

*** Note: This checklist is an electronic version of the original document found in the 1986 State Consolidated RCRA Authorization Manual (SCRAM). The checklist has not undergone any formal legal review since publication in the SCRAM.

OSWER DIRECTIVE 9541.00-1
APPENDIX D
[STATE] REVISION CHECKLIST FOR
SECTION 3006(f): AVAILABILITY OF INFORMATION
November 8, 1984
(Non-HSWA Cluster I)

Titles of Legislation: 1.
2.
3.
4.
5.

Date Submitted: _____

| FEDERAL REQUIREMENT | RCRA CITATION 40 CFR | STATE AUTHORITY Statute/Regulation/MOA | REQUIRED AUTHORITY | COMMENT |
|--|-------------------------|---|--------------------|---------|
| 1. PROCEDURAL REQUIREMENTS | | | | |
| 1.1 Scope of records subject to State requests as broad as scope of records defined by EPA | 2.100(b) | | Statute/Regulation | |
| 1.2 Certain materials routinely available without formal FOI | 2.104(b) | | MOA | |

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| 1.3 Reasonable effort to assist requestor | 2.109(b) | | MOA | |
| 1.4 Respond to request within 20 days. Failure to do so is basis for judicial or administrative review | 2.112 | | Statute/Regulation | |
| 1.5 If request is denied, provide basis for denial and notice of judicial/administrative appeal procedures | 2.113(f) and 2.114(a) | | MOA | |
| 1.6 Denial of judicial appeal because of untimely filing, provide 30 days to file timely appeal | 2.114(b) | | Statute/Regulation | |

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| 1.7 Decision on administrative appeal within 30 days or by next meeting of appellate body | 2.117 | | Statute/Regulation | |
| 1.8 Failure to decide on appeal by deadline constitutes final agency action and requestor's right to judicial review | 5 U.S.C. 552 (a)(6)(C) | | Statute/Regulation | |
| 1.9 Opportunity for judicial review of any final agency action denying the request | 2.116 | | Statute/Regulation | |
| 1.10 Consider waiver of fees for copies of information | 2.120(d) | | MOA | |
| 1.11 Attorney's fees and expense | 5 U.S.C. 552(a)(4)(E) | | Statute/Regulation | |

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2. SUBSTANTIVE REQUIREMENTS

Based on statute, regulation or case law, the Attorney General must certify that:

| | | | | |
|-----|---|--|--|---|
| 2.1 | All records are available to the public unless exempt from disclosure | See 5 U.S.C. 552 for exemptions (See 40 CFR 2.118) | | Attorney General General Statement, as part of application for authorization for §3006(f) |
| 2.2 | All non-exempt records available to the public regardless of whether any justification or need for records shown by requestor | See 2.1 | | Attorney General General Statement, as part of application for authorization for §3006(f) |

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| 2.3 Same types of records available as EPA provides ¹ | See 2.1 | | Attorney General General Statement, as part of application for authorization for §3006(f) | |
| 2.4 State agrees to fullest possible disclosure of records to public | §3006(f) | | MOA | |
| 3. CONFIDENTIAL BUSINESS INFORMATION (CBI) | | | | |
| 3.1 CBI not defined any more broadly than 40 CFR Part 2, Subpart A and B | 2.201(e) and 2.208 | | Statute/Regulation | |

¹Examples of records subject to release: Permit applications and modifications; Biennial reports; Closure plans; Notification of a facility closure; Contingency plan incident reports; Delisting petitions and other petitions for variances or waivers; Financial responsibility instruments; Environmental monitoring data (exemption 5 U.S.C. 522(b)(9) of the FOIA generally applies to such wells as oil and gas, rather than to ground-water wells); Transporter spills reports, International shipment reports; Manifest exception; discrepancy and unmanifested waste reports; EPA facility identification numbers; General correspondence with facility; Enforcement orders; Inspection reports; and Corrective action investigation results.

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| 3.2 If no claim of CBI at first opportunity, release information | 270.12 | | Statute/Regulation | |
| 3.3 If CBI claim cannot be resolved within 20 days of request, requestor must be notified of claim within 20 days and told that State denied claim so as to resolve CBI | 2.204(d)(1)(ii) | | MOA | |
| 4. OVERSIGHT OF STATE PROGRAM | | | | |
| 4.1 State must keep log or file of denials of requests available for inspection | | | MOA | |

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| 4.2 State informs EPA of proposed modification of its basic statutory/regulatory authority, forms, procedures, or priorities | 271.21(a) | | MOA | |