State"), the lead agency for the State Program as designated by the State pursuant to W. Va. Code Section 20-5E-4 and 40 CFR 271.6(b) and the Regional Administrator, EPA, Region III (hereinafter "Regional

Administrator" or "EPA"). This agreement is also entered into by the West Virginia Department of Highways (DOH), the West Virginia Air Pollution Control Commission (APCC) the West Virginia Public Service Commission (PSC), and the Water Resources Board (WRB), as participating State agencies.

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

II. POLICY STATEMENT

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon being granted final authorization by EPA, the State assumes primary responsibility for implementing the RCRA hazardous waste program within its boundaries except for the requirements of the Hazardous and Solid Waste Amendments of 1984. EPA retains its responsibility to ensure full and faithful execution of the requirements of RCRA, and to implement the requirements and prohibitions of the Hazardous and Solid Waste Amendments of 1984 until the State receives authorization to do so. The State and Regional Administrator agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective administration of the State program.

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

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

As the national hazardous waste program matures, the respective roles and responsibilities in this State/Federal partnership will become more clear. As the respective information needs of the State and EPA evolve, changes to this Agreement may be appropriate.

III. STATE PROGRAM SUMMARY

A. General

The State will coordinate its program activities through the Department of Natural Resources which is designated as the lead

agency.

The Department of Natural Resources will appoint a State Hazardous Waste Coordinator (SHWC) whose principle function will be to ensure that the Department fullfills its State statutory duties for ensuring that the administration and enforcement of the State's Hazardous Waste Management Act is integrated with the appropriate provisions of other State laws and overseeing the timely promulgation of regulations. In addition the SHWC will facilitate communications between EPA and the State agencies having RCRA program responsibilities and will monitor the coordination process between State agencies. The SHWC also performs coordination functions including: serving as a clearinghouse for information concerning EPA RCRA program requirements, coordinating State program milestones, coordinating actions necessary to secure federal funds for the program and overseeing distribution of those funds to agencies in the State hazardous waste management program.

The State's RCRA hazardous waste management program includes six (6) state agencies: The Department of Natural Resources (DNR) and its Division of Water Resources (DWR); the West Virginia Air Pollution Control Commission (WVAPCC); the West Virginia Department of Highways (DOH); the West Virginia Public Service Commission (PSC); and the Water Resources Board (WRB). Each agency has either rulemaking, permitting, compliance evaluation, enforcement or appellate responsibility.

The responsibilities of each agency are delineated in Attachment

A. In general, the DNR functions as the lead agency with primary responsibility for regulation promulgation and overseeing that regulations of other agencies are not duplicative. The DWR performs permitting, compliance evaluation and enforcement of requirements on generators of hazardous waste and owners and operators of hazardous waste treatment, storage and disposal (TSD) facilities.

The APCC has responsibility for rulemaking, permitting, compliance evaluation, enforcement and appellate review of incinerator treatment facilities and air emissions from TSD facilities.

Transportation of hazardous waste is regulated by three (3) agencies. The DOH and PSC regulate hazardous waste transporters via the highways and railroads, respectively. Both agencies perform rulemaking, compliance monitoring and enforcement for this program component. The DWR regulates hazardous waste transportation by air and water. It also has rulemaking, compliance monitoring and enforcement authority for such transporters.

The WRB has appellate jurisdiction for orders and permits issued by the Chief of the Division of Water Resources and promulgates regulations for groundwater.

B. Identification of Major Hazardous Waste Handlers

The State agrees to develop with EPA a list of hazardous waste facilities, generators and transporters in the State designated as "major" hazardous waste handlers. This designation is intended to identify, for administrative purposes, environmentally significant

hazardous waste handlers, and to be used in concentrating inspections, permitting and reporting resources on those handlers. The list is attached as a part of this Agreement (Attachment B). It shall be reviewed and updated annually or more often if necessary. Changes to the list do not require a formal amendment to this Agreement so long as both the State and EPA agree in writing to any changes. This list constitutes major facilities for purposes of EPA permit overview.

IV. STATE RESPONSIBILITIES

A. General

1. Transfer of File Information and Program Actions

Upon authorization EPA will transfer to the State copies of information in its files on each generator, transporter or treatment, storage or disposal facility within West Virginia.

The State has no mechanism for automatic transfer of RCRA permits issued by EPA prior to State authorization. Thus, all such permits which were not jointly issued and identical, shall be reissued by the State. Enforcement actions initiated by EPA will be retained by EPA unless the State agrees to take over such action.

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

will primarily rely on the State to enforce those terms and conditions.

2. Delisting

In the event a waste is delisted by EPA the State will consider whether or not to delist the waste. If the decision is to delist, the State will initiate the regulatory process by which the waste will eventually be delisted at the State level. Any delisting petition received by the State will be handled as stated in Section 16 of DNR's Hazardous Waste Management Regulations. The State recognizes that if it should delist wastes not delisted by EPA authorization may be withdrawn.

3. Waivers and Variances

The State agrees that it will not grant any waiver or variance from the provisions of the West Virginia Hazardous Waste Management Regulations unless such waiver or variance is specifically provided for in the regulations and the result of such waiver or variance would not result in the imposition of any requirement which is less stringent than the comparable Federal requirements. The State will provide EPA with a copy of any State variance or waiver that may be granted at the time it is issued.

4. State Program Changes

The State agrees to inform the Regional Administrator of any proposed or adopted program changes which would affect the State's ability to implement the authorized program. Program changes of

| | Office | Residence |
|-------------|----------------|----------------|
| Rob Jelacic | (304) 348-5935 | (304) 727-2710 |
| Tim Laraway | (304) 348-5935 | (304) 342-4409 |

Department of Highways

In the event of a spill effecting a road or highway, the Highway Services Division should be notified.

| | | |
|----------------|----------------|----------|
| Bob San Julian | (304) 348-3028 | 24 hours |
|----------------|----------------|----------|

Air Pollution Control Commission

One of the following individuals should be contacted in the case of an emergency situation involving the release or possible release of hazardous materials or wastes to the air.

| | Office | Residence |
|------------------|----------------|----------------|
| Carl G. Beard | (304) 348-2275 | (304) 776-1270 |
| Freddie Sizemore | (304) 348-4022 | (304) 756-3914 |

Public Service Commission

In the event of a spill involving the rail transportation of hazardous materials or wastes contact:

| | Office | Residence |
|---------------|----------------|----------------|
| John J. Dwyer | (304) 340-0472 | (304) 525-8674 |

Office of Emergency Services

In the event that the appropriate contact cannot be made, notification should proceed through the Office of Emergency Services.

| | |
|-----------------|----------------|
| Mannie Griffith | (304) 348-5380 |
|-----------------|----------------|

B. Permit Issuance

concern include modification of the State's legal authorities (i.e. statutes, regulations and judicial or legislative actions affecting those authorities), modifications or memoranda of agreement or understanding with other agencies, and modifications of resource levels (i.e. available or budgeted personnel and funds). The State recognizes that program revisions must be made in accordance with the provisions of 40 CFR 271.21.

5. 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 Agreement of the existence of such situation. The following procedures should be followed for notifying the participating State agencies:

Environmental Protection Agency

One of the following numbers should be called in the event an emergency occurs:

24 Hour Hot Line (215) 597-9898

National Response Center (24-hours) (800) 424-8802

Department of Natural Resources

One of the following individuals should be contacted in the case of an emergency situation:

24 Hour Hot Line 1 (800) 642-3074

1. General

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

The State will carry out the permitting procedures contained in its regulations. The priorities for permitting will be reviewed annually during the development of the State Work Program.

The State agrees that any compliance schedules contained in permits it issues will require compliance with applicable standards as soon as possible and in accordance with applicable State Program regulations.

The State agrees to allow EPA an additional 15 days beyond the public comment period to submit comments on the State's draft permit prior to making a final determination.

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

The State may request technical assistance from EPA for the review

of permit applications, draft permits, permit modifications, emergency permits, closure/post closure plans, etc.

The State shall jointly review with EPA any financial test submitted by a facility that covers more than one State and/or EPA Region. The State shall notify EPA of such submissions and in turn the EPA will notify the State of any deficiencies detected.

If the Director of the APCC tentatively decides to terminate a permit under Section 21.02 of the APCC regulations, he shall issue a notice of intent to terminate. A notice of intent to terminate is a permit action which follows the same procedures as any draft permit. Such procedures will be adhered to prior to the issuance of any order of termination of a permit.

The Director of the APCC shall hold a public hearing whenever he receives written notice of opposition to a draft permit and a request for a hearing is filed within forty-five days of the public notice under Section 19.12 of APCC Regulation XXV.

The Director of the APCC shall send public notice of the preparation of a draft permit and shall allow 45 days for public comment to any unit of local government having jurisdiction over the area where the facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of such facility. He shall also follow these procedures when issuing any public notice of a hearing under Section 19.10(a) or 19.17 of APCC Regulation XXV.

The State intends to issue post closure permits to any "regulated unit" which closes under interim status.

Technical infeasibility, as the term is used in DNR Regulations Section 8.10.09(c) requires that the owner or operator make all reasonable efforts to remove or decontaminate all waste residues, contaminated components, subsoils, structures and equipment before determining that it is technically infeasible to remove remaining hazardous waste and hazardous waste residue.

2. Submission of Permitting Information

The State agrees to submit to the Regional Administrator the following information as frequently as noted below.

| ITEM DESCRIPTION | FREQUENCY OF SUBMISSION |
|--|---|
| (a) <u>Major or New Facilities</u> | |
| (1) A copy of permit application originally submitted to the State and subsequent revisions or additions to these applications on or after the effective date of this Agreement by all major hazardous waste management facilities in the State unless EPA has been carbon copied by the facility. | Within 15 days of their receipt by the State. |
| (2) Copies of all trial burn permit application, all trial burn plans (if different from trial burn applications) unless EPA has been sent a copy by the applicant and all trial burn plan approvals. | Within 15 days of their receipt by the State, or within 10 working days of approval, as applicable. |
| (3) The State agrees to notify EPA of all new facility permit applications for the purpose of determining facility classification (major/non-major). | As soon as possible after receipt of application. |
| (4) Copies of (a) draft permits, (b) proposed permit modifications, (c) permit | At the time they are sent out or made available for |

denials, and (d) accompanying explanatory material for all major hazardous waste management facilities in the State. EPA may also request a copy of completeness and technical reviews for permits being worked on during that fiscal year.

public comment

(5) The State agrees to send copies of final permits issued, denied, modified, suspended, reissued or revoked.

Within 7 working days after completion.

(b) Nonmajor Facilities and Emergency Permits

(1) A copy of selected non-major permit applications. (Selection of non-major permit applications will be determined annually in the State Work program.) A copy of completeness and technical reviews and draft permits, will also be sent for these facilities.

Within 15 days of their receipt by the State.

(2) For all non-major facilities the State agrees to submit to EPA a copy of the fact sheet with the public notice of the intention to issue or deny the permit. In addition, the State will send EPA copies of notices of public hearings

At the time they are sent out for public comment or notice

(3) EPA may request copies of final permits issued, denied, modified, suspended, reissued or terminated.

Within two weeks of completion.

(4) The State agrees to provide telephone notification to the West Virginia/Virginia Section of all emergency permits prior to issuance, if feasible owing to the nature of the emergency. Copies of these permits shall be forwarded to EPA upon issuance.

As soon as possible.

(c) Closure/Post-Closure Data

(1) Copy of the public notice announcing receipt of closure/post-closure plans and public hearing, if applicable.

Two weeks after receipt.

(2) Copy of the approved closure and post-

Two weeks after receipt.

closure plans for all major facilities.

(3) Copy of the State's approval of the closure plan for all non-major facilities. Two weeks after receipt.

(4) Copy of the closure certifications by an independent registered engineer (or independent qualified soil scientist in cases of land treatment facilities) and the owner or operator. Two weeks after receipt.

(5) Copy of the revised Part A reflecting partial facility closures (i.e., where a cell or unit of the facility is closed) of interim status units (or cells). Two weeks after receipt.

(6) Copy of the State's reports of inspections conducted during closure and after receipt of closure certification. Two weeks after receipt.

(7) Copy of the certified survey plot of the closed disposal facility/unit or cell prepared by a professional land surveyor and filed with the local land authority. Two weeks after receipt.

(8) Copy of the notice placed in the property deed, or other instrument which is normally examined during the title search, for closed disposal facility/unit or cell. Two weeks after receipt.

(9) Copy of letters sent to facilities requiring post-closure permit applications for those facilities requiring a post-closure permit. Two weeks after receipt.

3. Identification Numbers

So that EPA can issue EPA identification numbers and maintain a national inventory of all hazardous waste handlers, the State agrees to provide EPA with the following notification and Part A information submitted to the State after the effective date of this Agreement by

new hazardous waste generators, transporters or new treatment, storage or disposal facilities and facilities seeking to change their interim status in the State:

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

The State will also submit any updates or changes in previously submitted notification information. This information will be provided to the Regional Administrator within ten days of receipt of the information.

C. Compliance Monitoring and Enforcement

1. General

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

compliance schedules, and all other program requirements. Compliance monitoring activities and priorities will be specified in the annual State Work Program and shall be consistent with all applicable Federal requirements and with the State's Program Description.

The State agrees to take timely and appropriate enforcement action, in accordance with the Interim National Criteria for a Quality Hazardous Waste Management Program under RCRA (May 15, 1984) and the State-EPA Agreement against all persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements, including violations detected by State or Federal compliance inspections. The State will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public.

Appropriate State enforcement response shall be conducted in accordance with the Interim National Criteria for a Quality Hazardous Waste Management Program under RCRA (May 15, 1984) and may include not more than two warning letters for any violation, followed by timely initiation and prosecution of enforcement proceedings which may be, as determined on a case-by-case basis, administrative or judicial in nature. Any civil penalty assessed, sought, or agreed upon by the State shall be appropriate to the violation as defined in 40 CFR 271.16(c).

The State agrees to retain all records for at least three years

unless there is an enforcement action pending. In that case all records will be retained until such action is resolved.

2. Submission of Compliance Monitoring and Enforcement Information

The State will provide compliance monitoring and enforcement information to the Regional Administrator on a routine basis as specified in the State Work Program. In addition to that information, the State will provide on a monthly basis, copies of inspection reports and any resultant enforcement actions at Federal facilities.

D. Other Reporting Requirements

1. The State agrees to submit the following reports to the Regional Administrator within the specified time periods:

a. Biennial reports summarizing the quantities and types of hazardous waste generated, transported, treated, stored and disposed in the State as specified in the RCRA Guidance, by October 1 of each even-numbered year.

b. Additional reports as negotiated in the State Work Program.

2. The State will provide copies of all exception reports that it receives from West Virginia generators to those States in which the facilities designated on the manifests are located and to those States to which the shipments may have been delivered (or to EPA in the case of an unauthorized States).

3. The State will require all generators who file annual reports required under 6.4.2 of the DNR Regulations to submit information on a form prescribed by the Chief which includes at a minimum the

information required by 40 CFR Section 262.41(a).

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

V. EPA RESPONSIBILITIES

A. General

1. Oversight

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

Review of State agency files may be scheduled at quarterly intervals; however, the State agrees to allow EPA access to specific files more frequently as warranted. Program review meetings between

the State and the Regional Administrator or their assignees will be scheduled at reasonable intervals not less than annually to review specific operating procedures and schedules to resolve problems and to discuss mutual program concerns. These meetings will be scheduled at least fifteen days in advance unless agreed to differently. A tentative agenda for the meeting will be prepared by EPA.

2. Duty to Keep State Informed

EPA will keep the State informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the State Program. EPA will also provide general technical guidance to the State. EPA will share with the State any national reports developed by EPA from the data submitted through State reporting requirements.

3. EPA Identification Numbers

EPA agrees to assign EPA identification numbers to generators and transporters and to owners and operators of hazardous waste treatment, storage, and disposal facilities submitting notifications to the State after the effective date of this Agreement. EPA will do this after receiving a copy of the notification information from the State as provided in Section IV.B.3 of this Agreement.

4. Transfer of Notification Information

EPA agrees to provide the State notification information from EPA Form 8700-12 obtained prior to the effective date of this Agreement. A copy of the original notification forms and/or a computer printout

containing all the notification information will be provided. Such information will be provided to the State within thirty days of the effective date of this Agreement. EPA will also forward, on a monthly basis, notification (including newly assigned EPA identification numbers) submitted by persons in the State who file such forms after the effective date of this Agreement. This information will be submitted to the State within ten days following the end of each month for the preceding month.

5. 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 the other party(ies) to this Agreement by telephone of the existence of such situation in accordance with Section IV.A.5 of this Agreement.

6. Technical Assistance

EPA agrees to provide the State with technical assistance and guidance on permitting, compliance monitoring and enforcement, as available, upon request.

7. Site Visits

EPA is responsible for maintaining reliable national data on hazardous waste management. This data is used to report to the President and Congress on the achievements of the hazardous waste program and to support EPA's regulatory development efforts. Whenever

EPA determines that it needs to obtain certain information, EPA will first seek to gain this information from the State. The State agrees to supply the Regional Administrator with this information if readily available. If the State is unable to provide the information or it is necessary to supplement the State information, EPA may conduct a special survey or perform information collection site visits after notifying the State. EPA will share with the State any national reports developed by EPA as a result of such information collection.

B. Permitting

1. General

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

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

pertinent file information to the State within thirty days of the approval of the State program in conformance with the conditions of this Agreement.

2. Transfer of Files

EPA agrees to transfer to the State any pending Part A and Part B hazardous waste management facility permit applications originally submitted to EPA pursuant to 40 CFR 270.10 by facilities located in the State and which have not already been transferred to the State, together with all pertinent file information. Pertinent file information includes applications (including accompanying narratives, plans, maps, etc.), draft permits, public notices, administrative notices, completeness and technical review documents, fact sheets and correspondence. Such materials will be provided within thirty days after the effective date of this Agreement and according to any arrangement the State and the Regional Administrator may make regarding the priority of file transfer.

EPA will also provide to the State, within five days of receipt, Part A and Part B permit application submitted directly to EPA by persons in the State after the effective date of this Agreement.

3. EPA Overview of State Permits

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

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

| ITEM DESCRIPTION | FREQUENCY OF SUBMISSION |
|---|--|
| EPA will comment in writing, in accordance with 40 CFR Section 271.19 to inform the State and the facility of any deficiency in the draft permits and proposed permit modifications for major facilities. | Within 60 days of receipt or will request an extension for these comments as warranted. The State retains the ability to decline such an extension for good cause. |
| As resources allow, EPA agrees to provide comments on permit applications, draft permits, and proposed permit modifications for non-major facilities which have been deemed complete. | Within 60 days of receipt or will request an extension for these comments as warranted. The State retains the ability to decline such an extension for good cause. |
| EPA will review all West Virginia emergency permits and provide comments, if any, to the State. | Immediately by phone, followed by letter. |
| EPA will review all trial burn permit applications and provide comments to the State. | Within 60 days of receipt. |
| EPA will select and evaluate closure plans, post-closure plans, and cost estimates and provide comments to the State. | Immediately if the plan appears to present an unreasonable risk to human health or the environment. Otherwise, on a mutually agreed upon schedule. |

EPA may request a copy of any permit application, draft permit or proposed permit modification, statement of basis or fact sheet and any supporting documentation that went into the development of the draft permit. The State will provide such information within the time frames specified in Section IV.B.2. In accordance with 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, within sixty (60) days of its receipt. Where EPA indicates in a comment that issuance 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 West Virginia regulations that support the comment); and
- (b) the action that should be taken by the State in order to address the comments (including the conditions which the permit would include if it were issued by the Regional Administrator).

EPA will send a copy of any comments on the permit application, draft permit or proposed permit modification to the State and the permit applicant.

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

4. EPA Termination of Permit

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

C. Compliance Monitoring and Enforcement

1. General

Nothing in this Agreement shall restrict EPA's right to inspect any hazardous waste generator, transporter or facility or bring enforcement action against any person believed to be in violation of the State hazardous waste program. Before conducting an inspection of a generator, transporter or facility, the Regional Administrator will normally give the State at least seven days notice of the intent to inspect in accordance with 40 CFR 271.8(b)(3)(i). If the State performs a compliance inspection and submits a report and data relevant thereto within that time to EPA, no EPA inspection will be made, unless the Regional Administrator deems the State report and data to be inadequate. In case of an imminent hazard to human health and the environment, the Regional Administrator may shorten or waive the notice period. Regardless of whether or not the notice is waived the Regional Administrator shall file a report with the State that an imminent hazard exists and what the results of such inspection reveal.

The frequency of EPA oversight and training inspections will be specified in the annual State Work Program. EPA will conduct oversight inspections, on approximately 10% of the State's compliance inspections.

EPA agrees to make available to the State copies of any reports and data resulting from compliance inspections within sixty days of completion of the inspections, including any enforcement actions by

EPA against hazardous waste handlers in the State.

2. EPA Enforcement

The Regional Administrator may take enforcement action against any person determined to be in violation of RCRA in accordance with Section 3008(a). EPA may also take enforcement action upon determining that the State has not taken timely and appropriate enforcement action. Prior to issuing a compliance order under Section 3008 EPA will give notice to the State. EPA also retains its rights to issue orders and bring actions under Sections 3013 and 7003 of RCRA and any other applicable Federal statute.

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

VI. INFORMATION SHARING

A. General

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

administration and enforcement.

EPA will make available to the State other relevant information as requested which the State needs to implement its approved program.

B. Confidentiality

1. Any information obtained or used in the administration of the State program shall be available to EPA upon request, without restriction. If the information has been submitted to the State under a claim of confidentiality, then the State must submit that claim to EPA when providing the information. Any information obtained from the State and subject to a claim of confidentiality will be treated in accordance with 40 CFR Part 2. With respect to any information submitted to the State under a claim of confidentiality and subsequently forwarded to EPA, when EPA issues any notice to affected businesses in accordance with 40 CFR Section 2.204(e)(1), the Chief of the West Virginia/Virginia Section, Waste Management Branch, shall send a copy of such notice upon issuance, to the Chief, Division of Water Resources.

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

VII. TERMS OF AGREEMENT

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

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

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

This Agreement will remain in effect until such time as State program authorization is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR 271.22 and 40 CFR 271.23. If final regulations which are consistent and equivalent to the federal RCRA program (pre-HSWA) do not become effective and replace emergency regulations contained in the Final Authorization Application prior to the expiration of such emergency regulations, then EPA may withdraw any final authorization approval in accordance with 40 CFR Section 271.22.

In computing any period of time prescribed by the Agreement, the

day on which the designated period of time begins shall not be included. However, the last day of the period shall be included unless it is a Saturday, Sunday, or legal holiday. In that case, the period will extend until the end of the next non-holiday weekend. When the period of time is less than seven (7) days, intermediate Saturdays, Sundays, or legal holidays shall be excluded in the computation.

STATE OF WEST VIRGINIA
DEPARTMENT OF NATURAL RESOURCES

US ENVIRONMENTAL PROTECTION AGENCY
REGION III

By: *[Signature]*

Director

DATE: 9/24/85

AIR POLLUTION CONTROL COMMISSION

By: *[Signature]*
Chairman

DATE: 10-19-85

DEPARTMENT OF HIGHWAYS

By: *[Signature]*
Commissioner

DATE: 9/26/85

By: *[Signature]*

DATE: 4/22/86

PUBLIC SERVICE COMMISSION

By: *[Signature]*
Chairman

DATE: 9/30/85

WATER RESOURCES BOARD

FOR *[Signature]*
Chairman

By: *[Signature]*
DATE: 10-3-85

APPROVED AS TO FORM THIS

25 DAY OF Sept. 1985

[Signature]

ATTORNEY LEGAL DIVISION,
WEST VIRGINIA DEPARTMENT
OF HIGHWAYS

US EPA ARCHIVE DOCUMENT