

US EPA ARCHIVE DOCUMENT

MEMORANDUM OF AGREEMENT BETWEEN

THE STATE OF TEXAS

AND

**THE UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

REGION 6



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This Agreement amends and supercedes previous Agreements. 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 This Agreement will remain in effect until such time as State program authorization is withdrawn by or is voluntarily transferred to EPA, according to the criteria and procedures established in 40 CFR § 271.22 and 40 CFR § 271.23.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 the Regional Administrator's decision to grant final authorization to the State for RCRA Cluster VI. *VI - X*

II. POLICY STATEMENT

Each of the parties to this Agreement is responsible for ensuring that its obligations under RCRA are met. Upon granting of final authorization by EPA, the State assumes primary responsibility for implementing the authorized provisions of the RCRA hazardous waste program within its boundaries. EPA retains its responsibility to ensure full and faithful execution of the requirements of RCRA, including direct implementation of HSWA, in the event the State is not authorized to act. The 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's administration and enforcement of the hazardous waste program on a continual basis for equivalency 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's review of information submitted by the State in accordance with this Agreement and the Performance Partnership Agreement (PPA), 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 that are received from regulated persons, the public, and Federal, State and local agencies concerning the administration and enforcement of the State's program. 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 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 TNRCC 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 criteria for priority activities. These criteria will be developed on an annual basis as a part of the Performance Partnership Agreement (PPA). These criteria will be based on guidance issued by EPA in the annual Agency Operating Year Guidance/RCRA Implementation Plan, Texas' evaluation of state needs, and other documents as may be appropriate, and will serve to identify those activities which should receive the highest priority during the grant period.

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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 any review of this Agreement, the State and the Regional Administrator will carefully examine the following information sharing provisions for needed revision.

Whenever possible, both EPA and the State of Texas shall make it their customary practice to seek information through electronic media as well as automated "read only" data bases. Both agencies agree to access the appropriate state and federal data bases in order to make oversight an automated function and to make information sharing more efficient and economical.

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. 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.
3. The State and EPA agree to the sharing of information as specified under 40 CFR §271.17.
4. 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.
5. 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.



6. 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. Pursuant to section 3010 and according to agreements between EPA and the State, the State is responsible for receiving, processing, and verifying information on notification forms (Form 8700-12) and for forwarding such information to EPA for the assignment of EPA identification numbers.
7. 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. Through development of the Performance Partnership Agreement (PPA), EPA and the State will agree on the type and frequency of reports the State will make available in order for EPA to maintain oversight of the implementation of the State's authorized program. Such reporting availability shall include, but may 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. 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 from the definition of a solid waste.
3. The State agrees to provide EPA any decisions regarding a facility's current or future permitted status or changes to the current or future site which would impact the permit.



4. The State agrees to provide EPA with access to reports on data resulting from any compliance inspection and subsequent enforcement actions, when EPA requests such copies.
5. The State agrees to provide access to 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, information shall be sent to Director, Hazardous Waste Division, Environmental Protection Agency, Region 6. *Muller*

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: TNRCC Emergency Response Unit: Telephone No: (512) 463-7727, or (512) 239-2507 (24 hours) or 1-800-832-8224 (24 hours).

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 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 them. 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 for the joint processing and enforcement of permits for those provisions of HSWA for which the State does not have authorization. As the State receives authorization for additional provisions of HSWA, EPA will suspend issuance of Federal permits in the State for those provisions.

B. EPA Overview of State Permits

While EPA may comment on any permit application or draft permit, EPA's overview function will focus primarily on those facilities identified by the State and EPA.

EPA may comment, in writing, on any draft permit or proposed permit modification, whether EPA commented on the permit application. 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:

1. a statement of the reasons for the comment (including the section of the State law or regulations that supports the comment), and
2. 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 or a violation of State RCRA requirements. 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, all applicable Federal requirements, and the State's Program Description. 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. & SAFETY CODE ANN. § 361.001 *et seq.* (Vernon 1992 & Supp. 1998), Title 30 TEX. ADMIN. CODE Chapters 1, 3, 10, 50, 55, 80, 281, 305 and 335, the Administrative Procedure Act in TEX. GOV'T CODE ANN. § 2001.001 *et seq.* (Vernon Supp. 1998) and to include as permit conditions all applicable provisions of Title 30 TEX. ADMIN. 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 in accordance with 40 CFR § 271.19 regarding permit applications and draft permits. The State will satisfy or refute, in writing, EPA's concerns on a particular permit application, proposed permit modification, or draft permit.

D. Joint Permitting Process

Pursuant to section 3006(g)(1), 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 RCRA authorization is received for the portion or 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 Joint Permitting Agreement (JPA). The duties and responsibilities of EPA and the State for joint permitting shall also be specified in the JPA.



The details of the joint permitting process as contained in the JPA shall be reviewed and revised as often as necessary, to assure its continued appropriateness.

Upon authorization of the State for any of the provisions of HSWA, 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, TEX. HEALTH & SAFETY CODE ANN. § 361.001 *et seq.* (Vernon 1992 & Supp. 1998), the Administrative Procedure Act in TEX. GOV'T CODE ANN. § 2001.001 *et seq.* (Vernon Supp. 1998) and all applicable provisions of Title 30 TEX. ADMIN. CODE Chapters 1, 3, 10, 50, 55, 80, 281, 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 to bring an enforcement action against any person believed to be in violation of the State or Federal hazardous waste program or believed to have released a hazardous waste or constituent. 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), and will invite the State to participate in the inspection. In case of an imminent hazard to human health and the environment, the Regional Administrator may shorten or waive the notice period. EPA agrees to make available to the State copies of any reports and data resulting from compliance inspections within a reasonable time from completion of the inspections.



The frequency of EPA oversight and training inspections will be specified in the Performance Partnership Agreement (PPA). 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). EPA will take enforcement action upon determining that the State has not taken timely and appropriate enforcement action or upon request by the State. EPA will give notice to the State prior to issuing a compliance order under section 3008(a). 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 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 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 Performance Partnership Grant (PPG) 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 actions as defined in the Hazardous Waste Enforcement Response Policy against all persons in violation of generator and transporter standards (including manifest requirements), facility standards, permit requirements, TCLP 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 provide EPA with copies of reports on data resulting from any compliance inspection and subsequent actions, when EPA requests such copies. The State agrees to retain all records for at least three years unless there is an enforcement action pending, in which case all records will be retained until such action is resolved.



VIII. 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. The State has not received authorization pursuant to section 3006(f) of RCRA, but information will be made available to the public as follows:

B. Requests for Information

1. Pursuant to the Texas Public Information Act in TEX. GOV'T CODE ANN. § 552.001 *et seq.* (Vernon 1994 & Supp. 1998), the State agrees to make certain materials routinely available without a formal request. Examples of these materials are final 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 State agrees to make reasonable efforts to assist a requestor in identifying records being sought and to help the requestor clarify or narrow his or her request as appropriate.
3. If the State contends that requested information is not subject to public disclosure, or if the information involves the interests of a third party who has asserted that the information is protected from disclosure, the State will comply with the statutory procedures for requesting a decision from the Texas Attorney General as set out in sections 552.301 through 552.305 of the Texas Public Information Act.
4. The State agrees to make the fullest possible disclosure of records to the public, subject to any applicable exceptions to disclosure under the Texas Public Information Act.
5. Pursuant to section 552.267(a) of the Texas Public Information Act, the State agrees to furnish a copy of public information without charge or at a reduced charge if it determines that waiver or reduction of the fee is in the public interest because furnishing the information primarily benefits the general public.



C. Oversight

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).

STATE OF TEXAS
Texas Natural Resource
Conservation Commission

U.S. ENVIRONMENTAL PROTECTION AGENCY
Region 6

BY: _____

Jeff Saitas
Executive Director
Texas Natural Resource
Conservation Commission

BY: _____

Gregg Cooke
Regional Administrator
U.S. Environmental
Protection Agency
Region 6

DATE: _____

4/24/00

DATE: _____

6/14/00

