PPC 9542.1980(02)

INTERIM AUTHORIZATION OF PROGRAMS BASED ON EMERGENCY STATE REGULATIONS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

OCT 3 1980

PIG-80-2

MEMORANDUM

SUBJECT: Interim Authorization of Programs Based on Emergency State Regulations

FROM: Steffen W. Plehn
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TO: PIGS Addressees

ISSUE

Can States use emergency regulations to obtain interim authorization?

DISCUSSION

In order to qualify for interim authorization a State must have a hazardous waste statue and regulations that meet minimum Federal requirements. In some cases when a State promulgates final regulations they are subject to State administrative review. Such a review process may be time-consuming and delay the State's receipt of Phase I interim authorization. Many States have authority to enact emergency regulations which postpone this State administrative review.

A major drawback of authorizing State programs based

upon emergency regulations is the possibility that the regulations may expire before final regulations are enacted. A State hazardous waste program without regulations obviously would not comply with minimum Federal requirements, and interim authorization would be subject to withdrawal under section 123.136. However, EPA could not administer a Federal program in the State until the State voluntarily returned the program to EPA or the extensive withdrawal procedures under section 123.15(b) were completed. Theoretically, this could consult in a void during which no State or Federal regulations would be in force in the State.

In addition to the possibility that the emergency regulations would expire prior to the effective date of the final regulations, EPA is also concerned that the State's final regulations might be inadequate. The withdrawal procedures of 40 CFR 123.15(b) would apply in either case. However, the Agency wants to eliminate any possible gap in regulatory control and address in advance questions regarding reversion of the program in both of these situations.

Therefore, it is necessary that the Memorandum of Agreement (MOA) describe the process whereby the State would immediately and voluntarily return the program to EPA. The Federal regulations provide for such a reversion process at 40 CFR 123.15(a): "...or in such other manner as may be agreed upon with the Administrator." The State must also agree to submit its final regulations for review of adequacy at the time it applies for Phase II authorization.

DECISION

Recognizing both the advantages and disadvantages of allowing a State to use emergency regulations to qualify for interim authorization, EPA has decided to allow a State to use emergency regulations, provided the State meets certain conditions. EPA will grant Phase I interim authorization to a State whose program under emergency regulations is substantially equivalent to the Federal program if, in addition, the following conditions are met:

1) The State must show that under its normal administrative procedures it will be able to enact final regulations which will take effect before the emergency regulations expire:

2) The MOA provide that the State will submit its final regulations to EPA for review at the time the State applies for Phase II interim authorization; and

3) The MOA describe the process by which the State will immediately and voluntarily return the program to EPA in the event that the emergency regulations expire prior to the effective date of the final regulations.

Emergency regulations will not be in an eligible basis for issuance of final authorization.