

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 "MOA") establishes responsibilities and procedures pursuant to 40 CFR §271.8 for the State of West Virginia (hereinafter "State") Hazardous Waste 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) (hereinafter "State Program" or "Program"), and the United States Environmental Protection Agency Region III (hereinafter "EPA").

This MOA further sets forth the manner in which the State and EPA will coordinate in the State's administration and enforcement of the State's program and, pending additional authorization, EPA's administration of the non-authorized provisions of the Hazardous and Solid Waste Amendments of 1984 ("HSWA"), and EPA's regulations thereunder. For purposes of this MOA, references to "RCRA" include HSWA.

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

Nothing in this MOA will be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities and authorities under Subtitle C of RCRA. Nothing in this MOA will be construed to contravene any provision of 40 CFR part 271 or any other Federal law or regulation.

The State and EPA (hereinafter "Parties" or, individually, "Party") will review the MOA jointly at least once a year.

This MOA supersedes the MOA that became effective on July 10, 2000. This MOA may be modified upon the initiative of either Party to ensure consistency with State program modifications or for any other purpose mutually agreed upon. Any revisions or modifications to this MOA will be in writing and must be signed by the Secretary and the Regional Administrator. This MOA will remain in effect until such time as EPA withdraws State program authorization or the State

voluntarily transfers authority to EPA according to the criteria and procedures established in 40 CFR §§ 271.22 and 271.23.

## II. POLICY STATEMENT

Each of the Parties to this MOA is responsible for ensuring that its obligations under Subtitle C of RCRA are met. Upon granting of final authorization by EPA, the State will assume primary responsibility for implementing the authorized provisions of the State hazardous waste program within its boundaries. The State will conduct its hazardous waste program in a manner consistent with EPA program policies and guidance.<sup>1</sup> EPA will retain 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 thereunder. The Secretary and the Regional Administrator agree to maintain a high level of cooperation between their respective staffs in a partnership to assure successful and effective administration of the State program. While EPA retains responsibility for the direct implementation of those provisions of HSWA for which the State is not authorized, EPA and the State intend to coordinate the implementation of these provisions to the greatest degree possible.

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

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<sup>1</sup> 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; EPA's Hazardous Waste Civil Enforcement Response Policy (March 1996), and any revisions thereto; 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, 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).

cannot be implemented by EPA in authorized States. If such HSWA requirements are less stringent than the State's authorized program, the State's rules would govern.

EPA will execute its required oversight functions of the authorized State program 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 joint efforts to prevent and to mitigate environmental problems associated with the improper management of hazardous wastes.

EPA will conduct oversight functions through written reporting requirements, permit overview, compliance and enforcement overview, and mid-year and annual reviews of the State's program.

### **III. STATE PROGRAM REVIEW**

#### **A. General**

The Regional Administrator will assess the State's administration and enforcement of the hazardous waste program on a continuing basis for equivalence and consistency with RCRA, with this MOA, and with all applicable Federal requirements and policies for the adequacy of enforcement. EPA will assess the State's administration and enforcement by reviewing information the State submits in accordance with this MOA, the State's RCRA §3011 grant work plan (hereinafter "grant work plan"), and through periodic reviews of the State's program activities. EPA may also employ other mechanisms to aid in its assessment of the State's program.

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

Review of the State's files may be scheduled periodically; however, the State agrees to allow EPA access to specific files more frequently as circumstances warrant, *i.e.*, for enforcement actions. Program review meetings between the Secretary and the Regional Administrator, or their designees, will be scheduled at reasonable intervals not less than annually to review specific operating procedures and schedules, to resolve problems and to discuss mutual program concerns. These meetings will be scheduled at least fifteen (15) days in advance unless EPA and the State agree to a different length of time. A tentative agenda for the meeting will be prepared in advance by EPA.

The Regional Administrator may also consider, as part of his 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.

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

The State and EPA agree to develop, as a part of the State's grant work plan, criteria for priority activities, including activities regarding handlers of hazardous waste. These criteria will be based on EPA program guidance, the Office of Enforcement and Compliance Assurance (OECA) MOA, and priorities of the State, and will be used to identify activities that should receive the highest priority during the grant period. They will be reviewed annually and revised as appropriate.

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

#### **IV. INFORMATION SHARING**

##### **A. General**

This Section covers information sharing on miscellaneous elements of the RCRA program, including notification, RCRAInfo data, etc. Specific information-sharing requirements for the other major program elements are covered in Sections V (Permit Issuance), VI (Permit Administration), and VIII (Compliance Monitoring and Enforcement).

As the respective information needs of the State and EPA evolve, changes to this section of the MOA may be appropriate. During the annual review of this MOA, the Secretary and the Regional Administrator will carefully examine the following information-sharing provisions and revise as appropriate.

EPA and State responsibilities regarding the maintenance and operation of the Resource Conservation and Recovery Information (RCRAInfo) System are specified in the RCRAInfo Memorandum of Understanding (MOU) negotiated between EPA Region III and the State, and in the grant work plan. Examples of responsibilities addressed in the MOU include, but are not limited to, the following:

1. processing hazardous waste notification forms;
2. issuing EPA identification numbers;
3. submittal and use of compliance and enforcement information;
4. submittal and use of corrective action information;
5. processing hazardous waste permitting information; and
6. submittal of information to correct information which is inaccurate.

## B. EPA

Consistent with applicable law and regulations, EPA will:

1. keep the State informed in a timely manner of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and other factors that affect the State's Program. EPA will also provide timely technical guidance to the State. EPA will share with the State any national reports EPA develops from the data submitted through State reporting requirements;
2. make available to the State, as requested, other relevant information which the State needs to implement its approved program, subject to the conditions of 40 CFR part 2, such as:
  - a. Part A and Part B Permit Applications, whether received prior to the effective date of this MOA, or subsequent to the effective date of this MOA, and whether first received by the State or EPA,
  - b. copies of final permits and permit modifications,
  - c. notices of permit denials, and
  - d. other information necessary to support the foregoing information; and
3. bring to the State's attention any comments it receives regarding the State's administration of the hazardous waste program.

As resources and circumstances allow, EPA will make available necessary training relating to RCRA Subtitle C to the State on request.

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, etc., on request.

## C. State

The State agrees to inform the Regional Administrator in advance of any proposed program changes that would affect the State's implementation of 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 that would have a negative impact on the State's ability to carry out the terms of this MOA (*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, and that, until approved by EPA, revisions are not authorized as RCRA Subtitle C requirements.

EPA and the State will agree on the type and frequency of reports which the State will prepare for EPA to maintain oversight of the implementation of the State's authorized program. A specific list of reports and their frequency will be included in the grant work plan and will constitute a grant commitment for the State. Reporting will include, but not be limited to, the following:

1. Government Performance and Results Act (GPRA) goals and accomplishments;
2. Information required pursuant to 40 CFR §270.5;
3. Biennial report summarizing the quantities and types of hazardous waste generated, transported, treated, stored, and disposed of in the State by October 1 of each even-numbered year;
4. Copies of inspection reports, record reviews, and sampling results for all commercial facilities, treatment, storage, and disposal facilities (TSDFs), 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;
5. Copies of all enforcement actions, orders and judgments regarding commercial facilities, non-notifiers, TSDFs, Federal facilities, generators and SQGs; and
6. Reports containing statistical summaries and charts of each quarter's accomplishments for compliance and enforcement, listed by category and EPA ID number.

Pursuant to 40 CFR §271.8, EPA reserves the right to request any information it deems necessary relating to the State's approved program in a manner to be specified in the grant work plan.

The State agrees to provide permit and closure information to EPA as specified in the grant work plan. A listing of the information which the State will submit to EPA and a submittal schedule will be included in the grant work plan and will constitute a grant commitment for the State. Examples of the required information include, but are not limited to, the following:

1. Copies of permit applications submitted to the State, and subsequent revisions or additions to these applications on or after the effective date of this MOA, for hazardous waste management facilities in the State, unless EPA has been sent a copy by the facility;
2. Copies of draft permits, proposed permit modifications, draft permit denials, and 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;

3. Copies of all final permits issued, modified, reissued or terminated and notices of permit denials;
4. The following closure/post-closure data:
  - a. Copies of the public notices announcing receipt of closure/post-closure plans and public hearings, if applicable;
  - b. Copies of the approved closure and post-closure plans for all facilities;
  - c. Copies of the closure certifications for facilities signed by an independent registered professional engineer (or an independent qualified soil scientist, in cases of land treatment facilities) and the owner or operator;
  - d. Copies of the State's reports of inspections conducted during closure and after receipt of closure certification; and
  - e. Copies of any notice placed in the property deed, or other instrument that is normally examined during a title search, annotating the existence of any closed disposal facility/unit or cell.

The State may request technical assistance in the review of permit applications, draft permits, permit modifications, closure/post-closure plans, etc. EPA will honor these requests as resources allow. The priorities for permitting will be reviewed annually.

Upon EPA's request, the State agrees to provide EPA with copies of reports or data resulting from any compliance inspection and subsequent enforcement actions.

The State agrees to provide any pertinent information requested by the Regional Administrator or his designee within a mutually agreed upon time frame, for EPA to carry out its oversight responsibilities. Unless otherwise specified, the above information will be sent to:

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

In accordance with the provisions of 40 CFR §§271.14 and 124.10(c) the State agrees to develop and maintain a public mailing list and have it readily available for EPA before public notice of an action



by the State regarding a facility. An acceptable list may be specific to certain facilities, areas, or concerns; or the list may be a general State-wide list used in all cases. This list should be kept current and accurate.

#### **D. Obtaining and Sharing Information for National Data**

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 such data, EPA will first seek to gain them from the State, which agrees to supply this information to the Regional Administrator 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 this information will immediately notify, by telephone, the other Party to this MOA of the existence of the situation.

1. For the West Virginia Department of Environmental Protection (DEP), Division of Water and Waste Management (DWWM), formerly the Division of Waste Management and the Division of Water Resources, the twenty-four (24) hour response number is (800)-642-3074.

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

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

2. For the EPA, the twenty-four (24) hour response number is (215) 814-9016.

#### **F. Confidentiality**

Any information obtained or used in the administration of the State's program will be made 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 business confidentiality, the State must submit that claim to EPA when providing the information. Any information obtained from the State subject to a

claim of business confidentiality will be treated in accordance with the requirements of 40 CFR part 2. If EPA obtains from a State information that is not subject to a business confidentiality claim, EPA may make that information available to the public without further notice subject to the requirements of 40 CFR part 2.

EPA agrees to furnish to the State information in its files that is not submitted under a claim of business 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 business 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.

## **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 State standards.

As the State receives authorization for additional provisions of HSWA, EPA will suspend issuance of Federal permits in the State for those provisions. If EPA promulgates new standards requiring a permit modification, 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.

EPA will 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 MOA.

### **B. 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 subject to the authorized provisions of the State's program. The State will do so in a manner consistent with RCRA, as amended by HSWA, this MOA, all applicable Federal requirements, the State's Program Description and Program Description Addendum, the 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's permitting process will conform to Section 11, 33 CSR 20 which is analogous to 40 CFR parts 270 and 124.

The State agrees to issue, modify or reissue all permits contained in the authorized portions of the State's program in accordance with Section 11, 33 CSR 20, which is analogous to 40 CFR part 270, and to include as permit conditions all applicable provisions of Section 7, 33 CSR 20, which is analogous to 40 CFR part 264. This MOA also applies to permits issued after final authorization, but for which the processing may have begun before final authorization.

In permits issued pursuant to the State's authorized program, the Department will ensure that compliance tasks are described in clear, unambiguous and plain language to the extent practicable. The compliance tasks should be clear, 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 will be maintained at the facility for a period of 3 years."

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

The State agrees to consider all comments that EPA makes on permit applications and draft permits before issuing the permit or making the modification. The State will satisfy or refute in writing any EPA written comments on a particular permit application, proposed permit modification, or draft permit before issuing the permit or making the modification. In addition, the State agrees not to issue a permit or approve a modification in dispute until the Regional Administrator and the Secretary have exercised the dispute process in Section V.C. below.

The State agrees to submit to EPA no less than fourteen (14) days prior to public notice those draft permits or proposed permit modifications identified for oversight in the grant work plan.

The State agrees to submit copies of all final permits to EPA within ten (10) days of issuance.

### **C. EPA Review of State Permits**

In accordance with 40 CFR §271.19, EPA may comment on any draft permit or proposed permit modification, whether or not EPA commented on the permit application. 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 was considered in the development of any draft permit. The State will provide this information to EPA within seven (7) days of EPA's request.

While EPA may comment on any permit application, draft permit, or proposed permit modification, EPA will focus primarily on those facilities identified by the State or EPA in the grant work plan or types of facilities identified as a priority in EPA national Guidance.

EPA will notify the State of its intent to comment on a State draft permit or proposed permit modification within thirty (30) days of receipt. EPA will comment within forty-five (45) days of receipt or will request an extension to submit those comments as warranted. Where EPA indicates in a comment that issuance, modification, reissuance, termination or denial of the permit would be inconsistent with the approved State program, EPA will include in the comment:

1. A statement of the reasons for the comment (including the section of the State law or regulations that support the comment), and
2. The actions that should be taken by the State to address the comments (including the conditions which the permit would include if it were issued by EPA.)

Generally, EPA and the State will attempt to resolve all EPA comments on an informal basis before a final action is taken by the State. If this is not successful, EPA will submit written comments to the State in accordance with 40 CFR §271.19 and send a copy of those comments to the permit applicant. The State agrees not to proceed with a final action until it receives EPA's written comments and attempts to resolve EPA's comments as described below:

1. The State and EPA will attempt to reach agreement on permit conditions in dispute before the State issues a draft permit or approves proposed permit modifications to an existing permit.
2. Whenever there is a disagreement between their staffs on the terms of any RCRA permit to be issued by the State, the Secretary and the Regional Administrator, or their designees, agree to confer in a timely manner to resolve such disagreement. Unless otherwise agreed to, the Secretary and the Regional Administrator, or their designees, will work towards resolving all issues within thirty (30) days of their first involvement in the issues.
3. EPA will withdraw its comments in writing if satisfied that the State has met or refuted its concerns in writing and will provide the permit applicant with a copy of such withdrawal.
4. It is the desire of both Parties that the Branch Chief of the General Operations Branch at EPA and the Program Manager of the Hazardous Waste Permitting Unit at DEP will attempt to resolve disagreements about the terms of RCRA permits. Any remaining disagreements will be brought thereafter to the attention of the Waste and Chemicals Management Division Director at EPA and the Division Director at DEP for resolution and then, if needed, to the attention of the Secretary and Regional

Administrator. If, after consultation, the Secretary and the Regional Administrator are unable to resolve any issue, EPA will not withdraw its comments, the State may proceed to permit issuance, and the provisions of 40 CFR § 271.19 will apply.

Under §3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of 40 CFR part 124, or bring an enforcement action in the 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), and any other applicable authorities.

#### **D. Coordinated Permitting Process**

The State and EPA agree to coordinate the issuance of permits, including joint permits, in the State for facilities subject to those provisions of HSWA for which the State does not have authorization. In accordance with §3006(c)(3) of RCRA, the State may enter into an agreement with the Administrator under which the State may assist in the administration of the requirements and prohibitions which take effect pursuant to HSWA. Details of coordinated permitting activities will be set forth in the grant work plan, and will be reviewed and revised as often as necessary, but no less often than annually to assure their continued appropriateness. Upon authorization of the State for a permit-related provision of HSWA, the details of any coordinated permitting activities set out in the grant work plan will be amended to reflect the authorization.

EPA oversight of State corrective action decisions will be performed in accordance with work sharing responsibilities established in the grant work plan, as resources allow. The State agrees to work cooperatively with EPA in achieving EPA's 2005 GPRA goals for corrective action environmental indicators, details of which will be established in the grant work plan. The State will submit to EPA copies of draft corrective action decision documents (*e.g.*, approvals of reports and work plans, disapproval comment letters, permit modifications, permits and orders, statements of basis for proposed remedy, and final remedy decisions) within seven (7) days of EPA's request. The State will consider and respond to EPA's comments on final corrective action decisions and will submit copies of all final corrective action decision documents to EPA within seven (7) days of issuance.

The State will conduct the RCRA-authorized Corrective Action Program in a manner consistent with applicable EPA guidance and in a manner that promotes rapid achievement of cleanups, while protecting human health and the environment. Specifically, the State will, to the extent practicable:

1. adopt flexible, practical, results-based approaches that focus on short-term control of human exposure and migration of contaminated groundwater, with the long-term goal being final cleanup;
2. provide ready public access to information and meaningful opportunities for public involvement in the cleanup process; and



3. foster innovation, creativity, communication and technical expertise, focusing on accelerating cleanups and meeting program goals.

EPA will assist the State with all aspects of the RCRA cleanup program and support its efforts to conduct faster, focused and more flexible RCRA cleanups.

## **VI. PERMIT ADMINISTRATION**

### **A. EPA**

EPA will administer, pursuant to 40 CFR parts 124 and 270, the RCRA permits or portions of permits it has issued for 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. Prior to authorization of additional authorities, EPA and the State may establish interim agreements that will allow State work sharing activities. 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 terminate those permits pursuant to 40 CFR parts 124 and 270.

### **B. State**

The State agrees to review all hazardous waste permits that were issued under State law before the appropriate effective date of authorization in accordance with 40 CFR §271.13(d) and to modify, or revoke and reissue, those permits as necessary to require compliance with the authorized State program. The State will 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.

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

### **C. Corrective Action Transition**

Pursuant to its authorized program, the State will be responsible for the issuance and enforcement of any new corrective action permits. EPA will continue to administer and enforce corrective action permits it has issued until they expire, or they are terminated by EPA because the State has modified or issued a permit that is not less stringent than EPA's corrective action permit. Administration of the corrective action facility universe will be divided between EPA and the State in a manner consistent with the mutually agreed upon Corrective Action Transition Strategy and the grant work plan. The grant work plan will revise the division of the facility universe as necessary and detail the



work to be performed on permit issuance and corrective action work sharing activities. The State agrees to work cooperatively with EPA to meet the State's share of the 2005 GPRA goals for Corrective Action Environmental Indicators, the details of which will be established in the grant work plan.

Since the enactment of the HSWA, EPA has managed all RCRA corrective action activities in the State. Immediately after authorization of the State's corrective action program, EPA will begin the transfer of RCRA corrective action permit responsibilities and workload to the State. During this transition, EPA will work with the State to determine when and how best to accomplish this task to minimize disruption of ongoing corrective action work and to achieve the best possible program outcomes. When making these determinations, EPA and the State will consider the following factors:

1. EPA's continued authority to administer EPA-issued corrective action permits after authorization,
2. EPA's investment in and knowledge of ongoing corrective action permit activities at RCRA facilities in the State,
3. the need to attain national corrective action program goals established under the GPRA,
4. available resources, which include, but are not limited, to personnel and financial circumstances,
5. skill and experience in the State's base program and corrective action program, and
6. the existence of EPA corrective action authorities beyond those related to permits (*e.g.*, RCRA §3008(h)).

For example, major decision points reached in the administration of an EPA permit (*e.g.*, remedy selection) might cause EPA to consider transferring lead permit responsibility to the State for the next phase of corrective action.

Both Parties agree to continue to communicate about, and coordinate, respective corrective action activities at RCRA facilities. Where either Party can offer management, programmatic or technical assistance to assist the other in meeting site-specific objectives or mutual program goals, such support will be provided to the extent resources and competing priorities allow. To the degree possible, specific plans and expectations to coordinate respective corrective action activities will be negotiated in RCRA grant work plans.

EPA's authorization of the State's corrective action program, and provisions of this MOA, relate to corrective action permitting responsibilities under RCRA §§3004 (u) and (v).

EPA's authorization of the State's corrective action program, and provisions of this MOA, relate to corrective action permitting responsibilities under RCRA §§3004 (u) and (v).

Site-specific corrective action work sharing activities will be defined in the State's grant work plan.

Once high priority RCRA sites are permitted or otherwise addressed and it is determined that GPRA goals will be achieved, facilities with medium and low priorities will be addressed.

## VII. DELISTING PROCEDURE

1. The State agrees to notify EPA of all delisting petitions received and will transmit to EPA a copy of all final actions. The State agrees to inform delisting petitioners of their need to petition EPA for a delisting action for interstate activities. The State agrees to inform EPA at the beginning of any public notice or public comment period for a proposed delisting action.
2. Upon receipt of a request to delist a hazardous waste, the State and EPA agree to the following delisting process:
  - a. The State will provide EPA with a copy of the request.
  - b. The State will evaluate the request and determine whether the waste should be delisted.
  - c. The State will notify the petitioner and EPA of the delisting decision. (The State understands that if delisting actions result in the State Program no longer being equivalent to EPA's, the Agency may begin proceedings to withdraw authorization of the State's program.)
  - d. EPA will only publish its decision of the delisting request in the Federal Register if the petitioner requests an EPA determination. (While the effect of Federal delisting is to exclude a waste from Federal regulatory control, the State's regulatory control is not affected by Federal delisting.)
  - e. If EPA receives a request to delist a hazardous waste, EPA will forward the request to the State. The request will then be handled as described above.
  - f. If EPA receives a request to delist a hazardous waste and the petitioner indicates that it knows the State's role in the delisting process, but specifically requests an EPA decision, EPA will:
    - (i) Provide the State a copy of the request,

- (ii) Invite the State to enter into a work sharing agreement with the Agency to evaluate the request and determine whether the waste should be delisted, and
  - \* If the State and EPA agree on the decision, EPA will publish the results of the decision in the Federal Register and note that the State's decision is the same as EPA's.
  - \* If the State disagrees with the EPA decision, EPA and the State will seek to resolve the issue. If no agreement can be reached, EPA will publish EPA's decision in the Federal Register and note that the State disagrees with the EPA decision.
- 3. 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.

## VIII. COMPLIANCE MONITORING AND ENFORCEMENT

Both EPA and the State are committed to maintaining a level playing field and establishing a credible deterrence to noncompliance 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 noncompliers (SNC) and Secondary Violators as defined in EPA's Hazardous Waste Civil Enforcement Response Policy dated March 1996, or any revisions thereto.

Enforcement and compliance monitoring activities/priorities will be outlined in the Office of Enforcement and Compliance Assurance's MOA guidance. EPA and the State will negotiate Enforcement and Compliance monitoring activities/priorities and describe them in the State's grant work plan.

### A. EPA

#### 1. Compliance Monitoring

Nothing in the MOA will restrict EPA's right to inspect any establishment or other place where hazardous wastes are or have been generated, stored, treated, transported from, or disposed of, or to bring an enforcement action against any person believed to be in violation of the State or Federal hazardous waste program or to exercise its authority under §§3008(h), 3013, and/or 7003 of RCRA. Before conducting any such inspection of a regulated facility, standard procedure will be for EPA to

give the State at least seven days notice of EPA's intent to inspect in accordance with 40 CFR §271.8(b)(3)(i). Based on emergency circumstances, EPA may shorten this period. The State may participate in all inspections EPA conducts. EPA will coordinate oversight and training inspections 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 enforcement 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 §3008 of RCRA. EPA may also take enforcement action upon determining that the State has not taken timely or appropriate enforcement in a manner consistent with EPA's Hazardous Waste Civil Enforcement Response Policy dated March 1996, or any revisions thereto. EPA reserves its right to take independent enforcement actions in the State. When the State refers an enforcement case to EPA, the Agency will review the information provided and determine the appropriate Federal action, if any. Before issuing a complaint, compliance order or referral to the Department of Justice, EPA will give notice to the State. If EPA determines it will not take an enforcement action, the State retains the right to take its own enforcement action.

After notice to the State, EPA may take action pursuant to RCRA §3008, including action against 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 §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. EPA may take action under RCRA §3008 in a manner consistent with EPA's Hazardous Waste Civil Enforcement Response Policy dated March 1996 or any revisions thereto, or the EPA Region III Non-Compliance Response Policy for RCRA, Oil and EPCRA/CERCLA Section 103.

Under §3008(a)(3) of RCRA, EPA may terminate a State-issued permit in accordance with the procedures of 40 CFR part 124 or bring an enforcement action in the 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) and any other applicable authorities.

EPA may exercise its authorities in accordance with RCRA §§3008(h), 3013, and 7003. EPA and the State will negotiate the lead agency for oversight. In the grant work plan, facilities will be prioritized and oversight activities established.

**B. State****1. Compliance Monitoring**

The State agrees to carry out a timely and effective program for monitoring compliance of 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 grant work plan.

**2. Enforcement**

The State agrees to take timely and appropriate enforcement action and agrees to make significant non-complier (SNC) determinations in a manner consistent with EPA's Hazardous Waste Civil Enforcement Response Policy dated March 1996 or any revisions thereto, 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 the action is resolved.

**XI. AVAILABILITY OF INFORMATION****A. General**

Section 3006(f) of RCRA provides that States may be authorized by the Administrator under this section if the State program provides for the public availability of information obtained by the State regarding facilities and sites for treatment, storage and disposal of hazardous waste; and that such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator were carrying out the provisions of this subtitle in the State.

**B. Requests for Information**

1. Consistent with the Federal Freedom of Information Act (FOIA), 5 U.S.C. 552(a)(2), the State agrees to make certain materials routinely available without a formal FOIA request. Examples of these materials are final opinions or orders in case adjudications, State regulations, statements of Agency policy, and administrative staff manuals affecting the



public. In addition, records prepared for routine public distribution will also be available. Examples of such records are press releases, copies of speeches, pamphlets, and educational materials.

2. The State Agency agrees to perform the custodial duties outlined in WV Code Section 29B-1-3(3) concerning public records. As part of those duties, the State Agency agrees to make reasonable efforts to assist a requestor in identifying records being sought, and helping the requestor formulate his or her request.

3. If a request of information is denied, the State agrees to provide the requestor the basis for the denial and to notify the requestor of State judicial procedures under sections 29B-1-3(4) (c) and 29B-1-5(1) of the West Virginia Code, which specifically state that any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

4. The State agrees that in addition to the waiver of fees under circumstances described in CSR Series 46-8-11(a),(c) and (f), the State will allow for the reduction or waiver of fees in accordance with 40 CFR 2.120(d). A reduction or waiver of fees will be considered in connection with each request from a representative of the press or other communication medium, or from a public interest group. The State agrees to reduce or waive the fee if it determines that a reduction or waiver of the fee is in the public interest because furnishing the information can be considered as primarily benefitting the general public.

5. Pursuant to WV Code 29B-1(the Freedom of Information Act), WV Code 22-18-12 (Confidentiality of Information), 46 CSR 8 (Regulations on Requests for Information), and CSR Title 33 Series 20-11.7 (Public Access to Information), the State agrees to make the fullest possible disclosure of records to the public, subject to any exemptions under the Federal FOIA recognized by the State.

#### **C. Confidentiality of Business Information**

If a claim of confidentiality is asserted and cannot be resolved in the time period provided for an agency response to a request, the State agrees to notify the requestor of the confidentiality claim within the maximum 20-day time limit provided for an agency response. In addition, the requestor will be told that the request was denied in order to resolve the business confidentiality claim.

#### **D. Oversight**

1. The State agrees to keep a log of denials of requests for information (or a file containing copies of denial letters sent to requestors) which will be made available to EPA during State reviews.



2. The State agrees to keep EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities, as applied to Section 3006(f).

## **X. STATE SPECIFIC AGREEMENTS**

### **A. Groundwater Protection Standards**

1. With respect to the State's provision at WV CSR Title 33 Series 20-7.4.c.1 which requires the Director of the DWWM to specify in the facility permit the frequencies for collecting samples required under 40 CFR 264.99(g), the State agrees to require sample collection at least annually. Under no situation will the frequency be less than what would be required by EPA.
2. Pursuant to its provision at WV CSR Title 46 Series 12-4.1, in any instance where the 46 CSR 12 standard is less stringent than the Federal requirements, the State agrees to act in accordance with the Federal regulations and use the 40 CFR Parts 264 and 265 Subpart F standards for purposes of determining the need for corrective action at hazardous waste treatment, storage or disposal facilities.

### **B. Other State Agencies**

The State's RCRA hazardous waste management program includes (3) state agencies: The Department of Environmental Protection (WV Division of Water and Waste Management (DWWM), WV Division of Air Quality, 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 Department of Environmental Protection (DEP) will serve as "lead" agency to simplify coordination and communication between the State and EPA. The State will coordinate its program activities through the DEP, WV DWWM which is designated as the lead DEP organization.

The WV DEP through the DWWM 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 DEP will facilitate communications between EPA and the State agencies having RCRA program responsibilities and will monitor the coordination process between State agencies. The DEP 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's DWWM functions as the lead agency with primary responsibility for regulation promulgation and overseeing that regulations of other agencies are comprehensive and not duplicative.

#### **XI. EFFECTIVE DATE**

The Parties are executing this MOA because the State is being authorized for RCRA corrective action authority and delisting. This MOA will become effective at the time the State's authorization takes effect, which will be the date set out in the Federal Register notice of the Regional Administrator's decision to grant authorization to the State.

STATE OF WEST VIRGINIA  
DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

U.S. ENVIRONMENTAL PROTECTION  
AGENCY, REGION III

BY: Schavior R. Timmermegg

BY: Donald S. Welch

TITLE: Cabinet Secretary

TITLE: Regional Administrator

DATE: April 21, 2003

DATE: October 7, 2003

STATE OF WEST VIRGINIA  
DIVISION OF HIGHWAYS

STATE OF WEST VIRGINIA  
PUBLIC SERVICE COMMISSION

BY: Fred Van der

BY: James W. Williams

TITLE: Secretary/Commissioner

TITLE: Chairman

DATE: May 5, 2003

DATE: May 14 2003

APPROVED AS TO FORM THIS  
5<sup>th</sup> DAY OF May, 2003  
[Signature]  
ATTORNEY LEGAL DIVISION  
WEST VIRGINIA DEPARTMENT  
OF TRANSPORTATION  
DIVISION OF HIGHWAYS