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RCRA/SUPERFUND HOTLINE MONTHLY SUMMARY

SEPTEMBER 86

4. State Programs

40 CFR 271.1(i) allows a state's authorized RCRA program to be broader in scope of more stringent than the Federal RCRA program. What is the difference between state program elements that are broader in scope and more stringent than Federal requirements? What are some examples?

The best available guidance distinguishing between "more stringent" and "broader in scope" is program implementation guidance (PIG) 84-1. A state program that is broader in scope than the Federal program either: 1) expands the size of the regulated community; or 2) incorporates program elements that do not have a Federal counterpart. Examples of requirements that are broader in scope are permits for Federally-exempt wastewater treatment units, special licenses for transporters, and listing of wastes which are not listed Federally.

A state program requirement that is more stringent has a direct Federal program counterpart. Examples of more stringent requirements are requiring generators to submit an annual, rather than a biennial report; shorter duration periods for permits; and stricter management standards for permitted or interim status tanks and containers.

The distinction between broader and more stringent state requirements is significant because EPA may enforce a more stringent state requirement but not a state requirement that is broader in scope. RCRA §3008 (a)(2) allows EPA to enforce any provision of an authorized state's approved program. More stringent state requirements fall into this category. State provisions that are broader in scope are not part of the Federally approved RCRA program, according to 40 CFR 271.1(i), and are therefore not enforceable by EPA (see also PIG 82-3).

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