

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, DC 20460

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SUBJECT: Review of State Capability in RCRA Final Authorization

FROM: Lee M. Thomas  
Assistant Administrator (WH-562-A)

TO: Regional Administrators  
Region I - X

At the heart of the Federal and State implementation of the hazardous waste management program under RCRA must be a commitment to quality in the permits we issue, the enforcement actions we initiate, the corrective steps we undertake, and the information we provide to the public on program accomplishments. The States are pivotal to the success of this effort. Our joint commitment to quality under final authorization is critical to meeting our mandate under the statute. Capable managers at all levels working together toward common objectives is a prerequisite to an effective, high quality program.

It is appropriate, therefore, to re-affirm the importance of jointly completing with the States a detailed review of program capability as a key component of the final authorization process. The enactment of State statutory authority and promulgation of regulations, although critical steps, must be coupled with a firm commitment to enhance program capability to effectively implement the authorized State program.

It is imperative that you reach agreement with each State, before the final authorization decision is made, on the steps necessary to strengthen program capability and sustain a quality State RCRA program over time. I am optimistic that the States will have achieved adequate program capability to implement the RCRA program. However, if your joint review with the State leads you to conclude that the State does not have this capability, you should be prepared to recommend that the State's application for final authorization be denied.

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## The Review of State Capability

The Region and State should jointly conduct a detailed review of State capability to identify areas that require strengthening. This review should use information gathered in previous reviews or analyses, particularly the mid-year and end-of-year evaluations and other activities related to the annual program grant. The review should address those portions of the Federal program a State has been conducting for EPA (if under a cooperative arrangement) or in lieu of EPA (if they have interim authorization). In the latter instance, more stringent State requirements may be included if they are part of the program authorized by EPA. Areas of a State's program broader in scope than the Federal program are not part of the authorized program and need not be included in the review.

The review must be broad enough to isolate the issues and needs of both EPA and the State to manage the program under final State authorization. It must provide for:

◇ An assessment of the quality of The State's Past Performance Under Interim Authorization or Cooperative Arrangements. Areas to consider include:

- The compliance monitoring and enforcement program under interim authorization or cooperative arrangements, including an analysis of the number and thoroughness of inspections, the number, type and timeliness of enforcement actions, and the improvement shown by the State in bringing violators into compliance.
- The permitting program under interim authorization or cooperative arrangements, including the number and types of permit actions handled, conformance to technical and procedural requirements, and future permitting strategy.
- State program management, including resources, skill mix, State organization, institutional constraints (organization, salary rate, etc.), training needs, legal, support and timeliness for filling vacancies. Even when such areas cannot be directly influenced by EPA or the State program (e.g., salaries) they should be noted.

◇ The Identification of State and EPA Actions Which Will Be Taken To Ensure State Capabilities. The actions should:

- Define resource levels, skill mix, training needs and other factors necessary to address management issues raised in the assessment of past performance.
- Address the level of Regional involvement in direct activities after final authorization, and the form and content of oversight and assistance over time.
- Recognize the value of flexible State management approaches and where appropriate, account for State institutional constraints or other unique features that determine the form of the authorized program.

### Use of the Review In Final Authorization Process.

The joint review of State capability should take place as early in the final authorization process as possible, most appropriately before the draft application is submitted to EPA.

The Memorandum of Agreement (MOA) or an equivalent document (e.g., joint letter of intent) should reflect agreement on the responsibilities of both EPA and the State in sustaining program quality over time. Through the MOA, the Regions and States should agree to use the program grant process to annually (or more frequently) identify and commit to specific actions required to strengthen the State program. The specific commitments and associated resource impact should be incorporated into the State's grant work program.

To facilitate the final authorization decision, your Action Memorandum transmitting the Federal Register Notice of Tentative Decision (or Final Decision if State is later in the authorization process) must: (a) describe the major aspects of past State performance relevant to State capability under final authorization, (b) outline the steps agreed to by the Region and State to enhance program capability, and (c) include a statement that affirms that these actions will result in the implementation of a quality RCRA program. As stated before, if you conclude from your review that a State does not have the capability to implement the RCRA program, then you should recommend that the State's application be denied.

Timely completion of the review is critical to demonstrate that proper consideration has been given to identifying and resolving State capability questions prior to the decision on final authorization. Because we have already received several draft and official applications. The following schedule should be followed:

- ◇ For States which have not yet submitted an official application, the capability assessment should be addressed in the Action Memorandum for tentative decision.
- ◇ For States which have submitted an official application the assessment should also be addressed (where possible) in the Action Memorandum for tentative decision. However, if it is too late in the review process to permit this, the assessment should be addressed in the Action Memorandum for final determination.

In no case is the review of State capability to be completed later than the final Action Memorandum and Federal Register Notice of Final Decision.

As you know, I have established a joint Region/State task force to consider the question of RCRA program quality. The outputs from this task force will provide more specific guidance and policy on criteria to be used in evaluating program performance under final State authorization. We do not expect to issue the final policy on RCRA program quality until April, 1984. However, to the extent feasible you may wish to use the criteria developed by the task force to assist you in performing the State capability reviews outlined above. The criteria you use should be based on the circumstances appropriate to your situation and your experience with each State.

Support and assistance in completing the reviews during the final authorization process will be provided by the Permits and State Programs, Division, Office of Solid Waste. The State Programs Branch will be developing recommended MOA language, a model Action Memorandum and a sample review of State capability to implement the new requirements. This will be completed in spring, 1984.

Cc: Regional Hazardous Waste Management Division Directors  
OSWER Office Directors  
Kirk Sniff, Office of Enforcement and Compliance Monitoring  
Lisa Friedman, Office of General Counsel  
Bruce Weddle, Acting Director, Permits and State Programs Division  
Donald Lazarchik, President, Association of State & Territorial Solid Waste Management Officials  
State Hazardous Waste Management Directors