

US EPA ARCHIVE DOCUMENT

Rec. 4/13/93

MEMORANDUM OF AGREEMENT

BETWEEN

THE STATE OF ARKANSAS

AND

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

I. GENERAL

This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities and procedures pursuant to 40 CFR 271.8 for the State of Arkansas' Hazardous Waste Program (hereinafter "State Program") authorized under Section 3006 of the Resource Conservation and Recovery Act (hereinafter "RCRA" or "the Act") of 1976 (Public Law 94-580, 42 USC §6901 et seq.) and the United States Environmental Protection Agency (hereinafter EPA) Regional Office for Region 6. This Agreement further sets forth the manner in which the State and EPA will coordinate in the State's administration of the State Program.

This Agreement is entered into by the Director of the Arkansas Department of Pollution Control and Ecology (hereinafter "Director" or "the State") and the Regional Administrator, EPA Region 6 (hereinafter "Regional Administrator" or "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.

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

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 must be in writing and must be signed by the State and the Regional Administrator.

This Agreement will remain in effect until such time as State Program authorization is withdrawn by or is voluntarily transferred to EPA according to the criteria and procedures established in 40 CFR 271.22 and 40 CFR 271.23.

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

II. POLICY STATEMENT

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon granting final authorization by EPA, the State assumes primary responsibility for implementing 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 in the event the State is unable to act. The State and the Regional Administrator agree to maintain a high level of cooperation and coordination between their respective staffs in a partnership to assure successful and effective administration of the State program.

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

III. INTERSTATE AGREEMENTS

The State agrees that the Final Authorization of the RCRA program in Arkansas by EPA constitutes an "interstate agreement" within the meaning of Arkansas Act 1098 of 1979, Arkansas Stats. Ann. §82-4217 et seq., that effectuates the purposes of said Act 1098. The State further agrees not to enforce any transportation or disposal ban on hazardous waste in the State of Arkansas, or to take enforcement action against a transporter of hazardous waste, solely because such waste may have originated in a state or states which has (have) not entered into an interstate agreement or compact with the State of Arkansas.

IV. 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 and for adequacy of enforcement. This assessment will be accomplished by EPA review of information submitted by the State in accordance with this Agreement and the State Work Program, permit overview, compliance and enforcement overview, and annual review of state program activities. The Regional Administrator may also consider, as part of this regular assessment, written comments about the State's program administration and enforcement that are received from regulated persons, the public, and federal, state, and local agencies. Copies of any such comments received by the Regional Administrator will be provided to the State upon receipt.

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

Review of (ADPC&E) files may be scheduled on at least quarterly intervals. Program review meetings between the State and the Regional Administrator or their assignees will be scheduled at reasonable intervals to be mutually agreed upon 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 agreed to differently. A tentative agenda for the meeting may be prepared by EPA, as well as ADPC&E.

B. Identification of Major Hazardous Waste Handlers

The State agrees to develop with EPA a list of hazardous waste facilities, generators, and transporters in the State designated as "major" hazardous waste handlers. This designation is intended to identify, for administrative purposes, environmentally significant hazardous waste handlers, and to be used in concentrating inspection, permitting, and reporting resources on those handlers. The list shall be submitted as a part of this Agreement. It shall be reviewed and updated annually as part of the negotiation for the State Work Program. Changes to the list do not require a formal amendment to this Agreement so long as both the State and EPA agree in writing to any changes.

From the list of "major" handlers the State agrees to develop and annually review with the Regional Administrator a list of facilities whose permit applications and draft permits will be reviewed by EPA. This smaller list constitutes major facilities for purposes of EPA permit overview.

V. INFORMATION SHARING

A. General

As the national hazardous waste program matures, the respective roles and responsibilities in this state/federal partnership will become more clear. As the respective information needs of the State and EPA evolve, changes to this section of the Agreement may be appropriate. During the annual review of this agreement the State and the Regional Administrator will carefully examine the following information sharing provisions for needed revision.

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 guidance to the State. EPA will provide the State any national reports developed by EPA from the data submitted through State reporting requirements.
2. EPA agrees to provide the State notification information from EPA Form 8700-12 obtained prior to the effective date of this Agreement. A copy of the original notification forms and/or a computer printout containing all the notification information will be provided. Such information will be provided to the Director within thirty (30) days of the effective date of this Agreement. EPA will also forward, on a monthly basis, notification information (including newly assigned EPA identification numbers) submitted by persons in the State who file such forms after the effective date of this Agreement. This information will be submitted to the Director within ten (10) days of the end of each month for the preceding month.
3. EPA agrees to assign EPA identification numbers to generators and transporters and to owners and operators of hazardous waste treatment, storage, and disposal facilities submitting notifications

to the State after the effective date of this Agreement. EPA will do this after receiving a copy of the notification information from the State or hazardous waste handler as provided in Section V.C.7 of this Agreement.

4. EPA agrees to transfer to the State any pending Part A and Part B hazardous waste management facility permit applications originally submitted to EPA pursuant to 40 CFR 270.10 by facilities located in the State and which have not already been transferred to the State, together with all pertinent file information. Pertinent file information includes applications (including accompanying narratives, plans, maps, etc.), draft permits, public notices, administrative notices, fact sheets and correspondence. Such materials will be provided within thirty (30) days after the effective date of this Agreement and according to any arrangements the State and the Regional Administrator may make regarding the priority of transfer.
5. EPA will also provide to the State, within five (5) days of receipt, Part A and Part B permit applications submitted directly to EPA by persons in the State after the effective date of this Agreement.
6. EPA agrees to provide to the State copies of any reports and data resulting from compliance inspections within thirty (30) days of completion of the reports.
7. EPA will provide to the State other relevant information as requested which the State needs to implement its approved program.

C. State

1. The State agrees to inform the Regional Administrator of any proposed or adopted program changes which would affect the state's ability to implement the authorized program. Program changes of concern include modification 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., availability of budgeted personnel and funds). The State recognizes that program revisions must be made in accordance with the provisions of 40 CFR 271.21.

2. The State will provide compliance monitoring and enforcement information to the Regional Administrator on a routine basis as specified in the State Work Program. During fiscal year 1984, the Regional Administrator will be especially concerned with information on facility groundwater monitoring, financial responsibility, and closure and post-closure care.

3. As specified in the State Work Program, the State will routinely provide the Regional Administrator with information indicating the status of the state's facility permitting activities. During fiscal year 1984, the Regional Administrator will be especially concerned with facility-specific information on the following milestones:
 - Date permit application requested
 - Date complete permit application received
 - Date of Public Notice
 - Date of permit application withdrawal (and reason)
 - Date of permit issuance/denial

4. The State agrees to submit the following reports to the Regional Administrator within the specified time periods:
 - Biennial report summarizing the quantities and types of hazardous waste generated, transported, treated, stored, and disposed of in the State, as reflected in the biennial reports submitted by the regulated community to the State, pursuant to the regulatory requirements of the State Program, by October 1 of each even-numbered year.
 - Additional reports as negotiated in the State Work Program.

5. Where the State Program involves the granting of variances or waivers, the State agrees to provide EPA with a copy of each State variance or waiver at the time it is granted.

6. For those major hazardous waste handlers identified as major facilities for EPA permit overview, the State agrees to provide EPA with the following information within the time frames described:

<ul style="list-style-type: none"> - Copies of complete facility permit applications, revisions, and additions 	Within fifteen working days of receipt
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- Copies of draft permits Within five working
proposed permit modifica- days of completion
tions, public notices
- Copies of final permit Within five working
or permit modifications days of completion

7. So that EPA can issue EPA identification numbers and maintain a national inventory of all hazardous waste handlers, the State agrees to provide EPA with the following notification information submitted to the State after the effective date of this Agreement by new hazardous waste generators, transporters, and treatment, storage, and disposal facilities in the State:

- Name and location of the handler
- Mailing address of the handler
- Name and telephone number of a contact person
- Type of hazardous waste activity
- Process codes (if the handler is a TSDF)

The State will also submit any updates or changes in previously submitted notification information. This information will be provided to the Regional Administrator within ten (10) days of receipt of the information.

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

D. Site Visits

EPA is responsible for maintaining reliable national data on hazardous waste management. This data is used to report to the President and Congress on the achievements of the hazardous waste program and to support EPA's regulatory development efforts. Whenever EPA determines that it needs to obtain certain information, EPA will seek to gain this information from the information available in the files of the EPA and the State. The State agrees to supply the Regional Administrator with needed information if readily available and as resources allow. If EPA or 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 in writing prior to conducting the surveys or site visits. Such notification will include copies of the surveys or information to be obtained during a site visit. EPA will share with the State any information developed by EPA as a result of such information collection survey or site visit.

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.

The State contact shall be: Emergency Response Coordinator, Arkansas Department of Pollution Control and Ecology, 8001 National Drive, Little Rock, Arkansas 72209, Phone: (501) 562-7444, or 374-1201 (after working hours).

The EPA contact shall be: Emergency Response Branch, U.S. Environmental Protection Agency, Region VI, InterFirst Two Building, 1201 Elm Street, Dallas, Texas 75270, Phone: (214) 767-2720.

F. Confidentiality

1. Any information obtained or used in the administration of the State Program shall be available to EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to EPA when providing information. Any information obtained from a state and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 CFR Part 2.
2. EPA agrees to furnish to the State information in its files upon request, but subject to the conditions of 40 CFR Part 2 for such information which is submitted to EPA under a claim of confidentiality.

VI. PERMIT ISSUANCE

A. EPA Permitting

Upon final authorization of the State Program, EPA will suspend issuance of federal permits for hazardous waste treatment, storage, and disposal facilities in the State.

EPA intends to add permitting standards for processes not currently covered by the Part 264 standards. For example, the Part 264 standards do not currently cover treatment and storage of hazardous waste in certain types of underground tanks. When EPA does promulgate standards for additional processes, EPA will process and enforce RCRA permits in the State in the new areas

until the State receives final authorization of equivalent and consistent State standards. At the time the State Program is approved in the new areas, EPA will suspend issuance of federal permits in the State. EPA will also transfer any pending permit applications, completed permits or pertinent file information to the State within thirty (30) days of the approval of the State Program in conformance with the conditions of this Agreement.

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 and EPA as major facilities for permit overview.

EPA may comment in writing on any draft permit or proposed permit modification, whether or not EPA commented on the permit application during the public comment period. Where EPA indicates in a comment that issuance of the permit would be inconsistent with the approved State Program, EPA shall include in the comment:

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

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

EPA shall withdraw such comments when satisfied that the State has met or refuted its concerns and shall also provide the permit applicant with a copy of such withdrawal.

Where the State and EPA staffs cannot reach resolution on draft permits, the Director of ADPC&E shall confer with the Regional Administrator and both shall direct all their staff to coordinate, as necessary, and to efficiently discuss and consider all comments and concerns and to resolve all misunderstandings. Any conflicts thereupon remaining shall be resolved by the mutual decision of the Director and the Regional Administrator.

Under Section 3008(a)(3) of RCRA, EPA may terminate a State issued permit in accordance with the provisions of 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 271.19(e).

C. State Permitting

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

The State agrees to issue, modify and reissue all permits in accordance with the Arkansas Hazardous Waste Management Act and Code and to include as permit conditions all applicable provisions of such statutes and regulations. This Agreement also applies to permits issued after final authorization but for which the processing may have begun before final authorization.

The State agrees that in exercise of its statutory variance authority (Ark. Stat. Ann. 82-4214) it shall not grant any variances that will result in any requirements less stringent than comparable federal statutory or regulatory requirements.

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

VII. PERMIT ADMINISTRATION

A. EPA

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

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 and to modify or revoke and reissue such permits as necessary to require compliance with the Arkansas Hazardous Waste Management Act and Code. The State agrees to modify or revoke and reissue such permits, as necessary, as RCRA permits in accordance with the annual State Work Program.

VIII. COMPLIANCE MONITORING AND ENFORCEMENT

A. EPA

EPA has the right to inspect any hazardous waste generator, transporter or facility, or bring enforcement action against any person believed to be in violation of the State hazardous waste program. The State has the primary responsibility under the State Program to inspect and/or bring enforcement action against any hazardous waste generator, transporter, or facility in the State. Without limiting, in any manner, EPA's ability to inspect or enforce, it is recognized that EPA will inspect and/or enforce in three categories of situations, namely: (1) when for policy reasons of EPA, unrelated to the ability or willingness of the State to timely inspect and/or enforce, desires to inspect and/or enforce; and (2) when in EPA's judgment the State fails to take timely and appropriate enforcement action, or fails to timely and properly inspect; and (3) when requested by the State.

With reference to category (1): When for policy reasons of EPA, unrelated to the ability or willingness of the State to timely inspect and/or enforce, EPA desires to inspect and/or enforce pursuant to the State Program, the facilities, generators, and other persons or categories thereof to be inspected and/or enforced against and the frequency of EPA oversight and training inspections will be specified in the annual State Work Program. Normally, EPA will accompany the State on no more than 5% of the State's compliance inspections. The inspections and enforcement actions under this category shall not constitute evidence of any inability or unwillingness of the State.

With reference to category (2): Before conducting an inspection of a generator, transporter or facility, the Regional Administrator will give the State at least fifteen (15) days notice of the intent to inspect in accordance with 40 CFR 271.8(b)(3)(i). If the State performs a compliance inspection and submits a report and data relevant thereto within that time to EPA, no EPA inspection will be made, unless the Regional Administrator deems the State report and data to be inadequate. In the event the Regional Administrator deems the report and data to be inadequate, the Regional Administrator will provide to the State a written statement of the deficiencies upon which such a determination is based. The statement of deficiencies will be provided with fifteen (15) days following a determination of inadequacy. In case of an imminent hazard to human health and the environment, the Regional Administrator may shorten or waive the notice period.

Pursuant to Section 3008(a)(2) the Regional Administrator may take enforcement action against any person determined to be in violation of RCRA. EPA will take enforcement action only upon determining that the State has not taken timely and appropriate enforcement action. Prior to issuing a compliance order under Section 3008, EPA will give notice to the State in writing or by telephone and will specify the basis for its determination that the State has not taken timely and appropriate enforcement action.

After such notice to the State, EPA may take action under Section 3008 of RCRA against a holder of a State-issued permit on the ground that the permittee is not complying with a condition of that permit.

In addition, EPA may take action under Section 3008 of RCRA against a holder of a State-issued permit on the ground 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. The Regional Administrator may not take action under Section 3008 of RCRA against a holder of a State-issued permit on the ground that the permitter is not complying with a condition necessary to implement approved State Program requirements, unless the Regional Administrator stated, in commenting on the permit application or draft permit, that the condition was necessary.

With reference to category (3): The coordination requirements shall be as agreed by the Regional Administrator and the Director of ADPC&E at the time the request is made. EPA also retains its rights to issue orders and bring actions under Section 3013 and 7003 of RCRA and any other applicable federal statute.

B. State

The State agrees to carry out a timely and effective program for monitoring the compliance by generators, transporters, and facilities with applicable program requirements (See 40 CFR 271.15.). As part of this program, the State will conduct compliance inspections to assess compliance with generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements. Compliance monitoring activities and priorities will be specified in the annual State Work Program and shall be consistent with all applicable federal requirements and with the State's Program Description.

The State agrees to take timely and appropriate enforcement action against all persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements (including violations detected by State or Federal compliance inspections.) Should EPA compliance inspection reveal violations of the State Program or regulations, the State agrees to review the findings and determine whether enforcement action can be pursued based on these findings. In the event the State proceeds with enforcement action based on the EPA findings, EPA agrees to make available to the State such persons and documentary evidence within its control necessary to establish the violations indicated in such administrative or judicial actions as are necessary to achieve compliance. The State will maintain procedures for receiving and ensuring proper consideration of information about violations submitted by the public.

Appropriate State enforcement response may include not more than two first level enforcement letters for any violation, followed by timely initiation and prosecution of enforcement proceedings which may be, as determined on a case-by-case basis, administrative or judicial in nature. Any civil penalty assessed, sought or agreed upon by the State, shall be appropriate to the violation as defined in 40 CFR 271.16(c).

The State agrees that in assessing civil penalties under Section 9 of Regulation No. 7 that it will apply the factors therein set forth in the manner provided by 40 CFR 271.16(c).

The State agrees to retain all records for at least three (3) years, unless there is an enforcement action pending. In that case, all records will be retained until such action is resolved. EPA also agrees to retain all records for at least three (3) years.

STATE OF Arkansas
AGENCY Dept. of Pollution Control
and Ecology

BY: Phyllis Bennett

DATE: July 9, 1984

U.S. ENVIRONMENTAL PROTECTION

AGENCY, REGION VI

BY: Dick Whittington

DATE: Dec. 19, 1984