

US EPA ARCHIVE DOCUMENT

MEMORANDUM OF AGREEMENT BETWEEN
THE STATE OF TEXAS

AND

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VI

I. GENERAL

This Memorandum of Agreement (hereinafter "Agreement") establishes policies, responsibilities, and procedures pursuant to 40 CFR §271.8 for the State of Texas 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 USC 6901 et seq.), as amended by the Hazardous and Solid Waste Amendments of 1984 (Public laws 94-580, 96-482, 98-616), and the United States Environmental Protection Agency (hereinafter EPA) Regional Office for Region VI. 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 Executive Director of Texas Water Commission (hereinafter "Director" or "the State") and the Regional Administrator, EPA Region VI (hereinafter "Regional Administrator" or "EPA"). In accordance with the Texas Solid Waste Disposal Act, TEX. HEALTH AND SAFETY CODE ANN. §§361.001 et seq. (Vernon's Supp. 1990) and the Governor's designation pursuant to Section 4003 of RCRA, the Texas Water Commission has responsibility for hazardous waste management in the State.

For administrative purposes, the Texas Water Commission will serve as lead agency to simplify coordination and communication between the State and EPA.

The following language is contained in Texas' regulations at, inter alia, §§335.29, 335.112(a), 335.152(a), 335.431(c) and essentially reads as follows:

"Except to the extent that they are clearly inconsistent with the Solid Waste Disposal Act, Texas Health and Safety Code,...or rules of the Commission...the regulations in 40 Code of Federal Regulations (CFR) Part...are adopted by reference."

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Whenever this language is employed in the State's regulations, including those sections cited above, the State interprets the language to incorporate the subject Federal regulations by reference in their entirety, unless the State references therein a specific provision of the Federal regulations to be excluded from the incorporation.

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, 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 to this Agreement 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 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 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 the Hazardous and Solid Waste Amendments of 1984 ("HSWA") in the event the State is not authorized 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.

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

EPA will oversee implementation of the authorized State program in order to ensure full execution of the requirements of RCRA, to promote national consistency in implementation of the hazardous waste program, to allow EPA to report to the President and Congress on the achievements of the hazardous waste program, and to encourage States and 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 the State's programs.

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, this Agreement, and 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 grant 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.

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

Review of Texas files may be scheduled at quarterly intervals. Program review meetings between the State and the Regional Administrator or their assignees will be scheduled at reasonable intervals not less than annually to review specific operating

procedures and schedules, to resolve problems and to discuss mutual program concerns.

These meetings will be scheduled at least fifteen days in advance unless agreed to differently. A tentative agenda for the meeting will be prepared by EPA.

B. Identification of Priority Activities

The State and EPA agree to develop, on an annual basis as a part of the State grant work program, criteria for priority activities, including activities regarding handlers of hazardous waste. These criteria will be based on guidance issued by EPA in the annual Agency Operating Year Guidance and other guidance documents as may be appropriate, and will serve to identify those activities which should receive the highest priority during the grant period.

Examples of activities which will be considered high priority will include, but not be limited to, facilities to be inspected, facilities to be permitted, and enforcement against facilities with known or suspected ground-water contamination.

IV. 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 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). Under this process the State and EPA have established policies and procedures by which each will pursue their respective and/or joint responsibilities under HSWA.

The State and EPA agree to the sharing of information as specified under "V.D Joint Permitting Process" and the annual State grant work program. Specifically included shall be the procedures for sharing and coordinating the exchange of information on the following:

- a. Part A and Part B hazardous waste 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.
3. EPA agrees to make available to the State copies of any reports and data resulting from compliance inspections within sixty days of completion of the inspections.
 4. EPA agrees to provide the State with notification information from EPA Form 8700-12 obtained prior to the effective date of this Agreement if such information has not already been provided to the State. The Director and EPA shall agree on the format in which the information will be provided and the information will be provided within thirty 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 10 days of the end of each month for the preceding month.
 5. 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 after the effective date of this Agreement.
 6. 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.

C. State

1. The State agrees to inform the Regional Administrator in advance of any proposed 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., 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.
2. Annually, through development of the State grant work program, 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. Such reporting shall include, but not be limited to, the following:
 - a. Compliance monitoring and enforcement information;
 - b. Information indicating the status of the State's permitting, closure, post-closure, and ground-water monitoring and corrective action activities;
 - c. Various reports designed to accurately describe the status of the State's authorized program including biennial reports summarizing the quantities and types of hazardous waste generated, transported, treated, stored and disposed in the State; and
 - d. State decisions to grant variances made by hazardous waste handlers.
3. The State agrees to provide EPA with a copy of any decisions regarding requests made by hazardous waste handlers to change their classifications (e.g., requests to be deleted as generators but to retain facility status) and facility requests to make on-site changes prior to permit issuance (e.g., requests to handle additional wastes not identified on the facility's original notification and RCRA Part A Permit Application.)
4. 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.
5. The State agrees to provide any pertinent information requested by the Regional Administrator or his or her designee within a mutually agreed upon time frame, as necessary for EPA

to carry out its oversight responsibilities. Unless otherwise agreed upon, the above information shall be sent to Director, Hazardous and Solid Waste Division, Texas Water Commission, Telephone No: (512) 463-7760.

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 first seek to gain this information from the States. The State of Texas 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.

State designee to be called:

Director, Hazardous and Solid Waste Division, Texas Water Commission, Telephone No.: (512) 463-7760.

F. Confidentiality

1. Upon written request by EPA, the State agrees to furnish all information in its files to the EPA. However, if any of the requested information has been submitted to the State under a claim of confidentiality, the State will submit that claim to EPA when providing such information. Any information obtained from the State and subject to a claim of confidentiality will be treated by EPA in accordance with the provisions of the Texas Open Records Act, TEX. REV. CIV. STAT. ANN. Article 6252-17a (Vernon 1990).
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.

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 final authorization for these new permitting standards. At the time the State program is approved in the new areas, EPA will suspend issuance of Federal permits in the State. EPA will also transfer any pending permit applications, completed permits or pertinent file information to the State within thirty days of the approval of the State program in conformance with the conditions of this Agreement.

The State and EPA have agreed to a joint permitting process (see section V.D of this Agreement) 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 the 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 and EPA in the State's Multi-Year Permit Strategy, annual State Grant Work Program and the State's Program Description.

EPA may comment in writing on any draft permit or proposed permit modification, whether or not EPA commented on the permit application, within forty-five days of its receipt. 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 supports the comment); and
- b. the actions that should be taken by the State in order to address the comment (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.

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 §271.19(e).

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 and shall do so in a manner consistent with RCRA, as amended by HSWA, this Agreement, and all applicable Federal requirements. The State agrees to issue, modify and reissue all permits contained in the authorized portions of the State's program in accordance with the Texas Solid Waste Disposal Act, TEX. HEALTH AND SAFETY CODE ANN. §361.001 et seq. (Vernon's Supp. 1990), the Administrative Procedure and Texas Register Act, TEX. REV. CIV. STAT. ANN., art. 6252-13(a) (Vernon) and to include as permit conditions all applicable provisions of 31 Texas Administrative Code Chapters 305 and 335. 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 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) of RCRA, and in accordance with the Hazardous and Solid Waste Amendments of 1984, EPA has the authority to issue or deny permits or those portions of permits to facilities in Texas 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 those portions of the program.

EPA and Texas hereby establish this joint permitting process for the issuance of RCRA permits in Texas. This joint permitting process is established in accordance with section 3006(c)(3) of RCRA. The details of the joint permitting process shall be incorporated into the annual State grant work program. The duties and responsibilities of EPA and the State for joint permitting shall also be specified in the annual State grant work program.

The details of the joint permitting process, as contained in the State Grant Work Program, 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 HSWA, the specifics of the Joint Permitting Agreement, as set forth in the annual State grant work program, 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 HSWA.

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 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 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.

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 Texas Solid Waste Disposal Act, TEXAS HEALTH AND SAFETY CODE ANN. §361.001 et seq. (Vernon Supp. 1990), the Administrative Procedure and Texas Register Act,

TEX. REV. CIV. STAT. ANN., art. 6252-13(a) (Vernon) and 31 Texas Administrative Code Chapters 305 and 335.

VII. COMPLIANCE MONITORING AND ENFORCEMENT

A. EPA

Nothing in this Agreement shall restrict EPA's right to inspect any hazardous waste generator, transporter or facility or bring enforcement action against any person believed to be in violation of the State or Federal hazardous waste program or believed to have or have had a release of hazardous waste or hazardous constituents. Before conducting an inspection of a generator, transporter or facility, the Regional Administrator will normally give the State at least seven days notice of the intent to inspect in accordance with 40 CFR §271.8(b)(3)(i). If the State performs a compliance inspection and submits to EPA a report and data relevant thereto within that time, no EPA inspection will be made, unless the Regional Administrator deems the State report and data to be inadequate. In case of an imminent hazard to human health and the environment, the Regional Administrator may shorten or waive this notice period.

The frequency of EPA oversight and training inspections will be specified in the annual State grant work program. EPA will negotiate on an annual basis with the State the number or percentage of the State's compliance inspections on which EPA will accompany the State.

EPA may take enforcement action against any person determined to be in violation of RCRA in accordance with section 3008(a)(2) of RCRA. EPA will take enforcement action upon determining that the State has not taken timely and appropriate enforcement action or upon request by the State. Prior to issuing a compliance order under section 3008(a) of RCRA, EPA will give notice to the State. EPA also retains its rights to issue orders and bring actions under sections 3008(h), 3013 and 7003 of RCRA and any other applicable Federal statute.

After notice to the State, EPA may take action under section 3008 of RCRA against a holder of a State-issued permit on the grounds 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 grounds 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.

B. State

The State agrees to carry out a timely and effective program for monitoring compliance by hazardous waste generators, transporters, and facilities with applicable program requirements (see 40 CFR §271.15). As part of this program, the State will conduct 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 State/EPA Enforcement Agreement and the annual State grant work program and shall be consistent with all applicable Federal requirements and with the State's Program Description.

Individuals in the State program may be designated as EPA representatives under section 3007 of RCRA so that they can inspect facilities for violations of the terms and conditions of Federal permits.

The State agrees to take timely and appropriate enforcement action as defined in the State/EPA Enforcement Agreement or annual State grant work program against all persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements, including violations detected by State or Federal compliance inspections. The State will maintain procedures for receiving and ensuring proper consideration or 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 such action is resolved.

VIII. AVAILABILITY OF INFORMATION (section 3006(f))

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. Pursuant to 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 adjudication, State regulations, statements of Agency policy,

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

2. The Texas Water Commission agrees to make reasonable efforts to assist a requestor in identifying records being sought, and to help the requestor formulate his or her request.
3. If a request for information is denied, the State agrees to provide the requestor the basis for the denial and to notify the requestor of State judicial (or, if they exist, administrative) procedures, including statutes of limitation.
4. The State agrees to make the fullest possible disclosure of records to the public, subject to any of the exemptions under the Federal FOIA recognized by the State.
5. The following shall be included if the State charges a fee to provide copies of information: 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.

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 the State review.
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 relevant to section 3006(f) of RCRA.

STATE OF TEXAS

TEXAS WATER COMMISSION

BY: *[Signature]*
Executive Director,
Texas Water Commission

DATE: 9/22/92

U.S. ENVIRONMENTAL PROTECTION
AGENCY

REGION VI
BY: *[Signature]*
Regional Administrator
U.S. Environmental
Protection Agency
Region VI

DATE: SEP 24 1992