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INVOLVEMENT OF STATES WITHOUT PHASE II INTERIM
AUTHORIZATION IN RCRA PERMITTING

OFFICE OF WATER AND WASTE MANAGEMENT

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PIG-81-11

MEMORANDUM

SUBJECT: Involvement of States without Phase II
Interim Authorization in RCRA Permitting

FROM: Steffen W. Plehn
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TO: PIGs Addressees

ISSUE

How should States without interim authorization for
Phase II be involved in RCRA permitting?

DISCUSSION

As you know, the recent promulgations of Phase II
facility standards under Part 264 and permitting requirements
under Part 122 enable States to receive Phase II interim
authorization for issuing RCRA permits to the following
categories of facilities:

- use and management of containers;
- storage and treatment of hazardous wastes in tanks,
surface impoundments, and waste piles; and

□ treatment of waste in incinerators.

In addition, EPA has published interim final regulations (Part 267) which, for a period of 18 months, will allow EPA to issue permits to new land disposal facilities pending promulgation of the final land disposal regulations. States may not receive interim authorization for permitting land disposal facilities at this time, since the Part 267 regulations only provide temporary standards which will not suffice for determinations of substantial equivalence.

Although States may now apply for Phase II interim authorization for permitting certain facilities, some States may not choose to do so in 1981. Some States may postpone their Phase II application until the final Federal land disposal regulations are promulgated later this year or in 1982. Also, State preparation of Phase II applications may take longer than Phase I applications, due to the complexity of the technical facility standards and the financial responsibility requirements. Some States may need to adopt or amend legislation and regulations to obtain substantially equivalent authority in these areas and may need to add additional personnel to administer the permitting program.

Given this situation, the Federal permit process must be implemented in a way which maximizes the use of State resources and technical capabilities and avoids inefficient and confusing duplication with State programs. Therefore, EPA must work closely with State permitting programs, especially those programs which appear to be moving in a timely manner toward Phase II interim authorization.

DECISION

EPA Regional Offices must seek the active involvement of State programs in the conduct of RCRA permitting during the period before a State receives Phase II interim authorization. This policy will provide for the most efficient use of EPA and State permitting resources and technical expertise, reduce confusion and paperwork burdens for the regulated community and the public, and ease the transition toward State administration of the RCRA permit program in lieu of EPA. While EPA retains authority and responsibility for RCRA permitting until a State receives Phase II authorization,

EPA must cooperate with the States as closely as possible in the implementation of this responsibility.

State involvement prior to Phase II interim authorization should take several forms:

- States should assist Regional Offices in the development of permitting priorities and in initial contacts with potential permittees, based on their own priorities and their knowledge of local conditions.
- States should review permit applications, share information from their files, assist EPA in obtaining additional information (including site visits) and help prepare technical analyses and support documents.
- States should assist in developing permit conditions and should comment on draft and final permits.
- Where unauthorized States must issue permits under State law, they should participate with EPA in joint permit issuance procedures (e.g., joint public notice, public hearings, response to comments).

These and other Federal-State working relationships should be formalized in writing through an amendment to a Cooperative Arrangement, a Phase I Memorandum of Agreement, or a Subtitle C grant work program. Through these mechanisms, the State can agree to perform specified tasks for which it has legal authority and can be funded by EPA to perform those tasks.

EPA can also support State involvement in the permit process through funding of State travel by the Peer Matching program, State access to EPA contractors, and participation of State personnel in RCRA training. We encourage Regional Offices to be aggressive in securing State involvement as we move toward the issuance of the first RCRA permits.