

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

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

July 23, 1986

**MEMORANDUM**

**SUBJECT:** Interpretation of April 24, 1986 Draft Guidance on §3006(f) of RCRA

**FROM:** Marcia E. Williams, Director  
Office of Solid Waste

Lisa K. Friedman  
Associate General Counsel

**TO:** David A. Stringham, Chief  
Solid Waste Branch, Region V

Mike Elam, Acting Chief  
Office of Regional Counsel, Region V

This is in response to your June 24 memorandum concerning EPA's draft guidance on Section 3006(f) of RCRA. The guidance requires States to respond to FOIA requests within twenty days. You asked whether States, whose statutes or regulations do not contain this requirement could agree to it in the MOA. You believe that this is a Procedural requirement for which an MOA agreement would be appropriate.

We disagree that this requirement can be handled through an MOA. Under 40 CFR §2.112, failure to respond to a FOIA request in 20 days constitutes a final agency action which triggers judicial review. Thus, the 20-day deadline is not a procedural requirement, but an inherent part of a substantive requirement and must be included in statutes or regulations. We have consistently treated, it as such in our development of the Section 3006(f) guidance and our related discussions with ASTSWMO and EDF.

We regret that this decision will require rule changes in several of your States. It appears that the language in your States' statutes requiring a response "as soon as possible" or "within a reasonable amount of time" would provide adequate statutory authority for State regulations establishing a 20-day response time.

If you have any further questions concerning this matter, please contact Martha Madison, State Programs Branch, OSW at FTS 382-2229.

Cc: Bruce Weddle  
Martha Madison  
Alex Wolfe  
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