
VI. DEVELOPING THE ADDENDUM TO THE STATE'S EPA APPROVED HAZARDOUS WASTE MANAGEMENT PROGRAM

OVERVIEW This chapter discusses how to prepare the Addendum to the State's EPA-Approved Hazardous Waste Management Program (hereafter referred to as "the Addendum"). The following topics will be discussed in separate sections below:

- A. Purposed and Structure of the Addendum
- B. Developing the Addendum's Explanatory Statement, and
- C. Developing the Addendum's Table of Contents and Text.

WHERE ADDENDUM IS KEPT Once completed, the Addendum should remain in the Regional Office developing the codification package. Discussions are underway with the Office of the Federal Register to allow this document to become part of the EPA Binder submitted with the codification. Until these discussions are completed, the Regional Office should retain this document. The Model Codification Federal Register Notices included in Appendix E reference the Addendum in both the preamble and at §272.____1(b)(5) and indicate that this document is available from the Regional Office that prepared the codification.

A. PURPOSE AND STRUCTURE OF THE ADDENDUM

KEY CONCEPTS

- Develop an Addendum only if the provisions incorporated by reference include State amendments that cannot be redlined, i.e., if §272.____1(b)(5) is included in the codification Federal Register notice.
- The Addendum serves 1) as notification that the incorporated by reference regulations include unauthorized amendments, and 2) as a readily available source for the Federally enforceable version of those provisions containing unauthorized State amendments.
- The Addendum consists of an Explanatory Statement, a Table of Contents and a Text Section.

CIRCUMSTANCES NECESSITATING THE ADDENDUM The Addendum is needed only if the State being codified has made unauthorized amendments to previously authorized provisions and these amendments cannot be redlined. Effectively, if the codification Federal Register notice prepared as per Chapter V's instructions contains §272.____1(b)(5) then the Addendum should be prepared. The addendum is needed in this situation because the Office of the Federal Register will allow only the official version of a State's code to be referenced in the incorporation by reference of the State's regulations. Thus, the version of the provisions listed at §272.____1(b)(5) that is incorporated by reference and included in the EPA Binders is not the currently authorized version.

THE ADDENDUM'S PURPOSE

As such, the Addendum serves two purposes:

P It provides notification that the State's regulations include amendments that are not part of the State's authorized program and are, therefore, not Federally enforceable if they are non-HSWA provisions.

P It contains the authorized version of each provision listed at §272.____1(b)(5), and serves as a reference document that can be used to easily find the Federally enforceable version of these provisions.

THE ADDENDUM'S COMPONENTS

The Addendum consists of the following major components:

P an **Explanation Statement**,

P a **Table of Contents**, and

P a **Text Section** containing the authorized provisions.

ADDENDUM MODEL AND EXAMPLE

A Model Addendum is included in Appendix H and a completed Addendum for Oregon is included in Appendix I. The instructions for completing the Addendum are embedded in the text of the model. Note, the Addendum contains a title page that also must be completed. However, completion of this page is simple enough that it is not specifically addressed by this workbook.

THE NEXT TWO SECTIONS

The two chapter sections that follow explain how to develop the Addendum, with the Explanation Statement discussed in the first section and the Table of Contents and the Text Section addressed in the second section.

B. DEVELOPING THE EXPLANATORY STATEMENT

KEY CONCEPTS

P Each authorized provision with unauthorized State amendments listed at §272.____1(b)(5) of the codification Federal Register notice must be listed in the Explanation Statement.

PURPOSE OF THE EXPLANATION STATEMENT

MODEL LANGUAGE

The purpose of the **Explanation Statement** is to provide notice that the State's regulations include State amendments that have not been reviewed or approved by EPA. As such, these unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. Exhibit VI-1 contains a copy of model language for this statement. The places where you need to insert specific information are bracketed and shaded. All of the inserts except two are self explanatory.

- INSTRUCTIONS P The first instruction on line 1 of the text--"[insert publication date of FR]"--requires that you insert the publication date of the codification notice that incorporates the State's regulations by reference. Thus, this insert cannot be made until this date is known.
- P The second insert on line 4 of the statement text says to "list authorized State citations with unauthorized State amendments." To complete this insert, refer to §272.____1(b)(5) of the codification Federal Register notice prepared as per the Chapter V instructions. Each authorized provision with unauthorized State amendments listed at §272.____1(b)(5) must be listed at this insert.

Exhibit VI-2 shows a completed draft explanatory statement for Oregon.

C. **DEVELOPING THE TABLE OF CONTENTS AND THE TEXT**

KEY CONCEPTS

- Each provision listed in §272.____1(b)(5) of the codification Federal Register notice must have a corresponding entry in both the Addendum table of contents and the Addendum text.
- Each entry in the Addendum text should consist of an introductory statement, the text of the authorized provision, and a reference to the source of the text.

TABLE OF CONTENTS

Each provision listed in §272.____1(b)(5) of the codification Federal Register notice needs to have a **corresponding entry** in both the Addendum table of contents and the Addendum text. Completing the **table of contents** is similar to completing any other table of contents and you should refer to both the Model Addendum in Appendix H and the sample Addendum for Oregon in Appendix I for examples of ways to develop it.

TEXT ENTRIES

Each entry in the Addendum **text** should consist of the following three parts:

- P An introductory statement saying that "The authorized version of [insert state citation] enforceable by EPA is:",
- P a copy of the authorized provision without any unauthorized amendments, and
- P a reference to the version of the State's regulations from which the authorized provision was obtained. The reference should include the full title of the State Regulations and the amendment or effective date of the authorized provision.

EXAMPLE

The following is an example of a text insert from a Draft Addendum for Oregon:

The authorized version of 340-102-011 (2)(c) introductory paragraph enforceable by EPA is:

340-102-011 Hazardous Waste Determination
* * * * *

(2) * * *

(c) If the waste is not listed as a hazardous waste by application of subsection (2) (b) of this rule, he must determine whether the waste is identified in Subpart C of 40 CFR Part 261 by either:

* * * * *

[Oregon Administrative Rules, Chapter 340, as amended July 19, 1985]

For further examples of an Addendum text entry, refer to the example addendum in Appendix I.

Exhibit VI-1. Model Language for the Addendum Explanatory Statement

**DRAFT ADDENDUM
TO THE
EPA-APPROVED [INSERT STATE NAME] REGULATORY & STATUTORY
REQUIREMENTS APPLICABLE TO THE HAZARDOUS MANAGEMENT
PROGRAM**

[Insert Month and Year of EPA Binder]

On **[insert publication date of FR]**, EPA published a Federal Register document announcing its decision to incorporate by reference, at 272. ___1(b), **[Insert State Name]**'s authorized hazardous waste program effective **[insert effective date]** (see **[insert FR reference]**).

However, **[list authorized State citations with unauthorized State amendments]** of the **[Insert Full Title and date of State regulations]** include State amendments that have not been reviewed or approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. This document gives notice that notwithstanding the language in the **[Insert State name]** hazardous waste regulations incorporated by reference at §272. ___(b)(1), EPA will only enforce the State provisions actually authorized by EPA. The document contains the actual authorized text of the regulatory language at the citations listed above that EPA will enforce.

**Exhibit VI-2. Example of a Completed
Addendum Explanatory Statement for Oregon 1/**

**ADDENDUM
TO THE
EPA-APPROVED OREGON REGULATORY & STATUTORY REQUIREMENTS
APPLICABLE TO THE HAZARDOUS MANAGEMENT PROGRAM
October, 1994**

On October 30, 1994, EPA published a Federal Register document announcing its decision to incorporate by reference, at 272.1901(b), Oregon's authorized hazardous waste program effective December 29, 1994 (see 58 FR 54452). However, sections 340-100-001, 340-100-002, 340-100-011(2), 340-102-011(2)(c) introductory paragraph, 340-102-040(2), 340-102-041, 340-102-050, 340-104-143(2), 340-104-145(2)(a), 340-104-147, 340-104-314, 340-105-021, 340-105-030, 340-105-040, 340-105-041, and 340-105-042 of the Oregon Administrative Rules, Chapter 340, as amended through November, 1993, include State amendments that have not been reviewed or approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. This document gives notice that notwithstanding the language in the Oregon hazardous waste regulations incorporated by reference at 272.1901(b)(1), EPA will only enforce the State provisions actually authorized by EPA. The document contains the actual authorized text of the regulatory language at the citations listed above that EPA will enforce.

1/ The dates shown in the text are example dates.

D. EXERCISES

PURPOSE The following exercise is designed to reinforce the topics presented in Chapter VI and provide hands-on experience in developing an addendum to a State's EPA-Approved hazardous waste program.

EXERCISE VI-1 Developing and Addendum explanatory statement.

ANSWER The answer to this exercise is in Appendix L, page L-17.

EXERCISE VI-1

DEVELOPING AN ADDENDUM EXPLANATORY STATEMENT.

PURPOSE

- Provide experience in developing the Explanatory Statement of the Addendum to a State's "EPA-Approved Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program."

**WORKBOOK
REFERENCE**

Chapter VI, Section B.

**BACKGROUND
MATERIALS
PROVIDED**

P 272.2401(b)(5) entry Washington as found in the Answer to Exercise V-3: Organizing Information Regarding Unauthorized State Amendments.

(See Appendix K-10 for background materials.)

ASSUMPTIONS

This exercise assumes that you have read Workbook Chapter VI and that:

- P You have already prepared the codification Federal Register for the State, and
- P The State's regulations incorporated by reference include State amendments that have not been approved by EPA.

INSTRUCTIONS

On the next page is the Model language for the Addendum explanatory statement. Based on the sample Washington entry for 272.2401(b)(5), complete the attached explanatory language.

Assume that:

1. The incorporation by reference of the Washington regulations was published in the Federal Register on September 1, 1992 and is effective November 1, 1992 (79 FR 9999).
2. The title of the official State regulations is: "Washington Annotated Code, Dangerous Waste Regulations, 173-303, as amended September 6, 1988."

ANSWER

See Appendix L, page L-17.

Exercise VI-1. Developing an Addendum Explanatory Statement

**ADDENDUM
TO THE
EPA-APPROVED _____ REGULATORY & STATUTORY REQUIREMENTS
APPLICABLE TO THE HAZARDOUS MANAGEMENT PROGRAM**

On _____, EPA published a Federal Register document announcing its decision to incorporate by reference, at 272.____1(b), _____ 's authorized hazardous waste program effective **[insert effective date]** (see _____). However, _____

of the

include State amendments that have not been reviewed or approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. This document gives notice that notwithstanding the language in the _____ hazardous waste regulations incorporated by reference at §272.____1(b)(1), EPA will only enforce the State provisions actually authorized by EPA. The document contains the actual authorized text of the regulatory language at the citations listed above that EPA will enforce.