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HAZARDOUS WASTE MANAGEMENT CAPACITY AND RCRA CONSISTENCY ISSUES

THE ADMINISTRATOR

DEC 23 1988

MEMORANDUM

SUBJECT: Policy Regarding Hazardous Waste Management Capacity and RCRA Consistency Issues

TO: Regional Administrators

In recent months we have focused on two parallel, but overlapping, issues in the hazardous waste management area. One issue has been the development of guidance for the State hazardous waste capacity assurance process called for by Section 104(c) (9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The other has been the issue of EPA's approach to State actions which may be inconsistent with the federal Resource Conservation and Recovery Act program.

This past June a task force on these RCRA consistency and CERCLA capacity issues presented their findings to me. In addition, we have now completed our guidance to the States for the CERCLA capacity assurance process. Based on an evaluation of the findings and guidance, I now want to present to you EPA's policy in the area of RCRA consistency and CERCLA capacity assurance.

First, we will rely on the CERCLA process as our primary vehicle for ensuring that States have adequate capacity to manage their hazardous wastes. As our CERCLA capacity guidance indicates, the States must provide EPA with a good knowledge of their current and projected waste amounts and management practices, including correlation of imports and exports between States; description of waste minimization programs; and discussions of laws and regulations which may affect the state's ability to manage wastes. EPA must approve these State assurances in order for EPA to provide Superfund remedial actions in a State after October 17, 1989.

Secondly, the Regions should use the procedures for withdrawal of authorized State RCRA programs in the case of failure to use the RCRA uniform manifest system, or for unreasonable restrictions on interstate waste movements. The CERCLA capacity assurance process should be used as an initial response to State Actions which prohibit waste management within State boundaries without environmental justification. States may be able to resolve issues related to such actions themselves during the interstate discussions that the CERCLA process will foster. The Regions should, therefore, decide whether to initiate proceedings to withdraw State RCRA programs for prohibitory actions after determining that the CERCLA process has proven ineffective.

I believe the above dual approach to be a positive one allowing us to work within the legal authority provided, and to assist States in developing needed waste management capacity.

Original Document signed

Lee M. Thomas