



DIRECTIVE NUMBER: 9471.00-01a

TITLE: Assurance of Hazardous Waste Capacity Guidance
to State Officials

APPROVAL DATE: April 15, 1991

EFFECTIVE DATE: April 15, 1991

ORIGINATING OFFICE: Capacity Programs Branch,
Waste Management Division,
Office of Solid Waste

FINAL

DRAFT

STATUS: **A - Pending OMB Approval**
 B - Pending AA-OSWER Approval

REFERENCE (Other Documents):

Supplement to 9471.00-01 (formerly 9010.00) and
9471.00-02 (formerly 9010.00a)

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United States Environmental Protection Agency
Washington, DC 20460

OSWER Directive Initiation Request

1. Directive Number
9471.00-01a

2. Originator Information

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3. Title
Assurance of Hazardous Waste Capacity Guidance to State Officials

4. Summary of Directive (include brief statement of purpose)
The attached guidance document describes the submission that will constitute the basis for the State's assurance that sufficient hazardous waste capacity would exist to manage wastes generated in the State during the next 20 years. It is limited in scope, requiring only the States address status of progress to meet capacity needs.

5. Keywords
assurance / hazardous waste / capacity / guidance / State officials / CAPS / CERCLA 104(c)(9)

6a. Does This Directive Supersede Previous Directive(s)? No Yes What directive (number, title)

b. Does It Supplement Previous Directive(s)? No Yes What directive (number, title)
9471.00-01 & 9471.00-02

7. Draft Level
 A - Signed by AA/DAA B - Signed by Office Director C - For Review & Comment D - In Development

8. Document to be distributed to States by Headquarters? Yes No

This Request Meets OSWER Directives System Format Standards.

9. Signature of Lead Office Directives Coordinator
Lynn S. Hansen
Lynn S. Hansen, OSW Policy Directives Coordinator

Date
4/16/91

10. Name and Title of Approving Official
Henry Longest for Don R. Clay, AA/OSWER

Date
4/15/91

EPA Form 1315-17 (Rev. 5-87) Previous editions are obsolete.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 15 1991

OFFICE OF
SOLID WASTE AND EMERGENCY RESPONSE

Ms. Cynthia Bailey
Executive Director
Department of Waste Management
101 N. 14th Street
Richmond, Virginia 23219

Dear Ms. Bailey:

The attached guidance document, Assurance of Hazardous Waste Capacity, describes the submission that will constitute the basis for the state's assurance that sufficient hazardous waste capacity would exist to manage wastes generated in the state during the next 20 years. It is limited in scope, requiring only that States address status of progress to meet capacity needs. This submission and the accompanying transmittal letter, together with the 1989 CAP and any amendments, revisions or supplements submitted by the state since its original submission, will be considered as we determine the adequacy of the state's assurance.

We would like to thank all those State representatives who commented on our draft, as well as those who made recommendations at various meetings we have attended over the past year. The comments were thoughtful and informative, and we appreciate the effort you made. We are trying to improve the capacity assurance planning process, and we cannot do that without your assistance. We have enclosed a summary of the many comments that we received concerning the draft guidance, and an explanation of how each was, or will be, addressed.

Although the intent of this letter is to transmit the 1991 guidance document to you, I would also like to use this opportunity to tell you what the Agency is doing to implement the 1989 CAP and how the Agency is preparing for the 1993 CAP.

Capacity Assurance Planning Data Requirements

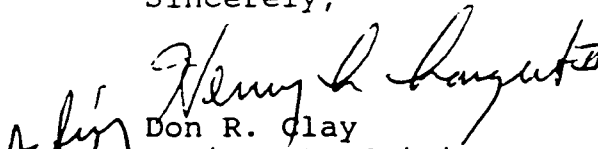
One of the areas that is most crucial to the success of the capacity assurance program as a waste management planning tool is the collection of accurate data. Without accurate data, planning becomes a meaningless exercise. EPA is aware of the limitations of former data collection efforts and is working towards eliminating past problems.

The Biennial Report and Capacity Assurance staffs are working together to ensure that States have the authority and ability to collect the information that is needed to effectively utilize this planning effort. The Agency will generally not ask the States for any data that are not collected through the Biennial Reporting process. In other words, the Biennial Reporting process will be the primary data collection tool for SARA CAP data requirements. The state, however, is free to use its state equivalent system.

The Biennial Report staff, with assistance of workgroups comprised of State, regional and Headquarters members, plans to promulgate a rule which will codify what the States will report voluntarily in the 1991 cycle. We do not anticipate making any major revisions in the reporting process in terms of expanding the universe of facilities who report, nor do we anticipate any major changes in terms of the type of information collected. The reporting process will be modified to some degree to enhance the capacity assurance planning process; major changes will only be proposed, however, after the Office of Solid Waste has had time to fully evaluate them to determine how necessary the additional information is.

Again, thanks to all of you who commented on our draft, as well as those of you who have added your recommendations for the CAP process at other times. Our dedication to improving the process is greatly enhanced by your interest and suggestions.

Sincerely,


Don R. Clay
Assistant Administrator

Enclosure

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demonstrated the state's knowledge of its hazardous waste management system as well as its present and planned future export and import balance. The Agency decided that an array of 20 years of data and projections was necessary, for the first round of implementation, to show that provisions for waste minimization, treatment or disposal had been made for all hazardous waste the state included in its projections.

The Agency understands the concern states have with the lack of reliability of projections that extend 20 years into the future, and we are working with the states to determine just how far in the future reliable projections can extend. For this submission, we intend to rely on states' commitments to maintain capacity for the latter years of the 20 year period. We do not find it necessary to use data and projections covering a 20 year period (1992 to 2012), as a basis for deeming a state's assurance adequate. The status of the CAP submitted pursuant to the 1992 submission, coupled with the data included in the 1989 capacity assurance plan which covers the period through 2009 (or 18 years), will be sufficient to judge the adequacy of the state's basis for assurance.

IV. INTERSTATE AND REGIONAL AGREEMENTS

CERCLA 104(c)(9) requires that assurances relying upon the availability of facilities outside the state must be in accordance with an interstate agreement or regional agreement or authority. All but seven states are currently participating in regional capacity sharing agreements. Although Congress did not specify the form these agreements would take, we believe they contemplated that interstate agreements would demonstrate that states were working cooperatively to plan for adequate treatment and disposal capacity.

Several changes in regional agreement participation have occurred since October 1989 and will likely continue to occur. Since one of our goals is to portray a more realistic view of the country's hazardous waste management, we urge States to continue to pursue arrangements that they believe more accurately reflect actual interstate waste flows.

V. 1989 MILESTONES AND SUPPLEMENTAL CONDITIONS

Although some of the state Capacity Assurance Plans (CAPs) have been approved unconditionally, the great majority of CAPs are those for which Regional Administrators have established supplemental conditions, such as schedules to provide additional information or to obtain capacity through regional agreements or siting. The Agency believes that approval with supplemental conditions is a productive procedure because it allows the Agency to keep states, who thus far have made a good faith effort to comply with the statute, actively involved in the process.

by the Governor or his designee. Also, if the Governor has delegated authority to provide the assurance, and the 1989 submission did not contain this information, then the 1992 CAP submission should also include a letter signed by the Governor, delegating authority to the signatory to provide the assurance. However, if the 1989 CAP submission included a letter signed by the Governor and/or a letter which delegated authority to the signatory to provide the assurance, then a new signature by the Governor is not required at this time; the designee's signature will suffice.

Dear Regional Administrator:

Section 104(c)(9) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, requires as a condition for providing remedial actions that states assure the availability of treatment or disposal facilities which have the capacity to treat, destroy, or securely dispose of all hazardous wastes that are reasonably expected to be generated within this [State, Commonwealth, Territory] for twenty years.

In evaluating the adequacy of the materials that provide a basis for you to evaluate this assurance, [name of state, commonwealth, territory] wishes the Regional Administrator to consider the following:

- [name of state, commonwealth, territory]'s Capacity Assurance Plan ("CAP") submitted [month/day], 1989.

- Agreement between EPA Region [number] and [name of state, commonwealth, territory] approving of the state's CAP, including supplemental conditions and/or milestones.

- [any amendments, revisions or supplements to the state's CAP since its original submission referred to above -- please briefly describe each inclusion]

- The following attached documents:

Status report on progress to meet capacity needs;

and

Letter signed by [name of governor], Governor of [name of state, commonwealth, territory] delegating authority to the undersigned to provide this assurance, if not provided with the 1989 submission.

- The government of this [State, Commonwealth, or Territory] hereby reaffirms its commitment to carry out the activities described in these incorporated documents.

Sincerely yours,

C. Submission of Materials to EPA

All materials should be transmitted to EPA for review. The Agency expects that the states' 1992 submission will include one document containing two subparts: 1) a transmittal letter, and 2) a report describing: a) the waste minimization program, b) the status of facilities, and c) interstate/regional agreements.

An original and four (4) copies of this document should be sent to the appropriate regional office.

VII. STATUS OF CAPACITY ASSURANCE PLAN³

It should be clearly understood that although the 1992 submission will not be as broad in scope as the one for 1989, failure to submit the requested information will constitute default in the state's obligation to assure capacity under CERCLA 104(c)(9). Thus, if the state fails to submit the CAP by February 15, 1992, the state will no longer have assured capacity under CERCLA 104(c)(9). If no 1992 submission is made, the 1989 CAP cannot form the basis for continuing capacity assurance. If the status of the state's 1989 CAP is unapproved, this submission will not change the status of such a CAP. Until the 1989 submission has been approved, a previously unapproved CAP will retain its status of not approved.

Once the 1992 CAP has been submitted, priority for review and determinations will be given to those states in which there are pending Superfund remedial actions.

³ It may happen that EPA will approve a CAP, but that subsequent information or events persuade EPA that the CAP no longer provides adequate assurance. In that case, EPA would not provide remedial actions until adequate assurance was provided.