

US EPA ARCHIVE DOCUMENT

EPA REGION III
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" or MOA) establishes policies, responsibilities, and procedures pursuant to 40 CFR Section 271.8 for the State of West Virginia (hereinafter "State") Hazardous Waste Program (hereinafter "State 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 Agreement further sets forth the manner in which the State and EPA will coordinate in the State's administration and enforcement of the State program and, pending State authorization, EPA's administration of the provisions of the Hazardous and Solid Waste Amendments of 1984 (HSWA). For purposes of this Agreement, references to "RCRA" include HSWA.

This Agreement is entered into by the Director of the Division of Environmental Protection, the Secretary, Division of Highways and the Chairman, Public Service Commission (hereinafter "Director") and the Regional Administrator, EPA Region III (hereinafter "Regional Administrator"). For administrative purposes, the Division of Environmental Protection will serve as lead agency to simplify coordination and communication between the State and EPA.

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

Further, nothing in this Agreement shall be construed to restrict the State in the administration of the State Program required in WV CSR Title 33 Series 20, Hazardous Waste Management Rule as well as those State Rules referred to therein.

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

This Agreement supersedes the Agreement which was effective on May 15, 1985. This Agreement may be modified upon the initiative of either party in order to ensure consistency with State program modifications made or for any other purpose mutually agreed upon. Any revisions or modifications to this Agreement must be in writing and must be signed by the Director and 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 Section 271.22 and 40 CFR Section 271.23.

This Agreement is being executed because the State is seeking authorization for the State's revised hazardous waste program and its implementation of it, for the Federal requirements addressing final rules promulgated through RCRA Regulatory Cluster VII dated July 1, 1997 as well as program elements addressed in the following Federal Register Notices and incorporated within the State's regulations currently in effect; 63 Federal Register 28556 (May 26, 1998), 63 Federal Register 33782 (June 19, 1998), 62 Federal Register 64636 (December 8, 1997) and 63 Federal Register 31266 (June 8, 1998). The following RCRA program elements are not included in this authorization revision package and therefore not covered under this Agreement: Corrective Action, Delisting, Radioactive Mixed Waste, and the requirements for existing and newly regulated surface impoundments provided in RCRA Section 3005(j)(2) & (6) and the variances from surface impoundment requirements provided in RCRA Section 3005(j)(2)-(9) and (13).

This Agreement shall be signed by the Director and the Regional Administrator and shall become effective at the time the State'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 State.

II. POLICY STATEMENT

Each of the Parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon granting of final authorization by EPA, the State 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 State is not authorized to act. The Director 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 State program. The State will conduct its hazardous waste program in accordance with EPA program policies and guidance.¹

¹ These policies and guidance include, at a minimum, the OSWER Consolidated Guidance; the Office of Enforcement and Compliance Assurance MOA guidance; RCRA Civil Penalty Policy dated October 26, 1990; National Criteria for a Quality Hazardous Waste Program; revised Hazardous Waste Civil Enforcement Response Policy (March, 1996); and the EPA Policy on Performance Based Assistance (May 31, 1985); and the May 1, 1996 Advanced Notice of Proposed Rulemaking for the Corrective Action Program; Setting Customer Service Standards (E.O. 12862, September 11,

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 for which the State is not authorized, it is the intention of EPA and the State to coordinate the implementation of such provisions to the greatest degree possible.

EPA will execute its required oversight functions of the authorized State 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 State's program.

Procedures used by the State in approving variances, waivers or petitions in WV CSR Title 33 Series 20 Hazardous Waste Management Rules must be equivalent to those used by EPA in granting variances, waivers or petitions to the Federal Regulations. The State will transmit to EPA a copy of all variances, waivers and petitions at the time they are approved.

EPA will continue to process delisting petitions; however, EPA agrees to include the State in all pre-petition discussions with petitioners, and EPA will notify the State within a reasonable time of receiving a petition to delist a waste from a specific facility in West Virginia, pursuant to 40 CFR Part 260.22. The Director, or his designee, will inform EPA in writing of the State's intent to participate in EPA's review and evaluation of the delisting petition. Delisting petitioners in the State will submit delisting petitions to the Regional Administrator and to the Director. In the event that these petitions are submitted to the State in lieu of EPA, the State will retain a copy and immediately forward the petition to EPA. When a petition is submitted to EPA, EPA will notify the petitioner of the need to submit a copy of the petition to the State. Should EPA require the assistance of the State in the review of the petition, this work sharing activity will be negotiated at the time the annual grant work plan is being negotiated, or subsequently as an additional element to be added to or substituted into the work plan.

EPA will notify the State prior to publishing a proposed delisting determination in the Federal Register, and again notify when the final determination is made. A copy of the Federal Register

1993); Improving Customer Service (Fred Hanson, April 8, 1998); Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations (E.O. 12892, February 11, 1994); EPA OSWER Environmental Justice Action Agenda (EPA 540/R-95/023, 1995).

Notice announcing EPA's tentative determination will be provided to the State. EPA will notify the State if any public comments are received on EPA's tentative determination and provide copies if requested. As necessary, and if requested, EPA agrees to coordinate with the State in the development of any response to comments. A copy of EPA's final determination on the petition, as published in the Federal Register, will be provided to the State. If the State concurs with an affirmative EPA decision on a delisting petition, the Director agrees to follow appropriate state procedures to officially incorporate EPA's rulemaking decision into the State's program. When EPA approves a delisting petition after the appropriate public comment period, the State will notify the facility that it must petition the State for a variance from the definition of hazardous waste. The State will review and approve the variance requests in accordance with the West Virginia Administrative Procedures Act so that the State can recognize EPA's approved exclusion until such time as the State is able to incorporate the exclusion into its regulations during the next State rulemaking opportunity. The State will inform the Regional Administrator when the final action has been completed in accordance with the West Virginia Administrative Procedures Act.

West Virginia Code Section 22-1-6(d)(7) authorizes the Director of the Division of Environmental Protection to "employ in-house counsel to perform all legal services for the Director and the Division, including, but not limited to, representing the Director, any chief, the division or any office thereof in any administrative proceeding or in any process in state or federal court." As noted in the West Virginia Office of Legal Services Statement, the Director hereby agrees that he will not call upon the Attorney General for legal assistance or representation in any matters related to the authorized hazardous waste management program.

III. STATE PROGRAM REVIEW

A. General

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 for the 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 grant work plan, permit overview, compliance and enforcement overview, and mid-year and end of year reviews 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.

To ensure effective program review, the State agrees to allow EPA access to all files and other information relating to the State program requested by the Regional Administrator, or his/her designee, that is deemed necessary by EPA for reviewing and evaluating State program administration and enforcement.

Review of State files may be scheduled at quarterly intervals; however, the State agrees to allow EPA access to specific files more frequently as warranted, i.e., for enforcement actions. Program review meetings between the Director 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 State. A tentative agenda for the meeting will be prepared in advance by EPA.

B. Identification of Priority Activities

The State and EPA agree to develop, on an annual basis as a part of the State 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 State of West Virginia, 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 State and EPA evolve, changes to this section of the Agreement may be appropriate. During the annual review of this Agreement, the Director 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 West Virginia and in the annual state workplan. 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. Submission and use of compliance and enforcement information data.

d. Submission and use of corrective action information.

B. EPA

1. 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 support to the State. EPA will share with the State any national reports developed by EPA from the data submitted through State reporting requirements.
2. The State and EPA have agreed to a joint permitting process (see Section V.D. of this Agreement, "Joint Permitting Process"). Under this process, the State and EPA have established policies and procedures by which each will pursue its respective and/or joint responsibilities under HSWA.
3. The State and EPA agree to the sharing of information as specified in this agreement and in the annual State grant work plan. Specifically included shall be the procedures for sharing and coordinating the exchange of information on the following:
 - a. Part A and Part B Permit Applications, whether received prior to the effective date of this Agreement or subsequent to the effective date of this Agreement and whether first received by the State or EPA;
 - b. Such other information necessary to support the foregoing information;
 - c. Copies of draft permits, proposed permit modifications, public notices;
 - d. Copies of final permits and permit modifications; and
 - e. Notices of permit denials.
4. EPA will make available to the State other relevant information, as requested, which the State needs to implement its approved program. Information provided to the State will be subject to the terms of 40 CFR Part 2.
5. As resources allow, EPA agrees to provide training to the State whenever the State requests it.
6. As resources allow, EPA agrees to provide technical assistance to the State in the review of permit applications, draft permits, permit modifications, closure/post-closure plans, variances, waivers, etc. on request.
7. EPA agrees to follow the delisting procedures as outlined in Section II, Policy Statement.

C. State

1. The State agrees to inform the Regional Administrator with as much advance notice as possible of any proposed program changes which would affect the State's ability to implement the authorized program. Program changes of concern include modifications of the State'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 State 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 State will agree on the type and frequency of reports the State will make in order for EPA to maintain oversight of the implementation of the State'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 state. Such reporting shall include, but not be limited to, the following:
 - a. RCRIS/RCRA Info 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 State 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/RCRA Info 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/RCRA Info 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.
 - 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 State grant work plan.
- 3. Pursuant to 40 CFR §271.8 EPA reserves the right to request any information it deems necessary (relative to the State's approved program) in a manner to be specified in the annual grant work plan.
- 4. The State agrees that it will not exercise its authority provided in WV CSR Title 33 Series 20, as amended, to grant variances or exemptions from the provisions of the regulations unless such variances or exemptions are specifically provided for in these regulations and the result of such variance or exemption will not conflict with the requirements that the program remain equivalent to the Federal program, be consistent with the programs applicable in other states, and that it provide adequate enforcement of compliance with the requirements of RCRA. Should such variances or exemptions be granted, the State agrees to notify EPA of the variances or exemptions.

The State agrees to abide by the provisions of 40 CFR 260.20, as incorporated by reference from any specific regulatory provision under 150 CSR 11 and 157 CSR 7, the Public Service Commission and the Secretary of the Division of Highways will also follow the procedural requirements of 40 CFR 260.20 (b) -(e), including the following:

1. Each petition must be submitted to the appropriate State agency by certified mail and must include:
 - (1) the petitioner's name and address;
 - (2) a statement of the petitioner's interest in the proposed action;
 - (3) a description of the proposed actions, including (where appropriate) suggested regulatory language; and
 - (4) a statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.
2. The State agency will make a tentative decision to grant or deny a petition and will publish notice of such tentative decision, either in the form of an advanced notice of proposed rulemaking, a proposed rule, or a tentative determination to deny the petition, for written comments.
3. Upon written request of any interested person, the State agency, may, at its discretion, hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The State agency may in any case decide on its own motion to hold an informal public hearing.

4. After evaluating all public comments the State Agency will make a final decision by publishing a regulatory amendment or denial of the petition.
5. The State agrees to follow the delisting procedures as outlined in Section II, Policy Statement.
6. The State agrees to provide permit and closure information to EPA as specified in the annual state grant workplan. A listing of the required information and a submittal schedule will be included in the annual grant work plan and shall be regarded as a State grant commitment. Examples of the required information include, but are not limited to, the following:
 - a. Copies of permit applications originally submitted to the State and subsequent revisions or additions to these applications on or after the effective date of this Agreement, by all hazardous waste management facilities in the State, 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 State. 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 State's reports of inspections conducted during closure and after receipt of closure certification;
 - (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.

7. The State may request technical assistance in the review of permit applications, draft permits, permit modifications, closure/post-closure plans, variances and waivers, etc. EPA will honor such requests as resources allow. The priorities for permitting will be reviewed annually during the development of the State work plan.
8. The State agrees to provide EPA with copies of reports on data resulting from any compliance inspection and subsequent enforcement actions, when EPA requests such copies.
9. The State agrees to provide any pertinent information relating to the State Program 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
West Virginia State 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 State. The State of West Virginia agrees to supply the Regional Administrator with this information if readily available and as resources allow. If the State is unable to provide the information or if 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.

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 Agreement of the existence of such situation.

1. For the WV Division of Environmental Protection, Office of Waste Management, the twenty-four (24) hour response number is 1(800)642-3074.

For the WV Division of Highways, the twenty-four (24) hour response number is 1(304)558-3028.

For the WV Public Service Commission, the twenty-four (24) hour response number is 1(304)340-0474.

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 State program shall be available to EPA upon request without restriction including any information associated with the administration of the State's Voluntary Remediation and Redevelopment Act (VRRDA). If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information. Any information obtained from a State subject to a claim of confidentiality will be treated in accordance with the regulations in 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 notices to affected businesses in accordance with 40 CFR Section 2.204(e)(1), the Division Director, Waste and Chemicals Management Division, shall send a copy of such notice upon issuance to the Chief, WV Office of Waste Management.
2. EPA agrees to furnish to 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. EPA will notify affected facilities when such information is sent to the State.

V. PERMIT ISSUANCE

A. EPA Permitting

Upon authorization of the State program, EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities for which the State is receiving authorization. If EPA promulgates standards for additional regulations mandated by HSWA that are not covered by the State's authorized program, EPA will issue and enforce RCRA permits in the State for these new regulations until the State receives final authorization for equivalent and consistent State 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 State receives authorization for the new standards. At the time the State program is approved in the new areas, EPA will suspend issuance of Federal permits in the State.

Whenever EPA adds permitting standards for processes not currently covered by Federal regulations, EPA will process and enforce RCRA permits in the State in the new areas until the State receives 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 (30) days of the approval of the State program or other mutually agreed upon schedule in conformance with the conditions of this Agreement.

The State 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 State does not have authorization. As the State receives authorization for additional provisions of HSWA, EPA will suspend issuance of Federal permits in the State for those provisions.

B. 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 or EPA in the annual State 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 State of its intent to comment on a State draft permit within 30 days of receipt and if the State requests it, EPA will provide an opportunity to discuss the proposed comments prior to written submission to the State. EPA will comment within 45 days of receipt or will request an extension for these 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 State law or regulations that support the comment); and
- b. the actions 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 at EPA.)

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

The State 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 State has met or refuted its concerns and shall also provide the permit applicant with a copy of such withdrawal.

The Director 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 State. Unless otherwise agreed to the State and EPA will work towards resolving all issues within thirty (30) days.

Under Section 3008(a)(3) of RCRA, EPA may terminate a State-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 State 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 State 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 State will provide such information within one (1) week of request or within a mutually agreed upon timeframe.

C. State Permitting

The State 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 State's program. The State shall do so in a manner consistent with RCRA, as amended by HSWA, this Agreement, all applicable Federal requirements, the State's Program Description, the annual state grant work plan and other State requirements. The State commits to meet 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 State agrees to issue, modify or reissue all permits contained in the authorized portions of the State's program in accordance with the Hazardous Waste Management Act Chapters 22-18-8, 22-5-12, the West Virginia Freedom of Information Act Chapter 29B and to include as permit conditions all applicable provisions of WV CSR Title 33 Series 20, Title 45 Series 25 and Title 46 Series 8. This Agreement also applies to permits issued after final authorization but for which the processing may have begun before final authorization.

In permits issued pursuant to West Virginia's authorized hazardous waste management program, the State 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. For example: "Conduct periodic inspections" should be replaced with "Inspect on a daily/weekly/biweekly/monthly basis. A log book documenting inspections shall be maintained at the facility for a period of 3 years".

The State agrees to abide by the procedures for permit processing set forth in the WV Hazardous Waste Management Rules, WV CSR Title 33 Series 20-11 and Title 45 Series 25, 45-25-3.2 and 45-25-5.4, which contain analogs for 40 CFR Part 270 and portions of 40 CFR Part 124.

In the event circumstances arise which warrant such action, the State may exercise the variance authorities established in WV CSR Title 33 Series 20.

The State agrees to provide EPA with a copy of each State decision regarding waivers, variances and delisting petitions at the time such requests are granted. The State agrees that it will not exercise its variance authority, including emergency administrative orders, unless the result would remain not less stringent than and consistent with the Federal program, and consistent with the other State programs.

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

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.

D. Joint Permitting Process

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

EPA and West Virginia have agreed to establish a joint permitting process in accordance with 3006(c)(3) of RCRA. Details of joint permitting activities will be negotiated yearly through the annual State grant work plan. The duties and responsibilities of EPA and the State for joint permitting shall also be specified in the annual State grant work plan.

The details of the joint permitting process as contained in the State 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 State for any of the provisions of the HSWA, the specifics of the Joint Permitting Agreement as set out in the annual State 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 State corrective action activities will be performed on an ongoing basis throughout each grant fiscal year and will be in accordance with work sharing responsibilities established

in the annual grant work plan. As resources allow, the State agrees to assist EPA in meeting West Virginia'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 State 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 State will work toward establishing State authorities that will allow State oversight and enforcement in addition to Federal oversight and enforcement. Prior to authorization of additional authorities, EPA and the State may establish interim agreements which will allow State worksharing activities. When the State either assumes full responsibility of an EPA permit or incorporates the terms and conditions of the Federal permits in State RCRA permits or issues State RCRA permits to those facilities, EPA will terminate those permits pursuant to 40 CFR Part 270 and rely on the State to enforce those terms and conditions subject to the terms of an acceptable State/EPA Enforcement Agreement as provided in Section VII.

B. State

The State agrees to review all hazardous waste permits which were issued under State law prior to the effective date of this Agreement 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 State Program. The State 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 State 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 State that the permit is terminated, and no longer administer those permits or portions of permits for which the State is authorized.

Where the State permit is not equivalent to federal permit requirements, the State 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 State 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 State 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 State agrees to resolve all State permit appeals in a manner consistent with its authorized RCRA program.

VII. COMPLIANCE MONITORING AND ENFORCEMENT

Both EPA and the State 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 State 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 State priorities, developing and implementing inspection targeting methods, developing targeted inspection lists, exchanging information regarding ongoing Federal and State enforcement actions against significant non-compilers (SNC) and Secondary Violators as defined in the EPA's Enforcement Response Policy dated March 1996.

Enforcement and compliance monitoring activities/priorities will be outlined in the Office of Enforcement and Compliance Assurance's MOA guidance and the State's annual grant work plan, which is consistent with all applicable Federal requirements and with the State's Program Description.

A. EPA

1. Compliance Monitoring

Nothing in the Agreement 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 State 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 State may participate in all inspections conducted by EPA. EPA oversight and training inspections will be coordinated with the State.

In an effort to improve enforcement coordination and clarify roles and responsibilities between EPA and the State, the lead agency of an inspection will routinely be the lead in any enforcement action to address 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 State has not taken timely or appropriate enforcement in accordance with the 1996 Hazardous Waste Enforcement Response Policy. EPA reserves its right to take independent enforcement actions in the State. In instances where the State 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 notice to the State.

After notice to the State, 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 State-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 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. 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 Hazardous Waste Management Division 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 State shall negotiate the lead agency for oversight. In the annual grant work plan, facilities will be prioritized and oversight activities established. EPA and the State shall coordinate the negotiations, issuance, and oversight of compliance orders issued under Section 3008(h).

B. State

1. Compliance Monitoring

The State 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 State will conduct compliance inspections to assess compliance with hazardous waste regulations, permit requirements, compliance schedules, and all other program requirements. State specific activities and priorities for compliance monitoring will also be included in the annual grant work plan.

2. Enforcement

The State agrees to take timely and appropriate enforcement actions and agrees to make Significant Non-Compliance (SNC) determinations in accordance with EPA's 1996 Hazardous Waste Enforcement Response Policy against all persons in violation of hazardous waste regulations, permit requirements, compliance schedules, and all other program requirements.

The State will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public. 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 three years after such action is resolved.

B. Other State Agencies

The State's RCRA hazardous waste management program includes (3) state agencies: The Division of Environmental Protection (WV Office of Waste Management, WV Office of Air Quality, WV Office of Water Resources, WV Environmental Quality Board), WV Division of Highways and the WV Public Service Commission. Each agency has either rulemaking, permitting, compliance evaluation, enforcement or appellate responsibility.

For administrative purposes, the Division of Environmental Protection will serve as "lead" agency to simplify coordination and communication between the State and EPA. The State will coordinate its program activities through the Division of Environmental Protection (DEP), WV Office of Waste Management (OWM) which is designated as the lead DEP organization.

The WV Division of Environmental Protection through the OWM will ensure that the State Agencies fulfill the 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 Division of Environmental Protection will facilitate communications between EPA and the State agencies having RCRA program responsibilities and will monitor the coordination process between State agencies. The Division of Environmental Protection will also perform 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, where warranted.

The responsibilities of each agency are delineated in the State's Program Description and Interagency Memoranda of Understanding. In general, the WV DEP Office of Waste Management functions as the lead agency with primary responsibility for regulation promulgation and overseeing that regulations of other agencies are comprehensive and not duplicative.

STATE OF WEST VIRGINIA
DIVISION OF
ENVIRONMENTAL PROTECTION

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION III

BY: Michael C. Castle

BY: Bradley M. Capbell

TITLE: Director

TITLE: Regional Administrator

DATE: 11/23/99

DATE: April 24 2000

STATE OF WEST VIRGINIA
DIVISION OF HIGHWAYS

STATE OF WEST VIRGINIA
PUBLIC SERVICE COMMISSION

BY: Samuel H. Beverage

BY: Charlotte R. Rose

TITLE: Commissioner

TITLE: Chairman

DATE: 12-8-99

DATE: 1-5-2000

APPROVED AS TO FORM THIS
5th DAY OF Dec. 1999

[Signature]
ATTORNEY LEGAL DIVISION
WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION
DIVISION OF HIGHWAYS