

Interoffice Communication

To Conoco Environmental Council Members
 From Mary Ann Chance
 Date October 21, 1980
 Subject Hazardous Waste Regulation Under RCRA Seminar
 October 21-22, 1980 -- San Francisco

Approximately 90 attendees were present at the seminar which was made up of approximately 75% legal participation. EPA representatives present were:

Gary Dietrick, Deputy Assistant Adm. for Solid Waste
 Sarah Compton, Deputy Assistant Adm. for Water Enforcement
 James Rogers, Associate General Counsel, Water & Solid Waste Division
 Lisa Freedman, Deputy Associate General Counsel, Water &
 Solid Waste Division
 Anthony Reisman, Chief, Hazardous Waste Section, Land & Natural
 Resources Division, U.S. Department of Justice

Other speakers were:

J. T. Smith, Attorney -- Covington & Burling
 David Weinberg, Attorney -- Wald, Harkrader & Ross
 Frank Friedman, Attorney -- Atlantic Richfield
 Robert Polock, Attorney -- Reilly Tar & Chemical Corp.
 John Quarles, Attorney -- Morgan, Lewis & Bockius
 Robert Zener, Attorney -- Pepper, Hamilton & Scheetz.

I. The "Solid Waste Disposal Act Amendments of 1980" have been passed.

A copy is attached to this report along with a short summary of major amendments. (See Attachments 1 and 2.)

II. Regulation Interpretative Memoranda (RIMs) and Technical Amendments to Regulations (TARs)

Jim Rogers from EPA said the first set of approximately one dozen RIMs should come out November 1. He said Headquarters is overwhelmed by the near 100 issues which must be addressed; most of these issues will have to be addressed by the now conceived TARs which are Technical Amendments to Regulations. Gary Dietrick said that RIMs and TARs will probably continue to be issued for the next "ten years".

CCR 000040843

Attachment 3 is the October 8, 1980 Federal Register pages 66816-66823 discussing the portions of the regulations that protect ground water resources from the adverse effects of land disposal facilities. The Federal Register notice sets out a broad outline of EPA's intended approach for controlling hazardous waste contamination of groundwater. EPA is seeking public comment on this approach as well as other hazardous waste management options, such as incineration, and to its solid waste regulations under Subtitle D of RCRA.

A. Some of the issues which were suggested to be covered in the Nov. 1 RIMs include:

1. Sludge accumulating in raw storage tanks is a hazardous waste when removed.
2. An empty container will be one with not more than 2-1/2 centimeters or 1 inch of residual remaining.
3. A permit by rule for tanks and tank like structures in the NPDES train is conceived. The question of neutralization will be approached. A permit by rule would be granted if:
 - a. It is a tank or tank like unit,
 - b. It has an EPA number,
 - c. It has limited access,
 - d. It does not leak,
 - e. Waste is removed at closure,
 - f. Spills are reported timely.

Thus EPA is proposing to deal with these in a specific way and industry would not have to deal with tanks unit by unit. Permit by rule would not include impoundments in the train because of potential groundwater contamination and migration of wastes.

4. An extension date may be granted for closure plans and cost estimates to May 19, 1981.
 5. Listing of Chromium will be addressed.
 6. Those lists of wastes which were interim final will be finalized. Some wastes may be delisted.
 7. "Totally enclosed treatment facility" will be defined.
 8. Utility waste will be addressed.
- B. EPA voiced internal confusion over and is considering the following issues which will have to be addressed in more detail at some time:
1. Interim Status
If a facility did not notify by August 18 or submit Part A Permit by November 19, can they still obtain Interim Status?

2. Inactive Storage

If a facility has inactive storage in tanks or impoundments in which no new waste is being added after November 19, what is the status of that waste?

3. Spills

Who is the generator? Does a manifest have to be maintained? Do you need a permit? (Spills hold priority for probably being called the "Super" or "Grand" RIM of all because of the questions surrounding that issue!)

4. Dredge Material

Is it a hazardous waste?

5. Shipment of Samples

As the regulations are written now, the shipment of samples have to be manifested. EPA would try to exclude the shipment of samples from regulation by issuance of a TAR.

III. State Authorizations

EPA specified that no states will have an authorized program by November 19. Very few will be authorized by the end of the year. Beginning the first part of next year some programs will be authorized.

Arnold Dent from Region IX EPA said that they intend to receive final application from California & Arizona and these will probably be approved by January 1981. California has a 60 day rather than a 90 day retention time.

Some regions are trying to set up regional manifests. California is modifying their manifest system to meet both state and federal programs. The suggestion was posed that EPA develop a uniform manifest. EPA stated that they are not authorized to impose a uniform manifest system; the format is subject to state requirement.

Differing State Hazardous Waste Lists under Authorized Programs

Several states may have a broader list of wastes than others. California and Texas, for instance, have listed additional wastes above those on the Federal Lists.

Industry voiced some concern as to the confusion this could cause in transporting wastes from one state to another and the differing manifests included. EPA does not foresee any problems and has established the following rules:

"(1) if a waste is transported from a state where it is listed as hazardous into a state with interim authorization where it is not so listed, the waste must be manifested as hazardous in the state where it was generated and may be treated, stored or disposed of as nonhazardous in the second state, (2) if a waste is transported from a state with interim authorization where it is not listed as hazardous into a state where it is so listed, the waste must be treated, stored or disposed of as a hazardous waste under the applicable laws of the second state." (Section 123.130(a)(b) -- Hazardous Waste Regulation Under RCRA-pg. 122)

IV. Part A Permit Review Procedure

Sarah Compton stated that, to date, EPA has received several hundred Part A applications. Approximately 80% have been insufficient -- no maps, no diagrams, etc. They expect to receive approximately 20,000 to 25,000.

Industry's concern is that EPA will not be able to handle the bulk of the applications and companies may not hear from EPA for years and then their applications would be found deficient and the company would not have Interim Status.

EPA is proposing to handle discrepancies in this manner. It will be a two-part process:

- A. EPA will send the company a letter stating they have received the Part A permit application and the company has Interim Status.
- B. If the application is deficient, EPA will send out a second form stating the deficiencies and allowing 90 days for the company to complete and correct the problem and return the form.

Industry's concern was again voiced that due to the large percentage of applications coming in deficient, EPA could not act on the re-submittal within that 90 days and a second discrepancy may not be caught in time to be corrected in that 90 day time period. EPA stated that companies will be dealing with the Regions and the Regions will have to gear up to handle these corrected forms.

EPA stressed not to purposely turn in incomplete forms because of this 90 day grace period; and they also stressed that if you do not turn in the corrected application within 90 days, the company will be deemed never to have had Interim Status. During this 90 day grace period, the company may continue to operate, but must meet all Interim Status requirements.

V. Hazardous Waste

EPA Identification Numbers

Much concern was voiced because ID numbers have not been received from EPA and are needed soon to insure timely submittals for company review and signatures.

BFI is awaiting over 100 numbers. Region IX EPA said they distributed approximately 3,500 within the last week. Federal EPA said there is such a delay in assigning Dun & Bradstreet numbers -- Dun & Bradstreet was ready to distribute 10,000 numbers and these should go out "soon" and be received before November 19.

It was stated by industry that some Regional Offices, upon being questioned by industry, were even confused on whether they were supposed to issue these numbers.

VI. Mixtures

Mixtures were discussed -- EPA says because of the confusing issues, future clarification will be forthcoming.

At a break, Gary Dietrick said that if a normal procedure is to flush spillage of a listed waste or a waste that meets one of the four characteristics into a waste water treatment system, then that system becomes a hazardous waste treatment system even if the sludge or the waste water subject to the NPDES permit does not fail any of the four characteristics.

The intentional act of normally discarding lab samples into the waste water treatment makes that a hazardous waste treatment facility.

VII. Inactive Mine Waste Dumps

Gary Dietrick stated that any dump sites which may have been inactive for 1-5-10-20 years which may include tailings, but have not had any wastes added to it on or after the November 19, 1980 deadline are considered "inactive" and not subject to these RCRA permit requirements. These dumps could be covered, as any site could, under Section 7003 as an Imminent Hazard later if it was found that it may present an Imminent Hazard.

VIII. Active Sites -- November 19, 1980

Gary Dietrick stated that if a site is active as of May 19, 1980, but closed before November 19, 1980, it would not be subject to Interim requirements of closure, post closure, etc. Only sites that are "active" as of November 19, 1980 are subject to these permitting regulations. Notification was required as of the May 19, 1980 date, but all permitting is determined by being "active" as of November 19, 1980.

IX. Permit Duration

Permits are not lifetime permits, but will be for a Fixed Term.

EPA can require upgrading at the end of that fixed term according to new technology. A permit holder is not subject to this technology requirement change during a permitted term.

X. Facility Diagram - Inactive Sites

Sarah Compton was asked the question by J. T. Smith:

Do you list inactive sites within your boundaries on the facility diagram -- F.R. page 33582, Page 5 of 5, and if so, why?

Her answer was that EPA does want the location of inactive sites on the facility diagram. This is necessary for locating your groundwater monitoring wells. If you have ongoing activities next to an inactive site, there may be a question as to which site is actually contaminating the soil.

XI. Topographic Map

There was some discrepancy between the instructions and the preamble as to the map distance requirement for extending past company boundaries -- (1/4 mile or 1 mile). EPA said it was intended the requirement be for 1/4 mile.

XII. Enforcement

If on November 19, Industry is unclear on any issues, EPA is encouraging that the issues be spelled out in a cover letter -- industry should not be bound by the form. EPA stated they are not after technical mistakes.

EPA currently intends to focus their efforts in reviewing permit applications to:

- A. New sources -- (EPA said permits for new sources will be hard to get.)
- B. Those facilities which show a statistical increase in groundwater contamination. (Under Section 3013 as amended, EPA can call for groundwater monitoring data before the one year period is up if a problem is expected.)

Attachment 4 is a copy of the hazardous waste enforcement actions EPA has brought thus far: "Rundown of 23 cases filed by EPA/Justice."

XIII. Retrofitting

EPA is going to follow what was proposed and defeated as the Swift Amendment and will not require retrofitting of any impoundments if you are not now contaminating groundwater. If there is contamination, retrofitting may be required.


Mary Ann Chance
Environmental Administrator
Environmental Conservation

jmt
Enc(4)

CCR 000040848

Joint Letter
October 21, 1980
Page 7

Distribution:

Attendees of RCRA Hazardous Waste Management "Work Session"

Jim Doyle
B. F. Miller
R. S. Hodgson
Rex Alford
Jeff Meyers
Joe Ledvina
Randy Buttram
Bill Broddle

CCR 000040849

"Solid Waste Disposal Act Amendments of 1980"

Section 2(c) (Page 1)

Integration with the Surface Mining Control and Reclamation Act
EPA shifted responsibility for carrying out requirements of the
subtitle C to the Department of Interior.

Section 11(f) (Page 5)

Coal Mining Wastes & Reclamation Permits

A permit approved under SMCRA shall be deemed a permit
under RCRA with respect to treatment, storage, or disposal
of such wastes or overburden.

Section 4(a) (Page 1)

An Interagency Coordinating Committee will be formed.

Section 5(6) (Page 3)

Transportation

Under Section 2002(a) EPA can delegate authority relating to
transportation of hazardous waste to DOT. DOT will be taking
the lead in this area.

Section 7(2)(A) (Page 3)

"Drilling fluids, produced waters, and other wastes associated with
the exploration, development or production of crude oil or natural
gas or geothermal energy shall be subject only to existing State or
Federal regulatory programs in lieu of subtitle C until at least
24 months after the date of enactment of the Solid Waste Disposal
Act Amendments of 1980..."

"...not later than six months after completion and submission of
the study required by Section 8002(m), the administrator shall...
determine either to promulgate regulations under this subtitle...
or that such regulations are unwarranted."

Section 29 (Page 17)

"m" Special Waste Study under Section 8002 for Drilling Fluids,
Produced Waters..."

Section 7(3)(A) (Page 4)

Deferrals also included in amendments for:

CCR 000040850

- 1) Fly ash waste, bottom ash waste, flu gas emission control waste
generated primarily from the combustion of coal or other fossil
fuels.

- 2) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.
- 3) Cement kiln dust waste.

Section 9 (Page 5)

Gives EPA the authority to distinguish between "new and existing" facilities.

Section 12(a)(4)(5)(7)(9) (Page 6)

Under 3007(a) the authority is extended to "any officer, employee or representative." Contractors would be included under representatives of EPA.

Section 12(b)(2) (Page 6)

Statutory limits would be extended to contractors for trade secrets -- subject to fine of not more than \$5,000 or imprisonment not to exceed one year.

Section 3007 - The authority to gather information for enforcement was limited to Subtitle C; now that authority to gather information is available to all aspects of RCRA. The authority for requiring sampling and analysis is for all aspects of RCRA.

Section 13 (Page 7)

Under Section 3008, the criminal charge is increased to Felony status.

Criminal charges are:

- 1) Transporting to an unpermitted facility.
- 2) Knowingly treating, storing or disposing of hazardous waste without a permit or in violation of a permit. (This was not a criminal charge before.) Tony Reisman feels that acting outside the Interim Status is like acting outside permit conditions and, therefore, if done knowingly, it is also a criminal offense. This is his interpretation and is subject to clarification.

Civil charges are:

- 1) False statements
- 2) Knowingly generates, stores, treats, transports, disposes of or otherwise handles any hazardous waste and who knowingly destroys, alters, or conceals any records.

Section 13(e) (Page 7)

Knowing Endangerment

It is a Federal crime subject to imprisonment for placing another person in imminent danger or reckless endangerment.

Section 3012(a) (Page 9)

This provides for State Inventory Programs.

Section 3013 (Page 11)

Provides additional coverage that private companies may be responsible for monitoring, analysis and testing of existing and preexisting contamination.

The Administrator can issue an Administrative Order to require companies to conduct monitoring.

Section 25 (15)

Section 7003 eases the government burden of proof for imminent hazard from "is presenting" to "may present" an imminent hazard.

1156

Ninety-sixth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Thursday, the third day of January,
one thousand nine hundred and eighty*

An Act

To amend and reauthorize the Solid Waste Disposal Act.

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

SECTION 1. This Act may be cited as the "Solid Waste Disposal Act Amendments of 1980".

SEC. 2. (a) Section 1004(14) of the Solid Waste Disposal Act is amended to read as follows:

"(14) 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."

(b) Section 1004(19) of such Act is amended to read as follows:

"(19) The term 'recovered material' means waste material and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process."

SEC. 3. Section 1006 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(c) INTEGRATION WITH THE SURFACE MINING CONTROL AND RECLAMATION ACT OF 1977.—(1) No later than 90 days after the date of enactment of the Solid Waste Disposal Act Amendments of 1980, the Administrator shall review any regulations applicable to the treatment, storage, or disposal of any coal mining wastes or overburden promulgated by the Secretary of the Interior under the Surface Mining and Reclamation Act of 1977. If the Administrator determines that any requirement of final regulations promulgated under any section of subtitle C relating to mining wastes or overburden is not adequately addressed in such regulations promulgated by the Secretary, the Administrator shall promptly transmit such determination, together with suggested revisions and supporting documentation, to the Secretary.

"(2) The Secretary of the Interior shall have exclusive responsibility for carrying out any requirement of subtitle C of this Act with respect to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977. The Secretary shall, with the concurrence of the Administrator, promulgate such regulations as may be necessary to carry out the purposes of this subsection and shall integrate such regulations with regulations promulgated under the Surface Mining Control and Reclamation Act of 1977."

SEC. 4. (a) The heading for section 2001 of the Solid Waste Disposal Act is amended by adding the following at the end thereof: "AND INTERAGENCY COORDINATING COMMITTEE".

(b) The item in the table of contents relating to section 2001 of such Act is amended by adding the following at the end thereof: "and interagency coordinating committee".

(c) Section 2001 of such Act is amended by inserting "(a) OFFICE OF SOLID WASTE.—" after "2001." and by inserting a new subsection (b) as follows at the end thereof:

"(b) INTERAGENCY COORDINATING COMMITTEE.—(1) There is hereby established an Interagency Coordinating Committee on Federal Resource Conservation and Recovery Activities which shall have the responsibility for coordinating all activities dealing with resource conservation and recovery from solid waste carried out by the Environmental Protection Agency, the Department of Energy, the Department of Commerce, and all other Federal agencies which conduct such activities pursuant to this or any other Act. For purposes of this subsection, the term 'resource conservation and recovery activities' shall include, but not be limited to, all research, development and demonstration projects on resource conservation or energy, or material, recovery from solid waste, and all technical or financial assistance for State or local planning for, or implementation of, projects related to resource conservation or energy or material, recovery from solid waste. The Committee shall be chaired by the Administrator of the Environmental Protection Agency or such person as the Administrator may designate. Members of the Committee shall include representatives of the Department of Energy, the Department of Commerce, the Department of the Treasury, and each other Federal agency which the Administrator determines to have programs or responsibilities affecting resource conservation or recovery.

"(2) The Interagency Coordinating Committee shall include oversight of the implementation of

"(A) the May 1979 Memorandum of Understanding on Energy Recovery from Municipal Solid Waste between the Environmental Protection Agency and the Department of Energy;

"(B) the May 30, 1978, Interagency Agreement between the Department of Commerce and the Environmental Protection Agency on the Implementation of the Resource Conservation and Recovery Act; and

"(C) any subsequent agreements between these agencies or other Federal agencies which address Federal resource recovery or conservation activities.

"(3) The Interagency Coordinating Committee shall submit to the Congress by March 1, 1981, and on March 1 each year thereafter, a five-year action plan for Federal resource conservation or recovery activities which shall identify means and propose programs to encourage resource conservation or material and energy recovery and increase private and municipal investment in resource conservation or recovery systems, especially those which provide for material conservation or recovery as well as energy conservation or recovery. Such plan shall describe, at a minimum, a coordinated and nonduplicatory plan for resource recovery and conservation activities for the Environmental Protection Agency, the Department of Energy, the Department of Commerce, and all other Federal agencies which conduct such activities."

SEC. 5. Section 2002(a) of the Solid Waste Disposal Act is amended as follows:

(1) in paragraph (4), by striking out "and" at the end thereof;

(2) in paragraph (5), by striking the period and inserting in lieu thereof "; and"; and

(3) by adding the following new paragraph at the end thereof:
 "(6) to delegate to the Secretary of Transportation the performance of any inspection or enforcement function under this Act relating to the transportation of hazardous waste where such delegation would avoid unnecessary duplication of activity and would carry out the objectives of this Act and of the Hazardous Materials Transportation Act."

SEC. 6. (a) Section 2006(b) of the Solid Waste Disposal Act is amended by inserting after "subsection (a)" a comma and the phrase "or \$5,000,000 per fiscal year, whichever is less,".

(b) Section 2006 of such Act is amended by adding the following new subsection at the end thereof:

(d) STATE AND LOCAL SUPPORT.—Not less than 25 per centum of the total amount appropriated under this title, up to the amount authorized in section 4008(a)(1), shall be used only for purposes of support to State, regional, local, and interstate agencies in accordance with subtitle D of this Act other than section 4008(a)(2) or 4009."

SEC. 7. Subsection (b) of section 3001 of the Solid Waste Disposal Act is amended by inserting "(1)" after "(b)" and by adding the following new paragraphs at the end of such subsection:

"(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy shall be subject only to existing State or Federal regulatory programs in lieu of subtitle C until at least 24 months after the date of enactment of the Solid Waste Disposal Act Amendments of 1980 and after promulgation of the regulations in accordance with subparagraphs (B) and (C) of this paragraph. It is the sense of the Congress that such State or Federal programs should include, for waste disposal sites which are to be closed, provisions requiring at least the following:

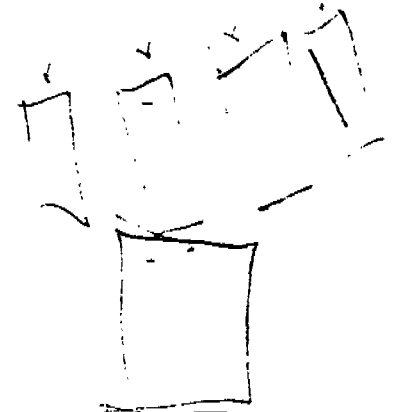
"(i) The identification through surveying, platting, or other measures, together with recordation of such information on the public record, so as to assure that the location where such wastes are disposed of can be located in the future; except however, that no such surveying, platting, or other measure identifying the location of a disposal site for drilling fluids and associated wastes shall be required if the distance from the disposal site to the surveyed or platted location to the associated well is less than two hundred lineal feet; and

"(ii) A chemical and physical analysis of a produced water and a composition of a drilling fluid suspected to contain a hazardous material, with such information to be acquired prior to closure and to be placed on the public record.

"(B) Not later than six months after completion and submission of the study required by section 8002(m) of this Act, the Administrator shall, after public hearings and opportunity for comment, determine either to promulgate regulations under this subtitle for drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy or that such regulations are unwarranted. The Administrator shall publish his decision in the Federal Register accompanied by an explanation and justification of the reasons for it. In making the decision under this paragraph, the Administrator shall utilize the information developed or accumulated pursuant to the study required under section 8002(m).

in Files??

*#180 million total
operational*



*Phase out state
operational grants
#2 million*

"(C) The Administrator shall transmit his decision, along with any regulations, if necessary, to both Houses of Congress. Such regulations shall take effect only when authorized by Act of Congress.

~~(3)(A)~~ Notwithstanding the provisions of paragraph (1) of this subsection, each waste listed below shall, except as provided in subparagraph (B) of this paragraph, be subject only to regulation under other applicable provisions of Federal or State law in lieu of this subtitle until at least six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p) of section 8002 of this Act and after promulgation of regulations in accordance with subparagraph (C) of this paragraph:

"(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

"(ii) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.

"(iii) Cement kiln dust waste.

"(B)(i) Owners and operators of disposal sites for wastes listed in subparagraph (A) may be required by the Administrator, through regulations prescribed under authority of section 2002 of this Act—

"(I) as to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting, or other measures, together with recordation of such information on the public record, to assure that the locations where such wastes are disposed of are known and can be located in the future, and

"(II) to provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record.

"(ii)(I) In conducting any study under subsection (f), (n), (o), or (p), of section 8002 of this Act, any officer, employee, or authorized representative of the Environmental Protection Agency, duly designated by the Administrator, is authorized, at reasonable times and as reasonably necessary for the purposes of such study, to enter any establishment where any waste subject to such study is generated, stored, treated, disposed of, or transported from; to inspect, take samples, and conduct monitoring and testing; and to have access to and copy records relating to such waste. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or authorized representative 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, or monitoring and testing performed, a copy of the results shall be furnished promptly to the owner, operator, or agent in charge.

"(II) Any records, reports, or information obtained from any person under subclause (I) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, to which the Administrator has access under this subparagraph if made public, would divulge information entitled to protection under section 1905 of title 18 of the United States Code, the Administrator 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 con-

Special waste

cerned with carrying out this Act. Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subparagraph shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

"(iii) The Administrator may prescribe regulations, under the authority of this Act, to prevent radiation exposure which presents an unreasonable risk to human health from the use in construction or land reclamation (with or without revegetation) of (I) solid waste from the extraction, beneficiation, and processing of phosphate rock or (II) overburden from the mining of uranium ore.

"(iv) Whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subparagraph, 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.

"(C) Not later than six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p), of section 8002 of this Act, the Administrator shall, after public hearings and opportunity for comment, either determine to promulgate regulations under this subtitle for each waste listed in subparagraph (A) of this paragraph or determine that such regulations are unwarranted. The Administrator shall publish his determination, which shall be based on information developed or accumulated pursuant to such study, public hearings, and comment, in the Federal Register accompanied by an explanation and justification of the reasons for it."

SEC. 8. Section 3002(5) of the Solid Waste Disposal Act is amended by inserting "and any other reasonable means necessary" after "use of a manifest system", and by inserting ", and arrives at," after "disposal in".

SEC. 9. Section 3004 of the Solid Waste Disposal Act is amended by inserting after the first sentence thereof "In establishing such standards the Administrator shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such regulations."

SEC. 10. Section 3005(e) of the Solid Waste Disposal Act is amended by striking "facility is in existence on the date of enactment of this Act," and inserting in lieu thereof "facility is in existence on November 19, 1980,".

SEC. 11. Section 3005 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(f) COAL MINING WASTES AND RECLAMATION PERMITS.—Notwithstanding subsection (a) through (e) of this section, any surface coal mining and reclamation permit covering any coal mining wastes or overburden which has been issued or approved under the Surface Mining Control and Reclamation Act of 1977 shall be deemed to be a permit issued pursuant to this section with respect to the treatment, storage, or disposal of such wastes or overburden. Regulations promulgated by the Administrator under this subtitle shall not be

*new m.
existing*

*in existence
Nov. 19, 1980*

Coal mining

applicable to treatment, storage, or disposal of coal mining wastes and overburden which are covered by such a permit."

Sec. 12. (a) Section 3007(a) of the Solid Waste Disposal Act is amended as follows:

- (1) by striking "subtitle" and inserting in lieu thereof "title";
- (2) by striking "maintained by any person" after "establishment or other place";
- (3) by inserting "or has handled" after "otherwise handles";
- (4) by striking "any officer or employee" and inserting in lieu thereof "any officer, employee or representative";
- (5) by striking "duly designated officer employee" and inserting in lieu thereof "duly designated officer, employee or representative";
- (6) by striking "furnish or permit" and inserting in lieu thereof "furnish information relating to such wastes and permit";
- (7) by striking out "such officers or employees" and inserting in lieu thereof "such officers, employees or representatives";
- (8) by inserting "or have been" after "where hazardous wastes are"; and
- (9) by striking "officer or employee obtains" and inserting in lieu thereof "officer, employee or representative obtains".

(b) Section 3007(b) of such Act is amended as follows:

- (1) by inserting "or any officer, employee or representative thereof" before "has access under this section";
- (2) by striking "the Administrator (or the State, as the case may be) shall consider such information or portion thereof" and inserting in lieu thereof "such information or particular portion thereof shall be considered";
- (3) by inserting "(1)" before "Any records" and adding at the end thereof the following new paragraphs:

"(2) Any person not subject to the provisions of section 1905 of title 18 of the United States Code who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

"(3) In submitting data under this Act, a person required to provide such data may—

- "(A) designate the data which such person believes is entitled to protection under this subsection, and
- "(B) submit such designated data separately from other data submitted under this Act.

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

"(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this Act shall be made available, upon written request of any duly authorized committee of the Congress, to such committee."; and

- (4) by inserting "(including records, reports, or information obtained by representatives of the Environmental Protection Agency)"

Sec. 13. Section 3008 of the Solid Waste Disposal Act is amended as follows:

- (1) in subsection (a)(1), by striking "the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day

contract divulging confidential info

Eliminates 30 day notice provision

after the Administrator's notification," and by inserting "immediately or" after "compliance";

(2) in subsection (a)(2), by striking "thirty days";

(3) in subsection (b), by striking "or any suspension or revocation of a permit" and "or notice of the suspension or revocation";

(4) in subsection (c), by inserting "may include a suspension or revocation of a permit issued under this subtitle, and" after "Any order issued under this section"; and

(5) by striking out subsection (d) and substituting:

✓ **"(d) CRIMINAL PENALTIES.—Any person who—**

✓ **"(1) knowingly transports** any hazardous waste identified or listed under this subtitle to a facility which does not have a permit under section 3005 (or 3006 in case of a State program), or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052),

✓ **"(2) knowingly treats, stores, or disposes of any hazardous waste** identified or listed under this subtitle either—

"(A) without having obtained a permit under section 3005 (or 3006 in the case of a State program) or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052); or

"(B) in knowing violation of any material condition or requirement of such permit;

✓ **"(3) knowingly makes any false material 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; or**

✓ **"(4) knowingly generates, stores, treats, transports, disposes of, or otherwise handles any hazardous waste (whether such activity took place before or takes place after the date of the enactment of this paragraph) and who knowingly destroys, alters, or conceals any record required to be maintained under regulations promulgated by the Administrator under this subtitle**

shall, upon conviction, be subject to a fine of not more than \$25,000 (\$50,000 in the case of a violation of paragraph (1) or (2)) for each day of violation, or to imprisonment not to exceed one year (two years in the case of a violation of paragraph (1) or (2)), 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.

Felony

✓ **"(e) KNOWING ENDANGERMENT.—Any person who knowingly transports, treats, stores, or disposes of any hazardous waste identified or listed under this subtitle—**

"(1)(A) in violation of paragraphs (1) or (2) of subsection (d) of this section, or

"(B) having applied for a permit under section 3005 or 3006, and knowingly either—

"(i) has failed to include in his application material information required under regulations promulgated by the Administrator, or

"(ii) fails to comply with the applicable interim status regulations and standards promulgated pursuant to this subtitle,

who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, and

"(2)(A) if his conduct in the circumstances manifests an unjustified and inexcusable disregard for human life, or

"(B) if his conduct in the circumstances manifests an extreme indifference for human life.
shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment for not more than 2 years, or both, except that any person who violates subsection (e)(2)(B) shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment for not more than 5 years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than \$1,000,000.

"(f) SPECIAL RULES.—For the purposes of subsection (e)—

"(1) A person's state of mind is knowing with respect to—

"(A) his conduct, if he is aware of the nature of his conduct;

"(B) an existing circumstance, if he is aware or believes that the circumstance exists; or

"(C) a result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

"(2) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury—

"(A) the person is responsible only for actual awareness or actual belief that he possessed; and

"(B) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

Provided, That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

"(3) It is an affirmative defense to a prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

"(A) an occupation, a business, or a profession; or

"(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subsection by a preponderance of the evidence.

"(4) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subsection (e) and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

"(5) The term 'organization' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

"(6) The term 'serious bodily injury' means—

"(A) bodily injury which involves a substantial risk of death;

"(B) unconsciousness;

"(C) extreme physical pain;

"(D) protracted and obvious disfigurement; or

"(E) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(g) CIVIL PENALTY.—Any person who violates any requirement of this subtitle shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation."

Sec. 14. Section 3009 of the Solid Waste Disposal Act is amended by adding at the end thereof the following new sentence: "Nothing in this title shall be construed to prohibit any State or political subdivision thereof from imposing any requirements, including those for site selection, which are more stringent than those imposed by such regulations."

Sec. 15. Section 3010(a) of the Solid Waste Disposal Act is amended by striking out "or revision" and by inserting the following at the end of the first sentence thereof: "In revising any regulation under section 3001 identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste subject to this subtitle, the Administrator may require any person referred to in the preceding sentence to file with the Administrator (or with States having authorized hazardous waste permit programs under section 3006) the notification described in the preceding sentence."

Sec. 16. Section 3011 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(c) ACTIVITIES INCLUDED.—State hazardous waste programs for which grants may be made under subsection (a) may include (but shall not be limited to) planning for hazardous waste treatment, storage and disposal facilities, and the development and execution of programs to protect health and the environment from inactive facilities which may contain hazardous waste."

Sec. 17. (a) Subtitle C of the Solid Waste Disposal Act is amended by adding the following new sections at the end thereof:

"HAZARDOUS WASTE SITE INVENTORY

"Sec. 3012. (a) STATE INVENTORY PROGRAMS.—Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory describing the location of each site within such State at which hazardous waste has at any time been stored or disposed of. Such inventory shall contain—

"(1) a description of the location of the sites at which any such storage or disposal has taken place before the date on which permits are required under section 3005 for such storage or disposal;

"(2) such information relating to the amount, nature, and toxicity of the hazardous waste at each such site as may be practicable to obtain and as may be necessary to determine the extent of any health hazard which may be associated with such site;

"(3) the name and address, or corporate headquarters of, the owner of each such site, determined as of the date of preparation of the inventory;

"(4) an identification of the types or techniques of waste treatment or disposal which have been used at each such site; and

*Site selection -
local stringency*

3010

"(5) information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated or disposed of at such site (and if not, the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraphs (1) through (5) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 3007 for purposes of this section in the same manner and to the same extent as provided in such section in the case of States having an authorized hazardous waste program, and any State may by order require any person to submit such information as may be necessary to compile the data referred to in paragraphs (1) through (5).

"(b) ENVIRONMENTAL PROTECTION AGENCY PROGRAM.—If the Administrator determines that any State program under subsection (a) is not adequately providing information respecting the sites in such State referred to in subsection (a), the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program in such State. In any such case—

"(1) the Administrator shall have the authorities provided with respect to State programs under subsection (a);

"(2) the funds allocated under subsection (c) for grants to States under this section may be used by the Administrator for carrying out such program in such State; and

"(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

"(c) GRANTS.—(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator may make grants to the States for purposes of carrying out such a program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator may make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before the date of the enactment of the Solid Waste Disposal Act Amendments of 1980 to reimburse such State for all, or any portion of, the costs incurred by such State in conducting such program.

"(2) There are authorized to be appropriated to carry out this section \$20,000,000.

"(d) NO IMPEDIMENT TO IMMEDIATE REMEDIAL ACTION.—Nothing in this section shall be construed to provide that the Administrator or any State should, pending completion of the inventory required under this section, postpone undertaking any enforcement or remedial action with respect to any site at which hazardous waste has been treated, stored, or disposed of.

"MONITORING, ANALYSIS, AND TESTING

"SEC. 3013. (a) AUTHORITY OF ADMINISTRATOR.—If the Administrator determines, upon receipt of any information, that—

"(1) the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or

"(2) the release of any such waste from such facility or site may present a substantial hazard to human health or the environment, he may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis, and reporting with respect to such facility or site as the Administrator deems reasonable to ascertain the nature and extent of such hazard.

"(b) PREVIOUS OWNERS AND OPERATORS.—In the case of any facility or site not in operation at the time a determination is made under subsection (a) with respect to the facility or site, if the Administrator finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (a).

"(c) PROPOSAL.—An order under subsection (a) or (b) shall require the person to whom such order is issued to submit to the Administrator within 30 days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis, and reporting. The Administrator may, after providing such person with an opportunity to confer with the Administrator respecting such proposal, require such person to carry out such monitoring, testing, analysis, and reporting in accordance with such proposal, and such modifications in such proposal as the Administrator deems reasonable to ascertain the nature and extent of the hazard.

"(d) MONITORING, ETC., CARRIED OUT BY ADMINISTRATOR.—(1) If the Administrator determines that no owner or operator referred to in subsection (a) or (b) is able to conduct monitoring, testing, analysis, or reporting satisfactory to the Administrator, if the Administrator deems any such action carried out by an owner or operator to be unsatisfactory, or if the Administrator cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) who is able to conduct such monitoring, testing, analysis, or reporting, he may—

"(A) conduct monitoring, testing, or analysis (or any combination thereof) which he deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or

"(B) authorize a State or local authority or other person to carry out any such action,

and require, by order, the owner or operator referred to in subsection (a) or (b) to reimburse the Administrator or other authority or person for the costs of such activity.

"(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the Administrator which confirms the results of an order issued under subsection (a) or (b).

"(3) For purposes of carrying out this subsection, the Administrator or any authority or other person authorized under paragraph (1), may exercise the authorities set forth in section 3007.

"(e) ENFORCEMENT.—The Administrator may commence a civil action against any person who fails or refuses to comply with any

order issued under this section. Such action shall be brought in the United States district court in which the defendant is located, resides, or is doing business. Such court shall have jurisdiction to require compliance with such order and to assess a civil penalty of not to exceed \$5,000 for each day during which such failure or refusal occurs."

(b) The table of contents for such subtitle C is amended by inserting the following new items at the end thereof:

"Sec. 3012. Hazardous waste site inventory.

"Sec. 3013. Monitoring, analysis, and testing."

Sec. 18. (a) Section 4003(2) of the Solid Waste Disposal Act is amended by striking out "section 4005(c)" and inserting in lieu thereof "sections 4004(b) and 4005(a)".

(b) Section 4003(5) of such Act is amended by inserting "State or" after "The plan shall provide that no", and by striking the period after "resource recovery facilities", and substituting the following: ", from entering into long-term contracts for the operation of such facilities, or from securing long-term markets for material and energy recovered from such facilities."

Sec. 19. (a) Section 4005 of the Solid Waste Disposal Act is amended by deleting subsection (a) in its entirety and by redesignating subsection (c) as (a).

(b)(1) Section 4005(a) of the Solid Waste Disposal Act, as redesignated by this section, is amended by striking "Any" and inserting in lieu thereof "Upon promulgation of criteria under section 1008(a)(3), any"; by inserting "and 4003(3)" after "4003(2)"; by striking "the inventory under subsection (b)" after "not to exceed 5 years from the date of publication of" and inserting in lieu thereof "criteria under section 1008(a)(3)".

(2) Section 4005(b) of the Solid Waste Disposal Act is amended by striking "Not" and inserting in lieu thereof "To assist the States in complying with section 4003(3), not".

(b) Section 4006(b)(1)(B) of such Act is amended by striking out "functions" wherever it appears and inserting in lieu thereof "management activities".

Sec. 20. Section 4008(e) of the Solid Waste Disposal Act is amended by—

(1) striking out "identify communities" in paragraph (1) thereof and substituting "identify local governments";

(2) striking out clause (A) thereof and redesignating clauses (B) and (C) as (A) and (B), respectively;

(3) striking out "solid waste disposal facilities in which more than 75 per centum of the solid waste disposed of is from areas outside the jurisdiction of the communities" in paragraph (1) thereof and substituting "a solid waste disposal facility (i) which is owned by the unit of local government, (ii) for which an order has been issued by the State to cease receiving solid waste for treatment, storage, or disposal, and (iii) which is subject to a State-approved end-use recreation plan";

(4) striking out "which have" in clause (B) of paragraph (1), as redesignated by paragraph (2) of this section, and substituting the following "which are located over an aquifer which is the source of drinking water for any person or public water system and which has";

(5) inserting before the period at the end of paragraph (1): ", including possible methane migration";

(6) striking out "each of the fiscal years 1978 and 1979" in paragraph (2) and substituting "the fiscal year 1980 and \$1,500,000 for each of the fiscal years 1981 and 1982";

(7) striking out "the conversion, improvement" in the first sentence of paragraph (2) and all that follows down to the period at the end of such sentence and substituting "containment and stabilization of solid waste located at the disposal sites referred to in paragraph (1)";

(8) inserting the following new sentence at the end of paragraph (2): "No unit of local government shall be eligible for grants under this paragraph with respect to any site which exceeds 65 acres in size."; and

(9) striking out paragraph (3) thereof.

SEC. 21. (a) Section 5002 of the Solid Waste Disposal Act is amended by striking out "the date of the enactment of this Act" and inserting in lieu thereof "September 1, 1979".

(b) Section 5003 of such Act is amended by striking out "the enactment of this Act" and inserting in lieu thereof "September 1, 1979".

(c)(1) Subtitle E of such Act is amended by inserting the following new section after section 5004:

"NONDISCRIMINATION REQUIREMENT

"SEC. 5005. In establishing any policies which may affect the development of new markets for recovered materials and in making any determination concerning whether or not to impose monitoring or other controls on any marketing or transfer of recovered materials, the Secretary of Commerce may consider whether to establish the same or similar policies or impose the same or similar monitoring or other controls on virgin materials."

(2) The table of contents for such Act is amended by inserting the following new item after the item relating to section 5004:

"Sec. 5005. Nondiscrimination requirement."

SEC. 22. Section 6002 of the Solid Waste Disposal Act is amended as follows:

(1) in subsection (c)(1), by deleting the first sentence and inserting in lieu thereof the following: "After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, considering such guidelines.";

(2) in subsection (c)(1)(C), by striking "clause (ii)" and inserting in lieu thereof "subparagraph (B)";

(3) in subsection (c)(2), by deleting "recovered material and recovered-material-derived fuel" and inserting in lieu thereof the following: "energy or fuels derived from solid waste";

(4) in subsection (c)(3), by deleting everything after "vendors" and inserting in lieu thereof a colon and the following:

"(A) certify that the percentage of recovered materials to be used in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements and

"(B) estimate the percentage of the total material utilized for the performance of the contract which is recovered materials.";

(5) by amending subsection (d), to read as follows:

"(d) SPECIFICATIONS.—All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies shall—

"(1) as expeditiously as possible but in any event no later than five years after the date of enactment of this Act, eliminate from such specifications—

"(A) any exclusion of recovered materials and

"(B) any requirement that items be manufactured from virgin materials; and

"(2) within one year after the date of publication of applicable guidelines under subsection (e), or as otherwise specified in such guidelines, assure that such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item."

(6) in subsection (e), by deleting the second sentence and inserting in lieu thereof the following: "Such guidelines shall—

"(1) designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of this section; and

"(2) set forth recommended practices with respect to the procurement of recovered materials and items containing such materials and with respect to certification by vendors of the percentage of recovered materials used,

and shall provide information as to the availability, relative price, and performance of such materials and items and where appropriate shall recommend the level of recovered material to be contained in the procured product. The Administrator shall prepare final guidelines for at least three product categories, including paper, by May 1, 1981, and for two additional product categories, including construction materials, by September 30, 1982. In making the designation under paragraph (1), the Administrator shall consider, but is not limited in his considerations, to—

"(A) the availability of such items;

"(B) the impact of the procurement of such items by procuring agencies on the volume of solid waste which must be treated, stored or disposed of;

"(C) the economic and technological feasibility of producing and using such items; and

"(D) other uses for such recovered materials."

SEC. 23. Section 6004 of the Solid Waste Disposal Act is amended by—

(1) inserting immediately after "an executive agency (as defined in section 105 of title 5, United States Code)" in subsection (a)(1), "or any unit of the legislative branch of the Federal Government";

(2) inserting after "Each Executive agency" in subsection (a)(2), "or any unit of the legislative branch of the Federal Government"; and

(3) inserting after "The President" in subsection (a)(4) "or the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate with regard to any unit of the legislative branch of the Federal Government".

SEC. 24. Section 7001 of the Solid Waste Disposal Act is amended by adding the following new subsection at the end thereof:

"(f) OCCUPATIONAL SAFETY AND HEALTH.—In order to assist the Secretary of Labor and the Director of the National Institute for

Occupational Safety and Health in carrying out their duties under the Occupational Safety and Health Act of 1970, the Administrator shall—

"(1) provide the following information, as such information becomes available, to the Secretary and the Director:

"(A) the identity of any hazardous waste generation, treatment, storage, disposal facility or site where cleanup is planned or underway;

"(B) information identifying the hazards to which persons working at a hazardous waste generation, treatment, storage, disposal facility or site or otherwise handling hazardous waste may be exposed, the nature and extent of the exposure, and methods to protect workers from such hazards; and

"(C) incidents of worker injury or harm at a hazardous waste generation, treatment, storage or disposal facility or site; and

"(2) notify the Secretary and the Director of the Administrator's receipt of notifications under section 3010 or reports under sections 3002, 3003, and 3004 of this title and make such notifications and reports available to the Secretary and the Director."

SEC. 25. Section 7003 of the Solid Waste Disposal Act is amended by—

(1) inserting "(a) AUTHORITY OF ADMINISTRATOR.—" after "7003";

(2) striking out "is presenting" and inserting in lieu thereof "may present";

(3) striking out "the alleged disposal" and inserting in lieu thereof "such handling, storage, treatment, transportation or disposal"; and

(4) adding the following at the end thereof: "The Administrator may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

"(b) VIOLATIONS.—Any person who willfully violates, or fails or refuses to comply with, any order of the Administrator under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than \$5,000 for each day in which such violation occurs or such failure to comply continues."

SEC. 26. Section 7004(b) of the Solid Waste Disposal Act is amended by inserting "(1)" after "PUBLIC PARTICIPATION.—" and by inserting the following new paragraph at the end thereof:

"(2) Before the issuing of a permit to any person with any respect to any facility for the treatment, storage, or disposal of hazardous wastes under section 3005, the Administrator shall—

"(A) cause to be published in major local newspapers of general circulation and broadcast over local radio stations notice of the agency's intention to issue such permit, and

"(B) transmit in writing notice of the agency's intention to issue such permit to each unit of local government having jurisdiction over the area in which such facility is proposed to be located and to each State agency having any authority under State law with respect to the construction or operation of such facility.

If within 45 days the Administrator receives written notice of opposition to the agency's intention to issue such permit and a request for a hearing, or if the Administrator determines on his own

"may present"

Violations of 7003

initiative, he shall hold an informal public hearing (including an opportunity for presentation of written and oral views) on whether he should issue a permit for the proposed facility. Whenever possible the Administrator shall schedule such hearing at a location convenient to the nearest population center to such proposed facility and give notice in the aforementioned manner of the date, time, and subject matter of such hearing. No State program which provides for the issuance of permits referred to in this paragraph may be authorized by the Administrator under section 3006 unless such program provides for the notice and hearing required by the paragraph."

SEC. 27. (a) Section 7006 of the Solid Waste Disposal Act is amended as follows:

(1) by inserting "(a) REVIEW OF FINAL REGULATIONS AND CERTAIN PETITIONS.—" before "Any";

(2) by adding after "pursuant to this Act" the following: "and the Administrator's denial of any petition for the promulgation, amendment, or repeal of any regulation under this Act";

(3) by adding after "or requirement under this Act" the following: "or denying any petition for the promulgation, amendment, or repeal of any regulation under this Act";

(4) by striking out "Columbia. Any" and substituting "Columbia, and";

(5) by inserting "or denial" after "date of such promulgation";

(6) by inserting "for review" after "date of such petition";

(7) by striking out ". Action" in paragraph (1) thereof and substituting "; action"; and

(8) by striking out "proper. The" in paragraph (2) thereof and substituting "proper; the".

(b) Such section 7006 is further amended by adding the following new subsection (b) at the end thereof:

"(b) REVIEW OF CERTAIN ACTIONS UNDER SECTIONS 3005 AND 3006.—Review of the Administrator's action (1) in issuing, denying, modifying, or revoking any permit under section 3005, or (2) in granting, denying, or withdrawing authorization or interim authorization under section 3006, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such issuance, denial, modification, revocation, grant, or withdrawal, or after such date only if such application is based solely on grounds which arose after such ninetieth day. Such review shall be in accordance with sections 701 through 706 of title 5 of the United States Code."

SEC. 28. Section 7009 of the Solid Waste Disposal Act is amended by striking out "unless the Secretary" and substituting "unless the Administrator".

SEC. 29. Section 8002 of the Solid Waste Disposal Act is amended by—

(1) by striking out the last sentence of subsection (f) of such section and inserting in lieu thereof the following: "Not later than thirty-six months after the date of the enactment of the Solid Waste Disposal Act Amendments of 1980 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. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Interstate and

Review of permit actions

Foreign Commerce of the United States House of Representatives. ; and

(2) by inserting the following new subsections after subsection (1) and by redesignating subsection (m) as (q):

"(m) DRILLING FLUIDS, PRODUCED WATERS, AND OTHER WASTES ASSOCIATED WITH THE EXPLORATION, DEVELOPMENT, OR PRODUCTION OF CRUDE OIL OR NATURAL GAS OR GEOTHERMAL ENERGY.—(1) The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects, if any, of drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy on human health and 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 oil and gas and geothermal drilling and production industry, Government agencies, and others to dispose of and utilize such wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

"(A) the sources and volume of discarded material generated per year from such wastes;

"(B) present disposal practices;

"(C) potential danger to human health and the environment from the surface runoff or leachate;

"(D) documented cases which prove or have caused danger to human health and the environment from surface runoff or leachate;

"(E) alternatives to current disposal methods;

"(F) the cost of such alternatives; and

"(G) the impact of those alternatives on the exploration for, and development and production of, crude oil and natural gas or geothermal energy.

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.

"(2) The Administrator shall complete the research and study and submit the report required under paragraph (1) not later than twenty-four months from the date of enactment of the Solid Waste Disposal Act Amendments of 1980. Upon completion of the study, the Administrator shall prepare a summary of the findings of the study, a plan for research, development, and demonstration respecting the findings of the study, and shall submit the findings and the study, along with any recommendations resulting from such study, to the Committee on Environment and Public Works of the United States Senate and the Committee on Interstate and Foreign Commerce of the United States House of Representatives.

"(3) There are authorized to be appropriated not to exceed \$1,000,000 to carry out the provisions of this subsection.

"(n) MATERIALS GENERATED FROM THE COMBUSTION OF COAL AND OTHER FOSSIL FUELS.—The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects on human health and the environment, if any, of the disposal and utilization of fly ash waste, bottom ash waste, slag waste, flue gas emission control waste, and other byproduct materials generated

*8002 Special
Waste Study*

primarily from the combustion of coal or other fossil fuels. Such study shall include an analysis of—

- "(1) the source and volumes of such material generated per year;
- "(2) present disposal and utilization practices;
- "(3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;
- "(4) documented cases in which danger to human health or the environment from surface runoff or leachate has been proved;
- "(5) alternatives to current disposal methods;
- "(6) the costs of such alternatives;
- "(7) the impact of those alternatives on the use of coal and other natural resources; and

"(8) the current and potential utilization of such materials. In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such material and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report on such study, which shall include appropriate findings, not later than twenty-four months after the enactment of the Solid Waste Disposal Act Amendments of 1980. Such study and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Interstate and Foreign Commerce of the United States House of Representatives.

"(o) CEMENT KILN DUST WASTE.—The Administrator shall conduct a detailed and comprehensive study of the adverse effects on human health and the environment, if any, of the disposal of cement kiln dust waste. Such study shall include an analysis of—

- "(1) the source and volumes of such materials generated per year;
- "(2) present disposal practices;
- "(3) potential danger, if any, to human health and the environment from the disposal of such materials;
- "(4) documented cases in which danger to human health or the environment has been proved;
- "(5) alternatives to current disposal methods;
- "(6) the costs of such alternatives;
- "(7) the impact of those alternatives on the use of natural resources; and

"(8) the current and potential utilization of such materials. In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, not later than thirty-six months after the date of enactment of the Solid Waste Disposal Act Amendments of 1980. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Interstate and Foreign Commerce of the United States House of Representatives.

"(p) MATERIALS GENERATED FROM THE EXTRACTION, BENEFICIATION, AND PROCESSING OF ORES AND MINERALS, INCLUDING PHOSPHATE ROCK AND OVERBURDEN FROM URANIUM MINING.—The Administrator shall conduct a detailed and comprehensive study on the adverse

effects on human health and the environment, if any, of the disposal and utilization of solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining. Such study shall be conducted in conjunction with the study of mining wastes required by subsection (f) of this section and shall include an analysis of—

- "(1) the source and volumes of such materials generated per year;
- "(2) present disposal and utilization practices;
- "(3) potential danger, if any, to human health and the environment from the disposal and reuse of such materials;
- "(4) documented cases in which danger to human health or the environment has been proved;
- "(5) alternatives to current disposal methods;
- "(6) the costs of such alternatives;
- "(7) the impact of those alternatives on the use of phosphate rock and uranium ore, and other natural resources; and
- "(8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, in conjunction with the publication of the report of the study of mining wastes required to be conducted under subsection (f) of this section. Such report and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Interstate and Foreign Commerce of the United States House of Representatives."

Sec. 30. Section 3 of the Resource Conservation and Recovery Act of 1976 is hereby repealed.

Sec. 31. (a) Section 2006(a) of the Solid Waste Disposal Act is amended by striking "and" and inserting before the period "\$70,000,000 for the fiscal year ending September 30, 1980, \$80,000,000 for the fiscal year ending September 30, 1981, and \$80,000,000 for the fiscal year ending September 30, 1982".

(b) Section 3011(a) of the Solid Waste Disposal Act is amended by inserting after "1979" the following: "\$20,000,000 for fiscal year 1980, \$35,000,000 for fiscal year 1981, and \$40,000,000 for fiscal year 1982".

(c) Section 4008(a)(1) of the Solid Waste Disposal Act is amended to read as follows:

"(1) There are authorized to be appropriated \$30,000,000 for fiscal year 1978, \$40,000,000 for fiscal year 1979, \$20,000,000 for fiscal year 1980, \$15,000,000 for fiscal year 1981, and \$20,000,000 for fiscal year 1982 for purposes of financial assistance to States and local, regional, and interstate authorities for the development and implementation of plans approved by the Administrator under this subtitle (other than the provisions of such plans referred to in section 4003(b), relating to feasibility planning for municipal waste energy and materials conservation and recovery)."

(d) Section 4008(a)(2)(C) of the Solid Waste Disposal Act is amended by adding at the end thereof: "There are authorized to be appropriated \$10,000,000 for fiscal year 1980, \$10,000,000 for fiscal year 1981, and \$10,000,000 for fiscal year 1982 for purposes of this paragraph."

80 - FY '81

15 - FY '81

(e) Section 4009(d) of the Solid Waste Disposal Act is amended by adding at the end thereof: "There are authorized to be appropriated \$10,000,000 for the fiscal year 1980 and \$15,000,000 for each of the fiscal years 1981 and 1982 to carry out this section."

(f)(1) Subtitle E of the Solid Waste Disposal Act is amended by adding the following new section:

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 5006. There are authorized to be appropriated to the Secretary of Commerce \$5,000,000 for each of fiscal years 1980, 1981, and 1982 to carry out the purposes of this subtitle."

(2) The table of contents for such subtitle E is amended by adding the following new item at the end thereof:

"Sec. 5006. Authorization of appropriations."

ENERGY AND MATERIALS CONSERVATION AND RECOVERY

SEC. 32. (a) The Congress finds that—

(1) significant savings could be realized by conserving materials in order to reduce the volume or quantity of material which ultimately becomes waste;

(2) solid waste contains valuable energy and material resources which can be recovered and used thereby conserving increasingly scarce and expensive fossil fuels and virgin materials;

(3) the recovery of energy and materials from municipal waste, and the conservation of energy and materials contributing to such waste streams, can have the effect of reducing the volume of the municipal waste stream and the burden of disposing of increasing volumes of solid waste;

(4) the technology to conserve resources exists and is commercially feasible to apply;

(5) the technology to recover energy and materials from solid waste is of demonstrated commercial feasibility; and

(6) various communities throughout the nation have different needs and different potentials for conserving resources and for utilizing techniques for the recovery of energy and materials from waste, and Federal assistance in planning and implementing such energy and materials conservation and recovery programs should be available to all such communities on an equitable basis in relation to their needs and potential.

(b) Section 4001 of the Solid Waste Disposal Act (relating to objectives) is amended by inserting "including energy and materials which are recoverable from solid waste" after "valuable resources".

(c) Section 4002(c) of the Solid Waste Disposal Act (relating to guidelines for State plans) is amended in paragraph (11) by inserting after "recovered material" the following: "and energy and energy resources recovered from solid waste as well as methods for conserving such materials and energy".

(d)(1) Section 4003 of the Solid Waste Disposal Act is amended by inserting "negotiating and" after "from" in paragraph (5) thereof and by adding the following before the period at the end thereof: "or for conserving materials or energy by reducing the volume of waste".

(2) Section 4003 of the Solid Waste Disposal Act (relating to minimum requirements for State plans) is amended by inserting "(a) MINIMUM REQUIREMENTS.—" after "4003" and by adding the following new subsection at the end thereof:

"(b) ENERGY AND MATERIALS CONSERVATION AND RECOVERY FEASIBILITY PLANNING AND ASSISTANCE.—(1) A State which has a plan approved under this subtitle or which has submitted a plan for such approval shall be eligible for assistance under section 4008(a)(3) if the Administrator determines that under such plan the State will—

"(A) analyze and determine the economic and technical feasibility of facilities and programs to conserve resources which contribute to the waste stream or to recover energy and materials from municipal waste;

"(B) analyze the legal, institutional, and economic impediments to the development of systems and facilities for conservation of energy or materials which contribute to the waste stream or for the recovery of energy and materials from municipal waste and make recommendations to appropriate governmental authorities for overcoming such impediments;

"(C) assist municipalities within the State in developing plans, programs, and projects to conserve resources or recover energy and materials from municipal waste; and

"(D) coordinate the resource conservation and recovery planning under subparagraph (C).

"(2) The analysis referred to in paragraph (1)(A) shall include—

"(A) the evaluation of, and establishment of priorities among, market opportunities for industrial and commercial users of all types (including public utilities and industrial parks) to utilize energy and materials recovered from municipal waste;

"(B) comparisons of the relative costs of energy recovered from municipal waste in relation to the costs of energy derived from fossil fuels and other sources;

"(C) studies of the transportation and storage problems and other problems associated with the development of energy and materials recovery technology, including curbside source separation;

"(D) the evaluation and establishment of priorities among ways of conserving energy or materials which contribute to the waste stream;

"(E) comparison of the relative total costs between conserving resources and disposing of or recovering such waste; and

"(F) studies of impediments to resource conservation or recovery, including business practices, transportation requirements, or storage difficulties.

Such studies and analyses shall also include studies of other sources of solid waste from which energy and materials may be recovered or minimized."

(e)(1) Section 4008(a)(2)(B) of such Act is amended by adding the following at the end thereof: "Applicants for technical and financial assistance under this section shall not preclude or foreclose consideration of programs for the recovery of recyclable materials through source separation or other resource recovery techniques."

(2) Section 4008(a) of such Act is amended by adding the following new paragraph at the end thereof:

"(3)(A) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, \$4,000,000 for purposes of making grants to States to carry out section 4003(b). No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.

"(B) Assistance provided by the Administrator under this paragraph shall be used only for the purposes specified in section 4003(b).

Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.

"(C) Where appropriate, any State receiving assistance under this paragraph may make all or any part of such assistance available to municipalities within the State to carry out the activities specified in section 4003(b)(1) (A) and (B)."

(3) Section 4008 of such Act is amended by adding the following new subsection at the end thereof:

"(f) ASSISTANCE TO MUNICIPALITIES FOR ENERGY AND MATERIALS CONSERVATION AND RECOVERY PLANNING ACTIVITIES.—(1) The Administrator is authorized to make grants to municipalities, regional authorities, and intermunicipal agencies to carry out activities described in subparagraphs (A) and (B) of section 4003(b)(1). Such grants may be made only pursuant to an application submitted to the Administrator by the municipality which application has been approved by the State and determined by the State to be consistent with any State plan approved or submitted under this subtitle or any other appropriate planning carried out by the State.

"(2) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, \$8,000,000 for purposes of making grants to municipalities under this subsection. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter."

"(3) Assistance provided by the Administrator under this subsection shall be used only for the purposes specified in paragraph (1). Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities."

(f) Section 4008(d) of the Solid Waste Disposal Act is amended by inserting "(1)" after "TECHNICAL ASSISTANCE.—" and by adding the following new paragraph at the end thereof:

"(2) In carrying out this subsection, the Administrator is authorized to provide technical assistance to States, municipalities, regional authorities, and intermunicipal agencies upon request, to assist in the removal or modification of legal, institutional, and economic impediments which have the effect of impeding the development of systems and facilities to recover energy and materials from municipal waste or to conserve energy or materials which contribute to the waste stream. Such impediments may include—

"(A) laws, regulations, and policies, including State and local procurement policies, which are not favorable to resource conservation and recovery policies, systems, and facilities;

"(B) impediments to the financing of facilities to conserve or recover energy and materials from municipal waste through the exercise of State and local authority to issue revenue bonds and the use of State and local credit assistance; and

"(C) impediments to institutional arrangements necessary to undertake projects for the conservation or recovery of energy and materials from municipal waste, including the creation of special districts, authorities, or corporations where necessary having the power to secure the supply of waste of a project, to conserve resources, to implement the project, and to undertake related activities."

(g) Section 6003 of the Solid Waste Disposal Act is amended to read as follows:

"COOPERATION WITH THE ENVIRONMENTAL PROTECTION AGENCY

"SEC. 6003. (a) GENERAL RULE.—All Federal agencies shall assist the Administrator in carrying out his functions under this Act and shall promptly make available all requested information concerning past or present Agency waste management practices and past or present Agency owned, leased, or operated solid or hazardous waste facilities. This information shall be provided in such format as may be determined by the Administrator.

"(b) INFORMATION RELATING TO ENERGY AND MATERIALS CONSERVATION AND RECOVERY.—The Administrator shall collect, maintain, and disseminate information concerning the market potential of energy and materials recovered from solid waste, including materials obtained through source separation, and information concerning the savings potential of conserving resources contributing to the waste stream. The Administrator shall identify the regions in which the increased substitution of such energy for energy derived from fossil fuels and other sources is most likely to be feasible, and provide information on the technical and economic aspects of developing integrated resource conservation or recovery systems which provide for the recovery of source-separated materials to be recycled or the conservation of resources. The Administrator shall utilize the authorities of subsection (a) in carrying out this subsection."

NATIONAL ADVISORY COMMISSION ON RESOURCE CONSERVATION AND RECOVERY

SEC. 33. (a)(1) There is hereby established in the executive branch of the United States the National Advisory Commission on Resource Conservation and Recovery, hereinafter in this section referred to as the "Commission".

(2) The Commission shall be composed of nine members to be appointed by the President. Such members shall be qualified by reason of their education, training, or experience to represent the view of consumer groups, industry associations, and environmental and other groups concerned with resource conservation and recovery and at least two shall be elected or appointed State or local officials. Members shall be appointed for the life of the Commission.

(3) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(4) Five members of the Commission shall constitute a quorum for transacting business of the Commission except that a lesser number may hold hearings and conduct information-gathering meetings.

(5) The Chairperson of the Commission shall be designated by the President from among the members.

(6) Upon the expiration of the two-year period beginning on (A) the date when all initial members of the Commission have been appointed or when (B) the date when initial funds become available to carry out this section, whichever is later, the Commission shall transmit to the President, and to each House of the Congress, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable.

(7) The Commission shall submit an interim report on February 15, 1982, and the Commission may also submit, for legislative and administrative actions relating to the Solid Waste Disposal Act, other interim reports prior to the submission of its final report.

(8) The Commission shall cease to exist 30 days after submission of its final report.

(b) The Commission shall—

(1) after consultation with the appropriate Federal agencies, review budgetary priorities relating to resource conservation and recovery, determine to what extent program goals relating to resource conservation and recovery are being realized, and make recommendations concerning the appropriate program balance and priorities;

(2) review any existing or proposed resource conservation and recovery guidelines or regulations;

(3) determine the economic development or savings potential of resource conservation and recovery, including the availability of markets for recovered energy and materials, for economic materials savings through conservation, and make recommendations concerning the utilization of such potential;

(4) identify, and make recommendations addressing, institutional obstacles impeding the development of resource conservation and resource recovery; and

(5) evaluate the status of resource conservation and recovery technology and systems including both materials and energy recovery technologies, recycling methods, and other innovative methods for both conserving energy and materials extractable from solid waste.

The review referred to in paragraph (1) should include but not be limited to an assessment of the effectiveness of the technical assistance panels, the public participation program and other program activities under the Solid Waste Disposal Act.

(c)(1) Members of the Commission while serving on business of the Commission, shall be compensated at a rate not to exceed the rate specified at the time of such service for grade GS-16 of the General Schedule for each day they are engaged in the actual performance of Commission duties, including travel time; and while so serving away from their homes or regular places of business, all members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in Government service employed intermittently.

(2) Subject to such rules as may be adopted by the Commission, the Chairperson, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, shall have the power to—

(A) appoint a Director, who shall be paid at a rate not to exceed the rate of basic pay for level I, GS-16 of the General Schedule; and

(B) appoint and fix the compensation of not more than 5 additional staff personnel.

(3) This Commission is authorized to procure temporary and intermittent services of experts and consultants as are necessary to the extent authorized by section 3109 of title 5, United States Code, but at rates not to exceed the rate specified at the time of such service for grade GS-16 in section 5332 of such title. Experts and consultants may be employed without compensation if they agree to do so in advance.

(4) Upon request of the Commission, the head of any Federal agency is authorized to detail on a reimbursable or nonreimbursable

CCR 000040876

basis any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this section.

(5) The Commission is exempt from the requirements of sections 4301 through 4308 of title 5, United States Code.

(6) The Commission is authorized to enter into contracts with Federal and State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties and responsibilities.

(7) In order to expedite matters pertaining to the planning for, and work of, the Commission, the Commission is authorized to make purchases and contracts without regard to section 252 of title 41 of the United States Code, pertaining to advertising and competitive bidding, and may arrange for the printing of any material pertaining to the work of the Commission without regard to the Government Printing and Binding Regulations and any related laws or regulations.

(8) The Commission may use the United States mail in the same manner and under the same conditions as other departments and agencies of the United States.

(9) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties and functions. Upon request of the Chairperson, the head of any such Federal agency shall furnish such information to the Commission subject to applicable law.

(10) Financial and administrative services (including those related to budget and accounting, financial reporting, personnel, and procurement) shall be provided to the Commission by the General Services Administration for which payment shall be made in advance, or by reimbursement, from funds of the Commission, in such amounts as may be agreed upon by the Chairperson of the Commission and the Administrator of General Services.

(d) In carrying out its duties under this section the Commission, or any duly authorized committee thereof, is authorized to hold such hearings and take testimony, with respect to matters to which it has a responsibility under this section as the Commission may deem advisable. The Chairperson of the Commission or any member authorized by him may administer oaths or affirmations to witnesses appearing before the Commission or before any committee thereof.

S. 1156--26

(e) From the amounts authorized to be appropriated under the Solid Waste Disposal Act for the fiscal years 1981 and 1982, not more than \$1,000,000 may be used to carry out the provisions of this section.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

CCR 000040878

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 264

[SW FRL 1828-4]

**Standards Applicable to Owners and
Operators of Hazardous Waste
Treatment, Storage and Disposal
Facilities**

AGENCY: Environmental Protection
Agency.

ACTION: Supplemental notice of
proposed rulemaking.

SUMMARY: EPA is in the process of finalizing its regulations under the Resource Conservation and Recovery Act that will provide a basis for issuing permits to owners and operators of hazardous waste treatment, storage and disposal facilities. The portions of those regulations that protect ground water resources from the adverse effects of land disposal facilities are particularly significant. This notice sets forth a broad outline of EPA's intended approach for controlling hazardous waste contamination of ground water to the extent necessary to protect public health and the environment. EPA seeks public comment on this approach. In addition EPA seeks comment on the applicability of this approach to other hazardous waste management options, such as incineration, and to its solid waste regulations under Subtitle D of RCRA.

DATE: Comments must be received on or before November 7, 1980.

ADDRESS: Comments should be addressed to Docket Clerk [Docket No. 3004-BE], Office of Solid Waste [WH-

process to operate more expeditiously than it otherwise would.

Legal Basis

Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c; *Georgia v. United States*, 411 U.S. 528 (1973).

Regulatory Analysis

A regulatory analysis is not required.

Knowledgeable Official

David H. Hunter, Voting Section, Civil Rights Division, Department of Justice, Washington, D.C. 20530, (202) 724-7189.

Matters Relevant to Section 2(b) of Executive Order 12044

Issues and Alternatives Considered

Section 5 of the Voting Rights Act of 1976, as amended by the Voting Rights Act Amendments of 1970 and 1975, 42 U.S.C. 1973c, requires that certain states, counties, cities, school districts, and other political units (primarily in the South and Southwest) submit to the Attorney General (or to the United States District Court for the District of Columbia) any changes in voting procedures, practices, or standards for a determination that such changes do not have the purpose and will not have the effect of discriminating on the basis of race, color, or membership in a language minority group. Procedures for the administration of Section 5 were first published on September 10, 1971, 38 FR 18186. These procedures are currently under revision.

Three alternatives have been considered: (1) Have no published procedures; (2) Retain the existing procedures; (3) and Prepare revised procedures. The third alternative has been selected. The Section 5 procedures were originally adopted in 1971, after six years of experience without such published procedures demonstrated a need for them. Since 1971, the passage of the Voting Rights Act Amendments of 1975, a number of court decisions, and the experience of the Department have made necessary the preparation of revised procedures. Within this context, the major issues will become more clearly defined once the comments have been analyzed.

Public Comment

A sixty-day comment period was provided after initial publication of the proposed revised procedures in the Federal Register. At that time copies of the proposed revised procedure were also sent to all persons and organizations listed in the Registry of Interested Individuals and Groups (see 28 CFR 51.13), and to officials of affected jurisdictions. In addition, the procedures have been brought to the attention of

other persons known to have a particular interest in the administration of Section 5.

Timetable

Final Rule—September 21, 1980

Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs—Implementation of Executive Order 11764

Discussion of the Regulation

Under Executive Order 11764, 3A CFR Part 124 (1974 comp.), the Attorney General is charged with the responsibility of coordinating Federal Government enforcement of Title VI of the Civil Rights Act of 1964, as amended. Pursuant to that authority the Department of Justice issued regulations, 28 CFR 42.401-415, in December 1976, setting minimum standards for the Federal grant agencies to use in enforcing Title VI. Experience in implementing this regulation has demonstrated that changes need to be made in the present regulation to increase its effectiveness. The changes proposed will improve the ability of the Department of Justice to direct agencies to take steps to adequately enforce Title VI. Additionally, it will clarify and broaden the enforcement authority of the grant agencies' civil rights offices; will provide clearer direction to the grant agencies and the public on how the Department of Justice expects Title VI to be enforced; and will provide further impetus towards reducing unnecessary duplication of effort.

Legal Basis

Executive Order 11764, issued January 21, 1974.

Regulatory Analysis

A regulatory analysis is not required.

Knowledgeable Official

Stewart B. Oneglia, Office of Coordination and Review, Civil Rights Division, Department of Justice, Washington, D.C. 20250, (202) 724-6757

Matters Relevant to Section 2(b) of Executive Order 12044

Issues and Alternatives Considered

Executive Order 11764 has charged the Attorney General with the responsibility for coordinating all Federal Government activity involving Title VI. Experience with the current regulations issued pursuant to the Attorney General's authority and studies conducted by the General Accounting Office and the President's Reorganization Task Force have shown that problems in the quality and quantity of Title VI enforcement still

remain. The Department of Justice believes that the changes it is proposing in 28 CFR 42.401-415 will, in part, address the deficiencies identified by our own experience and the studies cited above. These changes will improve the Department's ability to carry out its mandated responsibilities under the Executive Order and will assist the grant agencies in enforcing Title VI.

Public Comment

A sixty day comment period will be provided after initial publication. Additionally, comments will be solicited directly from the affected government agencies.

Timetable

NPRM—October/November, 1980

Final Rule—March/April, 1981

Drew S. Days III,

Assistant Attorney General, Civil Rights Division.

(FR Doc. 80-31292 Filed 10-7-80; 8:45 am)

BILLING CODE 4410-01-M

VETERANS ADMINISTRATION

38 CFR Part 3

Exclusions From Countable Income Under Improved Pension Program

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration is proposing to amend its regulation governing exclusions from countable income under the Improved Pension Program. The need for this action results from our determination that payments under the Foster Grandparent Program are not to be included in countable pension income under the Improved Pension Program. The effect of this action will be to permit persons in receipt of Improved Pension to receive income under Foster Grandparent Program (and under other Domestic Volunteer Service Act Programs) without loss of Veterans Administration pension entitlement or benefits.

DATES: Comments must be received on or before November 7, 1980.

Comments will be available for inspection at the above address during normal business hours until November 17, 1980.

It is proposed to make this amendment effective January 1, 1979, the date the Improved Pension Program began.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810

562], U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

The public docket for this regulation is located in Room 2711, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kosakowski, Office of Solid Waste (WH-564), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460 (202) 755-8120.

SUPPLEMENTARY INFORMATION: Under Subtitle C of the Resource Conservation and Recovery Act (RCRA), as amended, EPA is to issue regulations setting forth a complete "cradle-to-grave" system for the management of hazardous wastes. This hazardous waste management program is to establish a manifest system that tracks wastes from the point of generation, through their transportation to the points of treatment, storage and disposal. Owners and operators of facilities for treatment, storage and disposal of hazardous wastes must receive permits from the EPA (or EPA-approved States.)

On December 18, 1978, EPA proposed, at 43 FR 58948, the major regulations required under Subtitle C. These included the Identification and Listing of Hazardous Waste (Section 3001), Standards Applicable to Generators of Hazardous Waste (Section 3002), Standards Applicable to Transporters of Hazardous Waste (Section 3003), and Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities (Section 3004). After extensive opportunities for public participation, EPA began to issue final regulations early in 1980. The standards for generators and transporters of hazardous waste, as well as the Preliminary Notification of Hazardous Waste Activity form under Section 3010 of RCRA, were issued on February 28, 1980 (45 FR 12746).

On May 19, 1980 at 45 FR 33086, EPA issued final regulations that established the basis for identifying and listing hazardous wastes, under Section 3001. The May 19 regulations also established portions of the standards for owners and operators of hazardous waste treatment, storage and disposal facilities. Specifically they established standards applicable to facilities during "interim status," a period recognized by statute during which certain existing facilities will be treated as if they had a permit while they await EPA action on their permit application. They also

included many of the administrative requirements that will be used in the issuance of actual permits. EPA is working on the principal technical requirements under Section 3004 that will be used in issuing permits to treatment, storage and disposal facilities and intends to issue them soon.

Some of the most important elements of those technical requirements are the standards for land disposal facilities which are aimed at protecting ground water. The legislative history of RCRA reflects Congress's special concern for the effects of waste disposal on ground water. Ground-water contamination has been the central concern in some of the most tragic incidents involving hazardous waste. EPA is therefore particularly concerned that its approach to ground-water protection be protective of public health and the environment.

In the proposed regulations of December 16, 1978 EPA sought to protect ground water with specific design requirements for landfills, surface impoundments and landfills. For example, one proposed landfill standard would have required placement of a soil liner of at least 1.5 meters which had a permeability of less than 1.0×10^{-7} cm/sec. Many commenters on the proposed regulation objected to such reliance on uniform technical design standards, arguing that such an approach was unnecessary inflexible and did not allow adequate consideration of site-specific factors that might affect the need for more or less stringent requirements. EPA believes that those comments raised an important issue. Since the rule was proposed, EPA has also begun to develop a comprehensive ground-water strategy that will guide many of its programs. In developing that strategy, in close cooperation with members of the public, EPA has also come to realize the importance of providing flexibility in regulations aimed at ground-water protection so that regulatory decisions can take account of local ground-water uses and needs as well as physical (e.g. hydrogeologic) conditions. EPA has concluded, therefore, that facility design standards are not completely adequate to assure ground-water protection.

In this Notice EPA is seeking comment on the ground-water protection scheme which it is currently intending to implement. EPA believes that the relatively short 30-day comment period provided in the Notice is necessary. Beginning on November 19, on new facilities may accept waste for disposal unless the facility has a permit. EPA must finalize its Section 3004 regulations if it is to issue any such permits. Moreover EPA is under court orders from

the U.S. District Court for the District of Columbia to issue final Section 3004 regulations this fall. Under these circumstances it is important to expedite all rulemaking activities to allow for prompt promulgation of the land disposal standards.

I. Alternatives Examined

In developing a ground water protection approach for the hazardous waste facility regulations EPA examined four principal alternatives:

A. Facility Design Requirements

As in the proposed regulation, EPA could establish specific design requirements applicable to all land disposal facilities. For example, the regulations could require all landfills to install liners meeting minimum specifications (e.g. the equivalent of 20 feet of clay having a permeability of 10^{-7} cm/sec.), leachate collection systems capable of removing 98% of the leachate generated in the facilities, and highly impermeable final covers. While EPA has decided not to rely primarily on this approach at the present time, it does recognize that this approach provides a specificity that is desirable. Where such standards are used, both the permit issuing authority writer and the permittee have a clear idea of what is expected. This facilitates prompt issuance of permits. EPA recognizes the limits of this approach in devising land disposal standards for hazardous wastes, and therefore has not relied principally on design standards to protect ground water. Where justified, however, specific design requirements will be used. Moreover, EPA will continue to examine the possibility of using specific design requirements in future regulations as the state of the art in hazardous waste management technology improves.

B. Containment Strategies

Another approach to which EPA gave serious consideration was an engineering performance standard that would require containment of hazardous waste and hazardous waste constituents within certain boundaries. Such an approach could at least assure that the environment outside the regulatory boundaries would not be degraded.

The containment approach can take one of two forms. First it can be viewed purely as a design specification for a land disposal facility. Thus the regulation would specify a period of time over which there could be no leakage from the facility to useable ground water. The permittee would then present a facility design based on liner, leachate collection and cover

specifications as well as on the natural hydrogeologic setting) that would assure that no leachate would emerge from the bottom of the facility for a specified period of time.

In selecting the time period EPA would need to make a policy choice based on a consideration of the risks inherent in hazardous waste management. As a matter of policy, EPA would stipulate a finite but long period of time (e.g. 100 years) to allow for waste degradation and attenuation that would reduce the risks attending leachate releases after the containment period. Providing such a long containment period would allow for development of technologies that might be able to treat or recycle the hazardous wastes that have been placed in land disposal facilities or to restore ground water quality.

There are several key elements that a permittee could manipulate in designing the facility. For liners the principal variables are the liner thickness and the resistance of the liner material to leachate flow. To predict the containment potential of a liner design EPA would use variations of Darcy's Law to relate the liner thickness and its resistance to flow to the specified containment period. Models or equations used to make predictions could account for various factors. For example, in calculating the performance of a soil liner differing equations might be used for saturated and unsaturated liners. With a saturated liner the resistance of a liner to flow will be heavily dependent on the force of gravity. Thus predictions of flow would need to account for the head of leachate above the liner. With unsaturated liners, however, migration through the liner would be affected by capillary action, of diffusivity. Thus predictions, in that case, would need to include a variable that accounts for the surface tension forces that accelerate leachate migration in unsaturated liners.

Other key design features to be considered would be the efficiency, period of operation and leachate treatment capabilities of the facility's leachate collection and removal system. The permittee would also include in the proposed design specifications concerning the slope, thickness, permeability, configuration and period of maintenance of the final cover, as well as any methods for waste treatment (pretreatment, stabilization or fixation, in situ treatment) that may be used at the facility.

A second form of a containment approach is one which requires managing leachate such that it is contained within some area surrounding

the facility for a period of time. Again, the regulations would need to establish the duration of the containment period (e.g. 100 years), based on a consideration of acceptable risks. This approach would acknowledge that some leachate would emerge from the facility and enter the ground water. The leachate, however, could not migrate beyond the established containment area during the containment period. The permittee would be obligated to design and operate the facility to meet these conditions. In establishing the boundary of the containment area in the regulations, EPA would be concerned with the ability of the permittee to take corrective action to restore the ground water if contamination spread beyond the containment boundary. This would suggest, for example, that the regulatory boundary might be set at the permittee's property boundary in order to allow the permittee to take corrective action (e.g. installation of interceptor wells on-site) that would control any contamination that would occur. Variations from this boundary point, based on the use of or need for the downgradient ground water, might be allowed providing there were adequate methodologies (i.e. mass transport models) to predict migration. In evaluating facility designs, EPA would be seeking a thorough description of underlying hydrogeology, a predictive analysis adequate to assure that any contamination would remain within the containment area during the containment period, a method for detecting whether the containment objective is met (e.g. ground water monitoring) and a corrective action plan for responding when containment is not achieved.

EPA does not currently intend to use this approach in the land disposal regulations. As discussed later, EPA is concerned that this approach only guarantees human health and environmental protection for the finite time period (e.g. 100 years) selected as the containment period. While this might be an acceptable level of protection in some cases, it may not be so in others.

C. Specific Ambient Health and Environmental Performance Standards

This approach would involve establishing specific, often numerical, standards in the regulations that would be based on EPA determinations about unacceptable health risks. Thus EPA would evaluate available data on the health and environmental effects of specific hazardous waste constituents to establish tolerance limits for those constituents in the ground water or in the surface waters that are

hydrologically connected to the aquifer below the facility. Facilities would have to provide adequate assurance that any leachate that might emerge from the facility would not cause the ground water or surface water at specified points to exceed the tolerance levels for the hazardous waste constituents in the leachate.

In establishing such specific health and environmental standards, EPA would build on other Agency efforts to establish such tolerance levels. For example, EPA would look to such things as the Water Quality Criteria (developed under Section 304 of the Clean Water Act), the National Interim Primary and Secondary Drinking Water Regulations (developed under Section 1412 of the Safe Drinking Water Act), the suggested No Adverse Risk Levels (SNARL'S) used as guidance in EPA's drinking water programs, and the work of EPA's Cancer Assessment Group to provide the scientific basis for these tolerance levels. In addition efforts to develop such tolerance levels could be initiated in coordination with other Federal agencies studying similar problems.

A key element in this approach concerns the points at which the established tolerance level would have to be met. EPA would specify this in the regulation. EPA could require that the tolerances must be met at any points of ground-water or surface-water use downgradient from the facility. For example, EPA might specify that the tolerance could not be exceeded at the upgradient side of the zone around a water supply well delineated by the cone of depression around the well. Such a zone would be dependent on the rate of withdrawal from the well.

EPA might also specify the tolerance levels as ambient standards and allow for the establishment of mixing zones around facilities that relate the maintenance of the ambient standard back to specific "effluent limits" that may be released from the facility. This approach would have particular appeal when the media of concern is surface water because it would allow the RCRA standard to be coordinated with existing state water quality standards programs. EPA could also require that the tolerance limits be met in ground waters at the edge of the facility property boundary. This approach would provide protection for any future users (as well as existing users) that may use the water downgradient from the facility.

Another variation of specific health and environmental performance standards would be the specification of a risk level in the regulation, allowing the permit writer to then establish

tolerance levels that are based on that risk factor. For example, the regulation might specify that the risk factor from a known carcinogen may not exceed 1×10^{-6} (the possibility of one additional death per 1,000,000 people) over a 70-year life span.

Even where EPA had established ambient health and environmental performance standards, the permittee would have to provide an extensive analysis of the facility in order to allow EPA to apply the specific performance standard. The information requirements would include prediction of (1) the amount, quality and nature of the leachate generated, (2) the migration, dispersion and attenuation of the leachate in both the unsaturated and saturated zones, and (3) the concentration and types of contaminants that would occur at various points in underlying ground waters and in hydrologically-connected surface waters.

EPA does not currently intend to rely primarily on this approach because the available ambient health and environmental performance standards are not yet comprehensive enough to address the full range of adverse effects associated with hazardous wastes.

D. Non-numerical Health and Environmental Standards

Finally, the regulations could establish a set of non-numerical health and environmental standards that lay out broad objectives which permittees must seek to meet. The regulations also would set forth a set of factors and considerations which the permittee must address in devising and justifying the facility's design. Essentially these standards establish a mode of analysis which the permit writer and the permittee will use to address the many complex elements that would go into a determination of whether a facility is adequate to protect public health and the environment.

By clearly specifying objectives and considerations, such standards focus attention on the key site-specific factual issues that must be addressed in the permit process. The burden is then on the permittee to develop the information necessary to show the design he has chosen will satisfy the objectives specified in the regulations. The permit writer will, after providing an opportunity for full public review and for presentation of alternative points of view, evaluate the permittee's demonstration and decide whether to grant, deny or seek further information on the permit. Unless the permittee satisfies the regulatory objectives after

full consideration of all relevant factors, no permit may be issued.

The development of information is a key element of this approach. The regulations will guide the permittee by specifying the kinds of information which he will need to develop. EPA assumes that most of this information would have to be developed on a site-specific basis so that full consideration may be given to the unique aspects of the facility, its surrounding environment and the types of hazardous wastes handled. Certainly, however, the permittee could rely on scientific research and data from other facilities if he could demonstrate that such information took account of the same key conditions found at the facility seeking the permit. Likewise the permit writer would not be limited to the information generated by the permittee but could also consider information presented by other members of the public and on data developed by EPA or by the scientific community in general. (It should be noted that even where specific ambient health and environmental performance standards could be specified, many of the same information needs would be present.)

Since non-numerical standards inevitably involve the exercise of discretion by the permit-issuing authorities, it is important that they be used in a procedural context that allows for full development of all information relevant to the factual issues that must be resolved. EPA's permitting regulations provide a full opportunity for the concerned public to participate in the development of permits. EPA anticipates that in using non-numerical standards to evaluate particular facility designs, the permit-issuing authority would seek to insure that the permittee had adequately responded to the concerns raised by the public in the permit process.

II. EPA's Intended Approach

After evaluating these various alternatives, EPA has decided to develop regulations that combine elements of several approaches. First, where justified EPA will establish technical design requirements that reduce the risk of ground-water and surface-water contamination. Second, EPA will also require that disposal facilities do not degrade surface waters and ground waters below certain established ambient health and environmental performance standards (e.g. water quality standards.) Finally, EPA will use non-numerical health and environmental standards to protect against any potential adverse effects not addressed by the other types of

standards. These non-numerical standards would place a heavy burden (including the provision of essential information) on permittees to demonstrate that any ground-water or surface-water contamination caused by their facilities would not adversely affect public health and the environment. Initially the non-numerical health and environmental standards will be the key tool for assuring full protection for public health and the environment. Over time, as the information about disposal of hazardous waste improves, EPA expects to refine the regulations, shifting the mix of standards more towards facility design standards and ambient health and environmental performance standards.

The regulatory scheme which EPA currently intends to implement offers several distinct advantages. First, it is designed to engender maximum public confidence that land disposal facilities which receive permits under this program will not threaten public health or the environment. Unless the permittee can demonstrate that the facility will not contaminate ground or surface water used or needed for any purpose, EPA would require the permittee to document the nature and extent of contamination caused by the facility and to justify why such contamination will not adversely affect public health or the environment. By placing this heavy burden on the permittee, EPA can assure that all risks associated with hazardous waste, including those raised by the public, will be fully illuminated and carefully considered during the permit process.

Second, it allows EPA to address the full range of environmental issues raised by land disposal without awaiting the establishment of health and environmental performance standards for each of the hazardous waste constituents. In identifying the objectives and considerations necessary for a complete evaluation of a facility, EPA can immediately begin to develop permits which are responsive to the multiple ground water concerns (e.g. effects on drinking water, irrigation, the many uses of hydrologically connected surface water) and to the complex natural processes (e.g. ground-water flow patterns, soil attenuation potential) that may arise at each site. In short, narrative health and environmental standards are adaptable to the type of holistic, site-specific analysis which the public would expect in the development of permits for hazardous waste disposal facilities.

Third, non-numerical standards are most adaptable to the unique health and environmental risks presented by each

disposal facility. This is in contrast to approaches which rely exclusively on some types of design standards. A given design requirement may constitute over regulation at particular locations. More importantly a set of design requirements stipulated in a national regulation may not be stringent enough to protect public health and the environment in particularly sensitive settings. The kind of non-numerical health and environmental standards which EPA intends to promulgate should not suffer from this flaw. EPA's non-numerical health and environmental standards would set forth a uniform mode of analysis for evaluating facilities against precise health and environmental objectives, but would not attempt to define the acceptability of a particular site in terms of rigid numerical specifications. Such an approach allows the permit-issuing authority to tailor each permit to the particular human health and environmental hazard presented by each waste in the facility. In doing so, this approach responds to those commenters who sought a regulatory system that recognized the degree of hazard of particular wastes.

Fourth, the non-numerical standards approach allows EPA to establish a comprehensive basis for permitting now and yet allows for future refinement of the standards over time. EPA is not forced to avoid consideration of some phase of a comprehensive ground-water protection policy (e.g. protection of drinking water against contamination by a particular constituent) while it awaits the development of specific health and environmental performance standards. At the same time, EPA may continue to develop such performance standards, relying in part on data developed during the permit process. Later EPA can amend the regulations to establish more explicit national performance standards where warranted. Thus, through narrative standards, EPA can establish an initial program that is fully responsive to all aspects of ground-water protection without compromising the program's capacity to mature over time.

EPA's approach to ground-water protection in the hazardous waste regulations is founded on several key considerations that underlie the Agency's ground-water strategy and that characterize the problem of hazardous waste management under RCRA in general:

1. EPA's statutory mission under RCRA is to protect public health and the environment. In devising regulations to implement that mandate EPA must keep itself focused on the public health and

environmental questions of concern to the Congress and the public. While technical requirements and engineering approaches are certainly authorized by the statute and may be desirable as a matter of policy, EPA does not intend to get sidetracked from its general mission by regulations or permits that become unduly preoccupied with narrow debates over engineering specifications.

2. EPA does not recognize a general right to pollute. Pollution of our nation's environment is an unfortunate and undesirable result of human activity that should be avoided to the extent possible. In devising regulatory programs aimed at protecting public health and the environment, EPA must begin with a presumption that any environmental degradation is to be avoided. This is particularly true with a sensitive resource like ground water. It is extremely difficult, often impossible, to clean up an aquifer once it has been contaminated.

3. EPA also acknowledges, however, that a regulatory system designed to protect ground water must recognize that some ground water can be limited (physically and administratively) to specific uses. In seeking to protect ground water, EPA's programs must maintain water quality at levels required by these differing uses. Where states and localities have made or make conscious decisions to designate aquifers or portions of aquifers for certain uses, EPA will seek to achieve levels of water quality that are consonant with those uses.

4. Hazardous waste management is a new and developing field. The relatively recent concern with the dangers presented by the disposal of hazardous waste has spawned new efforts in the scientific and engineering community to develop new technologies that are capable of recycling, treating and safely disposing of these materials. EPA wants to encourage innovation in hazardous waste management. In devising regulations, therefore, it is important to avoid rigid approaches that stifle the development of new technologies.

5. The available information about hazardous wastes and their effects on public health and the environment is extremely limited. More information is needed to refine our knowledge of the risks presented by these substances. EPA must, therefore, devise a regulatory system that generates as much information as possible about particular disposal facilities and their likely effects on the surrounding area. This provides all parties—EPA, the owners and operators of facilities, the states, the courts and the public—the necessary tools to make rational decisions about

the real risks associated with each facility.

Based on these considerations, as well as a consideration of the comments received on the proposed regulation, EPA has developed a specific outline for protecting ground water from the adverse effects of land disposal facilities. The approach is primarily aimed at landfills but would also be adaptable to other disposal options, such as surface impoundments or land treatment facilities. The key elements of the approach include:

1. *Presumption against any degradation.*—The regulations would start from a presumption that it is unacceptable to allow the facility to cause any contamination of a downgradient water supply used for any purpose (drinking water, agricultural, industrial, etc.) This concern would not be limited to a particular period of time, but rather would extend as long as the environmental effects of the facility would continue. Likewise the nondegradation standard would apply to both ground water and hydrologically-connected surface waters.

The nondegradation standard would be modified somewhat for surface waters where water quality standards had been established under the Clean Water Act. These standards, rather than the nondegradation presumption, would provide the basic targets for protecting hydrologically-connected surface waters. Where surface waters were being used for water supply purposes, however, the nondegradation presumption would apply.

The nondegradation standard (i.e. no contamination from hazardous waste constituents) would be applied at all points where water is or may be withdrawn for water supply purposes. This approach would allow some degradation of the ground water below and beyond the facility, but only where the permit applicant could demonstrate that such controlled release of waste constituents would not result in contamination of current or future water supplies. The consideration of water supply withdrawal points would include likely future points of withdrawal, based on development plans and projections for the area potentially affected by the facility.

In defining ground-water supplies, particular emphasis would be given to those used for drinking water. Ground water used as a drinking water source would be defined similarly to the "underground source of drinking water" (USDW) used in the Underground Injection Control program under the Safe Drinking Water Act. (See 45 FR

42474 for an explanation of that definition).

2. *Minimum technical standards.*—In addition the regulations would require that the facility owner or operator employs certain management practices and certain design features that would control adverse effects on ground water and surface water, as well as prevent or minimize other surface environmental effects. Many of these standards would be similar to those required in the May 19, 1980 hazardous waste regulation (Part 265 at 45 FR 33233) for facilities operating during interim status. The basic purposes of these requirements are to minimize the production of leachate and to avoid situations that could interfere with the integrity and function of the facility's liner and final cover, where applicable. For landfills, these requirements include:

- a. Prevention of run-on to the facility;
- b. Control of run-off from the facility;
- c. Prevention of commingling of incompatible wastes;
- d. Prevention of the placement of wastes that are incompatible with the facility liner;
- e. Restrictions on the disposal of bulk liquid wastes;
- f. Restrictions on the disposal of containerized liquid wastes;
- g. Restrictions on the disposal of empty containers;
- h. Requirement that there be no "ponding" of liquids during operation;
- i. Requirement for a facility cover that is stable (i.e. topped with humus and vegetation to avoid erosion) and that is capable of avoiding the buildup of liquids in the landfill (the so-called "bathtub" effect) by providing a lesser permeability than of the facility liner.

Requirements for surface impoundments and land treatment facilities would be modified to reflect the differing purposes of these disposal options. EPA intends, for example, to place somewhat different requirements on surface impoundments than on landfills. EPA believes that surface impoundments should generally be used as treatment or storage, rather than disposal, facilities. As treatment or storage facilities they should be designed so as not to leak during their active life. At closure the remaining waste and contaminated liner material should be removed and properly disposed.

Since such surface impoundments would not be permanent disposal facilities, there would not be the same requirements for eliminating liquids from the facility that are applicable to landfills. Instead, diking requirements (e.g. protective cover for earthen dikes), freeboard requirements (e.g. minimum of five feet) and inspection requirements (e.g. daily for freeboard, weekly for dikes) would be established to provide

protection from the types of hazards that will arise at surface impoundments.

3. *Permissible demonstration that limited degradation will not threaten public health or the environment.*—

While EPA believes that the nondegradation goal must be the starting point in the regulation, it recognizes that in some circumstances it may be possible to show that limited degradation will not adversely affect public health or the environment. The burden would be on the permittee to make this demonstration. The regulations would set forth the kinds of considerations that would provide the basis for allowing limited degradation. These considerations would shape the kinds of informational requirements that would have to be met before the permit writer could make a judgment about the acceptability of such limited degradation. In making a demonstration sufficient to justify this kind of variance, the permittee would be required to provide the following types or information for landfill facilities:

- a. A description of the specific hazardous wastes and other wastes to be disposed of in the facility and the specification of the expected rate of deposition of each waste.
- b. A description of any in-situ treatment process that is expected to occur in the facility.
- c. A description of the rate of mass transport of leachate from the disposal facility, which shall include—
 - i. the mass rate of infiltrating rainwater and other liquids disposed of or generated within the facility expected to leach from the facility;
 - ii. the mass rate of hazardous wastes, hazardous waste constituents and decomposition byproducts thereof expected to leach from the facility;
 - iii. the mass rate of any other waste, waste constituent or decomposition byproduct thereof expected to leach from the facility.
- d. A description of the earth materials above the zone of saturation through which the leachate released from the facility will migrate, which shall include a specification of—
 - i. the lateral and vertical extent of the expected migration of leachate in any materials employed to control the rate of leachate migration (i.e., liners);
 - ii. the lateral and vertical extent of the expected migration of leachate in each natural earth material formation in the unsaturated zone below the facility.
- e. A description of the earth materials in the saturated zone in which the leachate released from the land disposal facility will migrate, which shall include a specification of—

- i. any alteration in the vertical elevation of the zone of saturation expected to occur due to the existence of the facility of the discharge from the facility to the saturated zone;

- ii. the lateral and vertical extent of the expected migration of leachate within each natural earth material formation in the saturated zone below the facility;

- iii. the concentration or mass of hazardous waste, hazardous waste constituents, decomposition byproducts thereof, other wastes and decomposition byproducts thereof in the leachate plume in the saturated zone.

- f. A description of the hydrogeology of the area surrounding the facility which includes—

- i. a mapping of the area to define ground surface contours, bedrock contours and ground-water elevation contours;

- ii. a description of any changes in ground surface contours, bedrock contours and ground-water elevation contours that will result from construction or operation of the facility;

- iii. a description of the character of each earth material formation through which leachate will flow, specifying its location, slope, uniformity, permeability, porosity, weathering (of bedrock), fracturing (of bedrock and aquifer formation), fault or karst zones (for bedrock) and swelling (for clay);

- iv. a complete mapping of the expected progress of the leachate plume.

- g. A description of the discharges (into surface water) and withdrawals of ground water that will be mixed with leachate from the disposal facility including a specification of—

- i. the net and maximum mass rate of discharge from the saturated zone of leachate contaminants and the decomposition byproducts thereof into any flowing or standing surface waters or to the surface of the ground;

- ii. the net and maximum mass rate of withdrawal from the saturated zone of leachate contaminants and the decomposition byproducts thereof into any well, or ground water collection device within the projected leachate plume from the facility.

- h. A description of the use of all surface water and ground water that comes in contact with the projected leachate plume which includes—

- i. an identification of all existing uses for each surface water or ground water withdrawal point, and an estimate of the quantity of water allocated to each such use, affected by the projected leachate plume;

- ii. a prediction of likely future uses of the surface water or ground water affected by the projected leachate plume, including an estimate of the

quantity of water allocated to each such use:

iii. a prediction of the nearest surface water or ground water withdrawal points used for any present or future use.

i. A description of the potential human health and environmental effects of each constituent found in the liquids, wastes, byproducts and substances from the facility present in each surface water or ground water withdrawal point, including—

i. a prediction of the human health risks (acute and chronic) presented by the constituent at the concentration found in the water used by humans;

ii. a prediction of the risks to plants and domestic animals presented by the constituents at the concentration found in the water used for agriculture;

iii. a prediction of the risks to aquatic life and other wildlife presented by the constituent at the concentration found in the water used by such wildlife;

iv. a prediction of the risks to physical equipment, chemical or biological production processes or other industrial operations presented by the constituent at the concentration found in the water used for industrial purposes.

EPA would then use this information to determine whether the permittee had adequately justified a claim that limited degradation of surface and ground water supplies would not threaten public health or the environment. The regulations would define the meaning of public health and environmental protection in terms of the types of adverse effects to be avoided (e.g. significant risk of chronic or acute toxicity, carcinogenesis, mutagenesis, teratogenesis in humans, toxicity to wildlife, phytotoxicity) and in terms of the availability of other waste management options (e.g. treatment, resource recovery, other disposal options.) The regulations would also specify that certain minimum standards (e.g. water quality standards for surface waters, the National Interim Primary Drinking Water Regulations for drinking water supplies) could not be exceeded due to operation of the facility.

Owners and operators of surface impoundments that are designed with liners to prevent subsurface and non-point surface releases of their contained wastes during their operating life would not be required to make the above demonstrations. However, owners and operators of surface impoundments that are not so designed would be required to make the above demonstration. Similar demonstrations would be required of owners and operators of land treatment facilities with respect to contaminants that are not treated or contained in the

soil treatment zone and which might migrate into ground or surface waters.

III. Additional Issues for Comment

EPA seeks comment in this Notice on all aspects of the alternative approaches considered for use in the regulation as well as on the intended approach as discussed above. In addition, EPA seeks comment on some additional issues that are related to the ground-water protection approach under Subtitle C:

A. New Versus Existing Facilities

Under pending legislation now before Congress, EPA's specific authority under RCRA to distinguish between new and existing facilities when writing regulations under Section 3004 would be specifically recognized. EPA believes that it has authority to distinguish between new and existing facilities under the existing law and thus is considering such a distinction as part of its ground-water protection approach.

EPA is considering applying the scheme outlined in this Notice to all new facilities and major expansions of existing facilities. "Major expansions" would include new separate landfill trenches or landfill areas developed at an existing interim status facility to handle a significantly expanded volume of hazardous waste, new surface impoundments at an existing interim status facility, and new separate land treatment areas developed at an existing interim status facility to handle a significantly expanded volume of waste.

For existing land disposal facilities (including unlined surface impoundments) that are continuing the same level and type of operation, EPA would apply the approach outlined in this Notice only to those facilities at which hazardous constituents are found to have entered ground water, based on the ground water monitoring data developed to satisfy the interim status requirements (Part 265, Subpart F, at 45 FR 33239.) EPA is considering amending the interim status requirements to require owners and operators who discover that hazardous waste or hazardous constituents have entered ground water to assess not only the extent and rate of migration of the contaminants, as required under the existing regulations, but also to evaluate the effects of that contamination on existing downgradient ground-water and surface-water use. First priority in permit review would be given to facilities that were causing significant contamination of existing water supplies.

EPA is interested in public comment on the issue of whether the approach outlined in this Notice should be applied

to both new and existing facilities as described. If commenters believe that a distinction should be made between new and existing facilities, but believes that the requirements suggested above are not appropriate, EPA requests recommendations for alternative schemes. EPA also seeks public suggestions on how it might distinguish between new and old cells in existing facilities.

B. Relationship to Subtitle D Facilities

Under Sections 4004(a) and 1008(a)(3) of RCRA, EPA issued the Criteria for Classification of Solid Waste Disposal Facilities and Practices (44 FR 53438). Those Criteria included provisions designed to protect ground water from certain types of contamination. As part of its general review of ground-water policy, EPA is reexamining those provisions.

EPA is particularly interested in public comment on the question of whether the approach described in this Notice should be applied to Subtitle D facilities as well. The Subtitle D program generally addresses different types of wastes in a regulatory context quite different than that found in Subtitle C. It is not clear, however, how the programmatic differences between Subtitles C and D should affect ground water protection standards. EPA, therefore, seeks public comment on this issue. If commenters believe that there should be differences in the ground-water protection approaches of Subtitles C and D, EPA seeks an explanation justifying the differences and suggestions about what the differing requirements would be. Where commenters recommend differences between the two programs, they should address the issue of how consistency between the Subtitle C and D programs can be maintained.

C. Relationship to Other Portions of the Subtitle C Regulations: Incineration

In commenting on the approach outlined in this Notice, commenters should address the question of how this approach relates to other elements of the hazardous waste regulations. Specifically EPA is interested in public comment on how the land disposal approach contrasts with the regulations on incineration.

Currently EPA intends to finalize incinerator standards that greatly resemble those contained in the proposed regulations. Incinerators would have to maintain operating conditions capable of destroying or removing 99.99% of the wastes, or hazardous constituents present in the waste, that feed into the incinerator. The

permit writer could relate the destruction or removal efficiency (DRE) to all or some of the hazardous waste constituents in the waste after considering the quantity, burnability and hazardousness of the constituents in the waste.

Special provisions would be made for products of incomplete combustion (PIC's) that are created during the combustion process (either through oxidation or other chemical reactions.) As an analog to the 99.99% DRE standard, the incinerator would have to be capable of destroying or removing PIC's to assure that the mass of the PIC's emitted from the stack is not more than .01% of the total mass of the waste from which the PIC was derived which is fed into the incinerator. In addition variances allowing lesser or greater destruction efficiencies for certain waste constituents or PIC's would be permitted where such alterations were justified to protect public health and the environment.

EPA does not intend to use a presumption against any degradation in regulating incinerators. EPA believes this is justified because incinerators actually destroy large masses of hazardous waste constituents. While some treatment can occur in land disposal facilities, land disposal options are not known to provide the kind of destruction efficiency possible with incineration. In light of these benefits of incineration, EPA believes, as a matter of policy, that incinerators should not be held to the rigors of the nondegradation presumption applicable to land disposal. It should be recognized, however, that a 99.99% DRE should achieve a reduction of most constituents down to a level that is sufficient to protect public health and the environment. Moreover the standard would allow tightening of the DRE on a case by case basis where it was necessary to protect public health and the environment.

EPA specifically seeks comment on this distinction between the land disposal and incinerator regulations.

D. Implementation Issues

Each of the alternatives outlined above would have different implications for EPA and the States. When standards are very specific, there is a danger of inflexibility. However, specific design or performance standards simplify the task of the permit writer because less individual judgment is required. When standards are phrased broadly, the individual circumstances of the site, the degree of necessary protection and other factors can be taken into account in fashioning a comprehensive, site-specific set of permit requirements. The

latter approach, however, would require more information from the permittee; as well as being resource-intensive for the permit issuing authority. EPA specifically solicits comments on this issue.

E. Interim Regulations

Under Section 3005 of RCRA new facilities must receive permits in order to treat, store or dispose of hazardous wastes. Such permits may not be issued until more specific technical standards have been promulgated under Section 3004. While EPA intends to promulgate such standards soon, it is possible that circumstances, including the comments on this notice, might lead to delays in EPA's plans for promulgation.

In order to allow for issuance of permits to new facilities in such a contingency arises, EPA is considering issuing separately interim regulations applicable to all management options other than landfills. These regulations would establish specific technical requirements for those options or would establish a general narrative standard that would apply to such options. The narrative standards EPA is considering would require the permit applicants to demonstrate that their facilities will use the best available technology. EPA solicits comments on this approach.

Dated: October 3, 1980.

Barbara Blum,

Deputy Administrator.

[FR Doc. 80-31280 Filed 10-7-80; 8:45 am]

BILLING CODE 6560-30-M

CCR 000040887

Inside EPA Special Report**HAZARDOUS WASTE ENFORCEMENT: RUNDOWN OF 23 CASES FILED BY EPA/JUSTICE**

EPA and the Dept. of Justice, working in concert to enforce the Resource Conservation & Recovery Act, have filed 23 cases to date under RCRA, the largest of which are against Hooker Chemical, where four separate suits, seeking damages over \$120-million, have been filed, according to an early June EPA-prepared status report on the cases. One of the 23 cases, against Kin-Buc, Inc., reached settlement, where the company paid roughly \$500,000 for remedial actions, with the U.S. government free to file for additional damages as new information surfaces.

Following is a rundown of those 23 cases, with EPA/Justice aiming to file 50 cases/year for waste violators. The list below was drawn from the summary prepared by EPA's hazardous waste enforcement task force, which is working in conjunction with Justice's hazardous waste section (headed by Anthony Roisman).

280

ALLEGED HAZARDS**REMEDIES SOUGHT**

Waynesboro et. al, Suit filed May 30, 1980. The three defendants are Duracell International, Inc., Dart Industries (related to PCB dumping) and Allied Products Corp., relating to PCB and trichloroethylene dumping at the Old Waynesboro dump in Waynesboro, Tenn.

The suit alleges that the defendants' dumping has seriously contaminated Beech Creek, a tributary of the Tennessee River, and will ultimately cause contamination of the groundwater and the food chain. Dart was said to have disposed of waste containing PCBs from 1969 to 1972. Allied Products Corp. disposed of wastes at the dump containing TCE between 1970 and 1972. An August 1979 study shows levels of PCBs discharged into Beech Creek that were 17,000 times the maximum allowable limit of PCB exposure to protect aquatic life.

Ask defendants to pay a civil penalty of \$10,000 per day for each day of violation of section 309(b) of the Federal Water Pollution Control Act; cease discharges of PCBs; conduct and complete a study to determine the existence and extent of and potential for groundwater contamination; develop a plan for permanent abatement and permanent restoration; maintain on-site and off-site monitoring program for leachate emanating from the dump, including groundwater monitoring.

Reprinted with permission from
"Inside EPA Special Report",
June 20, 1980, pp. 11-16.

CONCLUSION

Under common law, a nuisance has been broadly defined so as to protect the public's health and quiet use and enjoyment of property from endangerment or harm. Liability exists whenever there is significant contribution to the creation or maintenance of a nuisance, regardless of the care taken to avoid injury to others or of the former legality of acts which set in motion or create a subsequent nuisance. The common law invokes joint and several liability when concerted actions create a public or private nuisance, when injunctive relief is sought to abate either a public or private nuisance, and when damages are sought for the injury caused by a pollution or flooding public nuisance. Finally, the clear trend, in light of widespread liberalization of rules of procedure and statutory and judicial adoption of contribution among joint tortfeasors, favors joint and several liability for damages resulting from private nuisance involving pollution or flooding.

Nonetheless, there has been a staggering increase in the risk to and injury of human health and the environment caused by the disposal of hazardous wastes. Sadly, there are indications that these conditions will worsen before they improve. The availability of safe land to live on, water to drink and food to eat are now at stake. Adoption of a nationwide program for swift abatement of dangers associated with hazardous waste sites, at the expense of those contributing to their creation, would constitute a reasonable application of well established principles of common law to the nation's most serious environmental emergency. It would, if anything, simply assure that those principles are more consistently, comprehensively, and effectively applied, and provide substantial inducement to voluntary clean-up of hazardous wastes dump sites by those who contributed to the existing public nuisance. 20/

20/ Per your request, this memorandum constitutes a summary of research in progress. Though many cases cited were through references contained in recent articles and treatises and are therefore likely to be the most reliable precedent within a given jurisdiction, they have not been Shepardized to ascertain whether they have been reversed, distinguished, followed, or affirmed in more recent opinions, and therefore should not be cited in pending litigation without further inquiry.

ALLEGED HAZARDS

REMEDIES SOUGHT

Ottati and Goss, Inc. et. al. Suit filed May 15, 1980. Case deals with hazardous waste disposal site in Kingston, N.H., operated by Ottati and Goss. Great Lakes Container Corp. operates a barrel reconditioning facility next to the site.

The alleged hazards are two-fold, hazards from the site and hazards imposed by Great Lakes' reconditioning process. At the site, it is alleged that approximately 20% of the hazardous waste containers are uncovered or lack stoppers, leading to corrosion of the containers and to leakage and spills, which enter the soil and threaten groundwater.

For Ottati and Goss, EPA/Justice would have them: hire a consultant to prepare a remedial plan for abatement of the fire hazard and clean-up and abatement of the soil and water contamination; seal all drums and containers; prohibit additional storage at the site. For Great Lakes, EPA/Justice seek: a civil penalty of \$10,000 for each unauthorized discharge of pollutants into U.S. waters; post a performance bond for accomplishing remedial actions; implement measures to prevent further waste migration; clean and remove contaminated soil and rectify groundwater contamination.

Seymour Recycling Corp., et al. Suit filed May 9, 1980. Facility in Seymour, Ind. As of mid-March 40,000-60,000 drums and more than 80 bulk tanks were on site.

Container leakage has led to soil contamination, fires, fumes. Chemicals found include naphthalene, cyanide, trichloroethylene, picric acid, nitrocellulose, arsenic, cadmium and chromium.

Reimburse U.S. for funds expended for remedial efforts (roughly \$860,000 to date) plus interest; cease from receiving any additional solid or hazardous waste at this site; develop plans to properly handle waste; develop monitoring program.

Franklin J. Dusek, Helena Chemical Co., Tex-Ag, Inc. Suit filed May 5, 1980. Area of concern is Mission, Texas. Total storage capacity is 87,000 gallons for pesticides or pesticides-related chemicals, which are stored at this site.

High concentrations of pesticides and related chemicals are found in the soil, including DDT, lindane, toxaphene, dieldrin, and chlordane. Each found in quantities more than 10,000 times higher than permitted in EPA water quality standard.

Contain pesticides by applying non-oil based dust suppressant to soil; seal surface and secure loose chemical containers; maintain EPA-approved air monitoring system for "reasonable" period of time; offer preliminary health examinations to area residents; provide residents with long-term medical health monitoring if data prove this to be warranted; sample surrounding properties to determine pesticide concentrations and locations.

ALLEGED HAZARDS**REMEDIES SOUGHT**

Union Corp., Metal Bank of America. Suit filed April 23, 1980. Site on bank of Delaware River on Cottman Ave. in Philadelphia. Operates as landfill site.

PCB leakage in soil beneath the site, leading to PCB-contaminated groundwater. Leaks occurring since at least April 18, 1978. PCB is leaching into Delaware River.

Remove PCB-contaminated oil layer by recovery well pumping; prepare work plan to EPA for cleanup; treat water by filtration, pumping the purified water into the Delaware River; install and maintain monitoring wells; sample wells monthly; cover the site with impermeable cover; place \$2-million in escrow account to ensure compliance and post \$2-million bond against insolvency; reimburse U.S. for all funds expended for cleanup (roughly \$67,000).

W.R. Grace & Co. Suit filed April 17, 1980. Grace complex, manufacturing industrial chemicals, located in Acton, Mass. Roughly 75,000 gallons per day of process ash water result from latex operation there.

Improper disposal of chemical wastes leading to disposal, leaching and migration of hazardous and other chemical wastes into groundwater supplies of Acton. Contamination said to affect aquifer which supplies substantial portion of Acton's drinking water.

Cease from further contamination; repair and cleanup pollution caused by previous disposal practices; develop program for proper handling, treatment, storage and disposal of chemical wastes; monitor and verify with progress reports; finance acquisition and development of alternative public water sources to replace these wells; investigate and monitor health consequences to individuals who have consumed the contaminated water; post a performance bond for accomplishing all remedial efforts; pay U.S. for remedial costs.

Robert Richter; E.P.R. Inc.; Conral Data Corp. Suit filed March 21, 1980. Case involves storage of 1,200 55-gallon drums of waste stored in warehouse in Malvern, Iowa.

Volatile solvents escaping and polluting air. Substances include toluene, acetone and methyl ethyl ketone. Such chemical leakage present imminent and substantial endangerment of fire, explosion and consequent generation of toxic gases.

Temporary restraining order granted on March 21, 1980, restraining defendants from removing or altering containers of chemicals or from leaving the warehouse unattended.

ALLEGED HAZARDS**REMEDIES SOUGHT**

Li Pari Landfill, Suit filed March 21, 1980, Landfill, owned by Nick Li Pari, located in Mantua and Harrison townships in New Jersey. Case dates to actions taken between 1958 and 1971.

Improper handling of waste in landfill has led to contamination of adjoining streams and a nearby lake, as well as soil contamination. Key pollutant includes Bis-2-chloro-ethyl-ether, a known animal carcinogen and suspected human carcinogen.

Cease receiving solid or hazardous waste at the site; prepare study and plan to abate further contamination and restore the landfill; maintain a monitoring program of surface water and groundwater in the vicinity of the Li Pari Landfill; reimburse U.S. for amount equal to cost of its investigation and its monitoring of potential health danger.

2001 Inc; Southeastern Chemical Co., Inc. Suit filed March 5, 1980, Site near Reserve, Louisiana now owned by 2001, Inc., formerly owned by Southeastern Chemical Co. involves some 900 drummed containers, plus 30 storage tanks with capacity of 375,000 gallons on site, for handling, storing inorganic and organic chemicals and their waste products.

Improper handling of waste products threatens formation of poisonous gas, explosions, fires and long-term air, water and soil contamination. Waste products come from the production of industrial organic chemicals. Production ceased in 1976 but storage tank corrosion is the concern here.

The court entered a preliminary order on March 6, 1980, for a two-phase cleanup. Phase one involves location, removal and storage of acids located on site and removal of one known drum of cyanide. The defendant plans to commit up to \$15,000 to this effort. Phase two involves general cleanup of site, with defendants required to provide assurances of funding for the ultimate cleanup. Defendants were to prepare cleanup and closure plan.

Vertac Chemical Corp.; Hercules, Inc. Suit filed March 4, 1980, Facility located in Jacksonville, Ark., where there are over 6,000 drums, all believed contaminated with dioxin.

Operations of Vertac - manufacture, storage and disposal of pesticides, herbicides and their waste products - have resulted in continuous discharge of toxic and hazardous wastes and pollutants into navigable waters, soil and groundwater. Key pollutants are 2,4,-D; 2,4,5,-T; and dioxin.

EPA stopped further off-site shipment of TCDD contaminated wastes in February 1980 under section 6(d) of the Toxic Substances Control Act. EPA seeks the following: that defendants store drummed wastes in secure area and monitor monthly; institute a program for sampling, labeling, inventorying, securing and storing wastes; establish a fund or post bond to guarantee continued maintenance and monitoring of the site; present a cleanup plan to EPA; retain a groundwater consultant to determine extent of groundwater contamination; pay a fine of \$10,000 for each day of violations under section 301 and 309 of the Clean Water Act.

ALLEGED HAZARDS**REMEDIES SOUGHT**

Waste Industries, Inc. Suit filed Jan. 11, 1980. Site is the Flemington landfill in Flemington, N.C.

Waste material from presently inactive Flemington landfill has leached into underlying groundwater and contaminated wells of several area residences. Other area wells in imminent danger of contamination.

Provide affected residents a reliable temporary water supply; study and plan for installation of permanent water supply for area residents; prepare plan for abatement of groundwater contamination and restoration of the aquifer; permanently abate contamination of the aquifer; maintain a groundwater monitoring program.

Hooker Chemicals and Plastics Corp., Love Canal landfill. Suit filed Dec. 12, 1979. Site is Love Canal landfill in Niagara Falls, N.Y. More than 21,000 tons of waste disposed of by Hooker from 1942 to 1953.

Waste migration from Love Canal landfill resulting in contamination of soil, navigable waters, ambient air at the Canal and air in nearby houses. Numerous adverse health effects have resulted from the disposal site, including abnormal blood samples and liver tests, abnormalities relating to birth. Also, exposed residents have a higher than average expected cancer risk.

Deposit \$45-million in an annuity trust account to accomplish the following: vent the canal and all property affected by migration of the wastes; provide specific remedies to protect area residents; conduct and pay for complete medical studies of area families and pay for a health monitoring program of Love Canal residents; install and maintain perpetual program of periodic sampling of air, soil, streams and sediment; pay for temporary relocation of all affected area residents, or, as alternative, purchase all affected area homes and pay relocation costs. Reimburse U.S. for all funds expended for remedial actions.

Hooker Chemicals and Plastics Corp., Hyde Park landfill. Suit filed Dec. 12, 1979. Site is Hyde Park landfill in Niagara Falls, N.Y. Hooker disposed of more than 80,000 tons of chemical waste at this landfill from 1953 to 1975. Landfill closure was completed in 1975.

Waste has migrated from Hyde Park landfill into waters outside the landfill site and into ambient air near the site. Medical examination of area residents indicates that physical disorders — associated with chemicals detected migrating from the landfill — may be occurring. These include respiratory problems, skin disorders and miscarriages.

Pay a civil penalty of \$10,000 for each day of violation of section 301 of the Clean Water Act. Also, deposit \$6.08-million in an annuity trust account to accomplish the following: install and maintain a perpetual monitoring program for all subsurface water; conduct a program for all subsurface water; conduct a program of perpetual sampling of the air, soil, streams and sediment in the vicinity of the landfill; conduct or pay for complete medical studies of all workers and residents within one mile of the landfill and conduct or pay for a health monitoring program. Clean up Bloody Run Creek and Niagara River and prevent their future contamination.

ALLEGED HAZARDS**REMEDIES SOUGHT**

Hooker Chemicals and Plastics Corp., "S" area landfill. Suit filed Dec. 12, 1979, involving the "S" area landfill in Niagara Falls, N.Y. Hooker disposed of roughly 74,000 tons of chemical waste at the landfill from 1947 to 1975.

As of Dec. 20, 1979, no wastes have been detected in the drinking water at a level that would require immediate cessation of the water treatment plant, which is located near the "S" area landfill. But EPA says that if no remedial action is taken, the soil and ground water will be highly contaminated for decades.

Deposit \$40-million in an annuity trust account to accomplish the following: install and maintain a perpetual monitoring program for all groundwater at the "S" area; install a leachate collection system; pay for the installation of a carbon column filtration system at the existing Drinking Water Treatment Plant, or pay for the construction of a new plant; perform in perpetuity any additional remedial measures which EPA determines are necessary based on the monitoring reports.

Hooker Chemicals and Plastics Corp., 102nd St. landfill. Suit filed Dec. 12, 1979. Site is 102nd St. landfill in Niagara Falls, N.Y. Hooker and Olin Corp. disposed of more than 89,000 tons of waste at this landfill from the early 1940s until 1972. The two firms jointly own this site.

Waste migration from the 102nd St. landfill has resulted in entry of the wastes into the Niagara River and the drinking water source of the City of Niagara Falls. The migration of wastes, the suit says, has affected the productivity of the adjacent wetland, and has exposed animals and aquatic life to their harmful effects.

Pay the U.S. a civil penalty of \$10,000 per day for every day of violation of the Clean Water Act; deposit \$16.5-million in an annuity trust account, or obtain a bond against insolvency. Funds would accomplish the following: install a leachate collection system; incinerate liquid residue resulting from the leachate collection system; provide funds immediately and in perpetuity for the continued maintenance and testing of the site in accordance with EPA regulations; reimburse the U.S. for all costs incurred for remedial actions.

Chem-Dyne Corp. Suit filed Dec. 19, 1979. The landfill is a Chem-Dyne site near Hamilton, Ohio. The suit says more than 1½-million gallons of hazardous chemical waste were disposed of at the site since as early as 1976.

Improper disposal of these materials has resulted in past fires and continued threat of explosion and fire, as well as contamination of surface water and possible contamination of groundwater. These operations have resulted in the release of noxious and hazardous fumes.

Reimburse the government for all costs incurred in seeking a remedy; cease accepting wastes and transfer wastes to proper storage facilities; inventory and label the drums; formulate a plan for removal of solid and hazardous wastes; monitor, remove and treat contaminated soils and groundwater. EPA intervened on Feb. 1, 1980, in case that Ohio brought against Chem-Dyne in relation to these wastes.

ALLEGED HAZARDS**REMEDIES SOUGHT**

Occidental Chemical Corp. Suit filed jointly with California on Dec. 18, 1979. Site near Lathrop, Calif.

Storage and disposal of hazardous liquid, solid, and semi-solid wastes on the Lathrop site have resulted in contamination of domestic drinking water wells, groundwater and soil in the Lathrop vicinity. Occidental, and its predecessor, Best Fertilizer Co., have manufactured, formulated and handled pesticide and fertilizer products.

California seeks significant penalties which include civil monetary penalties of \$25,000 for each unlawful disposition from April 1978 to June 1, 1979. The EPA and Justice suit asks that the company provide a guarantee that sufficient funds are allocated for: providing potable domestic water to any user whose water has been contaminated by discharges from the facility; prepare and implement a plan to determine the extent of pesticide, chemical and radiological contamination of groundwater and soil; monitor the site immediately and in perpetuity to verify cessation of contamination.

Solvents Recovery Services of New England, Inc., and Lori Engineering Co. Suit filed Dec. 17, 1979. Solvents Recovery accepts waste products from New England industries. Lori Engineering Co. manufactures security devices, tools and dies.

Contamination of an aquifer used as a public drinking water supply. Solvents Recovery, since 1955, has temporarily stored distilled and undistilled chemical wastes in drums on its property with problems now believed to be created by migration of those wastes. Lori Engineering uses degreasing solvents which contain chlorinated hydrocarbons, with these activities leading to percolation of wastes through the soil, and contaminating underlying groundwater.

Assess a civil penalty against Solvents Recovery not to exceed \$10,000 for each day of violation of section 301 of the Clean Water Act. Additional demands include: required defendants to assure that an adequate drinking supply is provided to the residents of Southington, MA; forbidding disposal of wastes into groundwater and aquifer; requiring defendant to cease, alleviate and cleanup the groundwater and soil pollution; and requiring defendants to post a performance bond to complete the cleanup.

Midwest Solvent Recovery Inc., MIDCO No. 1 and No. 2. Suit filed Nov. 16, 1979. Suit involves Midwest Solvent Recovery Inc. (MIDCO No. 1) and Midwest Industrial Waste Disposal Co., Inc. (MIDCO No. 2). Both sites are near Gary, Ind., and both temporarily store drums and bulk amounts of hazardous and solid waste.

Solid and water analysis of the site indicated contamination by hazardous substances containing trace metals. Additional

Secure immediately both sites to prevent unauthorized access; cease storing or treating solid or hazardous wastes; formulate a plan for removal of all wastes; the extent of soil and groundwater contamination.

ALLEGED HAZARDS**REMEDIES SOUGHT**

surface and groundwater contamination could result from water runoff used to fight a fire. Biggest problem at both sites continues to be major fires. The sites contain cyanide wastes.

tion must also be determined and, if necessary, a cleanup plan must also be drawn up; report weekly on the progress of the remedial efforts.

Chemical and Minerals Reclamation Inc. Suit filed July 10, 1979. Site is located near Cuyahoga River in downtown Cleveland. The warehouse there allegedly stores some 4,000 55-gallon drums of waste.

Improperly stored wastes in a warehouse in downtown Cleveland have had frequently occurring fires, and the concern is the threat of additional fires. EPA believes the warehouse operation poses an imminent and substantial endangerment to the nearby downtown population of Cleveland.

Cleanup of the warehouse was completed on Nov. 28, 1979, and the U.S. will dismiss the case once the drums formerly at the site are removed and finally disposed of. The company was instructed to formulate a plan for removal of solid and hazardous wastes and award the government costs incurred in prosecuting the action.

Laskin Greenhouse and Waste Oil Co. Suit filed April 24, 1979. Suit involves site near Jefferson, Ohio, where Laskin accepts approximately 800,000 gallons of waste/year, burning 200,000 gallons as boiler fuel and the remainder applied to the roads. Active negotiations now going on to settle the case.

Inefficient burning of PCBs by Laskin boilers, causing PCBs to be volatilized and transported into the environment. Also, other waste-oil related actions have led to contamination of roads, air and a nearby waterway.

Pay a civil penalty of \$10,000/day for each day of unpermitted discharge since Oct. 23, 1972. Begin sampling and testing to determine the amount of PCBs in each tank; sample all waste oils and solvents for presence of PCBs; construct and maintain storage facilities in compliance with EPA regulations. EPA region V lab tests indicate PCBs exist in concentrations between 50-500 ppm in one of Laskin's storage tanks. Settlement near.

ALLEGED HAZARDS

REMEDIES SOUGHT

Wade Landfill, Suit filed April 20, 1979; with complaint amended on March 14, 1980; Site near Chester, Penn., involving wastes mainly from ABM Disposal Co.

Major risks from the landfill are fire and contamination of the Delaware River. Also, escaping wastes give off fumes and odors. The site is used for disposal and storage principally by ABM Disposal Co. for hazardous and solid wastes.

Cease further storage and disposal of wastes; formulate a plan for removal of these wastes; remove the wastes and award the plaintiff all costs incurred in seeking a remedy. The Wade Landfill case is currently under active review by EPA.

Kin-Buc, Inc. Suit filed Feb. 7, 1979. Landfill is near Edison, N.J., where more than 70-million gallons of chemical wastes were disposed from January 1973 to December 1976. Case settled.

The defendant is alleged with having disposed of liquid chemical wastes into pools, trenches, and ditches dug into the ground, or dumped on top of mounds of solid wastes allowing for infiltration and percolation. The suit alleges that few measures were taken to contain the wastes and prevent percolation into groundwater or nearby surface waters. Clouds of vaporized nitric acid were emitted into the atmosphere, and 12 major fires have occurred at the landfill.

Partial settlement was reached on Jan. 30 1980. The agreement requires that Kin-Buc construct a cover over a mound of buried refuse to prevent rainwater infiltration and prevent further contamination of underlying groundwater. A system to channel the rainwater into the Raritan River will be implemented, requiring Kin-Buc to apply for a discharge permit. The agreement also requires Kin-Buc to analyze groundwater under the site for at least 20 years, and to maintain and inspect the cover system for the same 20 years. Kin-Buc must deposit \$500,000 into an escrow account as insurance that the cover system will be completed. EPA may seek additional relief should it be needed. EPA had asked the company to post a \$25-million bond for the purpose of securing compliance with the provisions of the complaint.