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## RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

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### 2. Delisting by States

A facility generates a waste that is not hazardous by Federal EPA standards but is listed as a hazardous waste by the state. The state in which the generator is located is authorized to implement the RCRA program, excluding delisting provisions and the Hazardous and Solid Waste Amendments of 1984. According to 40 CFR 271.9(b) (See the September 22, 1986 Federal Register, 51 FR 33721), authorized states are not required to have a delisting mechanism. If the generator wishes to have his state-listed hazardous waste delisted, does he submit the delisting petition to EPA headquarters if the state has no delisting program?

Although EPA has the authority to grant delistings, its authority does not extend to wastes that are listed as hazardous by the state, but not by Federal EPA. According to 40 CFR 271.1(i)(2) and 271.121(i)(2), any state requirement that is greater in scope than the Federal RCRA requirements is not part of the Federally approved program. Program Implementation Guidance (PIG) 84-1 explains further that EPA may not enforce state provisions that are broader in scope than the Federal program. State listing of a waste that is not Federally listed is an example of a provision that is broader in scope because it increases the size of the regulated community. Therefore, EPA would have no authority to grant an exclusion for a waste that is listed only by the state. The state would be responsible for granting any exclusions for a waste not regulated Federally.

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