

### III. CREATING A STATUTORY CROSSWALK

#### OVERVIEW

Developing the statutory crosswalk is the first step in organizing the State's background information for input into the codification Federal Register (FR) notice. This chapter explains the rationale behind this process and addresses in a step-by-step manner how to develop the statutory crosswalk. Specifically, this chapter is composed of four sections:

- A. Purpose and structure of the statutory crosswalk;
- B. How to set up the preliminary crosswalk;
- C. How to identify authorized statutory provisions and classify each section/paragraph as
  - 1) authorized,
  - 2) procedural/enforcement,
  - 3) broader in scope, or
  - 4) unauthorized; and
- D. Potential problems and issues that can arise during the development of a statutory crosswalk and discusses possible solutions to those problems.

#### A. PURPOSE AND STRUCTURE OF THE STATUTORY CROSSWALK

##### KEY CONCEPTS

- The Statutory Crosswalk is an organized approach for classifying each section/paragraph of State statutes so that this information can be easily checked and entered into the codification Federal Register notice.
- There are many ways of organizing a statutory crosswalk, but the crosswalk should meet the seven minimum requirements listed in this section.
- Use Exhibit III-1 as an example of a possible statutory crosswalk structure.

#### PURPOSE

The statutory crosswalk is an organized approach for classifying each section/paragraph of a State's statutes so that the authorized program can be accurately identified and so that each section/paragraph can be cited at the appropriate place in the codification FR notice. There are many ways of organizing a statutory crosswalk, but the most important fact to remember is that it needs to clearly present the statutory information for input into the codification FR notice. This section presents the minimum requirements for developing the statutory crosswalk, and presents an example of how this crosswalk may be structured.

#### MINIMUM REQUIREMENTS

A statutory crosswalk should be designed to meet at least the following requirements:

- P** It must account for each statutory section/paragraph that provides the authority for the State to run its hazardous waste program.
- P** It must clearly classify each section/paragraph into one of the following four categories which correspond to specific portions of the FR notice: 1)

authorized, 2) procedural/enforcement, 3) broader in scope, and 4) unauthorized. It is important that this information be clearly displayed and organized, because it is then easier to transfer the statutory information into the codification FR notice.

- P** It should document what version (i.e., date) of each section/paragraph of relevant State statutes the State is authorized for and why.
- P** It should document what "redlining" (crossing out of unauthorized provisions) needs to be done.
- P** It should document what statutory amendments, if any, are not authorized by EPA and, therefore, need to be excluded from the codification.
- P** It should be understandable and concise, so that the Office of Regional Counsel (ORC) representative can easily review the information presented in the crosswalk.
- P** It should be easy to update so that once the crosswalk is developed it can be utilized as the starting point for updating the State's codification.

#### POSSIBLE STRUCTURE

#### WORD PROCESSING

Exhibit III-1 below presents a possible structure or format for a statutory crosswalk. This approach will be explained in detail to illustrate why the requirements listed above are necessary and to demonstrate how these requirements can be incorporated into a crosswalk. It is strongly recommended that the statutory crosswalk be developed in WordPerfect Tables (or some other word processing software providing this capability) because of the flexibility this word processing feature allows. WordPerfect tables can be easily revised or updated and rows or columns can be readily added. Exhibit III-1, shown below, was developed in WordPerfect Tables.

**Exhibit III-1. Possible Structure for a Statutory Crosswalk**

| [1]<br>State<br>citation | [2]<br>Date <sup>1</sup> | [3]<br>Section<br>Heading/<br>Description/<br>RCRA analog | [4]<br>Basis for<br>Classification | Classification Columns                                                                |                                                                                        |                                                             |                                                                                 |
|--------------------------|--------------------------|-----------------------------------------------------------|------------------------------------|---------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|-------------------------------------------------------------|---------------------------------------------------------------------------------|
|                          |                          |                                                           |                                    | [5]<br>Authorized:<br>Approved and<br>incorporated<br>by reference<br>272.____1(b)(1) | [6]<br>Authorized:<br>Procedural<br>or<br>enforcement<br>provisions<br>272.____1(b)(2) | [7]<br>Broader in<br>Scope<br>provisions<br>272.____1(b)(3) | [8]<br>Extra or<br>unauthorized<br>provisions:<br><br>Omit from<br>codification |
|                          |                          |                                                           |                                    |                                                                                       |                                                                                        |                                                             |                                                                                 |
|                          |                          |                                                           |                                    |                                                                                       |                                                                                        |                                                             |                                                                                 |
|                          |                          |                                                           |                                    |                                                                                       |                                                                                        |                                                             |                                                                                 |
|                          |                          |                                                           |                                    |                                                                                       |                                                                                        |                                                             |                                                                                 |

<sup>1</sup>Amendment or effective date of most recent authorization.

## WHAT A ROW REPRESENTS

A sample page from a completed statutory crosswalk, using the above structure, is shown in Exhibit III-2. Typically, there will be a row in the statutory crosswalk for each section/paragraph in the "official" State statutes used for the codification. What a row represents depends on the smallest subdivision of the statutes that can be classified into one of the four categories (e.g., authorized, procedural/enforcement) listed above. Sometimes a row will represent several sections (e.g., §361.025 through §361.031 as shown in Exhibit III-2), a section (e.g., 361.032 in Exhibit III-2) or one or more paragraphs within a section (e.g., §361.037(a) and §361.037(b)&(c) in Exhibit III-2)). Each of the eight columns, shown in Exhibit III-1, is briefly discussed below.

|                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Column 1</b> | <b>State citation</b><br><hr/> Specifies the State citation in a manner that represents the smallest division that can be classified into one of the four categories, as explained above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Column 2</b> | <b>Date</b><br><hr/> Documents the amendment or effective date of the most recent authorized version of each citation.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Column 3</b> | <b>Section Heading/Description/RCRA analog</b><br><hr/> Provides a brief description of the provisions at the listed citation and lists the RCRA analog, if there is one.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Column 4</b> | <b>Basis for Classification</b><br><hr/> Documents whether the provision at the citation was (1) in the base program statutes; (2) cited on a State legislation or HSWA statutory checklist; (3) cited in an AG Statement; and/or (4) cited in an authorization notice. This column is also used to present an analysis of the citation and includes comments, discussion of problem areas, and issues to be resolved. The following conventions are used: <ul style="list-style-type: none"> <li>! <b>"Base"</b> means that the provision is included in the base program statutes (see State reference).</li> <li>! <b>"LCL"</b> means that the provision is cited on the State's legislation checklist (see State reference).</li> <li>! <b>"HSWA statutory CL"</b> means the provision was cited on the HSWA statutory checklist (see State reference).</li> <li>! A <b>date</b> followed by <b>"<u>FR</u>"</b> indicates that the provision is cited in a <u>Federal Register</u> authorization notice on the specified date (see State reference).</li> </ul> |

**Basis for Classification** (cont'd)

- ! A **date** followed by "**AG (page #)**" indicates that the provision is cited on the specified page in an Attorney General's Statement signed on the specified date (see State reference).
- ! In those instances where only a subsection of the citation in the first column was cited on a legislative or HSWA statutory checklist, Federal Register notice or an Attorney General's Statement, the **specific citation is noted in parentheses**.

**Column 5****Authorized: Approved and Incorporated by Reference 272. \_\_1(b)(1)**

Column 5 is the first of the four columns used to classify a provision. An "X" in this column indicates that the citation is part of the authorized program and addresses provisions that are regulatory in nature. These provisions will be incorporated by reference (IBR) at subsection (b)(1) of the State's Part 272 entry in the FR codification notice. These provisions are potentially subject to the redlining and exclusion of unauthorized State amendments as documented in Column 4. Notes can be included in this column as to whether redlining or such exclusions are needed. The authorized, IBR provisions will be listed in the State's insert at Appendix A to Part 272.

**Column 6****Authorized: Procedural or Enforcement, Provisions 272. \_\_1(b)(2)**

Is the second of the classification columns. An "X" in this column indicates that the listed provisions are part of the authorized program, but they are procedural or enforcement in nature. Therefore, they are not incorporated by reference in the codification Federal Register notice because EPA relies on Federal rather than State authorities for such provisions. The procedural/enforcement provisions will be listed at subsection (b)(2) of the State's Part 272 entry in the codification Federal Register notice.

**Column 7****Broader in Scope 272. \_\_1(b)(3)**

Is the third of the classification columns. An "X" in this column indicates that the provisions are broader in scope and are not part of the authorized program. These provisions are not incorporated by reference, but will be listed at subsection (b)(3) of the State's Part 272 entry in the codification Federal Register notice.

**Column 8**

**Extra or Unauthorized Provisions: Omit from Codification**

Is the last of the classification columns. An "X" in this column indicates that the provision is either unauthorized or it was promulgated under authority other than the State's analog to RCRA (e.g., the State's analog to CERCLA or CWA). These provisions are omitted entirely from the codification article.

Exhibit III-2. Example Statutory Crosswalk Using Texas Statutes

| State Citation                | Effective Date of Authorized Version | Section Heading/<br>Description/RCRA analog                                                                                                                                                                                                                                                                          | Basis for Classification                                                                                                                                                                                                                                             | Authorized:<br>Approved and<br>incorporated<br>by reference<br>272.2201<br>(b)(1) | Not Incorporated by Reference                                                |                                                         |                                                                         |
|-------------------------------|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------|---------------------------------------------------------|-------------------------------------------------------------------------|
|                               |                                      |                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                      |                                                                                   | Authorized:<br>Procedural &<br>Enforcement<br>requirements<br>272.2201(b)(2) | Broader in<br>scope<br>provisions<br>272.2201<br>(b)(3) | Extra or<br>Unauthorized<br>provisions<br>(omit from<br>codification)   |
| 361.025<br>through<br>361.031 | NA                                   | Exempt activities; Assistance provided by department and commission; Training of solid waste technicians; Industrial solid and hazardous waste materials exchange; Collection and disposal of household materials that could be classified as solid waste; Federal funds; Financial Assistance to local governments. | Not in base; not cited on LCL or any AG; added in 1989.                                                                                                                                                                                                              |                                                                                   |                                                                              |                                                         | X                                                                       |
| 361.032                       | 9/1/89                               | Inspections; right of entry                                                                                                                                                                                                                                                                                          | April 11, 1994FR notice (Checklist 70).                                                                                                                                                                                                                              |                                                                                   | X                                                                            |                                                         |                                                                         |
| 361.033                       | 9/1/89                               | Inspections required by EPA                                                                                                                                                                                                                                                                                          | 7/21/88 AG, pp. 17-18.... §7(c)2/.                                                                                                                                                                                                                                   |                                                                                   | X                                                                            |                                                         |                                                                         |
| 361.034                       | NA                                   | Reports from commission to legislature and governor                                                                                                                                                                                                                                                                  | Not in base; not cited on LCLFR notice or any AG statement; added in 1984.                                                                                                                                                                                           |                                                                                   |                                                                              |                                                         | X                                                                       |
| 361.035                       | NA                                   | Records and reports; Disposal of HW by operators of solid waste facilities                                                                                                                                                                                                                                           | Not in base; not cited onFR notice LCL or any AG statement. This section is applicable to operators of solid waste facilities and probably should be excluded from the IBR. Note that in the Statutory notes § 13a is cited. This did not exist in the base program. |                                                                                   |                                                                              |                                                         | X                                                                       |
| 361.036                       | 9/1/89                               | Records and manifest required                                                                                                                                                                                                                                                                                        | 2/25/92 AG; p. 3.                                                                                                                                                                                                                                                    |                                                                                   | X                                                                            |                                                         |                                                                         |
| 361.037(a)                    | 9/1/89                               | Access to records by authorized agents or employees of the commission                                                                                                                                                                                                                                                | 5/22/84 AG p. 17; ..... §7(b)<br>11/26/86 AG, p. 15<br>7/21/88 AG, pp. 17-18.                                                                                                                                                                                        |                                                                                   | X                                                                            |                                                         |                                                                         |
| 361.037(b)<br>&<br>361.037(c) | NA                                   | Public records; confidentiality                                                                                                                                                                                                                                                                                      | Base ..... §7(c)<br>..... §7(d)2/.                                                                                                                                                                                                                                   |                                                                                   |                                                                              |                                                         | X<br>TX not<br>authorized for<br>Availability of<br>information<br>(AI) |

## B. DEVELOPING A PRELIMINARY CROSSWALK

### KEY CONCEPTS

- A preliminary crosswalk provides an initial structure so that when the statutes are examined on a section-by-section basis the focus can be on classifying each section/paragraph of State statutes.
- The approach for developing a preliminary crosswalk will differ depending on the size of the State's statutes.

### TWO STEP DEVELOPMENT

Because so many different sources of data (e.g., the legislation checklist, the statutory checklist, different versions of the statutes, FR notices, and AG statements) are used to develop the statutory crosswalk, it is strongly recommended that the statutory crosswalk be developed in two steps.

#### STEP 1: PRELIMINARY CROSSWALK

- The first step is to develop a **preliminary crosswalk** to provide the initial structure for the crosswalk. At this step, the focus will be on completing Columns 1, 2 and 4 and the RCRA analog in Column 3 of the statutory crosswalk table, as described in *Section III.A*, using the authorization Federal Register notices, the State legislation and HSWA statutory checklists and the AG Statements.

#### STEP 2: CLASSIFYING EACH SECTION/PARAGRAPH

- The second step is to focus on **classifying** each section/paragraph in the State's statutes in Columns 5 through 8 as described in the previous section, as well as providing a brief rationale in Column 4 for this classification. Any necessary redlining is also documented in Column 4.

### ONE APPROACH FOR A PRELIMINARY CROSSWALK

There are several approaches that can be used to develop a preliminary crosswalk. **One approach**, which is appropriate if the State's statutes are short, is to set up the table format that will be used for the crosswalk and then go quickly through the statutes, outlining them section by section by entering the State citations in Column 1. After entering the State citations, information from the State's authorization notices, the legislative and HSWA statutory checklists and the Attorney General's Statements supporting the State's authorization is used to complete Column 4 and the RCRA citation portion of Column 3.

### A SECOND APPROACH FOR A PRELIMINARY CROSSWALK

A **second approach**, which can be used if the State's statutes are lengthy, is to use the State's authorization FR notices, legislation and HSWA statutory checklists and supporting Attorney General's Statements to build the preliminary crosswalk. Each statutory citation provided in the legislation and HSWA statutory checklists is first entered in Column 1 on the crosswalk. The RCRA analogs on these checklists are entered in Column 3. The information from the authorization notices is entered next. If the effective date or the amendment date of the authorized State provision is given, you may want to enter this in the crosswalk in Column 2 as well. Finally, the Attorney General's Statement information should be entered. Most of this information will have been covered by the authorization notices and the State legislation and HSWA statutory checklists, but the Attorney General's Statement information tends to supplement this previously entered information.

**CONTENT OF  
PRELIMINARY  
CROSSWALK**

Once this preliminary step is finished for the second approach, the crosswalk contains only authorized statutory provisions. Note that not all authorized statutory provisions are necessarily included on the crosswalk at this point. There are likely statutory provisions, mostly procedural and enforcement in nature, that were authorized as part of the base program, but are not covered by the State legislation checklist. Such statutory provisions are considered authorized because the entire State's hazardous waste program would have been authorized at that time.

**C. IDENTIFYING AUTHORIZED LANGUAGE AND CLASSIFYING EACH SECTION/PARAGRAPH OF THE STATUTES****KEY CONCEPTS**

- Evaluate the State statutes on a section-by-section basis.
- Classify each section/paragraph as authorized, procedural/enforcement, broader in scope or unauthorized.
- Use Exhibit III-3 to help with the seven step determination process needed to make this classification.

**SECTION-BY-  
SECTION  
EVALUATION**

After the preliminary crosswalk has been developed, the next step in creating the statutory crosswalk is to go through the State's statutes **section-by-section** to:

- P** Ensure that all provisions (sections/paragraphs) in the State's statutes are accounted for on the crosswalk,
- P** Classify each section/paragraph as either authorized, procedural/enforcement, broader in scope or unauthorized, and
- P** Determine whether portions of an authorized section/paragraph need to be redlined or whether any State amendments associated with that section/paragraph need to be excluded from the codification.

There is no other way to accomplish the first item except to go through the State's statutes **page by page**; however, you can accomplish items 2 and 3 at the same time by entering the appropriate information into the crosswalk as you proceed through the State's statutes.

**FOUR  
CLASSIFICATION  
CATEGORIES**

As discussed above there are **four categories** into which a section/paragraph of statutes can be classified:

- P** authorized (and included in the IBR),
- P** procedural/enforcement,
- P** broader in scope, and
- P** extra or unauthorized provision.

**SEVEN  
DETERMINATIONS  
OR STEPS**

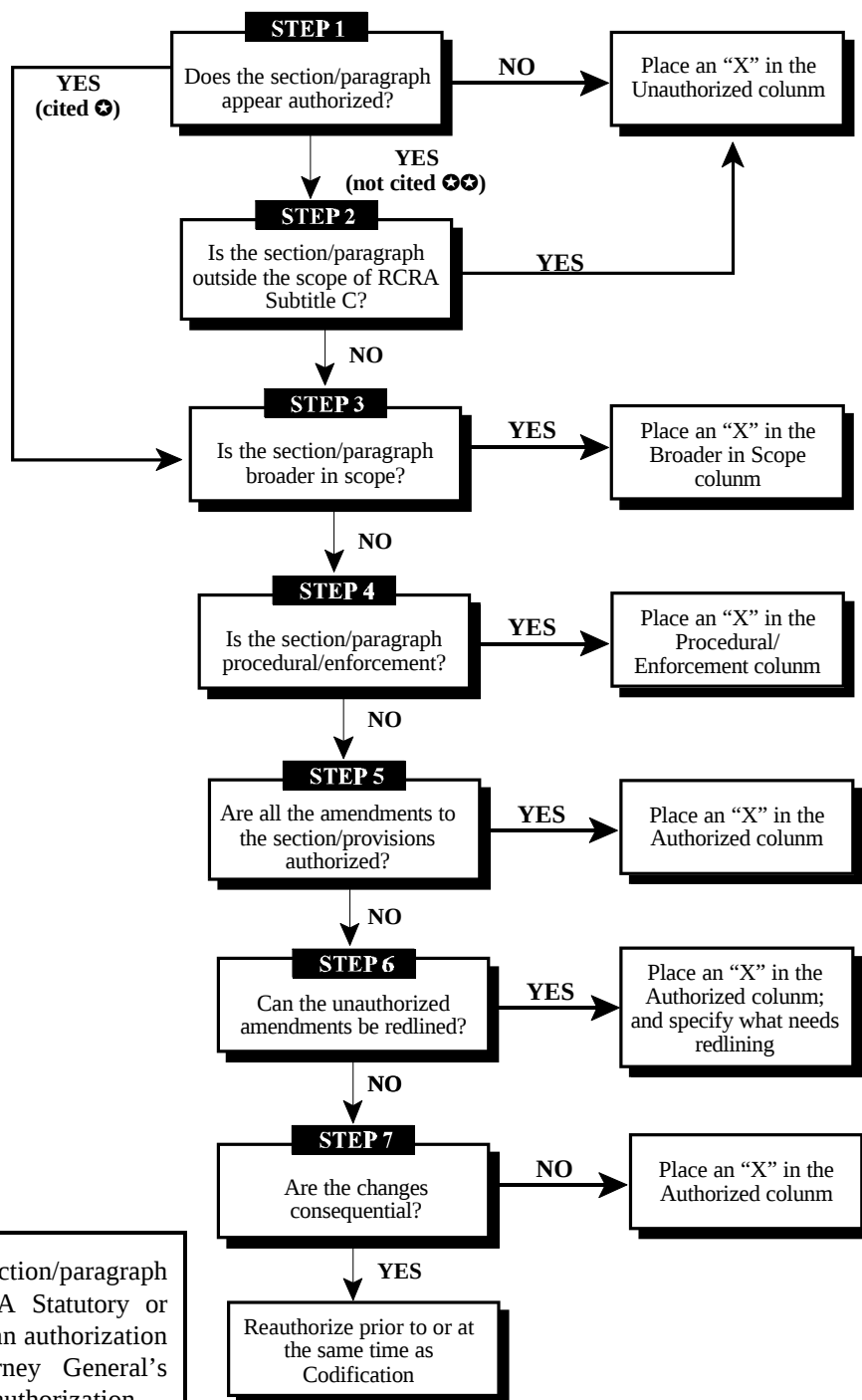
Because this classification is probably the most complicated process to convey, a step by step explanation is outlined in Exhibit III-3. This exhibit is an overall flow diagram showing the **seven determinations or steps** that need to be made in order to properly classify each section/paragraph of the statutes. Each of the seven determinations is discussed in detail below. Note that the seven-step classification process described below and in Exhibit III-3 refers to the **four classification columns** in the example crosswalk presented in Section A of this chapter. Most of the references to these columns are self-explanatory except for references to the "authorized" column. This refers to column 5 of the example crosswalk which is labeled "Authorized: Approved and Incorporated by Reference (b)(1)."

**WHAT IS NEEDED  
TO BEGIN**

Before you begin the step by step process of classifying the statutes, you should be sure that you have copies of the following items:

- P** The official version of the State's statutes.
- P** The base program statutes and the versions of the statutes submitted with each subsequent final authorization package.
- P** Each authorization Federal Register notice for the State.

Also, before you begin the classification process you should read through the State's authorization notices to see if there are any sections/paragraphs which were indicated as being broader in scope. If there were, you can classify them as broader in scope on the statutory crosswalk without completing the classification process described below for these provisions.

**EXHIBIT III-3. CLASSIFICATION OF STATE STATUTES**

★ "cited" implies that the section/paragraph was cited on the HSWA Statutory or Legislative Checklist, in an authorization article or in an Attorney General's Statement supporting an authorization.

★★ "not cited" implies that the section was not cited in the sources indicated above, but was in the code at the time of the base or recent requirements authorization.

**Step 1****HAS IT  
BEEN CITED?**ACTION IF  
"YES"ACTION IF  
"NO"**Determine whether a Section/Paragraph of the Statutes appears to be  
"Authorized"**

First, **determine whether the section/paragraph has been cited** in an authorization Federal Register notice, on a State legislation or HSWA statutory checklist or in an Attorney General's statement supporting a final authorization. This information should already be in the preliminary crosswalk. Based on this information, do the following:

- P** If the preliminary crosswalk indicates that the section/paragraph **has been cited** in one of these sources, move on to Step 3 to determine if the section is broader in scope.
- P** If the section/paragraph **has not been cited** in any of the above sources, then use a copy of the base program statutes to determine if the section/paragraph was authorized as part of the base program.
  - If it was part of the **base program statutes**, then proceed to Step 2 to determine if the section/paragraph is outside the scope of RCRA Subtitle C.
  - If it was **not part of the base program statutes**, then the section/paragraph is not authorized and an "X" should be placed in the "unauthorized" column on the crosswalk and you should move on to the next section of the statutes.

**Step 2****HOW TO  
DETERMINE****ACTION  
RELATIVE TO  
CROSSWALK****Determine whether Section is outside the scope of RCRA Subtitle C**

Certain sections of statutes may have been in the statutes at the time of the base program authorization, but they may address **topics outside the scope of RCRA Subtitle C**. These provisions are not considered part of the authorized program and should **not be codified**. Some examples of such provisions include those addressing remediation; the State analog to the Superfund program; non-hazardous solid waste; and State NPDES permits. If a section meets these criteria, it should be classified as "unauthorized" and an "X" placed in the unauthorized column of the crosswalk. You should move on to the next section of the State statutes. If the section does not meet these criteria, you should move on to Step 3, below.

### Step 3

### Determine whether the Section/Paragraph is Broader in Scope

#### USE OF AUTHORIZATION NOTICES

As was indicated in the introduction to this seven-step classification process, **authorization notices** can sometimes provide information on broader in scope provisions, although such sections are not consistently listed in authorization notices. Thus, if none of the authorization notices for a State list any broader in scope statutory provisions, you should not assume that the State does not have any broader in scope provisions. For this reason, each section/paragraph which has made it to this step of the classification process needs to be assessed to determine if it is broader in scope. There are **two sets of guidance** documents that address identifying broader in scope provisions. Copies of these guidance materials may be found in Appendix D.

#### GUIDANCE IN APPENDIX D

#### TWO TYPES OF BIS PROVISIONS

A **broader in scope** (BIS) provision is one that provides authority for the State to either:

- P regulate more entities or wastes than the Federal code, or
- P add an aspect to a State's statutes for which there is no Federal counterpart in RCRA.

#### EXAMPLES OF FIRST TYPE

Examples of the **first type** of broader-in-scope statutory provision include:

- P the capability for the State to regulate "State only" hazardous wastes,
- P authority to provide fewer facility/waste exemptions or exclusions than RCRA.

#### EXAMPLES OF SECOND TYPE

Examples of the **second type** of broader-in-scope statutory provision include the authority to:

- P impose waste fees,
- P subject transporters to permitting requirements, and
- P require environmental impact statement or siting board approval as part of the permit issuance process.

#### ACTIONS RELATIVE TO CROSSWALK

Relative to the **statutory crosswalk**,

- P **if the section or paragraph you're examining is broader in scope**, classify it as such on the statutory crosswalk and go to the next section of State statutes;
- P **if the section/paragraph is not broader in scope** go to Step 4 which addresses determining whether the section/paragraph is procedural/enforcement.

#### MORE STRINGENT PROVISIONS

Note that authorized **more stringent** State provisions are enforceable by EPA and, therefore, should be included in the State provisions to be incorporated by reference. The guidance materials in Appendix D also address the identification of more stringent provisions.

|                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Step 4</b></p>                             | <p><b>Determine whether Section should be Classified as Procedural/Enforcement</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p><b>WHAT MOST STATUTORY PROVISIONS ARE</b></p> | <p>Typically, statutory provisions deal with either procedural or enforcement issues. Thus, most statutory provisions will be classified under this category. In general, <b>procedural provisions</b> address public notice, public hearings and appeals. Additionally, provisions that give a State Agency or Commission specific authorities are considered procedural. <b>Enforcement provisions</b> address such things as civil penalties, criminal penalties, enforcement procedures, court proceedings, and enforcement proceedings. There are some exercises in Chapter X to provide additional guidance in classifying a statutory provision as procedural/enforcement. <b>If a section meets these criteria</b>, then classify it as procedural/enforcement and move on to the next section of State statutes.</p> |
| <p><b>EXAMPLES</b></p>                           | <p><b>Otherwise</b>, go on to Step 5 to determine if the section/paragraph contains any unauthorized State amendments.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p><b>ACTION RELATIVE TO CROSSWALK</b></p>       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p><b>MIXTURE OF PROVISIONS</b></p>              | <p>Sometimes a section will be <b>only partly procedural/enforcement</b>. In these instances it is best to break the section into its smallest citable components (e.g., paragraphs or subparagraphs) and try to classify them. If even these smaller components are still a mixture of procedural/enforcement provisions and nonprocedural/nonenforcement provisions, then the best approach is to determine which type of provisions makes up the greatest share of the paragraph/subparagraph and classify it accordingly.</p>                                                                                                                                                                                                                                                                                             |
| <p><b>UNCLEAR HOW TO CLASSIFY</b></p>            | <p>There may be certain <b>instances when it is unclear</b> how the section/paragraph should be classified. In these cases the ORC representative on the codification team should be able to provide some insight as to the appropriate classification. <b>When in doubt</b>, it is best to assume that the section/paragraph should be incorporated by reference in the codification notice. In this situation, you should go on to Step 5 to determine whether all amendments to the section/paragraph are authorized.</p>                                                                                                                                                                                                                                                                                                  |
| <p><b>HOW TO DETERMINE</b></p>                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <p><b>Step 5</b></p>                             | <p><b>Determine whether all the Amendments to the Section/Paragraph are Authorized</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|                                                  | <p>Unlike State regulations, the statutes are amended infrequently. However, previously authorized statutory provisions must still be examined to determine if there have been any amendments since the base program authorization. First, compare the amendment date or effective date of the authorized version of each State provision listed on the preliminary crosswalk with the dates of the amendments listed in the section's amendatory history. Note that some Regions include the amendment date for <u>each</u> State statutory citation in the</p>                                                                                                                                                                                                                                                              |

authorization notice, while others include the date of the State statutes associated with each authorization notice. In these cases, the date of the State statutes is the appropriate date that should be compared to the dates in the section's amendatory history. If no dates are given in the authorization notice for the State statutes or individual citations, there may be a date on the last set of State statutes submitted for final authorization that affected the section you are examining for classification.

**ACTIONS  
RELATIVE TO  
CROSSWALK**

**P** If all of the amendment dates are before the date of the authorized provision, you can usually assume that all amendments have been authorized. The section should be classified as authorized on the statutory crosswalk and you should move on to the next section of the State statutes.

**P** If any of the amendment dates are after the date of the most recent authorized version, then the section must be examined further to see if redlining (i.e., crossing out of unauthorized provisions) is needed in accordance with Step 6 below.

**Step 6**

**Determine Whether the Unauthorized Amendments can be Redlined**

**HOW TO  
DETERMINE**

To determine whether the unauthorized State amendments can be **redlined**, the most recent authorized version of the section/paragraph must be compared to the version in the official statutes. It is in this comparison that the versions of the State statutes submitted with each final authorization package are primarily used. The differences found in this comparison **can be redlined** if removing the differences leaves the wording of the section/paragraph the same as the authorized version, as described in Step 6 of Chapter IV, Section C.

**Step 7**

**Determine Whether the Changes are Consequential**

**HOW TO  
DETERMINE**

**ACTION  
RELATIVE TO  
CROSSWALK**

In the case where the statutory provision **cannot be redlined**, you must determine the effect of the change on the statutory requirements. (Typographical errors and conforming changes are typically not consequential.) If the change is **consequential**, the only course of action is to include the revised provision in an authorization update to be published either prior to or at the same time as the codification notice.

## D. POTENTIAL PROBLEMS AND ISSUES UNCOVERED IN DEVELOPING THE STATUTORY CROSSWALK

### KEY CONCEPTS

- Prior to codification, authorize any consequential, unauthorized amendments to State statutes.
- Use the base program statutes and the Attorney General's Statements in place of lost State legislation and HSWA statutory checklists.
- Use the State Law Library and the statutes' amendatory history in place of lost base program statutes.
- Contact the State and the State office compiling the statutes if the statutes' amendatory history is not available.

### INTRODUCTION

Development of the statutory crosswalk **provides an opportunity** to examine a State's statutes as a whole rather than in a piece by piece fashion, which is characteristic of revision reviews. This process can uncover issues and problems which were not previously apparent. This section discusses some of the commonly uncovered issues and examines some of the problems often encountered in developing a statutory crosswalk. Each problem statement below is followed by a discussion of potential solutions.

### AUTHORIZED VERSUS OFFICIAL STATUTES

#### 1. Major differences between the State's authorized statutes and the official statutes

Sometimes a State will revise, restructure or renumber its statutes such that the current official statutes are completely different from the version that was originally authorized. There is, however, no formal mechanism for States to systematically be authorized for revisions to their statutes. In such situations, the citations in previous State statutes (e.g., base program statutes), legislative and HSWA statutory checklists, and Attorney General's Statements would not match the statutory citations found in the official statutes. A solution to this problem is to ask the State to complete new legislation and HSWA statutory checklists and provide a crosswalk between the previous statutes and the current statutes. The Region should also reauthorize the revised State statutes prior to or at the same time as codification.

### LACK OF LEGISLATIVE & HSWA STATUTORY CHECKLISTS

#### 2. Lack of legislative and HSWA statutory checklists

Because the legislative checklist was submitted as part of the base program authorization, it is the most frequently missing item in the Regional files. Often the HSWA statutory checklist is missing as well. If one or both of these items are not in the Region's files, they should be requested from the State. If the State is unable to provide them, you should obtain a copy of the base program statutes and identify the provisions in the official statutes that were in the base program statutes. Much of the missing HSWA statutory checklist information can often be found in the Attorney General's Statements.

### LACK OF BASE PROGRAM STATUTES

#### 3. Base Program Statutes not in Regional or State files

If the base program statutes are missing from the Regional and State files, first contact the State Law library. Sometimes State Law libraries have copies of earlier versions of the State statutes. If a copy of the base program statutes cannot be

obtained from the State Law library, then the best approach is to use the amendatory history to determine those citations that were in the statutes before or at the time of the base program authorization.

**LACK OF  
AMENDATORY  
HISTORY**

**4. Amendatory History is not available**

Sometimes a State will keep track of the amendments to the States statutes and may have this information available, if it is not included in the State statutes. The versions of the statutes submitted with each authorization package can also be used to reconstruct the amendatory history. Another possible source of the amendatory history is the State office that compiles the State statutes.

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**E. EXERCISES**

**PURPOSE**

The following two exercises are designed to reinforce the topics presented in Chapter III and provide hands-on experience in completing specific tasks encountered during the development of the statutory crosswalk.

EXERCISE III-1

Developing the preliminary statutory crosswalk.

EXERCISE III-2

Classifying a State's statutory provisions into one of the categories, (1) authorized, (2) procedural/enforcement, (3) broader in scope, or (4) extra/unauthorized provision.

**ANSWERS**

The answers to these exercises are in Appendix L, pages L-6 and L-7.

## EXERCISE III-1

### Developing a Preliminary Statutory Crosswalk.

#### PURPOSE

- Provide experience in developing the preliminary statutory crosswalk.

#### WORKBOOK REFERENCE

Chapter III, Sections A and B.

#### BACKGROUND MATERIALS PROVIDED

- P** Internet Website StATS Report for Arkansas
- P** State Legislation Checklist
- P** State HSWA Statutory Checklist
- P** Two Arkansas authorization Federal Register notices
- P** Copies of the entries from two different Attorney General's Statements for (1) Burning and Blending of Hazardous Wastes, (2) Corrective Action and (3) Requirements for Permits
- P** Cover page and title page for official Arkansas Statutes

*(See Appendix K-2 for Background Materials)*

#### ASSUMPTIONS

This exercise assumes that you have read Workbook Chapters II and III and that you have already:

- P** Set up a Regional Codification Team,
- P** Determined that StATS Report accurately represents the authorization status of Arkansas,
- P** Gathered and organized the background materials,
- P** Used StATS Report to identify pertinent FR notices and have determined that the only authorization Federal Register notices that provide specific citations to the State statutes are (1) the technical correction for the Arkansas authorization effective November 18, 1991 and (2) the October 5, 1992 authorization notice effective December 4, 1992.
- P** Determined that the AG Statements that are relevant to the section of statutes you are working with are the ones dated December 11, 1990 and May 7, 1992.
- P** Obtained an official version of Arkansas' statutes.

#### INSTRUCTIONS

On the next page is an empty statutory crosswalk that you will use to complete this exercise. In order to limit the information you need to find in the background materials provided, the State citations have already been provided on the crosswalk. Normally, this information would be entered in the crosswalk as you proceed through the background materials using the WordPerfect Tables feature to allow you to insert each State citation in the proper order.

In the statutory crosswalk on the next page, fill out Columns 2, 3 and 4 using the background materials provided in Appendix K-2 of this workbook.

|               |
|---------------|
| <b>ANSWER</b> |
|---------------|

See Appendix L, page L-6.

## Exercise III-1. Developing a Preliminary Statutory Crosswalk

| (1)<br>State Citation                     | (2)<br>Date of<br>Authorized<br>Version | (3)<br>Section Heading/<br>Description/RCRA analog | (4)<br>Basis for Classification | (5)<br>Authorized:<br>Approved and<br>incorporated by<br>reference<br>272. 1(b)(1) | Not Incorporated by Reference                                                     |                                                          |                                                                              |
|-------------------------------------------|-----------------------------------------|----------------------------------------------------|---------------------------------|------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|----------------------------------------------------------|------------------------------------------------------------------------------|
|                                           |                                         |                                                    |                                 |                                                                                    | (6)<br>Authorized:<br>Procedural &<br>Enforcement<br>requirements<br>272. 1(b)(2) | (7)<br>Broader in<br>scope<br>provisions<br>272. 1(b)(3) | (8)<br>Extra or<br>Unauthorized<br>provisions<br>(omit from<br>codification) |
| Complete title and date of State statute: |                                         |                                                    |                                 |                                                                                    |                                                                                   |                                                          |                                                                              |
| 8-7-203(6)                                |                                         |                                                    |                                 |                                                                                    |                                                                                   |                                                          |                                                                              |
| 8-7-205(3)                                |                                         |                                                    |                                 |                                                                                    |                                                                                   |                                                          |                                                                              |
| 8-7-209(a)(5)                             |                                         |                                                    |                                 |                                                                                    |                                                                                   |                                                          |                                                                              |
| 8-7-211                                   |                                         |                                                    |                                 |                                                                                    |                                                                                   |                                                          |                                                                              |
| 8-7-214                                   |                                         |                                                    |                                 |                                                                                    |                                                                                   |                                                          |                                                                              |
| 8-7-216(d)                                |                                         |                                                    |                                 |                                                                                    |                                                                                   |                                                          |                                                                              |
| 8-7-218(b)                                |                                         |                                                    |                                 |                                                                                    |                                                                                   |                                                          |                                                                              |
| 8-7-219(2)                                |                                         |                                                    |                                 |                                                                                    |                                                                                   |                                                          |                                                                              |
| 8-7-220                                   |                                         |                                                    |                                 |                                                                                    |                                                                                   |                                                          |                                                                              |
| 8-7-221                                   |                                         |                                                    |                                 |                                                                                    |                                                                                   |                                                          |                                                                              |

See Appendix L, page L-6 for the answer to Exercise III-1.

## EXERCISE III-2

### Classifying State Statutory Provisions.

#### PURPOSE

- Provide experience in classifying State's statutes, using the statutory crosswalk, into one of the following four categories:

- P** authorized,
- P** procedural/enforcement,
- P** broader in scope, or
- P** unauthorized.

#### WORKBOOK REFERENCE

Chapter III, Sections A and B.

#### BACKGROUND MATERIALS PROVIDED

- P** Internet Website StATS Report for Washington
- P** A sample completed preliminary statutory crosswalk for Washington
- P** A copy of Washington's official statutes
- P** A copy of Washington's base program statutes
- P** A copy of Washington's Senate Bill 5071 submitted to EPA as part of Washington's authorization package

*(See Appendix K-3 for Background Materials)*

#### ASSUMPTIONS

This exercise assumes that you have read Workbook Chapters II and III and that you have already:

- P** Set up a preliminary crosswalk using appropriate background materials such as AG Statements, authorization Federal Register notices, State legislation checklist, etc.,
- P** Obtained an official version of Washington's statutes,
- P** Obtained copies of Washington statutes submitted with previous authorization packages.

#### INSTRUCTIONS

On the next page is a completed preliminary statutory crosswalk with Columns 1, 2, 3 and 4 filled in based on a review of and information from Washington's AG Statements, legislation checklist and authorization Federal Register notices.

Using the background materials provided within Appendix K-3 of this workbook, classify each of the State citations on the crosswalk as (1) authorized, approved and incorporated by reference, (2) procedural/enforcement requirement, (3) broader in scope, or (4) extra/unauthorized provision.

#### ANSWER

See Appendix L, page L-7.

## Exercise III-2. Classifying State Statutory Provisions

| (1)<br>State Citation                                                                            | (2)<br>Date of Authorized Version | (3)<br>Section Heading/<br>Description/RCRA analog                                           | (4)<br>Basis for Classification                                                                                                              | (5)<br>Authorized:<br>Approved and incorporated by reference 272. 1(b)(1) | Not Incorporated by Reference                                            |                                                 |                                                                  |
|--------------------------------------------------------------------------------------------------|-----------------------------------|----------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------|--------------------------------------------------------------------------|-------------------------------------------------|------------------------------------------------------------------|
|                                                                                                  |                                   |                                                                                              |                                                                                                                                              |                                                                           | (6)<br>Authorized:<br>Procedural & Enforcement requirements 272. 1(b)(2) | (7)<br>Broader in scope provisions 272. 1(b)(3) | (8)<br>Extra or Unauthorized provisions (omit from codification) |
| Complete Title and Date of State's Official Statutes: Revised Code of Washington Annotated, 1992 |                                   |                                                                                              |                                                                                                                                              |                                                                           |                                                                          |                                                 |                                                                  |
| 70.105.010(18)                                                                                   |                                   | Definition: service charge                                                                   | Not part of base; added in 1989 after base program authorization; not cited on any checklist, AG statement or FR authorization article       |                                                                           |                                                                          |                                                 |                                                                  |
| 70.105.020                                                                                       | 1984                              | Standards and regulations - adoption-notice and hearing- consultation with other agencies    | AG-6/25/84; page 8; 70.105.020(2) amended in 1986 and 1988. The 1988 amendment substituted "department of wildlife" for "department of game" |                                                                           |                                                                          |                                                 |                                                                  |
| 70.105.030(1)                                                                                    | 1984                              | List and information to be furnished by depositor of hazardous waste - Rules and regulations | Base; no change                                                                                                                              |                                                                           |                                                                          |                                                 |                                                                  |
| 70.105.030(2)                                                                                    | 1984                              | Adoption and enforcement of rules by department                                              | Base; no change                                                                                                                              |                                                                           |                                                                          |                                                 |                                                                  |
| 70.105.040(1)                                                                                    | 1984                              | Disposal site or facility; Acquisition                                                       | Base; no change                                                                                                                              |                                                                           |                                                                          |                                                 |                                                                  |
| 70.105.040(2)                                                                                    |                                   | Disposal fee schedule                                                                        | Base; no change                                                                                                                              |                                                                           |                                                                          |                                                 |                                                                  |
| 70.105.050(1)                                                                                    | 1984                              | Disposal at other than approved site prohibited                                              | In Base as 70.105.050; renumbered in 1987 as 70.105.050(1); no change                                                                        |                                                                           |                                                                          |                                                 |                                                                  |
| 70.105.050(2)                                                                                    | 1987                              | Disposal of radioactive wastes                                                               | Added in 1987 as an amendment to program revision package addressing radioactive mixed wastes (see p. 4 of Senate Bill 5071)                 |                                                                           |                                                                          |                                                 |                                                                  |
| 70.105.060                                                                                       |                                   | Review of rules, regulations, criteria and fee schedules                                     | Base; no change                                                                                                                              |                                                                           |                                                                          |                                                 |                                                                  |
| 70.105.070                                                                                       | 1984                              | Criteria for receiving waste at disposal site by department                                  | Base; no change                                                                                                                              |                                                                           |                                                                          |                                                 |                                                                  |
| 70.105.080                                                                                       | 1984                              | Violations-Civil penalties                                                                   | LCL; AG-6/25/84; page 16; base; amended in 1987                                                                                              |                                                                           |                                                                          |                                                 |                                                                  |
| 70.105.085                                                                                       |                                   | Violations - Criminal penalties                                                              | Added in 1989; not cited on a checklist or in an AG Statement. Most likely not submitted with the 1990 authorization package                 |                                                                           |                                                                          |                                                 |                                                                  |
| 70.105.090                                                                                       | 1984                              | Violations-Gross misdemeanor                                                                 | LCL; AG-6/25/84; page 16; base; no change                                                                                                    |                                                                           |                                                                          |                                                 |                                                                  |

See Appendix L, page L-7 for the answer to Exercise III-2.

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