

Y 4
P 96/10
95-H 57

RESOURCE CONSERVATION AND
RECOVERY ACT OVERSIGHT

95Y4
P 96/10
95-H 57

GOVERNMENT

Storage

JUL 24 1978

FA
KAI



411600 755634

LIBRARY
UNIVERSITY

HEARING
BEFORE THE
COMMITTEE ON RESOURCE PROTECTION
OF THE
COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

MARCH 20, 1978

SERIAL NO. 95-H57

Printed for the use of the Committee on Environment and Public Works



U.S. GOVERNMENT PRINTING OFFICE

28-447 O

WASHINGTON : 1978

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

JENNINGS RANDOLPH, West Virginia, *Chairman*

EDMUND S. MUSKIE, Maine
MIKE GRAVEL, Alaska
LLOYD M. BENTSEN, Texas
QUENTIN N. BURDICK, North Dakota
JOHN C. CULVER, Iowa
GARY HART, Colorado
DANIEL PATRICK MOYNIHAN, New York
KANEASTER HODGES, Jr., Arkansas

ROBERT T. STAFFORD, Vermont
HOWARD H. BAKER, Jr., Tennessee
JAMES A. McCCLURE, Idaho
PETE V. DOMENICI, New Mexico
JOHN H. CHAFEE, Rhode Island
MALCOLM WALLOP, Wyoming

JOHN W. YAGO, Jr., *Staff Director*

BAILEY GUARD, *Minority Staff Director*

PHILIP T. CUMMINGS, RICHARD M. HARRIS, KATHERINE Y. CUDLIPP (Minority), and
RICHARD E. HEROD, (Minority), *Counsels*

HAROLD H. BRAYMAN (Minority), *Senior Professional Staff Member*

Professional and research staff: JAMES K. ASSELSTINE (*Minority Nuclear Counsel*), JOSEPH R. BOWMAN, Jr., KARL R. BRAITHWAITE, KATHERINE CAPLES, MICHAEL A. CHCUKAS, E. KEVIN CORNELL, PAUL L. FADELLI, GEORGE F. FENTON, Jr., RANDOLPH G. FLOOD, KATHALEEN R. E. FORCUM, ANN GARRABRANT, RICHARD T. GREER, CAROLE A. HACKES, WESLEY F. HAYDEN, GEORGE JACOBSON, KATHLEEN A. KORPON, CURTIS MOORE (*Assistant Counsel, Minority*), CLIFFORD M. NAEVE, JUDY F. PARENTE (*Assistant Minority Staff Director*), KEVIN PHELPS, JOHN B. PURINGTON, Jr., JAMES D. RANGE (*Assistant Counsel, Minority*), W. LEE RAWLS, PETER D. ROSENBERG, LAWRENCE J. ROTH (*Assistant Counsel*), JACQUELINE E. SCHAFER, CHARLENE A. STURBITTS, E. STEVENS SWAIN, Jr., ROBERT I. VANHEUVELEN, SALLY W. WALKER, LEWIS W. WATTS, BARBARA WEBB, and HAVEN WHITESIDE

PAUL CHIMES, *Editorial Director*

SUBCOMMITTEE ON RESOURCE PROTECTION

JOHN C. CULVER, Iowa, *Chairman*

EDMUND S. MUSKIE, Maine
MIKE GRAVEL, Alaska
GARY HART, Colorado

MALCOLM WALLOP, Wyoming
HOWARD H. BAKER, Jr., Tennessee
JAMES A. McCCLURE, Idaho

CONTENTS

OPENING STATEMENTS

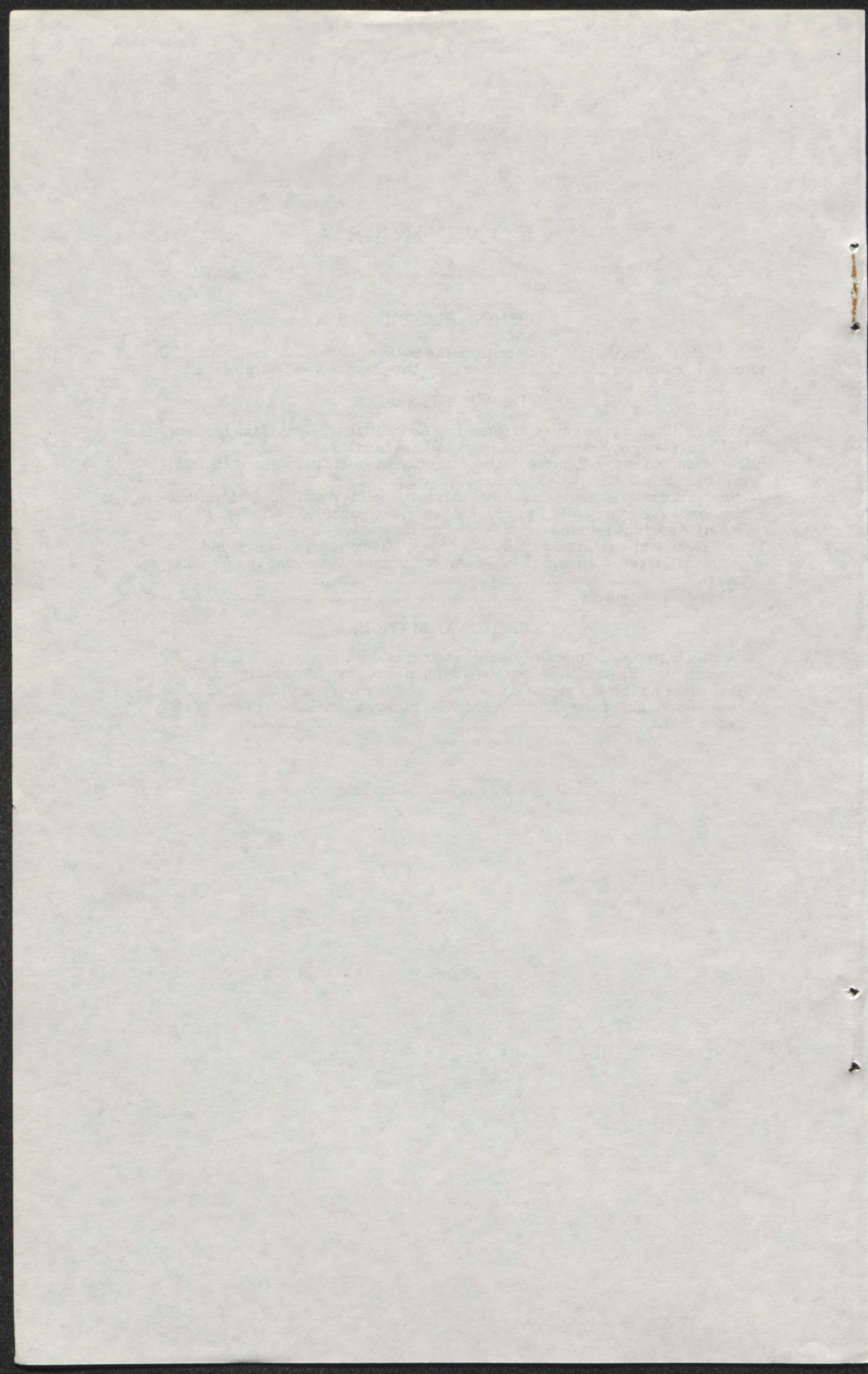
	Page
Culver, Hon. John C., U.S. Senator from the State of Iowa	1
Randolph, Hon. Jennings, U.S. Senator from the State of West Virginia	2

LIST OF WITNESSES

DeVile, William B., staff director, Standing Committee on Waste Management, National Governors Association, State of Louisiana.....	58
Edgar, Hon. Robert, a Representative in Congress from the State of Pennsylv- ania	5
Jorling, Thomas C., Assistant Administrator, Solid Waste and Hazardous Materials, Environmental Protection Agency, accompanied by Steffen Plehn, Deputy Assistant Administrator for Solid Waste	12
Potter, Neal, National Association of Counties, Montgomery Country, Md	54
Wingerter, Eugene, National Solid Waste Management Association, Washing- ton, D.C.	62
Prepared statement	68

ADDITIONAL MATERIAL

California State Department of Health, statement of	87
Environmental Protection Agency, "Detailed Progress Report By EPA in Implementing the Resource Conservation and Recovery Act"	24
"Trash Merchants of the Outdoors Must Be Stopped," article from the Wash- ington Star	4



RESOURCE CONSERVATION AND RECOVERY ACT OVERSIGHT

MONDAY, MARCH 20, 1978

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON RESOURCE PROTECTION,
Washington, D.C.

The committee met at 9:35 a.m., pursuant to call, in room 4200, Dirksen Senate Office Building, Hon. John Culver, chairman of the subcommittee, presiding.

Present: Senators Randolph, Culver, Stafford, and Wallop.

OPENING STATEMENT OF HON. JOHN C. CULVER, U.S. SENATOR FROM THE STATE OF IOWA

Senator CULVER. The subcommittee will come to order.

I want to welcome everyone to this hearing by the Senate Subcommittee on Resource Protection on implementation of the Resource Conservation and Recovery Act. At the outset, I wish to commend Senator Jennings Randolph, the chairman of the full committee, who has personally requested this hearing by the Resource Protection Subcommittee. All of the members of this subcommittee are very much aware and recognize his leadership in this area of solid waste management and his continuing interest in progress that is being made in some areas in the implementation of the Resource Conservation and Recovery Act.

And I am very hopeful that this session will prove to be useful. As you know, the purpose of that legislation is the development of a comprehensive waste management disposal and recovery program for State and local government. For too long I think we have tended to ignore and overlook the ever increasing solid waste problem, or simply shrugged it off as one of the inevitable but unstable side effects of an industrialized society. We have finally been jolted out of this complacency by the understanding of the great cost that the absence of a scientific solid waste program poses on society in terms of public health hazard, degradation of environment and the squandering of our finite resources.

This was facing Congress when RCRA was enacted into law in 1976. It charged the Environmental Protection Agency with establishing the regulations and providing for financial and technical assistance to States and local government for dealing with three major aspects of the solid waste program.

First, the establishment of environmentally sound land disposal programs in each State. Second, the establishment of a cradle-to-grave system for the control of all hazardous waste. And finally,

and perhaps most importantly, as a long-range stratagem for reducing the solid waste flow.

RCRA solutions involve a deconversion of waste into economically useful forms.

As an illustration of this last point, I was greatly encouraged by the initial results Ames, Iowa, has achieved in converting municipal waste into fuel for firing its own power plant in that community. The medieval alchemists failed to turn lead to gold, but we have shown that garbage can be changed to energy. There may be initial problems, but I think the Ames experiment is encouraging that solid waste disposal systems can be technologically feasible and economically justifying.

And as with any new undertaking, there have been concerns over delays and forging regulations and the adequacy of funding. The administration's fiscal year 1979 budget requests \$26.2 million for hazardous waste management. No money requested for use by local governments or rural communities this year. In considering that the major responsibility for both implementing as well as operating these programs will be at the State and local levels, I am concerned, and I know the distinguished chairman of the full committee is concerned, about the adequacy of this budget for this effective participation in RCRA programs.

Finally, we know no one wants a landfill program in their backyard and that communities object to hazardous waste facilities in their midst. Ultimately the question of the citing of these facilities must be addressed if the goals of RCRA are achieved.

I hope that EPA will discuss this funding question in the development of regulations in guiding landfill as well as providing us some information about the public education and programs that EPA has been undertaking. Such citizen involvement will be critical, I believe, in order to achieve RCRA's solid waste programs. Today's hearing provides an opportunity to explore these and other considerations in detail and I look forward to a wide-ranging and full discussion of these issues on the part of our witnesses. And, once again, Mr. Chairman, I wish to commend you for your continuing interest in resource recovery, and perhaps you would like to make a statement at this time?

**OPENING STATEMENT OF HON. JENNINGS RANDOLPH, U.S.
SENATOR FROM THE STATE OF WEST VIRGINIA**

Senator RANDOLPH. Thank you, Mr. Chairman.

Your intense interest in this subject matter is known to me by your personal conversations and by the work that you are doing as Chairman of the Subcommittee on Resource Protection. I do feel that this is a program which must not be allowed to take a back seat to energy programs or programs dealing with the general well-being of the people.

I have said that I felt there had been, perhaps inadvertently, the failure on the part of the administration to know that the commitment to resource recovery had been made in the legislation that became law. I know it is not always easy to implement all of the bills that are signed into law.

Mr. Chairman, the people of this country who campaign against environmental pollution remember October 21, 1976. That was a

significant date because that was the date on which the Resource Conservation and Recovery Act became law. We must recognize that it takes time to gear up to carry forward a program of this kind. But you, Mr. Chairman, and many of us were strongly convinced that this law was not just a law to take its place alongside hundreds of other laws, but that it had a potential for being an important part of a major breakthrough in the field of necessary solid waste management using realistic, productive programs.

I know at that time that I recognized that there had to be a concerted effort; you recognized it, the members of our committee recognized it. The concerted effort had to be through all levels of government; local, State, and Federal. Their efforts, as we already know, are supplemented by private industry. And so in a variety of ways the objective is being interpreted by people as a challenge, and I think that increasingly that challenge will be accepted.

I do know in West Virginia, as in other States—thinking particularly now Weirton, of the northern panhandle of Charleston, the State capital—that communities there don't use a hit-and-miss plan, but they are well thought out with hundreds of people participating. So as those communities in all of our States become involved in major cleanup and recycling efforts, we begin to understand the strength of this legislation. Business and industry, labor groups, even various foundations, all have seemed to come together and understand that we do have these major objectives, major developments in terms of reuse and waste conversion into an important source of energy.

When you mention the word "garbage" today, I wanted the record to indicate that we erected a runway at one of our municipal airports, served by daily scheduled airlines, actually from garbage heaps. That is exactly what brought that 500, 600, 700 feet of fill into being. They chided us and said that it was a very fragrant runway. But the program was highly successful from a technological standpoint.

As you have indicated, there have been some failures and shortcomings, so these hearings can serve a real purpose because they will be an overlook review. I know the value of a report, certainly from the Assistant Administrator of the EPA, Tom Jorling, who used to be with us here on the Hill. I am sure he would want us to know what the thinking of the Agency is in the establishment of the guidelines which, from time to time cause problems, as we implement the regulations.

We need the help from various teams of people who are part of the action. I also keep driving away on a subject that I think is very important, and that is the banning of open dumping in the United States of America. I read an article in the Washington Star yesterday, and I am going to ask your consent, Mr. Chairman, to place it in the record.

Senator CULVER. No objection; so ordered.

[The article follows:]

[From the Washington Star, March 19, 1978]

TRASH MERCHANTS OF THE OUTDOORS MUST BE STOPPED

Gene Mueller

It's a crying shame. Cans, bottles, bait containers and, yes, newspapers, lined the shores of the headwaters of South River. Fresh deposits. New signs of visitors who had come to look for long overdue yellow perch arrivals. The unsightly calling cards were not leftovers from years gone by.

The refuse does something to people who dearly love the outdoors, people who would just as soon look at clean earth, newborn grass and graceful trees.

The nerve, for example, of a well-groomed youth who stands alongside a group of would-be anglers drinking a cup of coffee. He finishes and the disposable cup sails through the air. It lands in the midst of fledgling bushes, looking very much out of place.

So you risk a chance of being punched in the nose and say, "Hey, friend, your cup fell out of your hand. Want me to pick it up for you?" The young man knows exactly what is up and mutters several choice Anglo-Saxon obscenities, then moves on downriver—without his cup.

The scene can be anywhere. Virginia's Occoquan Reservoir, Burke Lake, idyllic Lake Anna or the Eastern Shore of Maryland, where the trash merchants feel it so damned important to leave remembrances of human visits. No spot in the land seems immune.

A peaceful winter fishing spot called Chalk Point was the answer to rock- and white perch fishermen's dreams for many years. There was a time when a family could drive through Aquasco in Prince George's County, enter a parking lot provided by Pepco and fish the warm waters of the powerplant in mid-January. Rockfish could be caught. Winter blues and cabin fever were easily chased away.

Then the human pigs came. All manner of refuse lined and choked the shorelines until the power company could take it no longer. After all, it was in business to make money—lots of it—selling electricity, not spending it picking up trash. The place closed down.

Even after the hardnoses cut a hole in a surrounding fence to continue fishing the runoff channel, the plant management closed one eye. As long as it wouldn't get out of hand.

You guessed it. The trash dumpers showed they could carry equipment and supplies in, but had a heck of a time trekking the empties back out as they should have. This time Pepco made it stick. Patrols who make sure you stay away are working now.

The Suburban Sanitary Commission, which runs Rocky Gorge and Triadelphia reservoirs in nearby Maryland, has a fine eye for public relations. Its water supply lakes are really intended to do just that—supply water. But, in fact, it also supplies thousands of suburbanites with untold hours of boating picnicking and fishing pleasure.

The WSSC has a man, Paul Hancock, who brings us incredible displays of blooming azaleas each spring around Brighton Dam. With the help of dedicated employees, Hancock has introduced new fish species to the lakes. Late next month he will accompany local bass clubbers to South Carolina to bring back rockfish larvae to be raised and introduced into the water supply lakes.

But for some reason there is an element of sub-humanity who feels it absolutely necessary to throw a monkey wrench into good working relationships between WSSC and the public. The Supplee Lane picnic and boat landing area in Laurel has a lavatory building. Vandals broke into it recently, destroyed plumbing, appliances and a water fountain. Why?

The parking lot of this recreational area is strewn with glass. Why? It's certainly not the work of one lone sick mind. There must have been dozens who littered and messed up this place intended for public enjoyment.

Where will it end? Will it come to a halt when the Sanitary Commission says it can't afford to repair and clean up after us any longer? How willing are we to become involved?

We know Izaak Walton League members will worry about trash and they'll invade streamsides and pick up after litterbugs whenever possible. So will the many fine chapters of Trout Unlimited and troops of Boy Scouts and Girl Scouts. Then there is a northern Virginia bass fishing club that holds a different type of fishing tournament at Occoquan Reservoir each year. You can't enter a catch for prizes unless you also fill a bag with litter, naturally found in abundance along the lake's shores.

But the problem will never go away unless we all become involved. Children need to be educated in nature conservation and clean surroundings as much as they are in math and spelling. Many adults need an obvious refresher course. Time is running out.

Senator RANDOLPH. The article is a strong indictment of what people can cause through littering. Often, litter becomes hazardous to health and degrades the land. The headline is, "Trash Merchants of the Outdoors Must Be Stopped."

I don't care where in this country you go, in the streets, in the alleys of metropolitan areas, in the countryside of the beautiful mountain State like West Virginia, or a very wonderful State like Iowa with its great expanses of land you will find litter.

In this article by Gene Mueller, he says, "Where will it end? How are we to become involved?" We know the Izaak Walton League members will worry about trash and invade streamsides and pick up the litter wherever possible. So will Trails Unlimited and troops of Boy and Girl Scouts. There is the Northern Virginia Fishing Club that sponsors a tournament at the reservoir each year. You can't enter unless you fill a bag with litter normally found in abundance along the lake shores.

The problem will never go away unless we all become involved. Children need to be educated in clean surroundings as much as they are in math and spelling. The author is making a point that this should be a part of the educational process. He says, and this is so true, "Many adults need a refresher course and time," he says, "is running out."

This is more than just another column in an outdoor sports page, it emphasizes the problem of what I call open dumping which must cease. The legislation set the objective at within 5 years to eliminate open dumping because of the hazard to health and the destruction of property.

We have got to be sure that these oversight hearings will provide guidance and answers. I want to work with you and other members of your subcommittee and full committee in more than just a cursory look now after a year and a half. Let's see what is being done and thought and planned.

I thank you very much.

Senator CULVER. Thank you very much, Mr. Chairman.

Our first witness this morning is Congressman Edgar of Pennsylvania. Congressman Edgar, it is a pleasure to welcome you here this morning to be our initial witness on these oversight hearings, and you may proceed however you like.

STATEMENT OF HON. ROBERT EDGAR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. EDGAR. Thank you very much Mr. Chairman and Senator Randolph and Senator Culver. It is a pleasure to have the opportunity to come over and participate in these hearings today. As a colleague on the House side of the Public Works and Transportation Committee, we ought to share common goals and common issues.

Prompted by a serious waste problem in my own district in Delaware County, Pa., 2 months ago I began to take a serious look at the Federal Government's solid waste program and its impact on

State and local governments. As a relative newcomer to the solid waste arena, my comments this morning will be of a general nature.

I have been impressed by the comprehensiveness of the Resource Conservation and Recovery Act. The legislation reaches out to touch on almost all of the problems and issues that come to mind when we mention the term "solid waste." However, ambitious as the legislation may be, its application and effectiveness have been severely restricted because of the meager appropriations requested by EPA. Of \$179 million authorized in fiscal year 1978, less than \$40 million was appropriated. The outlook for fiscal year 1979 is not much improved, with only \$56.9 million requested by the Administration.

I have begun to seriously question whether hazardous and solid waste control are real concerns of the administration. State and local governments are questioning whether the Federal Government is serious in its intent to find solutions to these problems, or whether the Government is simply developing more regulations and timetables to complicate ongoing State and local efforts to deal with these age-old problems. If EPA is to take its responsibilities under the act seriously, it needs an effective funding base. I realize that the funding issue should more properly be addressed to the Appropriations Committee, but the issue has a place at these hearings as well.

The funding concerns of the Pennsylvania Department of Environmental Resources are typical of the concerns of many other State agencies with whom I have been in contact. The Department has a relatively well-advanced solid waste program of its own; however, the State does not have an effective hazardous waste program and recognizes the need to develop, administer, and enforce a hazardous waste program equivalent to the Federal program outlined in Subtitle C of RCRA. However, the Department's budget has been so severely cut back in recent months that it cannot press for any new programs when existing ones are being curtailed.

With the Federal Government's failing to provide the modest amount of funds authorized under RCRA for State planning and implementation, Pennsylvania will very likely decide not to seek authorization for its own hazardous waste regulatory program, forcing the Federal Government to accept responsibility in this area. If other states take similar action, one of the most important goals of RCRA—to leave implementation and enforcement to the States—will be defeated. Another concern of the Department is that the Federal funds for State planning are authorized for only a short 2-year period, ending in fiscal year 1979. This barely enables a State to get a plan underway before Federal funds are cut off. Unless more funds are authorized and appropriated beyond fiscal year 1979, State and local governments will be unable to implement many of the programs outlined in the Act.

At the local level, where the solid waste disposal problems are most keenly felt, there is a great need for the \$15 million in planning money authorized in subtitle D, section 4008(2)(C). Delaware County itself has a critical solid waste problem. Its incinerators are violating air pollution standards and therefore an alter-

native to incineration must be found. Acquiring additional landfills is a possibility, but suitable sites are very limited and, as in thousands of communities across the Nation, both rural and urban, tremendous citizen resistance is unleashed when mention is made of siting a new solid waste facility in the community.

Considerable interest has been shown in our county in a resource recovery facility, but no firm steps have been taken in this direction because of the many institutional barriers, risks, and high capital costs involved, and because there are no local funds for the feasibility studies, marketing studies, and other steps essential to consideration of a resource recovery facility. Without these basic studies, it is understandable that neither local governments nor private industries want to accept the responsibilities and risks associated with resource recovery technologies.

Let me illustrate some of the institutional barriers we have encountered. Delaware County is comprised of 49 municipalities, each of which has its own trash collection system, with the responsibility for disposing of the trash falling on the county. Many of these municipalities are unable or unwilling to enter into long-term agreements to supply their solid waste to a resource recovery facility. It has been suggested that a solid waste authority be established to look into the possibility of a resource recovery facility; however, State laws prohibit authorities from raising revenues themselves. And perhaps the most difficult problem we face is the fact that the administrative and political machinery of most local governments is simply not geared to tackling the technicalities intrinsic to solid waste management.

I have heard complaints that the Resource Conservation and Recovery Panels set up under subtitle B of RCRA are not as effective as they could be in helping State and local governments over these hurdles. In a number of cases, the panels have been slow to respond to the needs of communities. As the "salesmen" of RCRA, these technical assistance teams must excel in their liaison work with State and local governments if the act is to be effective. I am hopeful that the performance of the teams will improve as they gain experience and are called upon more often.

The lack of local planning money which I have discussed leads me to propose, in general terms, a change in the law to establish a "revolving fund" to provide planning money to communities considering resource recovery facilities or other revenue-producing systems to handle their wastes. These funds could be used for such purposes as feasibility studies, legal and consulting fees, and for the other purposes described in section 4008(2)(A) of RCRA. If, as a result of the preliminary studies, a resource recovery or other revenue-producing system is built, the money would be paid back to the fund once the facility begins to make a profit.

To be eligible for these funds, the applicant would have to agree that any final plan would adhere to all applicable provisions of RCRA. The Federal Government could not expect to recover all of the funds it lent out; some communities, as a result of the studies, would rule out attempting to develop revenue-producing solid waste systems as inappropriate to their needs. This is precisely one of the purposes of undertaking planning activities. Additionally, we must expect that some of the facilities constructed will not be as

successful as anticipated, given the many risks and uncertainties of resource recovery, and perhaps will not prove profitable.

The benefit of a revolving fund is that it provides for an infusion of capital from the Federal Government at the planning stage when it is needed yet leaves the major financing of resource recovery outside of the Federal Government where, in my view, it belongs. If properly administered, the revolving fund concept would help to ensure that planning moneys are available when communities are in a position to absorb them. By making planning money available indefinitely, rather than confining it to a 1- or 2-year period, we avoid the tendency to push communities into using money before they have determined how to make the best use of it. I submit my idea of a revolving fund as simply one possible means to provide planning money for resource recovery facilities. The important point is that if the Federal Government is going to fail in providing these funds, and if the Federal Government is going to fail, we will have to find other ways to make this money available.

It is clear that solid waste represents a potential source of valuable resources, including energy. Energy recovery from solid waste promises to meet a growing portion of our energy needs. It has been estimated that one percent of our Nation's current energy demand could be met by recovering energy from just the municipal waste generated in urban areas.

Energy recovery is a particularly attractive arrangement for urban areas with energy-intensive industrial bases. Solid waste when viewed as an energy source can act as an enticement to draw industries needing energy into urban areas, and just as importantly, can act as a stabilizing force to deter industry from leaving urban areas. Solid waste will become ever-more attractive as an energy source as the costs of traditional fuels continue to rise. Both our national energy policy and our national urban policy should address themselves to the energy-from-solid waste issue.

A number of uncertainties and unknowns exist regarding the performance and economics of resource recovery systems. For example, how will the declining birth rate affect such systems? Will the rise in the plastics component of our waste stream continue, or will the Federal Government step in to reverse this trend? What impact will the current movement of people out of the cities to less populated areas have on the viability of resource and energy recovery facilities? The question arises as to how much we should factor in these and other trends when planning elaborate and costly resource recovery facilities.

EPA's strategy document amounts to the realization that even with aggressive Federal efforts toward resource recovery, most wastes will continue to be deposited in landfills for many years to come. Given the continued dominant role of land disposal in our solid waste management scheme, I believe that we must give more emphasis to developing small-scale, low-cost improvements to our current waste disposal operation. There is a need, for example, to take a closer look at our present collection and haul methods. These are the most costly phases of the solid waste disposal process. In 1976, it cost an average of \$21 to collect a ton of discarded material as compared to \$5 per ton to process and landfill it. Improving the collection system could mean substantial savings to

local governments. There is also a need to give more emphasis to front-end separation, which is the separation of reusable materials at the source of generation. Incentives should be provided so that all materials which meet market demand will be separately collected before they become commingled with contaminated solid waste. If additional financial incentives were built into the act, States would have more reason to take on the responsibilities for developing and managing solid waste plans as outlined in subtitle D.

Finally, I think, we must not overlook the underlying need to reduce the amount of solid waste. I was disappointed to note that at one point the EPA strategy document for RCRA breaks down the term "resource conservation" into the terms "reuse" and "recovery." In my opinion, the concept of "nonuse," an example of which is cutting on our consumption of natural resources and material of natural resources and material goods so that much of what is in the waste stream today is not there tomorrow, is equally at the heart of resource conservation. I believe that RCRA must give more emphasis to, for lack of a better term, the "nonuse" principle. We must avoid the temptation to look at resource recovery and RCRA itself as a panacea to out solid waste problems. They are certainly valuable and promising tools, but they won't solve the fundamental problem of our growing consumption of natural resources and materials.

This concludes my formal statement, Mr. Chairman. Thank you again for this opportunity to present my views.

I am ready to answer any questions you might have.

Senator RANDOLPH. Thank you very much, Representative Edgar.

I will ask a question or two later. I would like to yield to Senator Wallop.

Senator WALLOP. Thank you, Mr. Chairman.

It is difficult to talk about waste of any kind on a spring morning like this. I have spring fever today.

Representative Edgar, in your testimony you note several legal barriers to the initiation of resource recovery facilities in Delaware County. Some of those have to do with State laws and municipal cooperation. I wonder if you could expand? Is it your view that the EPA can assist in these problems?

Mr. EDGAR. I think there are a number of things that EPA can help with. EPA's resource recovery teams could be more responsive in evaluating technical needs of communities.

Second, moneys in local communities up front to discuss the kind of feasibility needs they have would help assure the local governments that that plan was thought through. To give an example, we have 49 municipalities within a small radius. We have 600,000 people living in Delaware County and it borders on Philadelphia and on to Delaware. And the driving time from one end of my district to the other is about half hour. So it is a highly concentrated, populated area with 49 separate municipalities.

Second, if we come up with a plan for a resource recovery facility to take the tons of solid waste from the municipalities, we have to assure the local communities that this facility will work and that, in fact, it will provide energy to local industry. And then we have to get an agreement from those municipalities to give us their solid

waste for long periods of time, say, 20 years. And we need front-end money for feasibility studies and for other planning purposes.

EPA has cited Delaware County for violating ambient air quality standards. I see a resource recovery facility eliminating air pollution and establishing an energy source and helping us to incorporate a reuse mentality into the lifestyle of the urban community. It takes technical assistance; it takes up-front money.

With the proper assurances from those local communities, there are a number of private-sector interests that would be interested in resource recovery. We have the industries along the Delaware River that could utilize the waste to make energy. One example is Scott Paper Co. in Chester. It uses a great deal of energy to dry the paper and to process its materials. If, in fact, there was a marriage between our solid waste and its energy needs, I think it could be a very positive thing. But we need the assistance of the Federal Government.

Senator WALLOP. I can see assistance from the technical point of view, but I am having a hard time understanding EPA's role in resolving the variety of local political problems. It doesn't seem to me that this should be EPA's role. Technical assistance should be. I don't see how they get in and smooth out rivers of dispute between local units of government.

Mr. EDGAR. I think you misunderstood me. The point that I am trying to make is that if EPA comes in with some funds and competent people who have had some experience in helping local communities get over the hurdles and begin communicating with each other, we will be able to go the resource recovery route, perhaps in a matter of 5 years.

But if EPA says it has no funds to help the communities with legal and feasibility studies, then I think you are going to find the community saying, "Well, we don't have the funds to produce the needed studies to get the needed bids out for the plan to come in; therefore, we have nothing to sell the municipalities." The municipalities say, "We just want you to get rid of our trash." I think that if you have a realistic study provided and technical assistance, there can be a flow-through to the 49 municipalities.

Senator WALLOP. I think that helps considerably. So, EPA's role would be 100 percent up-front money, or should there be a contribution on the County's part?

Mr. EDGAR. I think there can be matching funds on the County's part and local part. I am very much in support of the matching concept. I believe that the Federal Government should play the role of getting things started and moving in the right direction, and then the local government could either provide matching funds or pay most of it back through the profits it could make.

Senator WALLOP. I agree with you there. I believe that is the way to go. I think it is the way most Americans would probably have it go.

Mr. EDGAR. One interesting thing we found in our research is that there is profit to be made and that there are private industries willing to move in and provide the service.

Senator WALLOP. Once the risk is removed?

Mr. EDGAR. When the risk is offset to some extent. I think they are willing to take substantial risks in the development of the technology.

Senator WALLOP. Thank you very much.

Senator RANDOLPH. Thank you, Senator Wallop.

Representative Edgar, I think you have focused our attention on several serious matters. I hope we are in agreement. I believe we are in saying that the Solid Waste Act will work only if we have a partnership at all levels of government as well as with the people. Is that correct?

Mr. EDGAR. That is correct.

Senator RANDOLPH. You cannot ignore the local, community, or county governments.

In our committee we have recommended an additional \$30 million of funding for fiscal year 1979, and \$15 million of that would be for local planning. We would have \$10 million for rural community assistance and I think that is very important. Would this be an approach that in part would fulfill your hope?

Mr. EDGAR. Yes. I think it is a very good first step. I would say \$15 million, when divided among 50 States for local involvement, is really a small contribution, but it is a good beginning. I would be supportive of your funding levels.

I think, if you read carefully my testimony, I mentioned that on a resource recovery effort it ought to be part of a lot of other policies that we have in the Federal Government—our energy policy. And in the next few days, we anticipate the President will be going forward with an urban policy and it seems to me that part of that urban policy may address itself to the question of solid waste in urban areas. I think the rural policy also has many implications related to solid waste.

You indicated in your opening statement of concern about open landfills, and I think that is an increasing concern and much of that is going out into areas that have been left open and left rural. And as we begin to plan better for the development of our Nation and work in a better marriage between rural and urban areas, I would hope that we would recognize that in 1980 and 1990 the question of solid waste would be important.

So, I commend you in your first step in the right direction. I think it is going to involve additional funds in the future as more and more communities recognize the desperate need they have to get into this particular program.

Senator RANDOLPH. Thank you, Representative Edgar. We are willing to cross to the other side of the Capitol and work with you and the appropriate committees there. It will take more than just a cursory effort; it will take an all-out thrust to bring into being the necessary funding, and to sell to the American people the determination that this is something very vital to their well-being.

Thank you very much.

Mr. EDGAR. Thank you, Mr. Chairman. I think you have the cooperation of the other body on this issue, given the testimony in Congressman Rooney's testimony.

Senator RANDOLPH. Thank you very much for coming over. We are privileged to have Tom Jorling here. I believe you have an associate with you.

STATEMENT OF THOMAS C. JORLING, ASSISTANT ADMINISTRATOR, SOLID WASTE AND HAZARDOUS MATERIALS, ENVIRONMENTAL PROTECTION AGENCY, ACCOMPANIED BY: STEFFEN PLEHN, DEPUTY ASSISTANT ADMINISTRATOR FOR SOLID WASTE

Mr. JORLING. That is right. Mr. Plehn is the Deputy Assistant Administrator for Solid Waste.

Senator RANDOLPH. We are always glad to see Tom come back. If we find fault with him downtown, perhaps it is because we are removed from you.

Mr. JORLING. Thank you, Mr. Chairman.

I am happy to be here today before the Subcommittee to report on the progress of the Environmental Protection Agency in implementing the Resource Conservation and Recovery Act of 1976 (Public Law 94-580).

As you know, RCRA was enacted in the fall of 1976 to achieve two basic objectives: To protect public health and the environment; and to conserve our Nation's natural resources.

RCRA provides three major programs to help achieve these objectives, all of which are interdependent: The establishment of a land disposal regulatory program in each State; the establishment of a hazardous waste control program to be administered by the States or, where States choose not or fail to do so, by EPA; and the initiation and support of resource conservation programs by State and local government to conserve natural resources and reduce the amount of solid waste requiring land or other disposal.

Congress, in enacting RCRA, provided EPA with a variety of tools to carry out these programs. These tools include technical and financial assistance to State and local governments; the development of regulations, guidelines, and criteria for improved hazardous waste management, resource conservation, and land disposal practices; research, development, and demonstration of new and improved solid waste management systems and technologies; the development of technical and public information programs; requirements for public participation to help in the implementation of RCRA; and authority to enforce hazardous waste management practices.

Today, I want to report on our progress in the implementation of RCRA. I believe that we have made an excellent beginning, although we have much yet to do to meet the objectives of RCRA.

RCRA was signed into law on October 21, 1976, shortly after the beginning of fiscal year 1977. This was after the fiscal year 1977 solid waste budget for EPA had already been approved by the President and Congress. The programs approved for fiscal year 1977 were not necessarily consistent with the provisions and mandates of the new law. Consequently, we undertook a major reprogramming and embarked upon an entirely new operating plan tailored to fit the needs of RCRA. With the available funds, we began the essential data development and interpretative work necessary to develop the hazardous waste regulations and the solid waste disposal criteria. We accelerated the funding of State solid waste management programs so that the States might get started early to meet their responsibilities under RCRA. We also held public meetings around the country to increase public awareness of the deci-

sions to be made and to encourage their participation from the beginning of implementation.

Fiscal year 1978 was our first full budget request to implement RCRA. That budget request included the funds needed to complete the supportive work for the hazardous waste regulations and the land disposal criteria. It also included funding for the initiation of State plans required by RCRA, the beginning of the land disposal inventory, the first funding of the Resource Conservation and Recovery Panels (Technical Assistance Panels); and the major work of the Resource Conservation Committee. In fiscal year 1978, the budget for financial assistance to States increased fourfold over fiscal year 1977.

Our budget request for RCRA for fiscal year 1979 is now pending before the Congress. The solid waste management program of RCRA fared very well in the Agency's first ZBB process, experiencing a 40-percent growth over fiscal year 1978. We believe that this clearly demonstrates EPA's recognition of the importance of this program and the necessity to give it greater support and attention. The request for fiscal year 1979 represents the maturing of the program and a major movement of the implementation of RCRA from Washington to our Regional Offices and to State government.

In fiscal year 1979, the development of State plans required by RCRA is expected to be completed; the implementation of this plan will begin; States will begin to implement hazardous waste programs; and States will develop resource conservation programs and expand the solid waste disposal inventory beyond municipal solid waste sites to industrial solid waste sites. Fiscal year 1979 will also show increased activity by the Technical Assistance Panel program to provide greater assistance to State and local governments as they begin to implement RCRA programs.

Public participation in implementing RCRA will continue to be important, and the programs to disseminate both technical and general information to the public will be expanded.

As you are aware, EPA has been developing a long-range strategy for the implementation of RCRA. Our strategy document is now in draft form as has been the subject of extensive public comment. The strategy establishes four major principles for implementing RCRA.

First, it stresses that controlling waste disposal (both through the subtitle C hazardous waste regulations and the subtitle D prohibitions on open dumps) should be the highest priority activity over the next few years.

Second, the strategy establishes resource conservation as the preferred solid waste management alternative and places high priority on certain resource conservation activities (particularly those related to the Resource Conservation Committee, the provision of technical assistance and procurement guidelines).

Third, the strategy places increased agency emphasis on industrial solid waste management and disposal as States and local governments move forward in their management of municipal and hazardous solid waste.

Fourth and perhaps most important, the strategy emphasizes that RCRA implementation is dependent upon strong and responsive State and local governments. As a corollary, the document

stresses that in large measure State and local assumption of the programs of RCRA will depend directly upon the availability of both financial and technical assistance, and indirectly upon public awareness of the need for implementation.

Over 10,000 copies of the draft strategy have been distributed to the public. On January 19, 1978, we held a public hearing on the draft. Over 200 individuals attended the public hearing, which lasted for 7 hours. In addition to receiving testimony from many interested individuals and groups, a panel of EPA representatives answered well over 100 questions about the strategy. EPA also received approximately 50 written comments on the strategy. We expect to review and analyze all of the testimony and the comments, revise the strategy in order to reflect the public input, and publish the final RCRA strategy in the late spring.

I am submitting for the record, and as an attachment to this testimony, a detailed progress report on EPA's implementation of RCRA. (See p. 24.) I would like to quickly report some of the major points of progress for the committee and then discuss for a few moments a few key issues that we face.

In the area of State and local program development we have issued the regional identification guidelines required by section 4002(a). The States and local government have essentially completed the identification of solid waste management regional planning boundaries. The State planning guidelines required by section 4002(b) are now in draft form and we expect to propose these guidelines within the next 60 days.

The section 4004 Solid Waste Disposal Facility Criteria were proposed in the Federal Register on February 6, 1978. The section 3006 State Hazardous Waste Program Development Guidelines were published in proposed form in the Federal Register on February 1, 1978. We expect to publish the section 3003 regulations for hazardous waste transporters and the section 3010 notification regulations soon. The remainder of the hazardous waste regulations should be proposed in the Federal Register by later spring 1978.

EPA submitted the first annual report on the implementation of RCRA as required by section 2005 on February 1, 1978. The Public Participation Guidelines required by section 7004 were proposed in the Federal Register on January 12, 1978, and the citizen suit regulations required by section 7002 were published in the Federal Register on October 21, 1977.

The Resource Conservation Committee has submitted its first two reports to the President and the Congress. The first report included the work plans for the Resource Conservation Committee. The second reported on the findings of the committee relative to beverage container deposits.

Finally, we have initiated the activities of the Resource Conservation and Recovery Panels to deliver technical assistance to State and local government on all solid waste management problems. The major consultative services for this effort will be in place by summer and we now have five national public interest groups participating in providing technical assistance to those in need through a "peer matching" effort. All-in-all, we believe we have made a good beginning.

Senator RANDOLPH. May I interrupt? You speak of the five groups. They do fan out all over the country, but come from Washington?

Mr. JORLING. Mr. Chairman, yes. They are all Washington-based associations. At least, I believe they are all Washington-based. What we have made is a judgment that their delivery systems are more effective in reaching the local government, so we have chosen the national organizations.

I would like to discuss several rather broad issues which will significantly affect the implementation of RCRA.

First, RCRA depends heavily on the involvement of State government for its implementation. Our strategy, our program plans, and our budget are therefore constructed with the intent of maximizing State assumption of the provisions of RCRA. If the States—for reasons of resources, legislation limitations, or the lack of commitment—do not fully support the implementation of RCRA, the possibility of not achieving RCRA's objectives is very different. To date, we have been extremely pleased with most States' response.

Second, RCRA requires EPA to establish strong hazardous waste regulations and a strong regulatory climate to protect public health and the environment. Within this regulatory framework the law assumes that private industry and private capital will produce facilities that will comply with the hazardous waste regulations. EPA believes that this reliance on the private sector is desirable and appropriate.

However, if private industry, for any of a number of reasons, cannot acquire the sites or the capital to develop these facilities, then other approaches will have to be considered. Such failure could require new approaches by State government to assure that sites are available and that solid waste generated within a State's boundaries is properly managed, and perhaps consideration of a stronger Federal role. It is clear the materials will not go away.

A third and related issue concerns the ability of States and local government and private industry to acquire sites for all types of solid waste management facilities. RCRA requires the elimination of open dumps and the establishment of environmentally acceptable waste storage, treatment, and disposal facilities; and the development of resource conservation facilities.

All of these actions will require new sites. Yet no matter what type of solid waste facility is proposed, public opposition is dramatic, often strong and well organized. If we are not able to convince the American public that RCRA will ensure that disposal sites are safe and well managed, we will never acquire the needed and necessary sites for facilities and, therefore, never achieve the objectives of RCRA, namely protection of health and the environment, and resource recovery. I think it is clear that the siting issue is the most difficult problem facing us in the implementation of RCRA.

Finally, I feel obliged to point out that it will not be possible to achieve the objectives of RCRA within the strict time frame set forth in the Act. While we have every intent to implement programs to meet RCRA objectives, the plain and simple facts are that there will never be enough resources available to do everything in the time expected.

Nor I should add do the States and local governments have the resources or the people to do their job adequately. Nor is the scientific or technical knowledge base adequate to do all that is required immediately. We are limited in what we can accomplish with the resources that are available, and we have had to make choices. It has meant that we have given priority to meeting the public health and environmental quality objectives of RCRA and except to phase into other aspects of RCRA as time and resources will allow.

I believe this makes a great deal of sense and is consistent with both the short-range and long-range goals of RCRA.

However, it in no way suggests that EPA is not committed to controlling the hazardous waste we generate in this country, assuring that the "open dump" disappears, and establishing resource conservation as the preferred alternative for solid waste management. It only means that time will be required to achieve the objectives set forth.

Mr. Chairman, in the letter of invitation you specifically requested that we speak to the possibility of change. The agency has transmitted to the Office of Management and Budget its several recommendations for change which are now going on in their clearance process.

I can summarize by stating they are, by and large, minor amendments dealing with making consistent the time frames and our ability to act and the encouragement of State primacy in the implementation of RCRA. One particular problem is the problem of timing with respect to the requirements for which States indicate that want full authorization of the hazardous waste program in September of 1978. But if we are being late in the final promulgation of the hazardous waste regulations, the States won't have the full base of knowledge upon which to make that judgment.

So we have in this package recommendations phasing that timetable, giving the State maximum opportunity to participate in the hazardous waste program. The other amendments are minor and technical. We have not at this time come forward with a recommendation on the series of questions relating to siting. The question of importation bans, exportation bans, some combination authority, is something that we will be studying with you over the next several year as that is the most difficult area confronting the implementation of RCRA.

But those amendments won't have that specific recommendation in this area.

Senator RANDOLPH. Thank you very much, Mr. Jorling. I will ask one question and, Senator Wallop, I will come to you afterward.

You spoke of the timetables. Do you have specifics as to the changes that you recommend?

Mr. JORLING. Yes, Mr. Chairman. We have the specific references that need to be changed, with the justification in that package.

Senator RANDOLPH. Is that available now or will it be provided?

Mr. JORLING. It will be provided as soon as the Office of Management and Budget clears that. We could make that available, that particular section, and the need for that change independently, as I don't believe there is a problem with the Office of Management and Budget.

Senator RANDOLPH. I think that would be helpful to us.

Senator Wallop?

Senator WALLOP. Thank you, Mr. Chairman.

Mr. Jorling, I compliment you very much on this statement. And if our role and others is as stated here, I think it will go a long, long way toward establishing a good deal of credibility with State and local governments and private industry and recognition of the kind of problems that exist.

In your statement you say:

We believe this conflicts with congressional intent to maximize the number of States that would be eligible and which would apply for authorization under interim authority. As a result, EPA is requesting a technical legislative amendment to provide States with a six-month period after the section 3001 regulations are promulgated to seek interim or full authorization.

"Or full authorization," it seems to me that this recognizes that there are time frames State and local governments have to work with and it is a breath of fresh air to try to keep up with it, and I really compliment you on that.

I would also compliment you on your statement that you have every intent to implement the programs to meet the RCRA objectives but you recognize the plain and simple fact there will be enough resources to do everything in the time expected. I think that recognition, too, will go a long way toward enlisting the cooperation of the State and local governments. They realize that while time frames are necessary, they sometimes are not plausible or possible.

With regard to your statement on the siting issue being the most difficult one, in a way, I don't disagree. But how are you coming with the conservation of resources as a primary goal? Isn't that nearly as difficult a job as the siting problem?

Mr. JORLING. I think you are correct, Senator. The siting question is one that faces all of the facilities, not just the hazardous waste or the landfill, but includes the resource conservation sites as well. In all of these, wherever that site is selected, the problems arise and they start with common problems; namely, a concentration of transportation requirements so that any area selected for these types systems, an increase in the number of vehicles moving in that area.

The other types of sites the hazardous wastes bring with them concerns the safety. But they all share that. And it is something that we have to contend with and we have to be credible in our assurance to the people that these programs are sound and will protect them.

The inducement of resource conservation and resource recovery is extremely difficult and the tools available to government are not that great. I think some of the conversation between Congressman Edgar and members of the committee indicate that. It is one thing to remove legal barriers and it is another thing to remove constitutional barriers, and there are a lot of political barriers that surround these issues. Your effort is to create a climate that that system can operate in. But the tools are not there and these issues have to go through the political process if we are going to be successful.

Senator WALLOP. Is one of the tools under consideration in any way the use of taxes, either as an incentive or penalty with regard to resources?

Mr. JORLING. Various economic incentives, I think, are useful tools. The Resource Conservation Committee is exploring several proposals for that, starting with the specific one, the beverage containers, and now concentrating on product charges or taxes. And then moving to a wider range of vehicles of economic incentive in the third group of studies.

We hope those recommendations will be coming forward later this year and moving in that direction.

Senator WALLOP. Your statement is one that keeps cropping up in EPA, one that keeps cropping up as we go there. From the testimony, it appears that you as well have selected public health effect as the highest priority. My question to you is, does that put you in a position of conflict, or overlapping jurisdictions?

Mr. JORLING. I don't believe there is conflict in this particular area. There are authorizations in other agencies such as OSHA which will have authority for workers' standards in these types of facilities. We are working closely with them to avoid not only conflicting requirements, but also redundant government activity.

But I don't believe there are areas where we will conflict with other agencies in carrying out the mandate of RCRA.

Senator WALLOP. Isn't there a concentration of Federal dollars going into the health priority through RCRA and other agencies, EPA and Food and Drug Administration, USDA, OSHA, and with everything else? There isn't a concentration of Federal effort on health to the exclusion of some other valuable areas that should rightly concern the Government?

Mr. JORLING. Most of the pathways through which the health is jeopardized is through releases into the environment. And the easiest and best way to detect the effect on public health is through adverse environment that usually occurs at the earlier stage. So we don't look at these as exclusive activities, but a coherent pathway.

We also have the clear statutory direction here, as well as elsewhere, to protect the environmental values in carrying out these activities.

Senator WALLOP. Could you briefly describe some of the programs that you have gotten into with resource conservation?

Mr. JORLING. Making available technical and matching?

The first implementation of this is during fiscal 1978 and it was actually well into fiscal 1978 before this program was fully available to our regional offices and January of this year. So we have really only the very rudimentary beginnings of this program, and I think it is too early to even sense any trends of difficulty or patterns of success. It is going to be something that we are closely watching as this year proceeds to see whether our assumptions are right or productive or whether we should make judgments on it.

I think computer matching has been looked upon by those receiving it as the most successful program, and bringing in county officials from one city where we faced the problem and dealt with it and taking them and moving them to a similar situation has been well received. But it is a little bit too early to see how far our implementation is going.

Senator WALLOP. Again, I want to compliment you on the thrust of this statement. I really do believe it is a good start. Thank you.

Senator RANDOLPH. Thank you, Senator Wallop.

I think you, Mr. Jorling, will recall as we came to the final phases of the drafting and passage of our legislation, the 1976 amendments, that we had some difficulty with the Administration. I mean from the standpoint of the payment of the State employees. We wrote a limitation in, as you recall, December 31, 1979. The startup of the programs, as indicated by Representative Edgar, has not been as fast, because of certain circumstances at local and State levels.

I think the cutoff is unwise even though we had to legislatively agree to it. That doesn't mean we can't make a case for change. Have you run into problems now with that cutoff of December 1979?

Mr. JORLING. Senator, I wanted to make sure that that date is one subject to a recommendation, and it is. We will be recommending a change.

I think deadlines, however, still serve an extremely valuable purpose. They give us a more meaningful target against which people have to measure resource requirements and other procedural requirements than they would in the absence of such dates.

Yes, we have pending at OMB a deletion of that particular date. We don't think it will serve programmatically any purpose to cut off the officials who we are trying to have pick up the implementation of this statute. At this time, I don't have a reason to believe that that will not be part of the Administration's position.

Senator RANDOLPH. I think the Administration was not singling out this bill. It was more or less a policy within the Administration, and I think that has been changing. If we can't get a program underway, we can't have the local and State people involved, and we need them involved. It is not that we do not want to transfer more to the local units of government through the use of funds for technological development.

I think that is the practicality that you recognize; is that right?

Mr. JORLING. That is correct, Mr. Chairman.

Senator RANDOLPH. In Subtitle C of the Solid Waste Act there is a requirement that permits treating or storing of hazardous waste on adequate long-term care. There are persistent wastes and in some cases just for an ordinary waste landfill that long-term burden can go on for 10, 20, 30 years, or whatever it might be, even after a facility ceased to be operative. Insurance may be adequate as a way for providing financial responsibility for current risk. But it does not seem to us that it is appropriate for those long-term problems where the original facility had operated and has left the scene.

I am considering the advisability of establishing a government-managed liability fund with money paid as a fee on each unit of hazardous waste that is handled. Such a fund, I believe, could be based on the Oil Spill Super Fund. That is legislation that you are familiar with. This fund could be used to pay the cleanup cost and compensate the owner or the operator of the site. I am not sure that this is a proposal that you would want to consider, but have you given any consideration to perhaps this type of change?

Mr. JORLING. Mr. Chairman, the problem that you describe is one that is another of the issues that really is outside of our normal way of thinking of things. The idea of how to address the problem in the future that has time frames that are measured in centuries as well as decades is something that we are trying to deal with. The subject that the particular proposal which you describe is one that I think merits serious consideration.

Somehow, there has to be made available assured resources on problems in the event the private operator leaves the scene through bankruptcy or failure of some sort. But in any event, leaves a problem on a particular piece of geography. We are in a position where these situations occur and the burden falls back on the State. I think it is important that we come up with a scheme that will provide resources on an assured basis and also one that I think should be consistent with the principle of placing on those who manufacture and transport these materials the burden of providing that assured resource base. So that is something that merits very careful consideration along with normal insurance schemes and the like.

But it is important that we come up with that kind of a mechanism that assures an available resource in the event of failure of these facilities.

Senator RANDOLPH. I think it will call for the utmost cooperation between you and the Congress and all who are involved in this. I suggest that we have continuing dialog across the broad spectrum of the interests. Do you agree with that?

Mr. JORLING. Yes, Mr. Chairman. And we will be happy to work with you on this.

Senator RANDOLPH. You have indicated that we have an alarming problem, and more recently it has been accentuated by the serious transportation accidents that involve hazardous materials. We all know that the roadbeds of the rail system are not being maintained. Still, the trains move with hazardous materials. Just in that one subject, we used to move our coal unit trains 40 or 50 miles an hour. We are moving them today 12 and 15 miles an hour only because the rails are in terrible condition.

This gets into matters beyond just hazardous waste, but derailments are almost a daily occurrence. You recall the instances within the last 2 or 3 weeks of serious problems that have arisen due to derailments—the destruction of life and property and a continuing health hazard from material released into the air.

But to rely on a waste tracking manifest system and the Department of Transportation regulations, what do you think we can do about a situation like that? Do you not believe that some greater control, or do you believe that some greater control over transportation of these wastes and other materials is needed.

We have studied some of the cases where the rails in the Midwest and in the Rocky Mountain regions are running right through the communities with the possibility of derailments. There have been examples where firefighting equipment could not cross to the other side of the town.

What do you think about this situation?

Mr. JORLING. It represents a very serious challenge to all of us, not just those who are trying to protect public health and the

environment from transportation-related releases of this material. The issues are, as you point out, far broader than that. We have been working with the Department of Transportation on ways so that the manifest system under RCRA will be compatible with the authority they have under their statutes.

We are also working with the Department in attempting to allocate responsibility with respect to setting performance standards and design standards with the actual vessels that carry the material. The area that has the greatest budget potential is in actually making the rail system safe. I think it is clear that we will have sufficient authority, working with the Department of Transportation, to, in effect, preclude the transport of certain wastes on certain rail systems that are identified as particularly vulnerable to hazards.

But the overall problem is still before us. I think as a general matter the rail system represents—and I might be criticized for this—the best means for moving this material better than in many instances certain vehicles, roadway vehicles, in that they still tend to be pass-through corridors which are less exposed to the population. However, they carry more so we have to weigh that against the risk of a smaller vehicle in a collision or accident. But the roadbed question is a serious one and has to be addressed. The important thing is to recognize that these materials are moving in tremendous volumes by rail and truck and don't just represent minor risks like the derailment of a freight train carrying coal. They represent release risks that are very substantial.

Senator RANDOLPH. It is a continuing and increasing problem that must be addressed broadly; is that correct?

Mr. JORLING. That is correct. Tonnages, the volume of these materials, is going up and the transport is not going down.

Senator RANDOLPH. The members of our committee, Mr. Jorling, have intended that guidelines be addressed to the increased use of what we call post-consumer waste in products that are purchased by the Federal Government itself. Has there been any resistance to the intent of the Congress about this?

Mr. JORLING. There is some resistance. One agency publishes guidelines which have the effect of influencing the business practices of the other Federal agencies and they tend to be somewhat negative or hostile in their initial response. However, as a general matter, we have been quite successful in working with the other Federal agencies in moving the implementation of this congressional intent.

Mr. PLEHN. Mr. Chairman, I think it is fair to say that there has been some ambiguity about the interpretation of section 6002 in light of the broad definition of solid waste as incorporated in RCRA. And I think I can illustrate that with a specific example. The General Services Administration has been in the forefront for a number of years in developing specifications which would require the utilization of post-consumer waste. And to take a specific example for paper towels, the specifications which GSA had required are that 45 percent, I believe, of the raw material be from post-consumer solid waste, and another 40 percent be from other waste, namely, the bark and sawdust and other residue from the normal logging and pulping operation.

There has been some question at GSA as to whether it would not be appropriate to interpret RCRA by saying those things such as wood chips and sawdust would be solid waste under the act and, therefore, move away from what we call a two-tiered specification system. We are in communication with GSA on that matter and we hope that we will be able to resolve it.

It has always been our interpretation that the intent of the Congress in that section was to encourage post-consumer waste in the specifications.

Senator RANDOLPH. Thank you very much.

Two of our panelists, Mr. Wingerter and Mr. Plehn, I understand, will suggest that EPA grant only partial interim program authorization for those portions of the hazardous waste control program which a State can actually administer in an effective way.

This would be in place of what we call the total interim authorization that I think you intend to give to States for any part of their program. What do you think of such an approach?

Mr. JORLING. Mr. Chairman, when we get into the period of full implementation of the hazardous program, it is our view that that is best conducted by one or the other level of government, either the State or the Federal. It is very hard to operate a program with segregated responsibility. It is a cohesive program of regulation; it is one that requires very close implementation of several pieces so that our implementation, when we are in the full versus the interim period, should be completely performed by one level of government. We would not have the benefit to the public by such segmented implementation by piecemeal implementation. It just becomes too great of a management task. Therefore, we support the concept of full authorization and full implementation of those responsibilities by the States.

Senator RANDOLPH. When you talk about a limited grandfather clause, this relates to the States which currently have bans on the importation of hazardous waste. That might make some sense.

Why should these States be permitted to enact non-importation bans and still qualify for approval of the State hazardous waste program?

Mr. JORLING. Mr. Chairman, that is pretty much where we as an agency have come down in our proposed regulations, and that is as a condition of approval of a State program, they cannot now or in the future enact an importation ban.

Senator RANDOLPH. We are thinking of the future?

Mr. JORLING. That is correct.

We also provided in these proposed regulations that those States which have enacted bans, rather than being disqualified from approval immediately, have a period of, I believe, 5 years to phase out those importation bans. But it is important that this impediment to the movement of these materials, given the assumption that that movement is going to be saved, be removed.

Senator RANDOLPH. I thank you.

Senator Muskie has talked with me about this subject and stressed it before in the committee. I want to ask this question on behalf of Senator Muskie. Do you have some details for us on the Rural Communities Assistance Program? We do realize that many small communities are faced, because of their very smallness, with

major responsibility in the closing of what we know are disasterous open dumps and relocating sanitary landfills. What kind of assistance is necessary to help these smaller towns, these rural areas, in achieving the goals of the act of 1976?

Mr. JORLING. The full range of assistance is necessary to rural communities as it is to many of the more concentrated metropolitan areas. Oftentimes, however, the cost of some of the equipment necessary to come in line with the land disposal practices that we will be requiring is high for a small population.

The statute itself recognizes this and does make available and does authorize in the Rural Community Grant Program funds for equipment so that the authority is there to provide actual machinery and equipment necessary to bring those landfill practices in line with the criterias.

The difficulty we face, however, is in initiating a grant program for the rural communities. Not being able to generate enough resources within the Federal budget to make a meaningful difference on a nationwide scale, we have not requested in the fiscal 1979 request funds to implement that grant program. But the full range of technical financial assistance is needed by rural communities, as it is by larger communities, who more acutely feel the need for the purchase of equipment and machinery.

Senator RANDOLPH. They need the technology very much. But also, they need the equipment; is that correct?

Mr. JORLING. That is correct. Some of these machines for properly operating a landfill can run \$40,000, \$50,000, \$60,000 for one piece of equipment. And if the population is small, that can be very taxing to them.

Senator RANDOLPH. We have an interest of Senator Stafford, who is the ranking Republican member on our committee, in the subject we are discussing today. And, Mr. Jorling, he may have certain questions which will be supplied to you.

JORLING. We will be very happy to do so, sir.

Senator RANDOLPH. Thank you very much.

Mr. JORLING. Thank you very much.

[An attachment to Mr. Jorling's statement follows:]

DETAILED PROGRESS BY EPA IN IMPLEMENTING
THE RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)
(PL 94-580)
RCRA OVERSIGHT HEARING
SUBCOMMITTEE ON RESOURCE PROTECTION
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE
MARCH 20, 1978

Submitted for the record is a detailed progress report on the implementation of RCRA. Progress is reported for the following RCRA authorities: state program development; hazardous waste control; solid waste disposal; resource conservation; technical assistance panels; research and development; and technical and public information and public participation.

STATE PROGRAM DEVELOPMENT

Since passage of the Solid Waste Disposal Act in 1965, we have been building a strong Federal/State partnership in solid waste management. Efforts under the Resource Conservation and Recovery Act in solid waste disposal, hazardous waste control, and resource conservation can draw on over twelve years of progress in solid waste management at the State and Federal levels. States received support in FY 1977 to determine what had to be done to develop comprehensive plans for solid waste management to prepare for RCRA implementation. These comprehensive plans will provide for control of hazardous waste pursuant to Subtitle C and for environmentally sound land disposal and resource conservation and recovery pursuant to Subtitles A, D, and H.

EPA promulgated Interim Guidelines for the Identification of Regions and Agencies for Solid Waste Management on May 16, 1977 (Section 4002(a)). In response to these guidelines, 38 States made final or tentative area identifications by the November deadline specified in the law. The remainder are expected to complete area identification soon. Agency identification is to be completed by April 1978.

The Guidelines for the Development and Implementation of State Solid Waste Management Plans (Section 4002) have been developed in draft form and have been extensively reviewed by States and others. The draft is currently being revised. We expect to promulgate these guidelines in time to guide the FY 1979 financial assistance programs, which will start on October 1, 1978.

The guidelines call for the completion of State plans by the end of FY 1979. The plans are to include hazardous waste control, solid waste disposal regulatory, and resource conservation programs necessary to meet the requirements of both Subtitles C and D. The guidelines stress the need for coordination with State and local programs pursuant to other Acts. In particular, we are establishing mechanisms necessary to coordinate residual management planning activities under

Section 208 of the Federal Water Pollution Control Act with activities under RCRA.

We have also guided and assisted the States in beginning to develop resource conservation programs as part of their State planning efforts. We recognize, as does the Congress, that resource conservation and recovery will be an alternative to unacceptable disposal practices in the 1980's only if we begin to plan for it now. States are to include in their planning activities the development of a strategy which will allow them to implement a resource conservation and recovery program beginning in FY 1980. We have also begun drafting the description of a "Model State Resource Conservation Program" which will describe what form such a program should take, what it should accomplish, and what resources are required.

Proposed guidelines for the development and implementation of authorized State hazardous waste management programs (Section 3006) were published in the Federal Register on February 1, 1978. Public hearings on the proposed guidelines are scheduled in March 1978 in three widely separated locations across the country. Final promulgation of the guidelines is anticipated to take place in May 1978. These guidelines set out substantive and procedural requirements

for both interim and full authorization of State programs to carry out the hazardous waste program in lieu of the EPA administered program.

One of the major issues remaining to be resolved before promulgation of State program guidelines concerns State restrictions on the free movement of hazardous wastes to duly permitted hazardous waste management facilities. The issue of State waste importation bans has been brought before the U.S. Supreme Court by the City of Philadelphia challenging the constitutionality of the State of New Jersey's importation ban as restricting interstate commerce. The free movement issue is addressed in the proposed guidelines and provides a five-year period for States to adjust their authorities to allow free movement.

Development, authorization, and implementation of State hazardous waste management programs is to be funded under Section 3011 of the Act, which calls for allocation of funds to States on the basis of: (1) hazardous waste generation, transportation, treatment, storage, and disposal within each State; (2) exposure of public health and the environment within each State; (3) any other appropriate factors. These grant regulations have been under development since December 1977 and are targeted for promulgation around mid-year 1978.

The major difficulty encountered in establishing the allocation formula is the lack of precise State-by-State data on generation, transportation, etc., required by the Act.

Section 3006 of RCRA provides for both Interim and Full Authorization for participation by States in the hazardous waste regulatory program. The guidelines under Section 3006 of the Act detail requirements for determining whether a State program is equivalent to the Federal program, is consistent with other State programs, has adequate enforcement authority, and is thus eligible for Full Authorization. Few State programs are able to meet these criteria for Full Authorization at the present time. Interim Authorization provides a period during which State programs which are not fully developed can be supported and so as to meet the requirements for Full Authorization. The eligibility requirements for Interim Authorization are flexible enough to permit most States to qualify in FY 1979. Interim Authorization is available only for two years beginning six months after promulgation of the Subtitle C regulations.

During FY 1979, it is anticipated that States are expected to be developing application packages for Interim or Full Authorization, establishing the necessary regulatory structure at the State level, taking the steps required to

initiate equivalent hazardous waste regulatory programs, and conducting the necessary hearings. Depending on the stage of development of individual State programs, the States will be acquiring the necessary legislative authority, regulations, and resources to conduct a permit program, operate the manifest system, and conduct surveillance and enforcement activities in FY 1979. Our present assessment is that some 36 States will accept primacy, 16 States are undecided, and 4 States are likely to reject the program, either because of the lack of resources at the State level, or the political problems in getting a legislative mandate.

Additionally, a number of States have indicated that they will not seek authorization of any kind until they have had an opportunity to evaluate the final regulations that will be promulgated under Sections 3002 through 3005 of the Act. As RCRA is presently written, the States must make their decision by September 1978 as to whether they wish to obtain Interim or Full Authorization. Therefore, if EPA is as little as three months late in promulgating the regulations under Sections 3002 through 3005, very few States will apply for and ultimately assume the hazardous waste program. We believe this conflicts with Congressional intent to maximize the number of States that would be eligible and which would apply for authorization under Interim Authority.

As a result, EPA is requesting a technical legislative amendment to provide States with a six-month period after the Section 3001 regulations are promulgated to seek Interim or Full Authorization.

For FY 1978, \$14.3 million in financial assistance is being allocated to State solid waste management programs. We estimate that the States will spend these funds as follows: \$3.9 million for development of State hazardous waste programs; \$3.9 million for the open dump inventory; \$5.0 million for State planning including increased emphasis on resource conservation planning; \$.7 million for regional identification; and \$.8 million for local government. For FY 1979, the Administration is requesting \$26.2 million for financial assistance. Of this amount, \$15.0 million is needed for the development and implementation of State hazardous waste programs and \$11.2 million is needed for the development and completion of State solid waste plans and the development of State land disposal regulatory programs. No funding for local planning and implementation is planned for FY 1979. To meet the mandated requirements of RCRA the emphasis in FY 1978 and FY 1979 has been on developing State hazardous waste and land disposal regulatory programs. We see major financial assistance shifting to local government in FY 1980. During this planning period, States will increasingly build a capability in resource conservation and recovery, through the development of long-term State resource conservation plans.

HAZARDOUS WASTE CONTROL

Subtitle C requires the design of a regulatory framework that provides "cradle-to-grave" control over wastes deemed hazardous under the authorities of RCRA. Such a framework is aimed at assuring that hazardous wastes no longer appear in systems not designed for their control.

To implement Subtitle C, we are developing seven sets of regulations supported by a voluntary environmental impact statement and an economic impact assessment. Three of the regulations have been, or are about to be, proposed in the Federal Register. These are the regulations containing guidelines for State hazardous waste programs (Section 3006), procedures by which waste handlers of hazardous wastes may notify EPA or the States (Section 3010) and standards for waste transporters (Section 3003). We anticipate that the remaining four regulations will be proposed by early May along with the draft environmental and economic impact statements. We are proposing the regulations on a staggered schedule as they become ready in order to maximize the amount of public review; they will be promulgated as a set. At present, we expect final promulgation of the Subtitle C regulations to take place around Labor Day.

The hazardous waste regulatory program will become effective six months after promulgation or during the first quarter of 1979.

With regard to the specific regulations, a number of issues have arisen which deserve mention. First, we are particularly pleased with our success in working together with the Department of Transportation on the regulation of transportation of hazardous wastes under Section 3003. We have jointly held a public meeting to gather data, and plan joint public hearings. We anticipate that the transportation regulations for hazardous wastes will be promulgated by DOT and adopted by EPA to allow joint enforcement. This is a fine example of interagency cooperation.

Regulations concerning the definition and listing of hazardous wastes (Section 3001) and the standards for facilities for their disposal (Section 3004) will be proposed last, primarily because they are the most technically complex. Our mandate under Section 3001 to address chronic as well as acute toxicity has required us to examine the state-of-the-art work in this area. Identifying existing testing methods that are feasible for complex chemical substances in waste streams has been difficult. Similarly, our charge under Section 3004 to address a multitude of factors affecting facility operation is very demanding. Foremost among the technical issues is protection of the public health from the myriad of recognized hazardous air pollutants not presently directly regulated by EPA. Similarly, a very difficult

management issue is the provision of funds for closure, long-term care and monitoring, and clean up if potential problems arise. We are seeking solutions to this problem jointly with affected industry, the insurance industry, and others. These solutions will be reflected in the regulations when they are proposed.

Our proposed State guidelines address the difficult issue of interstate transport of hazardous wastes. Free movement of solid wastes across State lines to permitted facilities is a legal issue currently before the Supreme Court, as was discussed earlier. Its decision along with our final regulation will affect the workability and economics of hazardous waste management. EPA supports the free movement of the wastes under regulatory control of RCRA. We also recognize that institutional change takes time. The proposed guideline therefore, establishes a time deadline of five years for States to remove constraints against the free movement of solid waste.

Facility availability is another major issue that will affect the implementation of the entire program. Subtitle C fortunately contains a "safety valve" in the form of interim permits to assure available capacity as we begin the program,

i.e., interim permits. However, strong citizen opposition is being raised to the siting of many kinds of public facilities (including prisons, power plants, and transmission lines), in addition to sanitary landfills and hazardous waste management facilities. Whether site approval for new or improved facilities on the generator's property or elsewhere will be obtained is a matter of serious concern, and one we are studying carefully.

Finally, a real challenge under Subtitle C has been to integrate its authorities with other environmental legislative requirements. Design of the hazardous waste regulatory system has required extensive coordination with other programs for surface and underground water protection, drinking water protection, ocean dumping control, pesticide disposal regulation, hazardous air pollutant control, and anticipated toxic substance regulation. These coordinating activities have focused our attention on the wide-ranging impact of RCRA authorities alone all solid waste.. RCRA, with its disposal and resource conservation objectives, has allowed us to assure that actions under other environmental authorities will not ultimately result in the re-entry into the environment of undesirable pollutants.

SOLID WASTE DISPOSAL

Major activities have been initiated under Subtitles A and D to meet the solid waste disposal requirements of RCRA.

We have devoted a major effort to the development of Criteria for Classification of Solid Waste Disposal Facilities in response to Sections 1008(a)(3) and 4004(a) of RCRA. These Criteria are intended to provide the States with a benchmark against which they can evaluate all solid waste disposal facilities. Thus, disposal Criteria are a keystone of State control of land disposal. Disposal facilities which do not comply with the Criteria are, by definition under Section 4005, open dumps. Those facilities which the States identify as open dumps (by application of the Criteria) will be listed in the Open Dump Inventory required under Section 4005. Open dumps are prohibited by RCRA, and States are to develop regulatory and other programs to ensure that open dumps are eliminated.

The disposal Criteria were proposed in the Federal Register on February 6, 1978. In developing the Criteria, various organizations, including the States, were consulted extensively, and we will continue this public participation process as we progress to final promulgation.

The Criteria have been closely coordinated with various other laws and programs, including the Safe Drinking Water Act, the Federal Water Pollution Control Act, the Clean Air Act, Executive Orders 11990 (Wetlands) and 11988 (Floodplains), and the Endangered Species Act. In addition, the disposal Criteria are to be copromulgated as partial fulfillment of Section 405(d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977. This will help to satisfy the need identified in the Clean Water Act for sludge disposal guidelines and will provide for implementation of the disposal Criteria through the wastewater treatment facility construction grant program.

The broad and comprehensive statutory definitions of "solid waste" and "disposal" are reflected in the Criteria, and the regulation will apply to all methods of solid waste disposal including landfilling, landspreading, and surface impoundment. Excepting those wastes deemed hazardous via Section 3001 of the Act, virtually all industrial, residential, institutional, and commercial solid wastes will be covered by the Criteria.

The requirement that disposal Criteria provide for
". . . no reasonable probability of adverse effects on
health or the environment from disposal of solid waste . . ."

imparts a significant degree of complexity to the regulation. The Criteria address potential adverse environmental impacts on ground water, surface water, air, food-chain croplands, and public health and safety. They also discourage the location of disposal facilities in environmentally sensitive areas such as wetlands and floodplains.

The facility evaluations required for the development of the Open Dump Inventory (Section 4005) will, of necessity, be complex and time-consuming. The evaluations must be thorough and sound, both technically and legally, in order to support enforcement actions undertaken by the States. Furthermore, the evaluations must be defensible in the case of citizen suits brought under Section 7002 against disposal facility operators or regulatory entities.

In light of the technical and legal complexities, costs, and the potential impact on facility operators and users and the general public, we think it appropriate to time-phase the evaluations and publication of the Open Dump Inventory. This would extend the compliance time-frame of Section 4005. However, we are convinced that such controlled extension is desirable and provides the only workable approach.

We have arranged to conduct the Inventory evaluations through the States, with 100 percent Federal funding provided

by the financial assistance programs of Section 4008. I would like to add that we have been working closely with the Bureau of Census as required by Section 4005(b) of RCRA. The Bureau of Census will be developing the data management system for the inventory and will be processing the data as the inventory evaluations are completed.

As we advised you by letter on April 12, 1977, we have initiated development of two solid waste disposal guidelines in response to Section 1008 of RCRA. As development of the Criteria progressed, it became apparent that our guidelines approach should be modified to provide guidance which will better support and aid implementation of the Criteria. Thus, we now intend to develop three guidelines to cover the practices of landfilling, landspreading, and surface impoundment disposal. These guidelines will provide design and operational guidance that will allow compliance with the Criteria. Since these guidelines are intended to aid in implementation of the Criteria, they will be developed in concert with finalization of the Criteria. Meanwhile, the guidelines which we promulgated under Section 209 of the Solid Waste Disposal Act of 1970 remain viable.

The public comment period for the Criteria ends May 8, 1978. We hope to promulgate the regulation in final form in

the Fall of this year. The first installment of the Open Dump Inventory would follow one year later.

RESOURCE CONSERVATION

As I mentioned in my opening remarks, resource conservation is one of the goals of this Act. It is also a requirement of the Act, appearing specifically in Subtitles F and H.

In enacting RCRA, Congress recognized that solid waste is not a useless commodity, but rather, a potential resource to be used and that we, as a society, have not always approached the use of our finite energy and material resources with sufficient wisdom to assure their availability to future generations. The Act requires both EPA and the Federal government to focus on this problem quickly, and clearly intends for the Nation to move toward resource conservation as an essential element of solid waste management as quickly as possible. The interagency Resource Conservation Committee's investigations of current and proposed policies together with other studies to be performed by EPA should culminate in recommendations to the President and Congress to help achieve the objective of resource conservation.

Section 8002(j) establishes a Resource Conservation Committee, chaired by the Administrator of EPA. The Committee is composed of the Secretaries of Commerce, Labor, Treasury, and Interior, the Chairman of the Council on Environmental Quality, the Administrator of EPA, and a representative of OMB. The Committee invited a representative of the new Department of Energy, which did not exist when the Act was passed, and a member of the Council of Economic Advisors, whose special expertise and perspective we thought would be useful in the analysis of economic policies required by the Act, to sit with the Committee. A significant portion of the EPA resource conservation effort in the first year following enactment of the Resource Conservation and Recovery Act has been devoted to initiating the work required of the Committee.

The Committee's first report, in June 1977, presents plans and schedules for the Committee's activities throughout its two years of effort. A formal report to Congress and the President is called for at the end of that period.

The Committee transmitted its second report to the President and Congress in January 1978. It contains the findings of the Committee on the potential economic and environmental impacts of its first major issue studied: a

national mandatory deposit on beverage containers. The deposit system would require a minimum 5-cent refundable deposit on all beer and soft drink containers. The deposit would provide an economic incentive to consumers to return empty containers for reuse or recycling. The Committee will make recommendations concerning deposit legislation, pending further study.

The Committee is now studying solid waste disposal charges and a variety of other economic and policy incentives and disincentives to conserve resources. The Committee expects to report its findings on product charges in May.

In addition to these economic policy oriented studies being conducted by the Committee, EPA also has underway the other studies required by Section 8002. In FY 1978, we will look at the compatibility of front-end source separation with high technology resource recovery systems, and at small-scale and low-technology resource recovery, and we will reevaluate our research priorities. These efforts will be completed in October of this year. Other studies, such as the analysis of glass, plastics, and tire recovery alternatives will begin this year for completion in October 1979 as mandated. The findings of these studies will be reported either in separate reports or as part of the Annual Report required under Section 2005.

The Act provides an opportunity for the Federal community to do something immediate and positive in resource conservation. Section 6002 requires Federal agencies and contractors to procure products containing maximum practicable quantities of recycled materials and to use recovered material-derived fuel to the maximum extent practicable. We are now in the process of preparing guidelines to assist Federal agencies as well as States, in this effort and hope to be able to provide substantial technical assistance in meeting this requirement. This is especially important because the Federal government is one of the largest single purchasers of products and services in the country. In addition, many State and local governments and large corporations use Federal specifications in their purchasing procedures. Thus, these guidelines serve the dual purpose of creating a new primary demand for goods containing recycled materials and, by the Federal example, induce and encourage a variety of secondary demands. Both will enhance resource conservation through increased use of recycled material.

Technical assistance from EPA to bring about Federal agency implementation of guidelines promulgated in June 1976 for source separation of paper in Federal buildings paid rich dividends over the past year. As a result of the efforts of EPA and the General Services Administration, there are now over 115,000 Federal workers in 90 buildings participating in

separation of high-grade ledger paper through the unique desk-top container system. This program will continue to expand over the next few years. The result is not only reduction in waste volume, but also significant cost savings.

Another important resource conservation activity initiated last year was an innovative two-day seminar on the implementation of resource recovery. The seminar was presented in six locations to over 1,000 State and local officials and representatives of private industry. The seminar drew high praise from attendees and is being continued this year.

Finally, a resource recovery system evaluation program was begun in the past year to document the performance of newly implemented, commercial recovery systems. Initiated as a low-cost alternative to commercial scale demonstrations, the evaluations provide technical, economic, and environmental performance data on new resource recovery systems, many of which have never previously operated at commercial scale. The information provides an important base of information for use in EPA's Technical Assistance Panel program.

TECHNICAL ASSISTANCE PANELS

We have now begun implementing the technical assistance program authorized by Section 2003, and have been offering assistance to States and local governments under the authorities of Section 2003 since January 1, 1978. Our experience thus far, although brief, strengthens our conviction that the Panels program meets an immediate and important need among State and local governments. Within the first few weeks of the program, for example, the Panels mechanism allowed EPA to assist a large western community with a methane problem from landfilled wastes. EPA in this case has provided the services of both professional consultants and public officials from other parts of the United States all without cost to the recipient.

We have developed and distributed to our Regional Offices a Handbook for the Panels program, describing how the Panels program is to operate and the kinds of technical assistance which will be given. The Handbook also identifies key people in both Headquarters and the Regional Offices.

The Technical Assistance Panels Program is designed to deliver technical assistance through the use of a number of tools and resources. These are: EPA Regional Office staff; EPA Headquarters solid waste staff; consultants under contract

to EPA Regional Offices; public officials (both elected and appointed) from State, county, and municipal governments; and voluntary participants from industry, other Federal agencies, etc. Additionally, we are increasing the development of data, information, and guidance materials to assist all sectors of the solid waste management field in their decision making and for use by the TA Panels to deliver assistance.

The public officials referred to above are available through "Peer Matching," a device which allows EPA to pay for the travel and expenses of experts from State and local government through grants to special interest groups. To date, EPA has given grants to The American Public Works Association (APWA); International City Management Association (ICMA); National Association of Counties (NACo); National Governors' Association (NGA); and, National League of Cities (NLC) to participate in this program. The "peer match" has shown itself to be an unusually effective and efficient tool over the last few years, and promises to be the same in the future.

EPA is also procuring teams of consultants to assist the Regional Offices in meeting the requests from States and

local governments for specialized help in solid waste management. The "request for proposals" has been published and the resulting contracts are expected to be signed early this summer. Each Regional Office will thereafter have control of a team capable of providing assistance on any solid waste issue or problem.

We recognize the importance of careful management and the need for flexibility in structuring a new program such as the Panels program. We are, therefore, developing an evaluation system which will allow recipients of the Panels' technical assistance to candidly and promptly appraise the responsiveness of the Panels, including both the quality and the timeliness of the help EPA renders. The evaluation system is being developed in consultation with the special interest groups identified above as participating in "peer matching." Although an evaluation system is not yet fully developed, it should be ready for use within a few weeks.

The Panels program provides both a mechanism for increased attention to the adequate training of solid waste managers. We are now examining the needs of Federal, State, and other solid waste managers in anticipation of developing a training program which will better prepare them for the new policies and technologies created by RCRA.

RESEARCH AND DEVELOPMENT

The fundamental goal of the research and development program is to produce the scientific data and technical tools that can lead to improved methods and technologies necessary to achieve environmentally acceptable and cost-effective solid waste management. Promising, improved technological methods are demonstrated first at pilot scale, and then each component is reexamined to assess the risks of scaling up to community-sized facilities.

Individual research projects are carried out by staff researchers, by grantees, and by contractors within the framework of the research and development plan prepared by the Solid and Hazardous Waste Research Division of the Agency's Municipal Environmental Research Laboratory in Cincinnati. The plan includes the following five areas of emphasis:

1. The development of comprehensive information and methodology for improving site selection, design, operation, maintenance and closure of solid and hazardous waste land disposal sites.

2. The development and environmental assessment of alternative methods to landfilling for disposing of solid and hazardous waste on land.

3. The development of remedial techniques to minimize the production of leachate and gas at existing disposal sites.

4. The technical, economic, and environmental assessment of methods for processing and/or treatment of hazardous wastes.

5. The development of techniques to increase the recovery and reuse of waste by assessment of the total impacts of alternative systems and developing marketable products.

The results obtained on each project are provided in the form of reports that are made available to the scientific community through the National Technical Information Service of the U.S. Department of Commerce. These research reports are also indexed and cataloged in EPA publications to make the information readily available to State and local agencies. In addition, research results are reported in scientific and technical journals and through scientific symposia.

TECHNICAL AND PUBLIC INFORMATION AND PUBLIC PARTICIPATION

In view of the nature and the complexity of the issues that RCRA addresses, the voluntary changes in institutional

and individual habits and attitudes that Congress intended to stimulate, and the difficult direct and indirect regulatory actions it prescribes, RCRA's successful implementation depends on a high level of public understanding and participation. Fortunately, RCRA contains an array of public information and participation provisions.

Section 2005 requires an Annual Report. Our first Annual Report was transmitted by the Administrator on February 1, 1978.

Section 7004 requires that public participation in implementation of all parts of the Act be provided for, encouraged, and assisted by EPA and the States. EPA, in cooperation with the States, is to develop and publish minimum guidelines for such public participation.

Section 8003 requires EPA to develop, collect, evaluate, and coordinate information in key subject areas; to rapidly disseminate this information; to implement programs to promote citizen understanding of its significance; and to establish a central reference library on solid waste management.

The Office of Solid Waste for some years has had an active information program directed to both technical and

general audiences, a computerized information storage and retrieval system, and, since 1972, a program of grants to organizations (civic, environmental, and consumer groups, labor unions, etc.) to support educational activities. With the passage of RCRA, these programs naturally formed the base for implementation of the RCRA requirements for information and education programs. OSW information programs were also considered to be necessary adjuncts to the Section 7004 public participation program, since only informed citizens can participate effectively and constructively in the complex decision-making called for by RCRA.

OSW's information objectives for fiscal year 1977 were: informing the public of the provisions of RCRA and their implications; providing opportunities for public participation in implementation of the Act; developing the Annual Report, the guidelines for public participation, and the regulation for prior notice of citizen suits; continuing the production and distribution of technical and public information materials on solid waste management for use in the citizen-education grants program and in technical assistance to be rendered to State and local governments; and continuing the solid waste literature search and library services for use of government, universities, industry, individuals and Congress.

The mandated deadlines of RCRA assured that the efforts to implement many of the regulations, guidelines, etc., would have to start immediately. In order to obtain public input related to these initial efforts, public participation activities also had to begin without delay. The first was an all-day public meeting in Washington on December 16, 1976. Similar meetings were sponsored by all the EPA Regions during January through March 1977. In the meantime a general plan for public participation was drawn up as guidance until the formal guidelines were developed. This plan was approved by the EPA Administrator and published in February 1977; its basic features were later incorporated into the interim guidelines.

A main element of the plan was to hold public meetings, hearings, conferences, and workshops throughout the country on a schedule in accordance with major developments in carrying out the key provisions of the Act. During Fiscal Year 1977, approximately 100 public meetings and workshops were held on the regulations, guidelines, and criteria being developed under Subtitles C and D. Transcripts of the hearings and meetings were made available to all interested persons.

A draft of the interim guidelines was approved by the EPA working group in June 1977 and sent out to reviewers

representative of the entire spectrum of interest groups and all levels of government. A public meeting was held in July to receive comments. A second draft was completed August 26, reviewed, and revised. The guidelines were published in the Federal Register, January 12, 1978. The guidelines apply not only to EPA but also to State governments and regional and local agencies receiving financial assistance under the Act. Each agency is required to conduct a continuing program of public information and participation. This program is to include provision of appropriate information to those who are interested in or affected by the decision-making. Each agency is to also provide technical and information assistance to public groups for citizen education activities. The guidelines specify minimum requirements regarding public hearings and other public meetings.

To develop public awareness of RCRA and its provisions, to meet the real demand for information about the Act, and to stimulate public participation, EPA published the Annual Report to Congress, which was delivered almost on time, and developed a variety of information materials--summaries, pamphlets, news releases, TV-radio public service announcements, fact sheets, and an exhibit. The printed materials were widely distributed and provided in bulk to OSW grantees carrying out public education programs and to the States and

local governments who requested materials for distribution. The regulation on Prior Notice of Citizen Suits was published in the Federal Register on October 21.

In Fiscal Year 1978, implementation of the public participation guidelines will be a major new effort. EPA will work with each public participation officer who is to be appointed by each Region to bring about implementation and monitor progress. State and local governments have indicated in the public meetings that additional public participation guidance is needed. Additional and more detailed specifications are, therefore, now in preparation and will be added to the guidelines before they are made final. Approximately 50 hearings and public meetings will be sponsored by EPA headquarters and held throughout the country on the regulations, guidelines, and programs now under development. To assist the State and local governments in their efforts to inform and involve the public, EPA will provide solid waste information materials and, as funds allow, grant assistance for citizen education programs so that the public has opportunities to understand the issues in RCRA implementation and solid waste management and can therefore, participate constructively in local, State, and Federal decision-making.

Senator RANDOLPH. We will take the opportunity now to say that further hearings are tentatively scheduled for May. That is subject, of course, to possible change.

We have a panel next. Mr. Potter, Mr. DeVille and Mr. Wingerter. Mr. Potter is our lead-off panelist; is that correct? Or do you have another arrangement?

Mr. DEVILLE. I believe Mr. Potter would perhaps be the best.

STATEMENTS OF NEAL POTTER, NATIONAL ASSOCIATION OF COUNTIES, MONTGOMERY COUNTY, MARYLAND; WILLIAM B. DEVILLE, STAFF DIRECTOR, STANDING COMMITTEE ON WASTE MANAGEMENT, NATIONAL GOVERNORS ASSOCIATION, STATE OF LOUISIANA; AND EUGENE WINGERTER, NATIONAL SOLID WASTE MANAGEMENT ASSOCIATION, WASHINGTON, D.C.

Mr. POTTER. I am here for the National Association of Counties.

We certainly appreciate the opportunity to present our views on RCRA. We commend the subcommittee for conducting this evaluation of the act.

NACo vigorously supported the enactment of the 1976 act through many months of congressional consideration. Our research foundation has provided technical assistance and program information to counties on solid waste management for over 5 years and has disseminated information on EPA's regulations.

Senator RANDOLPH. Are you an elected official?

Mr. POTTER. Yes, sir.

Our interest in the successful fulfillment of RCRA's mandate reflects the interest and responsibility of counties throughout the Nation.

American counties are heavily involved in providing solid waste management services. A 1975 survey of county government functions indicated over 70 percent of the reporting counties are responsible for disposal and 49 percent for collection of solid waste.

Moreover in the past 10 years counties have taken on 75 percent of all transfers of the solid waste function from municipal governments.

It is in this context that the National Association of Counties wishes to express deep concern with the direction in which the Federal solid waste and resource recovery effort is going.

As to the level of Federal commitment, the Administration has requested \$56.9 million out of a total authorization of \$160 million for administration of the RCRA during 1979. While we are pleased with the increase over the past year, we are concerned that the decrease in State assistance for solid waste planning under subtitle D from \$14 million to \$11.2 million will undermine the efforts of States to carry out their responsibilities and leave local governments with no financial assistance in compliance with RCRA.

Much of the \$11.2 million will go to developing regulatory efforts at the State level. Establishing a program to inventory and close open dumps however, does not prepare local jurisdictions to deal with these problems. Many counties are currently seeking ways to upgrade their solid waste management systems, but they lack adequate resources.

EPA has estimated that an additional \$9 million could be used to initiate local land disposal and resource conservation programs, and that \$5 million could be used to assist rural communities.

NACo strongly endorses the addition of at least \$30 million to the amount requested by the Administration.

Senator RANDOLPH. Mr. Potter, the figures that the members of the committee agreed on, are you endorsing those?

Mr. POTTER. We certainly think that \$30 million is a minimal response to needs.

Senator RANDOLPH. Yes. But it is more than we thought we could get and we are going to fight to retain that figure.

Mr. POTTER. We certainly appreciate that effort.

Senator RANDOLPH. But we haven't achieved it yet.

Mr. Potter. We will give you all the backing we can to get it through.

Most of this money should be provided to local governments for both program development costs and management costs outlined in section 4008(a)(2) of the 1976 act.

The important part of the Resource Conservation and Recovery Act is that it perceives a close link between program preparation and implementation. Congress should encourage this process by providing funds for implementation of solid waste management and resource recovery programs in fiscal 1979.

Counties and other local governments are ready now to prepare facility plans, market surveys, construction plans, and source separation studies. Many of these activities need not and should not await the approval of State solid waste plans.

If implementation grants must be certified consistent with a State plan which may not be completed for another year or more, we believe that significant progress toward carrying out already existing local programs would be discouraged. Local governments should not be penalized by the failure of a State to complete a plan which they have had no significant involvement in preparing.

NACo would suggest that section 4008(a)(2)(C) be changed to provide for an interim means of approving local implementation grants until State plans are completed. Perhaps a review at the State level through the A-95 process would be sufficient.

Local governments will soon be required to upgrade or replace landfill facilities. Congress should be prepared to provide financial assistance with some of the planning and administrative costs which counties and other local governments will have to meet.

Additionally, we hope that this subcommittee will approve an increase in the authorization for implementation grants in subsequent fiscal years. We would suggest that no less than \$75 million per year for a minimum of 5 years be provided to encourage a strong response at the local level.

NACo is concerned that the current Federal program places too much emphasis on the acquisition of new State planning capacity, and that such capacity may be perceived as a substitute for implementing effective local and areawide solutions to solid waste and resource conservation problems.

The simple fact is that States do not now, and should not have the responsibility to solve local solid waste problems. Let us consider these points:

Planning is meaningless unless it is conducted by those who have the responsibility for management of resource conservation and solid waste systems.

Siting and developing landfill, resource recovery and other solid waste projects are purely local functions. These facilities often include tremendous risks because of the uncertainty of markets, technology, public reaction to particular sites, and the environmental impact associated with landfill siting.

Mr. Chairman, if I could digress, Montgomery County has experienced all of these difficulties. First, our very large and expensive incinerator was put out of business because of violation of air quality standards, although it was a relatively modern plant. Second, we have put \$2.5 million into a landfill which 2 years later was declared ineligible for use by the State Health Department on groundwater use. Third, we are contemplating a new landfill location but are having tremendous difficulties in finding a site which is acceptable to the State and the local citizens.

We have programed 2 years for lawsuits in the acquisition of this site. And I hope we don't get into another 2 years of delay from the State.

Third, we have been looking, and have been looking intensely, for 7 years on the possibility of resource recovery. We toured the best plants in the country, and we are undertaking a major effort, but it looks as if these costs will run on an order of \$50 million.

Local governments make decisions about who will collect and dispose of garbage. Local governments, not States, sign contracts with private haulers and private landfill operators and regulate their practices and rates. If something goes wrong with garbage collection, local elected officials, not the governor or State legislature receive citizen complaints.

Though technical assistance from State agencies and EPA is important, there is no substitute for providing resources for meeting these needs at the local level.

Our recommendation is not to provide greater Federal assistance to local governments at the expense of grants to States because we recognize the need to carry out the open dump inventory and other functions. We recommend an increase in Federal assistance to local agencies for both planning and implementation, and continued support to State governments to finance technical assistance to local governments and the development of an effective designation process among local, regional, and State agencies.

As to enforcement, as part of its plan under subtitle D, each State must include an inventory of the land disposal sites within its borders. The inventory involves a site-by-site analysis of whether or not each disposal facility meets the criteria for a "sanitary landfill."

The Administrator is required to publish the inventory of disposal facilities within 1 year of the promulgation of the sanitary landfill criteria. However, EPA has made it clear that the States will not be able to complete the inventory in 1 year with the available resources. Under the State planning guidelines, EPA has accepted the concept of a phased inventory.

This approach is completely reasonable because it provides the States with sufficient time to do the job well. Unfortunately, it

provides no relief for local governments which are still required to meet the regulatory deadlines for closing open dumps.

Until a disposal site has been included in the inventory, it cannot be certified by the State as being in compliance. Nor may it be placed on a compliance schedule as provided in section 4005 of RCRA. In fact, 1 year after the promulgation of the sanitary landfill criteria, EPA estimates that only 2,000 to 2,500 sites will be inventoried out of approximately 18,000 facilities disposing of residential/commercial waste and tens of thousands of other disposal facilities.

In keeping with Congress's intent that enforcement against open dumps not begin until the State inventory is completed, RCRA should be amended not to require closing of an open dump until it has been inventoried. This would avoid enforcement actions in cases in which compliance with EPA criteria is not known. Such a change is the only way to achieve an orderly transition from open dumps to environmentally sound landfills as envisioned by RCRA.

The designation process which is coming up, the process for sorting out responsibilities among counties, cities, regional agencies, and State governments is less than satisfactory. States have yet to demonstrate on a nationwide basis that they have effective procedures for working with local governments.

Our concern is not academic nor based on local prerogatives. Whatever solid waste and resource conservation solutions are developed, must be implementable and must have the political support of those who are going to spend the money to carry them out.

The 1976 act calls for the designation of regional boundaries by the Governor in consultation with local elected officials. EPA believes that on the basis of its survey of State governments, there was adequate consultation with local officials before final promulgation of regional boundaries.

Limited evidence suggests that boundary designations were made in some States with extremely minimal consultation with local elected officials. In some places the State has still failed to make a boundary designation as required by EPA regulations.

Designation of agencies to implement various solid waste functions must be jointly determined between the State and local elected officials. If agreement cannot be reached, the Governor must designate a State agency to develop and implement the State plan.

This sorting out of agencies and functional responsibilities must be completed by May 15. It is difficult to know how well the designation process is proceeding. The question is whether State lead agencies have taken initiative to meet with local elected officials and adequately involve them in the process for jointly determining State, local, and regional responsibilities.

The problem appears to be widespread confusion as to the requirements of Federal regulations. For example, some counties have been led to believe that a single planning agency must be designated for an entire multicounty region, when in fact, EPA states that boundary designation and agency designation are supposed to be independent of each other. Boundary designation is not intended to predetermine agencies or functions.

EPA should immediately conduct a survey of each State to determine the manner in which the joint determination of agencies and

functions is taking place. This survey should include contact with local elected officials to find out if they understood the opportunities open to them and whether they have had an adequate opportunity to jointly designate planning and implementation agencies. It is not sufficient to ask State agencies this question, even though it may be the most convenient approach.

Detailed monitoring of State actions by EPA Regional Offices would go a long way toward enforcing congressional intent that the process should indeed be joint. If regulations are not followed, EPA approval should be withheld and the joint designation process should be repeated until local officials have had an opportunity to advance their own solutions and negotiate agreement with the Governor.

This concludes my formal statement, Mr. Chairman. Thank you again for the opportunity to offer our recommendations for effective implementation of the Resource Conservation and Recovery Act. I would be glad to respond to any questions you and the subcommittee may have.

Senator STAFFORD. Thank you very much, Mr. Potter.

We are ready to hear the next witness.

STATEMENT OF WILLIAM B. DEVILLE

Mr. DEVILLE. Good morning, Mr. Chairman. My name is William DeVille. I serve on the staff of Edwin Edwards of Louisiana as staff chairman of the National Governors Association Standing Subcommittee on Waste Management.

That subcommittee is composed of 21 governors. Governor Edwards, who chairs the subcommittee, could not be here this morning and designated me to present this statement on his behalf.

The effort of the Senate Subcommittee on Resource Protection and the permanent commitment of its committee chairman, Mr. Randolph, to enact and assure the implementation of the Resource Recovery Act is recognized by the governors and by the State officials. A primary function of the NGA subcommittee is to provide an organized and ongoing mechanism to convey the States' perception to the Environmental Protection Agency of RCRA goals and opportunities and their comments on the draft and proposed regulations and guidelines developed pursuant to the act.

The importance of this function relating to the development of detailed and intensive intergovernmental operation between the States and EPA was clearly recognized and emphasized by the Congress. I am particularly pleased on this occasion to report that EPA has diligently attempted to provide for public participation and comment and to facilitate the State consultative process in the development of RCRA's requirement.

The NGA Subcommittee, its task forces and its work groups have met numerous times with representatives of EPA to discuss and comment on the issues and strategies for implementation of RCRA and on drafts of proposed guidelines and regulations authorized by the act.

These meetings and the comments resulting from them have been open and candid, and we believe they have served to better clarify many of RCRA's goals and issues, and to improve most of

the proposed guidelines and regulations as they have undergone these mutual examination.

I would not pretend that all of the issues discussed have been resolved to the entire satisfaction to the NGA subcommittee as a whole, or in some particular cases, to the satisfaction of one or more States.

My own State—Louisiana—is at this time commenting very strongly in opposition to the particular set of proposed rules as we believe they pose problems almost unique to our situation. But it would not be appropriate at this time to bring to the attention of an oversight body such details the more so as a mechanism for continued decisions and problem-solving as is provided by the comment process itself. We have no reason to doubt EPA's good faith and intent for implementation of that portion of RCRA rationally and effectively.

It must be recognized that most of the body of rules, regulations, guidelines, and operational procedures, including the most fundamental elements authorized by the act, remain to be put into effect. From the vantage point of our examination of RCRA's goals and issues, the Subcommittee reports that: (1) The scope of RCRA far exceeds—beyond original expectations—its predecessors, the Solid Waste Act of 1965, and the Resource Recovery Act of 1970. (2) States' perception is that RCRA may be one of the most far-reaching environmental control and land quality control instruments enacted at the Federal level. (3) The resulting responsibilities and financial burdens, including hazardous waste management, rest predominantly on States, as envisioned by the law. (4) Major responsibilities for the achievement of most of RCRA's goals rest with local and regional governmental entities.

We believe that the points emphasized above imply that any EPA policy to plan for strategic implementation of RCRA must recognize the primary responsibility of States, and also the State and local partnership which must develop if implementation is to be successful. The agency must (1) meet its responsibility for development of guidelines and regulations under RCRA as to furnish tools appropriate to exercise by the States, which reflect the priorities and practicable measures sufficiently flexible for adaptation by all the States in pursuit of RCRA's goals. And (2), provide both State and local governments with the requisite and appropriate technical and financial assistance in a timely manner.

The scope of RCRA, while importantly related to protection of public health and environment, raises several substantive issues particularly in the context of strategies and policies for the act's implementation. My remarks will now focus on these major issues identified to date by the subcommittee.

The development of subtitle D, State for Regional Solid Waste plans which encompasses the open dump inventory, the categorization of land disposal facilities and regulatory and other State program elements to achieve the targets of the plan, demands the most serious attention. I have noted to Dr. John Lehman, Director, Hazardous Waste Management Division, whose program elements in the Office of Solid Waste is concerned with development of drafts under subtitle C, that he has the easier job. Someone is going to disagree with aspects of complementation of the hazardous

waste control program—but it is relatively easy to understand the subtitle C program. In many respects, in subtitle D program the more complex issues emerge.

While the criteria for determination of the scope of wastes to be included under subtitle C hazardous waste program are not in effect, it is safe to project that the vast preponderance of solid wastes will fall under the coverage of subtitle D programs—with primary regulatory responsibility falling to the States.

Let me emphasize that, by our remarks and recommendations, we are not advocating weakening of State and Federal solid waste programs. On the contrary, we are striving to assure determination of unchallengeable legal interpretations of the act to the extent feasible, and to cooperate with the Agency in promulgating a workable State/Federal as well as State/local partnership in solid waste management and resource conservation and recovery.

One issue identified by our Landfill Technical Task Force is the broad delineation of the scope of the definition "sanitary landfill." That term has a well-established meaning. To incorporate sites such as ponds, pits, and lagoons under the criteria for "sanitary landfills" could cause confusion and present enforcement obstacles under section 4005(b). Moreover, under the State Drinking Water Act, the States will be conducting an "assessment" of surface impoundments, including pits, ponds and lagoons. This assessment should provide preliminary information useful in conducting the open dump inventory under section 4005(b) of RCRA; but this effort should not duplicate or inhibit activity on this point, the Task Force recommended EPA's delineation of criteria relating specifically to "sanitary landfill" at this time.

The recommendation is made to "phase" the development of criteria which, would also permit the States to "phase" the subsequent inventory. "Phasing" would allow the States the time needed to upgrade solid waste management regulatory programs; adequately conduct inventory; and, reasonably enforce the compliance or closure of solid waste management facilities.

Such phasing relating to the scope of the criteria is also recommended to avoid an unmanageable number of sites required to be evaluated during the inventory. For example, in my own State, extension of the term "sanitary landfill" and "open dump" beyond conventional practice extends the potential inventory coverage from several hundred sites to, perhaps, as many as 70,000 sites. While my State may constitute an extreme example, I believe the general point encompasses most States. The utility of inventory of "open dumps" as a management tool could be threatened by the sheer numbers of candidate sites to be considered, especially where the need to maintain legally defensible enforcement requirements under State law are considered.

There is, we believe, considerable reason for optimism about resource recovery as a solid waste management tool. We must ensure the continued availability of other tools, including landfill. As an illustration in my own State, Hooker Chemical Co. continues to move toward the development of a planned \$100 million facility design to receive up to 3,500 tons of refuse per day which will recover energy from solid waste.

I want to emphasize that other States can provide their own examples. Ground breaking on a similar facility is already taking place now in New York. As the private sector initiative continues to develop, it will have a massive impact on our own State solid waste management plan, and on the solid waste planning within two or more regional boundaries already designated for planning, and on local government solid waste management, particularly in some of our wetlands areas.

To maximize the opportunities such a massive project can make the State, regional and local governmental entities responsible for ensuring that the waste stream is available, and will have to devote considerable efforts to plans, logistical arrangements, studies, and agreements. Provisions of funds authorized by RCRA, as well as executive technical assistance from EPA including design of cost-effective approaches to collection and transportation will be critical needs.

The aforementioned discussion illustrates the potential complexity of implementing RCRA, and that implementation be practicable and sensitive to cost-efficient approaches in light of resources available at the Federal, State and local levels. Federal financial assistance is, generally provided at adequate authorization levels throughout RCRA. However, the appropriation for fiscal 1978 do not assure the States that either the Congress or the Agency are fully committed to achievement of RCRA's long-term goals. Rather, the levels of the funding would tend to indicate a concern for achieving in a limited fashion the "mandated" portions of the law. Provision of low levels of assistance places the State in a position of being unable to adequately address the output immediately required, and impedes progress toward RCRA's long-term objectives.

Of great concern to the States is the point that lack of funding assistance to local and regional governmental entities will inhibit performance of the planning efforts necessary to development of genuinely effective State solid waste plans.

Governor Edwards has emphasized that the federal approach to RCRA requires a balanced one, the major elements of which are research, training demonstration, technical assistance and financial assistance, and enforcement. The full range of these tools is needed. RCRA is a complex act with goals that must and can be realized. It can be—and we believe will be—a new model for cooperation and coordination for all levels of government, Federal, State and regional and local, to make continuing progress in the protection of public health and the environment as well as improved use of our management resources.

I appreciate the opportunity to present this statement and would welcome any questions.

Senator STAFFORD. Thank you very much, Mr. DeVille. We will hold questioning until Mr. Wingerter has also addressed the committee. If you have a statement you could summarize, I would appreciate that and we will make your full statement a part of the record.

STATEMENT OF EUGENE J. WINGERTER

Mr. WINGERTER. Thank you, Mr. Chairman. I have submitted a statement for the record and I will present an abbreviated statement. (See p. 68.)

Good morning, Mr. Chairman and members of the committee, my name is Eugene Wingerter, executive director of the National Solid Wastes Management Association. Our association represents the private waste management industry, with over 2,000 members engaged in the transportation and disposal of solid wastes, resource recovery services, and chemical waste treatment and disposal.

The private sector of the waste management industry accounts for close to \$3 billion in annual revenues and has been credited with nearly half of all residential waste collection and 94 percent of all commercial and industrial waste collection. Some 10,000 private firms, operating in all 50 States and employing over 150,000 people, perform this vital environmental service.

We appreciate the opportunity today to present to the committee our views on the implementation of Resource Conservation and Recovery Act of 1976. We have transmitted to the committee our full testimony and would like at this time to highlight our principal concerns with the implementation of the law.

RCRA, as we perceive the law, was written to accomplish three major objectives: The prohibition of open "dumps"; the control of hazardous waste; and encouragement of resource conservation and recovery. We will comment on each of these areas in turn.

There are four issues regarding the prohibition of open dumps we would like to address.

We believe that when a State determines that a land disposal facility is by the Federal criteria an "open dump," the State should not, as the law presently requires, have to make an assessment as to whether there is an alternative site available before the State sets a compliance schedule to bring the site into conformance with the criteria. We believe that whenever possible an "open dump" should be upgraded—and not be forced to close because there may be a so-called "alternative" facility.

While we realize that the inventory of open dumps cannot be completed in the 1-year framework required by RCRA, we believe the list of open dumps should be published only after the entire inventory is complete.

The criteria defining open dumps should be specific and measurable allowing minimum discretion to those conducting the survey. Further, we believe the inventory of land disposal sites should be conducted against one consistent set of criteria to assure a uniform report; for this reason, the criteria should not allow States to adopt, individual State regulations as Federal criteria. EPA has attempted to "federalize" State standards for air quality and groundwater.

Prohibition of open dumps can be accomplished through State and regional solid waste planning. However, we do feel that the designation of certain regional agencies for solid waste planning should in no way disrupt the existing institutional arrangements for implementation of solid waste management functions.

The second objective of RCRA is the control of hazardous waste. We have always supported the "cradle-to-grave" approach that is

required in subtitle C. There are four aspects of the hazardous waste program as proposed by EPA which we believe require modification.

While RCRA allows States with less than a complete hazardous waste program to receive "interim authorization" to manage that program, we feel that EPA's proposed requirements for such interim authorization are inadequate. Under the proposed guidelines, EPA would authorize a State which has no manifest system, no regulation of on-site facilities and no definition of hazardous waste. We believe that the system is unworkable if any of these vital aspects are left untended and urge that EPA accept responsibility itself for any element of hazardous waste regulation which the State cannot fulfill when "interim authorization" is granted.

We support EPA's position that States cannot effectively manage a hazardous waste program if they ban importation of out-of-state wastes. However, we object to EPA's proposal to allow States 6 years to abolish such bans. The next 6 years are critical for the development of adequate hazardous waste management facilities—and EPA must adopt a policy of not funding States whose importation bans would discourage regional solutions.

We believe that while RCRA requires the financial responsibility of hazardous waste facility operator, the law does not provide an adequate mechanism for assuring that the public will be fully protected in the event of an unforeseen accident which may occur as a result of hazardous waste disposal practice.

We must be sure that financial responsibility requirements are established at a level which will allow private companies to participate in the program, but, at the same time, do not compromise public liability protection.

EPA, in initial draft regulations, had focused on a private insurance pool to provide perpetual care liability protection for closed sites. After careful examination, it became clear that the private insurance industry could not be required to provide such coverage nor was it possible for insurance companies to assure their own existence in perpetuity which the EPA regulations would have required. It is our opinion that the private insurance industry is not structured to provide the type of perpetual liability protection in a pooled arrangement as proposed by EPA.

Recognizing this situation, we are recommending that Congress consider a new approach to assuring the necessary liability protection to the public. Our approach is based on a Federal insurance program that would meet the requirements of RCRA and which would be patterned after other Federal insurance programs. Premiums would be paid by hazardous waste facilities through a disposal fee structure.

This Federal insurance approach would assure in perpetuity the existence of an adequate fund to meet any unforeseen events that could occur after sites are properly closed in accordance with the requirements of EPA. This concept is the only practical means of assuring adequate liability protection to the public for damages that may result either during the operation period and after site closure.

EPA seems to have ignored RCRA's requirement that EPA coordinate the law's regulations with other environmental control

acts. In draft regulations, EPA would create ambient air standards based on OSHA Standards without following procedures required by the Clean Air Act.

Finally, we would like to comment on one specific issue regarding the Resource Conservation Committee created by RCRA to evaluate the effect on resource conservation of certain incentive programs such as a product disposal charge. While the findings of this investigation are not yet complete, we are convinced, despite the law's intent to promote resource conservation, EPA is now emphasizing the use of product disposal charges to generate revenues to subsidize municipal resource recovery projects.

While we have refrained from stating a position on the equity and efficacy of this approach to resource conservation, we oppose the use of product charges for this purpose and feel that the use of such subsidies is not consistent with the intent of Congress under RCRA.

It is clear that in RCRA, as well as in its predecessors, the Solid Waste Disposal Act of 1965 and the Resource Recovery Act of 1970, Congress chose not to subsidize construction of resource recovery projects. Congress and the public have felt that resource recovery facilities should be paid for by those who would benefit directly from the facilities. We have always supported that philosophy.

To accomplish the goals of resource recovery, there is no need for either direct grants or more oblique subsidies through product disposal charges. The vast majority of products underway, in fact, are relying on private financing through revenue bonds.

The use of private capital appears to be a successful mechanism; the projects which are well-designed and economically feasible will be financed while less well planned high-risk projects will not attract private capital.

Therefore, we feel that Federal subsidies for resource recovery projects would distort the economic picture and serve only to prop up projects which may not be self-sufficient in the long run. The Federal Government in such situations would be in the unfortunate position of having to extend subsidies or watch the projects fail.

We believe any massive Federal program to subsidize resource recovery with funds generated through product disposal charges would be an unsound and uneconomic approach. The only check and balance system we have to assure sound resource recovery programs is the ability of a project to stand the test of financial scrutiny.

We appreciate the opportunity of appearing before the committee this morning. We would be pleased to answer any questions. Thank you, Mr. Chairman.

Senator RANDOLPH. Thank you very much, Mr. Wingerter. I remember the meeting you had a few months ago in Washington and I commend you and those who joined with you in your association in the dialogue that such an association has made possible with the people.

Mr. WINGERTER. Thank you.

Senator RANDOLPH. Mr. Wingerter, we are listening closely to your recommendations so that they may be used in committee and subcommittee staff deliberations.

The act provides, at the present time, for State establishment of compliance schedules and enforcement of the ban on open dumping. I keep coming back to open dumping because I am not sure that the American people realize that through this legislation we now have a vehicle that can be used to clean up America. We can eliminate product wastes that cause health problems and return to use all of these waste materials through recycling.

I know that you have suggested, Mr. Wingerter, that there may be, uneven enforcement and that would bring inconsistent interpretations; is that right?

Mr. WINGERTER. Yes, sir. I think your concern is that the time frame to conduct the survey of all disposal sites, in that context we are including the industrial States that are characterized as pits, ponds and lagoons. There are inequities if a site is published this year and an adjacent site might also need to be placed.

Senator RANDOLPH. What about a change in the law to provide a backup enforcement role for EPA, I am not sure that that is necessary, but EPA in this instance can enforce the open dumping ban in the absence of effective State action. Would you discuss it?

Mr. DEVILLE. First of all, I would like to comment that the act, RCRA, is fully consistent with the long-standing policy position of the National Governors' Association, dating back to 1972 on the need for Federal assistance and including technical and standard setting assistance to the States and local areas developing to improve solid waste management practices. That same policy statement also supported a nationally mandated hazardous waste program.

But we think that the act is appropriately designed as it deals with the non-hazardous solid waste at this time. There are, indeed, in many of the States outstanding existing solid waste management programs. And we think this provides a basis which can be expanded upon and when improved should be sufficient to deal with RCRA's intent as to those areas of non-hazardous waste.

Senator RANDOLPH. Thank you very much.

Mr. POTTER. Mr. chairman, if I could comment on that as well, because of our own experiences in the liquid waste field, I would have great trepidation about EPA actions until EPA had devoted considerable time and expertise in evaluating the local solutions that were proposed. Because we have been now struggling with the EPA for five years to get a site for our liquid waste program sewage disposal plant and we haven't gotten one yet.

We have been under a sewer moratorium as a result. It can be a serious problem. I think before evaluating extremely complex problems, EPA really needs to staff up with a high level of expertise and really in-depth studies before it makes the decision.

Enforcement actions are easy, but they may leave the effective jurisdiction with a much worse solution than the one it is trying to obtain. Enforcement action is really appropriate only when there is an indication of foot dragging or very poor decision making.

I don't think that can generally be found, and I think EPA enforcement action requires heavier staffing.

Senator RANDOLPH. Do you wish to comment, Mr. Wingerter?

Mr. WINGERTER. I think both Mr. Potter and Mr. DeVille have summed it up well, Mr. Chairman.

Senator RANDOLPH. All right. Thank you.

You all have opinions as to the manner in which the EPA is currently planning to implement the provisions for these technical assistance panels. Do you want to make any further comment with reference to that type of program?

Mr. DEVILLE. Mr. Randolph, I think that the concept of providing technical assistance is one of the most important elements of RCRA. I also think it is going to be one of those programs that is must "shake out" for a period of time because it will be very difficult to solve many of the kinds of problems that I think we are going to find emerging.

The National Governors' Association, through our grant with the Environmental Protection Agency, has in effect already embarked on peer matching efforts. And I think they have been worthwhile. I think we still have to consider a lot of questions like "responsibility" when a governmental jurisdiction journeys outside its jurisdiction.

Senator RANDOLPH. You gentleman were here for the testimony of Mr. Jorling; is that correct? All of you?

Mr. DEVILLE. Yes, sir.

Senator RANDOLPH. Does anyone want to comment on his testimony? Do you want to pick a flaw in it or speak of shortcomings?

Mr. DEVILLE. I would like to comment that I was very pleased to hear many of the points Mr. Jorling made. I would like to perhaps emphasize the importance of RCRA as it is developing. In my own State some of the most massive solid waste programs have come about as a result of water enforcement actions which prohibited their disposal in the waters. Had RCRA existed at the time those decisions were made, I think the outcome might have been quite different.

The comment has often been made that solid waste has been the stepchild of the environmental protection effort. I am pleased to see a great deal of attention on the part of Congress and on the part of the agency in evaluating it. My only concern is I don't think it has gotten out of that status yet and we have a lot of work remaining to be done.

Mr. WINGERTER. I think there is no question that those of us in the industry who have observed EPA's sincerity in implementing RCRA, that the agency has attempted to put the best effort into all aspects of the program. The timetable indicated this morning is very tight and very short, and I am sure there will be the anxious moments before the full regulatory structure is effected.

I do think one danger is the decentralization of the program through the 10 regional offices of EPA. It is my understanding at the present time that the agency is relying very heavily on the regional offices.

Mr. POTTER. I would just like to say that on technical assistance and administration there needs to be an increased emphasis not on the State but on local implementing boundaries. They could use more technical assistance. If enforcement actions are to be undertaken, it seems to me that technical assistance ought to be a predecessor to that and an evaluation that the best effort had been made.

Mr. DEVILLE. I would like to make a comment on the decentralization idea. I think that is going to work quite appropriately and a lot of decisions that must be made and cooperative efforts that must be established between the Federal and State levels, particularly as it concerns enforcement activity.

I would agree with Mr. Wingerter's remarks as to the need for sharing the experience between regions. I think that that may be a weakness in that proposed design. Technical assistance efforts in one region should somehow find its way outside that region to the other potential users.

Senator RANDOLPH. Your comments, gentlemen have been very helpful to us. We are going to ask you if you would continue to work with us because we are just beginning to dig deeply into our responsibility in this area. we are going to need finance but if we are going to have a continuing partnership there must be a commitment on the part of agencies of government and levels of government, elected and appointed, private industry, business, and commerce.

I am appalled as I go into some of the areas of, not only West Virginia, but any State, and see the almost utter disregard of the people. I use the word "garbage" once again. It is not a very romantic word, is it? And they sort of shy away from it, but it is something that must take its place with clean air and pure water and that means a wholesome environment from the standpoint of doing what we know we can do if we commit ourselves to it.

We are going to have problems with the budget and trouble with funding. But I would like to think what we did in 1976 was a clear pledge of the Congress to, and working with, people to do this job of solid waste disposal and resource recovery.

Will you help us in the hearings and the programs ahead?

Thank you all for coming.

[Whereupon, at 12:05 p.m., the subcommittee recessed, to reconvene subject to the call of the Chair.]

[Mr. Wingerter's prepared statement and a statement from the California State Department of Health follow:]



EUGENE J. WINGERTER
EXECUTIVE DIRECTOR

National Solid Wastes Management Association

1120 CONNECTICUT AVENUE, N.W. • SUITE 930 • WASHINGTON, D.C. 20036
TELEPHONE (202) 659-4613

Testimony

of

Eugene J. Wingarter
Executive Director

National Solid Wastes Management Association
1120 Connecticut Avenue, N.W., Suite 930
Washington, D. C. 20036

Public Hearing

on

Resource Conservation and Recovery Act of 1976

PL 94-580

before the

Subcommittee on Resource Protection

of the

Committee on Environment and Public Works
U.S. Senate
Washington, D. C.

March 20, 1978

- INSTITUTE OF WASTE TECHNOLOGY
 - CHEMICAL WASTE COMMITTEE
 - NATIONAL SANITARY LANDFILL COMMITTEE
 - RESOURCE RECOVERY COMMITTEE
- WASTE EQUIPMENT MANUFACTURERS INSTITUTE

Mr. Chairman and members of the Committee, my name is Eugene Wingerter, Executive Director of the National Solid Wastes Management Association. Our association represents the private waste management industry, with over 2000 members engaged in the transportation and disposal of solid wastes, resource recovery services, and chemical waste treatment and disposal.

The private sector of the waste management industry accounts for close to \$3 Billion in annual revenues. The industry has been credited with nearly half of all residential waste collection and 94 percent of all commercial and industrial waste collection. Some 10,000 private firms, operating in all fifty states and employing over 150,000 people, perform this vital environmental service.

It has been nearly a year and a half since Congress enacted the Resource Conservation and Recovery Act of 1976. We supported enactment of RCRA and continue to be actively involved in the law's implementation. As an Association we are contributing our recommendations to EPA in drafting regulations. And, our membership has continued to provide environmentally sound waste management and resource recovery services, which support the intent of the Act. We welcome the opportunity in these hearings to indicate how the implementation plan for RCRA can be refined to achieve the goals of this Act.

It is our interpretation that three goals were considered primary by the Congress in passing RCRA.

- (1) prohibition of open dumps,
- (2) Control of hazardous wastes, and
- (3) encouragement of resource recovery.

-2-

We will direct our comments to each of these three areas in turn.

Prohibition of Open Dumps

The first objective we identify in the law is, "prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health." (Section 1003 (3)). In principle, we support the initiative to eliminate open dumping. Only through enforcement of effective anti-pollution standards can environmentally-sound disposal sites be possible. The law requires EPA to establish criteria for classifying all sites as either "sanitary landfills" or "open dumps." The dumps must be closed or upgraded to meet the environmental criteria.

There is, however, a provision in Subtitle D which may have an adverse, though unintended, effect on obtaining the goal. Specifically, the section provides that state plans establish a compliance schedule for sites classified in the survey as "open dumps", not to exceed five years, but such a schedule may be established only if there is no alternative complying site which can be utilized.

Section 4005(c)...Each such plan shall establish, for any entity which demonstrates that it has considered other public or private alternatives for solid wastes management to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, in-

-3-

cluding an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed 5 years from the date of publication of the inventory under subsection (b)).

The law does not define the term "alternatives" but rather, in the proposed State Planning Guidelines, EPA asks the state, in each case, to determine if there is a complying alternative. The state may find itself in a difficult situation. For example, when two landfills in close proximity are surveyed, Site A may be determined to meet the landfill criteria while Site B fails because, in our example, it does not have adequate vegetation to fully prevent surface runoff. If there were no nearby site, the state would be empowered to establish requirements to improve the condition of the noncomplying site thereby making this site a useful and environmentally sound facility. As the law is written however, because Site A is in the vicinity, the state must assess whether Site A is "an alternative" under the law. If so, all the waste from Site B must be redirected to Site A.

We feel that a state, when it determines that a disposal site does not comply with the EPA criteria for purposes of the national survey, should determine how the site can be brought into compliance. If the site cannot be upgraded, it should be closed. The decision should be made on the basis of the condition of the site in question, and not on the existence of so-called alternatives, the availability of which would be extremely difficult to evaluate objectively.

-4-

A second problem relates to the inventory of open dumps that EPA is required to publish within one year after the landfill criteria are finalized. When the law was drafted, it was estimated that there were around 17,000 disposal sites in the nation. As EPA interprets the comprehensive definition of solid waste in the law, however, the landfill survey called for in Subtitle D may encompass as many as 100,000 sites, including the previously uncounted industrial pits, ponds, and lagoons. Despite the good intent of Congress and the efforts of EPA to complete the inventory within one year, the physical limitations of the states will inevitably cause delays. We believe the law should be amended to allow EPA and the states a reasonable time to prepare a complete and accurate inventory. Surely no purpose is served by a hasty evaluation in which some sites are ignored totally and the balance surveyed with varying degrees of scrutiny. EPA in its proposed State Planning Guidelines has recognized the need to phase the survey over several years, recommending that states set their own priorities. In order to comply with the language of the law, however, EPA intends to publish a partial inventory one year from finalization of the criteria, although the majority of sites will not have been surveyed.

Such a policy decision represents a serious problem if all sites within a given market area not surveyed within one year. If a site is classified as an open dump, it may be put on a compliance schedule, requiring remedial actions, such as monitoring wells or gas venting systems which are costly and will necessarily increase the disposal costs at that site. In other words, a situation will be created in which a disposer may choose between a facility which costs more to operate because it is complying with federal regulations and a site which

-5-

may have lower operating costs because it has not been surveyed and is therefore not on a compliance schedule. In effect, the government will be penalizing those facilities which are surveyed first by making them less competitive.

Congress recognized this problem by deferring the publication of the list of open dumps until the survey is completed. Since it is now clear that the survey cannot be completed in one year, Congress should act to prevent inequities that would result from piecemeal publication of the survey data. Instead, EPA, in its Annual Report to Congress, should be required to report only the status of the inventory, indicating in aggregate data the number of sites in each state inspected and the number placed on compliance schedules.

A further comment is in order regarding the compliance schedule required for an identified open dump under Section 4005(c). It is essential that EPA assure that states are enforcing this schedule. RCRA should be amended to require annually that states, to continue their eligibility for federal solid waste grants, certify their enforcement of actions indicated on compliance schedules.

Clearly, the inventory of land disposal sites is central to RCRA's goal of prohibiting open dumps. Violators of federal criteria are subject to citizen suits. States without plans to eliminate dumps cannot receive federal solid waste grants. It is imperative, therefore, that the inventory be an accurate and complete accounting of the inadequate disposal sites in the nation. For this reason, the criteria for a sanitary landfill must be specific and quantifiable, allowing as little discretion as possible to those conducting the survey. EPA's

-6-

general approach of developing measurable performance criteria represents a constructive method which will help to assure uniformity of results.

We are concerned that in some cases, EPA, in an attempt to achieve flexibility, has proposed criteria that will allow for varying interpretations in different areas. For example, a sanitary landfill is defined as a site which complies with state and local air quality standards. We have no objections to local governments developing their own standards, such as, example, a prohibition against odor emissions. We do not believe, however, that Congress intended that local standards be the basis for federal court actions.

Similarly, the proposed criteria specify that states shall adopt their own state standards as criteria for groundwater which is not a drinking-water supply. Groundwater standards may vary from state to state; many states do not have such standards at all. Consequently, one state may classify a site as a "dump" for an action that would be acceptable in another state. Certainly each state has the right to create its own standards -- but we feel that for a federal inventory to be consistent, the landfill criteria should be applied uniformly at each site. A list of open dumps should, for federal purposes, be measured against one yardstick.

Moreover, we believe that EPA can go further in meeting RCRA's requirement to coordinate the criteria with existing federal environmental legislation. For example, the safety criteria should reference the Occupational Safety and Health Act standards where they exist. Also, when the surface water criteria address non-point sources of pollution, the landfill should only be required to meet the water quality standards and provisions of the approved 208 plan.

-7-

To achieve the goal of assuring environmentally-sound disposal and recovery of wastes, Congress places great emphasis in Subtitle D on the mechanism of solid waste planning. We feel that the distinction should be clarified in the law between "planning" and "implementation" of solid waste activities. For example, Section 4002(a) requires EPA to publish guidelines for the identification of substate regions which are "appropriate units for planning regional solid waste management services:". However, under Section 4006(a), a governor must identify regions "appropriate for carrying out regional solid waste management." While the difference between "planning" and "carrying out" may seem minor, the discrepancy opens a door for misinterpretation of the intent of the law.

It makes sense for a region to develop a plan to assure that all solid waste within its boundaries will be collected and disposed of properly for the next 20 years. It does not follow, however, that the regions themselves will take over any of the management functions. While solid waste planning may be a reasonable task for a single regional agency, the actual management of solid waste is in reality a number of activities including collection, transfer, storage, disposal, hazardous waste control, and sludge management. In practice, these many activities are performed by different organizations, including private industry and government agencies at the state, regional, county and local levels. It is imperative that regional planning agencies not disrupt the existing institutional arrangements by taking over all solid waste management activities, but rather that such agencies incorporate these structures into their plans.

In summary, effective implementation of Subtitle D of RCRA requires that Congress make clear its intent with regard to the open-dump inventory, the landfill criteria and solid waste planning. Clarification of these issues now will help to avoid confusion as the law is carried out.

Hazardous Wastes

The second broad objective of RCRA is the intent to regulate hazardous wastes from the point of generation through transportation and storage to the ultimate recovery or disposal of the wastes. Implicit in the language of RCRA, specifically Section 1003(4), are two objectives. First, there should be adequate facilities available for the management of hazardous wastes generated throughout the country. Second, these facilities should be regulated so as to protect health and the environment. There are several areas in Subtitle C, the hazardous waste section of RCRA, which we feel need further attention in order to assure the most complete and effective regulation of hazardous wastes.

Interim State Authorization

Our first concern at this time is that control of hazardous wastes on a national basis will be inadequate under the guidelines for state hazardous waste programs as currently proposed by EPA under Section 3006. The law's objective is to regulate "the treatment, storage, transportation, and disposal of hazardous wastes which have adverse effects on health and the environment." (Section 1003 (4)) RCRA provides for states to administer this regulatory program, and EPA encourages states to apply for authorization. RCRA provides that states which cannot meet the requirements for full authorization of the hazardous waste management

-9-

program may be temporarily authorized, through October, 1980, if the state has in existence a "substantially equivalent" program on its books. Yet, EPA's proposed test for "substantial equivalency" is so minimal that we may find many states authorized to manage programs that do not meet the intent of the law.

The requirements for full authorization are strict:

- o The state must have published regulations identifying hazardous wastes and controlling generators, transporters, and the owners and operators of hazardous waste treatment, storage and disposal facilities.
- o A program to permit all hazardous waste facilities; both "on-site" (at the point of generation) and "off-site"
- o A waste tracking, or "manifest", system.
- o The authority to conduct inspections, take samples, and to institute enforcement proceedings against violators.

However, to receive interim authorization, EPA requires only that the state have the legislative authority to control either on-site or off-site disposal and that it prepare a plan identifying which sections of the full program are missing, and establishing a schedule for adopting those sections to bring the program into compliance within the two years. In other words, we may find states authorized on an interim

-10-

basis to administer the hazardous waste program with no control over on-site disposal; no control over generators, transporters, treaters, or storers; no waste tracking system; and no regulations defining what is a hazardous waste.

The lack of control over "on-site" facilities is critical. While many states have a program to permit off-site hazardous waste disposal, few have the authority currently to regulate on-site facilities. Yet 80 percent of the hazardous waste generated in this country is disposed of at the site where it is generated. In other words, a state could be granted authorization under the proposed regulations to administer a program which did not control the vast majority of the hazardous wastes generated.

While we support EPA's intent to encourage states to administer the hazardous waste program under Subtitle C, we feel that EPA should retain responsibility for those specific aspects of the program which the state has neither the legislative authority nor the resources to manage.

We recommend, therefore, that EPA grant partial interim authorization to states for those sections the state could effectively administer. For example, a state which has an effective permit and enforcement program could be enabled to administer that function. However, if the state did not have a manifest system, EPA would have the responsibility for that aspect of the program until the state could effectively manage their own program.

We realize that splitting the authority in any one state between the state and the federal government would require administrative coordination and additional paper work. But we find that alternative, with

-11-

all its drawbacks, to be preferable to a program in which certain vital elements of a full hazardous waste management program are simply abandoned until the state can incorporate the necessary mechanisms.

Through the partial authorization that we propose, the public would be assured the protection from hazardous wastes that Congress intended.

Financial Responsibility

Our second area of concern in the implementation of Subtitle C is the financial responsibility requirement for facility operators. A hazardous waste management program must assure that the public will be fully protected in the event of an unforeseen accident occurring as a result of hazardous waste disposal practices, either during operation of a site or after the site is closed. We believe a well-structured regulatory program is the first line of protection for the public against such accidents. But, should environmental damage occur despite all precautions, the public must be assured that the conditions will be corrected and all liabilities incurred by the public equitably resolved.

RCRA currently requires that EPA address, in its facility standard regulations under Section 3004, financial responsibility of owners and operators of hazardous waste disposal facilities. Any regulations developed under this mandate represent serious policy decisions. EPA should assure on one hand, that such regulations do not preclude the opportunity for private firms to participate in the program, while on the other hand, not compromise public liability protection.

EPA, in initial draft regulations, had focused on a private insurance pool to provide perpetual care liability protection for closed sites. After careful examination, it became clear that the private insurance

-12-

industry could not be required to provide such coverage nor was it possible for insurance companies to assure their own existence in perpetuity which the EPA regulations would have required. It is our opinion that the private insurance industry is not structured to provide the type of perpetual liability protection in a pooled arrangement as proposed by EPA.

Recognizing this situation, we are recommending that Congress consider a new approach to assuring the necessary liability protection to the public. Our approach is based on a Federal insurance program that would meet the requirements of RCRA and which would be patterned after existing federal insurance programs.

This Federal insurance approach would assure in perpetuity the existence of an adequate fund to meet any unforeseen events that could occur after sites are closed in accordance with the requirements of EPA. This concept is the only practical means of assuring adequate liability protection to the public for damages that may result either during the operating period and after site closure.

There are, however, several alternative means of establishing financial responsibility for assuring that sites will be properly closed and for the care and maintenance of sites after closure which are separate issues not directly related to the Federal insurance fund for public liability protection.

It is premature at this time to elaborate further on this new proposal. We will forward our recommendations in the near future to EPA and the Congress for consideration.

Non-Importation Bans

Our third concern relates to the movement of hazardous wastes between states for treatment and disposal. We believe this is necessary to assure development of the needed facilities.

Effective hazardous waste management includes a variety of costly treatment and disposal processes. It would not be economically feasible for a company to operate high technology hazardous waste treatment and disposal facilities if it could not obtain sufficient input of wastes. Furthermore, the requirements of industry for hazardous waste management do not justify establishing every type of facility within every state. For example, one site might specialize in disposal of inorganic wastes by neutralization or chemical stabilization. Another in an adjacent state might specialize in disposal of organic wastes by incineration and still another might develop a land disposal facility for solids or sludges. These kinds of specialized approaches can work only if the movement of hazardous waste across state lines is not forbidden.

There are also technical reasons why there should not be a ban on the interstate transport of wastes. The geology in some states makes land disposal environmentally difficult or impossible. Certain types of disposal, especially deep-well injection require geological formations that are available only in certain places. If states were not allowed to export or import wastes across state borders, in many cases they would simply not be able to avail themselves of these necessary processes.

-14-

EPA has generally supported the position that states should not be allowed to inhibit the movement of wastes into or through their jurisdictions. We believe, however, they have compromised this position unwisely. Under their proposed regulations, EPA would grant authorization to administer the hazardous waste program to those states with existing legislative hazardous waste importation bans through 1984. We object to this because in this critical six-year period, the industry will be transformed from its present unregulated condition to that of a regulated service industry. Widespread importation bans would prevent the orderly development of an economically and environmentally sound hazardous waste service industry. Several states are currently considering legislative initiatives which would prohibit the importation of wastes. If EPA's regulations were promulgated as proposed, states would not be constrained from enacting this kind of legislation.

As an additional consideration to facilitate the interstate movement of hazardous wastes, we believe the manifest system required by RCRA must have some uniformity among the states. Certain minimum information should be presented in a uniform format for every state. Individual states, however, may wish to require a generator of hazardous wastes to provide supplementary information.

A third issue of concern is the requirement that EPA integrate provisions of RCRA with other environmental control acts for purposes of administration and enforcement. EPA seems to have ignored this requirement when preparing the draft hazardous waste management regulations, particularly with regard to the Clean Air Act.

-15-

The Clean Air Act requires EPA to promulgate ambient air quality standards for certain air pollutants and provides strict procedures which must be followed when setting those standards. Additionally, the Clean Air Act requires EPA to promulgate emission standards for certain hazardous air pollutants.

Under the draft regulations that would implement Section 3004 of Subtitle C of RCRA, EPA would create ambient air standards for over 350 air pollutants, using OSHA standards as a basis. We object to this for the following reasons:

1. This would create ambient air quality standards without following the procedures required by Congress under the Clean Air Act.
2. This requirement is discriminatory against the waste management industry since similar requirements are not proposed for any other industry.
3. The monitoring process described in the proposed regulations is totally ineffectual.

The industry proposes that EPA mandate that hazardous waste management facilities comply with all provisions of the Clean Air Act and the regulations promulgated to implement it. If additional materials are determined to need regulation, either as air pollutants or hazardous air pollutants, those regulations should be promulgated under the Clean Air Act, and they should become applicable to all industries.

In summary, we believe that in Subtitle C of RCRA, Congress has created a mechanism which can, for the first time, control management of haz-

-16-

In summary, we believe that in Subtitle C of RCRA, Congress has created a mechanism which can, for the first time, control management of hazardous wastes. We urge Congress and the EPA to take advantage of the current rule-making period to promulgate regulations which support the intent of the law. The hazardous waste management industry must continue to expand to meet the demands of this new material policy. Let us insure that the needed hazardous waste treatment and disposal facilities are established in the next few years and that the regulations governing them are adequate to protect our environment.

Resource Conservation and Recovery

The third and final objective of RCRA which we have identified today is the encouragement of resource conservation and recovery.

This objective is promoted largely through the Resource Conservation Committee created by Section 8002(j) of RCRA, which is charged by Congress with an investigation of economic, social and environmental consequences of environmental conservation. The committee is evaluating such possible incentives as charges on consumer products which would reflect the cost of solid waste management services, litter pick-up, value of recoverable materials, final disposal and social values of nonrecycling.

The committee is currently studying the product disposal charge concept and is expected to make recommendations to Congress later this year. Although the law indicates the purpose of product disposal charges would be specifically aimed at resource conservation, EPA is downplaying that

-17-

function. Instead, EPA officials have stated recently that the real significance of product disposal charges is to generate enough revenues to turn back to communities to support resource recovery initiatives.

We oppose the use of product charges for this purpose and feel that such subsidies violate the intent of Congress.

It is clear that in RCRA, as well as in its predecessors, the Solid Waste Disposal Act of 1965 and the Resource Recovery Act of 1970, Congress chose not to subsidize construction of resource recovery projects. Congress and the public have felt that resource recovery facilities should be paid for by those who would benefit directly from the facilities. We have always supported that philosophy. To accomplish the goals of resource recovery, there is no need for either direct grants or more oblique subsidies through product disposal charges. The vast majority of projects underway, in fact, are relying on private financing through revenue bonds. The use of private capital appears to be a successful mechanism; the projects which are well-designed and economically feasible will be financed while less well planned high-risk projects will not attract private capital. Therefore, we feel that federal subsidies for resource recovery projects would distort the economic picture and serve only to prop up projects which may not be self-sufficient in the long run. The federal government in such situations would be in the unfortunate position of having to extend subsidies or watch the projects fail.

We believe any massive federal program to subsidize resource recovery with funds generated through product disposal charges would be an

-18-

unsound and uneconomic approach. The only check and balance system we have to assure sound resource recovery programs is the ability of a project to stand the test of financial scrutiny.

We have today addressed many major issues related to the implementation of the Resource Conservation and Recovery Act of 1976. We support specific definitions of a "sanitary landfill" and a reasonable timetable for the "open-dump" survey. We propose that states be authorized to administer the entire hazardous waste program, only when they have the resources to manage all elements, and believe states with laws banning importation of waste should not be authorized. We request that Congress investigate a new Federal insurance liability fund approach to assuring perpetual protection of the public for hazardous waste facilities. Finally, we urge that product disposal charges not be used as a means for subsidizing resource recovery systems.

We appreciate the opportunity of presenting our views today. Thank you.

DEPARTMENT OF HEALTH

714-744 P STREET
SACRAMENTO, CALIFORNIA 95814

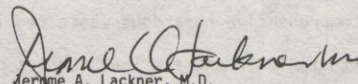
March 16, 1978

Honorable John C. Culver, Chairman
Resource Protection Subcommittee
Senate Environment and Public Works
The United States Senate
Washington, D.C. 20510

Dear Senator Culver:

It is our understanding that the Resource Protection Subcommittee held oversight hearings on the Resource Conservation and Recovery Act of 1976 on February 28, 1978. The Department of Health is responsible for the regulation of hazardous wastes in California and we have a major interest in the provisions of the Act which relate to hazardous wastes. I regret that the enclosed statement was not prepared in time for the hearing itself; however, I hope that the statement can be included in the record of the hearing and will receive the consideration of the Subcommittee. The statement contains five recommendations in their order of importance directed at certain provisions of the Act. The implementation of these recommendations will result in improved programs for the control of hazardous wastes.

Sincerely,


Jerome A. Lackner, M.D.
Director of Health

Enclosure

cc: James Tozzi, Chief
Environmental Branch
Natural Resources Division
Office of Management and Budget
Washington, D.C. 20503

Terry Grasso, Director
Waste Management Project
National Governors' Conference
Hall of The States, 444 North
Capitol Street
Washington, D.C. 20001

Jay Snow, Chairman
Hazardous Waste Task Force
Texas Water Quality Control Board
P.O. Box 13246, Capitol Station
Austin, Texas 78711

OVERSIGHT HEARINGS ON THE RESOURCE CONSERVATION
AND RECOVERY ACT OF 1976 -- STATEMENT BY THE
CALIFORNIA STATE DEPARTMENT OF HEALTH TO
THE RESOURCE PROTECTION SUBCOMMITTEE,
SENATE ENVIRONMENT AND PUBLIC WORKS COMMITTEE

The California State Department of Health has had the responsibility under State law for the regulation of hazardous wastes since 1972. We have undertaken the development of a program, supported to a large extent by federal grant funds, which we believe when fully implemented will meet the objectives and requirements of Subtitle C, PL 94-580. In 1977, the California legislature passed, and Governor Brown signed, legislation authored by Assemblyman Bill Lockyer and Senator John Nejedly which provided the specific authority necessary to bring the California hazardous waste program into full compliance with the provisions of the Resource Conservation and Recovery Act (RCRA). Also in 1977, comprehensive hazardous waste regulations were adopted by the Department of Health to implement the law. Copies of the law and regulations are attached.

The U.S. Environmental Protection Agency (EPA) has been given a very difficult task in developing the criteria and standards for a new waste management field in a relatively short period of time. In carrying out this work, the EPA has done an excellent job in maintaining open communications with us and in providing draft regulations and background documents for our review. We have had ample opportunity to comment on the regulations in the various stages of development and have made full use of these opportunities. For the most part, EPA has been responsive to our recommendations when we have presented a strong and logical case. With a few significant exceptions, we are in agreement with

the direction and content of standards that EPA has drafted pursuant to Subtitle C of RCRA. It appears that EPA has relied on California's program and experience in the development of the standards.

From the viewpoint of health and environmental protection, the greatest need in solid waste management lies in the effective control of hazardous wastes. The law recognizes this in the congressional findings and in the much greater detail given to hazardous waste management in the law. EPA, in several recent draft documents*, has indicated that increased program and funding priority will be given to Subtitle C activities. The emphasis on hazardous waste management during this initial period of program development is entirely appropriate and proper and has our full support.

In a matter as complex as the development of an entire regulatory program for hazardous wastes, there are bound to be many major and minor differences regarding the provisions of the Act and the direction being taken in its implementation. We offer five recommendations relative to the Federal Act which we believe are most important to improving the effectiveness of hazardous waste management.

1. Hazardous waste plans and programs should be coordinated with but separate from those of general solid waste. Hazardous waste management should be

*Strategy for the Implementation of the Resource Conservation and Recovery Act of 1976, December 5, 1977. Draft FY 79/80 Agency Guidance

more closely allied to the Underground Injection Control Program (PL 93-523) and the Water Pollution Control Program (PL 94-500).

Hazardous wastes for the most part are liquid industrial wastes with certain hazardous properties. There are much closer ties in treatment technology, resource recovery, control procedures and management practices between hazardous wastes and the industrial waste streams regulated pursuant to PL 92-500 and PL 93-523 than there are between hazardous wastes and municipal or industrial refuse. The Act certainly recognizes the separate control needs of hazardous wastes and EPA has clearly separated the planning and program in several ways. Guidance documents for State Grant development from EPA have presented separate and different agenda for the solid waste and hazardous waste program. The draft of guidelines for State Solid Waste Management Planning is clearly directed at general solid wastes and not hazardous wastes. The Proposed Classification Criteria for Solid Waste Disposal Facilities (Federal Register, February 6, 1978, Part II) state that the Criteria apply to all solid waste disposal facilities except facilities for the disposal of hazardous wastes. Where there has not been a clear identification of hazardous waste versus solid waste, confusion has resulted. For example, Subtitle D of the Act generally uses the term "solid waste" in discussing plans except that Section 4005(c) specifies that the open dumping of solid waste or hazardous waste is prohibited. The issue is further clouded inasmuch as the criteria for the classification of solid waste disposal facilities which defines acceptable (landfill) and unacceptable (open dump) operations excludes hazardous waste facilities.

There are major advantages in program efficiency and economy through the common use of technology, controls, and management practices which are required in hazardous waste program activities and the closely allied water pollution control and injection control programs. Similarly, there would be major disadvantages in forcing an uncomfortable unity of the disparate parts of hazardous waste and general solid waste management programs.

We recommend that the definition of hazardous waste in the Act be separate from the definition of solid waste. Hazardous waste should not be a subset of solid waste. Further, language should be included in the law which would encourage close coordination in the management, control and technology exchange among the programs of hazardous waste management, injection control and water pollution control. Additional language should be provided which would specifically acknowledge the need for coordination but reasonable separation of the hazardous waste and general solid waste planning and program activities where the needs of the programs are not substantially similar.

2. Amend the law to authorize federal funding beyond 1979 and increase the funding level.

Over half of California's hazardous waste program is supported by federal funds. This year, over ten positions in our program are supported by the RCRA Grant. With this federal backing, California has developed the elements of an effective State control program which will accomplish the objectives of RCRA for hazardous

waste control after full program implementation. The next several years will be particularly critical to the program's long-term acceptance and effectiveness. The lack of any firm assurance of federal funding in RCRA beyond FY 79 is very disruptive to program planning and is not conducive to obtaining and retaining the highly qualified personnel which the program demands. The possible cancellation of federally supported activities, even for a brief period, would not only slow the program in its formative period but would result in a total inability to carry out an effective enforcement activity. The resultant loss of credibility would be very difficult to overcome. If it is the intent of Congress to continue the federal support of hazardous waste control, it is essential that the Act be amended this year to specify continued federal funding beyond 1979.

In the next few years, the hazardous waste programs of the States will progress from the program development stage to full program implementation. The staffing needs will change from the relatively small staff needs of a program development unit to the much greater staffing requirements for effective permitting, surveillance and enforcement activities. In order to provide for the effective implementation of Subtitle C of RCRA, Congress should authorize the appropriation of funds above the level of \$25,000,000 authorized for FY 1978 and 1979.

Although Congress had authorized \$25,000,000 for assistance to the States in the development and implementation of authorized State hazardous waste programs,

the total support received by California for the hazardous waste program under RCRA for fiscal year 1978 is \$360,000. Without very substantial funding from other sources we would not be able to carry out essential program development functions and this low level of support would be totally inadequate to assist us in full program implementation. It appears that federal assistance may improve in FY 1979; however, it is essential for subsequent years that the full amount authorized by Congress be appropriated to assist the States.

3. Provide flexibility in RCRA standards or in their application.

There is a need in hazardous waste management for a wide range of facilities -- from the complex, regional facility which can receive virtually every type of hazardous waste to the small "on-site" facility where a company may only handle a single hazardous waste stream. The uniform application of comprehensive, rigorous and costly minimum standards to all facilities may result in the forced closure of many small operations which serve a useful purpose and which provide ample protection of health and the environment.

In this regard, there has been a concept used in the development of regulations of Subsection C including those for 3004 which is disturbing. The proposed standards for owners and operators of treatment, storage and disposal facilities appear to have been developed with a certain type of facility in mind, that is, a major regional off-site hazardous waste facility of significant proportions which receives a wide variety of wastes. As presently envisioned all facilities

would have to meet all the numerous mandatory standards and this would result in a few small hazardous waste operations. We believe that there must be some flexibility in the standards or in their application based on a consideration of the nature of the operation, the wastes, the environmental setting, and other possible mitigating circumstances so that small, single purpose facilities are not closed down solely due to the burden of record-keeping, insurance requirements, monitoring, or the need to comply with other requirements which may not be appropriate. To do otherwise would unduely penalize industry, would result in greater public costs and would not be in the best interests of effective hazardous waste management.

Either through an amendment to the law or through administrative means, some flexibility should be incorporated into the standards developed under RCRA to provide necessary and appropriate controls and avoid unnecessary ones.

4. The purpose and use of the manifest system, Sec.3002(5), should be expanded.

Section 3002(5) of RCRA calls for standards which establish requirements regarding the "use of a manifest system to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in treatment, storage or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued . . ."

A key element in the manifest system is the manifest document. EPA has proposed a national manifest document which could meet the needs of the Act

in tracking wastes; however, by requiring somewhat more specific information on waste characterization as is required on the California manifest (i.e., specific chemical constituents and concentrations) the manifest would be useful: (1) in assuring that the proper emergency responses would be taken in the case of an accidental spill; (2) in providing information to hazardous waste facility operators which would prevent many of the accidents which result from the handling of inadequately identified wastes; and (3) in developing effective resource recovery programs. It is recommended that the identified uses of the manifest system in Section 3002(5) be broadened to include the use of a system to provide information to assist in emergency responses to spills, proper handling of the hazardous waste, and resource recovery.

5. Tie interim authorization to the actual promulgation of regulations.

It is our understanding that there may be some delay in the promulgation of hazardous waste regulations beyond the deadlines given in the law. The provision for interim authorization for a State hazardous waste program, Section 3006(c), has fixed dates. If the regulations are delayed substantially, the date on which the State may request and receive a temporary authorization may preceed the regulations. There would be no basis for submitting evidence and making a determination that the State program is substantially equivalent to the Federal program. The dates for interim authorization should be tied to the dates of actual promulgation of regulations rather than being fixed in time.

○

