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MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF NORTH CAROLINA
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
FOR THE RCRA HAZARDOUS WASTE PROGRAM

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MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF NORTH CAROLINA
AND
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
FOR THE RCRA HAZARDOUS WASTE PROGRAM

I. GENERAL

This Memorandum of Agreement ("Agreement" or "MOA") establishes policies, responsibilities, and procedures for the State of North Carolina ("State") through its North Carolina Hazardous Waste Program ("State Program") authorized under Section 3006 of the Resource Conservation and Recovery Act ("RCRA") of 1976 (42 U.S.C §§ 6901-6992k), as amended, and the United States Environmental Protection Agency's ("EPA") Regional Office for Region 4. This Agreement further sets forth the manner in which the State and the EPA will coordinate the State's administration and enforcement of the State Program and administration of the provisions of the Hazardous and Solid Waste Amendments of 1984 ("HSWA"). For purposes of this Agreement, references to RCRA include HSWA.

This Agreement between the EPA and the State is a requirement and condition of State authorization under 40 C.F.R. § 271.8. Nothing in this Agreement will be construed to restrict in any way the EPA's statutory and regulatory authority to fulfill its oversight and enforcement responsibilities under RCRA. Nothing in this Agreement will be construed to restrict in any way the State of North Carolina's authority to fulfill its program responsibilities under the State Program.

Each of the parties to this Agreement is responsible for ensuring that obligations under RCRA are met. Upon granting of final authorization by the EPA, the State assumes primary responsibility for implementing the authorized provisions of the RCRA hazardous waste program within its geographic boundaries and will conduct its hazardous waste program in accordance with EPA program policies and guidance. While the EPA retains responsibility for direct implementation of those provisions of HSWA for which the State is not authorized, it is the intention of the EPA and the State to coordinate the implementation of all provisions to the greatest degree possible.

This Agreement may be modified upon the initiative of either party to ensure consistency with State Program modifications or for any purpose mutually agreed upon. Any revisions or modifications to this Agreement must be in writing and must be signed by the State Program Secretary or his/her delegatee and the Regional Administrator or his/her delegatee.[1] This Agreement will remain in effect until such time as State Program authorization is withdrawn by or is voluntarily transferred to the EPA according to the criteria and procedures in 40 C.F.R. §§ 271.22 and 271.23. This Agreement shall supersede all previous agreements and all subsequent amendments to those agreements.

This MOA does not create any right or benefit, substantive or procedural, enforceable by law or equity, by persons who are not a party to this Agreement, against the State of North Carolina or the EPA, their officers or employees, or any other person. This MOA does not apply to any person other than the State of North Carolina and the EPA. The EPA will oversee implementation of the

[1] "His or her delegatee" is added after Regional Administrator throughout the document to account for delegations of authority from the Regional Administrator to other EPA staff.

authorized State Program to ensure full execution of the requirements of RCRA, to promote national consistency in hazardous waste programs, and to allow the EPA to report to the President and Congress on the achievements of the RCRA Federal Program and the various state hazardous waste programs.

As the RCRA Federal Program changes, the authorized State Program must be revised, pursuant to 40 C.F.R. § 271.21, to remain in compliance with the requirements of 40 C.F.R. Part 271. The State agrees to keep the EPA fully informed of any proposed modifications to its basic statutory or regulatory authority, its forms, procedures, or priorities.

II. COMPLIANCE MONITORING AND ENFORCEMENT

A. Authorities

Nothing in this Agreement will restrict the EPA's authority to inspect any hazardous waste generator, transporter, or treatment, storage, or disposal ("TSD") facility; or to bring an enforcement action against any person believed to be in violation of the State Program or the RCRA Federal Program or any person believed to have a release of hazardous waste or hazardous constituents.

B. Inspection Coordination

Before conducting an EPA lead or oversight inspection of a generator, transporter, or TSD facility, the Regional Administrator or his/her delegatee will normally give the State at least seven days notice, in accordance with 40 C.F.R. § 271.8(b)(3)(i), and will invite the State to participate in the inspection. Notice may be given electronically. In case of a potential imminent hazard to human health and/or the environment, the Regional Administrator or his/her delegatee may shorten the notice period.

C. EPA Enforcement Actions in an Authorized State

The EPA may take enforcement action against any person determined to be in violation of RCRA in accordance with RCRA Section 3008(a), 42 U.S.C. § 6928(a). Where the violation concerns a regulation or requirement for which the State is authorized, the EPA will give notice to the State prior to issuing an order or commencing a civil action under RCRA Section 3008(a). The EPA also retains its rights to issue orders and bring actions under Section 3008(h) of RCRA (42 U.S.C. § 6928(h)), Section 3013 of RCRA (42 U.S.C. § 6934), and Section 7003 of RCRA (42 U.S.C. § 6973), and any other applicable Federal statute. Circumstances allowing, the EPA intends to notify the State before issuing orders under Section 3008(h) and Section 3013, and the EPA will give notice to the State before issuing an order under Section 7003.

Under Section 3008(a)(3) of RCRA, the EPA may revoke a State-issued permit in accordance with the procedures of 40 C.F.R. Part 124, or bring an enforcement action in accordance with the procedures of 40 C.F.R. Part 22, in the event that the EPA determines a facility has violated a State Program requirement. In exercising these authorities, the EPA will observe the conditions established in 40 C.F.R. § 271.19(e). The EPA may take action under Section 7003 of RCRA against a permit holder at any time whether or not the permit holder is complying with permit conditions.

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D. Authorized State Compliance Monitoring and Enforcement

The State agrees to carry out a timely and effective enforcement program for monitoring the compliance of generators, transporters, and TSD facilities with applicable program requirements (see 40 C.F.R. § 271.15). As part of this program, the State will conduct inspections to assess compliance with generator and transporter standards (including manifest requirements), facility standards, permit requirements, compliance schedules, and all other program requirements. The State may list additional activities and priorities for compliance monitoring consistent with the most current State Program Description (see 40 C.F.R. § 271.6).

The State agrees to take timely and appropriate enforcement action, as defined in the December 2003 Hazardous Waste Enforcement Response Policy, against all persons in violation of generator and transporter standards, facility standards, and all other program requirements, including violations detected by State or Federal compliance inspections, unless the EPA has the lead on enforcement. The State will maintain procedures for receiving, managing, and ensuring proper consideration of complaints, or other information regarding potential mismanagement of hazardous waste, that are submitted by the public.

The State will have at least quarterly conference calls and discussions with EPA Region 4 to provide periodic updates on facilities determined to be significant non-compliers ("SNCs") and to discuss other enforcement issues. These conference calls and discussions will be guided by reports, guidance documents, and other useful websites listed in Attachment A. The RCRA Enforcement and Compliance document flow is described in Attachment B.

III. RCRA PERMITTING IMPLEMENTATION PROCESS

A. Permitting Responsibilities upon Authorization

The State is responsible for and agrees to expeditiously draft, circulate for public review and comment, issue, reissue, renew, modify, and revoke RCRA permits for those hazardous waste TSD facilities subject to the authorized provisions of the State Program and will do so in a manner consistent with RCRA, as amended by HSWA, this Agreement, all applicable Federal requirements, and the State Program Description.

The State agrees to include all applicable and appropriate permit conditions required under RCRA Subtitle C and regulations promulgated pursuant thereto.

B. New Requirements and Joint Permitting

As the EPA promulgates additional regulations under the authority of HSWA, pursuant to Section 3006(g)(1) of RCRA, 42 U.S.C. § 6926(g)(1), the EPA will implement the requirements of HSWA directly in the State until the State Program is amended to reflect those requirements and prohibitions and the State receives authorization for those portions of HSWA. In accordance with RCRA Section 3006(c)(4), 42 U.S.C. § 6926(c)(4), and 40 C.F.R. § 271.19(f), the EPA will issue permits or portions of permits in the State as necessary to carry out the requirements of HSWA until the State is authorized for such requirements. Thus, the EPA and the State will establish a joint permitting process, as necessary, for the issuance of RCRA permits.

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The EPA will continue to administer any existing Federal permits in the authorized State until the State receives authorization for the specific provision(s) covered by the Federal permit and the State issues an equivalent State permit covering such provisions.Upon the effective date of an equivalent State permit, the EPA will terminate the Federal permit pursuant to 40 C.F.R. §§ 271.8(b)(6) and 124.5(d). The EPA will notify the permittee by certified mail of its intent to terminate the Federal permit, and give the permittee 30 days in which to agree or object to the termination of the permit.

C. EPA Permitting Comment Process

The State and the EPA will usually reach consensus on permit conditions before State issuance of a draft permit for public comment or approval of a proposed permit modification. The EPA may comment in writing on permit applications, any draft permit, including renewals, or proposed permit modification, as set forth in Attachment C. The EPA's silence on a permit application does not preclude the EPA from exercising its authority to comment on the draft permit. Pursuant to 40 C.F.R. § 271.19(b), (c), and (d), where the EPA indicates in a comment that issuance of the permit would be inconsistent with the approved State Program, the EPA will include in the comment:

1. A statement of the reasons for the comment (including the sections of the State law or regulations that support the comment); and

2. The actions that should be taken by the State in order to address the comment (including the conditions which the permit would include if the EPA issued it).

The EPA will send a copy of such written comments to the permit applicant and the State. The State agrees to consider all comments the EPA makes on permit applications, modifications, and draft permits, including renewals. The State will satisfy or refute the EPA's comments on a particular permit application, proposed permit modification, or draft permit, including renewals, in writing before issuing the final permit or making the modification. The EPA will withdraw such comments in writing when satisfied that the State has met or refuted its concerns and will provide the permit applicant with a copy of such withdrawal.

If the State fails to meet or refute the EPA's comments on a permit application or draft permit, the EPA may take action under RCRA Section 3008(a)(3) against a holder of a State permit at any time on the grounds that the permittee is not complying with a condition that the EPA, in commenting on the permit application or draft permit, stated was necessary to implement the approved State Program requirements, whether or not that condition was included in the final permit, as provided under 40 C.F.R. § 271.19(e)(2).

D. Permit Appeals

The State agrees to resolve all State permit appeals in a manner consistent with its authorized State Program and applicable State statutes. The EPA will notify the State of any permit appeals of any EPA-issued permits. The EPA will coordinate with the State on the EPA-issued permit

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appeals to the extent possible; however, the EPA will make the final decision on matters raised in the appeals.

E. Corrective Action

The State will conduct the RCRA Corrective Action Program in a manner that promotes rapid achievement of cleanups while protecting human health and the environment.

Specifically, the State will, to the extent practicable:

1. Embrace approaches that focus on control of human exposure and contaminated groundwater migration in the short term, with final cleanup being the long-term goal.

2. Provide public access to information and meaningful opportunities for public involvement in the cleanup process.

3. Foster a culture of innovation, creativity, communication and technical expertise, focused on accelerating cleanups and meeting program goals.

4. Follow and apply key RCRA Program guidance (and any updates) as appropriate, in conducting the RCRA Corrective Action Program to maintain consistency with other authorized state programs, as described in 40 C.F.R. § 271.4. The State should be aware that EPA guidance provides recommendations and does not impose any legally binding requirements. The recommendations provided under the guidance may not apply in a particular situation based on the circumstances and the State retains the discretion to adopt different approaches on a case-by-case basis where appropriate. For a listing of key RCRA Corrective Action Program guidance, please refer to: http://www/epa.gov/epawaste/hazard/correctiveaction/index.htm

The EPA will, to the extent resources allow and at the State's request, assist the State with its cleanup program and support its efforts to conduct RCRA cleanups.

Corrective action document flow is described in Attachment D.

IV. INFORMATION TRANSFER, MANAGEMENT AND PRESERVATION

The State will manage facility-specific records in a manner that at least meets the current Federal EPA Records Schedules but may retain additional records or maintain them for longer periods of time than the Federal Schedules require. A brief summary of the appropriate EPA Records Schedules, required retention times and associated documents, is included as Attachment E. This summary may not be all-inclusive but does list facility-specific decisions and status documents to be included in the official RCRA facility record.

For full record keeping requirement details, the State will reference the most current EPA Records Schedules (http://www.epa.gov/records/policy/schedule). Additional documentation or extension of the minimum required record retention time is at the discretion of the State.

The EPA will send information related to permitting and corrective action to:

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Head, Facility Management Branch
Hazardous Waste Section
Division of Waste Management
1646 Mail Service Center
Raleigh, North Carolina 27699-1646

The EPA will send information related to enforcement and compliance to:

Head, Compliance Branch
Hazardous Waste Section
Division of Waste Management
1646 Mail Service Center
Raleigh, North Carolina 27699-1646

The State will send information related to enforcement and compliance to:

Chief
Enforcement and Compliance Branch
Resource Conservation and Restoration ("RCR") Division
EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

The State will send information related to RCRA permitting and corrective action to:

Chief
RCRA Cleanup and Brownfield Branch
RCR Division
EPA Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303

The following items detail the information sharing agreements between the EPA and the State.

A. Federal Program Updates and Interpretations

The EPA will keep the State informed of the content and meaning of Federal statutes, regulations, guidelines, standards, policy decisions, directives, and any other factors that affect the State Program. The EPA will also provide general technical guidance to the State. The EPA will share with the State any reports developed by the EPA from the data submitted through State reporting requirements.

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B. Information Transfer to the State

The EPA will make available to the State other relevant information, as requested by the State, needed to implement its approved program. Information provided to the State will be subject to the terms of 40 C.F.R. Part 2.

C. State Program Changes

The State agrees to inform the Regional Administrator or his/her delegatee in writing of any proposed program changes that would affect the State's ability to implement the authorized State Program with as much advance notice as possible. Upon request of the State, the EPA will consider reviewing proposed State legislation that may affect the authorized State Program. Program changes of concern include modification of the State's legal authorities (including statutes, regulations and judicial or legislative actions affecting those authorities), modifications of agreements with other agencies which share substantive responsibility and resources for the functions as described in this Agreement, and modifications of resource levels (including available or budgeted personnel and funds). The State recognizes that program revisions must be made in accordance with the provisions of 40 C.F.R. § 271.21, and that until approved by the EPA, revisions are not authorized as part of the State Program.

D. Information Transfer to the EPA

The EPA is responsible for maintaining reliable national data on hazardous waste management. This data is used to report to the President and Congress on the achievements of the national hazardous waste program and to support the EPA's regulatory development efforts. The State agrees to provide information requested by the Regional Administrator or his/her delegatee via a mutually agreeable format (i.e., paper, electronic media, e-mail) within a mutually agreed upon time frame (or specified time limit, if appropriate), as necessary for the EPA to carry out its oversight responsibilities.

E. State Reports

The State agrees to submit the following reports and documents to the Regional Administrator or his/her delegatee within the specified time periods: a) End-of-Year reports on the dates set forth in the State Grant Work Plan or a mutually agreed upon date; b) additional reports and documents as specified in the State Grant Work Plan; and c) items detailed in Attachments B, C, and D describing the flow of documents.

F. Schedules

The EPA and the State agree to use best efforts to adhere to the schedules in Attachments B, C, and D describing the flow of documents, and the State Grant Work Plan.

G. State Grant Work Plan

Pursuant to 40 C.F.R. § 35.105, the State should submit a complete State Grant Application to the EPA at least 60 days before the beginning of the proposed funding period. The EPA suggests that the State send a draft State Grant Application and State Grant Work Plan to the EPA 120

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days in advance of the proposed funding period to allow sufficient time to complete negotiations on the terms of the State Grant Work Plan and State Grant Application. Consistent with the Government Performance and Results Act ("GPRA") and EPA strategic plan policies and directives, the State and the EPA will work together to determine facility baselines to track GPRA goals.

H. Regular and Ad Hoc Reporting

Whenever the EPA determines that it needs to obtain certain information on generators, transporters, or TSDs, the EPA generally will first seek to retrieve the information from RCRAInfo or other EPA/Federal databases. If the information is not available in an EPA/Federal database(s), the EPA will then seek to gain this information from the State. The State agrees to supply the Regional Administrator or his/her delegatee with this information if readily available and as resources allow. If the State is unable to provide the information, or if it is necessary to supplement the State information, the EPA may conduct a special survey, or perform information collection site visits after notifying the State and inviting the State to participate in the site visit. The EPA will share with the State any reports developed by the EPA as a result of such information collection.

I. Emergency Situations

Upon receipt of any information that the handling, storage, treatment, transportation, or disposal of hazardous waste may endanger human health or the environment, the party in receipt of such information will notify by telephone, as soon as possible, the other party to this Agreement of the existence of such situation. The EPA will call the State of North Carolina Emergency Response Team at 1-800-858-0368. The State will call the EPA's Emergency Response and Removal Branch at 404-562-8700, or notify the National Response Center at 1-800-424-8802.

J. Authorized State Delisting

The State will send to the EPA any draft delisting decision at least 30 days before public notice. The EPA will review the draft delisting decision, and if the EPA has comments, the EPA will provide its comments to the State within 30 days of receipt of the State's draft delisting decision. The State will send its final delisting decision to the EPA at least 15 days before mailing it to the applicant. The EPA will notify the State if it finds serious technical deficiencies in the State's final delisting decision before the State sends the final decision to the applicant. The State will provide the EPA a copy of the State's final delisting decision when it sends it to the applicant. See Attachment B, Items 7C and 7D.

K. Notification of EPA Identification Numbers

The EPA and the State have jointly decided that the State will assign all EPA I.D. numbers and enter all notification data into RCRAInfo. If the applicant sends a notification form (8700-12 or equivalent) directly to the EPA, the EPA will forward the form to the State for the assignment of an I.D. number within 30 days of receipt. If the State receives a notification form from the EPA or from the applicant, the State will assign an I.D. number to the applicant and inform the applicant of the assigned I.D. number.

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L. Variances and Waivers

The State agrees not to grant variances or waivers pursuant to State Program regulations that would make the State Program regulations less stringent than the RCRA Federal Program. The State will obtain concurrence from the Regional Administrator or his/her delegatee on all variances and waivers which might make the State Program less stringent than the RCRA Federal Program to assure that the State Program is as stringent as the RCRA Federal Program. Concurrence is specifically required for changes in testing or analytical methods. The EPA agrees to evaluate these requests for concurrence within 45 days of receipt. All public notices of intent to issue variances or waivers should be sent to the EPA within 14 days prior to issuance. The State will transmit a copy of all variance or waiver approvals to the EPA within 10 days after issuance. See Attachment B, Item 8.

M. RCRAInfo

RCRAInfo will serve as the primary means to evaluate State activities and/or accomplishments related to facility compliance monitoring and enforcement, permitting, and corrective action under the RCRA Federal Program. The State agrees to enter or translate data into the national RCRA data management system, RCRAInfo, including information on non-notifiers. As specifically agreed to:

1. The State is responsible for the correctness of the data it enters. The State will timely correct any State data errors revealed by RCRAInfo edit reports. The EPA is responsible for the correctness of the data it enters and will timely correct any data errors that the EPA has created.

2. For data entered directly into RCRAInfo, the State agrees to enter the previous month's activities no later than the 20th of every month.

3. The State will collect Biennial Reporting data and provide the data to the EPA for loading into the national Biennial Report part of RCRAInfo according to the schedule promulgated by EPA Headquarters.

4. The EPA will be responsible for maintenance and cleanup of all EPA data that it entered in the RCRAInfo corrective action module before the State's authorization for HSWA corrective action.

5. The EPA will inform the State promptly when changes are made to RCRAInfo that might affect the State's implementation of the State Program.

6. The EPA will assist the State in RCRAInfo through consultation and training as resources allow.

7. The EPA will help the State maximize the usefulness of RCRAInfo and Biennial Report data (a.k.a., "Waste Activity Monitoring Data") by enhancing existing reports or writing new report programs to fit the specifications of the State as EPA resources allow. These reports will be available on the Region 4 portion of the RCRAInfo shared reports menu.

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The EPA will also assist the State in resolving Biennial Report data quality problems according to the schedule promulgated by EPA Headquarters.

V. PUBLIC INFORMATION

Section 3006(f) of RCRA, 42 U.S.C. § 6926(f), requires an authorized state to provide for the public availability of information obtained by the state regarding facilities and sites for the treatment, storage, and disposal of hazardous waste. Such information must be available to the public in substantially the same manner and to the same degree as that available under Federal law. The State agrees to make certain materials routinely available without a formal request. Examples of these materials are final opinions or orders in case adjudication, State regulations, statements of agency policy, and administrative staff manuals affecting the public. In addition, records prepared for routine public distribution will also be made available. Examples of such records are press releases, copies of speeches, pamphlets, and educational materials.

The State agrees to make reasonable efforts to assist a requestor in identifying records being sought. If a request for information is denied, the State agrees to provide the requestor the basis for the denial and to notify the requestor of any State judicial or administrative procedures or statutes of limitation for appealing the denial.

The State agrees to make the fullest possible disclosure of records to the public, subject to any of the exemptions under the Federal Freedom of Information Act ("FOIA"), 5 U.S.C. § 552(a)(2), recognized by the State.

If the State charges a fee to provide copies of information, the State will work with the requestor to minimize any applicable fees in connection with each request as allowed by State law.

VI. DISCLOSURE OF RECORDS

Any information obtained or used in the administration of the State Program will be available to the EPA upon request without restriction. If the information has been submitted to the State under a claim of confidentiality, the State must submit that claim to the EPA when providing the information. Any information obtained from the State and subject to a claim of confidentiality will be treated in accordance with the regulations in 40 C.F.R. Part 2.

If a claim of business confidentiality has been asserted on information sought by a requestor, and the claim of business confidentiality cannot be resolved in the time period provided for an agency response to a request, the State agrees to notify the requestor within the maximum 20-day time limit provided for an agency response, that the information may be entitled to confidential treatment. In addition, the requestor will be told that the request was initially denied in order to resolve the business confidentiality claim.

The State agrees to keep a log of denials of requests for information (or a file containing copies of denial letters sent to requestors) that will be made available to the EPA upon request.

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VII. STATE GRANT WORK PLAN ACCOUNTABILITY

A. Background

The EPA awards Hazardous Waste Management Grants ("grants") to assist states in the development and implementation of authorized state hazardous waste management programs. The allotment is based on the extent to which hazardous waste is generated, transported, treated, stored, and disposed of in the state; the extent to which human beings and the environment in the state are exposed to such waste; and other appropriate factors as determined by the Regional Administrator or his/her delegatee.

B. Negotiation of the Work Plan

This section describes how the EPA and the State will negotiate the State Grant Work Plan components and expected commitments and how performance under the grant will be measured. Applications for grants must meet the requirements of 40 C.F.R. Part 31 and the applicable requirements of 40 C.F.R. Part 35, including a proposed work plan pursuant to 40 C.F.R. § 35.107, and must specify the amount of funding requested.

The State Grant Work Plan reflects considerations of national, regional, and State environmental and programmatic needs and priorities. State Grant Work Plan negotiations will also consider other factors, such as: the National Program Guidance; any regional supplemental guidance; goals, objectives, and priorities proposed by the applicant; other jointly identified needs or priorities; and the planning targets.

C. Work Plan Components

The State Grant Work Plan is the basis for management and evaluation of the State's performance under the Grant Agreement. A State Grant Work Plan must clearly specify the following, as stated in 40 C.F.R. § 35.107(b)(2):

1. The Work Plan components to be funded under the grant;

2. Estimated work years and the estimated funding amounts for each Work Plan component;

3. The Work Plan commitments for each Work Plan component and a time frame for their accomplishment;

4. A performance evaluation process and reporting schedule in accordance with 40 C.F.R. § 35.115; and

5. The roles and responsibilities of the recipient and the EPA in carrying out the Work Plan.

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D. Criteria for Approving a Grant Application

Under 40 C.F.R. § 35.111, the EPA may approve an application upon determining that:

1. The application meets the requirements of 40 C.F.R. Part 31 and 40 C.F.R. Part 35, Subpart A;

2. The application meets the requirements of all applicable Federal statutes, regulations, circulars, executive orders, and delegations, approvals, or authorizations;

3. The State Grant Work Plan complies with the requirements of 40 C.F.R. § 35.107; and

4. The achievement of the proposed State Grant Work Plan is feasible considering such factors as the applicant's existing circumstances, past performance, program authority, organization, resources, and procedures.

If the application does not satisfy the above criteria, the EPA may conditionally approve the application if only minor changes are necessary. Otherwise, the EPA will disapprove the application in writing.

E. Changes after Approval

Significant changes to the State Grant Work Plan require prior approval in writing as explained in 40 C.F.R. § 35.114. These changes, along with the corresponding budgeted amounts, must be documented in writing. Requests for increases in grant amounts must be in writing. Implementation of changes should only begin after EPA approval in writing is received; otherwise such changes are done at the State's own risk.

F. Performance Evaluation

State Grant Work Plan negotiation also requires that the EPA and the State jointly develop a process for evaluating and reporting progress and accomplishments under the State Grant Work Plan. The evaluation process and reporting schedule must be described in the State Grant Work Plan in accordance with 40 C.F.R. § 35.115. The evaluation process must include:

1. A discussion of accomplishments as measured against State Grant Work Plan commitments;

2. A discussion of the cumulative effectiveness of work performed under all State Grant Work Plan components;

3. A discussion of existing and potential problem areas; and

4. Suggestions for improvement, including, where feasible, a schedule for making the improvements.

Evaluations will be performed in accordance with an evaluation and reporting process schedule negotiated in the State Grant Work Plan. Copies of the evaluation report will be made available

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to the State. Where the evaluation reveals that the State has not made sufficient progress under the State Grant Work Plan, the EPA and the State will negotiate a resolution to the issues. If the issues cannot be resolved through negotiation, the EPA may take action under 40 C.F.R. § 31.43. The State may request review of this action under 40 C.F.R. § 31.70.

VIII. STATE PROGRAM REVIEW

The Regional Administrator or his/her delegatee will assess the State's administration and enforcement of the State Program on a continuing basis for equivalence and consistency with RCRA and applicable Federal requirements, guidance, and policies and for adequacy of enforcement. This assessment will be accomplished by EPA review of information submitted by the State in accordance with this Agreement and the State Grant Work Plan, by permit overview, by compliance and enforcement overview, and by annual review of State Program activities. The Regional Administrator or his/her delegatee may also consider, as part of this regular assessment, written comments about State Program administration and enforcement that are received from regulated persons, the public, and Federal, State and local agencies. Copies of any such comments received by the Regional Administrator or his/her delegatee will be provided to the State.

The State agrees to allow the EPA access to all records, documents, and other information requested by the Regional Administrator or his/her delegatee and deemed necessary by the EPA for reviewing State Program administration and enforcement. Document reviews may be conducted at any time. Program review meetings between the State and the Regional Administrator or his/her delegatee will be scheduled at reasonable intervals, not less than annually, to review specific operating procedures and schedules, to resolve problems, and to discuss mutual program concerns. These meetings will be scheduled at least 15 days in advance unless another mutually agreeable scheduling time is set.

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IX. SIGNATURES

This Agreement is entered into by the Secretary of the North Carolina Department of Environment and Natural Resources and the Regional Administrator of EPA Region 4. It will become effective upon execution by both parties.

STATE OF NORTH CAROLINA NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES	U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 4
BY: John C Evan	BY: Heather McTeer Toney
For Donald R. van der Vaart Secretary	Heather McTeer Toney Regional Administrator
DATE: 8/27/15	DATE: SEP 10 2015

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Attachment A: IMPORTANT OECA GUIDANCE DOCUMENTS FOR COMPLIANCE & ENFORCEMENT

The following list of guidance documents and other references is not all-inclusive, but represents a collection of information useful for the implementation of the RCRA hazardous waste program. These documents may be superseded and replaced by an updated version; therefore, the most recent version of each document should be consulted.

2003 Hazardous Waste Enforcement Response Policy ("ERP")
http://www2.epa.gov/sites/production/files/documents/finalerp1203.pdf

RCRAInfo Data Appendix for the 2003 ERP
http://www2.epa.gov/sites/production/files/2013-11/documents/rcrainfoapp.pdf

Example Data Entry to RCRAInfo under ERP Data Entry Appendix
http://www2.epa.gov/sites/production/files/2013-11/documents/rcraflowchart.pdf

2003 RCRA Civil Penalty Policy
http://www2.epa.gov/sites/production/files/documents/rcpp2003-fnl.pdf

Revised Penalty Matrices for the RCRA Civil Penalty Policy (January 11, 2005)
http://www2.epa.gov/sites/production/files/documents/rcpprevisedtables2005.pdf
(Note that the penalty matrices are periodically adjusted per the Civil Monetary Penalty Inflation Adjustment Rule)

Oversight of State and Local Penalty Assessments: Revisions to the Policy Framework from State/EPA Enforcement Agreements (June 2, 1993)
http://www2.epa.gov/sites/production/files/2013-11/documents/oversgt-penal-mem.pdf

RCRA Compliance Monitoring Strategy
http://www2.epa.gov/sites/production/files/2013-11/documents/rcracms.pdf

Compliance Monitoring Strategy for the Resource Conservation and Recovery Act Subtitle C Core Program: Appendices
http://www2.epa.gov/sites/production/files/2013-11/documents/rcracms-appendices.pdf

OECA National Program Managers Guidance (annual fiscal year guidance)
http://www2.epa.gov/planandbudget/national-program-manager-guidances

RCRAInfo
https://rcrainfo.epa.gov/

ECHO.gov (Includes State Review Framework data and reports)
http://echo.epa.gov/
(Only available to federal, state, local and tribal government employees - must register for access)

National Enforcement Initiatives
http://www.epa.gov/compliance/data/planning/initiatives/index.html

Waste Chemical and Cleanup Enforcement Policy, Guidance and Publications
http://www.epa.gov/enforcement/

Voluntary Self-Policing and Self-Disclosure Policy and Guidance
http://cfpub.epa.gov/compliance/resources/policies/incentives/auditing

CERCLA Off-Site Rule (40 C.F.R. §300.440)
http://www.epa.gov/epawaste/hazard/wastetypes/wasteid/offsite
The Rule with the preamble was published on September 22, 1993 (58 FR 49200-49218).

Small Business Compliance Policy
http://origin.www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8955.pdf

Small Communities Policy
http://www.gpo.gov/fdsys/pkg/FR-2004-06-02/pdf/04-12417.pdf

Supplemental Environmental Project ("SEP") Policy and Guidance
http://www.epa.gov/enforcement/sep.html

Attachment B: RCRA ENFORCEMENT & COMPLIANCE DOCUMENT FLOW

Item	Item Description	State Action	EPA Action
1	List of TSDFs / LQGs / HW Transporters / Used Oil Processors / Used Oil Transporters that the State will inspect each year.	Send list to the EPA prior to start of the Federal Fiscal Year.	Review list and notify the State which facilities the EPA will inspect.
2A	State draft inspection reports for joint EPA/State inspections prior to finalization.	Send an electronic copy to the EPA for review within 45 days of the inspection. Await EPA comments, revise the report if appropriate prior to sending the final report to the facility with cc to the EPA within 60 days after the inspection. If the State does not receive the EPA's comments before the 60-day deadline, the State may send the final report to the facility. In extenuating circumstances, the inspectors may mutually agree on an extension of these deadlines. However, inspection reports must be issued within 150 days of the inspection.	Review electronic copy of draft State joint inspection report and provide comments to the State within 10 days after receipt.
2B	EPA draft inspection reports for joint EPA/State inspections prior to finalization.	Review electronic copy of draft EPA joint inspection report and provide comments to the EPA within 10 days after receipt.	Send an electronic copy to the State for review within 45 days of the inspection. Await the State's comments, revise the report if appropriate prior to sending the final report to the facility with cc to the State within 60 days after the inspection. If the EPA does not receive the State's

Item	Item Description	State Action	EPA Action
			comments before the 60-day deadline, the EPA may send the final report to the facility. In extenuating circumstances, the inspectors may mutually agree on an extension of these deadlines. However, inspection reports must be issued within 150 days of the inspection.
3	Upon request from the EPA, copies of final inspection reports for facilities where formal enforcement actions are expected by the State. The EPA may request, on a case by case basis, additional documentation, such as, but not limited to, follow-up reports, warning letters, NOVs, etc.	Send to the EPA electronically within 15 days of issuance.	Monitor State action for timeliness and appropriate action. The EPA will continue its practice of copying the State on final inspection reports and final enforcement actions taken by the EPA.
4	Notice of Intent to receive hazardous waste from a foreign source pursuant to 40 C.F.R. §§ 265.12 and 264.12.	Send copy to the EPA within 15 days of receipt.	Review and take action as necessary.
5	Notification to the State that the EPA will take enforcement action pursuant to RCRA Section 3008(a).		Notification to the State, normally at least 7 days prior to issuing 3008(a) Order.
6	Notification to the EPA of any determination that a Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") off-site facility is: 1. A Significant Non-Complier ("SNC"); 2. May be posing a significant threat to public health, welfare or the environment; 3. Has relevant violations at or affecting the unit or units receiving the waste;	Notify the EPA in writing or by e-mail within 15 days of the determination and send the EPA electronic copies of any formal or informal enforcement action within 7 days of issuance.	Review per Off-Site Rule, consult with the State, and take appropriate action.

Item	Item Description	State Action	EPA Action
	4. Has environmentally significant releases of hazardous substances; or 5. Is otherwise deemed ineligible under 40 C.F.R. § 300.440.		
7A	Petition for delisting, and all subsequent revisions.	Send to the EPA within 15 days of receipt.	Review and provide comments to the State within 30 days of the EPA's receipt of petition for delisting.
7B	Public comments received due to public notice of petition to delist.	Send comments to the EPA if requested.	Review and provide comments to the State within 30 days of the EPA's receipt of public comments.
7C	Draft delisting decisions.	Send draft decision to the EPA at least 30 days before public notice.	Review and provide comments to the State within 30 days of the EPA's receipt of the draft decision.
7D	Final delisting decisions.	Send final decision to the EPA 15 days before mailing to the applicant. If the final decision changes in response to the EPA's comments, send final decision to the EPA when it sends the decision to the applicant.	Notify the State if the EPA finds serious technical deficiencies in the final delisting decision.
8	Decisions to grant variances and waivers.	Obtain EPA concurrence on all variances and waivers which might make the State Program less stringent.	Evaluate requests for concurrence within 45 days of receipt.

Item	Item Description	State Action	EPA Action
		Send all public notices of the State's intent to issue variances or waivers within 14 days prior to issuance. Send copies of all variances and waiver approvals to the EPA within 10 days after issuance.	
9	RCRA-related citizen concerns referred to the State by the EPA.	Investigate, and upon request from the EPA, provide information on the investigation to the EPA within 30 days of the referral from the EPA. If the response to the citizen is time sensitive, the State will work with the EPA for a shorter deadline.	
10	Formal enforcement actions taken by the State.	Electronically transmit to the EPA at the same time as transmitted to the facility.	Review and take action as necessary.

Attachment C: BASE RCRA PERMITTING DOCUMENT FLOW

Item	Item Description	State Action	EPA Action
1	For more stringent permitting rules that go into effect immediately in authorized states.	Modify approved permitting program in order to maintain equivalency and consistency. Provide copy of any permit documents to the EPA until approval of authorization.	Issue permit and permit modification decisions, as needed.
2	Part B permit applications, modifications of permits, draft permits, and final permits for facilities selected by the EPA, including major hazardous waste management facilities selected by the EPA.	Furnish a copy of each document for listed facilities, or others, as requested, to the EPA within 30 days of request.	Provide the State with a beginning of year plan listing facilities selected for EPA review. Timely review documents for completeness and quality within 45 days of receipt from the State.
3	Documents for which EPA technical support is requested by the State.	Provide the EPA a beginning of year list of documents projected to need EPA review. Send document(s) to the EPA when received from the facility.	Provide timely assistance to the State within limits of contract budget and staff time and expertise.

Attachment D: CORRECTIVE ACTION DOCUMENT FLOW

Item	Item Description	State Action	EPA Action
1	Draft RFA Reports*	The State will send draft document to the EPA if EPA technical review is requested by the State or a review is requested by the EPA.	The EPA will review and comment pursuant to a schedule agreed upon with the State project manager.
2	Final RFA Reports*	The State will send final document to the EPA when the document is sent to the facility if EPA technical review is requested by the State or a review is requested by the EPA.	The EPA will verify comments are adequately addressed and follow-up as necessary to determine if an addendum to the document is needed. The EPA will verify information in RCRAInfo.
3	Signed EI Evaluations* for CA725 and CA750	The State will send document to the EPA.	The EPA will review for conformity to regional practices. The EPA will verify EI Evaluations are in RCRAInfo.
4	Draft RFI Work Plans* and Reports*	The State will send draft documents to the EPA if EPA technical review is requested by the State or a review is requested by the EPA.	The EPA will review pursuant to a schedule agreed upon with the State project manager.
5	Final RFI Work Plans* and Reports*	If the EPA's technical review was requested by the State or a review is requested by the EPA, the State will send the final document to the EPA as the approval letter is sent to the facility.	The EPA will verify comments are adequately addressed and follow-up as necessary to determine if an addendum to the document is needed. The EPA will verify information in RCRAInfo.

Item	Item Description	State Action	EPA Action
6	Draft Interim Measures (IM) Work Plans* and Reports*	The State will send draft documents to the EPA if EPA technical review is requested by the State or a review is requested by the EPA.	The EPA will review pursuant to a schedule agreed upon with the State project manager.
7	Final IM Work Plans* and Reports*	If the EPA's technical review was requested by the State or a review is requested by the EPA, the State will send the final document to the EPA as the approval letter is sent to the facility.	The EPA will verify comments are adequately addressed and follow-up as necessary to determine if an addendum to the document is needed. The EPA will verify information in RCRAInfo.
8	Other DRAFT Work Plans* and Reports* that address investigations and corrective action requirements for SWMUs and AOCs, including but not limited to risk assessments, vapor intrusion, and hydrogeologic investigations.	The State will send draft documents to the EPA if EPA technical review is requested by the State or a review is requested by the EPA.	The EPA will review and comment pursuant to a schedule agreed upon with the State project manager.
9	Other FINAL Work Plans* and Reports* that address investigations and corrective action requirements for SWMUs and AOCs, including but not limited to risk assessments, vapor intrusion, and hydrogeologic investigations.	If the EPA's technical review was requested by the State or a review is requested by the EPA, the State will send the final document to the EPA as the approval letter is sent to the facility.	The EPA will verify comments are adequately addressed and follow-up as necessary to determine if an addendum to the document is needed. The EPA will verify information in RCRAInfo.
10	PRELIMINARY DRAFT Permit/Order modification* for Remedy Selection plus supporting documentation, including but not limited to Corrective Measures Study and Statements of Basis.	The State will send draft documents to the EPA if EPA technical review is requested by the State or a review is requested by the EPA.	The EPA will review pursuant to a schedule agreed upon with the State project manager.

Item	Item Description	State Action	EPA Action
11	FINAL Permit/Order* modification for Remedy Selection.	The State will send copy to the EPA upon issuance.	The EPA will verify that Remedy Selection is in RCRAInfo.
12	FINAL CA 550 (Construction Complete).	The State will send the supporting memo and documentation to document CA 550 decision to the EPA.	The EPA will verify CA 550 is in RCRAInfo.
13	RCRA Ready for Anticipated Use ("RAU") Documentation Form.	The State will send a copy of the completed RAU Documentation Form to document CA 800 determination to the EPA.	The EPA will verify CA 800 is in RCRAInfo.

*All documents sent in electronic version, if possible.

Attachment E: FEDERAL RECORD REQUIREMENTS & AUTHORIZED STATE EQUIVALENCY

In order for a RCRA-authorized state to assume responsibility as the official record custodian for RCRA site-specific records, the state must agree to manage and retain the RCRA site-specific records in a manner that at least meets the Federal EPA Records Schedule associated with that record type. The following summary may not be all-inclusive, but does list site-specific decision and status documents to be included in the official RCRA site record.

The following table summarizes the main RCRA-related EPA Record Retention Schedules and the minimum associated records that would be required to be kept to be equivalent to the Federal record requirements for RCRA Program site-specific records. For each RCRA facility, the records can be categorized by the EPA I.D. number, record schedule and year, into one of five Schedules. In the following table, sub-item retention, sub-items are followed by a series of numbers denoting the required retention in the office after the file break, the required retention off-site after the file break, then either permanent retention (P) or disposal (D) of the record (ex. 5/20/P).

*Record retention requirements do change over time. For full record keeping requirement details, the State should reference the most current EPA Records Schedules (http://www.epa.gov/records/policy/schedule/).

EPA Schedule 207 (Regional Counsel Referrals)	EPA Schedule 206 (RCRA Corrective Action (CA)) (Permit Imposed CA)	EPA Schedule 211 (RCRA Compliance files)	EPA Schedule 210 (RCRA Land Disposal Permit Administrative Record)	EPA Schedule 478 (RCRA Generators, Transporters & TSD facility files)
(ENFO 207)	(RCRA 206)	(ENFO 211)	(PERM 210)	(RCRA 478)
Sub-item Retention: (a) no action, 1/10/D (b) action, 1/20/D (c) landmark case 5/20/P	Sub-item Retention: (a) land disposal permit CA, 5/20/P (b) G/T/TSD CA, 5/10/D	Sub-item Retention: (a) paper 1/5/D	Sub-item Retention: (a) Land Disposal Permit 5/30/D	Sub-item Retention: (a) land disposal permit CA, 5/20/P (b) G/T/TSD CA, 5/10/D
Associated Records: ☐correspondence ☐meeting documentation ☐Notice of Deficiencies, NODs ☐information requests ☐Warning Letters ☐Notices of Violation, NOVs ☐adm. compliance orders ☐civil action documentation ☐criminal action documentation ☐Corrective Action Orders ☐attorney work products ☐case summaries ☐pleadings ☐state/local enforcement records ☐settlement document ☐consent decrees	Associated Records: RCRA Facility Assessment, RFA, work plan & report RCRA Facility Investigation, RFI, work plan & report Corrective Measures Studies, CMS, plan & report Corrective Measures Implementation, CMI, plan & report related documents NCAPS EI approvals/denials letters risk assessments NOTIs Interim measures documents	Associated Records: compliance schedules inspections inspection reports correspondence inventories sampling data analytical data Notices of Non-compliance non-enforcement related compliance orders Note: if enforcement/NOVoccurs, these records are converted to retention under Schedule 207.	Associated Records: RCRA Permit Application Completeness Determination draft permit & factsheet Notice of Intent to Deny Statement of Basis and associated documents Public Notice comments received public hearing transcripts public notices final permit/response to comments	Associated Records: notification forms permit applications permit modifications background/support documents public notices draft permits/fact sheets final permits/respond to comments public meeting comments/records exception reports Notice of Intent to Deny certifications appeals import/export notices closure and post-closure plans/reports/verifications /certifications NODs Completeness Determinations inspection reports court orders manifests delisting requests/decisions correspondence financial assurance documents interim status related documents (notice of waste activity enforcement) Regional Off-site Contract, ROC, documents (Off-site letters, phone logs, inspection reports)

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