

9541.1987(01)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JAN 14 1987

MEMORANDUM

SUBJECT: The Role of Authorized States in Dispute Resolution

FROM: Bruce R. Weddle, Director
Permits and State Program Division

TO: Marcia E. Williams, Director
Office of Solid Waste

You asked about the role of authorized States in the dispute resolution procedures described in the attached DOJ memo. The DOJ memo suggests procedures for resolving RCRA disputes between EPA and Federal agencies. EPA's procedures for Federal facility dispute resolution and the role of an authorized State in dispute resolution are explained in the RCRA Enforcement Response Policy (ERP) and in EPA's Federal Facility Compliance Strategy. The draft DOJ procedures do not appear to affect the role of authorized States in dispute resolution since they are not bound by EPA's dispute resolution procedures.

Under either EPA's current dispute resolution procedures or DOJ's draft procedures, EPA would encourage the State (whether authorized or not) to participate in the dispute resolution process. It is EPA's policy that an authorized State take the enforcement lead for violations of RCRA. This policy applies to violations at private facilities as well as Federal facilities. Where the State fails to take timely and appropriate action, or where the State requests EPA to take the lead, EPA will pursue an enforcement action in an State. Where EPA takes the lead and pursues a negotiated settlement, it is our policy to encourage the States to participate in the negotiations and sign the compliance agreement. Signing the agreement, however, does not prevent a State from pursuing an independent enforcement action against the Federal facility. Furthermore, the State usually reserves the right to take an enforcement action if the Federal facility does not comply with the agreement. For example, in the Rocky Flats agreement and in the Wright-Patterson AFB agreement, the States reserved the right to take an enforcement action against the Federal facilities. The State's role in dispute resolution is the same under either the draft procedures written by DOJ or under EPA's dispute resolution procedures.

Where EPA takes the enforcement lead, States are often hesitant to join EPA's dispute resolution negotiations because the States would prefer to pursue an enforceable order in court. Under the draft DOJ procedures the States may be even more hesitant to join EPA's dispute resolution negotiations because the draft procedures do not include timeframes for issuing NOV's or for referring disputes to Headquarters as do EPA's current procedures.

Attachment