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Committee in Session at 8:39 am on Wednesday, March 21, 1979.

Senator Keith Ashworth in the Chair.

PRESENT: Chairman Keith Ashworth
Vice-Chairman Joe Neal
Senator Wilbur Faiss
Senator Jim Kosinski

ABSENT: Senator Clifton Young
Senator Rick Blakemore

GUESTS: Mr. George Vargas, Nuclear Engineering Company, Inc., Counsel
Mr. Clifford Chandler, Corporate Chemical Control and Safety Officer, Nuclear Engineering Company, Inc., Louisville, Kentucky
Ms. Daisy Talvitie, League of Women Voters of Nevada
Mr. Robert Warren, Nevada Mining Association
Mr. Charles B. Armstrong, Basic Management, Inc.
Mr. Donald H. Baker, III, Environmental Supervisor, Titanium Metals
Mr. Ron Chadek, Lovelock Growers Association, Humboldt County Seed Growers Association, Nevada Seed Council and other agriculturalists
Mr. Stan Warren, Nevada Bell
Mr. Howard Clodfelter, Washoe County District Health Department
Mr. Carl R. Cahill, Washoe County District Health Department
Mr. Jim Cota, Hansen Enterprises, A-ALL-EN-ONE
Ms. Marsha Hutchings, City of Las Vegas
Mr. Ernest Gregory, Division of Environmental Protection
Mr. Peter G. Morros, Department of Conservation and Natural Resources

Chairman Ashworth opened the hearing on S.B. 272 and S.B. 273.

Mr. George Vargas, Nuclear Engineering Company, Inc., Counsel, introduced Mr. Clifford Chandler, Corporate Chemical Control and Safety Officer, Nuclear Engineering Company, Inc., Louisville, Kentucky, who spoke in support of S.B. 272 and S.B. 273. He presented Exhibit "A" to the committee and stated he was speaking on behalf of the company's Beatty, Nevada site. He recommended several amendments to S.B. 273 (Exhibit "A").

Chairman Ashworth questioned why the definition of "hazardous waste" does not include radioactive materials. Mr. Chandler responded that they believe the intent of the bill is to regulate chemical and toxic waste rather than radioactive materials. He suggested the two types of waste remain completely separate.

Mr. Chandler also presented comments to S.B. 272 (See Other Comments, Exhibit "A").

Ms. Daisy Talvitie, League of Women Voters of Nevada, spoke in support of S.B. 272 and S.B. 273. She stated that she was also a member of the Solid Waste Advisory Committee in Clark County. She said that her presentation today had also been reviewed by the committee and they are in agreement. She presented Exhibit "B" and Exhibit "C" to the committee which includes proposed amendments to both bills. She stated that they would like the definition of "solid waste" to be consistent in both bills as proposed in Exhibit "B."

Senator Kosinski questioned if Ms. Talvitie had any objection to exempting radioactive waste as proposed by Mr. Chandler. She stated that she would not like to see the people of Nevada lose any voice in the handling of this material.

Ms. Talvitie stated that she strongly disagreed with the thinking that the federal government should not have the right to implement and enforce solid waste programs. She said that the state never has the policing force to cover the entire area. She further stated that the amendments presented are to clarify the role of local governments as she felt the problem could be best handled at the local level.

She emphasized the need for an appeal procedure and stated that the proposed language was taken from the state air pollution law. She also stated that the League prefers an administrative approach to handling violations rather than going to court.

Ms. Talvitie expressed violent objections to Mr. Chandler's recommendation to leave the variance procedure at the discretion of the commission and eliminate a public hearing. She stated that the language in the state air pollution law is excellent and would like to see this incorporated into the bills.

Ms. Talvitie then addressed her comments to Exhibit "C" dealing with S.B. 273.

Mr. Robert Warren, Nevada Mining Association, and Mr. Charles B. Armstrong, Basic Management, Inc., addressed themselves to the matter of mining waste. Mr. Armstrong expressed support for state regulations rather than regulations by the federal government. He stated that their concerns were with the timing of this legislation as the federal government has not implemented firm guidelines as to the control of solid waste. He suggested that consideration of these bills be deferred until the federal guidelines are clarified so the state law will be consistent with federal regulations. In the event the bills would be considered, Mr. Warren proposed the addition to S.B. 272, Page 6, Section 27, subsection 2, Lines 37 and 38, to read, "A mining or minerals processing operation from disposing of overburden, tailings, mine wastes, and other residual products of mineral processing or

extractive operations on its own land." He stated that this language is cited from the regulations of the Environmental Protection Agency. Mr. Armstrong stated that their industries in Southern Nevada are processing minerals and he did not believe it would be appropriate to handle that waste as sanitary landfill would be handled. He expressed concern with S.B. 273 in regards to the definition of "hazardous waste." He stated that he did not believe the states should go beyond the federal regulations regarding facilities and permits for generation. He further expressed concern on Page 4, Section 17, subsection 2.(a), Line 48, as to the availability of insurance against liability for harm to the environment. He also requested further protection in the area of disclosure of trade secrets.

Senator Kosinski questioned what still remained unresolved with the federal regulations. Mr. Chandler stated that the entire package of federal regulations are still, as yet, unresolved.

Chairman Ashworth questioned if Mr. Warren felt it would be appropriate to have an interim study committee research the issue. Mr. Warren stated that he would like to get the opinion of other members of the Association; however, he stated this type of guidance would probably be well served.

Senator Neal questioned the problem with the definition of "hazardous waste" as in S.B. 273. Mr. Warren stated that the definition needs further study to determine if it is adequate and also how to cope with these wastes. Senator Neal questioned the premise of passing or not passing a law because the extent of the definition is unknown. Mr. Armstrong stated that they were asking for the exclusion of the "special wastes" category, which includes mine waste. Senator Neal stated that this could be very hazardous when dealing with areas such as uranium tailings. Mr. Armstrong stated that it was his belief "solid waste" does include radioactive waste. Chairman Ashworth pointed out that Mr. Chandler had requested radioactive waste not be included in the legislation. Mr. Armstrong stated that radioactive waste was not included in S.B. 273 by the language on Page 2, Section 9, Lines 19 through 23; similar language is also found in S.B. 272.

Senator Kosinski questioned the ramifications of excluding radioactive waste in the definition of "solid waste" but not excluding it in the definition of "hazardous waste." Mr. Warren stated that he was uncertain.

Mr. Donald H. Baker, III, Environmental Supervisor, Titanium Metals, stated that it was their belief that S.B. 272 is premature. He expressed support for S.B. 273; however, he wished to make the committee aware of the problems involved and the expense that will be borne by the state as to monitoring and enforcement of the regulations. He felt that based on the current staff, the state would be unable to handle this type of situation. He concurred with the testimony of Mr. Armstrong as to permits

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for generation and believed they should be deleted from any reference to any permitting system throughout the law. He also concurred with the testimony of Ms. Talvitie as to the need for administrative appeals procedure prior to any court proceedings. He stated that Titanium Metals would definitely support an interim study committee to resolve these problems for presentation to the next session of the legislature.

Senator Faiss questioned if there is any special substance used for covering waste material. Mr. Baker responded that it is a standard landfill operation.

Mr. Ron Chadek, Lovelock Growers Association, Humboldt County Seed Growers Association, Nevada Seed Council and representing other agriculturalists, expressed opposition to S.B. 273 and S.B. 273 (Exhibit "D").

Senator Blakemore arrived for the meeting (10:02 am).

Ms. Talvitie requested that if the committee decides to postpone S.B. 273, they move forward with S.B. 272 as it deals with problems of "solid waste."

Mr. Stan Warren, Nevada Bell, stated that the bills could impact Nevada Bell's function in pumping water that seeps into manholes and cable vaults. He proposed an amendment to S.B. 273 (Exhibit "E").

Mr. Howard Clodfelter and Mr. Carl R. Cahill, Washoe County District Health Department, presented Exhibit "F" to the committee enumerating their proposed changes to the legislation. Chairman Ashworth stated that the committee had received their letter (Exhibit "G") and it was distributed. Mr. Cahill stated that they did believe it was important to maintain regulatory authority with local entities; he stated they are presently doing the job and should continue.

Mr. Clodfelter stated that he had met with Washoe County's local elected officials, county commissioners and chairman of the board of health, and stated that they do not want to lose local control.

Senator Kosinski questioned the immediate problems should S.B. 272 and S.B. 273 be passed. Mr. Cahill responded that as to S.B. 273, there would be the possibility of federal intervention. As to S.B. 272, he stated that they could live with the present bill; however, if there are changes made, they would like to have some clarification as to local authority.

Mr. Jim Cota, Hansen Enterprises, A-ALL-EN-ONE, stated that his business is the dumping of materials. He expressed concern as to the definitions and felt there would be problems with the legislation. He also expressed concern as to permits and the effect on small companies. He stated that there is no Class "A" dump within a 300 mile area and no area that could be turned into a

Class "A" dump. He expressed concern about chemicals currently being dumped that are seeping into the water tables of the area. He stated that he believed the key issue to be the classification of waste; he did not feel one could classify waste from a restaurant under the same permit as chemical waste but felt that would occur. He felt that rather than pass this legislation, a group of men should go into the field and study each situation on a separate basis until legislation can be drafted for control. He stated that something must be done shortly but these bills should not pass as they stand. He also felt there should be state standardization on the cost of permits.

Ms. Marsha Hutchings, City of Las Vegas, concurred with the testimony of the Washoe County District Health Department. She stated they have difficulty with the interpretation of definitions. She requested that in S.B. 273, Page 2, Section 9, Lines 13 and 14, the references to "sludge from a waste treatment plant" be deleted. She stated that the sludge has been utilized as a fertilizer for city parks and the legislation would force them to change this procedure.

Mr. Ernest Gregory, Division of Environmental Protection, and Mr. Peter G. Morros, Department of Conservation and Natural Resources, stated that the Division of Environmental Protection is the agency responsible for this legislation. He stated that the Division did not wish to pursue both bills but they had been introduced by Senator Lawrence Jacobsen.

Senator Blakemore questioned how many Class "A" dumps existed in the state. Mr. Gregory stated that there was only one "true" Class "A" dump outside of Beatty.

Mr. Gregory stated that a problem that exists with the legislation is that the Division has no idea as to the cost and what the regulations or requirements will be. He stated that the fiscal impact noted in the bill was only intended as money to continue the planning effort for the next two years.

Chairman Ashworth questioned if Mr. Gregory believed it would be advisable to have an interim subcommittee study this issue. He stated he would like to have members of the subcommittee consist of members of the community involved in this matter as well as legislators. Mr. Gregory concurred and stated his belief that there would be adequate time to address this issue in the next two years.

Senator Kosinski stated that he did not feel justification for an interim study committee had been adequately presented. He requested information from Mr. Gregory indicating the kind of information that would justify this issue to be chosen as an area of study. Mr. Gregory stated that he would provide the committee a summary of federal legislation and other pertinent material (Exhibit "H" submitted March 23, 1979).

Mr. Gregory also noted the State of Nevada's philosophy on this particular problem. The state, in the past, was approached by several different companies to establish a hazardous waste site. Then Governor Mike O'Callaghan declared a moratorium until the problem could be researched. Mr. Gregory stated that it would be one of the areas the state will have to decide and should have definite public input. He questioned if Nevada wants to become a "dumping ground" for the rest of the country.

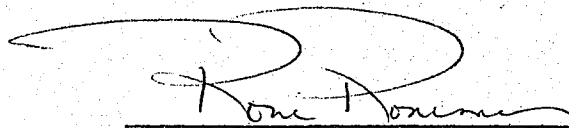
Chairman Ashworth stated that he believed it important to look into the matter before the federal government mandates state action but questioned if it would be premature at this point.

Ms. Talvitie stated that a section of S.B. 273, Section 28, is of major importance to local entities. She stated that this was an area local entities had been trying to obtain as legislation for a number of years. She requested that if S.B. 273 would not be considered, a small bill addressing that section should be considered.

There being no further testimony, Chairman Ashworth closed the hearing on S.B. 272 and S.B. 273.

There being no further business, the meeting was adjourned at 10:52 am.

Respectfully submitted,



Roni Ronemus
Committee Secretary

Approved:

Chairman
Senator Keith Ashworth

March 9, 1979

CONFIDENTIAL

RLP 3-9-79
Telegraphed at 12:43

Mr. Chairman and Members of the Committee:

I am ~~Steve Carpenter~~, Manager of Nuclear Engineering Company's chemical and toxic waste disposal site at ~~Bentley~~, Nevada, a site which has been in operation under a permit from the Department of Conservation and Natural Resources since 1970.

On behalf of Nuclear Engineering Company I am pleased to be here this morning to testify before this committee in support of SB 273 which would authorize the Department of Conservation and Natural Resources to develop a regulatory program for the control of hazardous wastes consistent with the criteria and regulations being developed by the U.S. EPA under the mandate of the Research, Conservation and Recovery Act of 1976.

Our reasons for support of the bill are several fold. The Research Conservation and Recovery Act of 1976, otherwise known as RCRA, requires the close regulation of hazardous materials either at the Federal or State level. The choice will be yours, and in making that choice you will have to decide whether you prefer State or Federal regulation of these materials. There will be no room for the middle ground of concurrent jurisdiction. However, the legislation before you is tangible evidence of the fact that its author believes in the ability of the State to meet its constitutional prerogative to assure the health and safety of its citizens. This as you know is a traditional responsibility of the States and one which should not be easily eroded away.

Handwritten notes:
Varga
Carl...
H...
...

We support SB 273 because we are sensitive to the fact that the shift in the balance of Federal - State power during the last three quarters of the 20th Century was due largely to the slowness in which States reacted to novel problems. While the Federal government was the logical and proper level for the handling of these problems, others fell to it by default. Some would like to sweep away the whole concept of State and local powers and would urge a centralized domination - with States and localities reduced to mere administrative units. To put it bluntly, they would argue that Government must be centralized to carry out the task of public regulation inasmuch as virtually all our problems today are national problems and that therefore they must be dealt with nationally.

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We disagree with that concept but when, for example, hot lunches in schools are subsidized and regulated by a central authority, when farmers in the most remote county of the country are supervised out of Washington, then the process of centralization already is well advanced.

Fortunately there are still those in the country who recognize that there will always exist fundamental areas of political administration best left to the States and we believe that the regulation of hazardous wastes is one of these.

Mr. Chairman, I would be remiss in my remarks this morning if as a company we ^{did not} recognize that in the State of Nevada you have today an ongoing regulatory program for the control of hazardous materials-- a program which is being conducted in a highly professional manner by a highly competent staff. I have no doubt that the Department of Conservation and Natural Resources, acting through the Division of Solid Waste Management, will have no difficulty in meeting the requirements of the U.S. EPA should this legislation be adopted. Speaking for one industry which would be affected by your action we wholeheartedly endorse the concept of State regulation over that of regulation at the Federal level. That is not to say that we do not deem the U.S. EPA to be competent in the field of hazardous waste. It is --but our preference for State control is simply that industry is best regulated by those who are closest to the regulated. Regulation from afar is not in the best interests of the State nor the industry.

You may also be aware that EPA anticipates, as of this date, that some 41 states will apply for interim authorization to regulate hazardous materials pending the development by the states of a program equivalent to that of the Federal program. I would hope that Nevada would be one of those states.

Turning to the bill itself we have several comments which we would like to make at this time; to wit:

Sec. 7.

The definition of "hazardous waste" includes those radioactive materials subject to regulation by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954, as amended, as well as other radioactive material occurring naturally or produced artificially now regulated by the State of Nevada. Accordingly it is recommended that the definition of "hazardous waste" be amended as follows: "Hazardous Waste" does not include source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, (69 Stat 923) or other radioactive material occurring naturally or produced artificially."

Sec. 11.2

This section ^{include provisions which} would require the State Environmental Commission to establish what could well be characterized as a full cost recovery program. We are not aware of such a program being imposed upon other like activities in the State and question its legality. Certainly the cost of this type of regulatory supervision is a proper charge to the funds appropriated to the Department for its day-to-day responsibilities. We urge that this section be deleted.

Sec. 11.2. (5)

This section would require the Commission to establish standards applicable to containers used for hazardous waste and labels for the containers. Inasmuch as the U.S. Department of Transportation has primary jurisdiction in this area we recommend that language such as "consistent with DOT standards" be included in this section.

Sec. 16.2.

This section describes the condition under which a permit is not required. We are of the view that a person must meet all three conditions (a-c) in order to operate without a permit while its application is pending. If we are correct in this assumption we have no comment thereon other than to express our approval. Should this not be the case we would have serious objection thereto.

DRAFTSec. 17.2 line 48

Insert the word "uniform" before the word amount. We are concerned that evidence of liability insurance could result in different requirements for individual waste disposal sites resulting in an economic disadvantage for those operators with a higher premium etc. By inserting the word "uniform" in the legislation, the legislation would be establishing a standard applicable to all waste disposal operators.

Sec. 17.2 (b)

Insert at the end of subparagraph (b) the following: "This section shall not apply to those hazardous waste disposal sites located on State owned land where provisions have been made for such financial responsibility."

Sec. 18.

Section 18 provides the framework for requesting a variance from the Commission's regulations. Subsection 2. states that the Commission may grant a variance only after a public hearing. Obviously there will be occasions where a person will be seeking a minor variance to the regulations which would not dictate a public hearing. Could it not be left to the discretion of the Commission to set out in its regulations the type of requests requiring a public hearing? Otherwise the system could well bog down to the detriment of the Commission in unnecessary costs to the Commission, the industry and the taxpayer.

Sec. 19.

Sec. 19.3. limits the variance to a period of not more than one year other than for those situations described in Section 19 1-2. If our assumption is correct that for minor changes in the Commission's regulations would not need a public hearing, why the limitation?

Sec. 20.3.

See comments on Section 19.3. There should be no need for the renewal of minor variance.

DRAFTSec. 26.

As we read this Section the administrative fine could be in addition to the fine provided for in Section 28. We suggest adding at the end of the first sentence in Section 28 the following: "Such penalty shall not be in addition to the administrative fine provided for in Section 26."

Sec. 28

The civil penalty proposed of not more than \$25,000 for each day of violation ^{in our opinion} is too harsh in regard to licensed operators of disposal sites. (see Section 3008(3) of RCRA.) A solution to this problem would be to apply the \$25,000 civil penalty to those individuals who are not licensed disposal operators and thus violate this Act per se. It should not be the intent of the State of Nevada to penalize individuals who have obtained licenses and are seeking to operate within the intent and limits of the law but who inadvertently violate the law. Therefore, it is suggested that the \$25,000 ^{ceiling} be reduced to \$1,000 per day for non-willful violations by licensed disposal site operators. Criminal penalties for willful violations would be applicable to willful violations by both licensed and non-licensed operators.

Other CommentsPreemption

We recommend that the proposed legislation make clear that any facility which meets the state's requirements for obtaining a hazardous waste facility permit should not be required to obtain any permits, licenses or authorizations or be subjected to the regulations of any other political subdivision of the state. In short the state should preempt local governments in permitting the siting and regulation of hazardous waste facilities. In this connection we would urge the delation of those sections of SB 272, also before this Committee, which would permit local entities to regulate hazardous wastes.

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Liability Insurance

The requirement for "liability insurance" is unrealistic because insurance carriers are extremely reluctant to write the kind of policies to cover non sudden occurrences and do not write policies for liability in perpetuity. EPA currently is encouraging federal legislation which would create a fund to cover liability. In the interim, we recommend that the states provide a legislative mechanism whereby the State Insurance Commissioner (or some equivalent state official) would be given a mandate to study the question of the availability of insurance and provide a report to the legislature.

Mr. Chairman, this concludes my comments. I shall be pleased to respond to any questions you may have at this time.

S.B. 272 League of Women Voters of Nevada by Daisy Talvitie

The League of Women Voters of Nevada have been involved with studies and action relating to solid waste problems since 1971 when we in cooperation with several legislators and the Nevada Open Spaces Council were instrumental in drafting and securing passage of the Nevada existing solid waste statute which is being proposed for revision in S.B. 272. The primary purpose of the existing statute was to start us on the road to developing plans for solid waste management in our State, securing necessary data, some cost studies, and some degree of enforcement authority.. With the passage of that bill in 1971, we recognized that we would someday, after having our initial start, need to update the statute. That day is now here. The League fully supports the concepts and principles in S.B. 272 and urges its passage with some amendments. Unfortunately, our suggested revisions to the bill are extensive as we find some major omissions of needed language, and a number of spots where clarification is needed. We will not discuss all of them but will simply submit them as many of our recommendations are being made by other speakers. As you examine our suggested amendments, you will find many of them to be editorial in nature for the purpose of clarifying the roles of local governments. I will skip over most of those and concentrate on the ones of most concern. It is the League's belief that when a bill is introduced it is better to try to correct problems at that point rather than depend upon resolving problems of interpretation at a later date after passage. The League has always has confidence that the Legislative body shares that sentiment and that the need for revision will not be viewed as cause for killing the bill. With our proposed amendments, we urge passage of S.B. 272 as a much needed improvement in solid waste management in our State.

SECTION 4. Page 1, lines 20 through page 2, line 3. Definition of hazardous waste should be amended to make consisten with S.B. 233 and federal law, as follows:

Sec. 4 (1): "Hazardous waste" means a solid waste or combination of solid wastes, which because of its quantity, its concentration, or its physical, chemical, or infectious characteristics may:

(a) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible illness or incapacitating reversible illness; or

(b) Pose a substantial hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.

2. Such wastes include those which are toxic, corrosive, ignitable, irritant, strongly sensitizing, persistent, capable or being assimilated or concentrated in tissue, or which generates pressure through decomposition, heat or other means.

Section 16. P. 3, lines 22-34. Amend the definition of "Solid Waste" by deleting the existing section 16 in its entirety and substituting :

"Solid Waste" means: garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, including but not limited to garbage, rubbish, junk vehicles, ashes or incinerator residue, street refuse, dead animals, demolition waste, construction waste, solid or semisolid commercial and industrial waste and hazardous waste, including explosives, pathological waste, chemical waste, and herbicide or pesticide waste; but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Law or 33 U.S.C. paragraph 1342, or radioactive materials regulated by the health division or any source, special nuclear or byproduct material as these terms are defined in 42 U.S.C. paragraph 2014.

SECTION 17. Page 3, line 36. Amend . Amend to read:

"1. The governing body of every municipality or of any district board of health....etc.

Section 18. Page 4, beginning with line 9 . Amend to read:

"The governing body of any municipality or of any district board of health may, by ordinance, or regulation, provide for the levy and collection of fees....."

Section 19. Page 4, beginning with line 18. Amend to read:

The governing body of a municipality or of any district board of health providing for the management of solid waste within its boundaries shall, by ordinance or regulation provide for that management. The ordinance or regulations shall be as strict as or stricter than any regulations adopted by the state environmental commission....."

SECTION 20. Page 4. Line 28. Amend to read:

"The governing body of any municipality or of any district board of health may accept and disburse money...

Section 21. Page 4, line 34. Amend to read:

Section 22. Page 4, lines 48, 49, and 50. These lines require giving notice to governing boards of municipalities. While the League understands that 233 B automatical applies to adoption of all regulations, the League is still concerned that it be re-emphasized that public notice and attention be called to all public hearings on adoption of regulation. There have been consistent problems through the years with agency failure to make the proposed regulations available to the public in time for adequate review and comment. This has been particularly true in the State Environmental Agency where legal notices have appeared giving a place where copies of proposed regulations could be secured and League has found that the copies are then not on file at the designated place and we have had to make major efforts to secure copies through numerous phone calls, etc. with it then often being the case that copies received do not actually reflect the proposals under discussion at the hearing as they have been redrafted in the interim. We have also been aware that sometimes even the Commission doesn't have copies until a few days or even the day of the hearing of much of the material. We have protested this publicly many times. We wish to have the statute re-emphasize the importance of following 233 B. We ask that this section be amended to read:

".....and public notice given as required by N.R.S. 233 B.060."

Section 23. Page 5, lines 6 through 36. This section deals with the authorities given and transfers the authorities to the staff of the Department of Conservation and Natural Resources. While we can recognize the desire of the staff to be independent of the Commission, we feel the section goes too far. It is our belief that too much final decision making without review by the Commission is undesirable. We request that the section be amended to read as follows:

Subsection 4. Line 25, Page 5:

" Jointly, with governing bodies of municipalities and of district boards of health- of health develop a state plan for solid waste management. "

Add the following :

The State Environmental Commission shall examine and approve, modify or disapprove plans for solid waste management.

Add a complete new section establishing right of appeal:

Any person aggrieved by action of the department may file notice of appeal with the commission within 10 days after the date of notice of action of the department except as otherwise provided by law.

(a) Any person aggrieved by: The issuance, denial, renewal, suspension or revocation of a permit; or

(b) the issuance, modification, or rescission of any other order, by the Director, may appeal to the commission.

(c) The commission shall affirm, modify or reverse any action taken by

the director which is the subject of the appeal.

- (d) The commission shall provide by rule for the time and manner in which the appeals are to be taken to the commission.

It is also the League's belief that appeals from local staff decisions should also be available under the same provisions with the appeal to go to either a hearing board established for that purpose or to the governing board of the municipality or the local board of health, whichever is applicable.

Section 23, Subsection 6, F. 5, beginning line 31. Amend to read:

"Deposit fees collected for state issued permits with the state treasurer....."

Section 24: Page 5, lines 38 to 43. Add to this section the following:

and collect fees therefor. Duly adopted regulations of a district board of health promulgated pursuant to this subsection shall take precedence over and may supersede any inconsistent and less restrictive standards and regulations of any municipality located within the jurisdiction of such district board of health.

Section 26. ^{page 6 - lines 5-21.} This section is of major concern to the League. It appears to us that administrative fines are only appropriate if violations are declared to be civil offenses. Yet we find no such statement in the bill. Additionally, we find a necessity to guarantee to the parties accused of violation a hearing before a fine is levied unless the parties accused of violation elect to waive such hearing. If the administrative fine procedure is to be used, then we recommend that the language be revised to incorporate a reference to a hearing held under the contested hearings procedures of 233 B. We would then recommend language to assure that court review of the findings of the hearing be based on the record rather than de novo, possibly using a reference to 233b. In the case of local regulations, and violations thereof, we feel that it is necessary to establish who is authorized to hold such hearings and levy the administrative fines, also establishing procedures as outlined for the Commission. The administrative fines approach, in our view, has worked very well in the air pollution law. However, we understand that Washoe County has difficulty with the hearing board approach of that law, and would prefer to use a misdemeanor penalty using the justice court. The misdemeanor approach and justice court procedure has never worked in Clark County. It is also the League's feeling that, when local regulations must be as strict as or more strict than those adopted by the State, it would be ridiculous to have lesser penalties for violation of the local regulations. Perhaps the solution would be to give the local boards of health the option of either bringing a charge for misdemeanor or the civil penalty approach using administrative fines. I must re-emphasize that the hearing board approach to local regulation enforcement and penalties has worked exceptionally well in Clark County, settling air pollution cases very quickly. The Clark County Hearing Board has not hesitated to levy the penalties, even as much as \$5,000 when the case warranted it. Through the years of operation of the Hearing Board for Air Pollution in Clark County, we have averaged about three cases per month. In all those years, we have had only five of our decisions appealed to court and of those we have only lost two cases and those were lost on procedural technicalities. We have had only one case where the violator refused to pay his fine and the small claims court ordered him to pay it, upholding the Board. That's a good record. So the League feels that the civil penalty process of administrative fines is a better procedure than misdemeanor. However, we would have no objection if an option were given to use either procedure as the case warrants it.

The League believes that a section needs to be added to the bill assuring rights of entry for inspections. We recommend the following language:

RIGHT OF ENTRY:

1. for the purpose of determining whether or not N.R.S. 444.450 to 444.590, inclusive sections 1-28 of this act, inclusive, and regulations adopted pursuant thereto are being complied with, any ~~author-representative-of-the-~~ authorized representative of the department, or any authorized representative of a district board of health or municipality meeting the requirements of 444.580 in areas under their jurisdiction, may

(a) at any reasonable time, upon presentation of appropriate credentials inspect any facility for solid waste management as defined in section 3 of this act, or any facility under construction.

(b) inspect any monitoring equipment or methods

(c) inspect and obtain samples of any waste. The samples may include samples from any vehicle in which waste is being transported.

2. before leaving a facility at which any samples have been obtained the inspector shall give to the owner or operator a receipt describing the samples and, if requested, a portion of each sample equal ~~to-~~ in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results may be furnished promptly to the owner or operator, if he requests a copy.

3. the owner or operator of the facility shall not:

(a) refuse entry or access to an authorized representative who requests entry or access for the purpose of inspection, as provided in this section.

(b) obstruct, hamper or interfere with any such inspection.

4. if entry is refused, or prior to attempting to enter, the department, or district board of health or municipality specified under line ---, may apply to any magistrate for a search warrant. The magistrate shall issue the warrant if he believes from the affidavit or affidavits that the facility meets the definition of facility for solid waste management.

It is the League's belief that occasions may arise where variances may be necessary for specific situations. For this reason, we recommend adding a section to establish variance procedures. For this purpose, we suggest incorporation into this bill the language found in S.B. 273, Sections 18, 19, and 20, adapting the first sentence of Section 18 to apply to solid waste. This variance procedure would then be consistent with the state air pollution and water pollution variance procedures..

The League wishes to emphasize the importance of the the amendment to N.R.S. 444.630, in Section 28, ~~line-~~ page 7, line 4 of the bill. While the League would prefer civil procedures and penalties to the misdemeanor approach to the problems of promiscuous dumping, ~~previ~~ we can live, for now, with the misdemeanor approach provided that we have assurance that adding health authorities to the list of those enforcing this section have the legal right to issue citation notices in justice court equal to that of any peace officer. If this assurance is not provided without adding additional language, then we request that language establishing that authority be incorporated. Promiscuous dumping has always been a problem. It will continue to be for so long as we must depend upon the police and the District attorney's office to bring action since they are, understandably, automatically going to give priority to those matters of greater criminal concern and to traffic control.

*League of Women Voters of Nevada
by Daisy J. Falvete*

The federal Resource Conservation and Recovery Act recognizes the responsibility of the government to identify and manage hazardous wastes. We are belatedly recognizing the impacts of poorly thought out management practices in the past, witness the Love Canal situation in New York State. Congressional intent, however, is clear. The Congress wishes to see the states develop their own programs to fit their own particular circumstances and needs, within the general guidelines provided in the RCRA. Although Nevada does not generate large quantities of hazardous wastes within its own borders, our apparent barren, "useless" desert has a certain attraction to those who wish to dispose of their wastes outside of their own borders. It will be important, therefore, that Nevada have its own system for handling site locations and management as well as transport of hazardous materials through the state. Recycling hazardous wastes is a feasible procedure, but the state should be able to control the hows, whens and wheres of such a process.

According to the federal law and regulations, state legislative authority and planning programs must be in place by the time the final federal regulations are promulgated. This means we are looking at a final date sometime in the early part of 1980. Thus, this session of the Nevada Legislature must provide the enabling authorities to start up the program or else have the state sit back and wait for the federal authorities establish a program for us. Considerable time and effort has gone into the development of the legislation in SB 273 in order to put the state in a position to operate its own hazardous waste program. The Bill is, for the most part a good bill, and should be adopted after consideration of the following concerns.

The bill gives no definition of generation of hazardous waste although the bill in at least six places concerns itself with such generation. Include a section containing a definition using the definition given in the federal statute:

Hazardous waste generation means the act or process of producing hazardous wastes.

The bill does not specify the manner in which generators, specific wastes, and quantities of wastes will be identified. There is no requirement that the generator procure a permit or any other mechanism ~~that the~~ which would place the generator within the system. In addition the federal statute requires standards for generators. Should references to the federal statute (42 USC 6923) be made incorporating these federal requirements into the Nevada statute? Or could this be accomplished by regulation?

Section 9, page 2, beginning line 13. Definition of solid waste. Please amend to use the same definition we are submitting for S.B. 272. The two bills should be consistent in definitions.

Section 11, page 3, lines 5 and 6. Amend, changing the word and to or or so that it reads:
securing, monitoring, and regulating the storage or disposal of

Section 13, page 3, lines 31 and 32. Insert additional language that would require that the plan developed by the staff is as follows:

The State Environmental Commission shall examine and approve, modify or disapprove plans for the management of hazardous waste.

Section 21, page 9, line 6. Amend to read:

Every generator, transporter, storer, treater, and disposer who transports

In the case of hazardous waste, manifests must follow the waste from cradle to grave!

Add a section for rights and procedures to be followed for appeals. x See League recommendation submitted for S.B. 272.

Section 22, Page 6, after line 33. Add the following:

If entry is refused, or prior to attempting to enter, the department may apply to any magistrate for a search warrant. The magistrate shall issue a warrant if he believes from the supporting affidavit or affidavits that there is probable cause to believe that a facility is generating, transporting, treating, storing or disposing of hazardous waste on the premises to be searched.

Section 26, Page 7, lines 41 and 42.. Amend to read :

The Commission may assess the appropriate administrative fine after a hearing under the procedures for contested cases found in 233B.

The League believes that every accused person is entitled to a hearing and we believe that hearing should be by the State Environmental Commission sitting as a hearing board. We do not think this should be a staff responsibility.

If the accused chooses, he may simply plead no contest, waive right to hearing, and pay the fine.

Add a section to read ---probably in section 14:

The department may delegate to any district board of health created pursuant

IRS 439, 370 or other public entity any function or authority granted to the department by sections 2 to 31, inclusive, of this act, as the department deems appropriate.

Senate Committee on Human Resources and Facilities
Hon. Keith Ashworth, Chairman
Nevada State Legislature
Carson City, Nevada 89701

Re: Senate Bills 272 and 273

March 21, 1979

Mr. Chairman, members of the committee:

My name is Ron Chadek. I reside in Pershing County and am engaged in the business of farming in the Lovelock area. I am currently the Chairman of the Board of Directors of the Lovelock Alfalfa Seed Growers Association, a member of the Lovelock Valley Weed Control District, and a pilot in the Nevada Air National Guard.

I speak today not only for myself, but for the Lovelock Growers Association, Humboldt County Seed Growers Association, Nevada Seed Council, and others involved in agriculture in our area.

The major reason for my appearance today is the proposed change to Sec. 27 NRS 444.620, which if approved, will change the exemption of "any agricultural activity" to a more restrictive definition.

There is a great deal of agricultural activity on leased land, and it appears that this will not be exempt as previously allowed. Also, other agricultural activities are in a questionable status, such as agricultural aviation which in actuality takes place in the air above land which is not owned (necessarily) by the operator.

At this time I ask for your patience as I give my views on various aspects of both Bills. I will be as brief as possible

Neither Bill defines at what point a substance becomes waste.

S.B. 272 does ~~not~~ define solid waste, S.B. 273 does ^{also} and includes "other discarded material" which seems all inclusive.

S.B. 272 & 273: "Disposal" includes emitting into the air.

S.B. 273, pg. 2, line 1: The definition of Hazardous Waste uses a non-definable term in the definition, that being "Substantial hazard to the environment". What constitutes a "Substantial hazard"?

- S.B. 273, pg. 2, lines 17-21: By eliminating return flow from irrigation subject to point source permit, does this Bill thereby include all other return flow from irrigation (ie. non-point source)?
- S.B. 272, pg.2, lines 14-17 and S.B. 273, pg. 2, lines 24-29: Both relating to treatment and what constitutes "Solid Waste Management". Are not all agricultural operators in fact Solid Waste Managers by this definition, and therefore subject to permits (S.B. 272, pg.2, lines 25-30, and S.B. 273, pg. 2, lines 39-42)? Furthermore are they not required to develop operational plans and systems of manifests? What would be the cost and what type of monitoring would be required?
- S.B. 272, pg.2, lines 31-41: The word "Knowingly" should be expanded to include the phrase "Knowingly with criminal negligence or intent," violates etc., etc. What I object to is the fact that occasionally, albeit infrequently, we in agriculture will be forced to violate this law due to circumstances beyond our foreseeable control. I specifically refer to "crop dusting" and the situation where engine failure or other unavoidable emergency necessitates the "dumping" (ie. emitting into the air) a large quantity of possibly hazardous material (which at this point becomes waste I assume), in order to save the airplane and/or pilot. A crash landing is less hazardous with no chemical aboard and the plane is more maneuverable with no load. The end result is that there will be a spill, leak, or dump in any case, either in the air or at the crash site. I think we need to be realistic and not ignore probable situations.
- S.B. 272, pg. 4, lines 13-16: Regarding fee assessment. Real property does not generate waste, people do. The fee should be assessed to the one who produces it, not the property owner.
- S.B. 272, pg. 4, lines 18-20: Why should fines go to School Districts? Why not to the County General Fund where Commissioners can decide where it is needed most. I foresee a

shortage of funds in all rural counties if [Proposition 6] becomes law.

S.B. 272, pg. 6, lines 29-36: Again I call your attention to the reason I neglect my business to be here, that being the changes affecting agriculture.

My following comments will be directed to S.B. 273.

pg. 3, lines 18&19: Interest on delinquent fees? At what point is an account delinquent and at what point is it closed?

pg. 3, lines 37-40: Requirement to maintain records, monitoring devices, etc. Gentlemen, a small farming operation must be one of the most marginal business ventures today. I request your help in keeping us from becoming overrun by mandatory record keeping and monitoring.

pg. 3, lines 44-47: How many permits will be required? One for all uses, or one for each?

pg. 4, lines 16-18: Encourages studies, surveys, investigations, experiments, demonstrations, etc. At what cost and to Whom?

pg. 4, lines 48-50: Requireing insurance? How much? I doubt seriously that anyone can set a dollar fee on protection of the environment. This appears to be a subsidy of the insurance industry which in my opinion preys on people's fear of the future. Gentlemen, I have confidence in our future together and furthermore feel that pg. 5, lines 1-5 cover all that is necessary in the way of protection.

pg. 6, lines 6-9: Again addresses manifests..

pg. 6, lines 14-18: Relating to inspection... I suggest this smacks of illegal search and I point out recent court decisions regarding O.S.H.A. and a similar situation in Idaho which was determined to be an illegal search under the Constitution!

pg. 6, lines 23-28: Regarding samples... It should be mandatory for the inspector to give duplicate samples and results to the owner/ operator without his request.

- pg. 6, lines 23-28: Again addresses search and the Constitutional question.
- pg. 6, lines 36-38: I believe the definition or description of what constitutes a "Trade Secret" should rest with the "Person" and not with the department. I doubt seriously that the inspectors will be well versed in every industry and knowledgeable enough to know what constitutes a "Trade Secret" in every case.
- pg. 7, lines 32-35: Should we EVER limit ourselves in having an order be final and not subject to review?
- pg. 8, lines 7-11: A fine of \$25,000.00 a day? Makes you wonder why anyone would want to be in business anymore.
- pg. 8, line 29: The wording "Intentionally" violates... I recall my example of an intentional but unavoidable action.
- pg.8, lines 33-40: The penalties seem very high with no review of circumstance.
- pg. 9, lines 3-6: It is my sincere belief that the \$252,000.00 (a quarter of a million dollars) could be better utilized elsewhere.

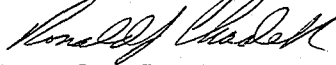
In summary, there are four major points I wish to express:

1. This legislation is an attempt to include portions of agriculture which have previously been exempt.
2. It is special interest legislation with indisputable benefits included for School Districts (which in my opinion already get more than their fair share of available funds), and the insurance industry.
3. It is exceptionally expensive in terms of penalties and initial funding, not to mention the unknown fee structures.
4. It makes no provision for the "reasonable and prudent man" aspect of law, nor for "usual and best practices under available technology", nor for review of circumstance.

Gentlemen, I strongly oppose this Legislation for the reasons I have stated.

I would like to thank you for the opportunity you have given me to express my/our opinions on this important question.

Respectfully submitted,


Ronald J. Chadek

AMENDMENT TO NEVADA SENATE BILL NO. 273

Amendment No. 1

On Page 2, Line 7, of the printed bill, after "means", insert, "but exclude groundwater or surface water runoff which collects and settles in underground utility vaults or manholes."

Amendment No. 2

On Page 2, Line 19, after "irrigation," insert, "or any groundwater or surface water runoff which collects and settles in underground utility vaults or manholes, or"

WASHOE COUNTY*"To Protect and To Serve"*

WELLS AVE. AT NINTH ST.
 POST OFFICE BOX 11130
 RENO, NEVADA 89520
 PHONE: (702) 785-4290

DISTRICT HEALTH DEPARTMENT

March 20, 1979

Senator Keith Ashworth
 Chairman, Human Resources & Facilities
 Nevada State Senate
 Legislative Building
 Carson City, Nevada 89710

Re: S.B. 272 and S.B. 273

Dear Senator Ashworth:

If NRS is to be revised relating to the handling and disposal of solid waste as so indicated in S.B.-272 it is recommended that the enclosed revision be made.

Senate Bill 273, as drafted, does not permit any local control of hazardous waste. Therefore, it is requested that a new subsection 6 be added on page 4, line 24, to read:

6. Delegate to the governing body of any municipality or district board of health any function or authority granted to the department by sections 2 to 31, inclusive, of this act as the department deems appropriate.

Sincerely,


 Howard Clodfelter
 Administrator

HC:co

cc: Senator Neal
 Senator Blakemore
 Senator Faiss
 Senator Kosinski
 Senator Young

SB 272

PAGE 2 Line 3

Insert Subsection 3

3. Such wastes include those which are toxic, corrosive, ignitable, irritant, strongly sensitizing, persistent, capable of being assimilated or concentrated in tissue, or which generates pressure through decomposition, heat or other means.

Page 3 Line 12 444.470

"Municipality" means: district, district board of health,
or other public body - - - etc.

Page 3 Line 22 444.490

"Solid Waste" means: garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, including but not limited to garbage, rubbish, junk vehicles, ashes or incinerator residue, street refuse, dead animals, demolition waste, construction waste solid or semisolid commercial and industrial waste and hazardous waste, including explosives, pathological waste, chemical waste, and herbicide or pesticide waste; but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, or any industrial discharge which is a point source subject to a permit under the Nevada Water Pollution Control Law or 33 U.S.C. paragraph 1342,

or radioactive materials regulated by the health division or any source, special nuclear or byproduct material as these terms are defined in 42 U.S.C. paragraph 2014.

Page 3 Line 36

444.510 1. The governing body of every municipality or of every district board of health - - - etc.

Page 4 Line 9

444.520 - the governing body of any municipality or of any district board of health may, by ordinance, or regulation, provide for - - - etc.

"The governing body of a municipality or of any district board of health providing for the management of solid waste within its boundaries shall, by ordinance or regulation (establish regulations for) provide for that management. The ordinance or regulations (must conform to) shall be as strict or stricter than any regulations adopted by the state environmental commission - - - etc.

Page 4 Line 34

444.550 - the governing body of any municipality or of any district board of health may contract - - - etc.

Page 4 Line 50

- - - governing body of each municipality and of each district board of health in this state.

Page 5 Line 24 Subsection 4

"Jointly, with (elected officials serving in local units of government having a general purpose) governing bodies of municipalities and of district boards of health develop a state plan for solid waste management."

Page 5 Line 44 Insert Subsection 2

any person who violates any ordinance or any regulation adopted by the governing body of any municipality or of any district board of health created pursuant to NRS 439.370 is guilty of a misdemeanor.

Page 7 Line 7 Insert Subsection 4

4. All health officers and their designated deputies shall have the authority to issue misdemeanor citations before a court of competent jurisdiction for violations of NRS 444.450 to 444.590, inclusive, of this act and all lawful rules, orders, and regulations adopted pursuant thereto.

PAGE 4 Line 24 Insert Subsection 6

6. Delegate to the governing body of any municipality or district board of health any function or authority granted to the department by sections 2 to 31, inclusive, of this act as the department deems appropriate.

WASHOE COUNTY

"To Protect and To Serve"

DISTRICT HEALTH DEPARTMENT

WELLS AVE. AT NINTH ST.
 POST OFFICE BOX 11130
 RENO, NEVADA 89520
 PHONE: (702) 785-4290

March 9, 1979

MAR 12 1979

Senator Keith Ashworth, Chairman
 Committee on Human Resources
 Nevada State Senate
 Legislative Building
 Carson City, Nevada 89710

Re: S.B. 272 and S.B. 273

Dear Senator Ashworth:

This Department has only recently had the opportunity to review the referenced draft legislation which deal with solid waste and hazardous waste management. While the intent of the draft legislation is admirable and would expand efforts at public protection throughout the State, this Department cannot support the legislation as presently worded.

In the case of S.B. 272, the proposed legislation would remove a significant portion of both the authority and activities of the Washoe County District Board of Health in solid waste management. The District Board of Health was designated in 1975 as the authority for solid waste management in Washoe County. An extensive Solid Waste Management Plan was prepared and subsequently approved by the District Board of Health, the City Councils of Reno and Sparks and the Washoe County Board of County Commissioners. Enforcement regulations, as part of the implementation of that approved Solid Waste Management Plan, were adopted in September, 1977. The Washoe County District Board of Health, therefore, has a history of an aggressive and comprehensive solid waste management effort which has been acceptable to and supported by local elected officials. Although there appears to be some inconsistency in the wording of amendments and deletions, S.B. 272 would apparently substantially reduce the effectiveness of local activities and control which is unacceptable to this Department.

Senate Bill 273, which addresses Hazardous Waste Management, completely ignores the existence and capabilities of the District Boards of Health and local efforts. The Washoe County Solid Waste Management Plan and regulations noted above address, in detail, Hazardous Waste Management. The contingency plans and coordination of local agency response to hazardous waste incidents in Washoe County since implementation of the program have been excellent. There is an acceptable history and experience

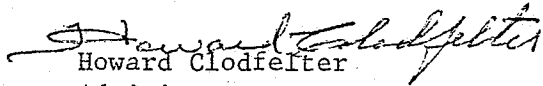
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Senator Keith Ashworth
March 9, 1979
Page Two

by local officials which should not be ignored. Further, if there is to be an appropriation of funds for these efforts, formulae for distribution of those funds to participants, including local officials, should be spelled out. Consequently, we cannot support the legislation as proposed.

We would very much appreciate the opportunity to provide the Committee with specific details and suggested wording alternatives during testimony before the Committee on March 19, 1979.

Your attention to this matter is greatly appreciated.

Sincerely,


Howard Clodfelter
Administrator

MF:co

cc: Senator Richard E. Blakemore
Senator Wilbur Faiss
Senator James N. Kosinski
Senator Joe Neal
Senator Clifton C. Young
R.W. McDonald
F.W. Farr
Ron Player



EXHIBIT "H"

STATE OF NEVADA
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
DIVISION OF ENVIRONMENTAL PROTECTION

CAPITOL COMPLEX
CARSON CITY, NEVADA 89710

March 23, 1979

TELEPHONE (702) 885-4670

MAR 23 1979

Senator Keith Ashworth, Chairman
Human Resources and Facilities Committee
Nevada State Legislature
Legislative Building
Carson City, Nevada 89710

Dear Senator Ashworth:

During the hearing on Senate Bills 272 and 273 on April 21, 1979, Senator Kosinski inquired as to magnitude of the problem with hazard wastes in the State and if we were faced with any situations which would require immediate action.

Accompanying this letter are copies of a report prepared by this Division which summarizes the Federal Resource Conservation and Recovery Act and on pages 7 and 8 gives a rough estimate of the magnitude of the current waste disposal problems in Nevada. As indicated in the report the estimate for wastes generated in the State are from a 1975 survey but you could assume they have risen proportional to the population or by about 15%.

We are not faced with any situations which pose an immediate threat to the public welfare. There are some minor problems involving improper storage of herbicide and pesticide containers, improper disposal of hazardous and biological wastes, and disposal sewage sludge especially in the Reno area, but these can be handled under existing authorities.

I have also enclosed copies of two pages from the U.S. EPA's budget proposal for FY 80 which presents their evaluation of the current status of the Hazardous Waste program. Also enclosed is a copy of some correspondence generated by EPA's Region VIII (Denver) Office which you may find of interest.

Sincerely,

A handwritten signature in cursive script, appearing to read "E.G. Gregory".

E.G. Gregory, Administrator
Division of Environmental Protection

kc
Encl.
cc: Roland Westergard

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

EXHIBIT H

DATE: 8 5 MAY 1978

30W-LEL 5-2-3006

JK
JE
ST
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T
FE
S

SUBJECT: Option to Consider when a State Turns Down Section 3006 of Resource Conservation and Recovery Act (Public Law 94-580)

FROM: Alfred Lindsey, Chief Implementation Branch HWMD (WH-565)

Alfred Lindsey

RECEIVED
MAR 05 1979
Environment

TO: All Regional Solid Waste Representatives

Attached is a copy of a letter which was sent by the Region VII Solid Waste Section to nearly every segment of the Hazardous Waste Industry in Wyoming. The letter served to apprise industry of the decision by the State Legislative Budget Committee, to reject increasing the required funding and resources needed to handle the Hazardous Waste Program in Wyoming.

As a result of the letter, the hazardous waste industry lobbied the State Legislature to overturn the decision of the Wyoming Legislative Budget Committee. It now appears that Wyoming will be one of the States to request Interim Authorization.

The Regional Office found that the letter effected a measure of success in Wyoming. I feel that while the same letter may not be appropriate for every State lacking interest in seeking Section 3006 authorization something similar to this letter might be useful when a State finally does turn us down.

You may wish to discuss your thoughts and other ideas concerning this letter with Ernie Pappajohn when he visits the Regional Offices in the near future. Part of Ernie's function will be to provide cross fertilization of ideas such as this from Region to Region. Perhaps a monthly newsletter such as the PCB Monthly Facility Approval Newsletter would be useful in the State acceptance area?

cc: J.P. Lehman
A.W. Lindsey
S. Morekas
D. Derkics
E. Pappajohn
Appropriate Regional Division
Appropriate Regional Branch Chiefs



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII
1860 LINCOLN STREET
DENVER, COLORADO 80203

February 27, 1978

REF: 8AH-WM

Larry Meredith
Wyoming Trucking Association
Box 1909
Casper, WY 82601

Dear Mr. Meredith:

This letter is to inform you of some upcoming Federal regulations and some current State actions which may effect your members.

The Resource Conservation and Recovery Act (RCRA) was passed in October, 1976 to provide a regulatory program in the area of hazardous waste management and other areas of solid waste management.

Subtitle C of RCRA provides for the regulation of activities in which hazardous wastes (defined in Section 3001) are generated (Section 3002), transported (Section 3003), and treated, stored, or disposed (Section 3004). A permit program is also established by regulation for treatment, storage, and disposal facilities (Section 3005). The intent of Congress was that states be authorized by the Environmental Protection Agency, (EPA) (Section 3006) to conduct hazardous waste regulatory programs with partial planning and implementation monies provided by the Federal Government. Hazardous waste programs not run by the state will be run by the EPA Regional office.

State authorization can be of two types, "full and interim". "Full authorization" is a program equivalent to the Federal program, whereas, "interim authorization" is substantially equivalent and allows the states to run a hazardous waste program for up to two years on existing state authority, or until they upgrade state legislation, regulations, and resources to gain full authorization. The hazardous waste regulatory program will go into effect six months after final publication of Section 3001 of RCRA (scheduled to be published this summer) resulting in either a full Federal program or an interim state program.

The Wyoming Legislative Budget Committee recently rejected a request by the Department of Environmental Quality for an increase in State funding and manpower. The Committee imposed a hiring freeze and restricted total spending to \$60,000 even though Federal monies are available for personnel and operation of a State solid and hazardous waste program in excess of this amount. In light of these developments, it appears that unless the State Legislature overturns the Budget Committee action, EPA will be running a full hazardous waste program in Wyoming late this year or early next year. We are interested in establishing a good communication link with your Association since all indications are that we will be directly involved in regulating the entire hazardous waste industry in the State in the near future.

If you have any questions on approaching activities or need information please contact Charles Porter, Solid Waste Program Supervisor, Wyoming Department of Environmental Quality, State Office Building, 1st, Cheyenne, Wyoming 82002, number (307) 777-7752 or myself at (303) 837-2221.

Sincerely yours,

Henry C. Schroeder, Ph.D.
Solid Waste Section

Enclosures

cc: Charles Porter

ENVIRONMENTAL PROTECTION AGENCY

JUSTIFICATION OF APPROPRIATION ESTIMATES FOR
COMMITTEE ON APPROPRIATIONS, FISCAL YEAR 1980

The Resource Conservation and Recovery Act of 1976 (RCRA) established a national program designed to protect public health and the environment from the damages caused by improper waste management practices, and to encourage resource conservation and recovery. The Act mandates a national program to control hazardous wastes from the point of generation to ultimate disposal. This "cradle-to-grave" control will be achieved through Federal standards for hazardous waste generators, transporters, and treatment, storage and disposal facilities; a nationwide manifest system to track the movement of hazardous wastes; permits to new and existing treatment, storage, and disposal facilities; and enforcement of these Federal requirements. While RCRA provides for and encourages authorization of States to operate the hazardous waste regulatory program, it also requires that EPA operate the program for those States that do not seek or are unable to obtain authorization.

The enforcement provisions of the Resource Conservation and Recovery Act (RCRA) center upon the administrative support of permit issuance, and upon compliance monitoring activities in those States which do not assume responsibility for hazardous waste management. The enforcement program is also responsible for developing the enforcement provisions of regulations implementing RCRA. Hazardous waste generators and transporters must observe certain operational requirements, including recordkeeping, reporting, containerization, and proper manifesting and disposal. Permits from EPA or the States must be procured by all hazardous waste facilities in order to operate legally.

Because the Congress realized that a nationwide solid waste program demands a balanced investment, the Act also sets forth a program for State management of nonhazardous solid wastes. States are to complete comprehensive solid waste management plans which provide a mechanism to ensure the closure or upgrading of existing open dumps; prohibit the establishment of new open dumps; and provide for environmentally sound disposal or recovery for all solid wastes. The Act also requires an inventory, which will be conducted by the States, of all disposal sites to determine whether they should be classified as open dumps or sanitary landfills. This determination will be made for over 100,000 sites based on the criteria established under Section 4004 of RCRA, defining what constitutes a sanitary landfill.

RCRA is to be implemented primarily by the States. The Subtitle C (hazardous waste) program will be operated and enforced by the Federal Government only when a State does not receive authorization. Subtitle D (nonhazardous solid waste) encourages the States to develop nonhazardous waste regulatory programs, but does not mandate a Federal program where States do not wish to operate their own. Nor is there Federal enforcement authority for Subtitle D.

Financial and technical assistance are provided to assist the States in their efforts. Assistance is provided in all areas of solid waste management to Federal, State, and local agencies through Technical Assistance Panels composed of expert contractors, EPA employees, and other experienced public officials. Grants to States are awarded annually for the development and operation of State solid and hazardous waste management programs.

Pursuant to the statute, the major solid and hazardous waste management regulations were to be promulgated 18 months after RCRA's enactment, in April 1978. The task of meeting this ambitious schedule has been complicated by the paucity of technical and economic data and the substantial number of complex and controversial issues to be resolved. The State of Illinois, three environmental groups, and a solid waste trade association sued EPA for failure to meet statutory dates for promulgating these regulations. A court order established a schedule for promulgation, calling for all major regulations to be promulgated by January 31, 1980.

In spite of this delay, progress has been made toward implementing the requirements of RCRA. Major regulations proposed under Subtitle C include criteria for defining a hazardous waste; standards for generators and transporters of hazardous waste; standards for hazardous waste treatment, storage and disposal facilities; procedures for notification of hazardous waste activities; and guidelines for the development of State hazardous waste programs. Under Subtitle D, criteria for the classification of sanitary landfills and guidelines for the development of State plans have been proposed. Grant regulations under both Subtitles C and D have also been proposed.

In anticipation of the promulgation of hazardous waste regulations, some States have begun to implement or upgrade their hazardous waste programs. Several States have legislation and regulations comparable to RCRA and expected Federal regulations, and some States already operate hazardous waste management programs.

By early 1980, most of the major regulations under RCRA are expected to be promulgated and the headquarters program will begin to move into an implementation phase. Major activities in 1980 will be to develop program guidance for implementing the requirements of Subtitle C, to provide technical support for the litigation expected after the regulations are promulgated, and to begin developing guidance and guidelines for specific industries and specific wastes under Sections 3004 and 1008 of RCRA.

The regional offices will continue to work with the States to help them develop, strengthen and implement State programs under both Subtitles C and D. A substantial increase in positions for the regional hazardous waste program will allow for much greater support for the States, which is essential in helping them to develop the capabilities necessary for authorization to operate a State hazardous waste management program. EPA must operate a Federal program for those States that do not seek or are denied authorization. The regions will also be greatly involved in providing technical guidance for preventing hazardous situations and for remedial actions to clean up hazardous waste sites. Response to hazardous waste emergencies will continue to be a top priority.

The prime responsibility of the solid waste enforcement program is to investigate emergencies involving substantial threats to public health and safety to determine the appropriate legal actions required. Additionally, in 1980, enforcement policy will be developed on regional oversight of authorized States and on regional enforcement programs in States without authorization. Initiation of the oversight function or regional enforcement activities, depending upon the status of each State, will be put into operation. Cooperative enforcement agreements with States and Federal agencies will be negotiated and implemented.

Fiscal Year 1980 will be the first year of a 2-year period for interim authorization of State hazardous waste programs. States will be upgrading their programs in order to qualify for full authorization. EPA expects that approximately 41 States will seek and obtain interim or full authorization in 1980. Under Subtitle D, grants will be used to support the disposal site inventory and development of State regulatory programs for non-hazardous waste. As the States become better able to implement and manage nonhazardous waste regulatory programs, the Federal role in this area will decline. A 5-year phase-down of the Federal role will begin in 1980.

Under the President's Urban Policy, a program of grants to local communities for planning and implementation of resource recovery projects was instituted. The first grants (totalling \$15 million) under this program will be awarded in 1979, and additional grants of almost \$14 million will be awarded in 1980.

Research and development activities will continue to focus on the technology and techniques which can contribute to effective and economical disposal practices for solid and hazardous wastes. The approach will address such areas as the various ways in which waste is disposed on land, ways in which past practices that pose problems can be remedied, and ways in which useful resources can be recycled from waste material. The approach also calls for assessing the environmental implications of specific industrial operations and contributing to the solution of problems identified. Basic considerations in the overall program will continue to include the economics of applying those technologies and effective techniques which are available and likely to be adopted.

SW-3

STATE OF NEVADA
HAZARDOUS WASTE MANAGEMENT LAW
1979



PREPARED BY
THE
DIVISION OF ENVIRONMENTAL PROTECTION
DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES
CARSON CITY

INTRODUCTION

THIS DOCUMENT DESCRIBES THE PURPOSE AND NEED FOR THE NEVADA HAZARDOUS WASTE LAW. IT INCLUDES A BRIEF SUMMARY OF THE FEDERAL ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (P.L. 94-580), AND THE REQUIREMENTS THE STATE HAZARDOUS WASTE MANAGEMENT PROGRAM MUST MEET.

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THE RESOURCE CONSERVATION
AND RECOVERY ACT

Public Law 94-580, 94th Congress, S329, October 21, 1976, 71 Stat. 3101. This law is far reaching and has a considerable effect on hazardous waste generators, transporters, and owners and operators of hazardous waste treatment, storage, and disposal facilities. The Federal regulations shall take effect on the date six months after the date of promulgation. Promulgation is expected by December 1980.

THE ACT:

- . Sets uniform regulations throughout the country and provides for strong penalties for violations.
- . Is designed to have each State assume responsibility for its hazardous waste and encourages it to do so.
- . Provides aid to States for purposes of assisting in the development and implementation of authorized State hazardous waste programs.
- . Finally, leaves to each State the option of primacy in supervision and enforcement of the Act and regulations within its boundaries; or, if a state does not choose to do so, requires the EPA to administer and enforce the Act in that state.

BACKGROUND:

The United States in recent years has begun to come to grips with the problems of air and water pollution, but the land remains relatively unprotected from many hazardous discards. As the laws enacted to control air and water pollution are implemented, the pressures on the land are increasing. Many hazardous materials once emitted into the air or dumped in our rivers, lakes, and oceans are winding up on the land. Unless adequately controlled, these substances can eventually get into the air or water nevertheless; or they can continue indefinitely on land, still hazardous, but often forgotten and unsuspected.

Foreseeing the assault on the land, Congress wrote into the Solid Waste Disposal Act as amended by the Resource Conservation and

Recovery Act of 1970 (PL 91-512) a requirement that the U.S. Environmental Protection Agency prepare a comprehensive report to Congress on storage and disposal of hazardous waste.

The EPA report to Congress in 1973, presented some eye opening conclusions. It stated that:

- . The management of the Nation's hazardous residues (toxic, chemical, biological, radioactive, flammable, and explosive waste) is generally inadequate; numerous case studies demonstrate that public health and welfare are unnecessarily threatened by the uncontrolled discharge of such waste materials into the environment.
- . Based on surveys conducted during this program, it is estimated that the generation of non-radioactive hazardous wastes is taking place at the rate of approximately 10 million tons yearly.
- . Hazardous waste disposal to the land is increasing as a result of air and water pollution controls and prohibited heretofore accepted methods of disposal such as ocean dumping.
- . Current expenditures by generators for treatment and disposal of such wastes are low relative to what is required for adequate treatment or disposal.
- . Federal, State and local legislation and regulation dealing with the treatment and disposal of non-radioactive hazardous waste are generally spotty or nonexistent.
- . Technology is available to treat most hazardous waste streams by physical, chemical, thermal and biological methods, and for disposal of residues.
- . Adequate treatment, storage and disposal facilities are essential for properly managing hazardous waste.

A regulatory approach is best for the achievement of hazardous waste management objectives.

Due to the above startling conclusions, the U.S. Environmental Protection Agency proposed legislation to the 93rd Congress which was intended to fulfill the purpose of Section 212 of the Solid Waste Disposal Act as amended. This legislation was titled the "Hazardous Waste Management Act of 1973".

The forerunner of the current law which included the Hazardous Waste Act of 1973 was introduced in May 1974. Extensive hearings on the measure were held that year, and the Committee on Public Works held preliminary meetings in late 1974 to make up the legislation. Senators Hart and Jennings introduced S2150 in July 1975 as a bill which incorporated in the Committee's earlier tentative decisions and the refinement recommended by many interested parties. The final version of the bill, accommodating the House and Senate approaches, was prepared during the last week of the session and cleared the Congress on September 30, 1976. It was signed into law on October 21, 1976.

HAZARDOUS WASTE OBJECTIVE OF THE ACT

One objective of the Resource Conservation and recovery Act is to promote the protection of health and the environment and to conserve valuable material, and energy resources by regulating the treatment, storage, transportation and disposal of hazardous waste which have adverse effects on health and the environment.

ENVIRONMENTAL PROTECTION AGENCY INVOLVEMENT

The Resource Conservation and Recovery Act requires the EPA to provide for:

- . Setting of national regulations to assure that all hazardous waste generators, transporters, storers or disposers meet certain minimum standards, and
- . Administration and enforcement of the Act if states do not seek primacy.

NATIONAL HAZARDOUS WASTE REGULATIONS

Subtitle C of the Resource Conservation and Recovery Act creates a management control system which for those wastes defined as hazardous, requires "cradle to grave" cognizance, including appropriate monitoring, recordkeeping, and reporting throughout the system. Section 3001 requires EPA to define

the criteria and methods for identifying and listing hazardous wastes. Those wastes which are identified as hazardous are then included in the management control system constructed under Sections 3002-3006 and 3010.

Section 3002 addresses standards applicable to generators. Regulations under this section describe the classes of generators for whom some requirements may vary; for example, EPA does not interpret the intent of Congress to include regulation of individual homeowners due to the small quantities of hazardous wastes which they may generate. Section 3002 also requires the creation of a manifest system which will track wastes from the point of generation to their ultimate disposal.

Section 3003 addresses standards applicable to transporters of hazardous wastes to assure that wastes are carefully managed during the transport phase. EPA is exploring opportunities for coordination with current and proposed Department of Transportation regulations to avoid duplication in this area.

Section 3004 addresses standards affecting owners and operators of hazardous waste storage, treatment, and disposal facilities. These standards define the levels of environmental protection to be achieved by these facilities and provide the criteria against which EPA (or State) officials will measure applications for permits. Facilities on a generator's property as well as off-site facilities are covered by these regulations and will require permits. Generators and transporters who do not treat, store, or dispose of hazardous wastes do not need permits.

Section 3005 regulations address the scope and coverage of the actual permit granting process for facility owners and operators. Requirements for the permit application as well as for the issuance and revocation process are defined by these regulations.

Section 3006 requires EPA to issue guidelines for State programs and procedures by which State may seek both full and interim authorization to carry out the hazardous waste program in lieu of the EPA-administered program.

Section 3010 regulations define procedures by which any person generating, transporting, owning or operating a facility for storage, treatment, and disposal of hazardous wastes must notify EPA of this activity within 90 days of promulgation of regulations defining a hazardous waste. There are provisions for States to be delegated this function upon application to EPA.

CONGRESS INTENDED STATES
BE RESPONSIBLE

It was the intention of Congress that each state develop and implement an authorized hazardous waste management program in lieu of the Federal program.

FEDERAL SUPPORT

EPA is to provide assistance in establishing and administering hazardous wastes supervision programs. Direct grants will be made to States that:

- . Have EPA approved programs for the regulation of hazardous waste management,
- . Have established or will establish a hazardous waste supervision program, and
- . Have assumed primary responsibility for enforcement of regulations for hazardous waste management in their State.

A funding formula has been established based on the population of the State, land area of the State, amount of hazardous wastes generated in the State and number of generators in the State. Initial allotments were based on:

- . Ratio of the State's population to the U.S. population - 40%,
- . Ratio of State's hazardous waste generators to number of hazardous waste generators in the U.S. - 15%,
- . Ratio of State land area to U.S. area - 5%, and

Ratio of State's hazardous waste generation to hazardous waste generation in the U.S.
- 40%.

In addition, no State is to receive less than one-half of one percent of the sums available. The Federal share of the hazardous waste program development and implementation shall not exceed:

For fiscal years 1979, 1980 and 1981, 100% of the allowable work program costs of development of a fully authorized hazardous waste program and 75 percent of all other work program costs, and

For fiscal year 1982 and subsequent fiscal years, 75% of the allowable work program development.

The authorization to be appropriated to carry out the Act's grant provisions was \$25 million for FY78 and \$25 million for FY79. In FY79 the State of Nevada received a \$75,000 Hazardous Waste Grant from appropriated money.

Additional Federal legislation is required to provide for appropriation authorizations beyond September 30, 1979.

EXEMPTIONS

Individual homeowners as well as small generators (those who generate less than 100 kilograms/mo.) are exempted from the Resource Conservation and Recovery Act.

ADDITIONAL PROVISIONS OF THE ACT

In order for EPA and State officials to enforce the Act, Section 3007 authorizes them to inspect facilities, copy records, and obtain samples when necessary. Any records, reports or information obtained under this Section shall be available to the public except that which would divulge information entitled to protection under Section 1905 of Title 18 of the United States Code.

Section 3008 addresses Federal enforcement regulations. Compliance provisions of the law will be enforced through civil and criminal penalties. Civil actions will be commenced in Federal courts for violations extending beyond 30 days for notification

and violators will be liable for a penalty of \$25,000 for each day of continued non-compliance. Criminal penalties may be imposed for transporting hazardous wastes without a permit or making falsifications in labeling and reporting. Penalties of \$25,000 per day or imprisonment for not more than one year are authorized.

Section 3009 regulations require that States may not provide for penalties less than those provided in the Act.

Section 3011 authorizes \$25,000,000 for each of the fiscal years 1978 and 1979 to be used to make grants to States for purposes of assisting the development and implementation of an authorized State hazardous waste program.

NEVADA'S CURRENT
HAZARDOUS WASTE
GENERATION AND
DISPOSAL

In 1975 the Division of Environmental Protection of the Department of Conservation and Natural Resources and Clark and Washoe County Health Departments conducted a hazardous waste survey. The objectives of the survey were as follows:

- . Determine sources of hazardous wastes generated,
- . Determine quantities of hazardous waste generation,
- . Determine current handling and disposal of hazardous waste generation and disposal,
- . Recommend procedures for collection, handling and disposal of hazardous waste, and
- . Recommend criteria or standards for the regulation of hazardous waste.

The 1975 Hazardous Waste Survey concluded that in Nevada:

- . Approximately 79,470 tons of organic chemical waste are produced per year.
- . Approximately 1,866,000 tons of inorganic chemical wastes are produced per year.
- . Approximately 81 tons of pathological wastes are produced per year.

- . General handling and disposal of hazardous waste is inadequate and poses a real and present danger to the general public and to individuals involved directly with collection, handling and disposal of these wastes.
- . Hazardous wastes must be classified according to their degree of potential hazard to the public health and the environment.
- . In conjunction with the classification of hazardous waste, a strict reporting procedure must be established. This should include the control of the generation, handling, collection and disposal of hazardous wastes.
- . A new facility for the disposal of hazardous wastes should be considered in northern Nevada for the proper disposal of these wastes.

Currently there is only one off-site hazardous waste management facility in the State. This facility is owned by the State, but leased to Nuclear Engineering Company Inc., Louisville, Kentucky for operation. In 1978, 46,734 cubic feet of hazardous wastes were disposed of at this site. Only 8,514 cubic feet of hazardous waste originated from within the State.

**ACTIONS NEEDED
FOR FULL
AUTHORIZATION**

Nevada does not have the choice of whether or not the Resource Conservation and Recovery Act and regulations will apply to its hazardous waste systems; that is already a Federal mandate. Nevada does have a choice of whether to be responsible for enforcement of the regulations or whether to leave the enforcement to EPA.

If Nevada wishes to seek full authorization responsibility, it must:

- . Demonstrate legislative authority to provide the following program components: regulations governing hazardous waste treatment, storage and disposal facilities, including the keeping of records, and submittal of reports and the establishment of monitoring practices; control of the treatment storage and disposal of hazardous waste through a permit system; a waste tracking system; the power to conduct inspections and sampling; the power to institute enforcement proceedings against violators

- . Demonstrate the "consistency" of its program with the Federal program, and
- . Demonstrate that enforcement provisions of the State program are adequate and that the State is able to administer and enforce its program successfully.

None of these requirements can be met under the existing State solid waste law. The proposed 1979 Hazardous Waste Management Law contains the necessary components to achieve full authorization. If the proposed law is enacted by the 1979 State Legislature, then Nevada would be eligible for full authorization. If the proposed law is not enacted, EPA will assume primary enforcement responsibility of its regulations with respect to Nevada's hazardous waste management systems.

NEVADA PROGRAM
REQUIREMENTS

EPA has specified the elements necessary in a State program, if a State wants primary responsibility and wants to be eligible for State grants under the Resource Conservation and Recovery Act. A State program must include the following:

- . Administration and Program Development Planning

Develop/coordinate activities for a hazardous waste management system supervisory program, including general program direction, staffing and budget; development and evaluation of basic hazardous waste management legislation, regulations, policies and public information.

- . Permit Mechanism

Develop/implement regulations and procedures for permit issuance, denial, modification, revocation, suspension and renewal; receive and evaluate permit applications and negotiate and issue permits; modify permits and provide assistance to applicants.

- . Surveillance and Enforcement

Develop/implement facility and waste selection, inspection and monitoring procedures; publish sampling and analysis requirements, methods and parameters; develop/secure analytical capability; develop/implement reporting requirements and report management

systems; develop/implement enforcement programs including negotiations, non-compliance screening, complaint processing, and notification and prosecution of violators.

Public Participation

Develop/implement programs to encourage informed public involvement in the planning and conduct of the State hazardous waste management program.

Manifest System

Develop/implement a State manifest system; coordinate interagency jurisdictional issues; review manifests for non-compliance and report to EPA.

Technical Assistance

Provide assistance to those who generate, transport, store or dispose of hazardous waste on regulatory requirements as well as technological advancements.

Licensing/Registration of Hazardous Waste Transporters

Develop/implement regulations for such a system; coordinate interagency jurisdictional issues; develop/implement procedures for license or registration issuance, denial modification, revocation, suspension, and renewal; provide assistance to license/registration applicants; review, evaluate, negotiate, and modify licenses as required.

Emergency Response System

Assess need for such a system; coordinate interagency jurisdictional issues and identify/assign responsibilities; develop/implement an emergency response plan; if necessary, recruit staff and provide training.

Data Management

Develop/implement a data management program to maintain essential records as required by EPA including permits, manifests, licenses and an inventory of all hazardous waste generators, transporters, storers and disposers.

The Division of Environmental Protection administers the State's requirements pertaining to hazardous waste. The current State requirements and staffing are deficient in meeting EPA regulations and requirements.

Nevada's Law and most of its regulation requirements need to be as stringent as those promulgated by EPA, if it is to obtain enforcement authority. Additional staffing and expenditures are necessary to meet these requirements.

STAFFING NEEDS

The Division of Environmental Protection of the Department of Conservation and Natural Resources currently has the equivalent of 2.5 people allocated to the State's hazardous waste supervision program. The minimum staff required to implement and supervise the existing and additional requirements is estimated to be 4.3 people.

FUNDING NEEDS

Funds currently utilized for the State's hazardous waste activities are \$75,000 from a Federal assistance grant. The minimum funds necessary for the Act and regulatory requirements are estimated to be \$126,000 in Federal Fiscal Year 1980 (October 1979 through September 1980). At the current time (January 1979) it is anticipated that Federal legislation will be enacted to extend grant funding under the Act, Public Law 94-580, which will now expire September 30, 1979. It is expected at least \$75,000 of Federal grant funds will be available annually to aid in paying for Nevada's increased costs. Legislation that is proposed (Hazardous Waste Management Law) to enable the State to seek the primary enforcement responsibility of the Act, includes a State funding authorization of \$51,000 annually to additionally offset the increased cost of the Act and regulation requirements. It has been indicated that to qualify for the Federal grant, the State, in addition to adopting a program suitable to EPA, must provide

at least 25 percent of the program funding.

The following table presents the first year's minimum budget to implement the Act and regulatory requirements. The table contains:

- . The additional staffing, operating and contract services to be provided by the State pursuant to the Hazardous Waste Management Law for meeting the Act and regulatory requirements, and their estimated additional costs, and
- . The current State staffing and the annual cost of providing services for the State's present hazardous waste supervision and program development.

If Congress does not enact an extension of the grant funding to aid in paying for their required program, the State will seek other sources of revenue or reduce its effort to the availability of funding.

For Fiscal Year 1981 the same level of funding is anticipated for continuation of implementation.

THE GREATEST
IMPACT

The Act and regulations apply to all hazardous waste systems in the State as previously defined, whether or not the State chooses to enact enforcement legislation and assume responsibility. Meeting the Act requirements will entail more effort and expenditures for each system and will have the heaviest impact on the small systems. The greatest impact the law will have is to insure that hazardous wastes are properly handled and disposed. Such wastes will not be disposed in landfills which may contaminate groundwater, or discharged to the sewers where the wastes could render the sewage treatment plant inoperative and in turn pollute surface or groundwater.

STATE OFFICIALS
ARE PREPARED

Providing safe hazardous waste management for all citizens is a primary concern of the Division of Environmental Protection. Congress has passed the necessary laws to allow individual

FORECAST STAFF AND FUNDS
FOR NEVADA'S HAZARDOUS WASTE MANAGEMENT PROGRAM

PROGRAM ELEMENT	CURRENT STATE (FY79)		ADDITIONAL STATE	
	MY	\$	MY	\$
Administration and Supervision of Program	.35	7,770	.75	16,635
Permit Mechanism	.40	9,000	.60	13,385
Surveillance and Enforcement	.25	5,600	.51	11,375
Public Participation	.18	3,950	.24	5,350
Manifest System	.32	7,200	.50	11,090
Technical Assistance	.33	7,375	.51	11,375
Licensing/Registration of Hazardous Waste Transporters	.24	5,425	.40	8,900
Emergency Response System	.32	7,040	.59	13,100
Data Management	.11	2,540	.20	4,390
<hr/>				
Subtotal	2.50		4.30	
Operating Expenses		17,400		20,700
Contract Services				
Computer Data		1,700		1,700
Laboratory Support				8,000
<hr/>				
Total	2.5	75,000	4.30	126,000

MY=MAN-YEAR

States to assume primary enforcement responsibility for implementing the conditions of the Resource Conservation and Recovery Act. It has also provided funds to assist States in their implementation efforts. The Division of Environmental Protection acknowledges its hazardous waste control responsibilities to the citizens of Nevada. It is ready to provide program services required by the Act and has prepared legislation (Hazardous Waste Management Law) to permit State environmental authorities to do so.

REFERENCES

Please refer to the Resource Conservation and Recovery Act, EPA's proposed guidelines for State Hazardous Waste Programs and the Nevada Hazardous Waste Management Law (No. 472) for more detailed information.

**WEDNESDAY, FEBRUARY 1, 1978
PART IV**



**ENVIRONMENTAL
PROTECTION
AGENCY**



**STATE HAZARDOUS
WASTE PROGRAMS**

Proposed Guidelines

**Revised
Order**

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 250]

[FRL 820-8]

STATE HAZARDOUS WASTE PROGRAMS

Proposed Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Proposed Guidelines.

SUMMARY: This rule sets out Guidelines for State hazardous waste management programs, including the substantive and procedural requirements for authorization of such State programs under the authority of Section 3006 of the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580) ("the Act"). These Guidelines also prescribe the procedures by which States may apply for authorization, the procedures by which such authorization may be withdrawn, and the procedures by which EPA proposes to exercise oversight of such State programs as may be authorized under Section 3006.

DATES: All comments received on or before April 3, 1978 will be considered by the Agency before taking action on the proposed guidelines.

HEARING: Oral or written comments may be submitted at the public hearings on these proposed guidelines. Registration for each hearing will be held between 8:30 and 9 a.m. The hearings are scheduled for: March 9, 1978 at the Bourbon Orleans Ramada Inn, 717 Orleans St., New Orleans, La.; March 14 at the Marriott Motor Hotel, 2345 Commonwealth Ave., Newton, (Suburb of Boston) Mass.; and March 16 at the Seattle Convention Center (Nisqually Room), 305 Harrison St., Seattle, Wash. Requests to participate in the public hearings should be directed to: Mrs. Gerri Wyer, Public Participation Officer, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, D.C. 20460, 202-755-9157.

ADDRESSES: Comments should be submitted to: Deputy Assistant Administrator for Solid Waste (WH-562), U.S. Environmental Protection Agency, Washington, D.C. 20460. Communications should identify the regulatory docket or notice number, which is 3006 for these proposed guidelines.

The official record for this rulemaking is located in room 2111D U.S. Environmental Protection Agency, 401 "M" St. SW., Washington, D.C. 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT:

Mr. Dan Derkics, Hazardous Waste Management Division, Office of Solid Waste (WH-565), U.S. Environmental Protection Agency, Washington, D.C. 20460, 202-755-9190.

SUPPLEMENTARY INFORMATION: Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) of 1976 (Pub. L. 94-580), creates a regulatory framework to control hazardous waste. Congress has found that such waste presents "special dangers to health and requires a greater degree of regulation than does non-hazardous solid waste" (Section 1002(b)(5)). Because of the seriousness of this waste problem, Congress intended that States develop programs to control it. In the event that a State does not choose to operate such a program, EPA is required to do so.

This rule is one of a series of seven being developed and proposed under Subtitle C to implement the hazardous waste management program. It is important to note the broad definition of solid waste (Section 1004(27)) which encompasses (with a few exceptions) garbage, refuse, sludges, and other discarded materials, including liquids, semisolids, and contained gases from both municipal and industrial sources. Hazardous wastes, which are a subset of all solid waste and will be defined by section 3001 regulations, have a particularly significant impact on public health and the environment.

Subtitle C creates a management control system which, for those wastes defined as hazardous, required "cradle-to-grave" cognizance, including appropriate monitoring, recordkeeping, and reporting throughout the system. Section 3001 requires EPA to define the criteria and methods for identifying and listing hazardous wastes. Those wastes which are identified as hazardous by these means are then included in the management control system constructed under Sections 3002-3006 and 3010. Those that are excluded will be subject to the requirements for non-hazardous solid waste being carried out by States under Subtitle D, under which open dumping is prohibited and environmentally acceptable practices are required. It is important that appropriate interconnections be established between Subtitle C and Subtitle D efforts.

Section 3002 addresses the standards applicable to generators. EPA's regulations under this section describe the classes of generators for whom some requirements may vary; for example, the Agency does not interpret the intent of Congress to include regulation of individual homeowners due to the small quantities of hazardous wastes which they may generate. Section 3002 also requires the creation of a manifest system which will track wastes from the point of generation to their ultimate disposition.

Section 3003 addresses standards affecting transporters of hazardous wastes to assure that wastes are carefully managed during the transport phase. The Agency is exploring opportunities for meshing closely with proposed and current DOT regulations to avoid duplication in this area.

Section 3004 addresses standards affecting owners and operators of hazardous waste storage, treatment, and disposal facilities. These standards define the levels of environmental protection to be achieved by these facilities and provide the criteria against which EPA (or State) officials will measure applications for permits. Facilities on a generator's property as well as off-site facilities are covered by these regulations and will require permits—generators and transporters who do not treat, store, or dispose of hazardous wastes do not need permits.

Section 3005 regulations describe the scope and coverage of the actual permit granting process for facility owners and operators. Requirements for the permit application as well as for the issuance and revocation process are defined by these regulations. Section 3005(c) provides for interim permits during the time period that the Agency or a State is reviewing the pending permit applications.

Section 3006 requires EPA to issue guidelines for State programs and procedures by which States may seek both full and interim authorization to carry out the hazardous waste program in lieu of the EPA-administered program.

Section 3010 regulations define procedures by which any person generating, transporting, owning or operating a facility for storage, treatment, and disposal of hazardous wastes must notify EPA of this activity within 90 days of promulgation of regulations defining a hazardous waste (Section 3001). EPA intends to make provision for States to be delegated this function upon application to the Administrator. It is significant to note that no hazardous waste subject to Subtitle C regulation may be legally transported, treated, stored, or disposed, nor may interim permits be issued, unless this timely notification is given to EPA or a designated State.

The Act calls for the Agency to promulgate final regulations by no later than April 1978 under all sections of Subtitle C. However, it is important for the regulated communities to understand that the regulations (Section 3001-3005) do not take effect until 6 months after promulgation (October 1978). Thus, there will be a time period after final promulgation during which public understanding of the regulations can be increased and those covered by the regulations can prepare to comply. During this same period, notifications required under Section

3010 may be submitted, and facility permit applications required under Section 3005 may be distributed for completion by applicants.

BACKGROUND OF THIS REGULATION

Section 3006(a) of the Solid Waste Disposal Act (42 U.S.C. 6926), as amended by the Resource Conservation and Recovery Act of 1976 (Pub. L. 94-580) directs the Agency to " * * * promulgate guidelines to assist States in the development of State hazardous waste programs." The proposed Guidelines have been developed in the course of considerable consultation with the States. Between March 22, 1977, and April 6, 1977, a series of six meetings was held throughout the United States at which EPA and the States discussed issues relevant to the Guidelines to be developed under Section 3006(a). Representatives from a total of 48 States participated in those meetings. A second series of meetings was held between June 23, 1977, and August 10, 1977, at which the first draft of these Guidelines was discussed with the States; a total of 47 States were represented at this second series. The proposed guidelines thus reflect the experience, comments, and opinions of State hazardous waste management people to the greatest extent possible.

Section 3006 describes two types of authorization: Section 3006(b) describes an authorization without fixed beginning dates, and of unlimited duration; while Section 3006(c) describes an "Interim" authorization " * * * for a 24-month period beginning on the date 6 months after the date required for promulgation of regulations under Sections 3002 through 3005" (April 21, 1978). These Guidelines distinguish the two by referring to the former as "full" authorization and to the latter as "interim" authorization.

The Act directs or authorizes "the Administrator" of EPA to discharge certain responsibilities and conduct certain activities with respect to hazardous waste management. The Administrator has delegated to each Regional Administrator those authorities and responsibilities related to Section 3006 in order to allow States to work with the appropriate Regional Administrator throughout the application and authorization process. The Guidelines therefore refer to the Regional Administrator in most cases; where the Guidelines refer to "the Administrator" the authority or decision referenced has not been delegated to the Regional Administrator.

MAJOR ISSUES CONSIDERED

The following discussion is presented to assist the reader in understanding the reasoning behind the development of the proposed guidelines. Only those portions of the guidelines which

generated significant discussion in the public meetings and in response to the Advance Notice of Proposed Rulemaking are discussed here.

I. Authorization (3006b).

A. Full authorization.

(1) *Equivalency.*

(a) LEGISLATIVE AUTHORITY

Several States have enacted, or are now considering, hazardous waste management legislation. The Agency does not believe that every State must necessarily do so in order to receive authorization. Where the State has other statutory authority (i.e., water pollution legislation, public health legislation, etc.) which, in the opinion of the State and of the Agency, is sufficient to allow the administration and enforcement of a State hazardous waste program "equivalent" to that of EPA, the Agency will consider this element to be satisfied.

(b) PERMIT MECHANISM

Section 3005 of the act requires anyone who owns or operates a facility which stores, treats, or disposes of hazardous wastes to have a permit. The Agency considers this requirement to be central to the administration and enforcement of the Act, and consequently believes that no State program can be "equivalent" to that of EPA without such an element. A few commenters felt that any control mechanism through which the State could achieve "equivalency in effect" should be allowed. However, EPA feels strongly that use of a document (e.g., permit or license) authorizing facility operation is necessary to achieve adequate control. The Federal legislation specifically requires that "permits" will be issued to those facilities that treat, store and dispose of hazardous waste where the Federal EPA is operating the program. Therefore, other control mechanisms, such as control by surveillance and penalty will not be acceptable for the purpose of authorizing the State program. Before these guidelines for State hazardous waste programs are promulgated, EPA will describe and resolve, or attempt to minimize, any possible overlaps between: (1) The State's issuance of permits to hazardous waste injection wells under the Underground Injection Control (UIC) program, which is administered under Part C of the Safe Drinking Water Act of 1974 (Pub. L. 93-532, 42 U.S.C. 300f, et seq.) and (2) the issuance of hazardous waste permits under the State's hazardous waste program.

(c) MANIFEST SYSTEM

Section 3002(5) of the Act requires the use of a manifest to ensure that hazardous wastes which leave the site of generation are taken only to stor-

age, treatment, or disposal facilities to which a permit has been issued. This requirement is reflected in the experience or expectations of several States which believe a manifest system to be an essential element in managing hazardous wastes, a belief which the Agency shares. The State will not be able to effectively control hazardous wastes by regulating only the treatment and disposal sites. The "cradle-to-grave" management concept, on which Subtitle C is based, includes the requirement that the regulatory agency know of the existence and movement of hazardous wastes throughout the life cycle of those wastes. This concept is intended to discourage clandestine and environmentally unsound practices. In addition, due to the substantial transportation of waste across State lines, a large majority of commenters considered a consistent or uniform manifest format to be necessary to make the entire waste tracking and control process work. This requirement may cause the few States which already have a manifest system to change their system, thus presenting some initial problems. However, the long-range benefits (i.e., simpler manifest data management) from this change will far outweigh these initial problems. Also, EPA expects to provide software and other "tools" to assist States in setting up such systems.

(d) IDENTIFICATION OF RESOURCES

In developing and implementing a State hazardous waste program, the States will need to estimate the resources needed in order to conduct a comprehensive hazardous waste management program. The Agency considers the requirement of adequate resources to be a necessity in defining an "equivalent State program" in order to properly administer and enforce the requirements of the Act. However, there was some uncertainty raised as to the way the phrase "adequate resources" should be defined in the guidelines (i.e., citing specific resources estimates or using a broad description of adequacy).

EPA believes that the guidelines should be written so as to allow the Regional Administrator the latitude necessary to assure himself that the State has the "adequate resources" to conduct the program. In this way, the individual characteristics of each State's bureaucracies and problems may be considered in evaluating its resource needs.

(2) *Consistency.* The second criterion for authorization of State programs under Section 3006(b) is that they be " * * * consistent with the Federal or State programs applicable in other States * * *". Impartiality and equity dictate that the requirements and obligations imposed upon those

who manage hazardous wastes in one State not differ significantly from those imposed in other States, to avoid a condition which could give the regulated community in any State a competitive advantage. This issue is of special concern to those who conduct their activities in more than one State, and who should not be held to differing standards in different States.

The Agency believes that States which inhibit the movement of wastes into or through their jurisdictions vitiate the hazardous waste management programs of EPA and of other States. Effective hazardous waste management requires regional solutions, often involving treatment or disposal in a State other than the one in which the waste was generated. Bans on the importation of waste into one State may spur the establishment of similar bans in other States, leading to needless duplication of treatment and disposal capacity in many States, or to a shortfall of adequate facilities in other States. Artificially high standards could discriminate against or limit the movement of hazardous waste into the State and, concurrently, artificially cause wastes to move out of the State.

In the course of developing these guidelines, six options were identified which addressed the issue of free movement of hazardous wastes with respect to authorizing States to operate and enforce a hazardous waste management program in accordance with the provisions of section 3006(b) of the Act:

(1) Authorize only those States which allow the importation of hazardous wastes to permitted treatment, storage and disposal facilities. Legislative bans or artificially high standards would disqualify States from authorization.

(2) Same as Option 1, except that States with legislative bans or artificially high standards for disposal of hazardous wastes would still be authorized, as long as hazardous wastes are allowed to be imported to permitted treatment and storage facilities.

(3) Same as Option 1, except that the imposition of artificially high standards would not disqualify States from authorization.

(4) Petition Congress for a legislative amendment to abolish State hazardous wastes importation bans altogether or at least pre-empt them in those States where EPA administers the regulatory program. (This, of course, is not an exclusive alternative.)

(5) Take no action on the hazardous waste importation ban issue.

(6) Same as Option 1, except that States with existing legislative hazardous waste importation bans or artificially high standards would be authorized for a limited number of years beyond the 2-year "interim authorization". (The termination date of the al-

lowed phase-out period is to be July 1, 1984.)

It should be emphasized that EPA is convinced that importation bans can not be permitted to multiply and that such bans must sooner or later be eliminated one way or another. EPA strongly believes that the adequate management of hazardous wastes demands the free movement of wastes to whatever facility, or site can best treat or dispose of them. Restricting the movement of hazardous wastes goes directly against this philosophy and poses a real threat to the expansion of an environmentally sound industry as well as hampers the regionalization of waste management. In addition, if EPA fails to take the position in the Guidelines to preclude a State from assuming the Federal hazardous waste program if the State has a legislative hazardous waste importation ban, it may well result in the proliferation of such bans. Depending on the approach finally taken, this may result in the disqualification from full authorization of some States, a few of which may already have some form of a hazardous waste management program.

EPA has chosen to include option number six in the text of the proposed guidelines, but recognizes the possibility of using any one of the six options or a variant of one of these options in the final promulgation of these regulations. Comments and suggestions on the six options or any other possible courses of action are especially invited. The implications involved in the final choice of an option include tradeoffs between authorizing a maximum number of States and discouraging impediments to free movement of wastes. Comments on these tradeoffs are welcome.

ADEQUATE ENFORCEMENT

The third and final criterion to be evaluated by EPA in determining which States will be fully authorized is whether such programs provide adequate enforcement. This particular criterion was considered by all commenters to be one of the most important components of the hazardous waste program, a belief which the Agency shares. However, there were some major questions raised concerning the degree of specificity that the guidelines should take (i.e., guidelines citing specific enforcement requirements as compared with guidelines providing the Agency with discretion).

As was indicated earlier, under "Identification of Resources", EPA believes that the guidelines should be written so as to allow the Regional Administrator the flexibility necessary to assure himself that the State is proposing a surveillance and enforcement program which is adequate to conduct an effective hazardous waste program. Each State has its own characteristics

and problems, which should be evaluated on a State-by-State basis, necessitating individual evaluation of the surveillance and enforcement program.

B. PARTIAL AUTHORIZATION

In some cases, States which wish to take over the full hazardous waste program will have been unable to bring all components of the State program into compliance with 3006(b). These States may have been unable to obtain passage of needed legislation, or may lack adequate resources to carry out all program responsibilities. A number of States have indicated to EPA that, under these circumstances, they would wish to obtain at least the authorization to carry out those program responsibilities for which they have authority and resources, with EPA carrying out the remaining responsibilities.

Under Section 3006(b), EPA could allow States to receive partial authorization for selected major components of a full hazardous waste program, but only if the State meets the requirements of equivalency, consistency and enforceability for each such major component. For example, a State could perform permitting, surveillance, and enforcement for off-site disposal, treatment, and storage, while EPA carried out permitting, surveillance and enforcement for on-site operations; or States could run a permit program for all treatment, storage, and disposal facilities, both off-site and on-site, while EPA conducted the manifest system, etc.

However, there are problems with partial authorization. First, the regulated community has strenuously contended that a single entity should carry out the entire program in a given State, arguing that a sharing of responsibility would result in confusion and duplication of effort for the agencies, and greatly increased complexity for regulated firms. Second, the availability of partial authorization could encourage some States, although capable of qualifying for full authorization, to take over only selected program elements, leaving EPA with the most "controversial" and expensive segments and actually increasing the burden on the resources of the Regional Offices. Third, the delineation of responsibilities between the Region and the State would undoubtedly be a lengthy and difficult process. Finally, the existence of partial authorization could remove some of the incentive for strenuous State efforts toward full authorization.

Although these arguments against allowing States to apply for partial authorization are strong, EPA proposes to allow States to apply for partial authorization to allow as many States as possible to participate in the implementation of the hazardous waste pro-

gram. However, the availability of partial authorization will be limited. States will be permitted to apply for partial authorization only if State legislative authority does not exist for certain program components. The decision on granting partial authorization will rest with the Regional Office, in the course of its examination of the State's eligibility for full authorization under 3006(b). In all cases, the State and EPA hazardous waste programs, when taken together, must meet the substantive and procedural requirements of a fully authorized hazardous waste program.

II. INTERIM AUTHORIZATION 3006(c)

The Agency shall, if evidence submitted indicates that the State has a hazardous waste program "in existence" pursuant to State law by July 20, 1978 and the State program is substantially equivalent to the Federal program under Subtitle C, grant an interim authorization to the State to carry out such program in lieu of the Federal program for a 24-month period beginning on October 21, 1978. However, a State may only apply for interim authorization over a specified time period (July 20, 1978, to October 20, 1978) and may only operate the hazardous waste program, under interim authority, during the definite calendar period between October 21, 1978, through October 20, 1980.

(1) *Substantially equivalent.* In defining the interim program, the various elements and associated alternatives that were proposed as criteria for "substantially equivalent" are the same as those being considered by EPA in defining an "equivalent" State program. Since it is clear that Congress intended this interim period to provide a "grace" period to the States to develop a program suitable for full authorization, the major difference between "equivalent" and "substantially equivalent" is that the latter program may be limited in statutory and regulatory authority. Similarly, the degree of stringency of a given regulation within any element may, during this interim period, be less stringent than the Federal standards.

This temporary relaxation from strict "equivalence" to "substantial equivalence" and the corresponding latitude in degree of stringency for the interim period, EPA believes to be consistent with the intent of Congress to facilitate the entry by the maximum number of States into the interim hazardous waste management program, and ultimately, into a fully authorized program. EPA supports this viewpoint by structuring its policy so that the greater resources available to the States within each Region (some EPA Regions encompass 6 to 8 States) will be brought to bear on the implementation and enforcement of a hazardous

waste management program without straining the already limited resources of EPA. This approach should result in a greater degree of protection of public health and the environment than if EPA had to conduct the hazardous waste program in a large majority of States.

(2) *Authorization plan.* The Guidelines include a requirement that each State prepare an "authorization plan" as a condition of receiving interim authorization. The Agency considers the interim authorization step to be an opportunity for States which cannot yet qualify for full authorization to nevertheless establish their stewardship of the hazardous waste regulatory program during the period in which they are developing their programs. The Agency further believes that the intent of Congress was to have States which qualify for and accept interim authorization progress to full authorization in the two years allotted by Section 3006(c), and that by their doing so, the best interests of public health and the environment, EPA, the State and the regulated community will be served. The authorization plan is intended to assist this progress.

The authorization plan should be comparable to a "compliance schedule" under which the State and the Regional Administrator agree on what deficiencies exist in the State program (as compared with the requirements for full authorization); what corrective or perfecting measures are necessary; and, the proposed schedule for accomplishing the corrections.

RECOMMENDED ELEMENTS

The Agency believes that the three elements discussed below will contribute to an effective State hazardous waste management regulatory program, and are in keeping with the intent of the Act. They will not be required, however, for authorization under Section 3006(b) or Section 3006(c). These elements are: (1) Technical Assistance; (2) Inventory of Hazardous Wastes; and (3) Safeguarding of Confidential Information.

TECHNICAL ASSISTANCE

The experience of EPA and of those States which have begun developing hazardous waste management programs has strengthened the Agency's conviction that State Technical Assistance to the regulated community is useful and desirable. The State program should include assistance as well as deterrence aspects, and should offer the regulated community information on acceptable management options at the same time it discourages those which are unacceptable.

A Technical Assistance program should include the State's role of assisting the regulated community in complying with applicable require-

ments and regulations. The Agency will not require either of these types of Technical Assistance in assessing the equivalency of proposed State programs under Sections 3006(b) or 3006(c). The State however, should especially seek to provide the latter type of assistance since its failure to do so may increase the potential for incomplete or inadequate compliance by segments of the regulated community.

INVENTORY

Many States have conducted hazardous waste surveys over the past few years, gathering information on the types, quantities, locations, and dispositions of hazardous wastes within the State. The manifest system required under Section 3002 of the Act will allow the State to verify or upgrade this information or to begin to compile it. This information is an important and useful tool for the State, both for planning purposes and for use in administering and enforcing the hazardous waste regulatory program.

The Agency will not require this element in assessing the equivalency of a proposed State program for the purposes of Sections 3006(b) or 3006(c). The States are urged, nevertheless, to compile such data for use in developing their programs over both the short- and long-term.

SAFEGUARDING OF CONFIDENTIAL INFORMATION

The Freedom of Information Act (5 U.S.C. 552 *et seq.*) includes a provision under which trade secrets and certain other information may be exempted from public disclosure. The Agency believes that similar provisions in State "Privacy Acts" or "Public Records Acts" make a significant contribution to securing the confidence of the regulated community since this legislation assures that information submitted to the State regulatory agency will be adequately safeguarded. State legislation of this type will not be required for authorization under Section 3006(b) or 3006(c). States should be aware, nevertheless, that provisions for the safeguarding of confidential information are an important part of an effective State regulatory program, and that the protection of a "Privacy Act" or of similar legislation is essential to winning the confidence of the regulated community.

REPORTING REQUIREMENTS

Two types of reporting will take place under the proposed guidelines: (1) Hazardous waste management facilities will report to the State and (2) as a part of the oversight process, States will report quarterly to EPA. In either case, reporting requirements are of a small or negligible impact. In the first case, the impact of facilities

reporting to the States will be the same as reporting to EPA since the subject State programs must be equivalent to the Federal program. In the second case, the impact of States reporting quarterly to EPA is further minimized by allowing the States to combine the quarterly report with the grant review process where applicable.

ECONOMIC AND ENVIRONMENTAL IMPACTS

In accordance with Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107 and EPA Policy as stipulated in 39 FR 37419, October 21, 1974 respectively, analyses of the economic and environmental impacts are being performed for the entirety of Subtitle C, Hazardous Waste Management, and are not completed as yet. Any additional economic impact on the public resulting from Section 3006 implementation can be expected to be negligible, since the subject State programs must be equivalent to the Federal program. These impacts can thus be assumed to be equivalent.

Dated: January 24, 1978.

DOUGLAS M. COSTLE,
Administrator

It is proposed to amend Title 40 by adding Part 250 consisting of new Subpart F to read as set forth below. Subparts A through E are reserved.

Subparts A-E [Reserved]

Subpart F—Guidelines for State Hazardous Waste Programs

Sec.	
250.70	Scope and purpose.
250.71	Definitions.
250.72	Authorization (3006b).
250.73	Interim Authorization (3006c).
250.74	Federal oversight of authorized programs.
250.75	Application procedure.
250.76	Withdrawal of authorization.

AUTHORITY.—Sec. 3006, Pub. L. 94-580, 90 Stat. 2809 (42 U.S.C. 6926). Secs. 250.70, 250.72 (a)(1) and (a)(2) also issued under sec. 3009, Pub. L. 94-580, 90 Stat. 2812 (42 U.S.C. 6929).

§ 250.70 Scope and purpose.

(a) Section 3006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6926), requires the Administrator, after consultation with State authorities, to promulgate guidelines to assist States in the development of State hazardous waste programs.

(b) These guidelines describe the various provisions and capabilities a State hazardous waste program must have in order to qualify for authorization under section 3006(b) or section 3006(c), which provide that the State, in lieu of the Federal EPA, may administer and enforce the hazardous waste management regulatory pro-

gram established pursuant to Subtitle C of the Act. The guidelines also describe the substantive and procedural requirements for States applying for authorization, EPA's oversight of the State's hazardous waste program, and for the withdrawal of authorization pursuant to section 3006(e).

(c) In addition, section 3009 of the Act prohibits States from imposing any requirement which is "less stringent" than EPA's regulations under sections 3001 through 3005 of the Act, a prohibition which applies whether or not the State is authorized under section 3006.

§ 250.71 Definitions.

For the purposes of this part:

(a) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(b) The term "authorization" or "authorized" refers to a State which has an approved hazardous waste program under section 3006(b) or 3006(c) of the Act and §§ 250.72 and 250.73.

(c) The term "element" means a function of the State program which EPA considers necessary for a State hazardous waste program to be equivalent to that of EPA.

(d) The term "full authorization" refers to authorization of a State program which has met the substantive and procedural requirements of section 3006(b) of the Act and § 250.72(a).

(e) The term "hazardous waste management" means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

(f) The term "interim authorization" refers to authorization by EPA of a State program which has met the substantive and procedural requirements of section 3006(c) of the Act and § 250.73.

(g) The term "oversight" refers to a continuing program of surveillance and review carried out by EPA to insure that each authorized State's hazardous waste management program remains in compliance with the requirements for authorization stated in this Part.

(h) The term "partial authorization" refers to authorization by EPA of a State program to administer and enforce selected program components of a fully authorized hazardous waste program while EPA carries out the remaining parts. In all cases, the combination of the State and EPA hazardous waste program shall meet the substantive and procedural requirements of section 3006(b) of the Act and § 250.72(a).

(i) The term "withdrawal" refers to the termination of authorization for a State hazardous waste program under section 3006(e) of the Act and § 250.76.

(j) The term "State" means any of the several States, and the District of

Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

§ 250.72 Authorization (3006b).

(a) *Full authorization.* This section describes the various provisions to be met and capabilities to be demonstrated by States seeking to apply to the Regional Administrator for full authorization. The Regional Administrator shall apply the criteria identified in § 250.72(a)(1) through § 250.72(a)(3) in determining whether the program of any State is "equivalent to" the Federal program, "consistent with" the Federal program and with those applicable in other States, and whether the State's program provides "adequate enforcement of compliance," as required by section 3006(b) of the Act. A negotiated Memorandum of Understanding, as described in § 250.74(a), is required for full authorization.

(1) *Equivalency.* The Regional Administrator shall measure the "equivalency" of a State program to the Federal program by determining whether the State program encompasses all of the following elements, and by assessing the adequacy of each for the administration and enforcement of a hazardous waste program: Legislative Authority; Published Regulations; Permit Mechanism; Manifest System; Identification of Resources; Interagency Delineation of Responsibilities (if appropriate to the applicant State); and Public Participation.

(i) *Legislative authority.* (A) A State seeking full authorization shall demonstrate legislative authority to provide the following program components: regulations governing hazardous waste generators, transporters and owners and operators of hazardous waste treatment, storage and disposal facilities, including the keeping of records and submittal of reports, and the establishment of monitoring practices; control of the treatment, storage and disposal of hazardous waste through a permit system or its equivalent; a waste tracking system (manifest system); the power to conduct inspections and take samples; and the power to institute enforcement proceedings against violators.

(B) The State legislative authority and regulatory program shall be applicable both to those hazardous wastes stored, treated or disposed of at the site of generation (so-called "on-site" management), and to those hazardous wastes shipped elsewhere for storage, treatment, or disposal.

(ii) *Published regulations.* The State may choose to publish its own regulations with respect to hazardous waste management, adopt the regulations promulgated by EPA under sections 3001 through 3005 of RCRA unchanged, or adapt EPA's regulations

to unique or unusual circumstances or conditions within the State. Where a State has existing regulations or proposes new regulations which are different from those of EPA, the Regional Administrator shall evaluate the published regulations of the State's Agencies for their equivalency to those of EPA. The State's regulation shall address the identification of hazardous waste and shall contain standards applicable to generators of hazardous waste, transporters of hazardous waste, and the owners and operators of hazardous waste treatment, storage and disposal facilities. State regulations may not impose any requirement which is "less stringent" than EPA's regulations under sections 3001 through 3005 of the Act.

(iii) *Permit mechanism.* A State seeking full authorization shall provide for a permit system applicable to facilities which treat, store, or dispose of hazardous wastes, which consists of an administrative and legal framework together with resources sufficient to: accept, process and review applications for permits; issue permits (with appropriate special conditions); monitor renewals and expirations of permits; monitor compliance with the terms and conditions of permits; enforce compliance with the terms and conditions of permits; and enforce against owners and operators who have not acquired permits. The Regional Administrator shall evaluate the systems of those applicant States where the term "permit," is not used in order to determine whether mechanisms such as "license", "letters of approval", "waste discharge requirements", or other control devices, regardless of terminology, satisfy the intent of the Act.

(iv) *Manifest system.* A State seeking full authorization shall demonstrate the administrative capability to oversee the waste transportation manifest system established under section 3002(5) of the Act. Such capability shall include the management of manifests involving both intrastate and interstate transportation of hazardous wastes. States seeking full authorization under these Guidelines shall agree to use the manifest format published by the Administrator in the FEDERAL REGISTER pursuant to Section 3002 in administering and enforcing their hazardous waste management programs, but may supplement that format as appropriate to meet specific requirements or needs.

(v) *Identification of resources.* The Regional Administrator shall evaluate the resources proposed by an applicant State to be applied to its hazardous waste management program in order to ascertain that the State is able to administer and enforce the program successfully. The Regional Administrator shall consider the following factors in evaluating the ade-

quacy of the State's proposed resources: (A) A comparison with levels of resources known to have been applied in other States of commensurate size, hazardous waste generation and disposal frequency; and (B) the adequacy of those resources in relation to the level of success of those other State programs. Consequently, State applications for full authorization under Section 3006(b) shall clearly identify the personnel and the monetary resources to be used to carry out each responsibility necessary to conduct a comprehensive hazardous waste management program.

(vi) *Interagency delineation.* A State seeking full authorization in which more than one agency is involved in the administration and enforcement of the State hazardous waste program shall explicitly delineate the responsibilities of each such agency which relate to hazardous waste management, and shall designate a "lead agency", for the purposes of these Guidelines, to facilitate communications between EPA and the agencies responsible for the State program, and to receive such grant funds as may be made available under section 3011 of the Act. This "lead agency" may be the same agency designated under 40 CFR Part 255, "Identification of Regions and Agencies for Solid Waste Management (Interim Guidelines)." The "lead agency" should provide for coordination with the State agency responsible for the regulation of injection wells under the Underground Injection Control (UIC) program administered under Part C of the Safe Drinking Water Act of 1974 (Pub. L. 93-532, 42 U.S.C. 300f, et seq.) unless the agency responsible for the UIC program is the same as the "lead agency" described above.

(vii) *Public participation.* A State seeking full authorization shall submit a public participation plan as part of the application which complies with the guidelines EPA has promulgated pursuant to section 7004(b) of the Act (40 CFR Part 249).

(2) *Consistency.* A State seeking full authorization shall demonstrate the "consistency" of its program with the Federal program or State programs applicable in other States in order for the State program to be authorized. Such States shall satisfy the requirements of both the free movement of hazardous wastes across State boundaries and the degree to which State standards may vary from those of EPA or of other States, except that States which violate these requirements on the date of promulgation of these guidelines may request a temporary suspension of this requirement. The Regional Administrator may grant a temporary suspension of this requirement for a period not to exceed July 1, 1984, upon a showing that the

State is working towards elimination of this violation. For purposes of this subpart, the phrase " * * * State programs applicable in other States * * *" refers only to those programs which have received full authorization under section 3006(b) of the Act.

(i) *Free Movement of Hazardous Wastes.* (A) Any State program which includes a ban on the importation of hazardous wastes from other States which are destined for treatment, storage, or disposal facilities having hazardous waste permits under the State program will be deemed inconsistent for the purposes of section 3006(b). Therefore, the Regional Administrator shall not grant full authorization to a State program including such a ban.

(B) Any State program which applies one standard to hazardous wastes originating within its borders, and a different standard to hazardous wastes originating elsewhere, will be deemed inconsistent with the Federal program and with those programs applicable in other States. Therefore, the Regional Administrator shall not grant full authorization to such a State program.

(ii) *Dissimilar standards.* Where the proposed State program includes standards which are significantly different from the Federal standards, the Regional Administrator shall determine whether such State standards substantially impede the movement of hazardous wastes into or out of the State; and whether such State standards protect public health and the environment to substantially the same degree as do the Federal standards. If the Regional Administrator determines that such State standards do substantially impede the movement of hazardous wastes into or out of the State, then the State program is inconsistent for the purposes of section 3006(b), unless such standards protect public health and the environment to substantially the same degree as do the Federal standards. If the Regional Administrator does not authorize a State program due to this determination of inconsistency, the State may continue to operate its hazardous waste program in parallel with the Federal program.

(3) *Adequacy of enforcement.* A State seeking full authorization shall demonstrate that the enforcement provisions of the proposed State program are adequate, and that the State is able to administer and enforce its program successfully. The Regional Administrator shall consider the proposed State enforcement procedures, practices, and penalties, comparing them with those contained in the Act, and with those implemented by the Environmental Protection Agency for the Federal program in evaluating the adequacy of the State's proposed enforcement program. The Regional Administrator should employ the follow-

ing criteria in regard to penalty assessment in evaluating the adequacy of enforcement of a State Program that legislation exists authorizing civil and criminal penalties with a deterrent value adequate to handle almost all enforcement actions and that the legislation provides that such penalties be sought in appropriate circumstances.

(b) *Partial authorization.* The Regional Administrator may authorize a State to administer and enforce selected components of a hazardous waste regulatory program as described in § 250.72(a)(1)(i) while retaining responsibility for such part or parts for which State legislative authority is absent. A negotiated Memorandum of Understanding as described in § 250.74(a) is required for partial authorization.

(1) *Application.* States may apply for partial authorization only if State legislative authority does not exist for certain program components. Partial authorization of the hazardous waste program may only be granted if such components meet the three criteria of equivalency, consistency, and enforceability. In all cases, the combination of the State and EPA hazardous waste program shall meet the substantive and procedural requirements of a full hazardous waste program described in § 250.72(a).

(2) *Duration.* Partial authorization shall be effective for a fixed duration, agreed upon mutually by the State and the Regional Administrator and not to exceed 5 years, and shall apply to complete and discrete components of the program from among those identified in § 250.72(a)(1)(i) of these Guidelines. At the end of the fixed period, the Regional Administrator shall determine whether to renew the partial authorization on the basis of a continued lack of State legislative authority; a good faith effort by the State to procure needed legislation; and a determination by the Regional Administrator that the program can be carried out more effectively by the EPA-State partnership than by EPA alone.

§ 250.73 Interim authorization (3006c).

Any State which has in existence a hazardous waste program pursuant to State law prior to July 20, 1978, may request interim authorization to carry out a hazardous waste management program which will be granted if such program is "substantially equivalent" to the Federal program. A negotiated Memorandum of Understanding as described in § 250.74(a) is required for interim authorization. The phrase "in existence" requires that States seeking interim authorization have the legislative authority, effective as of July 20, 1978, to conduct their hazardous waste programs as described in § 250.73(b)(2) of these Guidelines.

(a) *Duration.* Interim authorization is only effective for the period from October 21, 1978, through October 21, 1980.

(b) *Substantial equivalency.* A State seeking interim authorization shall submit copies of the relevant legislation to the Regional Administrator together with evidence to demonstrate that the State is willing and able to conduct a successful hazardous waste program, which, at a minimum, complies with § 250.73 (b)(1) through (b)(5).

(1) *Authorization plan.* A State seeking interim authorization shall submit an "authorization plan" as part of its application. The authorization plan shall describe the additions or modifications necessary to qualify the State program for full authorization under Section 3006(b) by October 21, 1980, together with the schedule which the State proposes to achieve those additions or modifications. Failure to meet the schedule may be cause for withdrawal of interim authorization.

(2) *Legislative authority.* A State seeking interim authorization shall demonstrate legislative authority to control at least either on-site or off-site hazardous waste disposal facilities, including the authority to conduct inspections and institute enforcement proceedings. Legislative authority to control hazardous waste treatment or storage facilities is not required for interim authorization. The State Authorization Plan shall describe any changes which will be sought in State legislation in order to prepare the State for full authorization as described in § 250.72(a)(1)(i).

(3) *Identification of resources.* A State seeking interim authorization shall identify and commit adequate resources to carry out the minimal program described in § 250.73 (b)(4) and (b)(5). Evaluation of the resources proposed by the State will be at the discretion of the Regional Administrator. A level of resources which is necessary for the purposes of full authorization will not necessarily be required for interim authorization. The State Authorization Plan shall identify the resource levels which will be applied to hazardous waste management at both the beginning and end of the interim authorization period.

(4) *Permit mechanism.* A State seeking interim authorization shall demonstrate at a minimum the institutional and administrative capability to issue permits, licenses, letters of approval, or other control devices to those facilities for which State legislative authority exists. The State Authorization Plan shall describe any changes in the permit system which will be made during the 24-month period for which the interim authorization is effective, to enable the State to become eligible for full authorization.

(5) *Surveillance and enforcement.* (1) A State seeking interim authorization shall demonstrate a surveillance and enforcement program sufficient to carry out a minimal program as described in § 250.73(b)(5). Evaluation of the surveillance and enforcement program will be at the discretion of the Regional Administrator.

(ii) A surveillance and enforcement effort which is insufficient for full authorization may be sufficient for interim authorization. Where the State proposal provides for a surveillance and enforcement program which does not satisfy the requirements for full authorization, the State Authorization Plan must describe the activities, including those criteria described in § 250.72(a)(3) regarding penalty assessment, through which the State expects to become eligible for full authorization during the twenty-four month period for which the interim authorization is effective.

§ 250.74 Federal oversight of authorized programs.

After all other requirements have been satisfied and before receiving authorization under Section 3006(b) or Section 3006(c) of the Act, the State shall agree with the Regional Administrator on an oversight procedure which will allow EPA to monitor the State's hazardous waste program to ascertain that the program is being administered and enforced successfully in accordance with the Act. The oversight procedures shall become part of the Memorandum of Understanding required under § 250.74(a) of these Guidelines.

(a) *Memorandum of Understanding.* In order to receive authorization under Section 3006(b) or Section 3006(c) of the Act, a Memorandum of Understanding shall be negotiated between the State and the Regional Administrator. The Memorandum of Understanding shall describe in detail the oversight procedures to which the State and the Regional Administrator have agreed, and may include such other terms, conditions, or agreements as are relevant to the administration and enforcement of the State's hazardous waste regulatory program. At a minimum, the Memorandum of Understanding shall include the items described in § 250.74 (a)(1)-(a)(4).

(1) *Program evaluation.* The State shall allow EPA to review such State records, reports, or files as are relevant to the administration and enforcement of the State hazardous waste regulatory program no less than once in each fiscal year for which the State has received authorization under Section 3006(b) or 3006(c) of the Act. The program review may be scheduled so as to coincide with the annual grant mid-year review.

(2) *Review of permit applications.* The Memorandum of Understanding

shall specify the basis on which the Regional Administrator may select permit applications of the State for review. The Regional Administrator may review and comment to the State on up to ten (10) percent of the permit applications received by the State in each fiscal year for which the State has received authorization under Section 3006(b) or Section 3006(c) of the Act; the Regional Administrator and the State may agree to a lower percentage limitation where the Regional Administrator believes such an agreement to be useful.

(3) *Inspections.* The Memorandum of Understanding shall specify the basis on which the Regional Administrator may select facilities within the State where hazardous waste is generated, transported, stored, treated, or disposed for federal inspection. The Regional Administrator or his designee may conduct inspections of up to ten (10) percent of the generators, transporters, treaters, storers, and disposers in a State in each fiscal year for which the State has received authorization under Section 3006(b) or Section 3006(c) of the Act. The Regional Administrator and the State may agree to a lower percentage limitation where the Regional Administrator believes such an agreement to be useful. Except in the case of an imminent hazard within the meaning of Section 7003 of the Act, the Regional Administrator shall notify the State at least seven (7) calendar days before each such inspection and allow the State the opportunity to make the initial contact with the facility or site owners or operators. EPA shall give the State the opportunity to lead any inspection or visit conducted by EPA pursuant to this Subpart.

(4) *Reports.* The Memorandum of Understanding shall specify the frequency and content of such reports as are required to be submitted by the State to EPA, but in no event shall the frequency of such reports be less than once in each quarter of any fiscal year for which the State has received authorization under Section 3006(b) or Section 3006(c) of the Act. The content of such reports shall be specified in the Memorandum of Understanding and may be combined with grant reports where applicable.

(b) *Change in oversight requirements.* The oversight mechanism outlined above and agreed upon by a State and Region shall be binding on both parties except when the Regional Administrator has reason to believe that the State program is not in compliance with requirements of § 250.72 (a) and (b) or § 250.73 and all Subparts thereunder. In such a case, and after notice to the State, the Regional Administrator may institute such oversight procedures as he deems necessary to investigate the situation and,

where warranted, to insure a return to compliance.

§ 250.75 Application Procedure.

The State application shall include a narrative description of the State hazardous waste regulatory program. The State application shall provide information sufficient for the Regional Administrator to make a determination on the adequacy of the State's program. At a minimum, the following information shall be submitted: Application describing hazardous waste program as it relates to guidelines (full, partial, and interim authorization); Memorandum of Understanding describing oversight provisions (full, partial, and interim authorization); authorization plan describing deficiencies and planned milestones to achieve full authorization (interim authorization).

(a) *Public hearing.* After preparation of the draft application, the State shall give notice to all interested parties of the State's intention to seek authorization. Public notice shall be such that all interested parties will be given reasonable opportunity to comment on the draft application. Copies of the draft application shall be made available to the public for comment. Upon request, the State shall hold a public hearing to discuss the State's application to conduct the hazardous waste program. All interested parties will be given reasonable opportunity to present written or oral testimony on the State's application at the public hearing.

(b) *Submission of application to EPA.* After consideration of comments received from the public notice and public hearing, the State shall prepare a completed application, signed by the appropriate State official in charge of the designated lead agency, for submission to the Regional Administrator. (Three (3) copies of the final application shall be submitted.)

(c) *Notice and determination of findings.* Within 90 days following submission of a completed application for program authorization, the Regional Administrator shall issue a notice as to whether or not he expects such program to be authorized. Within 90 days following such notice and after opportunity for public hearing, the Regional Administrator shall publish his findings as to whether or not the State will be given authorization to operate the hazardous waste regulatory program. Public notice of the hearing, if held, will be such that all interested parties will be given reasonable opportunity to present written and oral testimony on the State's application at the public hearing.

§ 250.76 Withdrawal of authorization.

Section 3006(e) of the Act requires the Administrator to withdraw au-

thorization of such State program and establish a Federal program where the Administrator determines, after holding a public hearing, that the State program is not in compliance with the requirements of § 250.72 (a) and (b) or § 250.73. A Regional Administrator having reason to believe that a State is not administering or enforcing an authorized program in accordance with the Act, shall follow the procedure described in § 250.76 (a) through (d)

(a) *Notice to State of public hearing.* A Regional Administrator having reason to believe that a State is not administering or enforcing its authorized program in compliance with the requirements of Section 3006 and this Subpart, shall inform the State by registered mail of the specific areas of alleged noncompliance, and that a public hearing will be held to discuss withdrawal of the State's program as required under Section 3006(e) of the Act. If the State demonstrates to the Regional Administrator within 30 days of such notification that the State program is in compliance, the Regional Administrator shall take no further action toward withdrawal.

(b) *Public hearing.* Where the Regional Administrator still has reason to believe that the State is not in compliance 30 days after notification, a public hearing shall be scheduled not less than 60 days or more than 75 days following the initial notification date. All interested parties shall be given opportunity to present written and oral testimony on the withdrawal of the State's program at the public hearing.

(c) *Notice to State of findings.* Where the Regional Administrator determines the State program to be in compliance as a result of written or oral testimony presented at such public hearing, he shall take no further action toward withdrawal. Where he finds the State not to be in compliance, he shall notify the State by registered mail of specific deficiencies in the State program and of necessary remedial activities. Within 90 days of receipt of the above letter, the State shall either carry out the required remedial actions or the Regional Administrator shall withdraw authorization. If the State carries out the remedial actions, the Regional Administrator shall take no further action toward withdrawal.

(d) *Transfer plan.* Whenever any State chooses to relinquish authorization under Section 3006(b) or Section 3006(c), or whenever any State is required to relinquish such authorization through the withdrawal procedures under this Part, the State shall submit to EPA a plan for the orderly transfer of all information to EPA. Such plan shall be submitted not less than 30 days before the date such transfer is to be effected.

[FR Doc. 78-2701 Filed 1-31-78; 8:45 am]

Public Law 94-580
94th Congress

An Act

To provide technical and financial assistance for the development of management plans and facilities for the recovery of energy and other resources from discarded materials and for the safe disposal of discarded materials, and to regulate the management of hazardous waste.

Oct. 21, 1976

[S. 2150]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Resource
Conservation and
Recovery Act of
1976.

SHORT TITLE

SECTION 1. This Act may be cited as the "Resource Conservation and Recovery Act of 1976".

42 USC 6901
note.

AMENDMENT OF SOLID WASTE DISPOSAL ACT

SEC. 2. The Solid Waste Disposal Act (42 U.S.C. 3251 and following) is amended to read as follows:

"TITLE II—SOLID WASTE DISPOSAL

"Subtitle A—General Provisions

"SHORT TITLE AND TABLE OF CONTENTS

"SEC. 1001. This title (hereinafter in this title referred to as 'this Act'), together with the following table of contents, may be cited as the 'Solid Waste Disposal Act':

42 USC 6901
note.

"Subtitle A—General Provisions

- "Sec. 1001. Short title and table of contents.
- "Sec. 1002. Congressional findings.
- "Sec. 1003. Objectives.
- "Sec. 1004. Definitions.
- "Sec. 1005. Governmental cooperation.
- "Sec. 1006. Application of Act and integration with other Acts.
- "Sec. 1007. Financial disclosure.
- "Sec. 1008. Solid waste management information and guidelines.

"Subtitle B—Office of Solid Waste; Authorities of the Administrator

- "Sec. 2001. Office of Solid Waste.
- "Sec. 2002. Authorities of Administrator.
- "Sec. 2003. Resource recovery and conservation panels.
- "Sec. 2004. Grants for discarded tire disposal.
- "Sec. 2005. Annual report.
- "Sec. 2006. General authorization.

"Subtitle C—Hazardous Waste Management

- "Sec. 3001. Identification and listing of hazardous waste.
- "Sec. 3002. Standards applicable to generators of hazardous waste.
- "Sec. 3003. Standards applicable to transporters of hazardous waste.
- "Sec. 3004. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.
- "Sec. 3005. Permits for treatment, storage, or disposal of hazardous waste.
- "Sec. 3006. Authorized State hazardous waste programs.
- "Sec. 3007. Inspections.

"Subtitle C—Hazardous Waste Management—Continued

- "Sec. 3008. Federal enforcement.
- "Sec. 3009. Retention of State authority.
- "Sec. 3010. Effective date.
- "Sec. 3011. Authorization of assistance to States.

"Subtitle D—State or Regional Solid Waste Plans

- "Sec. 4001. Objectives of subtitle.
- "Sec. 4002. Federal guidelines for plans.
- "Sec. 4003. Minimum requirements for approval of plans.
- "Sec. 4004. Criteria for sanitary landfills; sanitary landfills required for all disposal.
- "Sec. 4005. Upgrading of open dumps.
- "Sec. 4006. Procedure for development and implementation of State plan.
- "Sec. 4007. Approval of State plan; Federal assistance.
- "Sec. 4008. Federal assistance.
- "Sec. 4009. Rural communities assistance.

"Subtitle E—Duties of the Secretary of Commerce in Resource and Recovery

- "Sec. 5001. Functions.
- "Sec. 5002. Development of specifications for secondary materials.
- "Sec. 5003. Development of markets for recovered materials.
- "Sec. 5004. Technology promotion.

"Subtitle F—Federal Responsibilities

- "Sec. 6001. Application of Federal, State, and local law to Federal facilities.
- "Sec. 6002. Federal procurement.
- "Sec. 6003. Cooperation with Environmental Protection Agency.
- "Sec. 6004. Applicability of solid waste disposal guidelines to executive agencies.

"Subtitle G—Miscellaneous Provisions

- "Sec. 7001. Employee protection.
- "Sec. 7002. Citizen suits.
- "Sec. 7003. Imminent hazard.
- "Sec. 7004. Petition for regulations; public participation.
- "Sec. 7005. Separability.
- "Sec. 7006. Judicial review.
- "Sec. 7007. Grants or contracts for training projects.
- "Sec. 7008. Payments.
- "Sec. 7009. Labor standards.

"Subtitle H—Research, Development, Demonstration, and Information

- "Sec. 8001. Research, demonstrations, training, and other activities.
- "Sec. 8002. Special studies; plans for research, development, and demonstrations.
- "Sec. 8003. Coordination, collection, and dissemination of information.
- "Sec. 8004. Full-scale demonstration facilities.
- "Sec. 8005. Special study and demonstration projects on recovery of useful energy and materials.
- "Sec. 8006. Grants for resource recovery systems and improved solid waste disposal facilities.
- "Sec. 8007. Authorization of appropriations.

"CONGRESSIONAL FINDINGS

42 USC 6901.

"SEC. 1002. (a) SOLID WASTE.—The Congress finds with respect to solid waste—

"(1) that the continuing technological progress and improvement in methods of manufacture, packaging, and marketing of consumer products has resulted in an ever-mounting increase, and in a change in the characteristics, of the mass material discarded by the purchaser of such products;

"(2) that the economic and population growth of our Nation, and the improvements in the standard of living enjoyed by our population, have required increased industrial production to meet

our needs, and have made necessary the demolition of old buildings, the construction of new buildings, and the provision of highways and other avenues of transportation, which, together with related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste materials;

"(3) that the continuing concentration of our population in expanding metropolitan and other urban areas has presented these communities with serious financial, management, intergovernmental, and technical problems in the disposal of solid wastes resulting from the industrial, commercial, domestic, and other activities carried on in such areas;

"(4) that while the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies, the problems of waste disposal as set forth above have become a matter national in scope and in concern and necessitate Federal action through financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid-waste disposal practices.

"(b) ENVIRONMENT AND HEALTH.—The Congress finds with respect to the environment and health, that—

"(1) although land is too valuable a national resource to be needlessly polluted by discarded materials, most solid waste is disposed of on land in open dumps and sanitary landfills;

"(2) disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment;

"(3) as a result of the Clean Air Act, the Water Pollution Control Act, and other Federal and State laws respecting public health and the environment, greater amounts of solid waste (in the form of sludge and other pollution treatment residues) have been created. Similarly, inadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health;

"(4) open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land;

"(5) hazardous waste presents, in addition to the problems associated with non-hazardous solid waste, special dangers to health and requires a greater degree of regulation than does non-hazardous solid waste; and

"(6) alternatives to existing methods of land disposal must be developed since many of the cities in the United States will be running out of suitable solid waste disposal sites within five years unless immediate action is taken;

"(c) MATERIALS.—The Congress finds with respect to materials, that—

"(1) millions of tons of recoverable material which could be used are needlessly buried each year;

"(2) methods are available to separate usable materials from solid waste; and

"(3) the recovery and conservation of such materials can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments.

42 USC 1857
note.
33 USC 1151
note.

- “(d) ENERGY.—The Congress finds with respect to energy, that—
- “(1) solid waste represents a potential source of solid fuel, oil, or gas that can be converted into energy;
- “(2) the need exists to develop alternative energy sources for public and private consumption in order to reduce our dependence on such sources as petroleum products, natural gas, nuclear and hydroelectric generation; and
- “(3) technology exists to produce usable energy from solid waste.

“OBJECTIVES

42 USC 6902.

“SEC. 1003. The objectives of this Act are to promote the protection of health and the environment and to conserve valuable material and energy resources by—

- “(1) providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including resource recovery and resource conservation systems) which will promote improved solid waste management techniques (including more effective organizational arrangements), new and improved methods of collection, separation, and recovery of solid waste, and the environmentally safe disposal of nonrecoverable residues;
- “(2) providing training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems;
- “(3) prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health;
- “(4) regulating the treatment, storage, transportation, and disposal of hazardous wastes which have adverse effects on health and the environment;
- “(5) providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal practices and systems;
- “(6) promoting a national research and development program for improved solid waste management and resource conservation techniques, more effective organizational arrangements, and new and improved methods of collection, separation, and recovery, and recycling of solid wastes and environmentally safe disposal of nonrecoverable residues;
- “(7) promoting the demonstration, construction, and application of solid waste management, resource recovery, and resource conservation systems which preserve and enhance the quality of air, water, and land resources; and
- “(8) establishing a cooperative effort among the Federal, State, and local governments and private enterprise in order to recover valuable materials and energy from solid waste.

“DEFINITIONS

42 USC 6903.

“SEC. 1004. As used in this Act:

- “(1) The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.
- “(2) The term ‘construction,’ with respect to any project of construction under this Act, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization,

or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project; and includes preliminary planning to determine the economic and engineering feasibility and the public health and safety aspects of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, and any surveys, designs, plans, working drawings, specifications, and other action necessary for the carrying out of the project, and (C) the inspection and supervision of the process of carrying out the project to completion.

“(2A) The term ‘demonstration’ means the initial exhibition of a new technology process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness.

“(3) The term ‘disposal’ means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

“(4) The term ‘Federal agency’ means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

“(5) The term ‘hazardous waste’ means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—

“(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

“(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

“(6) The term ‘hazardous waste generation’ means the act or process of producing hazardous waste.

“(7) The term ‘hazardous waste management’ means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

“(8) For purposes of Federal financial assistance (other than rural communities assistance), the term ‘implementation’ does not include the acquisition, leasing, construction, or modification of facilities or equipment or the acquisition, leasing, or improvement of land and after December 31, 1979, such term does not include salaries of employees due pursuant to subtitle D of this Act.

“(9) The term ‘intermunicipal agency’ means an agency established by two or more municipalities with responsibility for planning or administration of solid waste.

“(10) The term ‘interstate agency’ means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the disposal of solid wastes and serving two or more municipalities located in different States.

“(11) The term ‘long-term contract’ means, when used in relation to solid waste supply, a contract of sufficient duration to assure the

viability of a resource recovery facility (to the extent that such viability depends upon solid waste supply).

“(12) The term ‘manifest’ means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

“(13) The term ‘municipality’ (A) means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

“(14) The term ‘open dump’ means a site for the disposal of solid waste which is not a sanitary landfill within the meaning of section 4004.

“(15) The term ‘person’ means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

“(16) The term ‘procurement item’ means any device, good, substance, material, product, or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such item.

“(17) The term ‘procuring agency’ means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

“(18) The term ‘recoverable’ refers to the capability and likelihood of being recovered from solid waste for a commercial or industrial use.

“(19) The term ‘recovered material’ means material which has been collected or recovered from solid waste.

“(20) The term ‘recovered resources’ means material or energy recovered from solid waste.

“(21) The term ‘resource conservation’ means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption, and utilization of recovered resources.

“(22) The term ‘resource recovery’ means the recovery of material or energy from solid waste.

“(23) The term ‘resource recovery system’ means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

“(24) The term ‘resource recovery facility’ means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

“(25) The term ‘regional authority’ means the authority established or designated under section 4006.

“(26) The term ‘sanitary landfill’ means a facility for the disposal of solid waste which meets the criteria published under section 4004.

“(26A) The term ‘sludge’ means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control

Post, p. 2816.

facility or any other such waste having similar characteristics and effects.

“(27) The term ‘solid waste’ means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

“(28) The term ‘solid waste management’ means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

“(29) The term ‘solid waste management facility’ includes (A) any resource recovery system or component thereof, (B) any system, program, or facility for resource conservation, and (C) any facility for the treatment of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.

“(30) The terms ‘solid waste planning’, ‘solid waste management’, and ‘comprehensive planning’ include planning or management respecting resource recovery and resource conservation.

“(31) The term ‘State’ means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

“(32) The term ‘State authority’ means the agency established or designated under section 4007.

“(33) The term ‘storage’, when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

“(34) The term ‘treatment’, when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

“(35) The term ‘virgin material’ means a raw material, including previously unused copper, aluminum, lead, zinc, iron, or other metal or metal ore, any undeveloped resource that is, or with new technology will become, a source of raw materials.

“GOVERNMENTAL COOPERATION

“SEC. 1005. (a) INTERSTATE COOPERATION.—The provisions of this Act to be carried out by States may be carried out by interstate agencies and provisions applicable to States may apply to interstate regions where such agencies and regions have been established by the respective

33 USC 1342.
42 USC 2011
note.

Post, p. 2817.

42 USC 6904.

States and approved by the Administrator. In any such case, action required to be taken by the Governor of a State, respecting regional designation shall be required to be taken by the Governor of each of the respective States with respect to so much of the interstate region as is within the jurisdiction of that State.

“(b) CONSENT OF CONGRESS TO COMPACTS.—The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for—

“(1) cooperative effort and mutual assistance for the management of solid waste or hazardous waste (or both) and the enforcement of their respective laws relating thereto, and

“(2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts.

No such agreement or compact shall be binding or obligatory upon any State a party thereto unless it is agreed upon by all parties to the agreement and until it has been approved by the Administrator and the Congress.

“APPLICATION OF ACT AND INTEGRATION WITH OTHER ACTS

42 USC 6905.

“SEC. 1006. (a) APPLICATION OF ACT.—Nothing in this Act shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the Federal Water Pollution Control Act (33 U.S.C. 1151 and following), the Safe Drinking Water Act (42 U.S.C. 300f and following), the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 and following), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following) except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.

“(b) INTEGRATION WITH OTHER ACTS.—The Administrator shall integrate all provisions of this Act for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act (42 U.S.C. 1857 and following), the Federal Water Pollution Control Act (33 U.S.C. 1151 and following), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 and following), the Safe Drinking Water Act (42 U.S.C. 300f and following), the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 and following) and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this Act and in the other acts referred to in this subsection.

“FINANCIAL DISCLOSURE

42 USC 6906.

“SEC. 1007. (a) STATEMENT.—Each officer or employee of the Administrator who—

“(1) performs any function or duty under this Act; and

“(2) has any known financial interest in any person who applies for or receives financial assistance under this Act shall, beginning on February 1, 1977, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

“(b) ACTION BY ADMINISTRATOR.—The Administrator shall—

“(1) act within ninety days after the date of enactment of this Act—

“(A) to define the term ‘known financial interest’ for purposes of subsection (a) of this section; and

“(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

“(2) report to the Congress on June 1, 1978, and of each succeeding calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

“(c) EXEMPTION.—In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions within the Environmental Protection Agency which are of a nonpolicy-making nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

“(d) PENALTY.—Any officer or employee who is subject to, and knowingly violates, this section shall be fined not more than \$2,500 or imprisoned not more than one year, or both.

“SOLID WASTE MANAGEMENT INFORMATION AND GUIDELINES

“SEC. 1008. (a) GUIDELINES.—Within one year of enactment of this section, and from time to time thereafter, the Administrator shall, in cooperation with appropriate Federal, State, municipal, and intermunicipal agencies, and in consultation with other interested persons, and after public hearings, develop and publish suggested guidelines for solid waste management. Such suggested guidelines shall—

“(1) provide a technical and economic description of the level of performance that can be attained by various available solid waste management practices (including operating practices) which provide for the protection of public health and the environment;

“(2) not later than two years after the enactment of this section, describe levels of performance, including appropriate methods and degrees of control, that provide at a minimum for (A) protection of public health and welfare; (B) protection of the quality of ground waters and surface waters from leachates; (C) protection of the quality of surface waters from runoff through compliance with effluent limitations under the Federal Water Pollution Control Act, as amended; (D) protection of ambient air quality through compliance with new source performance standards or requirements of air quality implementation plans under the Clean Air Act, as amended; (E) disease and vector control; (F) safety; and (G) esthetics; and

“(3) provide minimum criteria to be used by the States to define those solid waste management practices which constitute the open dumping of solid waste or hazardous waste and are to be prohibited under title IV of this Act.

Where appropriate, such suggested guidelines also shall include minimum information for use in deciding the adequate location, design, and construction of facilities associated with solid waste management

Report to Congress.

42 USC 6907.

33 USC 1151 note.

42 USC 1857 note.

Minimum criteria of management practices.

practices, including the consideration of regional, geographic, demographic, and climatic factors.

Notification to congressional committees.

“(b) NOTICE.—The Administrator shall notify the Committee on Public Works of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives a reasonable time before publishing any suggested guidelines, pursuant to this section of the content of such proposed suggested guidelines.

“Subtitle B—Office of Solid Waste; Authorities of the Administrator

“OFFICE OF SOLID WASTE

Establishment. 42 USC 6911.

“SEC. 2001. The Administrator shall establish within the Environmental Protection Agency an Office of Solid Waste (hereinafter referred to as the ‘Office’) to be headed by a Deputy Assistant Administrator of the Environmental Protection Agency. The duties and responsibilities (other than duties and responsibilities relating to research and development) of the Administrator under this Act (as modified by applicable reorganization plans) shall be carried out through the Office.

“AUTHORITIES OF ADMINISTRATOR

42 USC 6912.

“SEC. 2002. (a) AUTHORITIES.—In carrying out this Act, the Administrator is authorized to—

“(1) prescribe, in consultation with Federal, State, and regional authorities, such regulations as are necessary to carry out his functions under this Act;

“(2) consult with or exchange information with other Federal agencies undertaking research, development, demonstration projects, studies, or investigations relating to solid waste;

“(3) provide technical and financial assistance to States or regional agencies in the development and implementation of solid waste plans and hazardous waste management programs;

“(4) consult with representatives of science, industry, agriculture, labor, environmental protection and consumer organizations, and other groups, as he deems advisable; and

“(5) utilize the information, facilities, personnel and other resources of Federal agencies, including the National Bureau of Standards and the National Bureau of the Census, on a reimbursable basis, to perform research and analyses and conduct studies and investigations related to resource recovery and conservation and to otherwise carry out the Administrator’s functions under this Act.

“(b) REVISION OF REGULATIONS.—Each regulation promulgated under this Act shall be reviewed and, where necessary, revised not less frequently than every three years.

“RESOURCE RECOVERY AND CONSERVATION PANELS

Technical assistance by personnel teams. 42 USC 6913.

“SEC. 2003. The Administrator shall provide teams of personnel, including Federal, State, and local employees or contractors (hereinafter referred to as ‘Resource Conservation and Recovery Panels’) to provide States and local governments upon request with technical assistance on solid waste management, resource recovery, and resource conservation. Such teams shall include technical, marketing, financial,

and institutional specialists, and the services of such teams shall be provided without charge to States or local governments.

“GRANTS FOR DISCARDED TIRE DISPOSAL

“SEC. 2004. (a) GRANTS.—The Administrator shall make available grants equal to 5 percent of the purchase price of tire shredders (including portable shredders attached to tire collection trucks) to those eligible applicants best meeting criteria promulgated under this section. An eligible applicant may be any private purchaser, public body, or public-private joint venture. Criteria for receiving grants shall be promulgated under this section and shall include the policy to offer any private purchaser the first option to receive a grant, the policy to develop widespread geographic distribution of tire shredding facilities, the need for such facilities within a geographic area, and the projected risk and viability of any such venture. In the case of an application under this section from a public body, the Administrator shall first make a determination that there are no private purchasers interested in making an application before approving a grant to a public body.

Eligible applicants. 42 USC 6914.

“(b) AUTHORIZATION.—There is authorized to be appropriated \$750,000 for each of the fiscal years 1978 and 1979 to carry out this section.

“ANNUAL REPORT

“SEC. 2005. The Administrator shall transmit to the Congress and the President, not later than ninety days after the end of each fiscal year, a comprehensive and detailed report on all activities of the Office during the preceding fiscal year. Each such report shall include—

42 USC 6915.

“(1) a statement of specific and detail objectives for the activities and programs conducted and assisted under this Act;

“(2) statements of the Administrator’s conclusions as to the effectiveness of such activities and programs in meeting the stated objectives and the purposes of this Act, measured through the end of such fiscal year;

“(3) a summary of outstanding solid waste problems confronting the Administrator, in order of priority;

“(4) recommendations with respect to such legislation which the Administrator deems necessary or desirable to assist in solving problems respecting solid waste;

“(5) all other information required to be submitted to the Congress pursuant to any other provision of this Act; and

“(6) the Administrator’s plans for activities and programs respecting solid waste during the next fiscal year.

“GENERAL AUTHORIZATION

“SEC. 2006. (a) GENERAL ADMINISTRATION.—There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of this Act, \$35,000,000 for the fiscal year ending September 30, 1977, \$38,000,000 for the fiscal year ending September 30, 1978, and \$42,000,000 for the fiscal year ending September 30, 1979.

42 USC 6916.

“(b) RESOURCE RECOVERY AND CONSERVATION PANELS.—Not less than 20 percent of the amount appropriated under subsection (a) shall be used only for purposes of Resource Recovery and Conservation Panels established under section 2003 (including travel expenses incurred by such panels in carrying out their functions under this Act).

Infra. “(c) HAZARDOUS WASTE.—Not less than 30 percent of the amount appropriated under subsection (a) shall be used only for purposes of carrying out subtitle C of this Act (relating to hazardous waste) other than section 3011.

“Subtitle C—Hazardous Waste Management

“IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

42 USC 6921.

“SEC. 3001. (a) CRITERIA FOR IDENTIFICATION OR LISTING.—Not later than eighteen months after the date of the enactment of this Act, the Administrator shall, after notice and opportunity for public hearing, and after consultation with appropriate Federal and State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subtitle, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate.

Regulations.

“(b) IDENTIFICATION AND LISTING.—Not later than eighteen months after the date of enactment of this section, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 1004 (5)), which shall be subject to the provisions of this subtitle. Such regulations shall be based on the criteria promulgated under subsection (a) and shall be revised from time to time thereafter as may be appropriate.

Ante, p. 2799.

“(c) PETITION BY STATE GOVERNOR.—At any time after the date eighteen months after the enactment of this title, the Governor of any State may petition the Administrator to identify or list a material as a hazardous waste. The Administrator shall act upon such petition within ninety days following his receipt thereof and shall notify the Governor of such action. If the Administrator denies such petition because of financial considerations, in providing such notice to the Governor he shall include a statement concerning such considerations.

“STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

Regulations.
42 USC 6922.

“SEC. 3002. Not later than eighteen months after the date of the enactment of this section, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this subtitle, as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting—

- “(1) recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such wastes;
- “(2) labeling practices for any containers used for the storage, transport, or disposal of such hazardous waste such as will identify accurately such waste;
- “(3) use of appropriate containers for such hazardous waste;
- “(4) furnishing of information on the general chemical compo-

sition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;

“(5) use of a manifest system to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued as provided in this subtitle; and

“(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out an authorized permit program pursuant to this subtitle at such times as the Administrator (or the State agency if appropriate) deems necessary, setting out—

Reports.

“(A) the quantities of hazardous waste identified or listed under this subtitle that he has generated during a particular time period; and

“(B) the disposition of all hazardous waste reported under subparagraph (A).

“STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

“SEC. 3003. (a) STANDARDS.—Not later than eighteen months after the date of enactment of this section, and after opportunity for public hearings, the Administrator, after consultation with the Secretary of Transportation and the States, shall promulgate regulations establishing such standards, applicable to transporters of hazardous waste identified or listed under this subtitle, as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting—

Regulations.
42 USC 6923.

“(1) recordkeeping concerning such hazardous waste transported, and their source and delivery points;

“(2) transportation of such waste only if properly labeled;

“(3) compliance with the manifest system referred to in section 3002(5); and

“(4) transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this subtitle.

“(b) COORDINATION WITH REGULATIONS OF SECRETARY OF TRANSPORTATION.—In case of any hazardous waste identified or listed under this subtitle which is subject to the Hazardous Materials Transportation Act (88 Stat. 2156; 49 U.S.C. 1801 and following), the regulations promulgated by the Administrator under this subtitle shall be consistent with the requirements of such Act and the regulations thereunder. The Administrator is authorized to make recommendations to the Secretary of Transportation respecting the regulations of such hazardous waste under the Hazardous Materials Transportation Act and for addition of materials to be covered by such Act.

Recommendations.

“STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

“SEC. 3004. Not later than eighteen months after the date of enactment of this section, and after opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or

Regulations.
42 USC 6924.

listed under this subtitle, as may be necessary to protect human health and the environment. Such standards shall include, but need not be limited to, requirements respecting—

“(1) maintaining records of all hazardous wastes identified or listed under this title which is treated, stored, or disposed of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of;

“(2) satisfactory reporting, monitoring, and inspection and compliance with the manifest system referred to in section 3002(5);

“(3) treatment, storage, or disposal of all such waste received by the facility pursuant to such operating methods, techniques, and practices as may be satisfactory to the Administrator;

“(4) the location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;

“(5) contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste;

“(6) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable; and

“(7) compliance with the requirements of section 3005 respecting permits for treatment, storage, or disposal.

No private entity shall be precluded by reason of criteria established under paragraph (6) from the ownership or operation of facilities providing hazardous waste treatment, storage, or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage, or disposal of specified hazardous waste.

“PERMITS FOR TREATMENT, STORAGE, OR DISPOSAL OF HAZARDOUS WASTE

42 USC 6925.

“SEC. 3005. (a) PERMIT REQUIREMENTS.—Not later than eighteen months after the date of the enactment of this section, the Administrator shall promulgate regulations requiring each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subtitle to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 3010 and upon and after such date the disposal of any such hazardous waste is prohibited except in accordance with such a permit.

“(b) REQUIREMENTS OF PERMIT APPLICATION.—Each application for a permit under this section shall contain such information as may be required under regulations promulgated by the Administrator, including information respecting—

“(1) estimates with respect to the composition, quantities, and concentrations of any hazardous waste identified or listed under this subtitle, or combinations of any such hazardous waste and any other solid waste, proposed to be disposed of, treated, transported, or stored, and the time, frequency, or rate of which such waste is proposed to be disposed of, treated, transported, or stored; and

“(2) the site at which such hazardous waste or the products of treatment of such hazardous waste will be disposed of, treated, transported to, or stored.

“(c) PERMIT ISSUANCE.—Upon a determination by the Administrator (or a State, if applicable), of compliance by a facility for which a permit is applied for under this section with the requirements of this section and section 3004, the Administrator (or the State) shall issue a permit for such facilities. In the event permit applicants propose modification of their facilities, or in the event the Administrator (or the State) determines that modifications are necessary to conform to the requirements under this section and section 3004, the permit shall specify the time allowed to complete the modifications.

“(d) PERMIT REVOCATION.—Upon a determination by the Administrator (or by a State, in the case of a State having an authorized hazardous waste program under section 3006) of noncompliance by a facility having a permit under this title with the requirements of this section or section 3004, the Administrator (or State, in the case of a State having an authorized hazardous waste program under section 3006) shall revoke such permit.

“(e) INTERIM STATUS.—Any person who—

“(1) owns or operates a facility required to have a permit under this section which facility is in existence on the date of enactment of this Act,

“(2) has complied with the requirements of section 3010(a), and

“(3) has made an application for a permit under this section shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

“AUTHORIZED STATE HAZARDOUS WASTE PROGRAMS

“SEC. 3006. (a) FEDERAL GUIDELINES.—Not later than eighteen months after the date of enactment of this Act, the Administrator, after consultation with State authorities, shall promulgate guidelines to assist States in the development of State hazardous waste programs.

42 USC 6926.

“(b) AUTHORIZATION OF STATE PROGRAM.—Any State which seeks to administer and enforce a hazardous waste program pursuant to this subtitle may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his findings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this subtitle in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this subtitle, (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such

program does not provide adequate enforcement of compliance with the requirements of this subtitle.

“(c) INTERIM AUTHORIZATION.—Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date required for promulgation of regulations under sections 3002, 3003, 3004, and 3005, submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subtitle. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subtitle, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subtitle for a twenty-four month period beginning on the date six months after the date required for promulgation of regulations under sections 3002 through 3005.

“(d) EFFECT OF STATE PERMIT.—Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subtitle.

“(e) WITHDRAWAL OF AUTHORIZATION.—Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subtitle. The Administrator shall not withdraw authorization of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

“INSPECTIONS

42 USC 6927.

“SEC. 3007. (a) ACCESS ENTRY.—For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this subtitle, any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous wastes shall, upon request of any officer or employee of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer employee of a State having an authorized hazardous waste program, furnish or permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the development of any regulation or enforcing the provisions of this title, such officers or employees are authorized—

“(1) to enter at reasonable times any establishment or other place maintained by any person where hazardous wastes are generated, stored, treated, or disposed of;

“(2) to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results

of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

“(b) AVAILABILITY TO PUBLIC.—Any records, reports, or information obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof, to which the Administrator (or the State, as the case may be) has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18 of the United States Code, the Administrator (or the State, as the case may be) shall consider such information or particular portion thereof confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

“FEDERAL ENFORCEMENT

“SEC. 3008. (a) COMPLIANCE ORDERS.—(1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subtitle, the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification, the Administrator may issue an order requiring compliance within a specified time period or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction. 42 USC 6928.

“(2) In the case of a violation of any requirement of this subtitle where such violation occurs in a State which is authorized to carry out a hazardous waste program under section 3006, the Administrator shall give notice to the State in which such violation has occurred thirty days prior to issuing an order or commencing a civil action under this section.

“(3) If such violator fails to take corrective action within the time specified in the order, he shall be liable for a civil penalty of not more than \$25,000 for each day of continued noncompliance and the Administrator may suspend or revoke any permit issued to the violator (whether issued by the Administrator or the State). Penalty.

“(b) PUBLIC HEARING.—Any order or any suspension or revocation of a permit shall become final unless, no later than thirty days after the order or notice of the suspension or revocation is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures. Subpenas.

“(c) REQUIREMENTS OF COMPLIANCE ORDERS.—Any order issued under this section shall state with reasonable specificity the nature of the violation and specify a time for compliance and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements. Penalty.

“(d) **CRIMINAL PENALTY.**—Any person who knowingly—

“(1) transports any hazardous waste listed under this subtitle to a facility which does not have a permit under section 3005 (or 3006 in the case of a State program),

“(2) disposes of any hazardous waste listed under this subtitle without having obtained a permit therefor under this subtitle,

“(3) makes any false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for purposes of compliance with this subtitle.

shall, upon conviction, be subject to a fine of not more than \$25,000 for each day of violation, or to imprisonment not to exceed one year, or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.

“**RETENTION OF STATE AUTHORITY**

42 USC 6929.

“**SEC. 3009.** Upon the effective date of regulations under this subtitle no State or political subdivision may impose any requirements less stringent than those authorized under this subtitle respecting the same matter as governed by such regulations, except that if application of a regulation with respect to any matter under this subtitle is postponed or enjoined by the action of any court, no State or political subdivision shall be prohibited from acting with respect to the same aspect of such matter until such time as such regulation takes effect.

“**EFFECTIVE DATE**

42 USC 6930.

“**SEC. 3010. (a) PRELIMINARY NOTIFICATION.**—Not later than ninety days after promulgation or revision of regulations under section 3001 identifying by its characteristics or listing any substance as hazardous waste subject to this subtitle, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs under section 3006) a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. Not more than one such notification shall be required to be filed with respect to the same substance. No identified or listed hazardous waste subject to this subtitle may be transported, treated, stored, or disposed of unless notification has been given as required under this subsection.

“(b) **EFFECTIVE DATE OF REGULATION.**—The regulations under this subtitle respecting requirements applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste (including requirements respecting permits for such treatment, storage, or disposal) shall take effect on the date six months after the date of promulgation thereof (or six months after the date of revision in the case of any regulation which is revised after the date required for promulgation thereof).

“**AUTHORIZATION OF ASSISTANCE TO STATES**

42 USC 6931.

SEC. 3011. (a) AUTHORIZATION.—There is authorized to be appropriated \$25,000,000 for each of the fiscal years 1978 and 1979 to be used to

make grants to the States for purposes of assisting the States in the development and implementation of authorized State hazardous waste programs.

“(b) **ALLOCATION.**—Amounts authorized to be appropriated under subsection (a) shall be allocated among the States on the basis of regulations promulgated by the Administrator, after consultation with the States, which take into account, the extent to which hazardous waste is generated, transported, treated, stored, and disposed of within such State, the extent of exposure of human beings and the environment within such State to such waste, and such other factors as the Administrator deems appropriate.

“**Subtitle D—State or Regional Solid Waste Plans**

“**OBJECTIVES OF SUBTITLE**

“**SEC. 4001.** The objectives of this subtitle are to assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources and to encourage resource conservation. Such objectives are to be accomplished through Federal technical and financial assistance to States or regional authorities for comprehensive planning pursuant to Federal guidelines designed to foster cooperation among Federal, State, and local governments and private industry.

42 USC 6941.

“**FEDERAL GUIDELINES FOR PLANS**

“**SEC. 4002. (a) GUIDELINES FOR IDENTIFICATION OF REGIONS.**—For purposes of encouraging and facilitating the development of regional planning for solid waste management, the Administrator, within one hundred and eighty days after the date of enactment of this section and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which have common solid waste management problems and are appropriate units for planning regional solid waste management services. Such guidelines shall consider—

Publication.
42 USC 6942.

- “(1) the size and location of areas which should be included,
- “(2) the volume of solid waste which should be included, and
- “(3) the available means of coordinating regional planning with other related regional planning and for coordination of such regional planning into the State plan.

“(b) **GUIDELINES FOR STATE PLANS.**—Not later than eighteen months after the date of enactment of this section and after notice and hearing, the Administrator shall, after consultation with appropriate Federal, State, and local authorities, promulgate regulations containing guidelines to assist in the development and implementation of State solid waste management plans (hereinafter in this title referred to as ‘State plans’). The guidelines shall contain methods for achieving the objectives specified in section 4001. Such guidelines shall be reviewed from time to time, but not less frequently than every three years, and revised as may be appropriate.

Regulations.

Review.

“(c) **CONSIDERATIONS FOR STATE PLAN GUIDELINES.**—The guidelines promulgated under subsection (b) shall consider—

- “(1) the varying regional, geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to insure the reasonable protection of the quality of the ground and surface waters from leachate contamination,

the reasonable protection of the quality of the surface waters from surface runoff contamination, and the reasonable protection of ambient air quality;

“(2) characteristics and conditions of collection, storage, processing, and disposal operating methods, techniques and practices, and location of facilities where such operating methods, techniques, and practices are conducted, taking into account the nature of the material to be disposed;

“(3) methods for closing or upgrading open dumps for purposes of eliminating potential health hazards;

“(4) population density, distribution, and projected growth;

“(5) geographic, geologic, climatic, and hydrologic characteristics;

“(6) the type and location of transportation;

“(7) the profile of industries;

“(8) the constituents and generation rates of waste;

“(9) the political, economic, organizational, financial, and management problems affecting comprehensive solid waste management;

“(10) types of resource recovery facilities and resource conservation systems which are appropriate; and

“(11) available new and additional markets for recovered material.

“MINIMUM REQUIREMENTS FOR APPROVAL OF PLANS

42 USC 6943.

“SEC. 4003. In order to be approved under section 4007, each State plan must comply with the following minimum requirements—

“(1) The plan shall identify (in accordance with section 4006(b)) (A) the responsibilities of State, local, and regional authorities in the implementation of the State plan, (B) the distribution of Federal funds to the authorities responsible for development and implementation of the State plan, and (C) the means for coordinating regional planning and implementation under the State plan.

“(2) The plan shall, in accordance with section 4005(c), prohibit the establishment of new open dumps within the State, and contain requirements that all solid waste (including solid waste originating in other States, but not including hazardous waste) shall be (A) utilized for resource recovery or (B) disposed of in sanitary landfills (within the meaning of section 4004(a)) or otherwise disposed of in an environmentally sound manner.

“(3) The plan shall provide for the closing or upgrading of all existing open dumps within the State pursuant to the requirements of section 4005.

“(4) The plan shall provide for the establishment of such State regulatory powers as may be necessary to implement the plan.

“(5) The plan shall provide that no local government within the State shall be prohibited under State or local law from entering into long-term contracts for the supply of solid waste to resource recovery facilities.

“(6) The plan shall provide for such resource conservation or recovery and for the disposal of solid waste in sanitary landfills or any combination of practices so as may be necessary to use or dispose of such waste in a manner that is environmentally sound.

Long-term
contracts.

Resource
conservation and
disposal of solid
waste.

“CRITERIA FOR SANITARY LANDFILLS; SANITARY LANDFILLS REQUIRED FOR ALL DISPOSAL

“SEC. 4004. (a) CRITERIA FOR SANITARY LANDFILLS.—Not later than one year after the date of enactment of this section, after consultation with the States, and after notice and public hearings, the Administrator shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this Act. At a minimum, such criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility. Such regulations may provide for the classification of the types of sanitary landfills. 42 USC 6944.

“(b) DISPOSAL REQUIRED TO BE IN SANITARY LANDFILLS, ETC.—For purposes of complying with section 4003(2) each State plan shall prohibit the establishment of open dumps and contain a requirement that disposal of all solid waste within the State shall be in compliance with such section 4003(2).

“(c) EFFECTIVE DATE.—The prohibition contained in subsection (b) shall take effect on the date six months after the date of promulgation of regulations under subsection (a) or on the date of approval of the State plan, whichever is later.

“UPGRADING OF OPEN DUMPS

“SEC. 4005. (a) OPEN DUMPS.—For purposes of this Act, the term ‘open dump’ means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 4004 and which is not a facility for disposal of hazardous waste. 42 USC 6945.

“(b) INVENTORY.—Not later than one year after promulgation of regulations under section 4004, the Administrator, with the cooperation of the Bureau of the Census shall publish an inventory of all disposal facilities or sites in the United States which are open dumps within the meaning of this Act.

“(c) CLOSING OR UPGRADING OF EXISTING OPEN DUMPS.—Any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste is prohibited, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under this section. For purposes of complying with section 4003(2), each State plan shall contain a requirement that all existing disposal facilities or sites for solid waste in such State which are open dumps listed in the inventory under subsection (b) shall comply with such measures as may be promulgated by the Administrator, to eliminate health hazards and minimize potential health hazards. Each such plan shall establish, for any entity which demonstrates that it has considered other public or private alternatives for solid waste management to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed 5 years from the date of publication of the inventory under subsection (b)).

Schedule of
remedial
measures.

"PROCEDURE FOR DEVELOPMENT AND IMPLEMENTATION OF STATE PLAN

Regulations.
42 USC 6946.

"SEC. 4006. (a) IDENTIFICATION OF REGIONS.—Within one hundred and eighty days after publication of guidelines under section 4002(a) (relating to identification of regions), the Governor of each State, after consultation with local elected officials, shall promulgate regulations based on such guidelines identifying the boundaries of each area within the State which, as a result of urban concentrations, geographic conditions, markets, and other factors, is appropriate for carrying out regional solid waste management. Such regulations may be modified from time to time (identifying additional or different regions) pursuant to such guidelines.

State plan.

"(b) IDENTIFICATION OF STATE AND LOCAL AGENCIES AND RESPONSIBILITIES.—(1) Within one hundred and eighty days after the Governor promulgates regulations under subsection (a), for purposes of facilitating the development and implementation of a State plan which will meet the minimum requirements of section 4003, the State, together with appropriate elected officials of general purpose units of local government, shall jointly (A) identify an agency to develop the State plan and identify one or more agencies to implement such plan, and (B) identify which solid waste functions will, under such State plan, be planned for and carried out by the State and which such functions will, under such State plan, be planned for and carried out by a regional or local authority or a combination of regional or local and State authorities. If a multi-functional regional agency authorized by State law to conduct solid waste planning and management (the members of which are appointed by the Governor) is in existence on the date of enactment of this Act, the Governor shall identify such authority for purposes of carrying out within such region clause (A) of this paragraph. Where feasible, designation of the agency for the affected area designated under section 208 of the Federal Water Pollution Control Act (86 Stat. 839) shall be considered. A State agency identified under this paragraph shall be established or designated by the Governor of such State. Local or regional agencies identified under this paragraph shall be composed of individuals at least a majority of whom are elected local officials.

Multi-functional
regional agency.

33 USC 1288.

"(2) If planning and implementation agencies are not identified and designated or established as required under paragraph (1) for any affected area, the governor shall, before the date two hundred and seventy days after promulgation of regulations under subsection (a), establish or designate a State agency to develop and implement the State plan for such area.

"(c) INTERSTATE REGIONS.—(1) In the case of any region which, pursuant to the guidelines published by the Administrator under section 4002(a) (relating to identification of regions), would be located in two or more States, the Governors of the respective States, after consultation with local elected officials, shall consult, cooperate, and enter into agreements identifying the boundaries of such region pursuant to subsection (a).

"(2) Within one hundred and eighty days after an interstate region is identified by agreement under paragraph (1), appropriate elected officials of general purpose units of local government within such region shall jointly establish or designate an agency to develop a plan for such region. If no such agency is established or designated within such period by such officials, the Governors of the respective States may, by agreement, establish or designate for such purpose a single

representative organization including elected officials of general purpose units of local government within such region.

"(3) Implementation of interstate regional solid waste management plans shall be conducted by units of local government for any portion of a region within their jurisdiction, or by multijurisdictional agencies or authorities designated in accordance with State law, including those designated by agreement by such units of local government for such purpose. If no such unit, agency, or authority is so designated, the respective Governors shall designate or establish a single interstate agency to implement such plan.

Regional solid
waste
management
plans.

"(4) For purposes of this subtitle, so much of an interstate regional plan as is carried out within a particular State shall be deemed part of the State plan for such State.

"APPROVAL OF STATE PLAN; FEDERAL ASSISTANCE

"SEC. 4007. (a) PLAN APPROVAL.—The Administrator shall, within six months after a State plan has been submitted for approval, approve or disapprove the plan. The Administrator shall approve a plan if he determines that—

42 USC 6947.

"(1) it meets the requirements of paragraphs (1), (2), (3), and (5) of section 4003; and

"(2) it contains provision for revision of such plan, after notice and public hearing, whenever the Administrator, by regulation, determines—

"(A) that revised regulations respecting minimum requirements have been promulgated under paragraphs (1), (2), (3), and (5) of section 4003 with which the State plan is not in compliance;

"(B) that information has become available which demonstrates the inadequacy of the plan to effectuate the purposes of this subtitle; or

"(C) that such revision is otherwise necessary.

The Administrator shall review approved plans from time to time and if he determines that revision or corrections are necessary to bring such plan into compliance with the minimum requirements promulgated under section 4003 (including new or revised requirements), he shall, after notice and opportunity for public hearing, withdraw his approval of such plan. Such withdrawal of approval shall cease to be effective upon the Administrator's determination that such complies with such minimum requirements.

Review;
withdrawal of
approval.

"(b) ELIGIBILITY OF STATES FOR FEDERAL FINANCIAL ASSISTANCE.—(1) The Administrator shall approve a State application for financial assistance under this subtitle, and make grants to such State, if such State and local and regional authorities within such State have complied with the requirements of section 4006 within the period required under such section and if such State has a State plan which has been approved by the Administrator under this subtitle.

"(2) The Administrator shall approve a State application for financial assistance under this subtitle, and make grants to such State, for fiscal years 1978 and 1979 if the Administrator determines that the State plan continues to be eligible for approval under subsection (a) and is being implemented by the State.

"(3) Upon withdrawal of approval of a State plan under subsection (a), the Administrator shall withhold Federal financial and technical assistance under this subtitle (other than such technical assistance as

Withholding of
financial and
technical
assistance.

may be necessary to assist in obtaining the reinstatement of approval) until such time as such approval is reinstated.

“(C) EXISTING ACTIVITIES.—Nothing in this subtitle shall be construed to prevent or affect any activities respecting solid waste planning or management which are carried out by State, regional, or local authorities unless such activities are inconsistent with a State plan approved by the Administrator under this subtitle.

“FEDERAL ASSISTANCE

42 USC 6948.

“SEC. 4008. (a) AUTHORIZATION OF FEDERAL FINANCIAL ASSISTANCE.—(1) There are authorized to be appropriated \$30,000,000 for fiscal year 1978 and \$40,000,000 for fiscal year 1979 for purposes of making grants to the States for the development and implementation of State plans under this subtitle.

“(2) (A) The Administrator is authorized to provide financial assistance to States, counties, municipalities, and intermunicipal agencies and State and local public solid waste management authorities for implementation of programs to provide solid waste management, resource recovery, and resource conservation services and hazardous waste management. Such assistance shall include assistance for facility planning and feasibility studies; expert consultation; surveys and analyses of market needs; marketing of recovered resources; technology assessments; legal expenses; construction feasibility studies; source separation projects; and fiscal or economic investigations or studies; but such assistance shall not include any other element of construction, or any acquisition of land or interest in land, or any subsidy for the price of recovered resources. Agencies assisted under this subsection shall consider existing solid waste management and hazardous waste management services and facilities as well as facilities proposed for construction.

Compliance with project or program.

“(B) An applicant for financial assistance under this paragraph must agree to comply with respect to the project or program assisted with the applicable requirements of section 4005 and Subtitle C of this Act and apply applicable solid waste management practices, methods, and levels of control consistent with any guidelines published pursuant to section 1008 of this Act. Assistance under this paragraph shall be available only for programs certified by the State to be consistent with any applicable State or area-wide solid waste management plan or program.

Ante, p. 2803.

Appropriation authorization.

“(C) There are authorized to be appropriated \$15,000,000 for each of the fiscal years 1978 and 1979 for purposes of this section.

“(b) STATE ALLOTMENT.—The sums appropriated in any fiscal year under subsection (a) (1) shall be allotted by the Administrator among all States, in the ratio that the population in each State bears to the population in all of the States, except that no State shall receive less than one-half of 1 per centum of the sums so allotted in any fiscal year. No State shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than non-recurrent expenditures for solid waste management control programs will be less than its expenditures were for such programs during fiscal year 1975, except that such funds may be reduced by an amount equal to their proportionate share of any general reduction of State spending ordered by the Governor or legislature of such State. No State shall receive any grant for solid waste management programs unless

the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, regional, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such programs.

“(c) DISTRIBUTION OF FEDERAL FINANCIAL ASSISTANCE WITHIN THE STATE.—The Federal assistance allotted to the States under subsection (b) shall be allocated by the State receiving such funds to State, local, regional, and interstate authorities carrying out planning and implementation of the State plan. Such allocation shall be based upon the responsibilities of the respective parties as determined pursuant to section 4006(b).

“(d) TECHNICAL ASSISTANCE.—The Administrator may provide technical assistance to State and local governments for purposes of developing and implementing State plans. Technical assistance respecting resource recovery and conservation may be provided through resource recovery and conservation panels, established in the Environmental Protection Agency under subtitle B, to assist the State and local governments with respect to particular resource recovery and conservation projects under consideration and to evaluate their effect on the State plan.

Ante, p. 2804.

“(e) SPECIAL COMMUNITIES.—(1) The Administrator, in cooperation with State and local officials, shall identify communities within the United States (A) having a population of less than twenty-five thousand persons, (B) having solid waste disposal facilities in which more than 75 per centum of the solid waste disposal of is from areas outside the jurisdiction of the communities, and (C) which have serious environmental problems resulting from the disposal of such solid waste.

“(2) There is authorized to be appropriated to the Administrator \$2,500,000 for each of the fiscal years 1978 and 1979 to make grants to be used for the conversion, improvement, or consolidation of existing solid waste disposal facilities, or for the construction of new solid waste disposal facilities, or for both, within communities identified under paragraph (1). Not more than one community in any State shall be eligible for grants under this paragraph and not more than one project in any State shall be eligible for such grants.

Appropriation authorization.

“(3) Grants under this subsection shall be made only to projects which the Administrator determines will be consistent with an applicable State plan approved under this subtitle and which will assist in carrying out such plan.

“RURAL COMMUNITIES ASSISTANCE

“SEC. 4009. (a) IN GENERAL.—The Administrator shall make grants to States to provide assistance to municipalities with a population of five thousand or less, or counties with a population of ten thousand or less or less than twenty persons per square mile and not within a metropolitan area, for solid waste management facilities (including equipment) necessary to meet the requirements of section 4005 of this Act or restrictions on open burning or other requirements arising under the Clean Air Act or the Federal Water Pollution Control Act. Such assistance shall only be available—

42 USC 6949.

“(1) to any municipality or county which could not feasibly be included in a solid waste management system or facility serving an urbanized, multijurisdictional area because of its distance from such systems;

42 USC 1857 note. 33 USC 1151 note.

“(2) where existing or planned solid waste management services or facilities are unavailable or insufficient to comply with the requirements of section 4005 of this Act; and

“(3) for systems which are certified by the State to be consistent with any plans or programs established under any State or areawide planning process.

“(b) ALLOTMENT.—The Administrator shall allot the sums appropriated to carry out this section in any fiscal year among the States in accordance with regulations promulgated by him on the basis of the average of the ratio which the population of rural areas of each State bears to the total population of rural areas of all the States, the ratio which the population of counties in each State having less than twenty persons per square mile bears to the total population of such counties in all the States, and the ratio which the population of such low-density counties in each State having 33 per centum or more of all families with incomes not in excess of 125 per centum of the poverty level bears to the total population of such counties in all the States.

Land acquisition, prohibition.

“(c) LIMIT.—The amount of any grant under this section shall not exceed 75 per centum of the costs of the project. No assistance under this section shall be available for the acquisition of land or interests in land.

“(d) APPROPRIATIONS.—There are authorized to be appropriated \$25,000,000 for each of the fiscal years 1978 and 1979 to carry out this section.

“Subtitle E—Duties of the Secretary of Commerce in Resource and Recovery

“FUNCTIONS

42 USC 6951.

“SEC. 5001. The Secretary of Commerce shall encourage greater commercialization of proven resource recovery technology by providing—

- “(1) accurate specifications for recovered materials;
- “(2) stimulation of development of markets for recovered materials;
- “(3) promotion of proven technology; and
- “(4) a forum for the exchange of technical and economic data relating to resource recovery facilities.

“DEVELOPMENT OF SPECIFICATIONS FOR SECONDARY MATERIALS

Publication of guidelines. 42 USC 6952.

“SEC. 5002. The Secretary of Commerce, acting through the National Bureau of Standards, and in conjunction with national standards-setting organizations in resource recovery, shall, after public hearings, and not later than two years after the date of the enactment of this Act, publish guidelines for the development of specifications for the classification of materials recovered from waste which were destined for disposal. The specifications shall pertain to the physical and chemical properties and characteristics of such materials with regard to their use in replacing virgin materials in various industrial, commercial, and governmental uses. In establishing such guidelines the Secretary shall also, to the extent feasible, provide such information as may be necessary to assist Federal agencies with procurement of items containing recovered materials. The Secretary shall continue to cooperate with national standards-setting organizations, as may be necessary, to encourage the publication, promulgation and

Cooperation with national standards-setting organizations.

updating of standards for recovered materials and for the use of recovered materials in various industrial, commercial, and governmental uses.

“DEVELOPMENT OF MARKETS FOR RECOVERED MATERIALS

“SEC. 5003. The Secretary of Commerce shall within two years after the enactment of this Act take such actions as may be necessary to— 42 USC 6953.

- “(1) identify the geographical location of existing or potential markets for recovered materials;
- “(2) identify the economic and technical barriers to the use of recovered materials; and
- “(3) encourage the development of new uses for recovered materials.

“TECHNOLOGY PROMOTION

“SEC. 5004. The Secretary of Commerce is authorized to evaluate the commercial feasibility of resource recovery facilities and to publish the results of such evaluation, and to develop a data base for purposes of assisting persons in choosing such a system. 42 USC 6954.

“Subtitle F—Federal Responsibilities

“APPLICATION OF FEDERAL, STATE, AND LOCAL LAW TO FEDERAL FACILITIES

“SEC. 6001. Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption. 42 USC 6961.

Exemptions.

Presidential report to Congress.

"FEDERAL PROCUREMENT

42 USC 6962.

"SEC. 6002. (a) APPLICATION OF SECTION.—Except as provided in subsection (b), a procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds \$10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was \$10,000 or more.

"(b) PROCUREMENT SUBJECT TO OTHER LAW.—Any procurement, by any procuring agency, which is subject to regulations of the Administrator under section 6004 (as promulgated before the date of enactment of this section under comparable provisions of prior law) shall not be subject to the requirements of this section to the extent that such requirements are inconsistent with such regulations.

"(c) REQUIREMENTS.—(1) (A) After two years after the date of enactment of this section, each procuring agency shall procure items composed of the highest percentage of recovered materials practicable consistent with maintaining a satisfactory level of competition. The decision not to procure such items shall be based on a determination that such procurement items—

"(i) are not reasonably available within a reasonable period of time;

"(ii) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

"(iii) are only available at an unreasonable price. Any determination under clause (ii) shall be made on the basis of the guidelines of the Bureau of Standards in any case in which such material is covered by such guidelines.

"(B) Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using recovered material and recovered-material-derived fuel as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

"(C) Contracting officers shall require that vendors certify the percentage of the total material utilized for the performance of the contract which is recovered materials.

"(d) SPECIFICATIONS.—(1) All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement item procured by Federal agencies shall, in reviewing those specifications, ascertain whether such specifications violate the prohibitions contained in subparagraphs (A) through (C) of paragraph (2). Such review shall be undertaken not later than eighteen months after the date of enactment of this section.

"(2) In drafting or revising such specifications, after the date of enactment of this section—

"(A) any exclusion of recovered materials shall be eliminated;

"(B) such specification shall not require the item to be manufactured from virgin materials; and

"(C) such specifications shall require reclaimed materials to the maximum extent possible without jeopardizing the intended end use of the item.

"(e) GUIDELINES.—The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the Bureau of Standards), and the Public Printer, shall

prepare, and from time to time revise, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall set forth recommended practices with respect to the procurement of recovered materials and items containing such materials and shall provide information as to the availability, sources of supply, and potential uses of such materials and items.

"(f) PROCUREMENT OF SERVICES.—A procuring agency shall, to the maximum extent practicable, manage or arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery.

"(g) EXECUTIVE OFFICE.—The Office of Procurement Policy in the Executive Office of the President, in cooperation with the Administrator, shall implement the policy expressed in this section. It shall be the responsibility of the Office of Procurement Policy to coordinate this policy with other policies for Federal procurement, in such a way as to maximize the use of recovered resources, and to annually report to the Congress on actions taken by Federal agencies and the progress made in the implementation of such policy.

"COOPERATION WITH ENVIRONMENTAL PROTECTION AGENCY

"SEC. 6003. All Federal agencies having functions relating to solid waste or hazardous waste shall cooperate to the maximum extent permitted by law with the Administrator in carrying out his functions under this Act and shall make all appropriate information, facilities, personnel, and other resources available, on a reimbursable basis, to the Administrator upon his request.

42 USC 6963.

"APPLICABILITY OF SOLID WASTE DISPOSAL GUIDELINES TO EXECUTIVE AGENCIES

"SEC. 6004. (a) COMPLIANCE.—(1) If—

"(A) an Executive agency (as defined in section 105 of title 5, United States Code) has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste disposal activities, or

"(B) such an agency enters into a contract with any person for the operation by such person of any Federal property or facility, and the performance of such contract involves such person in solid waste disposal activities, then such agency shall insure compliance with the guidelines recommended under section 1008 and the purposes of this Act in the operation or administration of such property or facility, or the performance of such contract, as the case may be.

42 USC 6964.

"(2) Each Executive agency which conducts any activity—

"(A) which generates solid waste, and

"(B) which, if conducted by a person other than such agency, would require a permit or license from such agency in order to dispose of such solid waste,

shall insure compliance with such guidelines and the purposes of this Act in conducting such activity.

Ante, p. 2803.

"(3) Each Executive agency which permits the use of Federal property for purposes of disposal of solid waste shall insure compliance with such guidelines and the purposes of this Act in the disposal of such waste.

"(4) The President shall prescribe regulations to carry out this subsection.

“(b) **LICENSES AND PERMITS.**—Each Executive agency which issues any license or permit for disposal of solid waste shall, prior to the issuance of such license or permit, consult with the Secretary to insure compliance with guidelines recommended under section 1008 and the purposes of this Act.

Ante. p. 2803.

“Subtitle G—Miscellaneous Provisions

“EMPLOYEE PROTECTION

42 USC 6971.

“SEC. 7001. (a) **GENERAL.**—No person shall fire, or in any other way discriminate against, or cause to be fired or discriminated against, any employee or any authorized representative of employees by reason of the fact that such employee or representative has filed, instituted, or caused to be filed or instituted any proceeding under this Act or under any applicable implementation plan, or has testified or is about to testify in any proceeding resulting from the administration or enforcement of the provisions of this Act or of any applicable implementation plan.

Application to Secretary for review.

“(b) **REMEDY.**—Any employee or a representative of employees who believes that he has been fired or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such alleged violation occurs, apply to the Secretary of Labor for a review of such firing or alleged discrimination. A copy of the application shall be sent to such person who shall be the respondent. Upon receipt of such application, the Secretary of Labor shall cause such investigation to be made as he deems appropriate. Such investigation shall provide an opportunity for a public hearing at the request of any party to such review to enable the parties to present information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator or subject to judicial review under this Act.

Hearing notice.

Rehiring or reinstatement of employee.

Judicial review.

“(c) **COSTS.**—Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

“(d) **EXCEPTION.**—This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any requirement of this Act.

“(e) **EMPLOYMENT SHIFTS AND LOSS.**—The Administrator shall conduct continuing evaluations of potential loss or shifts of employ-

ment which may result from the administration or enforcement of the provisions of this Act and applicable implementation plans, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and on any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator or any State to modify or withdraw any standard, limitation, or any other requirement of this Act or any applicable implementation plan.

Request for investigation.

Hearing.

Report, findings, and recommendations, availability to public.

“CITIZEN SUITS

“SEC. 7002. (a) **IN GENERAL.**—Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

42 USC 6972.

“(1) against any person (including (a) the United States, and (b) any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, or order which has become effective pursuant to this Act; or

“(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred. Any action brought under paragraph (a)(2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such regulation or order, or to order the Administrator to perform such act or duty as the case may be.

“(b) **ACTIONS PROHIBITED.**—No action may be commenced under paragraph (a)(1) of this section—

“(1) prior to sixty days after the plaintiff has given notice of the violation (A) to the Administrator; (B) to the State in which the alleged violation occurs; and (C) to any alleged violator of such permit, standard, regulation, condition, requirement, or order; or

"(2) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, or order: *Provided, however,* That in any such action in a court of the United States, any person may intervene as a matter of right.

"(c) NOTICE.—No action may be commenced under paragraph (a) (2) of this section prior to sixty days after the plaintiff has given notice to the Administrator that he will commence such action, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 212 of this Act. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation. Any action respecting a violation under this Act may be brought under this section only in the judicial district in which such alleged violation occurs.

42 USC 3254f.

"(d) INTERVENTION.—In any action under this section the Administrator, if not a party, may intervene as a matter of right.

"(e) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, requiring the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

28 USC app.

"(f) OTHER RIGHTS PRESERVED.—Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or requirement relating to the management of solid waste or hazardous waste, or to seek any other relief (including relief against the Administrator or a State agency).

"IMMINENT HAZARD

42 USC 6973.

"SEC. 7003. Notwithstanding any other provision of this Act, upon receipt of evidence that the handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste is presenting an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person for contributing to the alleged disposal to stop such handling, storage, treatment, transportation, or disposal or to take such other action as may be necessary. The Administrator shall provide notice to the affected State of any such suit.

"PETITION FOR REGULATIONS; PUBLIC PARTICIPATION

Publication in
Federal Register.
42 USC 6974.

"SEC. 7004. (a) PETITION.—Any person may petition the Administrator for the promulgation, amendment, or repeal of any regulation under this Act. Within a reasonable time following receipt of such petition, the Administrator shall take action with respect to such petition and shall publish notice of such action in the Federal Register, together with the reasons therefor.

"(b) PUBLIC PARTICIPATION.—Public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under this Act shall be provided for, encouraged, and assisted by the Administrator and the States.

The Administrator, in cooperation with the States, shall develop and publish minimum guidelines for public participation in such processes.

"SEPARABILITY

"SEC. 7005. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby. 42 USC 6975.

"JUDICIAL REVIEW

"SEC. 7006. Any judicial review of final regulations promulgated pursuant to this Act shall be in accordance with sections 701 through 706 of title 5 of the United States Code, except that— 42 USC 6976.

"(1) a petition for review of action of the Administrator in promulgating any regulation, or requirement under this Act may be filed only in the United States Court of Appeals for the District of Columbia. Any such petition shall be filed within ninety days from the date of such promulgation, or after such date if such petition is based solely on grounds arising after such ninetieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement; and

"(2) in any judicial proceeding brought under this section in which review is sought of a determination under this Act required to be made on the record after notice and opportunity for hearing, if a party seeking review under this Act applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

"GRANTS OR CONTRACTS FOR TRAINING PROJECTS

"SEC. 7007. (a) GENERAL AUTHORITY.—The Administrator is authorized to make grants to, and contracts with any eligible organization. For purposes of this section the term "eligible organization" means a State or interstate agency, a municipality, educational institution, and any other organization which is capable of effectively carrying out a project which may be funded by grant under subsection (b) of this section. 42 USC 6977.

"Eligible
organization."

"(b) PURPOSES.—(1) Subject to the provisions of paragraph (2), grants or contracts may be made to pay all or a part of the costs, as may be determined by the Administrator, of any project operated or to be operated by an eligible organization, which is designed—

"(A) to develop, expand, or carry out a program (which may

combine training, education, and employment) for training persons for occupations involving the management, supervision, design, operation, or maintenance of solid waste disposal and resources recovery equipment and facilities; or

“(B) to train instructors and supervisory personnel to train or supervise persons in occupations involving the design, operation, and maintenance of solid waste disposal and resource recovery equipment and facilities.

“(2) A grant or contract authorized by paragraph (1) of this subsection may be made only upon application to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it provides for the same procedures and reports (and access to such reports and to other records) as required by section 207(b) (4) and (5) (as in effect before the date of the enactment of Resource Conservation and Recovery Act of 1976) with respect to applications made under such section (as in effect before the date of the enactment of Resource Conservation and Recovery Act of 1976).

“(c) STUDY.—The Administrator shall make a complete investigation and study to determine—

“(1) the need for additional trained State and local personnel to carry out plans assisted under this Act and other solid waste and resource recovery programs;

“(2) means of using existing training programs to train such personnel; and

“(3) the extent and nature of obstacles to employment and occupational advancement in the solid waste disposal and resource recovery field which may limit either available manpower or the advancement of personnel in such field.

He shall report the results of such investigation and study, including his recommendations to the President and the Congress.

“PAYMENTS

“SEC. 7008. (a) GENERAL RULE.—Payments of grants under this Act may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as the Administrator may determine.

“(b) PROHIBITION.—No grant may be made under this Act to any private profitmaking organization.

“LABOR STANDARDS

“SEC. 7009. No grant for a project of construction under this Act shall be made unless the Secretary finds that the application contains or is supported by reasonable assurance that all laborers and mechanics employed by contractors or subcontractors on projects of the type covered by the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with that Act; and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. 133z-5) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

“Subtitle H—Research, Development, Demonstration, and Information

“RESEARCH, DEMONSTRATIONS, TRAINING, AND OTHER ACTIVITIES

“SEC. 8001. (a) GENERAL AUTHORITY.—The Administrator, alone or after consultation with the Administrator of the Federal Energy Administration, the Administrator of the Energy Research and Development Administration, or the Chairman of the Federal Power Commission, shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to—

“(1) any adverse health and welfare effects of the release into the environment of material present in solid waste, and methods to eliminate such effects;

“(2) the operation and financing of solid waste disposal programs;

“(3) the planning, implementation, and operation of resource recovery and resource conservation systems and hazardous waste management systems, including the marketing of recovered resources;

“(4) the production of usable forms of recovered resources, including fuel, from solid waste;

“(5) the reduction of the amount of such waste and unsalvageable waste materials;

“(6) the development and application of new and improved methods of collecting and disposing of solid waste and processing and recovering materials and energy from solid wastes;

“(7) the identification of solid waste components and potential materials and energy recoverable from such waste components;

“(8) small scale and low technology solid waste management systems, including but not limited to, resource recovery source separation systems;

“(9) methods to improve the performance characteristics of resources recovered from solid waste and the relationship of such performance characteristics to available and potentially available markets for such resources;

“(10) improvements in land disposal practices for solid waste (including sludge) which may reduce the adverse environmental effects of such disposal and other aspects of solid waste disposal on land, including means for reducing the harmful environmental effects of earlier and existing landfills, means for restoring areas damaged by such earlier or existing landfills, means for rendering landfills safe for purposes of construction and other uses, and techniques of recovering materials and energy from landfills;

“(11) methods for the sound disposal of, or recovery of resources, including energy, from, sludge (including sludge from pollution control and treatment facilities, coal slurry pipelines, and other sources);

“(12) methods of hazardous waste management, including methods of rendering such waste environmentally safe; and

“(13) any adverse effects on air quality (particularly with

42 USC 3254a.
Post, p. 2795.

Report to
President and
Congress.

42 USC 6978.

42 USC 6979.

5 USC app. II.

regard to the emission of heavy metals) which result from solid waste which is burned (either alone or in conjunction with other substances) for purposes of disposal or energy recovery.

“(b) MANAGEMENT PROGRAM.—(1) (A) In carrying out his functions pursuant to this Act, and any other Federal legislation respecting solid waste or discarded material research, development, and demonstrations, the Administrator shall establish a management program or system to insure the coordination of all such activities and to facilitate and accelerate the process of development of sound new technology (or other discoveries) from the research phase, through development, and into the demonstration phase.

“(B) The Administrator shall (i) assist, on the basis of any research projects which are developed with assistance under this Act or without Federal assistance, the construction of pilot plant facilities for the purpose of investigating or testing the technological feasibility of any promising new fuel, energy, or resource recovery or resource conservation method or technology; and (ii) demonstrate each such method and technology that appears justified by an evaluation at such pilot plant stage or at a pilot plant stage developed without Federal assistance. Each such demonstration shall incorporate new or innovative technical advances or shall apply such advances to different circumstances and conditions, for the purpose of evaluating design concepts or to test the performance, efficiency, and economic feasibility of a particular method or technology under actual operating conditions. Each such demonstration shall be so planned and designed that, if successful, it can be expanded or utilized directly as a full-scale operational fuel, energy, or resource recovery or resource conservation facility.

“(2) Any energy-related research, development, or demonstration project for the conversion including bioconversion, of solid waste carried out by the Environmental Protection Agency or by the Energy Research and Development Administration pursuant to this or any other Act shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy from Solid Wastes and specifically, that in accordance with this agreement, (A) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Energy Research and Development Administration, following which project responsibility will be assigned to one agency; (B) energy-related portions of projects for recovery of synthetic fuels or other forms of energy from solid waste shall be the responsibility of the Energy Research and Development Administration; (C) the Environmental Protection Agency shall retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines published pursuant to section 1008, and any applicable State or regional solid waste management plan; and (D) any activities undertaken under provisions of sections 8002 and 8003 as related to energy; as related to energy or synthetic fuels recovery from waste; or as related to energy conservation shall be accomplished through coordination and consultation with the Energy Research and Development Administration.

“(c) AUTHORITIES.—(1) In carrying out subsection (a) of this section respecting solid waste research, studies, development, and demon-

stration, except as otherwise specifically provided in section 8004(d), the Administrator may make grants to or enter into contracts (including contracts for construction) with, public agencies and authorities or private persons.

“(2) Contracts for research, development, or demonstrations or for both (including contracts for construction) shall be made in accordance with and subject to the limitations provided with respect to research contracts of the military departments in title 10, United States Code, section 2353, except that the determination, approval, and certification required thereby shall be made by the Administrator.

“(3) Any invention made or conceived in the course of, or under, any contract under this Act shall be subject to section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 to the same extent and in the same manner as inventions made or conceived in the course of contracts under such Act, except that in applying such section, the Environmental Protection Agency shall be substituted for the Energy Research and Development Administration and the words ‘solid waste’ shall be substituted for the word ‘energy’ where appropriate.

“(4) For carrying out the purpose of this Act the Administrator may detail personnel of the Environmental Protection Agency to agencies eligible for assistance under this section.

42 USC 5908.

Detail of
EPA personnel to
other agencies.

“SPECIAL STUDIES; PLANS FOR RESEARCH, DEVELOPMENT, AND
DEMONSTRATIONS

“SEC. 8002. (a) GLASS AND PLASTIC.—The Administrator shall undertake a study and publish a report on resource recovery from glass and plastic waste, including a scientific, technological, and economic investigation of potential solutions to implement such recovery.

42 USC 6982.

“(b) COMPOSITION OF WASTE STREAM.—The Administrator shall undertake a systematic study of the composition of the solid waste stream and of anticipated future changes in the composition of such stream and shall publish a report containing the results of such study and quantitatively evaluating the potential utility of such components.

“(c) PRIORITIES STUDY.—For purposes of determining priorities for research on recovery of materials and energy from solid waste and developing materials and energy recovery research, development, and demonstration strategies, the Administrator shall review, and make a study of, the various existing and promising techniques of energy recovery from solid waste (including, but not limited to, waterwall furnace incinerators, dry shredded fuel systems, pyrolysis, densified refuse-derived fuel systems, anaerobic digestion, and fuel and feedstock preparation systems). In carrying out such study the Administrator shall investigate with respect to each such technique—

“(1) the degree of public need for the potential results of such research, development, or demonstration,

“(2) the potential for research, development, and demonstration without Federal action, including the degree of restraint on such potential posed by the risks involved, and

“(3) the magnitude of effort and period of time necessary to develop the technology to the point where Federal assistance can be ended.

“(d) SMALL-SCALE AND LOW TECHNOLOGY STUDY.—The Administrator shall undertake a comprehensive study and analysis of, and publish a report on, systems of small-scale and low technology solid

waste management, including household resource recovery and resource recovery systems which have special application to multiple dwelling units and high density housing and office complexes. Such study and analysis shall include an investigation of the degree to which such systems could contribute to energy conservation.

“(e) FRONT-END SOURCE SEPARATION.—The Administrator shall undertake research and studies concerning the compatibility of front-end source separation systems with high technology resource recovery systems and shall publish a report containing the results of such research and studies.

“(f) MINING WASTE.—The Administrator, in consultation with the Secretary of the Interior, shall conduct a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources, and on the adequacy of means and measures currently employed by the mining industry, Government agencies, and others to dispose of and utilize such solid wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

- “(1) the sources and volume of discarded material generated per year from mining;
- “(2) present disposal practices;
- “(3) potential dangers to human health and the environment from surface runoff of leachate and air pollution by dust;
- “(4) alternatives to current disposal methods;
- “(5) the cost of those alternatives in terms of the impact on mine product costs; and
- “(6) potential for use of discarded material as a secondary source of the mine product.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. The Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects.

“(g) SLUDGE.—The Administrator shall undertake a comprehensive study and publish a report on sludge. Such study shall include an analysis of—

- “(1) what types of solid waste (including but not limited to sewage and pollution treatment residues and other residues from industrial operations such as extraction of oil from shale liquefaction and gasification of coal and coal slurry pipeline operations) shall be classified as sludge;
- “(2) the effects of air and water pollution legislation on the creation of large volumes of sludge;
- “(3) the amounts of sludge originating in each State and in each industry producing sludge;
- “(4) methods of disposal of such sludge, including the cost, efficiency, and effectiveness of such methods;
- “(5) alternative methods for the use of sludge, including agricultural applications of sludge and energy recovery from sludge; and
- “(6) methods to reclaim areas which have been used for the disposal of sludge or which have been damaged by sludge.

“(h) TIRES.—The Administrator shall undertake a study and publish a report respecting discarded motor vehicle tires which shall include an analysis of the problems involved in the collection, recovery of resources including energy, and use of such tires.

“(i) RESOURCE RECOVERY FACILITIES.—The Administrator shall conduct research and report on the economics of, and impediments, to the effective functioning of resource recovery facilities.

“(j) RESOURCE CONSERVATION COMMITTEE.—(1) The Administrator shall serve as Chairman of a Committee composed of himself, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Council on Environmental Quality, the Secretary of Treasury, the Secretary of the Interior, and a representative of the Office of Management and Budget, which shall conduct a full and complete investigation and study of all aspects of the economic, social, and environmental consequences of resource conservation with respect to—

- “(A) the appropriateness of recommended incentives and disincentives to foster resource conservation;
- “(B) the effect of existing public policies (including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives) upon resource conservation, and the likely effect of the modification or elimination of such incentives and disincentives upon resource conservation;
- “(C) the appropriateness and feasibility of restricting the manufacture or use of categories of consumer products as a resource conservation strategy;
- “(D) the appropriateness and feasibility of employing as a resource conservation strategy the imposition of solid waste management charges on consumer products, which charges would reflect the costs of solid waste management services, litter pickup, the value of recoverable components of such product, final disposal, and any social value associated with the nonrecycling or uncontrolled disposal of such product; and
- “(E) the need for further research, development, and demonstration in the area of resource conservation.

“(2) The study required in paragraph (2)(D) may include pilot scale projects, and shall consider and evaluate alternative strategies with respect to—

- “(A) the product categories on which such charges would be imposed;
- “(B) the appropriate state in the production of such consumer product at which to levy such charge;
- “(C) appropriate criteria for establishing such charges for each consumer product category;
- “(D) methods for the adjustment of such charges to reflect actions such as recycling which would reduce the overall quantities of solid waste requiring disposal; and
- “(E) procedures for amending, modifying, or revising such charges to reflect changing conditions.

“(3) The design for the study required in paragraph (2)(D) of this subsection shall include timetables for the completion of the study. A preliminary report putting forth the study design shall be sent to the President and the Congress within six months following enactment of this section and followup reports shall be sent six months thereafter. Each recommendation resulting from the study shall include at least two alternatives to the proposed recommendation.

Pilot scale projects.

Study design.

Report to President and Congress.

Report to
President and
Congress.

Appropriation
authorization.

"(4) The results of such investigation and study, including recommendations, shall be reported to the President and the Congress not later than two years after enactment of this subsection.

"(5) There are authorized to be appropriated not to exceed \$2,000,000 to carry out this subsection.

"(k) AIRPORT LANDFILLS.—The Administrator shall undertake a comprehensive study and analysis of and publish a report on systems to alleviate the hazards to aviation from birds congregating and feeding on landfills in the vicinity of airports.

"(l) COMPLETION OF RESEARCH AND STUDIES.—The Administrator shall complete the research and studies, and submit the reports, required under subsections (b), (c), (d), (e), (f), (g), and (k) not later than October 1, 1978. The Administrator shall complete the research and studies, and submit the reports, required under subsections (a), (h), (i), and (j) not later than October 1, 1979. Upon completion, each study specified in subsections (a) through (k) of this section, the Administrator shall prepare a plan for research, development, and demonstration respecting the findings of the study and shall submit any legislative recommendations resulting from such study to appropriate committees of Congress.

"(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated not to exceed \$8,000,000 for the fiscal years 1978 and 1979 to carry out this section other than subsection (j).

"COORDINATION, COLLECTION, AND DISSEMINATION OF INFORMATION

"SEC. 8003. (a) INFORMATION.—The Administrator shall develop, collect, evaluate, and coordinate information on—

"(1) methods and costs of the collection of solid waste;

"(2) solid waste management practices, including data on the different management methods and the cost, operation, and maintenance of such methods;

"(3) the amounts and percentages of resources (including energy) that can be recovered from solid waste by use of various discarded materials management practices and various technologies;

"(4) methods available to reduce the amount of solid waste that is generated;

"(5) existing and developing technologies for the recovery of energy or materials from solid waste and the costs, reliability, and risks associated with such technologies;

"(6) hazardous solid waste, including incidents of damage resulting from the disposal of hazardous solid wastes; inherently and potentially hazardous solid wastes; methods of neutralizing or properly disposing of hazardous solid wastes; facilities that properly dispose of hazardous wastes;

"(7) methods of financing resource recovery facilities or, sanitary landfills, or hazardous solid waste treatment facilities, whichever is appropriate for the entity developing such facility or landfill (taking into account the amount of solid waste reasonably expected to be available to such entity);

"(8) the availability of markets for the purchase of resources, either materials or energy, recovered from solid waste; and

"(9) research and development projects respecting solid waste management.

42 USC 6983.

"(b) LIBRARY.—(1) The Administrator shall establish and maintain a central reference library for (A) the materials collected pursuant to subsection (a) of this section and (B) the actual performance and cost effectiveness records and other data and information with respect to—

"(i) the various methods of energy and resource recovery from solid waste,

"(ii) the various systems and means of resource conservation,

"(iii) the various systems and technologies for collection, transport, storage, treatment, and final disposition of solid waste, and

"(iv) other aspects of solid waste and hazardous solid waste management.

Such central reference library shall also contain, but not be limited to, the model codes and model accounting systems developed under this section, the information collected under subsection (d), and, subject to any applicable requirements of confidentiality, information respecting any aspect of solid waste provided by officers and employees of the Environmental Protection Agency which has been acquired by them in the conduct of their functions under this Act and which may be of value to Federal, State, and local authorities and other persons.

"(2) Information in the central reference library shall, to the extent practicable, be collated, analyzed, verified, and published and shall be made available to State and local governments and other persons at reasonable times and subject to such reasonable charges as may be necessary to defray expenses of making such information available.

"(c) MODEL ACCOUNTING SYSTEM.—In order to assist State and local governments in determining the cost and revenues associated with the collection and disposal of solid waste and with resource recovery operations, the Administrator shall develop and publish a recommended model cost and revenue accounting system applicable to the solid waste management functions of State and local governments. Such system shall be in accordance with generally accepted accounting principles. The Administrator shall periodically, but not less frequently than once every five years, review such accounting system and revise it as necessary.

"(d) MODEL CODES.—The Administrator is authorized, in cooperation with appropriate State and local agencies, to recommend model codes, ordinances, and statutes, providing for sound solid waste management.

"(e) INFORMATION PROGRAMS.—(1) The Administrator shall implement a program for the rapid dissemination of information on solid waste management, hazardous waste management, resource conservation, and methods of resource recovery from solid waste, including the results of any relevant research, investigations, experiments, surveys, studies, or other information which may be useful in the implementation of new or improved solid waste management practices and methods and information on any other technical, managerial, financial, or market aspect of resource conservation and recovery facilities.

"(2) The Administrator shall develop and implement educational programs to promote citizen understanding of the need for environmentally sound solid waste management practices.

"(f) COORDINATION.—In collecting and disseminating information under this section, the Administrator shall coordinate his actions and cooperate to the maximum extent possible with State and local authorities.

"(g) SPECIAL RESTRICTION.—Upon request, the full range of alternative technologies, programs or processes deemed feasible to meet the

resource recovery or resource conservation needs of a jurisdiction shall be described in such a manner as to provide a sufficient evaluative basis from which the jurisdiction can make its decisions, but no officer or employee of the Environmental Protection Agency shall, in an official capacity, lobby for or otherwise represent an agency position in favor of resource recovery or resource conservation, as a policy alternative for adoption into ordinances, codes, regulations, or law by any State or political subdivision thereof.

“FULL-SCALE DEMONSTRATION FACILITIES

42 USC 6984.

“SEC. 8004.(a) AUTHORITY.—The Administrator may enter into contracts with public agencies or authorities or private persons for the construction and operation of a full-scale demonstration facility under this Act, or provide financial assistance in the form of grants to a full-scale demonstration facility under this Act only if the Administrator finds that—

“(1) such facility or proposed facility will demonstrate at full scale a new or significantly improved technology or process, a practical and significant improvement in discarded material management practice, or the technological feasibility and cost effectiveness of an existing, but unproven technology, process, or practice, and will not duplicate any other Federal, State, local, or commercial facility which has been constructed or with respect to which construction has begun (determined as of the date action is taken by the Administrator under this Act),

“(2) such contract or assistance meets the requirements of section 8001 and meets other applicable requirements of the Act,

“(3) such facility will be able to comply with the guidelines published under section 1008 and with other laws and regulations for the protection of health and the environment,

“(4) in the case of a contract for construction or operation, such facility is not likely to be constructed or operated by State, local, or private persons or in the case of an application for financial assistance, such facility is not likely to receive adequate financial assistance from other sources, and

“(5) any Federal interest in, or assistance to, such facility will be disposed of or terminated, with appropriate compensation, within such period of time as may be necessary to carry out the basic objectives of this Act.

“(b) TIME LIMITATION.—No obligation may be made by the Administrator for financial assistance under this subtitle for any full-scale demonstration facility after the date ten years after the enactment of this section. No expenditure of funds for any such full-scale demonstration facility under this subtitle may be made by the Administrator after the date fourteen years after such date of enactment.

“(c) COST SHARING.—Wherever practicable, in constructing, operating, or providing financial assistance under this subtitle to a full-scale demonstration facility, the Administrator shall endeavor to enter into agreements and make other arrangements for maximum practicable cost sharing with other Federal, State, and local agencies, private persons, or any combination thereof.

“(2) The Administrator shall enter into arrangements, wherever practicable and desirable, to provide monitoring of full-scale solid waste facilities (whether or not constructed or operated under this

Act) for purposes of obtaining information concerning the performance, and other aspects, of such facilities. Where the Administrator provides only monitoring and evaluation instruments or personnel (or both) or funds for such instruments or personnel and provides no other financial assistance to a facility, notwithstanding section 8001(c)(3), title to any invention made or conceived of in the course of developing, constructing, or operating such facility shall not be required to vest in the United States and patents respecting such invention shall not be required to be issued to the United States.

“(d) PROHIBITION.—After the date of enactment of this section, the Administrator shall not construct or operate any full-scale facility (except by contract with public agencies or authorities or private persons).

“SPECIAL STUDY AND DEMONSTRATION PROJECTS ON RECOVERY OF USEFUL ENERGY AND MATERIALS

“SEC. 8005. (a) STUDIES.—The Administrator shall conduct studies and develop recommendations for administrative or legislative action on— 42 USC 6985.

“(1) means of recovering materials and energy from solid waste, recommended uses of such materials and energy for national or international welfare, including identification of potential markets for such recovered resources, the impact of distribution of such resources on existing markets, and potentials for energy conservation through resource conservation and resource recovery;

“(2) actions to reduce waste generation which have been taken voluntarily or in response to governmental action, and those which practically could be taken in the future, and the economic, social, and environmental consequences of such actions;

“(3) methods of collection, separation, and containerization which will encourage efficient utilization of facilities and contribute to more effective programs of reduction, reuse, or disposal of wastes;

“(4) the use of Federal procurement to develop market demand for recovered resources;

“(5) recommended incentives (including Federal grants, loans, and other assistance) and disincentives to accelerate the reclamation or recycling of materials from solid wastes, with special emphasis on motor vehicle hulks;

“(6) the effect of existing public policies, including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives, upon the recycling and reuse of materials, and the likely effect of the modification or elimination of such incentives and disincentives upon the reuse, recycling and conservation of such materials;

“(7) the necessity and method of imposing disposal or other charges on packaging, containers, vehicles, and other manufactured goods, which charges would reflect the cost of final disposal, the value of recoverable components of the item, and any social costs associated with nonrecycling or uncontrolled disposal of such items; and

"(8) the legal constraints and institutional barriers to the acquisition of land needed for solid waste management, including land for facilities and disposal sites;

"(9) in consultation with the Secretary of Agriculture, agricultural waste management problems and practices, the extent of reuse and recovery of resources in such wastes, the prospects for improvement, Federal, State, and local regulations governing such practices, and the economic, social, and environmental consequences of such practices; and

"(10) in consultation with the Secretary of the Interior, mining waste management problems, and practices, including an assessment of existing authorities, technologies, and economics, and the environmental and public health consequences of such practices.

"(b) DEMONSTRATION.—The Administrator is also authorized to carry out demonstration projects to test and demonstrate methods and techniques developed pursuant to subsection (a).

"(c) APPLICATION OF OTHER SECTIONS.—Section 8001 (b) and (c) shall be applicable to investigations, studies, and projects carried out under this section.

"GRANTS FOR RESOURCE RECOVERY SYSTEMS AND IMPROVED SOLID
WASTE DISPOSAL FACILITIES

42 USC 6986.

"SEC. 8006. (a) AUTHORITY.—The Administrator is authorized to make grants pursuant to this section to any State, municipal, or interstate or intermunicipal agency for the demonstration of resource recovery systems or for the construction of new or improved solid waste disposal facilities.

"(b) CONDITIONS.—(1) Any grant under this section for the demonstration of a resource recovery system may be made only if it (A) is consistent with any plans which meet the requirements of subtitle D of this Act; (B) is consistent with the guidelines recommended pursuant to section 1008 of this Act; (C) is designed to provide area-wide resource recovery systems consistent with the purposes of this Act, as determined by the Administrator, pursuant to regulations promulgated under subsection (d) of this section; and (D) provides an equitable system for distributing the costs associated with construction, operation, and maintenance of any resource recovery system among the users of such system.

"(2) The Federal share for any project to which paragraph (1) applies shall not be more than 75 percent.

"(c) LIMITATIONS.—(1) A grant under this section for the construction of a new or improved solid waste disposal facility may be made only if—

"(A) a State or interstate plan for solid waste disposal has been adopted which applies to the area involved, and the facility to be constructed (i) is consistent with such plan, (ii) is included in a comprehensive plan for the area involved which is satisfactory to the Administrator for the purposes of this Act, and (iii) is consistent with the guidelines recommended under section 1008, and

"(B) the project advances the state of the art by applying new and improved techniques in reducing the environmental impact of solid waste disposal, in achieving recovery of energy or resources, or in recycling useful materials.

"(2) The Federal share for any project to which paragraph (1) applies shall be not more than 50 percent in the case of a project serving an area which includes only one municipality, and not more than 75 percent in any other case.

"(d) REGULATIONS.—(1) The Administrator shall promulgate regulations establishing a procedure for awarding grants under this section which—

Regulations.

"(A) provides that projects will be carried out in communities of varying sizes, under such conditions as will assist in solving the community waste problems of urban-industrial centers, metropolitan regions, and rural areas, under representative geographic and environmental conditions; and

"(B) provides deadlines for submission of, and action on, grant requests.

(2) In taking action on applications for grants under this section, consideration shall be given by the Administrator (A) to the public benefits to be derived by the construction and the propriety of Federal aid in making such grant; (B) to the extent applicable, to the economic and commercial viability of the project (including contractual arrangements with the private sector to market any resources recovered); (C) to the potential of such project for general application to community solid waste disposal problems; and (D) to the use by the applicant of comprehensive regional or metropolitan area planning.

"(e) ADDITIONAL LIMITATIONS.—A grant under this section—

"(1) may be made only in the amount of the Federal share of (A) the estimated total design and construction costs, plus (B) in the case of a grant to which subsection (b)(1) applies, the first-year operation and maintenance costs;

"(2) may not be provided for land acquisition or (except as otherwise provided in paragraph (1)(B)) for operating or maintenance costs;

"(3) may not be made until the applicant has made provision satisfactory to the Administrator for proper and efficient operation and maintenance of the project (subject to paragraph (1)(B)); and

"(4) may be made subject to such conditions and requirements, in addition to those provided in this section, as the Administrator may require to properly carry out his functions pursuant to this Act.

For purposes of paragraph (1), the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value of which shall be determined by the Administrator.

"(f) SINGLE STATE.—(1) Not more than 15 percent of the total of funds authorized to be appropriated for any fiscal year to carry out this section shall be granted under this section for projects in any one State.

"(2) The Administrator shall prescribe by regulation the manner in which this subsection shall apply to a grant under this section for a project in an area which includes all or part of more than one State.

Regulation.

"AUTHORIZATION OF APPROPRIATIONS

"Sec. 8007. There are authorized to be appropriated not to exceed \$35,000,000 for the fiscal year 1978 to carry out the purposes of this subtitle (except for section 8002)."

42 USC 6987.

SOLID WASTE CLEANUP ON FEDERAL LANDS IN ALASKA

Study.
42 USC 6981
note.

SEC. 3. (a) The President shall direct such executive departments or agencies as he may deem appropriate to conduct a study, in consultation with representatives of the State of Alaska and the appropriate Native organizations, to determine the best overall procedures for removing existing solid waste on Federal lands in Alaska. Such study shall include, but shall not be limited to, a consideration of—

- (1) alternative procedures for removing the solid waste in an environmentally safe manner, and
- (2) the estimated costs of removing the solid waste.

Report to
congressional
committees.

(b) The President shall submit a report of the results together with appropriate supporting data and such recommendations as he deems desirable to the Committee on Public Works of the Senate and to the Committee on Interstate and Foreign Commerce of the House of Representatives not later than one year after the enactment of the Solid Waste Utilization Act of 1976. The President shall also submit, within six months after the study has been submitted to the committees, recommended administrative actions, procedures, and needed legislation to implement such procedures and the recommendations of the study.

Llangollen
Landfill, Del.,
leachate control
research
program.
42 USC 6981
note.

SEC. 4. (a) In order to demonstrate effective means of dealing with contamination of public water supplies by leachate from abandoned or other landfills, the Administrator of the Environmental Protection Agency is authorized to provide technical and financial assistance for a research program to control leachate from the Llangollen Landfill in New Castle County, Delaware.

Cooperation with
EPA.

(b) The research program authorized by this section shall be designed by the New Castle County areawide waste treatment management program, in cooperation with the Environmental Protection Agency, to develop methods for controlling leachate contamination from abandoned and other landfills that may be applied at the Llangollen Landfill and at other landfills throughout the Nation. Such research program shall investigate all alternative solutions or corrective actions, including—

- (1) hydrogeologic isolation of the landfill combined with the collection and treatment of leachate;
- (2) excavation of the refuse, followed by some type of incineration;
- (3) excavation and transportation of the refuse to another landfill; and
- (4) collection and treatment of contaminated leachate or ground water.

Such research program shall consider the economic, social, and environmental consequences of each such alternative.

(c) The Administrator of the Environmental Protection Agency shall make available personnel of the Agency, including those of the Solid and Hazardous Waste Research Laboratory (Cincinnati, Ohio), and shall arrange for other Federal personnel to be made available, to provide technical assistance and aid in such research. The Administrator may provide up to \$250,000, of the sums appropriated under the Solid Waste Disposal Act, to the New Castle County areawide waste treatment management program to conduct such research, including obtaining consultant services.

42 USC 6901
note.

(d) In order to prevent further damage to public water supplies during the period of this study, the Administrator of the Environmental Protection Agency shall provide up to \$200,000 in each of fiscal years 1977 and 1978, of the sums appropriated under the Solid Waste Disposal Act for the operating costs of a counter-pumping program to contain the leachate from the Llangollen Landfill.

Counter-pumping
program

42 USC 6901
note.

Approved October 21, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-1491 accompanying H.R. 14496 (Comm. on Interstate and Foreign Commerce).

SENATE REPORT No. 94-869 (Comm. on Public Works).

CONGRESSIONAL RECORD, Vol. 122 (1976):

June 30, considered and passed Senate.

Sept. 27, considered and passed House, amended, in lieu of H.R. 14496.

Sept. 30, Senate concurred in House amendments.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 12, No. 43:

Oct. 22, Presidential statement.

Note.—A change has been made in the slip law format to provide for one-time preparation of copy to be used for publication of both slip laws and the United States Statutes at Large volumes. Comments from users are invited by the Office of the Federal Register, National Archives and Records Service, Washington, D.C.: 20408.

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