PPC 9543.1984(01)

STATE CAPABILITY ASSESSMENT GUIDANCE

December 27, 1984

MEMORANDUM

SUBJECT: Additional Guidance on RCRA State Capability Assessments

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

TO: Regional Administrators
Regions I - X

Your assessment of the State's capability to implement a quality RCRA permit is an important part of the process of making a Tentative Determination to grant RCRA final authorization. (Guidance on conducting the capability assessment was issued on June 26.) To help ensure timely Headquarters' concurrence on both tentative and final determination decision packages, this memorandum provides additional guidance on capability assessments.

Our review of the assessments indicates the need for a more formalized process to collect the information needed to assess the State capability. This process will ensure that program quality/capability can be readily discerned from the decision packages and that the packages can be processed well within the 10-day concurrence period.

Please make sure that your tentative and final determination decision packages include the following:

1. A chart outlining specific grant commitments and State accomplishments in the areas of permitting, compliance monitoring and enforcement for FY 84 (suggested format attached). A similar chart should also be updated upon submittal of the Final Decision (and for Notices of Tentative Decisions submitted later this year) with respect to State commitments and accomplishments to

date in FY 85.

2. As you know, the assessments must include an agreement in the form of a Letter of Intent or Memorandum of Agreement that outlines specific State and EPA actions necessary to strengthen State program capability and sustain a quality RCRA program over time. The Letter of Intent or Memorandum of Agreement must include specific schedules and/or dates for implementing both EPA and State activities identified as necessary for enhancing the State's RCRA program. Letters or Memoranda which are vague or generalized are more likely to lead to unachieved expectations and misunderstandings. It is imperative that both we and the State clearly understand and agree to these specific milestones so that each program knows what is expected. For example, if the State has not yet met its inspection commitments for ground-water monitoring facilities, the agreement should reference a schedule identifying specific facilities to be inspected and a timetable for completion of those inspections in the coming year. The agreement would also specify a timetable for the State to hire additional inspectors, and an EPA inspection schedule that would temporarily augument the State program and enable the State to meet its inspection commitments.

3. Where weaknesses are found in State program areas not identified in the grant accomplishment chart, include specific documentation to support the findings. For example, a State capability assessment may conclude that the State attornhey general has been slow in processing cases referred by the program office. The assessment would identify the specific number of cases referred in FY 84, and the cu rrent status of those cases at the time of the assessment (pending, filed atc.). Corrective measures for this situation would be addressed in the Letter of Intent or in the Memorandum of Agreement.

I encourage you to submit drafts of your capability assessments to Headquarters (OSW's State Programs Branch) prior to transmitting your tentative or final determinations. By

reviewing drafts in advance, the Office of Solid Waste and the Office of Waste Program Enforcement are able to identify and assist in resolving potential problem areas in the document without being constrained by the 10-day concurrence period.

Attachment

cc: Waste Management Division Directors,
Regions I - X

FEB 21 1984

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

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, muts 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.

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 consent 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.
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> 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

JUN 26 1984

MEMORANDUM

SUBJECT: State Capability Assessment Guidance

FROM: Lee M. Thomas
Assistant Administrator

TO: Regional Administrators, Region I - X

On February 21, I wrote to you explaining the importance of assessing State program capability as a key component of the final authorization process. I asked that before you recommned authorization of a State program you work with the State to evaluate its capabilities and come to an agreement on whether action is required to strenghten those capabilities. Several Regions requested guidance on conducting these assessments. The attached guidance was developed after reviewing several capability assessments and receiving comments from the Regions on a draft guidance document.

In conducting these assessments, you should work closely with the States to identify areas of program inadequacy and weakness and to devise remedial measures. The basic criteria to be used in this evaluation are the Criteria for a Quality RCRA Program, developed jointly by EPA and the States. These are the same criteria which will be used as a component of the Headquarters review of Regional activities where EPA operates the RCRA program.

It should be clearly understtod that this review allows the Region and the State to take a prospective view of the RCRA program and mutually establish capability objectives and supporting strategies for their accomplishments. Its purpose is not to be an impediment to final authorization unless the Regional Administrator feels the weaknesses in the State program are so severe that additional time is needed to assess a State's ability to implement remedial measures. Through this exercise we hope to avoid granting final authorization to a State only to be faced soon after with concern about

inadequate performance and uncertainty about the criteria used to measure it. Your Action Memorandum should affirm that the remedial actions delineated in the capability assessment are mutually agreed upon strategies which will result in a quality RCRA program.

Support and assistance in completing the reviews will be provided by the State Programs Branch, Permits and State Programs Division, Office of Solid Waste. I recommend that a draft of your capability assessments be submitted to that Branch before you seek State concurrence on corrective measures. Comments will be provided as quickly as possible.

Attachment

cc: Regional Hazardous Waste Management
Division Directors

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13 NOV 1984

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MEMORANDUM

SUBJECT: Placement of Capability Assessments in Authorization File

FROM: Bruce R. Weddle
Director, Permits and State
Programs Division (WH-563)

TO: Hazardous Waste Division Directors
Regions I-X

The Capability Assessments which you develop when making tentative and final decisions on authorizing a State's hazardous waste management program are an integral part of our decision-making process. This being the case, the Office of General Counsel has informed us that the Capability Assessment and Letter of Intent must be included in the public record. Therefore, when notice of the Region's decision is published in the Federal Register, copies of these documents shoud be placed in your State Authorization File for access by the public.

Several decisions have already been published. If the Capability Assessment was not part of the Authorization File at the time of publication, consult with your Office of Regional Counsel before adding them to the File now.

cc: John Skinner
Truett DeGeare
Gail Cooper
ORC Team Leaders