

US EPA ARCHIVE DOCUMENT

CAPABILITY ASSESSMENT FOR THE STATE OF WEST VIRGINIA HAZARDOUS WASTE PROGRAM

AUTHORIZATION REVISION # 1

I. INTRODUCTION

This Capability Assessment was prepared by EPA Region III to assess the ability of the State of West Virginia to carry out its revised hazardous waste management program in lieu of the federal program. This assessment is required under EPA's Subtitle C authorization guidance as part of the review and approval process for RCRA authorization decisions. Assessments are needed when state authorization will result in significant impacts on a State's workload or when an application for HSWA Corrective Action is included in the authorization application. This application for revised authorization encompasses the Boiler and Industrial Furnace (BIF) rule and the Land Disposal Restrictions (LDR). Corrective Action authorization will be sought by the State at a later date.

The State of West Virginia has requested that its authorization be revised to include the Federal requirements through RCRA Regulatory Cluster VII dated July 1, 1997 as well as program elements addressed in the following Federal Register notices: 63 Federal Register 28556 (May 26, 1998) LDR Phase IV, 63 Federal Register 31266 (June 8, 1998) LDR Technical Amendment, 63 Federal Register 33782 (June 19, 1998) Hazardous Waste Combustors Revised Standards (the "fast track rule"), and 62 Federal Register 64636 (December 8, 1997) Organic Air Emission Standards for Tanks, Surface Impoundments and Containers. This first revision to the State's authorization includes more than 13 years of regulatory revisions by EPA since the base program was first authorized in 1986. The following RCRA program elements are not included in this authorization revision package: corrective action, delisting, radioactive mixed waste and the requirements for existing and newly regulated surface impoundments in RCRA Section 3005(j)(2) & (6) and the variances from surface impoundment requirements in RCRA Section 3005(j)(2)-(9) and (13).

The overall responsibility for managing the West Virginia hazardous waste program is assigned to the Division of Environmental Protection (DEP), Office of Waste Management (OWM). Other participating DEP offices include the Office of Air Quality (OAQ) and the Office of Water Resources (OWR). Other participating State agencies include the Public Service Commission, the Division of Highways, the Air Quality Board and the Water Environmental Quality Board. These State agencies are bound by financial agreements and Memoranda of Understanding to fully implement the hazardous waste program in West Virginia.

This assessment was completed in accordance with EPA's October 1991 "RCRA State Authorization Capability Assessment Guidance" using EPA's annual and midyear reviews of the West Virginia hazardous waste management program for the years 1996 through 1998, as well as West Virginia's self assessment of their program and expertise. Although an assessment of West Virginia's entire hazardous waste program was conducted, there is an emphasis in this Capability Assessment on state capabilities in the combustion area because it is a big component of West Virginia's first revision authorization application.

II. ASSESSMENT

Enforcement

- **The State has and uses an Enforcement Strategy that is consistent with national priorities and guidance.**

In the current MOA between West Virginia and Region III the State commits to perform enforcement actions in accordance with the EPA's current Enforcement Response Policy.

- **Inspections are of good quality and consistent with current guidance.**

Inspections are of good quality and consistent with current guidance, as documented in the end of year reports for the past three fiscal years (FY96, 97 and 98). This includes inspections at combustion facilities and air emission sources.

- **The State is generally able to identify violators and make reasonably rapid progress toward meeting prescribed time frames in final enforcement orders according to current enforcement policy (e.g., Enforcement Response Policy).**

Annual reviews by EPA of the West Virginia hazardous waste program over the past three years reveal that WV is generally bringing timely enforcement actions. In FY 96 the State was recognized by EPA for their efforts working on two major enforcement cases with the Regional Office.

As stated previously, in the current Memorandum of Agreement between the State and EPA - Region III, the State will commit to perform enforcement actions in accordance with the Timely and Appropriate Policy as defined in EPA's current Enforcement Response Policy. Enforcement orders are issued in accordance with the current Enforcement Response Policy requirements.

The State has been successful in decreasing the number of facilities on the T & A list during the last three years. Enforcement orders are issued in accordance with the current Enforcement Response Policy requirements.

- **The State has consistently met the majority of compliance monitoring and enforcement grant commitments, or has demonstrated a trend of significant improvements toward meeting commitments.**

As discussed within the mid and end of year reports, the State continually met and/or exceeded compliance monitoring inspection targets and enforcement objectives. Also noted in these reports, the State continued to complete compliance inspections and complaint investigations, pursue enforcement and/or provided assistance to small quantity generators, conditionally exempt SQGs, nonhandlers, stand alone transporters, and non-notifiers. Some of these activities were considered State priorities and were accomplished above and beyond the normal grant commitments.

The State also actively took part in EPA's Community Based and Sector-based initiatives as well as working on significant areas where environmental justice issues may be present. EPA had commended West Virginia for participating in a number of sector-based areas. In FY'98, State

personnel began working on a high school initiative for hazardous waste from school chemistry labs. The State had also been adding waste minimization actions in administrative enforcement orders.

The State has developed a data management team in the past three years that has been working diligently to clean up the current RCRIS database. This team has made great strides in cleaning up the database and will continue to work on enforcement and permitting activities in the future. This staff has been acknowledged by the Regional Office for their efforts over the past few years.

Permits & Closure Plans

- **The State uses (or, in the case of combustion facilities, is developing) a multi year permitting strategy that addresses the most environmentally significant facilities first. State permitting strategies are consistent with current national priorities and guidance.**

The State has consistently adopted the priorities set forth in the national RCRA Implementation Plan and Region III's Beginning of Year Plan. Permitting priorities are reviewed each year by WVDEP and EPA through the grant work plan. There are approximately 25 treatment, storage or disposal facilities that are subject to RCRA permitting requirements.

- **Permits are generally of good quality as established by current guidance, manuals, and policies.**

Permits and permit modifications issued under the State's base program authorization have consistently met the requirements set forth in the authorized State regulations as well as EPA policies and guidance. The State maintains frequent contact with the Region on complex technical and regulatory issues, and seeks EPA assistance prior to making decisions. There have been no inconsistencies noted in mid- or end-of-year reviews for the past three fiscal years. The additional regulatory requirements included in the present authorization package are logical extensions of the base program. Therefore, EPA fully expects that the State will continue to issue good quality permits that are consistent with national policies.

- **The State has consistently met the majority of permitting grant commitments, or is making significant improvements toward meeting commitments.**

As documented in EPA's past three fiscal year-end reports, the WV Offices of Waste and Air Quality have met the majority of their permitting commitments. Commitments that were not met were due to delays caused by the facilities or at EPA's request to coordinate with ongoing enforcement actions. The State has since made significant progress toward meeting the outstanding commitments. EPA is kept fully apprised of the status of all permitting commitments.

The State has permitted all treatment, storage and disposal facilities that are covered by the base program. Work on renewals and modifications is ongoing. In addition, work is continuing on the two remaining post-closure permits, which should be completed within the next year. Although this authorization will change some regulatory requirements, it will not substantially affect the permitting workload for most of those facilities.

Only two facilities (one BIF, one Subpart X) will be added to the State's permitting universe as a result of regulatory changes included in this authorization. One other facility, previously permitted under the base program, will require very substantial permit modifications as a result of incorporating the BIF rule into the State's authorization. EPA believes that the State will readily assimilate this additional workload at current staffing levels.

Hazardous Waste Combustors

The State's Office of Air Quality (OAQ) has been authorized to regulate hazardous waste incinerators since 1986. Since that time, OAQ has issued numerous hazardous waste incinerator permits and permit modifications, conducted compliance inspections, provided compliance assistance, and taken enforcement actions, as necessary to implement a comprehensive regulatory program. As reflected in EPA's past end-of-year evaluations, the State's performance in all of these areas has been satisfactory or better. Because the skills and expertise necessary to regulate incinerators are identical to those for boilers and industrial furnaces (BIFs), EPA expects a seamless transition to State control of BIFs. Furthermore, the OAQ combustion staff has already acquired several years of experience in regulating BIFs under State regulations prior to authorization.

OAQ has developed an interpretive rule which is consistent with—and supports—EPA's policy on comprehensive risk assessments at hazardous waste combustors. They have also adopted the hazardous waste combustor (HWC) MACT "fast track" rule which, among other things, will facilitate the transition from the existing RCRA regulations to Clean Air Act-based regulations.

The OAQ combustion staff has expanded in recent years to keep pace with its growing regulatory workload. The staff is well-trained, both technically and programmatically, and continually seeks additional training to stay abreast of new regulatory developments.

OAQ has had primary responsibility for inspecting hazardous waste incinerators ever since the State received base program authorization. The State began accompanying EPA on BIF inspections in 1992. Starting in 1996, OAQ has taken the lead on BIF inspections, including small quantity burners, through a work sharing arrangement that is set forth in each annual grant work plan. State inspections have been of consistently good quality.

The State is well-positioned for the coming transition to MACT controls for hazardous waste combustors. The fact that both the RCRA and CAA permitting responsibilities fall within a single agency, OAQ, should facilitate the close coordination between the two programs that will be required during the transition.

OAQ staff also has considerable experience with closure of hazardous waste combustors, including both incinerators and BIFs. The State has had the lead on all incinerator closures and the technical lead to support EPA's closure of several BIFs. All closures were consistent with EPA guidance. OAQ coordinates closures with the Office of Waste Management.

Miscellaneous Treatment Units

The State currently has only one miscellaneous treatment unit (often referred to as a "Subpart X" unit) that will be subject to permitting. That unit, as is most often the case for Subpart X units, is a thermal treatment device that resembles a hazardous waste combustor in many aspects. Therefore, OAQ will be the lead technical reviewer of that permit application. OAQ's skills and expertise with combustors are directly transferrable to regulation of thermal treatment units.

Air Emission Standards

The air emission standards for hazardous waste treatment, storage and disposal facilities that are incorporated in this authorization (often referenced as Subparts AA, BB, and CC) apply only to facilities that are otherwise required to obtain RCRA permits. They do not expand the RCRA permitting universe. In addition, many of the requirements are virtually identical to standards established for other facilities under the Clean Air Act and for which OAQ is already the lead implementing agency. Consequently, OAQ already has the requisite skill mix to effectively implement these standards, and, due to the self-implementing nature of the requirements, there should be little effect on OAQ's work load.

Land Disposal Restrictions

The State continues to enforce the LDR regulations within its daily work activities. The State staff is trained to ensure that LDR requirements are satisfied. Additional inspector training on the newer LDR rules was provided to State inspectors in May 1997. Through work sharing and training the staff has built its capability with respect to the technical skills and expertise for this additional program responsibility

Management

- **Resource and Skill mix - The State has consistently devoted sufficient resources necessary to match Federal Section 3011 grant funds, and has consistently maintained a staff that is large enough and has the technical skills and experience necessary to effectively manage the existing program and the additional program responsibilities that the State is seeking.**

Over the past three fiscal years, the State has provided its required 25% match or more to the Section 3011 Federal funds. Staff vacancies are filled in a timely manner. Through work sharing, the State has built its capability with respect to technical skills and experience for the additional program responsibilities under the LDR and combustion programs. The State currently has staff with skills and experience to implement these regulations. The Office of Air Quality has noted that there is a need for secretarial support as well as two additional engineers and/or scientists to assist in completing long term goals. In FY 2000, EPA has awarded an additional \$45,000 in the Office of Air Quality's pass through base grant in order to facilitate additional staff hours for RCRA Subtitle C work. This money will assist with hiring staff for Compliance and Enforcement work such as compliance investigation, facility compliance and enforcement, referral reporting, and writing enforcement actions.

The State has access to toxicologists and health assessment staff with specialized skills necessary to accomplish the site-specific, indirect pathway risk assessments required by the Combustion Strategy. This expertise is accessible through the Office of Waste Management, the new Office of Environmental Remediation, the Office of Air Quality and when necessary through outside contractor assistance.

- **Training - The State ensures that all staff are adequately trained, commensurate with their program responsibilities and applicable order requirements (e.g., Order 3500.1 for inspectors).**

The State provides a variety of program training for the staff, including health and safety, enforcement, and inspection procedures. State staff are also encouraged to attend specialized training in their respective program areas (e.g., LDR, combustion, and risk assessment). The State also provides a variety of more generalized training that is designed to ensure a diverse, informed and productive workplace.

- **Information Management - The State has—and effectively uses—an appropriate data system (e.g., CARS, RCRIS, etc.) that provides timely and accurate information to the program and EPA.**

The State is currently an Implementor of Record for RCRIS. The State has developed a data management team which has been trained and will be accepting the handler module for RCRA/Info. The State updated data equipment in order to utilize RCRIS reporting techniques. Data quality and timeliness have caused the Region to cease monthly Quality Assurance/Quality Control reviews of WV's RCRIS input. WV has also been actively involved in EPA Headquarters "Informed" initiative. Staff has been trained in ORACLE.

The State has continued to complete BRS activities in a timely manner. The State has been using the data collected from the BRS forms to assist with waste minimization activities in the State. Certain prominent waste streams have been targeted for reduction. The State is working on providing these facilities with information on minimizing their waste.

State Agency Interaction

The lead Agency responsible for the hazardous waste program is the WV Division of Environmental Protection (DEP), Office of Waste Management (OWM). The OWM receives assistance for hazardous waste combustion and other air-related requirements from the Office of Air Quality, also of WV DEP. Hazardous waste transporter highway inspections are completed by the WV Division of Highways. The Highway inspectors receive hazardous waste training on an annual basis. The Public Service Commission assists with regulating transportation of hazardous waste by rail. As the new Office of Environmental Remediation develops, the OWM will be working with them on corrective action work sharing activities within the State. The Office of Water Resources assists with Waste Minimization activities.

Future Expectations

- **The State demonstrates that it has the necessary resources, experience and organizational structure to successfully implement the new provisions for which it is seeking authorization.**

Through work sharing arrangements with EPA over the last three years, the State has demonstrated its ability to implement each of the provisions included in this revised authorization package. The State and EPA have worked closely to develop the State's expertise in the various program areas. As the work load transition proceeds, EPA will continue to provide technical support, training, and work sharing expertise through negotiated annual State grant work plans.

The State has effectively dealt with legislative, organizational, or institutional barriers to program implementation. The State prepares annual regulatory packages which adopt the Federal Code by reference. They have committed to continue this process.

III. DETERMINATION

All relevant aspects of the West Virginia hazardous waste program were reviewed against the criteria set forth in the 1991 Capability Assessment Guidance. We also reviewed the State's performance with respect to base program implementation as well as work sharing in support of EPA's work on LDR and the combustion initiative. These reviews focused on fiscal years 1996, 1997 and 1998. As a result of our review, the Waste and Chemicals Management Division recommends that the State's application for revised authorization be approved.