

MEMORANDUM

SUBJECT: Regional Certifications Made During the RCRA Subtitle C State Program
Revision Authorization Process

FROM: Timothy Fields, Jr., Acting Assistant Administrator
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TO: Senior RCRA Policy Managers, Regions I-X
Regional Counsels, Regions I-X

During last year's RCRA Senior Policy Managers Meeting in Kansas City, there was a discussion regarding the certifications that are made by the Regions during the State Authorization Revision process. The result of this discussion was a general agreement that the certifications signed by both the Regional Waste Management Division Director and the Regional Counsel were no longer necessary and should be eliminated.

The requirement for these certifications was created by the Pilot Delegation of the authorization revision process that was instituted on March 11, 1991. The existing delegation (EPA Delegation 1200 TN 138, number 8-7) requires Regions to consult with Headquarters before reaching a decision to revise a State's authorization. Before the Pilot Delegation, the authorization revision process included a Headquarters review of each State's application, even though the Regional office was in fact the lead reviewer. This Headquarters review generally lengthened the authorization process. Thus, by greatly limiting Headquarters involvement in individual authorization decisions by no longer conducting separate reviews, the Pilot Delegation's purpose was to reduce the overall length of time needed to complete the process.

A model certification for the Waste Management Division Director was attached to the December 20, 1991 memo that provided guidance on regional and Headquarters roles and on issues of national significance. The rationale for requiring the certification in the Pilot Delegation was to assure Headquarters that issues of national significance would be raised, and to ensure Office of Regional Counsel (ORC) involvement in the review. Thus, the certification was a policy requirement, not a legal requirement.

Since the Pilot Delegation was initiated, both Headquarters and the Regions believe the authorization process has run much more smoothly than previously and that the Regions are doing a good job of authorizing states. This is supported by the fact that the States' authorization progress has increased dramatically since 1991. Moreover, Headquarters is confident that as a matter of normal practice and policy, Regions are raising issues of national significance. Further, the Office of Regional Counsel is involved in all authorization reviews. Visits to the Regional offices by OSW staff, regular conversations between Regions and Headquarters, and the monthly authorization conference calls have confirmed this belief. Headquarters also believes that the certification requirement itself causes an administrative delay in some cases.

Based on an evaluation of all these factors, Headquarters believes that the purpose of the Regional certifications can be met even if the certification is not made. Thus, Headquarters is modifying the Pilot Delegation to delete the Regional certification requirement. Note however, that the guidance contained in the December 20, 1991 memorandum regarding issues of national significance remains in effect, and Headquarters continues to expect that these issues will be raised. Of course, authorizations would have to go through the normal Regional concurrence process, including an opportunity by the Office of Regional Counsel to review State authorization packages and to concur or provide comments on those packages to the Regional Administrator.

In a related move, Headquarters is pursuing a change to the Delegations Manual that will formally remove the requirement for Headquarters consultation for authorization revision decisions. It is expected that this process will take several months. For further information on the revision to the Pilot Delegation or the change to the Delegations Manual, please call Wayne Roepe of the Office of Solid Waste at (703) 308-8630, or Charles Openchowski of the Office of General Counsel at (202) 260-9745.