

ETHICS

→ VF - LEG. REFORM

League of Women Voters of Alaska

May 4, 1981

On April 25, 1981, a workshop entitled, "Strengthening the Legislative Process" was held in Juneau. The workshop was funded by the Legislative Council and conducted by the League of Women Voters of Alaska. Addressing the workshop participants were Jack Doyle, former executive director of the Legislative Affairs Agency in Alaska; Senator David Nething, North Dakota state legislature; Senator George Kinley, Iowa state legislature and chairman of the Legislative Management Committee of the National Conference of State Legislatures; Paul Mason, author of Mason's Manual of Legislative Procedure, and Senator Kay Poland, former member of the Alaska legislature. Participating in the workshop throughout the day were 25 Alaskan legislators, 14 legislative staff members, 3 lobbyists, 2 members of the Anchorage FREE committee, 1 member of Common Sense for Alaska, 4 members of the League of Women Voters of Juneau. In addition, there were 6 student assistants and 7 League of Women Voters of Alaska facilitators.

After using a process of group discussion and prioritizing, the following statements resulted. These are not to be confused with positions of the League of Women Voters of Alaska.

1. Combining the top recommendations for free conference committee changes, a new rule would include these items:

- * Conference committees must be appointed first. They may ask for specific powers from the presiding officer. If there is no agreement, then free conference powers could be granted to six new members.
- * 24 hours must elapse, with the new bill on members' desks accompanied by a summary of the changes, before a vote is taken.
- * Powers of free conference might be limited to certain stated subjects.

2. Many participants felt the existing rule allowing introduction of only committee bills after the 35th day of the second session is a satisfactory practice. Almost as many felt a majority vote of the committee should be required before a bill is introduced in its name.

3. Participants were nearly unanimous in agreeing that the "no recommendation" option should remain on committee report forms.

4. Participants felt comfortable with the existing system of allowing special committees to meet jointly.

5. An overwhelming majority believed adequate record-keeping requirements should exist.

6. Participants agreed unanimously that committee procedures should include the following:

- * Uniform logging and recording of arrival and departure of committee members.
- * Roll call of all motions.
- * All amendments recorded in the minutes.
- * Testimony summarized in the minutes, in addition to a taped record.
- * 5-day notice in advance of meetings.
(This provision could be waived only by a majority vote of the committee.)

7. Pertaining to a committee's acting on all bills referred to it, a majority of participants felt there should be specific time restraints on the entire process of referring, acting and reporting on bills. A majority also thought that a committee's composition should reflect the majority/minority proportion in the respective houses. A significant number, however, felt that the situation which currently exists is not a problem.

8. A majority of participants thought the present rule requiring a committee to act and report on all bills referred to it "as soon as practicable" should be rewritten to reflect the current or preferred practice.

9. An overwhelming majority agreed a salary scale is needed for staff based on qualifications, experience and job description.

10. There was a strong consensus for giving each legislator a staff and an expense budget. In this staffing method, the legislator would make all decisions pertaining to staff, similar to the practice in the United States Congress.

11. Recommendations on interim committees included the following:

- * A close relationship between standing committees and interim committees. At least a majority of the interim committee should be from the appropriate standing committee.
- * Clear interim committee goals (planning, general education of members on the subject, drafting and introducing legislation).
- * Utilization of standing committee staff on the related interim committee.
- * Establishment of interim committees by concurrent resolution.

Sharon Richards
Project Coordinator
2306 Douglas Drive
Anchorage, Alaska 99503

NOTE REGARDING THE FOLLOWING FRAME ON MICROFILM:

COMPLETE DOCUMENT IS AVAILABLE IN ORIGINAL FILES
IN ALASKA STATE ARCHIVES. TITLE PAGE ONLY HAS
BEEN FILMED.

**Model State
Campaign Finance Law**

National Municipal League
47 East 68th Street
New York, New York 10021

STATE OF ALASKA

ALASKA PUBLIC OFFICES COMMISSION

JAY S. HAMMOND, GOVERNOR

REPLY TO:

- ☒ 610 C STREET, SUITE 211
ANCHORAGE, ALASKA 99501-3598
(907) 276-4176
- ☐ JUNEAU BRANCH OFFICE
POUCH CO
JUNEAU, ALASKA 99811-0222
(907) 465-4864

October 27, 1981

The Honorable Vic Fischer
511 West 4th Avenue, Suite 5
Anchorage, Alaska 99501

Dear Senator Fischer:

Thank you for the interest you expressed in the annual meeting of the Council on Governmental Ethics Laws to be held December 7 - 9, 1981, in Charleston, South Carolina. I was unable to send you any of the enclosed information sooner because we received it ourselves only last week.

In light of your interest in ethics legislation, I also have enclosed a letter from the South Carolina State Ethics Commission which offers a comparative analysis of ethics laws. I ordered a copy for the APOC sometime ago, but since it has not arrived, I can't say whether it lives up to its promise as a reference document or not. As you know, at one time SB 175 attempted to incorporate portions of the Ethics Model from the National Municipal League, although my understanding is that some of the individuals who worked on the draft of 175 had questions about the League's model for which they didn't find satisfactory answers.

The fact that South Carolina has not ratified the ERA was discussed at last year's annual meeting when it came time to make a final site selection. Some members of the Council voiced the concern that you expressed but the majority felt that the ERA status of a site should not be given consideration in the decision of an organization whose members must be a-political in their day-to-day functioning.

After the first of the year, I will let you know about any reference materials which become available as a result of the Charleston meeting.

Sincerely,

ALASKA PUBLIC OFFICES COMMISSION



THEDA S. PITTMAN
Executive Director

TSP/nab

enclosures

CONFERENCE REGISTRATION FORM

THE PUBLIC OFFICIAL AND THE PUBLIC TRUST

December 7th thru 9th
Charleston, SC

NAME & TITLE: _____

ORGANIZATION: _____

ADDRESS: _____

* * * * *

REGISTRATION FEE: (check one)

☐ Council Member: \$30.00 per individual registrant

☐ Non-Member: \$60.00 per individual registrant

Complete the above portion and mail it together with your payment
by November 30th to:

Dannie Trautwein, Treasurer
Council on Governmental Ethics Laws
P. O. Box 95086
Lincoln, NE 68509

If payment cannot be made by November 30th or if your agency has
special billing procedures, please contact Dannie Trautwein, either
at the above mailing address or by calling area code (402) 471-2524.

*Make checks payable to "Council on Governmental Ethics Laws."
Receipts will be sent upon payment.

COUNCIL ON GOVERNMENTAL ETHICS LAWS

Steering Committee:

Please reply to:

OCT 20 1981

OCT 26 1981

Melvin G. Cooper
Alabama Ethics
Commission

Jean-Marc Hamel
Chief Electoral
Officer of Canada

Shari Holmes
Alaska Public Offices
Commission

Betty J. Reynolds
Oregon Government
Ethics Commission

Robert W. Shellenberg
Florida Commission
on Ethics

Robert Stern (Chairperson)
California Fair Political
Practices Commission

Dannie Trautwein
Nebraska Accountability
and Disclosure Commission

J. Jackson Walter
U.S. Office of Government
Ethics

Dear Council Member:

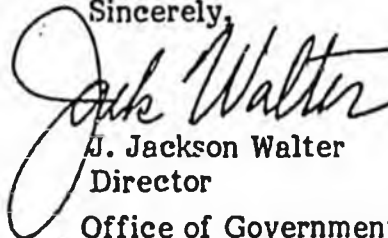
APOC-ANCH
PM HC

Mel Cooper from Alabama and Bob Schellenberg from Florida, who have arranged the program for the Charleston Conference of the Council on Governmental Ethics Laws, asked me to assist them in securing better attendance at our Conference. We have a program that should be of particular interest to members of your Commission and want to ask you to extend a special invitation to each of them to participate. In addition to that, you might want to give each of them a copy of the Conference information that you received from Bob Stern and to emphasize that other Commission members will be there and that there will be ample opportunity for discussing mutual problems and concerns.

I have enclosed a revised version of the Conference schedule; the one that Bob Stern sent you didn't do complete justice to the outstanding job done by Mel and Bob in arranging our Conference. Please note the additions to the list of speakers: Governor Richard Riley of South Carolina, Major Joseph Riley of Charleston, former Ambassador and Governor Reubin Askew of Florida, Commissioner Frank Reiche of the Federal Election Commission, and David Cohen, former President of Common Cause. This truly is an "all-star" line-up.

From here on, it is up to you. Mel and Bob have arranged a superb program but its real success will be only as good as the "selling job" you do to your Commission members. I personally believe it is important to the Council that this year's Conference be a great success, that our program will be first-rate, and that you and the members of your Commission will find your participation to be most worthwhile.

Sincerely,



J. Jackson Walter
Director

Office of Government Ethics

Enclosure

**Council on Governmental Ethics Laws
Preliminary Conference Program (10/20/81)**

December 6-9, 1981
Mills House Hotel
Charleston, South Carolina

"IS POLITICAL REFORM DEAD?"

Sunday, December 6, 1981

6:00 - 7:00 p.m. **Reception**

Monday, December 7, 1981

9:00 - 9:30 a.m. **Opening Remarks and Greetings**
Governor Richard W. Riley, South Carolina
Mayor Joseph Riley, Charleston
Robert Stern, Chairperson, Council on Governmental
Ethics Laws

9:30 a.m. - 12 noon **"Political Reform Laws: Milestones or Millstones? A Debate"**
David Cohen, former President, Common Cause
Frank Reiche, Member, Federal Election Commission
- - - -
- - - -

12:15 - 1:45 p.m. **Luncheon**
Honorable Howell Heflin, Vice Chairman,
Select Committee on Ethics, U.S. Senate

2:00 - 3:00 p.m. **Seminar Discussions**
(discussion leaders to include Melvin G. Cooper, Alabama
Ethics Commission; Robert W. Schellenberg, Florida
Commission on Ethics; J. Jackson Walter, United States
Office of Government Ethics)

3:15 - 4:15 p.m. **Seminar Reports and General Discussion**

Tuesday, December 8, 1981

	<u>Ethics, Conflict of Interests</u>	<u>Campaign Finance</u>
9:00 - 10:15 a.m.	"CASE STUDIES IN ETHICS" Dr. John Dempsey College of Charleston	"UPDATE ON LITIGATION AND LEGISLATION" Tom Houston Jim Davis California FPPC
10:30 - 11:45 a.m.	"UPDATE ON LITIGATION AND LEGISLATION" Rosa Hamlett Assistant Attorney General Alabama	"CAMPAIGN FINANCE IN SELECTED COUNTRIES" Dr. K. Z. Palteil Carleton University, Ottawa

12:00 Noon - 1:30 p.m. Luncheon

Honorable Reubin O'D. Askew
Former United States Trade Representative
and Governor of Florida

1:45 - 2:45 p.m.

"CODES OF ETHICS IN
STATE GOVERNMENT"
Dr. Stephen Hays
University of South Carolina

"PUBLIC FINANCING IN
SELECTED STATES"
Ed Farrell, Counsel
New Jersey Election
Law Enforcement Commission

3:00 - 3:30 p.m.

Question and Answer Session

3:30 - 4:30 p.m.

Council Business Session

Wednesday, December 9, 1981

9:00 - 11:00 a.m.

"THE IMPACT OF POLITICAL ACTION COMMITTEES
ON THE GOVERNMENTAL PROCESS"

Howard Vaughn
Vice President, Liberty National Life Insurance Company
and PAC Secretary
Edward Roeder
Washington, journalist and author of PACS AMERICANA
(S.C. Legislator)

11:00 - 12:00 Noon

Question and Answer Session

COMMISSIONERS
W. JACK GREER, 4TH DISTRICT
Chairman
JOHN M. TRASK, JR., 1ST DISTRICT
DR. L. COWANS, 2ND DISTRICT
JACK GI



COMMISSIONERS
DR. D.H. DANIEL, 3RD DISTRICT
FRANCES M. DANIEL, 5TH DISTRICT
ALLEN RAY, 6TH DISTRICT

State of South Carolina

GARY R. BAKER
EXECUTIVE DIRECTOR

State Ethics Commission

(803) 758-7408
Rembert Dennis Bldg., Ste. 545
1000 Assembly Street
Columbia, S.C. 29201

September 1, 1981

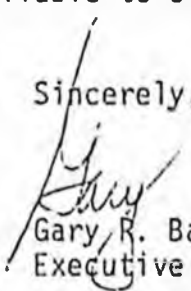
Ms. Shari Holmes
Alaska Public Offices Commission
610 C Street, Ste. 211
Anchorage, AK 99501

Dear Shari:

I have just received your latest newsletter. I was hoping to include another item in it but you were faster at publishing than I was in contacting you.

We have recently completed publications of State of South Carolina State Ethics Act: A Comparative Analysis. The publication was put together by the staff of the South Carolina Ethics Commission as a research aid for the staff and commission. This publication compares other states' statutes with each section of the South Carolina Ethics Act. Each code section of the South Carolina Act is listed separately, followed by similar or same code sections from other states. In addition, the Model State Statutes of the National Municipal League are also included. Copies can be made available to other agencies at cost, plus postage, approximately \$10.00.

Sincerely,


Gary R. Baker
Executive Director

GRB:1h1

26 October 1981

TO: SENATOR FISCHER
FROM: GINGER BAIM
RE: SOME CONSIDERATIONS FOR ETHICS TELECONFERENCE

ETHIC - 1. the discipline dealing with what is good and bad and with moral duty and obligation 2. a set of moral principles or values, a theory or system of moral values, the principles of conduct governing an individual or group.

ETHICAL - 1. of or relating to ethics 2. conforming to accepted professional standards of conduct

ETHICS - (Roget's Thesaurus) The Science of Morals

MORAL - 1. (a) of or relating to principles of right and wrong in behavior: ETHICAL (judgement) (b) expressing or teaching a conception of right behavior (c) conforming to a standard of right behavior (d) sanctioned by or operative on one's conscience or ethical judgment (e) capable of right and wrong action 2. probable though not proved 3. of, relating to or acting on the mind, character, or will.

SYN - MORAL, ETHICAL VIRTUOUS, RIGHTEOUS, NOBLE shared meaning element: conforming to a standard of what is right and good

MORAL PHILOSOPHY n: ETHICS; also: the study of human conduct and values.

- 1) What is the dividing line between "ethical" considerations and personal moral values?
- 2) What public employees, departments and agencies fall under Ethics Legislation? Which ones don't and why?
- 3) Can we set ethical standards (read moral values) from a secular base?
- 4) What are the penalties for ethical violations and why can't they be administered through the law in the manner that criminal violations having ethical overtones are currently channeled? (I.E. illegal kickbacks and/or campaign contributions, bribes, and contracting violations that result in actual embezzlement)
- 5) What is the public's perception of ethics and ethical behavior?
- 6) What is "right" behavior, who determines it and who enforces it?
- 7) Can there be one set of ethics or moral values for an individual and another set for groups? (If not why is it "ethical" for society to kill as in administering the death sentence and not "ethical" for an individual to kill)?
- 8) With ethics and ethical considerations be extended to persons in the scientific and medical professions and what protection can the state offer to individual and groups expressing their ethical beliefs? (over)

**D
I
S
C
O
N
F
L
I
C
T
I
N
S
U
R
E
O
F
I
N
T
E
R
E
S
T
A
L**

A MODEL STATE LAW

KF
4568
•N37

National Municipal League

CONTENTS

Foreword	v
Introduction	ix
Section 1. Short Title	1
Section 2. Legislative Findings and Statement of Policy	1
Section 3. Definitions. As Used in the Act	2
Section 4. State Ethics Commission; Establishment Membership, Executive Director; Offices	5
Section 5. State Ethics Commission; Powers and Duties	9
Section 6. State Ethics Commission; Complaints; Hearings; Dispositions; Judicial Review	10
Section 7. State Ethics Commission; Advisory Opinions	13
Section 8. State Ethics Commission; Modification of Reporting Requirements	14
Section 9. Financial Disclosure; Filing Requirements	15
Section 10. Financial Disclosure Statements; Contents	17
Section 11. Conflicts of Interest; Prohibitions	24
Section 12. Conflicts of Interest; Legislature	26
Section 13. Government Contracts; Prohibitions	27
Section 14. Conflicts of Interest; Employment	29
Section 15. Conflicts of Interest; Avoidance	29
Section 16. Conflicts of Interest; Reporting	30
Section 17. Conflicts of Interest; Member of State Legislature; Reporting	31
Section 18. State Officials or Employees; Making and Acceptance of Gifts	32
Section 19. State Officials or Employees; Disclosure of Information	32
Section 20. State Officials or Employees; Limitation on Representation	33
Section 21. Criminal Prosecution; Penalties	34
Section 22. Civil Action; Injunctive Relief; Civil Penalties	36
Section 23. Citizen Action	38
Section 24. Civil Action; Generally	39
Section 25. Violations; Employment Discipline	41
Section 26. Severability	42
Section 27. Effective Date	42
National Municipal League Ethics Project Committee	42
Advisory Committee 1975-1978	44

79-89590

ague

by Sowers Printing Company

FOREWORD

That "public office is a public trust" has always been a basic principle underlying the National Municipal League's programs to make state and local government more responsive and responsible, efficient and effective. Its special interest in ethics was initiated by William W. Scranton in 1970 while he was League president. In its preliminary stages ethics was considered as an adjunct to the Election Systems Project (1971-1973) because financial disclosure requirements for candidates and regulations governing campaign finance are integral parts of comprehensive election legislation.

The public disillusionment with government generally caused by a number of scandals involving officials at all levels of government prompted the enactment in the early 1970s of an unprecedented number of new statutes, broadly described as ethics legislation. The administration of these statutes was uncharted territory to a substantial extent. Since 1976, the League has been able through its Ethics Project not only to assist in an exchange of information among those with official responsibilities in this field but also to serve as a forum for the evaluation of existing statutes, the case law developed as the statutes have been adjudicated, and proposals for further legislation. In a very real sense the League has been the instrumentality for "reforming reform," and thus guiding an effort to make refinements to assure that today's reform will not be tomorrow's problem, as it sometimes the case when measures are not reappraised after they are in operation. The *Model State Conflict of Interest and Financial Disclosure Law* is presented to provide such guidance.

The League is indebted to The George Gund Foundation of Cleveland for

a series of grants which provided the basic financial support for the project, which included preparation of this model statute.

The League is also indebted to Mark S. Matthews of Greenwich, Connecticut, a former member of the Council, for financing the preliminary stages of the project which led to the publication of the *Preliminary Bibliography on Conflict of Interest and Personal Ethics in Government and Ethics in Government: Selected Statutes and Reports*.

Barbara Rawson, who chaired the League's Ethics Project Committee, provided constant assistance to the project staff. She brought to the undertaking not only a longtime concern that state and local government be worthy of citizen trust because of its competence and integrity, but also the special experience gained as an early chairman of the Ohio Ethics Commission as that body launched a statewide program to administer newly enacted legislation.

The members of the League committee made invaluable contributions to the development of the model. The committee deliberations held in connection with the annual National Conference on Government, as well as comments received from members, shaped the basic policy thrust of the *Model*. Although some members expressed reservations with regard to detail, the committee as a whole gave approval.

Members of the special Advisory Committee composed of persons with official responsibilities for the administration of conflict of interest, financial disclosure and campaign finance laws gave the model the benefit of their experience in dealing with the delicate issues involved in enforcing rules and regulations designed to maintain high ethical standards. (The rosters of the committees appear at the end of this volume.)

Frank P. Grad, professor of law and director of the Legislative Drafting Research Fund, Columbia University, not only prepared the draft of the *Model* but also was of enormous assistance in the deliberations of the League committee and in the preparation of the commentary which accompanies the legal text.

In addition to her participation as a member of the Advisory Committee, Barbara Snethen, former executive director of the Iowa Campaign Finance Disclosure Commission, provided special assistance in analyzing financial disclosure requirements.

Page Elizabeth Bigelow, League staff associate, directed the research effort for the project, prepared the detailed specifications for the model for review by the committee, and revised them for the guidance of the draftsman. She also prepared the analytical commentary.

Acknowledgement is also made of the assistance provided by League staff members: William J. D. Boyd, former assistant director, Debra J. Collins,

c financial support for the project, statute.

Matthews of Greenwich, Connecticut, financing the preliminary stages of the *Preliminary Bibliography on Government and Ethics in* its.

ague's Ethics Project Committee, staff. She brought to the undertaking and local government be worthy of and integrity, but also the special of the Ohio Ethics Commission as an to administer newly enacted

made invaluable contributions to committee deliberations held in connection on Government, as well as shed the basic policy thrust of the and reservations with regard to detail,

committee composed of persons with on of conflict of interest, financial ve the model the benefit of their ies involved in enforcing rules and ical standards. (The members of the me.)

director of the Legislative Drafting at only prepared the draft of the e in the deliberations of the League onmentary which accompanies the

member of the Advisory Committee, or of the Iowa Campaign Finance l assistance in analyzing financial

sociate, directed the research effort ifications for the model for review he guidance of the draftsman. She

assistance provided by League staff ssistant director, Debra J. Collins,

research librarian, and Thomas J. Drury and Shelley M. Greenwald, legal research assistants.

As the *Model* was in preparation, many inquiries were received from citizens and officials concerned with conflict of interest issues. Their questions were important to the model-building process and helped to focus staff research. It is hoped that those using the *Model* will address inquiries to the League and thus help enhance its capability for making further refinements in the law governing ethical standards in government.

WILLIAM N. CASSELLA, JR.
Executive Director

INTRODUCTION

In December 1974, the executive directors of several newly established ethics and campaign finance commissions formed an ad hoc group which sponsored a conference in Washington, D.C., primarily for representatives of commissions and agencies involved in the administration of state legislation on conflicts of interest, financial disclosure, campaign finance, elections and lobbying. A major purpose of the meeting was to facilitate the exchange of information among governmental bodies charged with responsibility in these evolving areas. A number of participants urged the National Municipal League to expand its limited program in this field into a national center with a clearinghouse capability to serve public officials and citizens.

In October 1975, The George Gund Foundation of Cleveland, which had provided financial support for the 1974 conference, made a grant to the National Municipal League for the operation of a service center to assist states and major local governments as they administer and refine newly established programs for enforcing ethical practices in government. The service center project has operated an information clearinghouse, sponsored annual conferences on "The Public Official and The Public Trust," published periodic newsletters, indexes and directories, and prepared the *Model State Conflict of Interest and Financial Disclosure Law* and the *Model State Campaign Finance Law*.

An Advisory Committee of executive directors and commissioners from various states has assisted the League in planning program objectives and the annual conferences. This committee also was extremely helpful in commenting on technical aspects of the model laws, particularly those with administrative implications. The participation of the committee was advisory only, and does not imply endorsement of the contents by the committee members or their respective commissions.

The League's Ethics Project Committee was responsible for basic policy decisions with respect to the model laws which were subsequently approved by the League's Executive Committee.

Early in the process of designing the *Model State Conflict of Interest and Financial Disclosure Law* it was decided to incorporate the strictest provisions that the League committee found acceptable which would also be constitutionally permissible in most states. Recognizing that the strictest provisions would not be necessary everywhere, and that their use might be counter-productive where they were stronger than needed, it was decided that the commentary would provide guidance for varying them in such a way as to maintain basic effectiveness. Most of these variations are in the financial disclosure provisions (Section 9) and the definition of "State Official" (Section 3(g)).

The committee began its work with one basic premise, which was that the only conflicts of interest which could be regulated under this law were those which concerned finances. Having a conflict of interest is not, in and of itself, evil, wrong or even unusual. Conflicts may be ethnic, cultural, emotional, nostalgic, regional, financial or philosophical. Conflict of interest laws are concerned with financial conflicts which set apart an individual officeholder from most of the general public. For example, being a taxpayer and a legislator voting on new taxes is not a conflict one worries about; while being a contractor/legislator voting on a bill specifying one's own company as the contractor is a matter of concern.

Conflict of interest provisions are designed to prevent public officials and employees from gaining financial profit from their official actions (other than government salaries), or from helping family or friends to profit unfairly because of inside information or preferential treatment. At the same time, the provisions can take some outside pressure off by making certain practices illegal instead of merely unethical. This is particularly true when the provisions are combined with those for financial disclosure and when the existence of conflicts or potential conflicts becomes a matter of public record.

Financial disclosure provisions are an essential part of the enforcement capability of the conflict of interest provisions. There would be no point to financial disclosure laws if there were no conflict of interest provisions. The purpose of financial disclosure laws is to make available sufficient relevant information to allow citizens to judge whether officials are acting in the public interest or tending too much to favor personal interests. Another role of financial disclosure statements is to remind public officials to examine their actions in light of their holdings and to be aware of possible conflicts of interests or the appearance of conflicts of interests. It is not the purpose of financial disclosure laws to give the public a chance to pry into every private detail of an official's life, right down to valuations on jewelry, silver, antiques and art.

Local officials are not included in this law. There are statutes which include

Model State Conflict of Interest and incorporate the strictest provisions ble which would also be constituting that the strictest provisions l that their use might be counter- r needed, it was decided that the varying them in such a way as to use variations are in the financial he definition of "State Official"

basic premise, which was that the :gulated under this law were those ct of interest is not, in and of itself, ay be ethnic, cultural, emotional, ical. Conflict of interest laws are et apart an individual officeholder xample, being a taxpayer and a ct one worries about; while being a ifying one's own company as the

nea to prevent public officials and om their official actions (other than amily or friends to profit unfairly ial treatment. At the same time, the re off by making certain practices articularly true when the provisions closure and when the existence of matter of public record.

essential part of the enforcement sions. There would be no point to conflict of interest provisions. The make available sufficient relevant her officials are acting in the public ersonal interests. Another role of nd public officials to examine their be aware of possible conflicts of f interests. It is not the purpose of a chance to pry into every private luations on jewelry, silver, antiques

w. There are statutes which include

local officials in the conflict of interest and financial disclosure provisions; some have operated fairly smoothly while others have encountered resistance. There is no reason why any local government could not adapt this model for its needs. The needs of local government may be very different depending on the population and budget, whether or not any of its officials are paid, and if so, how much. There is a big difference between what may be needed in Loving County, Texas (population 164), and what is appropriate for Cook County, Illinois (population 5,492,369). It appears wiser to adapt the model provisions for local use than to try to make provisions appropriate for such disparate situations.

The *Model State Conflict of Interest and Financial Disclosure Law* is designed to allow sufficient flexibility for adaptation to particular conditions and political traditions. The commentaries on the sections dealing with commission structure and financial disclosure explain what kind of variations could be made and still fulfill the stated purposes of the law. There should be no mistake, however, about the standards of conduct expected from public officials; there is virtually no provision in the commentary for changes in the conflict of interest and penalty provisions. The use of public position for private financial benefit or gain is clearly and unequivocally unacceptable, and no variations in the structure of the enforcement body or the financial disclosure requirements change that standard.

PAGE ELIZABETH BIGELOW

Research Director

National Municipal League Ethics Project

Model Conflict of Interest and Financial Disclosure Law

An Act to prohibit conflicts of interest among State officials and employees, creating a State Ethics Commission and prescribing its powers and duties, establishing a state code of ethics and procedures for its enforcement, and penalties for its breach.

Section 1. Short Title.

This Act shall be known and may be cited as Conflict of Interest and Financial Disclosure Act.

Section 2. Legislative Findings and Statement of Policy.

The legislature finds that public confidence in the impartiality and independence of state officials and employees is essential for the sound functioning of a democratic government. To maintain such confidence, the business and offices of the state must be conducted in a manner free from improper influence, and particularly from influences arising, or which may arise, from opportunities for personal gain or from divided loyalties resulting from involvement in business ventures that may benefit from particular government decisions or courses of action.

The purpose of the Conflict of Interest and Financial Disclosure Act, therefore, is to establish ethical standards for state officials and employees for the avoidance of such conflicts of interest as the use of offices or employment for private gain, the granting and exchange of favored treatment to persons, businesses or organizations, and the conduct of activities by such officials and employees that may engender opportunities for personal gain or advantage to influence government decisions. It is the purpose of the code of ethics to delineate clearly the ethical standards for state officials and employees in order to aid them in avoiding situations or conduct that may give rise to the appearance of impropriety even when no actual impropriety has occurred. It is the intention of the legislature that the Act be liberally construed so as to accomplish its purposes of protecting the public against government decisions that result or are affected by undue influences or conflicts of interest.

Commentary

Section 2. The *Model State Conflict of Interest and Financial Disclosure Law* emphasizes the avoidance of conflicts between the private financial interests of public officials and employees and their responsibilities to the public and to the government that employs them. The Act is intended to curb such conflicts, and to protect the public's right to honest government and to government decisions unaffected by competing private interests of officials. When the private interest of officials and employees conflicts with the interests and rights of the public, such private interests must yield.

Implicit in this statement is the intent to use such constitutionally permissible and effective methods for the enforcement of the conflict of interest provisions as have been provided for. For this reason, the financial disclosure provisions as set forth in Sections 9 and 10 are essential for the enforcement of the law.

Section 3. Definitions. As used in the Act.

(a) "Business" means any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or a service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as nonprofit organizations.

Commentary

Section 3(a). The definition of *business* is intentionally broad in order to include as many forms of economic activity as possible. Many economic involvements which may appear to be slight or of little consequence may nevertheless have sufficient economic importance to affect an official's or employee's judgment in situations that may give rise to conflicts with official responsibilities.

(b) "Business with which a person is associated" means any business in which the person is a director, officer, owner, member, partner, employee, or is a holder of securities which have a fair market value of \$5,000 or more or whose market value is one-fifth of his net worth, regardless of its value. It does not include any insurance companies which have issued the person a policy of insurance if that is his sole association with such companies.

Commentary

Section 3(b). The definition of *business with which a person is associated* is intended to delineate business relationships that involve some measurable element of close and continuing association and economic interest which might lead to a conflict of interest. The definition seeks to exclude relationships of a mere formal nature as

try

Interest and Financial Disclosure Law the private financial interests of public officials to the public and to the government to avoid such conflicts, and to protect the government decisions unaffected by the private interest of officials and the public, such private interests

such constitutionally permissible and conflict of interest provisions as have financial disclosure provisions as set forth in the law.

the Act.

created for economic gain, whether or not established to produce or not limited to, entities operated by self-employed person, partnership, trust, receivership or trust, and treated as nonprofit organizations.

try

intentionally broad in order to include as many economic involvements which may nevertheless have sufficient employee's judgment in situations that

associated" means any business in which, member, partner, employee, or market value of \$5,000 or more or worth, regardless of its value. It does not have issued the person a policy with such companies.

try

with which a person is associated is not involve some measurable element of interest which might lead to a conflict of interest relationships of a mere formal nature, as

between insurance companies and their insureds, and relationships where the interest is of such a minor nature that it is unlikely to have any impact on the decisions of the business or on the decisions of government that may affect such business, as in the case of a government official who owns a few shares of the stock of a large, publicly held corporation.

(c) "Commission" means the State Ethics Commission.

(d) "Interest in Real Property" includes any leasehold, beneficial interest, ownership interest or an option to acquire any such interest in real property.

Commentary

Section 3(d). *Real property* is defined in a broad manner to include a broad spectrum of property interests not limited to ownership of legal title. The definition recognizes that other interests may lead to conflicts of interest to the same degree as outright ownership. For further discussion of conflicts of interest involving real property, see commentary on Section 10 (d), which requires that such interests in real property be listed in financial disclosure statements.

(e) "Member of Household" means

- (i) a person who is another person's spouse, child, ward, parent or other relative, or the child, ward, parent or other relative of such person's spouse, and who shares such other person's legal residence; or
- (ii) a person who is another person's spouse, child, ward, parent or other relative of such person's spouse, and over whose financial affairs and holdings such other person has legal or actual control, whether or not they share a legal residence.

Commentary

Section 3 (e) *Member of Household* is defined to include those family members or wards sharing the same legal residence with another person and those family members or wards over whose financial affairs such person has legal or actual control. The defined term is used in provisions relating to public officials' financial disclosure statements and potential conflicts of interest. Members of household, as defined, are individuals whose financial affairs are likely to be best known to the official and who, because of ties of blood or affection the official is most likely to want to benefit financially. In some cases, there may be a more direct self interest, i.e., where the public official is a possible beneficiary of the estate of a member of the household. The inclusion of members of household in financial disclosure requirements will allow not only the public but also the public official to become aware of potential conflicts, apparent or real, before they occur so that such conflict of interest may be avoided.

It should be noted that in cases where such financial disclosure involving members of household would prove difficult or cause serious family problems, the Commission

4 MODEL STATE CONFLICT OF INTEREST AND FINANCIAL DISCLOSURE LAW

is empowered to modify or waive the financial disclosure requirement to the extent necessary to relieve such hardship. Such waiver authorization does not extend to references to member of household in conflict of interest provisions relating to such matters as government contracts, as for instance in Section 13, which are designed to prevent the abuse of official position.

(f) "State Employee" means a person who obtains or is entitled to compensation for any services to any department or agency of state government other than a state official. The term includes full-time and part-time service and service on a long-term or short-term basis, whether or not included in civil service or a merit system, whether undertaken pursuant to a written agreement or otherwise, and whether the relationship is considered an employment relationship or an independent contractor relationship for any purposes other than this Act, unless the Commission exempts such independent contractor relationship by regulation.

Commentary

Section 3 (f). State employee is defined to include all persons who, by reason of their work for the government, gain contacts and inside knowledge which, because of their position, may be abused or used in a manner to benefit themselves or others. The definition includes not only persons who stand in a formal employment relationship, but also persons who may be regarded as independent contractors. For instance, a lawyer, accountant or consultant should not be able to do work for the state, whether as an employee or an independent contractor, and then represent or assist private clients against the state in the same, or in a related matter. In instances where there is no risk of an abuse of the independent contractor relationship, as in independent contractual relationships with plumbers, electricians, and other such service- and repair-related matters, the Commission may by regulation exempt such contractors, unless there is good reason that they continue to be covered by this definition.

(g) "State Official" means an elected office holder in the legislative and executive branches of state government, or a member of any state board, commission, agency, bureau, department or any other part of state government who is appointed by any elected state official or by the legislature, except a member of the judiciary. The term includes a member of a commission, except that a member of any commission which is solely advisory in nature and which has no authority to make binding decisions, to enter into contracts or to make expenditures other than expenditures necessarily incurred for research in connection with its advisory functions shall not be required to meet the requirements of financial disclosure of Sections 9 and 10.

l disclosure requirement to the extent
ver authorization does not extend to
of interest provisions relating to such
e in Section 13, which are designed to

on who obtains or is entitled to
department or agency of state
The term includes full-time and
m or short-term basis, whether or
em, whether undertaken pursuant
and whether the relationship is
or an independent contractor rela-
ct, unless the Commission exempts
by regulation.

ary

include all persons who, by reason of
nd inside knowledge which, because of
er to benefit themselves or others. The
in a formal employment relationship,
ependent contractors. For instance, a
able to do work for the state, whether
and then represent or assist private
ted matter. In instances where there is
or relationship, as in independent con-
is, and other such service- and repair-
lation exempt such contractors, unless
covered by this definition.

office holder in the legislative and
or a member of any state board,
or any other part of state govern-
state official or by the legislature,
term includes a member of a
any commission which is solely
only to make binding decisions, to
iditures other than expenditures
tion with its advisory functions shall
of financial disclosure of Sections

Commentary

Section 3(g). The definition of State Official includes all elective office holders in the legislative and executive branches and all appointed office holders who owe their appointment to an elected official. Thus, it includes all officials who are charged with authority to make choices and decisions, and whose conflicts of interest and official corruption are likely to be most injurious to public confidence in government. The betrayal of the public trust by such an official, whether appointed or elected, who is expected to serve the public interest and who, generally, has taken an oath pledging to do so, undermines the public confidence in the official's agency and in the government as a whole, unless it is dealt with promptly and effectively. The definition thus covers officials whose fidelity is essential to well-ordered government.

There are some states which include the judiciary in conflict of interest and financial disclosure provisions. In many others this would pose substantial constitutional problems. It is for this reason that judicial offices are not included in this Model. The Model thus recognizes that the laws relating to ethical standards for judicial offices may need to be varied by each state. To include the judiciary within this law one need merely delete "except a member of the judiciary" from the first sentence of the definition.

Members of commissions which are purely advisory in nature and have no authority to make binding decisions, to enter into contracts or to make expenditures other than those necessarily incurred for research in connection with its advisory function are covered by the conflict of interest provisions of the law, but they are exempted from financial disclosure requirements. Members of such commissions are usually not compensated and frequently are very difficult to recruit. Their exemption from the financial disclosure requirements is intended to avoid further discouragement from such service. Moreover, because of the limitations regarding spending and decision-making authority, the opportunities to use these positions for personal financial gain or benefit are greatly diminished.

Section 4. State Ethics Commission; Establishment, Membership, Executive Director; Offices.

(a) There is hereby established the State Ethics Commission to administer and implement this Act. The Commission shall consist of seven members appointed by the governor with the concurrence of the Senate. Not more than four members shall be identified with the same political party. No member shall hold any elected or appointed office under the government of the United States, the state or any of its political subdivisions or be a candidate for any such office. A member may contribute to a political campaign, but no member shall hold any political party office, or participate in any political campaign or in a campaign relating to a referendum or other ballot issue, and no member shall be a lobbyist or an employee of the state or any of its political subdivisions. Members of the Commission may be removed by the

governor, with the concurrence of the Senate, for substantial neglect of duty, gross misconduct in office or violation of this law, after written notice and opportunity for reply.

Commentary

Section 4 (a). The provision establishing the Ethics Commission requires appointment by the Governor with concurrence by the Senate, which parallels the federal constitutional requirement as laid down in *Buckley v. Valeo*, 424 U.S. 1, 46 L.Ed. 2d 659, 96 S. Ct. 612 (1976) which sets the *federal* separation of powers standard for commission appointments where the commission has regulatory and enforcement powers. The federal requirement is that all such appointments be made by the chief executive rather than by other executive or legislative officers. In most states, by express constitutional requirement or by judicial interpretation under the doctrine of separation of powers, the result reached in *Buckley v. Valeo* would be followed. In some states it is permissible, however, to have various executive and legislative officers appoint members of regulatory commissions. If this is done, it is advisable not to authorize the attorney general to appoint members as he may do in some states, because there might be a conflict in his official obligations due to his role in Commission litigation.

The Commission is designed to be bipartisan. Because of its sensitive position, its members must avoid even the appearance of a conflict of interest, and they are barred from participation in political campaigns, running for or holding any federal, state or local office or employment, or engaging in lobbying. They may, however, contribute to a political campaign.

While many states do not have any provisions for the removal of members of ethics commissions, it is advisable to allow removal for cause. The Model follows this course, but requires the concurrence of the Senate in order to prevent abuse of this power by the Governor. The Model thus seeks to balance Commission independence against prevention of abuse. This Commission ought to be as independent as possible so long as its members perform their duties faithfully and in compliance with the law.

It has been suggested that there ought to be two separate state ethics commissions—one for the executive branch and one for the legislature—administering the same law. Several states, among them Nevada, Ohio and South Carolina, have this arrangement because of constitutional separation of power provisions which do not allow legislators to be overseen or regulated by a gubernatorially appointed body; they can only be governed by their own members. States that encounter this problem may have to adapt the Model to meet their special constitutional requirements. For other states a single commission is considered preferable.

(b) A member of the Commission shall be appointed for a term of office of seven years and until his successor has been appointed and has qualified, except that the members first appointed shall be appointed for terms of office of one, two, three, four, five, six and seven years, respectively, and until their successors have been appointed and have qualified. No member shall serve for more than one full seven-year term. When a vacancy occurs in the

te. for substantial neglect of duty,
this law, after written notice and

ry

the Ethics Commission requires ap-
by the Senate, which parallels the
in *Buckley v. Valeo*, 424 U.S. 1, 46
ats the *federal* separation of powers
the commission has regulatory and
s that all such appointments be made
ecutive or legislative officers. In most
r by judicial interpretation under the
ached in *Buckley v. Valeo* would be
ever, to have various executive and
ary commissions. If this is done, it is
to appoint members as he may do in
his official obligations due to his role

1. Because of its sensitive position, its
conflict of interest, and they are barred
ing for or holding any federal, state or
ying. They may, however, contribute

s for the removal of members of ethics
cause. The Model follows this course,
der to prevent abuse of this power by
e Commission independence against
be as independent as possible so long
nd in compliance with the law.

: to be two separate state ethics
one for the legislature—administering
ada, Ohio and South Carolina, have
aration of power provisions which do
by a gubernatorially appointed body;
ers. States that encounter this problem
ecial constitutional requirements. For
preferable.

be appointed for a term of office of
een appointed and has qualified,
all be appointed for terms of office
years, respectively, and until their
qualified. No member shall serve
When a vacancy occurs in the

membership of the Commission, it shall be filled by appointment for the
unexpired portion of the term in the same manner as original appointments.

Commentary

Section 4 (b). The provision for limited and rotating terms is intended to achieve
continuity in the Commission while avoiding long-term domination of the Commis-
sion and its decisions by any single member.

(c) The Commission shall elect a chairman from among its membership.
Four members of the Commission shall constitute a quorum and, if a quorum
is present, a vacancy on the Commission shall not impair the right of the
remaining members to exercise all the powers of the Commission. A majority
of the total membership shall be necessary to act at all times.

Commentary

Section 4 (c). A majority of the total membership of the Commission is necessary
for Commission action. This discourages the practice of leaving one or more vacancies
in order to gain more favorable decisions from a "rump" commission. The require-
ment for an absolute majority for binding action—rather than merely a majority of a
quorum—is not unusual. An absolute majority is necessary for many government
actions including, in most states, those of state legislatures.

(d) Each member of the Commission shall be compensated at the rate of
\$_____ for each day devoted to the performance of his official duties.
Each member of the Commission shall be reimbursed for reasonable and
necessary expenses incurred in the performance of official duties.

Commentary

Section 4 (d). The level of per diem compensation ought to be high enough so as
not to discourage professionals and others of high standing in the community from
service, where such service would otherwise constitute an undue economic sacrifice.
On the other hand, the rate of compensation should not be so high as to make service
on the commission a plum to be sought for its economic benefits.

(e) The Commission shall appoint and set the compensation of an
executive director to assist the Commission in carrying out its functions, in
accordance with Commission policies and regulations and with applicable
law. The executive director shall appoint and discharge counsel and employ-
ees, consistent with applicable civil service laws, and shall fix the compensa-

tion of employees and prescribe their duties. The counsel to the Commission shall advise the Commission on all legal matters and on the instructions of the Commission may commence civil or criminal actions as may be appropriate.

Commentary

Section 4 (e). The executive director is directly responsible to the Commission which does the hiring and sets the salary. In turn, counsel and employees are responsible to the executive director, who is responsible to the Commission for their work. However, the counsel is directly responsible to the Commission in the sense that he or she may commence legal proceedings only on its instruction. In all other matters counsel is responsible to the executive director, thus avoiding the problem of competition for staff leadership position and power.

(f) The Commission may delegate authority to the chairman or executive director to act in the name of the Commission between meetings of the Commission, except that the Commission shall not delegate the power to hold hearings and determine violations.

Commentary

Section 4 (f). It is a common pattern that Commission staff may be delegated to act for the Commission on routine matters between commission meetings. Some states also allow commission staff or others to act as hearing officers and present their findings to the Commission for its decision. Such a delegation may be necessary when the Commission would otherwise be overburdened by the size of its docket. States wishing to adopt such a system should change the section to read:

"(f) The Commission may delegate authority to the chairman or executive director to act in the name of the Commission between meetings of the Commission. The Commission may delegate the power to hold hearings but not to determine violations."

The delegation of the power to hold hearings to hearing officers generally meets the requirements of due process if the Commission itself makes the appropriate determination or decision on the basis of a fully adequate record so that it may review the hearing officers' recommendations.

(g) The principal office of the Commission shall be in _____ but it may establish offices, meet, and exercise its power at any other place in the state. Meetings of the Commission other than hearings shall be public or private as provided for in Section 6(b), except that the Commission may exclude the public from attendance at discussions of Commission personnel, planned or ongoing litigation and planned or ongoing investigations.

15. The counsel to the Commission attests and on the instructions of the legal actions as may be appropriate.

ary

directly responsible to the Commission. In turn, counsel and employees are responsible to the Commission for their role to the Commission in the sense that they are on its instruction. In all other matters, the Commission, thus avoiding the problem of power.

authority to the chairman or executive commission between meetings of the Commission shall not delegate the power to

ary

Commission staff may be delegated to between commission meetings. Some act as hearing officers and present their findings. A delegation may be necessary when the size of its docket. States the section to read:

authority to the chairman or executive commission between meetings of the Commission shall not delegate the power to hold hearings but not to

to hearing officers generally meets the Commission itself makes the appropriate determination of the record so that it may review the

sion shall be in _____
exercise its power at any other place in _____
er than hearings shall be public or
except that the Commission may
sessions of Commission personnel,
for ongoing investigations

Commentary

Section 4 (g). The subsection provides for accessible commission offices and for open meetings, making exception in certain limited situations. As provided for in Section 6 (b), hearings may be open or private, depending on the wishes of the person charged (see commentary, subsection 6(b)). Meetings may also be closed when the Commission discusses its own personnel, and certain litigation and investigations. The provision is intended to balance the need for the protection of confidential discussions to enable the Commission to perform its functions effectively against the public's right to open movement.

Section 5. State Ethics Commission; Powers and Duties.

(a) The Commission may adopt, amend and rescind rules and regulations to carry out the provisions of this Act, and to govern the procedures of the Commission, in accordance with the administrative procedure act of the state. Such rules and regulations shall be consistent with this law and other applicable law.

(b) The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the Commission's duties or exercise of its powers, including its duties and powers of investigation.

(c) The Commission shall, in addition to its other duties:

- (i) Prescribe forms for reports, statements, notices, and other documents required by law;
- (ii) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this law; and
- (iii) Provide assistance to agencies, officials and employees in administering the provisions of this law.

(d) The Commission may:

- (i) Prepare reports and studies to advance the purposes of the law;
- (ii) Contract for any services which cannot satisfactorily be performed by its employees;
- (iii) Request the Attorney General to provide legal advice and representation without charge to the Commission, and the Attorney General shall comply with the request. The Commission may also employ additional legal counsel; and

- (iv) Request appropriate agencies of state government to provide such professional assistance as it may require in the discharge of its duties.

Commentary

Section 5. This section authorizes the Commission to carry out its routine housekeeping functions. It also grants the Commission full authority to make rules consistent with the law, and it provides the Commission with the necessary powers to carry on investigations and to hold hearings and determine cases. The intent is to give the commission sufficient authority to run effective, efficient and timely investigations with the full cooperation of other state agencies, and to carry out its other enforcement responsibilities. It may use its powers of subpoena both for investigational purposes and in mind of the production of evidence at hearings. It may undertake studies and enter into contracts. In addition, the Commission also has the duty to provide assistance and information to persons and agencies covered by the law, and it may also prepare instructional and other public information materials it may deem advisable to advance compliance with the law.

Section 6. State Ethics Commission; Complaints; Hearings; Dispositions; Judicial Review.

(a) Upon the sworn complaint of any person or on its own initiative, the Commission shall investigate alleged violations of this law.

Not later than fifteen days after the Commission receives a sworn complaint, or after it decides to investigate on its own initiative, it shall acknowledge the receipt of the complaint to the complainant, where appropriate, and it shall give notice of the investigation to the person complained against. Not later than thirty days after receipt of a complaint under this section, or after the Commission decides to act on its own initiative, the Commission shall notify in writing the person who made the complaint and the person complained against of what action, if any, the Commission has taken or plans to take on the complaint, together with the reasons for such action or non-action. If the Commission does not decide within thirty days of receipt of the complaint what action to take, it shall notify the person who made the complaint of the reasons for the delay and shall subsequently give him the appropriate notification.

Commentary

Section 6 (a). Section 6 requires the Commission to investigate on the sworn complaint of any individual and sets up procedures under which the Commission is required to keep the complainant and the person complained against apprised of Commission actions and decisions with regard to the complaint until such time as final decisions are made. This provision is designed not only to ensure prompt action by the

if state government to provide such
may require in the discharge of its

ary

Commission to carry out its routine
Commission full authority to make rules
Commission with the necessary powers to
determine cases. The intent is to give
ative, efficient and timely investigations
and to carry out its other enforcement
pena both for investigational purposes
hearings. It may undertake studies and
Commission also has the duty to provide
encies covered by the law, and it may
information materials it may deem

in; Complaints; Hearings;

person or on its own initiative, the
ations of this law.

Commission receives a sworn com-
its own initiative, it shall acknowl-
omplainant, where appropriate, and
he person complained against. Not
plaint under this section, or after the
ative, the Commission shall notify in
point and the person complained
ssion has taken or plans to take on
for such action or non-action. If the
days of receipt of the complaint
on who made the complaint of the
iently give him the appropriate

tary

Commission to investigate on the sworn
cedures under which the Commission is
person complained against apprised of
to the complaint until such time as final
not only to ensure prompt action by the

Commission, but also to make sure that the cases will not be buried or delayed for
political reasons, or in order to avoid hard political choices. The time limits and
procedures are particularly important in light of the three-year statute of limitations on
criminal prosecutions (Section 21c) and civil actions (Section 24 (b)), and in light of
provisions which allow for citizen action to sue for relief should the Commission fail to
take action. The section also allows the Commission to initiate complaints on its own.

(b) When the Commission concludes that there is probable cause for
believing that the law has been violated, it may hold a hearing to determine if
such violation has occurred. The person complained against may choose
whether the hearing shall be open or closed. At the hearing, the person
complained against shall have all of the protections of due process consistent
with the state administrative procedure act, including but not limited to the
right to be represented by counsel, the right to call and examine witnesses, the
right to the production of evidence by subpoena, the right to introduce
exhibits and the right to cross-examine opposing witnesses. When the
Commission determines that the preponderance of the evidence shows a
violation has occurred, it shall issue an order to the violator to comply with
any one or more of the following requirements:

- (i) To cease and desist violation of this law;
- (ii) To file any reports or other documents or information required by
this law; or
- (iii) To pay a penalty not to exceed \$100 a day until the proper
financial disclosure statements are filed.

Commentary

Section 6 (b). The Commission may not proceed to the hearing stage unless it
concludes that there is "probable cause for believing that the law has been violated."
Thus, it may not proceed on mere suspicion. Once it has found such probable cause it
may hold a hearing to determine whether such a violation has indeed occurred.

The provisions for hearings allow the person complained against to choose whether
the hearing shall be open to the public or not. Many states require that such hearings
be open while others require that they be closed. The decision to allow a choice
reflects a desire to keep a balance between the rights of persons who are drawn into
situations without wrongdoing—such as individuals who may not be directly involved
in the situation in question—and the rights of the public. Since the final determination
made by the Commission will be a matter of public record, the public's right to know
will ultimately be served in every case.

There are good and valid reasons why a person might choose to have a hearing
closed to the public. There are cases in which the inquiry might involve delicate or
confidential information about government plans, where disclosure might be detri-
mental to the best interests of the government. Other such cases might involve

12 MODEL STATE CONFLICT OF INTEREST AND FINANCIAL DISCLOSURE LAW

disclosure of the assets of a minor or disclosure of a serious mental or physical illness of someone other than the involved official and which might interfere with that person's right to lead as normal a life as possible. If a determination is made to go to court, such information would become public, but in many situations cases will not progress that far and could be handled without damage to privacy or the public right to know by allowing the option of closed hearings.

For others, an open hearing may offer prompt public vindication and may be the more desirable alternative. While in some situations the protection of privacy is a desirable goal, it seems equally important to guarantee the personal right of an individual to a public hearing, particularly in situations in which a great deal of public speculation and innuendo already exists, when only full and prompt disclosure of facts may lead to public vindication.

This section also provides for the usual guarantees of due process at hearings, including the right to counsel, to call and examine witnesses, to subpoena evidence, and the right of cross-examination.

The Commission has the authority to impose a number of sanctions and restrictions administratively, without going to court, if it finds by a preponderance of the evidence that violation has occurred. It may issue cease and desist orders against a further violation of law, and it may order the violator to file reports or other documents as required by law. It may also order the violator to pay a penalty of not more than \$100 a day until proper financial disclosure statements are filed. The issuance of any administrative order does not, however, preclude the Commission from referring a case to the Attorney General for criminal prosecution (cf. Section 6(c)), or from suing for injunctive relief or for civil penalties (cf. Section 22 (a)).

(c) The Commission shall refer to the Attorney General violations of the law which in its opinion merit prosecution. The Attorney General shall have responsibility for all prosecutions under the law and may request from the Commission all evidence collected in its investigation.

Commentary

Section 6 (c). Where the Commission finds by a preponderance of the evidence that a violation has occurred which, in its opinion, merits prosecution, the Commission may refer the case to the Attorney General for criminal prosecution. Under section 21 it must be shown for conviction that the violation was knowing or willful. Thus, the Commission is likely to find that a case merits prosecution when there is evidence of knowing or willful violation. Referral for prosecution does not preclude the Commission from issuing the order authorized in Section 6 (b) or from filing a civil suit pursuant to Section 22 (a).

In states where the Attorney General is not the chief prosecutor for the state, this provision should be adapted to mandate referral to the appropriate prosecutorial authority.

of a serious mental or physical illness of which might interfere with that person's determination is made to go to court, such situations cases will not progress that privacy or the public right to know by

not public vindication and may be the relations the protection of privacy is a guarantee the personal right of an relations in which a great deal of public only full and prompt disclosure of facts

guarantees of due process at hearings, line witnesses, to subpoena evidence,

a number of sanctions and restrictions is by a preponderance of the evidence and desist orders against a further to file reports or other documents as to pay a penalty of not more than \$100 nents are filed. The issuance of any ude the Commission from referring a cution (cf. Section 6(c)), or from suing ction 22 (a)).

Attorney General violations of the . The Attorney General shall have the law and may request from the investigation.

ary

s by a preponderance of the evidence n, merits prosecution, the Commission riminal prosecution. Under section 21 on was knowing or willful. Thus, the rosecution when there is evidence of tion does not preclude the Commis- o(b) or from filing a civil suit pursuant

the chief prosecutor for the state, this eral to the appropriate prosecutorial

(d) Any person directly involved or affected by a final action of the Commission within the meaning of the state administrative procedure act may seek judicial review of the action of the Commission other than of a determination to refer a violation to the Attorney General for prosecution.

Commentary

Section 6 (d). Subsection (d) gives any person "directly involved or affected by a final action of the Commission" the right to seek judicial relief of a final action of the Commission other than the determination to refer a violation to the Attorney General.

Thus, a right to seek judicial review is available only to final actions of the Commission, carrying out the usual requirement of administrative law that there must be an exhaustion of administrative remedies before a judicial review may be had.

It should be noted, too, that not only the person charged with a violation may seek judicial review, but other persons involved or affected by such final action may ask for review, too. For instance, if a person is ordered to file certain information and the filing of such information would have adverse consequences to a third person, such person adversely affected would also have a right to judicial review. This may become a matter of some significance in light of the broad financial disclosures required under the law.

(e) If judicial review is sought of any action of the Commission relating to a pending election, the matter shall be advanced on the docket of the court. The court may take any steps authorized by law to accelerate its procedures so as to permit a timely decision.

Commentary

Section 6 (e). Subsection (e) provides for docket preferences, and allows the court to speed the resolution of matters relating to a pending election. A prompt resolution of such matters is desirable so that the matter will not unfairly become an election issue or otherwise taint the election.

Section 7. State Ethics Commission; Advisory Opinions.

The Commission may on its own motion issue opinions and interpretations of the law. Any person may request the Commission to issue an opinion with respect to his duties under this law in a given factual situation. The Commission shall, within thirty days, either issue the opinion or advise the person who made the request whether an opinion will be issued. No person who acts in good faith relying on an opinion issued to him by the Commission shall be subject to criminal or civil penalties for so acting, if the statement of facts and other data submitted as part of his request for an opinion and on

14 MODEL STATE CONFLICT OF INTEREST AND FINANCIAL DISCLOSURE LAW

which the opinion is based are complete and true. The Commission's opinions with such limited modifications as may be necessary to protect the privacy of individuals, other than public officials or candidates for public office, shall be public records and shall from time to time be published.

Commentary

Section 7. The power of the Commission to issue advisory opinions is intended to provide protection to persons who seek advance determination as to whether particular activities will violate the law. If such a person submits a true and complete statement of facts to the Commission, and if the person follows the Commission's opinion in good faith, then such a person will be protected against civil and criminal penalties which would arise from a different resolution of the issues.

By giving opinions on certain issues prospectively, the Commission may also ease its caseload and the number of cases which must go through time-consuming hearings. With this power the Commission can, with authority, clarify the application of the law in a variety of circumstances. The certainty of the application of the law is also sought to be advanced by the requirement that advisory opinions be published from time to time. When made public or published, names of individuals other than public officials and candidates for public office may be deleted or withheld to protect the privacy of persons who are not involved as officials or candidates.

In *Stein v. Howlett*, 52 Ill. 2d 570, 289 N.E. 2d 409, *app. dismissed* 412 U.S. 925, 93 S. Ct. 2750, 37 L.Ed 2d 152 (1973), a provision of the Illinois Ethics Act was held unconstitutional because it authorized the Secretary of State to hire legal counsel and to render advisory legal opinions interpreting a legislative enactment, because that function properly belonged to the attorney general, the chief law officer of the state. Thus, states which follow the Illinois approach should delegate the advisory opinion function under this section to the attorney general. In *Dunphy v. Sheehan*, 549 P.2d 332 (Nev. 1976) the invalidation of the financial disclosure provision of the Nevada Ethics in Government Law was based in part on the ground that advisory opinions from the State Ethics Commission provided no insulation from criminal prosecution.

Section 8. State Ethics Commission; Modification of Reporting Requirements.

Upon application made in the form prescribed by the Commission, it may suspend or modify any of the requirements of Sections 9 and 10 of this law in a particular case, if it finds (a) that strict application of this Act works a manifestly unreasonable hardship, and (b) that such suspension or modification will not frustrate the purposes of the law. Any such suspension or modification shall limit the application of a requirement only to the extent necessary to relieve the hardship.

Commentary

Section 8. This provision gives the Commission flexible powers to suspend or modify financial disclosure requirements where warranted. This may obviate the

te and true. The Commission's
may be necessary to protect the
officials or candidates for public
in time to time be published.

ry

issue advisory opinions is intended to
advance determination as to whether
a person submits a true and complete
the person follows the Commission's
be protected against civil and criminal
solution of the issues.

ely, the Commission may also ease its
go through time-consuming hearings.
only, clarity the application of the law
the application of the law is also sought
ry opinions be published from time to
f individuals other than public officials
l or withheld to protect the privacy of
ndidates.

2d 409, *app. dismissed* 412 U.S. 925.
ision of the Illinois Ethics Act was held
tary of State to hire legal counsel and
a legislative enactment, because that
eral, the chief law officer of the state,
should delegate the advisory opinion
ral. In *Dunphy v. Sheehan*, 549 P.2d
al disclosure provision of the Nevada
on the ground that advisory opinions
insulation from criminal prosecution.

1; Modification of Reporting

cribed by the Commission, it may
of Sections 9 and 10 of this law in
t application of this Act works a
that such suspension or modifica-
ie law. Any such suspension or
a requirement only to the extent

ry

mission flexible powers to suspend or
re warranted. This may obviate the

criticism that financial disclosure requirements will discourage substantial and dedi-
cated people from seeking public office or employment when required disclosures
produce manifest hardship. Under the provision, it would be possible for the
Commission to tailor difficult financial disclosure provisions to the particular require-
ments of the position held or sought, while providing sufficient information so as not to
frustrate the purposes of the law relating to public disclosure.

Section 9. Financial Disclosure; Filing Requirements.

(a) On or before January 31 of each calendar year, each state official shall
file with the Commission a financial disclosure statement. The statement shall
cover the previous calendar year. The state official shall file the statement at
the office of the Commission, or shall mail it by certified mail to the
Commission prior to the time specified.

Commentary

Section 9 (a). Section 9 requires that all "state officials" as defined in Section 3 (g)
file by January 31 of each year a financial disclosure statement covering the previous
calendar year. It is the responsibility of each official to make sure that the Commission
has received the statement by January 31 or that it has been mailed by certified mail
by January 31. Certified mail is required to ensure timely mailing and to prevent
violation of the time limit by using a back-dated postal meter. It is necessary that all
state officials file financial disclosure forms because only in this manner can the
legislative purposes of the law be carried out (see Section 2).

While the financial disclosure provisions as stated are limited to "state officials" and
do not include "state employees," this does not indicate any disapproval of such
inclusion. Financial disclosure provisions might well include employees in policy-
making positions, particularly those who can authorize and make expenditures.
Differences between states' employment provisions make it inadvisable to write state
employees into a model provision. States are urged to consider including some state
employees in disclosure requirements. It is advisable, however, to limit inclusion to
employees who are actually in a position to benefit their own interests. Over-
inclusiveness may become burdensome to the Commission in that the mass of filing
may obscure violations rather than reveal them.

(b) A person who becomes a state official less than ten days before the
filing date or who becomes a state official after the filing date shall file a
financial disclosure statement for the previous twelve months no later than ten
days after the date on which he assumes the duties of his office unless he has
filed a financial disclosure statement with the Commission during the
preceding twelve months.

Commentary

Section 9 (b). Since many appointments do not take effect until after the appointing authority takes office, or until another official's term of office is completed in mid-year, this section provides for a filing procedure for them. It also provides that officials who have filed during the previous 12 months need not file again, so as to avoid the burden of over-repetitive filings. It should be noted that this provides for filing the financial disclosure statement after taking office. This would not, however, prevent a confirming authority (usually the Senate) from requiring earlier filing as part of the confirmation proceedings and perhaps even as a pre-condition for confirmation consideration. The fact that many state-appointed offices may not require confirmation militates against the practicality of a general requirement of pre-appointment filing.

(c) candidate for state office shall file a financial disclosure statement with the Commission for the previous twelve months no later than ten days after he becomes a candidate, unless he has filed a financial disclosure statement with the Commission during the previous twelve months. A candidate shall continue to file annual financial disclosure statements with the Commission until he ceases to be a candidate by reason of election, withdrawal or defeat. As used in this section, a candidate is a person who officially files as a candidate for office, or who publicly announces that he is running for office, or who authorizes the collection or disbursement of money for the promotion of his candidacy or election. The State Election Commission [or Secretary of State] shall promptly inform the State Ethics Commission when a person files as a candidate for office.

Commentary

Section 9 (c). This section requires candidates to file if they have not already done so in a given year and to continue filing so long as they are candidates. This section is intended to address the problem of public knowledge of the reportable finances and actual and potential conflicts of interest of the incumbent state official, and the lack of comparable knowledge of the reportable finances and potential conflicts of other candidates. The public has a right to know as much about the candidates as it knows about incumbents in order to make an informed choice.

The definition of *candidate* in this section is designed to correlate this section with Section 3 (c) of the *Model State Campaign Finance Law* (National Municipal League, 1979). The definition of the term "candidate" in both laws is similar but not identical. A person must have taken some positive action to become a candidate in order to be required to file financial disclosure statements. For purposes of the Campaign Finance Law, the fact that money is being collected with or without his permission or authorization for the promotion of his nomination or candidacy suffices to make him a candidate, though the positive assertion of his candidacy will also reach that result.

ry

do not take effect until after the official's term of office is completed procedure for them. It also provides that months need not file again, so as to could be noted that this provides for king office. This would not, however, ste) from requiring earlier filing as part en as a pre-condition for confirmation ted offices may not require confirma- ral requirement of pre-appointment

financial disclosure statement with onths no later than ten days after d a financial disclosure statement twelve months. A candidate shall statements with the Commission of election, withdrawal or defeat. person who officially files as a ates that he is running for office, ment of money for the promotion tion Commission [or Secretary of s Commission when a person files

ry

to file if they have not already done as they are candidates. This section is ledge of the reportable finances and ument state official, and the lack of nes and potential conflicts of other uch about the candidates as it knows d choice. designed to correlate this section with nce Law (National Municipal League, n both laws is similar but not identical. to become a candidate in order to be or purposes of the Campaign Finance l with or without his permission or in or candidacy suffices to make him a candidacy will also reach that result.

(d) The Commission shall retain financial disclosure statements in its files for not less than ten years from the date of filing.

Commentary

Section 9 (d). This subsection puts a limit on the required retention of records, while providing that they be kept for ten years—long enough to facilitate efficient investigation should that be necessary.

Section 10. Financial Disclosure Statement; Contents.

The financial disclosure statement shall disclose the economic interest of the state official or candidate, and of all members of his household. The value of interests shall be indicated by category only. The categories are Category I, less than \$5,000; Category II, \$5,000-\$24,999; Category III, \$25,000-\$99,999; and Category IV, \$100,000 or more.

Commentary

Section 10. A key provision of the law is the requirement that public officials and candidates regularly disclose their holdings and earnings. The Model provides for disclosure by officials or candidates by categories rather than by actual specific amounts. Disclosure by categories represents an acceptable compromise between specific disclosure by amount and disclosure by source or type of property only. Disclosure by categories as in the Model produces significantly more information by which the public may judge the behavior of its public officials, as well as information for the Commission should investigation be called for. Among other things, it reflects any significant augmentation of reportable holdings and income. The lesser alternative is to list by sources and nature of holdings. This model would work without categorization by amount, but not as effectively.

However, if reporting by source is relied on, once a source reaches a reportable level, the income can become much greater or the value of a holding can be augmented substantially without triggering public or Commission awareness, except in the case of the acquisition of a controlling interest in a business, in which case if real estate holdings would have to be disclosed under Section 10 (d). Disclosure by categories, as in the Model, will facilitate the use of the information to call attention to major or potential conflicts of interest, or to indicate possible use of confidential information or use of public position for private financial gain, thus aiding the preventive purpose of the Act.

States which do not seek financial disclosure by category may use the Model without such categories by eliminating all references to them in Section 10, Section 10 (d), Section 10 (e), Section 10 (f), Section 10 (g) and Section 10 (h).

In addition, broader or narrower ranges may be used. The Model may be adapted to such changes so long as the threshold amounts referred to in the body of the law are keyed to the arrangement of the categories. The amounts shown in the Model were designed to be far enough apart to prevent accurate pinpointing of net worth of

officials and candidates, but to provide an opportunity for the observation of substantial changes in holdings which may give rise to inquiry.

The statement shall include:

- (a) The name, address, and public position held or sought by the state official or candidate, the names of all members of his household, and all names under which any of them do business.

Commentary

Section 10 (a). There is a substantial issue as to whether financial disclosure requirements should be limited to public officials, or whether members of the official's household should also be included. The Model solves this issue in favor of the broader disclosure requirement, in view of the ease of concealment of questionable income or holdings by such methods as giving it or having it paid to the spouse, particularly in community property states, putting it in a revocable trust, or using some other device through which actual control is retained.

This provision covers only persons included in the definition of "member of household" (Section 3(e)). Thus, persons who share the official's legal residence, or relatives over whose financial affairs the public official has legal or actual control whether or not they share the same legal residence are included. In most cases, adult children or wards will probably not fall within the requirement. In cases where such disclosure would cause unusual problems, the Commission can make necessary modifications in the disclosure requirements under Section 8 without allowing circumvention of the disclosure law. For example, in a situation in which a member of the official's household is one of several beneficiaries of a trust where the official has neither control nor even knowledge of its holdings, and in which disclosure would necessarily make known the holdings of persons not covered by the act, the Commission could waive disclosure.

For discussion of the implications of the "member of household" definition, see Commentary on Section 3 (e).

Financial disclosure provisions have been upheld against a variety of constitutional challenges, including the alleged invalid delegation of legislative power; vagueness and overbreadth, thus violative of due process; denial of the equal protection of the law; unconstitutional conditions on right to public employment; invasion of privacy; invasion of employees' right to freedom of association and other first amendment rights; infringement of employees' rights to petition government for redress of grievances; e.g., *Alabama State Employees' Assoc. v. Dr. Wright, et. al.*, Circuit Court of Montgomery Co. (Ala.), Civil Action No. 39026, 1974; *County of Nevada v. MacMillen*, 11 Cal. 3d 662, 114 Cal. Rptr. 345, 522 P.2d 1345 (1974); *Baty v. Bales*, Marin County Superior Court, No. 83978 (July 15, 1977); *Metropolitan Water District of Southern California v. FPPC*, 73 Cal. App. 3d 650 (1977); *Goldtrap v. Askew*, 334 So.2d 20 (Fla. 1976); *Plante v. Gonzalez, Thomas v. Gonzalez*, 575 Fed. 2d 1119 (5th Ct. 1978), cert. den. — U.S. — 1979; *Stein v. Howlett*, 52 Ill. 2d 570, 289 N.E.2d 409, app. dismissed, 412 U.S. 925, 93 S. Ct. 2750, 37 L.Ed 2d 152 (1973); *Illinois State Employees' Association (I.S.E.A.) v. Walker*, 57 Ill. 2d 512, 315 N.W. 2d 9, cert. denied (with memorandum, Douglas, J.) sub. nom. *Troopers Lodge No. 41 v. Walker*,

opportunity for the observation of
rise to inquiry.

ition held or sought by the state
l members of his household, and
do business.

ry

e as to whether financial disclosure
or whether members of the official's
el resolves this issue in favor of the
ase of concealment of questionable
; it or having it paid to the spouse,
; it in a revocable trust, or using some
ained.

d in the definition of "member of
share the official's legal residence, or
e official has legal or actual control
ice are included. In most cases, adult
ne requirement. In cases where such
e Commission can make necessary
under Section 8 without allowing
2, in a situation in which a member of
aries of a trust where the official has
ings, and in which disclosure would
sons not covered by the act, the

ember of household" definition, see

held against a variety of constitutional
on of legislative power, vagueness and
al of the equal protection of the law;
employment; invasion of privacy;
location and other first amendment
petition government for redress of
v. *Dr. Wright, et. al.*, Circuit Court
026, 1974; *County of Nevada v.*
22 P.2d 1345 (1974); *Baty v. Bales*,
15, 1977); *Metropolitan Water District*
1650 (1977); *Goldtrap v. Askew*, 334
s v. *Gonzalez*, 575 Fed. 2d 1119 (5th
Howlett, 52 Ill. 2d 570, 289 N.E.2d
750, 37 L.Ed 2d 152 (1973); *Illinois*
r, 57 Ill. 2d 512, 315 N.W. 2d 9, cert.
in, *Troopers Lodge No. 41 v. Walker*,

419 U.S. 1058, 95 S. Ct. 642, 42 L.Ed. 2d 656 (1974); *Klaus v. Minnesota State Ethics Commission*, 309 Minn. 430, 244 N.W.2d 672 (1976); *Kenny v. Byrne*, 144 N.J. Super. 243, 365 A.2d 211 (App. Div. 1976); *Evans v. Carey*, 53 A.D. 2d 109, 385 N.Y.S.2d 965 (1976), *aff'd*, 40 N.Y.2d 393, 359 N.E. 2d 983 (1976); *Fritz v. Gorton*, 83 Wash. 2d 275, 517 P.2d 911 (1974), *app. dismissed* 417 U.S. 902, 94 S. Ct. 2596, 41 L.Ed. 2d 208 (1974); *In Re Kading*, Wis. 2d 508, 235 N.W. 2d 409 (1975) (disclosure requirements under Judicial Code of Ethics). Decisions apparently to the contrary involved special and non-recurring situations, e.g., *Comer v. City of Mobile*, 337 So. 2d 742 (Ala. 1976) (law amending earlier state ethics legislation invalidated in part on such grounds as violation of prohibition of a special legislation in its effect on certain local governments; major provisions on disclosure upheld); *Alabama League of Municipalities v. Dr. Wright* (unconstitutional delegation of legislation in that state ethics commission was granted overly broad, and not legislatively defined, role asking power on ethical conduct and financial disclosure; also, violation of subject/title rule); *Dunphy v. Sheehan*, 549 P.2d 332 (Nev. 1976) (required disclosures limited to economic interests that would "materially affect" the official in the performance of his duties; held unconstitutionally vague, in that they failed to inform officials as to what conduct was proscribed); *Rapp v. Carey*, 44 N.Y. 2d 157 (1978) (Governor's executive order for financial disclosure inconsistent with earlier state law).

The inclusion of the economic interest of the spouse, children or other dependents was challenged and upheld in a number of cases, e.g., *County of Nevada v. MacMillen*, *supra*; *Baty v. Bales*, *supra*; *Illinois State Employees' Association (I.S.E.A.) v. Walker*, *supra*; *Havrisky v. Byrne*, N.J. (1978); *In Re Kading*, *supra*;

-
- (b) The occupations and principal places of business of the state official or candidate, and of all members of his household, indicating in each instance which person is associated with any particular business.
 - (c) The name of each business with which the state official or candidate or any member of his household was associated at any time during the filing year, indicating to which person it applies, and a brief description of the business or activity of each business entity, and the nature of the association of the state official or candidate or member of his household with each such business.

Commentary

Section 10 (b) and (c). These requirements primarily serve the purpose of identification, helping to connect individuals covered by the financial statement and their business interests.

-
- (d) A listing of all interests of the state official or candidate and of all members of his household, in real property, excluding his principal

residence, held by him at any time during the previous year and which had a fair market value exceeding \$5,000. If he acquired or divested any such interest during the year, he shall disclose the transaction and the date it occurred. This listing shall include the street address or legal description of the property, and its value by category. An interest in real property for purposes of this section shall include property owned by any business in which the official or any member of his household owns a controlling interest.

Commentary

Section 10 (d). Inclusion in financial disclosure statement of direct and indirect interests in real property is particularly important because such interests provide many opportunities for conflict of interest violations. For instance, an official can use confidential information to buy real estate while the price is low, expecting its value to rise sharply when public announcement of state building plans is made. This has given rise to problems in areas surrounding highway development, specifically in the acquisition of land at premium prices for planned entrance and exit ramps. Another example involves the participation in decisions on the location of government buildings or other projects on or adjacent to land owned by the decision maker. A further example is the corrupt development of design specifications for a project to fit only the real estate the official owns, such as in the development of water resources and other similar uses for undeveloped land.

-
- (e) A listing of all securities the state official or candidate or members of his household held at any time during the previous year and which at any time during the year had a fair market value of \$5,000 or more, and their value by category for each such security. If he or any member of his household acquired or divested any such securities during such year, the transaction and date shall be shown.

Commentary

Section 10 (e). Persons required to file financial disclosure statements must list all securities having a fair market value of \$5,000 or more which they or members of their household held at any time during the previous calendar year. In addition, acquisitions and divestments of such securities must also be shown, together with an indication of when they were acquired or disposed of. The \$5,000 value of securities was chosen as a threshold because it would be considered by most a fairly substantial holding and because, particularly in closely held corporations, a person holding a \$5,000 security interest may well be in the position to affect company decisions. Holdings of a lesser value than \$5,000 are not considered to give their owner an interest which is likely to affect the business decisions. It is difficult to determine a value which is likely to give the owner of shares a sufficient interest to affect business decisions in all situations. Clearly, in a major, publicly held company a \$5,000 share interest is not likely to be of

uring the previous year and which 5,000. If he acquired or divested shall disclose the transaction and include the street address or legal lue by category. An interest in real shall include property owned by r any member of his household

ry

sure statement of direct and indirect because such interests provide many i. For instance, an official can use the price is low, expecting its value to building plans is made. This has given ay development, specifically in the ed entrance and exit ramps. Another ns on the location of government nd owned by the decision maker. A design specifications for a project to fit the development of water resources

ial or candidate or members of his e previous year and which at any et value of \$5,000 or more, and i security. If he or any member of any such securities during such be shown.

ry

cial disclosure statements must list all more which they or members of their endar year. In addition, acquisitions own, together with an indication of 00 value of securities was chosen as most a fairly substantial holding and s, a person holding \$5,000 security npany decisions. Holdings of a lesser ir owner an interest which is likely to rmine a value which is likely to give t business decisions in all situations. 00 share interest is not likely to be of

sufficient dimension to affect company policy so as to involve the holder or the company in significant conflicts of interest.

The requirement that dates of acquisition and dates of divestiture be indicated serves the additional purpose of flagging what may be significant transactions having conflict of interest implications. The acquisition of shares in a company at a time when the official has regulatory responsibilities relating to the field of operations of the particular business would of course be a matter which would give rise to inquiry. An additional purpose of the requirements of detail in furnishing information relating to security holdings is a preventive one, in that a public official who knows that his acquisition and divestiture of securities is subject to scrutiny is less likely to acquire shares and other securities in companies and at times when these may point to conflict of interest situations.

-
- (f) A listing of all bonds issued by the state or by any municipality, county or other political subdivision of the state regardless of value, held by the state official or candidate, or any member of his household at any time during the filing year, and their value by category. If he or any member of his household acquired or divested any such securities during such year, the transaction and date shall be shown.

Commentary

Section 10 (f) The section requires that all persons who must file financial disclosure statements must list holdings of all bonds issued by any state or local government regardless of value. As in the case of other securities, their value, time of acquisition and time of divestiture must also be shown. The requirement that state and municipal bonds be listed regardless of the value of the holding indicates the importance of the concern for potential conflicts of interest which officials may encounter who have an interest in state and municipal bonds. The value of state and municipal bonds is peculiarly affected by decisions made on the state level. This is the case especially in the instance of revenue bonds issued to support particular capital projects of the state or municipality.

-
- (g) The name and address of each creditor to whom the state official or candidate or a member of his household owed a debt in excess of \$1,000 at any time during the filing year, other than for a credit card or retail installment contract, and the rate of interest, listing each obligation to each creditor and the amount of each debt by category. If he or any member of his household incurred or discharged any such debt during such year, the transaction and date shall be shown.

Commentary

Section 10 (g). Persons required to file financial disclosure statements must list any debt in excess of \$1,000 owed at any time during the filing year. This does not include

credit card or retail installments which may be regarded as fairly routine. Other debts, rate of interest and listing of each obligation to individual creditors and the amount of the debt must be listed, and the incurring or discharge of the debt during the year and the date of such transaction must also be shown. Note that all personal debts of the person who files, and of his household, must be included if they exceed the \$1,000 threshold. The purpose of the provision is to forestall or at the very least to raise questions regarding debts which have been granted on a preferential basis, or where the interest rate shows that the borrower has been given an unusual preference or advantage, or that he has been given unusually favorable terms in situations which may well raise questions of conflicts of interest. The nature of the obligation may also provide useful information. In political life it is not at all unusual to make gifts by way of extending credit in instances where there is no intention that the loan be repaid, even though it will ostensibly have all of the characteristics and all of the formalities and legal instruments that normally show that a loan rather than gift was intended.

The \$1,000 threshold is intended to cover loans of some significance. The figure may need adjustment from time to time to insure that the requirement includes only significant obligations.

-
- (h) The name and address of any person or business that made payments or provided gross income exceeding \$1,000, other than income received from securities reported in subsection 10(e), including the amount by category, to the state official or candidate or any member of his household, indicating the nature of the business or services for which such payment or income was received. A report shall be made under this subsection when the payment is to a business which pays, or which is under an obligation to pay, a prorated share to the state official or candidate exceeding \$1,000. If such payments or income are for the rendition of medical or mental health services, the income shall be listed but the identity of individual patients need not be disclosed.

Commentary

Section 10 (h). The provision requires persons who file financial disclosure statements to include information on all payments made exceeding \$1,000 during the reporting year to the person filing or to any member of his household, indicating the nature of the business or services for which the payment was made. The section expressly excludes payments of dividends earned on securities which are already covered in another provision. The disclosure requirement is of all payments regardless of whether these payments were made by an individual or by a business or corporate entity. The source of the payment must be disclosed unless such payment is for medical or mental health services. Included in the report are to be payments to a business which in turn is under an obligation to pay the state official a prorated share exceeding \$1,000. The purpose of the provision is the disclosure of sources of income to the state official or candidate other than the public sources which pay his compensation as a state official. The requirement that the nature of the business or

regarded as fairly routine. Other debts, individual creditors and the amount of discharge of the debt during the year and when. Note that all personal debts of the be included if they exceed the \$1,000 to forestall or at the very least to raise wanted on a preferential basis, or where been given an unusual preference or ally favorable terms in situations which. The nature of the obligation may also not at all unusual to make gifts by way of intention that the loan be repaid, even statistics and all of the formalities and legal other than gift was intended.

loans of some significance. The figure sure that the requirement includes only

on or business that made payments during \$1,000, other than income in subsection 10(e), including the official or candidate or any member of of the business or services for which lived. A report shall be made under s to a business which pays, or which prorated share to the state official or ch payments or income are for the health services, the income shall be patients need not be disclosed.

tary

persons who file financial disclosure nts made exceeding \$1,000 during the mber of his household, indicating the he payment was made. The section ned on securities which are already quirement is of all payments regardless individual or by a business or corporate disclosed unless such payment is for in the report are to be payments to a to pay the state official a prorated share on is the disclosure of sources of income in the public sources which pay his nent that the nature of the business or

services for which payment was made must be disclosed is intended to prevent the gratuitous and potentially corrupt payment of moneys under the guise of payment for goods or services rendered. Under the provisions government officials who are involved in law practice for instance would have to indicate payments received from particular clients, but they would not have to disclose the exact nature of services rendered. It has been held that it is not a violation of the code of professional ethics to reveal the name of clients so long as the exact nature of the professional services is not disclosed. Legal requirements of a similar nature in other laws have not had any untoward effects on the practice of the professions and have not caused lawyers with outside interests to leave public employment.

A requirement that attorneys disclose the names of clients who paid a fee of \$1,000 or more in the report year was upheld in *Hays v. Wood*, 79 Cal. App. 3d 354, modified 79 Cal. App. 3d 447, with the court indicating that the requirement of disclosing the client's name did not invade any recognized rights of privacy or legally recognized privilege. The California Political Reform Act of 1974 required attorneys and others, such as brokers, to disclose the names of clients who had paid \$1,000 or more during the year. This the court found discriminatory, and held that lawyers and brokers would be bound only by the \$10,000 disclosure rule applicable to other professionals under the law.

-
- (i) The name and address of business or governmental clients or customers of any business in which the state official or candidate or a member of his household is an officer, director or partner or has an ownership interest of more than _____ percent, if the client or customer has paid an aggregate of \$25,000 or more to the business during the filing year, but the full amounts of such fees need not be disclosed.

Commentary

Section 10 (i). The section covers the rather unusual situation of a state official, candidate or member of his household who is an officer or has a major ownership interest in a business to which a customer or client has paid an aggregate of \$25,000 or more during the filing year. The disclosure required by this section affects only state officials with major business interests in situations where a major client or customer may affect the overall financial condition of the firm. The underlying assumption is that where a government official also has a major interest in a business he is likely to value important customers and clients, and that this may in turn influence his judgment in carrying out his official duties. There is a particular risk of this in instances where a number of important clients or customers may have similar interests in certain government decisions. So, for instance, a law firm which represents a number of banks or insurance companies or which represents a number of mining operations may well have a particular point of view with respect to the law which applies to these regulated interests. The disclosure of the relationship of the public official to certain regulated industries puts the matter on the public record and may thus be useful in preventing undue influence.

An effort has been made to make this provision no more burdensome than

24 MODEL STATE CONFLICT OF INTEREST AND FINANCIAL DISCLOSURE LAW

necessary. The only disclosure that is required is the name of the client or customer who has paid an aggregate of \$25,000 or more during the filing year. The exact amount paid need not be disclosed, and there is no requirement that the amount paid be disclosed by category. It should be noted that professional or trade directories frequently list the important clients of law firms or the most important trade connections of the firm. Except in the case of very large firms or businesses, it is unlikely that an officer, director, partner, or part owner will be unaware of the existence of such important clients or customers. It may well be that the \$25,000 threshold is too low to be of significance in the case of large companies. In that event, this may be an appropriate situation for a petition to the Commission for a modification of the requirement under Section 8 of the law.

-
- (i) A list of all gifts received which exceed _____ dollars in value from persons other than relatives or a person to whom the state official or candidate is engaged or intends to marry. As used in this section, the term "gifts" does not include campaign contributions, but shall have the same meaning as in Section 18.

Commentary

Section 10 (i). The section requires financial disclosure of valuable gifts, exempting only defined categories of gifts among family members or among persons who expect to marry. The section makes the assumption that large gifts received by a public official or candidate from persons other than family members may at least be subject to some explanation. The section expressly exempts campaign contributions which have been properly defined in Section 3(e) of the *Model Campaign Finance Law*. The matter of the acceptance of gifts by state officials and employees is dealt with in considerable detail in Section 18 of this law. Thus, the present section may be viewed as a regulatory mechanism to see that Section 18 is properly complied with.

Section 11. Conflicts of Interest; Prohibitions.

(a) No state official or state employee shall use his public office for private advancement or gain.

Commentary

Section 11 (a). Section 11 contains a number of specific prohibitions that deal with recurring problems involving conflicts of interest. Section 11 (a) is a general prohibition on the use of public office for private advancement or gain. The subsection is intentionally broad because it is intended to cover the variety of situations which may not be expressly covered by more specific prohibitions. One such example of the use of public office for private gain is the situation of a state official who uses his official position to place state funds in a bank in order to obtain favorable action from the bank on a personal loan application.

is the name of the client or customer or during the filing year. The exact is no requirement that the amount paid that professional or trade directories firms or the most important trade of very large firms or businesses, it is part owner will be unaware of the ers. It may well be that the \$25,000 case of large companies. In that event, petition to the Commission for a 8 of the law.

ceed _____ dollars in value a person to whom the state official marry. As used in this section, the main contributions, but shall have

ary

al disclosure of valuable gifts, exempt- ily members or among persons who tion that large gifts received by a public ily members may at last be subject to its campaign contributions which have *del State Campaign Finance Law*. The icials or employees is dealt with in us, the present section may be viewed 18 is properly complied with.

Prohibitions.

shall use his public office for private

ary

er of specific prohibitions that deal with Section 11 (a) is a general prohibition increment or gain. The subsection is ver the variety of situations which may ibitions. One such example of the use of a state official who uses his official r to obtain favorable action from the

(b) A state official or state employee shall not represent or otherwise assist any person or business before any state agency or before any agency of any political subdivision of the state for contingent compensation in any transaction involving the state or any political subdivision.

Commentary

Section 11 (b). The section prohibits state officials or employees from representing or assisting any person or business before any agency of the state or any of its political subdivisions for a contingent compensation. The agreement to pay compensation contingent on the success of the assistance of representation adds a special inducement to the use of undue influence to get a desired result. Note that this section does not address the question of state officials or employees who represent others before agencies for compensation other than contingent compensation, such as on a regular fee basis. Such representation is permitted except as restricted by other provisions of this Act, and especially subsections (c), (d) and (e) of this section.

(c) A state official or state employee shall not represent or otherwise assist any person or business for a fee or other compensation to secure passage of a bill or to obtain a contract, or payment of a claim, or in any other transaction or proposal if he has participated, will participate, or is likely to participate as an official or employee in the disposition of the matter.

(d) A state official or state employee shall not represent or otherwise assist any person or business before a state agency on any bill, contract, claim or other transaction or proposal involving official action by the agency if he has official authority over that state agency or is an official or employee of that agency.

(e) This section shall not apply to elected members of the state legislature who shall be governed by Section 12 of this Act.

Commentary

Section 11 (c) and (d). These subsections prohibit state officials or employees from representing others for a fee or other consideration in matters in which they have been involved in their work for the state. Subsection (c) deals with the situation of a state official or state employee who represents another in a situation where such official or state employee participates in or is likely to participate in the disposition of the matter. Such matters as passage of a bill, obtaining a contract, or the payment of a claim are covered transactions. Subsection (d) deals more generally with a state official or state employee who represents or assists another before a state agency on any bill, contract, claim or other transaction if such state official or employee has official authority over that state agency or is an official or employee of that agency. The situations covered involve some classic and recurring conflict of interest problems, and

are parallel in some respects to the prohibitions of conflicts of interest contained in the American Bar Association Code of Professional Responsibility. They also parallel the restrictions which business corporations put on the actions of their officers and employees.

Section 12. Conflicts of Interest; Legislature.

(a) A member of the state legislature and a person appointed by the legislature or by any legislator shall not represent or assist any person or business before any state agency or before any agency of any political subdivision of the state for compensation or other benefit or promise thereof.

Commentary

Section 12 (a). This section deals with a variety of conflict of interest situations which may involve legislators or legislative staff. Subsection (a) bars state legislators and persons appointed by them from representing others before any agency of the state or its subdivisions, for compensation or other benefit or promise of benefit. It should be noted that the section prohibits representation "for compensation." It does not, however, interfere with a legislator's responsibility to represent his constituent's interests before a state agency. It should also be noted that the section is not intended to apply to representation of clients by state legislators or legislative employees before the courts of the state. The state courts are not generally considered to be agencies of the state, and, consequently, this section does not bar such representation. In the states which do not follow the usual rule and do consider courts state agencies, an express exception for courts should be added.

(b) A member of the state legislature shall comply with the Code of Legislative Ethics adopted by the legislature, and shall comply with the reporting requirements of Section 17 of this Act.

Commentary

Section 12 (b). This subsection reflects the universal constitutional provision that the legislature is the only body which may regulate a member's behavior on the floor, and the questions of his seating and seniority. Thus the section refers the legislators to their legislature's own code of legislative ethics in lieu of compliance with the requirements of this Act. Note, however, that legislators are not exempt from the reporting requirements of Section 17 of this Act. The section exhorts the houses of the legislature to set rules of conduct for their members and to enforce them. The provisions of this law clearly cannot reach instances of actions on the part of legislators in the legislative chambers that reflect conflicts of interest or that reflect commitment to special interests.

of conflicts of interest contained in the Responsibility. They also parallel the on the actions of their officers and

Legislature.

and a person appointed by the represent or assist any person before any agency of any political other benefit or promise thereof.

try

variety of conflict of interest situations f. Subsection (a) bars state legislators tting others before any agency of the other benefit or promise of benefit. It sentation "for compensation." It does nsibility to represent his constituent's noted that the section is not intended slators or legislative employees before generally considered to be agencies of s not bar such representation. In the do consider courts state agencies, an

shall comply with the Code of ture, and shall comply with the is Act.

try

universal constitutional provision that ate a m:ember's behavior on the floor, hus the section refers the legislators to hics in lieu of compliance with the legislators are not exempt from the The section exhorts the houses of the members and to enforce them. The ces of actions on the part of legislators f interest or that reflect commitment to

(c) Any violation of this Act by a member of the state legislature shall be subject to the sanctions of this Act to the fullest extent possible under the provisions of the state constitution. Any violation not to the sanctions of this Act by reason of the state constitution shall be subject to such sanctions as the legislature itself may impose under its Code of Legislative Ethics.

Commentary

Section 12 (c). This section states the general principle that violations of the Act by members of the state legislature are to be subject to the sanctions of the Act insofar as such sanctions may be applied consistent with the provisions of the state constitution. In a number of states the constitutional protection granted legislators for actions on the floor of the respective houses of the legislature extends beyond matters of voting and free speech and may be inconsistent with the enforcement of certain conflict of interest provisions under this law. To the extent that some of the conflict of interest provisions under this law may not be applicable to state legislators under the constitution, the Act relegates those violations to sanctions imposed by the legislature itself. Thus, for example, if the Commission may not penalize a legislator for failing to disclose a conflict of interest prior to voting as required by Section 17, the legislature is obligated to proceed against its members when the commission cannot by reason of constitutional limitations.

Section 13. Government Contracts; Prohibitions.

(a) A state official or state employee or a member of his household shall not be a party to or have an interest in the profits or benefits of a state contract or the investment of state funds unless the contract or the investment meets the following exceptions:

- (i) The contract is let by competitive bidding or involves not more than \$150 (One Hundred and Fifty Dollars);
 - (ii) The contract is for necessary supplies or services for the governmental agency involved, which are unobtainable elsewhere for the same or lower cost, or which are furnished to the government agency as part of a continuing course of dealing, established before the state official or state employee became associated with the governmental agency, and the entire transaction is conducted at arm's length, with the agency's full knowledge of the interest of the state official or state employee or a member of his household, and the state official or state employee takes no part in the determinations of specifications, deliberations or decision of the governmental agency with respect to the public contract.
- (b) In the absence of bribery or a purpose to defraud, a state official or

state employee, or a member of his household, shall not be considered as having an interest in a public contract or the investment of public funds when such a person has a limited interest as a shareholder or creditor of the business which is the contractor on the public contract involved or which is the issuer of the security in which public funds are invested. A limited interest for purposes of this section is an interest not exceeding 5 percent of the outstanding shares of a corporation or an interest as a creditor not exceeding 5 percent of the total indebtedness of a corporation or other organization, unless it is a corporation whose shares are traded on a public exchange, in which case the Commission may set lower limits. A person claiming such a limited interest shall file with the State Ethics Commission and the governmental agency an affidavit describing his status in and connection with the corporation or other business, before such public contract is entered into.

Commentary

Section 13. Section 13 places management restrictions on business dealings between state officials or employees and the state. It prohibits outright self-dealing but it relieves the state of the burden of limiting its business transactions to companies in which no state official or employee has even a minute or indirect interest. In instances where a state official or employee has such a minor interest in a business that deals with the state the section provides that the state official or employee may take no part in the deliberations and decisions relating to such dealings, and that the persons and businesses involved in such situations be aware of the relationship and take appropriate steps to disclose the same to the commission. The purpose of the section is not only to prohibit outright self-dealing but also to prevent even the appearance of conflict to the fullest extent possible.

The purpose of preventing self-dealing might best be served by an outright and complete ban, but such a ban is not likely to serve the public interest because it is unfeasible and unmanageable.

The prohibition against self-dealing allows for certain exceptions. The exception in subsection (a) is for contracts let by competitive bidding, or where the amount involved is \$150 or less where the contract is let for necessary materials at the best available price, as part of a continuing course of dealing established prior to the time the state official or employee became associated with a governmental agency. Further conditions require the arrangement to be at arm's length and that the state official or employee disclose his interest to the agency. Both the small amount involved and the conditions imposed assure that no significant instances of self-dealing will be permitted under this subsection.

Subsection (b) allows public contract or the investment of public funds with businesses in which a state official or state employee has a demonstrably limited interest. Such a limited interest may be a shareholder's interest or a creditor's interest where the shareholder's interest does not exceed 5 percent of the outstanding shares of the business and where the interest of the creditor does not exceed 5 percent of the total indebtedness of the business. In the instance of publicly held companies whose shares are traded on a public exchange, a 5 percent share interest or a 5 percent

ehold, shall not be considered as the investment of public funds when a shareholder or creditor of the public contract involved or which is invested. A limited interest not exceeding 5 percent of the interest as a creditor not exceeding corporation or other organization, traded on a public exchange, in limits. A person claiming such a Ethics Commission and the government status in and connection with the public contract is entered into.

try

ent restrictions on business dealings. It prohibits outright self-dealing but business transactions to companies in minute or indirect interest. In instances minor interest in a business that deals official or employee may take no part ch dealings, and that the persons and aware of the relationship and take mission. The purpose of the section is so to prevent even the appearance of

ht best be served by an outright and serve the public interest because it is

r certain exceptions. The exception in tive bidding, or where the amount let for necessary materials at the best of dealing established prior to the time l with a governmental agency. Further a's length and that the state official or n the small amount involved and the nces of self-dealing will be permitted

he investment of public funds with employee has a demonstrably limited holder's interest or a creditor's interest d 5 percent of the outstanding shares ditor does not exceed 5 percent of the ce of publicly held companies whose percent share interest or a 5 percent

interest in the corporate indebtedness would be considered a substantial or major interest, and in that situation the State Ethics Commission may set lower limits. Again, the section relies on the principle of public disclosure in that a state official or employee is required to file with the State Ethics Commission and the governmental agency involved an affidavit which describes the nature of his interest.

Section 14. Conflicts of Interest; Employment.

(a) No state official and no state employee shall seek employment with, or allow himself to be employed by, any business which is or may be regulated by a department or agency which he serves. The term employment within the meaning of this section includes professional services and other services rendered by the state official or state employee whether rendered as an employee or as an independent contractor.

(b) No business shall employ a state official or state employee if the employment violates subsection (a) of this section.

Commentary

Section 14. This section prohibits a state official or employee from seeking or accepting employment from a business regulated by his agency. For purposes of this prohibition the term employment is broadly defined to include professional services and other services that may be rendered either as an employee or as an independent contractor. Subsection (b) poses a correlative prohibition on businesses. They are prohibited from employing state officials or state employees if such state officials or employees are prohibited from accepting such employment under this section, thus the business and the employee would become equally guilty of violating the law.

Section 15. Conflicts of Interest; Avoidance.

No state official or state employee shall acquire any financial interest, including, but not limited to, interest in a business, real property, or in a contractual relationship, when he believes or has reason to believe that it will be directly and immediately affected by his official action or the action of the government department or agency which he serves.

Commentary

Section 15. The section prohibits the acquisition by any state official or employee of any financial interest which he believes or has reason to believe will put him in a conflict of interest situation. It is clearly contemplated by the section that any employee who finds that he has acquired such a financial interest divest himself of the same as promptly as possible.

Section 16. Conflicts of Interest; Reporting.

(a) A state official or state employee, other than a legislator, who is required to take any action or make any decision in the discharge of his official duties that may cause financial benefit or detriment to him, to a member of his household or a business with which he is associated, which is distinguishable from the effects of such action on the public generally or a broad segment of the public, shall:

- (i) Prepare a written statement describing the matter requiring action or decision and the nature of the potential conflict; and
- (ii) Deliver a copy of the statement to the Commission and to his immediate superior, if any, who shall assign the matter to another, or, if he has no immediate superior, he shall take such steps as the Commission shall prescribe or advise to remove himself from influence over actions and decisions on the matter. This restriction shall not prevent such person from making or participating in the making of a governmental decision to the extent that the individual's participation is legally required for the action or decision to be made, but in such event the person shall report the occurrence to the Commission.

(b) The obligation to report a potential conflict of interest under this section arises as soon as the state official or state employee is aware of such conflict or as soon as he should reasonably be aware of such conflict, whichever is sooner.

Commentary

Section 16. When a state official or employee finds himself faced by a conflict of interest as defined in the section he must prepare a written statement describing the situation and he must deliver a copy of the statement to the State Ethics Commission and to his immediate superior in the agency. The state official or employee must then also disengage himself from participation in the matter so far as legally permissible. His superior is under an obligation to assign the matter to another person for determination or decision, and if the official or employee has no direct superior, he must follow the advice of the Ethics Commission in removing himself from a decision-making role. In some instances the law may require that certain decisions be made by designated officials. In such an event, where the determination cannot be delegated to another, the needs of government shall be met in that the particular official or employee shall make the legally required decision, but he must report the matter to the ethics commission. The section provides that a state official or employee cannot close his eyes to the existence of a conflict of interest situation. The obligation to report, and to disqualify himself arises as soon as he is aware of the conflict, or as soon as he should reasonably be aware of such conflict.

The section protects not only public agency decisions from the effect of conflicts of interest but also the state official or employee involved. A state official who promptly

Reporting.

2, other than a legislator, who is
decision in the discharge of his official
detriment to him, to a member of his
associated, which is distinguishable
public generally or a broad segment of

bring the matter requiring action or
potential conflict; and

to the Commission and to his
will assign the matter to another, or, if
he shall take such steps as the
case to remove himself from influence
the matter. This restriction shall not
or participating in the making of a
that the individual's participation is
decision to be made, but in such event
notice to the Commission.

conflict of interest under this section
employee is aware of such conflict or
aware of such conflict, whichever is

tary

employee finds himself faced by a conflict of
prepare a written statement describing the
statement to the State Ethics Commission
The state official or employee must then
the matter so far as legally permissible. His
matter to another person for determina-
has no direct superior, he must follow
himself from a decision-making role.
ertain decisions be made by designated
action cannot be delegated to another,
the particular official or employee shall
must report the matter to the ethics
a official or employee cannot close his
situation. The obligation to report and to
of the conflict, or as soon as he should

decisions from the effect of conflicts of
involved. A state official who promptly

reports the matter to the State Ethics Commission as required by law and who
thereafter follows the direction of the Commission would be protected from any
subsequently asserted liability.

Section 17. Conflicts of Interest; Member of State Legislature; Reporting.

(a) A member of the Legislature who is required to take an action in the
discharge of his official duties that may cause financial benefit or detriment to
him, a member of his household or a business with which he is associated,
which is distinguishable from the effects of such action on the public generally
or a broad segment of the public shall:

- (i) Prepare a written statement describing the matter requiring action and
the nature of the potential conflict; and
- (ii) Deliver a copy of the statement to the clerk of the house of the
legislature for inclusion in the official legislative record and to the
Speaker of the House or [Assembly] or the President Pro Tempore of
the Senate as appropriate [and to the Commission.]. He may request
permission to abstain from voting on the issue and such legislative
officers may grant the request. Nothing in this section shall be
construed to prohibit any legislator from voting on any matter that
comes before his house of the legislature.

(b) The obligation to report a potential conflict of interest under this section
arises as soon as the member of the legislature is aware of such conflict or as
soon as he should reasonably be aware of such conflict, whichever is sooner.

Commentary

Section 17. Section 17 imposes disclosure requirements on legislators who find
themselves in a situation of conflict of interest. Section 16, which deals with conflicts
of interest of state officials and state employees other than legislators, requires them to
disqualify themselves from official action in conflict situations, except insofar as they
may be required to act by reason of the legal responsibilities of their position. Unlike
other state officials, legislators are not required to disqualify themselves, but they are
required under section 17 to disclose their conflict and to put it on the legislative
record. Disqualification of state legislators is not required because to require them to
disqualify themselves would deprive their constituents of representation. To require
legislators to disqualify himself, and in effect to prohibit him from voting when he find
himself in a conflict of interest, or to penalize him for voting in such a situation, would
probably be an unconstitutional interference with the legislative process. The right of
the legislature to be the sole judge of the conduct of its members on the floor is
virtually absolute. However, a legislator who finds himself in a conflict of interest is
encouraged to request permission to abstain from voting on the particular issue and

the presiding officer of the particular house may grant the request. It is clear that the effectiveness of Section 17 in dealing with legislative conflicts of interest will depend largely on the seriousness of the legislature in its enforcement. In this area it is likely that efforts by the State Ethics Commission to seek enforcement of the law will meet with constitutional objections based on the principle of the separation of powers.

Section 18. State Officials or Employees; Making and Acceptance of Gifts.

(a) No state official or state employee shall solicit, accept or agree to accept any gift, including economic opportunity, loan (other than from a regular lending institution on terms generally available for such loans), gratuity, special discount, favor, hospitality or service having an aggregate value of one hundred dollars (\$100) or more in any calendar year from any person, except from members of his family or from a person whom he plans to marry. This section shall not, however, operate to prevent the acceptance by a state official or state employee of reimbursement for expenses which are expressly provided for or permitted by law.

(b) No person or business shall offer or make any gift which a state official or employee is prohibited from accepting pursuant to subsection (a) of this section.

Commentary

Section 18. Section 18 prohibits any state official or employee from accepting any gift in excess of \$100 from persons other than his family or a person whom such official or employee plans to marry. Earlier formulation of state ethics laws prohibited officials from accepting gifts from persons one might "reasonably" expect to have an interest in some matter over which such official's agency had authority. In this earlier formulation there was the recurring risk that the law would be declared unconstitutional, as void for vagueness. The firm dollar limit eliminates the problem of what is a reasonable gift, and it also eliminates the problem of determining when a gift is made because it is reasonably expected to have some impact on the official's actions. The section assumes that gifts other than from relatives or future spouses in excess of the limit are questionable in purpose and resolves the issue by prohibiting such gifts altogether. The dollar limit on gift giving may have to be adjusted from time to time to reflect inflationary changes. Subsection (b) of Section 18 makes the giver or offerer of an illegal gift equally liable with the official who accepts it.

Section 19. State Officials or Employees; Disclosure of Information.

No state official or state employee shall disclose or use confidential information or information not available to members of the general public for

to grant the request. It is clear that the relative conflicts of interest will depend on its enforcement. In this area it is likely that enforcement of the law will meet the principle of the separation of powers.

Gifts; Making and Acceptance

shall not solicit, accept or agree to accept a loan (other than from a regular lender available for such loans), gratuity, or anything having an aggregate value of one hundred dollar year from any person, except from whom he plans to marry. This provision prevents the acceptance by a state official for expenses which are expressly

make any gift which a state official pursuant to subsection (a) of this

try

official or employee from accepting any gift from his family or a person whom such violation of state ethics laws prohibited might "reasonably" expect to have an agency had authority. In this earlier law would be declared unconstitutional eliminates the problem of what is a means of determining when a gift is made and its impact on the official's actions. The law covers or future spouses in excess of the value of the issue by prohibiting such gifts and to be adjusted from time to time to subsection 18 makes the giver or offerer of the gift accept it.

Gifts; Disclosure of

shall disclose or use confidential information to members of the general public for

his personal gain or benefit or for the personal gain or benefit of any other person or business if he has obtained such information through his official position. The restriction on the use of information shall continue for two years after he ends his term of office or leaves government service or employment, and shall supersede any other less restrictive requirements of confidentiality that may be applicable.

Commentary

Section 19. Section 19 prohibits the use of confidential information for financial gain. The use of confidential information has long been a common and serious abuse of public trust and one which, because of its nature, was particularly difficult to prove. Financial disclosure requirements make certain gross abuses easier to trace. However, when confidential information is not used by the official himself but is given to friends or business associates, tracing it may still be difficult. The abuse of confidential information gained through official position both during and after public service has been the frequent subject of public investigations, particularly as "government in the sunshine" laws diminish the amount of truly confidential information and makes it easier to trace its leakage. Note that Section 19 restricts the use of information gained in consequence of official position for two years after the term of office is concluded or government service or employment is ended. This two-year limitation supersedes other less restrictive requirements which are commonly scattered throughout the law with a variety of requirements applicable to different agencies.

Section 20. State Officials or Employees: Limitation on Representation.

(a) No former state official or former state employee shall for a period of two years following the end of his term of office or the termination of his state service or employment assist another person or business whether or not for compensation, in any transaction, or in any appearance in connection with any transaction involving the state or any of its agencies or subdivisions in which such former state official or former state employee participated during his term of office or employment.

(b) No business in which a former state official or former state employee is a partner or member, or, in the case of a professional corporation, a shareholder, and no employee of such business, shall, for a period of two years following the termination of his term of office or employment, assist another person in any appearance or transaction involving the state or any of its agencies or subdivisions in which the former state official or former state employee participated during his term of office or state employment. For purposes of this section, the termination of employment of the former state official or former state employee with the agency which he served when he so

participated shall be deemed to be the termination of his state employment.

(c) Nothing contained in this Act shall prohibit a former state official or former state employee from being retained or employed by the department or state public agency which he served.

Commentary

Section 20. Section 20 deals with the recurring problem of state officials and employees who leave public employment to work in the private sector, who are then able to use confidential information and the previous close contacts gained in public employment for the advantage of their private employer's customers or clients. The problem of the "revolving door" in public service is a recurring and serious one. While abuses in the use of special contacts and special information gained during public employment must be curbed, it is constitutionally unacceptable to place undue job restrictions on public officials and public employees after they leave public service. Moreover, it would be a disservice to the public interest to limit employment opportunities of former government officials and employees unduly because it would discourage highly qualified and expert persons from entering government service for fear of unduly limiting their future employment opportunities.

Section 20 seeks to resolve these competing considerations by drawing a balance which results in reasonable limits. Under subsection (a) a former state official or employee is barred for a period of two years following the end of his official service from assisting or appearing on behalf of any other person or business in connection with any transaction in which such official participated during his term of office or employment. Subsection (b) applies a similar limitation to any business or person associated with such business in which such a former state official or state employee is a partner or member, or in a professional corporation, a shareholder. It should be noted that only those matters with which the former state official or employee had any direct connection are out of bounds. It may be of particular significance to law firms and similar professional undertakings that all appearances, including those before the agency of the former official or employee, on matters that were not his responsibility are permitted. The narrow range of prohibitions is intended to limit the adverse impact which such limitations would have on highly qualified professionals who might otherwise avoid entering government service. At the same time the section also protects businesses from a form of undue pressure or blackmail by state officials or employees who may condition favorable government action on advantageous private job offers.

Section 21. Criminal Prosecution; Penalties.

(a) A person who knowingly or willfully violates any provision of this Act other than a requirement of financial disclosure pursuant to Sections 9 and 10 of this Act is guilty of a misdemeanor, punishable for each such violation by imprisonment of not more than one year and by a fine not to exceed \$10,000.

nation of his state employment.
prohibit a former state official or
or employed by the department or

ary

curring problem of state officials and
ork in the private sector, who are then
vious close contacts gained in public
employer's customers or clients. The
ce is a recurring and serious one. While
cial information gained during public
ally unacceptable to place undue job
loyees after they leave public service.
public interest to limit employment
nd employees unduly because it would
from entering government service for
it opportunities.

g considerations by drawing a balance
bsection (a) a former state official or
following the end of his official service
ther person or business in connection
rticipated during his term of office or
limitation to any business or person
omer state official or state employee is
poration, a shareholder. It should be
rmer state official or employee had any
e of particular significance to law firms
ppearances, including those before the
matters that were not his responsibility
s is intended to limit the adverse impact
ly qualified professionals who might
At the same time the section also
ssure or blackmail by state officials or
nment action on advantageous private

Commentary

Section 21(a). Section 21 separately provides for convictions which involve violation of the conflict of interest provision of the law and violation of the financial disclosure requirements. Knowing and willful violation of the conflict of interest provisions is a misdemeanor and the penalty is a fine of not more than \$10,000, imprisonment for not more than one year, or both. Many jurisdictions treat the violation of conflict of interest provisions as a felony. However, it has been a common experience that white collar crimes, which generally do not involve any violence or threat of violence, are treated lightly by juries and that juries are less likely to convict when the violation is treated as felony subject to many years of imprisonment. Thus, designating knowing and willful violation as misdemeanors is more likely to result in convictions. It should be noted, moreover, that in many instances it is likely that more than one offense of conflict of interest will be charged. Thus, in egregious cases, consecutive one-year terms for different counts or violations are not unlikely.

(b) A person who knowingly or willfully violates any financial disclosure requirements of Section 9 or 10 of this Act is guilty of a misdemeanor, punishable by a fine of not more than \$10,000 or three times the amount or value of the interest or interests the person failed to report, whichever is greater.

Commentary

Section 21(b). The violation of financial disclosure requirements under the law is treated as a misdemeanor. Unlike violations of conflict of interest provisions this misdemeanor is not punishable by a jail term but only by a fine. In effect, the violation of a financial disclosure requirement is regarded as a primarily economic offense; consequently, the penalty provided is primarily economic in nature. For the conviction of failure to make required financial disclosures the penalty is three times the amount or value of items not reported. Thus, when there has been a gross failure to meet financial disclosure requirements, penalties may be greatly in excess of \$10,000.

(c) The Attorney General shall commence prosecution for violation of this Act no later than three years after the date of violation.

Commentary

Section 21(c). A three-year statute of limitations for violations of the *Model State Conflict of Interest and Financial Disclosure Law* is intended to provide sufficient time for the discovery and careful investigation and case preparation of violations which in many instances may involve complex financial dealings. While some states allow for longer statutes of limitations in laws of this nature, the three-year statute of limitations is intended to require diligent prosecution efforts when violations have been discovered. A three-year statute of limitations is also subject to less abuse for political purposes and for purposes of influencing the outcome of elections.

Penalties.

y violates any provision of this Act
sure pursuant to Sections 9 and 10
ishable for each such violation by
ar and by a fine not to exceed

(d) A person convicted of a misdemeanor under this Act shall not be a candidate for any elective office or be eligible for any appointive office or act as a paid lobbyist for a period of four years following the date of the conviction, unless the court at the time of sentencing reduces the period or determines that this provision shall not be applicable. A plea of *nolo contendere* shall be deemed a conviction for purposes of this Act.

Commentary

Section 21 (d). As an additional sanction, Subsection (d) provides that a convicted official or employee may not become a candidate for public office, or become eligible for appointive office, or be a paid lobbyist for four years unless the court relieves him from the effects of this provision at the time of sentencing. Removal from office as a sanction for conviction of violation of law is a justifiable penalty, and it is recommended that Section 21 (d) also provide for removal from office in states where such a provision is constitutionally permissible. It is not constitutionally permissible in all states for all public officials, because the constitution may limit removal from office to certain offenses or may require certain constitutionally prescribed procedures.

Section 22. Civil Action; Injunctive Relief; Civil Penalties.

(a) The Commission may sue in the _____ Court for injunctive relief to enjoin a violation or to compel compliance with the provisions of the Act, and for the collection of civil penalties.

Commentary

Section 22. Section 22 authorizes the Commission to bring civil actions for two purposes. First, to secure injunctions against violation of the Act, or to compel compliance with its provisions and, second, to sue for the collection of civil penalties under the Act.

The injunctive process is a useful and necessary procedure to deal with situations that involve conflicts of interest before they have done irreversible damage. Such damage may involve not only public confidence in government but also the expenditure of substantial public funds in reliance on administrative decisions or other government action based on a process that was tainted by the private interest of the decision maker. The injunctive process has the advantage of a prospective, preventive procedure that can deal with imminent risks in a timely fashion, unlike criminal prosecution for violation of the Act which generally deals with violation after the harm is done, and which takes a lengthy course of preparation, and evidence to convict beyond a reasonable doubt. The effectiveness of the injunctive procedure is enhanced by the availability of the power of the court to hold the violator in contempt if he fails to obey the court's injunctive order. Such contempt powers are exercised by the court subject to the applicable provisions of state law.

It is likely that the power to enjoin violations of the law will usually be exercised after

nor under this Act shall not be a
ble for any appointive office or act
years following the date of the
sentencing reduces the period or
be applicable. A plea of *nolo*
for purposes of this Act.

ary

ubsection (d) provides that a convicted
ite for public office, or become eligible
our years unless the court relieves him
sentencing. Removal from office as a
a justifiable penalty, and it is recom-
oval from office in states where such a
constitutionally permissible in all states
may limit removal from office to certain
prescribed procedures.

Relief: Civil Penalties.

Court for injunctive relief to
with the provisions of the Act, and

ary

mission to bring civil actions for two
violation of the Act, or to compel
sue for the collection of civil penalties

sary procedure to deal with situations
have done irreversible damage. Such
dence in government, but also the
ce on administrative decisions or other
s tainted by the private interest of the
advantage of a prospective, preventive
in a timely fashion, unlike criminal
ally deals with violation after the harm
preparation, and evidence to convict
d the injunctive procedure is enhanced
ld the violator in contempt if he fails to
upt powers are exercised by the court

d the law will usually be exercised after

SECTION 22

37

the violator has failed to obey the State Ethics Commission's own administrative order
to cease his violation.

The Commission's right to sue for civil penalties is discussed in connection with
Subsection 22 (d).

(b) Upon a preliminary showing in an action brought by the Commission
that a violation of the law has occurred that involves a conflict of interest or a
disqualification for official action, the court may restrain the execution of any
official action in relation to which such violation occurred, pending final
adjudication. If it is ultimately determined that a violation has occurred and
that in the absence of such conflict of interest the official action might not have
been taken or approved, the court may set the official action aside as void.
The term official action as used in this subsection includes, but is not limited
to, executive and administrative action, such as orders, permits, resolutions
and contracts, but does not include the enactment of state legislation. In
considering the granting of preliminary or permanent relief under this
subsection, the court shall accord due weight to any injury to members of the
public who rely on the official action in good faith.

Commentary

Section 22 (b). In addition to the power of the State Ethics Commission to seek an
injunction against a violation of the ethics law under Subsection 22(a), this subsection
allows the court, in an injunctive proceeding brought by the Commission, to restrain
the official action alleged to be tainted. The Commission may obtain a temporary
restraining order against such government action after a preliminary showing that a
violation of the law has occurred. Such a preliminary restraining order will hold all
further government action in relation to which the violation has occurred until the issue
of the existence of the alleged violation has been determined. When it is determined
that there has been a violation, the court may void the tainted government decision or
action. The court, however, is not required to grant such temporary or permanent
relief, but must give due weight to the detrimental effect such an order may have on
members of the public who rely on the official action, in good faith. A number of
instances of such good faith reliance may be suggested—such as employees whose
jobs may be lost when their company's contract is voided, or the residents of a
particular area who may lose the benefit of some public works project, be it a housing
project, a public transportation project, or a flood control project, as a result of the
voidance of the particular government action.

(c) Any person who violates any of the reporting requirements of this Act is
liable to the state for a civil penalty in an amount not exceeding the value of
the interest not properly reported.

Commentary

Section 22(c). This subsection allows a civil action for the collection of a civil penalty for the violation of the reporting requirements of the Act, in an amount not exceeding the value of the interest not properly reported in the financial disclosure statement. Note that this civil penalty is limited to violations of reporting requirements, and that, unlike the criminal fine for the same violation, the penalty may be collected regardless of whether the violation was knowing and willful. The civil penalty, as in other civil suits, may be imposed on the basis of the fair preponderance of the evidence of violation. For additional discussion of the imposition of civil penalties see Commentary in Section 24.

(d) Any state official or state employee who realizes an economic benefit as a result of a violation of the conflict of interest provisions of Sections 11 to 20, is liable to the state for a civil penalty in an amount not exceeding three times the amount or value of the benefit.

Commentary

Section 22 (d). This subsection allows a civil action for the collection of a penalty for the violation of the conflict of interest provisions of Sections 11 to 20 in an amount not exceeding three times the amount of the benefit derived from the violation (such as the use of official information for private benefit, or the benefit from government contracts improperly obtained). The provision does not require proof beyond a reasonable doubt or proof of knowing and willful violation. The section treats the violation as a civil, economic or administrative offense, for which an economic penalty is imposed that stands in direct relationship to the economic benefit gained from the violation.

(e) If two or more persons are responsible for any violation, each of them is liable to the state for the full amount of the civil penalty, and a separate civil penalty for the full amount may be imposed on, and collected from, each of them individually.

Commentary

Section 22 (e). This subsection provides for separate civil causes of action against each person civilly liable under the provision of the Act. Civil penalties, therefore, are not to be divided among the persons responsible in cases where more than one person bears responsibility, but each person is liable independently for the full amount of the penalty.

Section 23. Citizen Action.

Any resident of the state may file a written request with the Commission

ry

al action for the collection of a civil
ements of the Act, in an amount not
y reported in the financial disclosure
violations of reporting requirements,
iolation, the penalty may be collected
g and willful. The civil penalty, as in
is of the fair preponderance of the
of the imposition of civil penalties see

ho realizes an economic benefit as
provisions of Sections 11 to 20, is
amount not exceeding three times

ry

l action for the collection of a penalty
ons of Sections 11 to 20 in an amount
nefit derived from the violation (such
efit, or the benefit from government
does not require proof beyond a
llful violation. The section treats the
fense, for which an economic penalty
he economic benefit gained from the

ie for any violation, each of them is
civil penalty, and a separate civil
d on, and collected from, each of

ry

separate civil causes of action against
the Act. Civil penalties, therefore, are
in cases where more than one person
ependently for the full amount of the

ten request with the Commission

that the Commission commence action for injunctive relief to enjoin a violation or to compel compliance with the provisions of the Act, or for the collection of civil penalties. The request shall state the grounds for belief that a cause of action exists. The Commission shall respond no later than forty days after the receipt of the request, indicating whether it intends to file a civil action. If the response is affirmative, and suit is commenced within fifty days thereafter, no other action may be brought unless the action brought by the Commission is dismissed without prejudice as provided for in subsection 24 (c). If the Commission fails to reply or to take any action, the resident may proceed with the action in the same manner and to the same extent as is provided for civil actions by the Commission pursuant to Section 22 of this Act.

Commentary

Section 23. This section follows the trend, which began in the sixties, to give standing to private citizens to engage in litigation to vindicate the public interest. In areas of the law where there is a great concern that powerful groups within and outside the government may prevent others from carrying out the law to the fullest, private citizens may bring lawsuits not to protect narrow personal interests but rather broad public ones. Citizens acting in this manner have sometimes been referred to as "private attorneys general," and the public interest litigation they have engaged in in such areas as civil rights, consumer protection, environmental protection, has added greatly to compliance with the law.

As in other areas of citizen action, the purpose is not to oust the government from jurisdiction, but rather to encourage government assumption of its duties. Moreover, it should be noted that citizen action is limited to civil action and plays no direct part in criminal prosecution. Great care is taken in Section 23 to assume that citizen action will not interfere with, but will rather enhance public enforcement activities. Thus, citizen action can only be brought if the Ethics Commission has failed to respond to a request to take action, or having responded to the request, has failed to proceed promptly. Once the Commission has begun its own civil suit, no citizen action may be brought, unless the Commission's action is dismissed without prejudice. The kind of action the citizen may bring is like the Commission's authorized actions—either for injunctive or for civil penalties. The purpose of the section is to give private citizens the opportunity of closely reviewing government action or inaction, without objectionable interference in the government's primary sphere. In the case of this model state ethics law, it is expected that in most instances the law would work to stimulate the Commission to take enforcement steps on its own.

Section 24. Civil Action; Generally.

- (a) In any civil action brought under Section 22 or 23 of this Act:
 - (i) The court may award court costs and reasonable attorney's fees to the prevailing party;

- (ii) The court in determining the amount of civil liability under subsections (c) and (d) of Section 22 may take into account the seriousness of the violation and the degree of culpability of the defendant;
 - (iii) The court, on motion of any party, may require the defendant or a private plaintiff at any stage of the proceedings to post a bond in a reasonable amount sufficient to assure payment of costs and attorney's fees.
- (b) No action shall be filed under Sections 22 and 23 more than three years after the occurrence of the violation complained of.

Commentary

Section 24(a) and (b). The provisions of this section are applicable to all civil actions brought under this law, whether by the Commission under Section 22, or as a citizen action under Section 23. In all such civil actions, the court may award court costs and attorneys fees to the winning party, and it may also require the posting of bond by defendants and by citizen plaintiff, to secure the payment of costs and attorneys fees. This is a device to discourage frivolous lawsuits. In addition, the section sets forth the considerations the court may take into account in setting the amount of the civil penalty.

A three-year statute of limitations on civil actions, which parallels the statute for criminal prosecution is Section 21(c), is provided for.

(c) The court may dismiss an action under Section 22 or 23 without prejudice to any other action for failure of the plaintiff to proceed diligently and in good faith. The action may be so dismissed on motion of the Commission or any other plaintiff who intends to bring an action based on the same violation.

Commentary

Section 24(c). The subsection authorizes the court to dismiss a civil action, whether brought by the Commission or by a private citizen, for failure to proceed diligently and in good faith. The subsection meets several needs. It prevents an action from being dragged out unnecessarily. Such protracted delay, which reflects a failure to pursue the matter diligently, gives evidence of lack of good faith. Delays in litigation have the result of damaging the defendant's reputation, and, where a particular business contract or activity has been suspended, it may damage other, tangible, interests as well. Delay intended to defeat the full pursuit of the matter may be dealt with by dismissing the action "without prejudice," which has the result of allowing some other party—most probably a private citizen plaintiff—to start a new lawsuit and carry the matter to a completion, so long as the three-year statute of limitations has not run out at the time the new action is commenced.

AND FINANCIAL DISCLOSURE LAW

of civil liability under subsections into account the seriousness of the liability of the defendant;

may require the defendant or a proceedings to post a bond in a payment of costs and attorney's

tions 22 and 23 more than three complained of.

ary

this section are applicable to all civil Commission under Section 22, or as a il actions, the court may award court and it may also require the posting of to secure the payment of costs and volous lawsuits. In addition, the section into account in setting the amount of

actions, which parallels the statute for ed for.

under Section 22 or 23 without f the plaintiff to proceed diligently so dismissed on motion of the nds to bring an action based on the

ary

the court to dismiss a civil action, private citizen, for failure to proceed ets several needs. It prevents an action otracted delay, which reflects a failure of lack of good faith. Delays in litigation reputation, and, where a particular ided, it may damage other, tangible, full pursuit of the matter may be dealt ice," which has the result of allowing en plaintiff—to start a new lawsuit and three-year statute of limitations has not ed.

(d) Any civil penalties imposed under Section 22 or 23 shall be paid into the general fund of the state.

Commentary

Section 24 (d). Civil penalties, whether collected in a civil action brought by the Commission or by a private citizen, must be paid into the general fund of the state. This also demonstrates the public interest nature of citizen actions, because the plaintiff does not derive any personal benefit from the successful outcome of the suit.

(e) The commencement or conclusion of a criminal prosecution for violations shall not bar a civil action under Section 22 or 23, nor shall a civil action be a bar to criminal prosecution for violation of this Act.

Commentary

Section 24 (e). The subsection expressly provides that civil and criminal proceedings and sanctions are not mutually exclusive. The purpose of a criminal prosecution is to prove a criminal violation beyond a reasonable doubt, and to impose a criminal penalty that will, because of its punitive nature, exert a deterrent effect. The civil sanction is based on a civil proceeding that does not impose the stigma of criminality on the violator. A civil violation may, therefore, be proved by a fair preponderance of the evidence. While the civil sanction may be economically onerous, it is nonetheless not intended to be punitive, but rather compensatory and restitutional in scope, in that it is designed to have the violator pay back to the public the economic cost of his violation. In view of the different modes of proof, the different procedural requirements and the different measures for, and purposes of, the sanctions imposed, the two procedures may stand separately, and no question of double jeopardy arises. The existence of two possible procedures to deal with violation allows the Commission a wide range of choices of civil and criminal sanctions, depending on the nature of the violation and the nature of the available evidence. The constitutionality of civil and criminal sanctions for violation growing out of the same set of circumstances has been upheld by the U.S. Supreme Court.

The distinction between criminal prosecution and civil penalty action was drawn authoritatively in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed. 2d 644 (1963). The distinction has been applied in numerous cases where both criminal and civil sanctions were available, e.g., *United States v. Ashland Oil & Transp. Co.*, 364 F.Supp. 349 (W.D. Ky. 1973); *United States v. General Motors Corp.*, 403 F.Supp. 1151 (D.Conn. 1975).

Section 25. Violations; Employment Discipline.

Any state employee who violates a provision of the law is subject to discipline, including dismissal, by his agency, consistent with any applicable civil service or other personnel laws, regulations and procedures.

Commentary

Section 25. This section adds another sanction to the array that may be imposed for violation of the law. A violation of this Act is clearly a breach of employment discipline in the case of state employees and may be treated accordingly.

Section 26. Severability.

If a part of this Act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. Effective Date.

This law shall become effective on _____.

NATIONAL MUNICIPAL LEAGUE ETHICS PROJECT COMMITTEE

Barbara Rawson, Chairmar.
Former Chairman
Ohio Ethics Commission
Cleveland, Ohio

Jewel Bellush
Professor of Political Science
Hunter College
New York, New York

Richard J. Carlson
Office of the Governor
Springfield, Ohio

LeRoy Collins*
Former Governor of Florida
Ervin, Varn, Jacobs, Odom & Kitchen
Tallahassee, Florida

Stephen K. Galpin*
Manager, Community & Governmental
Relations
General Electric Company
Fairfield, Connecticut

John A. Love*
Former Governor of Colorado
President, Ideal Basic Industries
Denver, Colorado

George G. Matthews*
Former President of the Town Council
Palm Beach, Florida

Robert E. Merriam*
Former Chairman
U.S. Advisory Commission on
Intergovernmental Relations
Chicago, Illinois

William T. Patrick, Jr.*
Director of Environmental Affairs
American Telephone and Telegraph
New York, New York

try

tion to the array that may be imposed
it is clearly a breach of employment
may be treated accordingly.

parts that are severable from the
Act is invalid in one or more of its
in all valid applications that are

NATIONAL MUNICIPAL LEAGUE COMMITTEE

Chairman
man
mission
Ohio

John A. Love*
Former Governor of Colorado
resident, Ideal Basic Industries
Denver, Colorado

George G. Matthews*
Former President of the Town Council
Miami Beach, Florida

Bert F. Merriam*
Former Chairman
U.S. Advisory Commission on
Intergovernmental Relations
Chicago, Illinois

William T. Patrick, Jr.*
Director of Environmental Affairs
American Telephone and Telegraph
New York, New York

ETHICS PROJECT COMMITTEE

Carl H. Pforzheimer, Jr.*
Former President, National Municipal
League
Former Vice Chancellor, New York State
Board of Regents
Purchase, New York

William Pincus
President
Council on Legal Education for
Professional Responsibility
New York, New York

William A. Pyle*
Watkins, Pyle, Ludlum, Winter
& Stennis
Jackson, Mississippi

William F. Quinn*
Former Governor of Hawaii
Goodsill, Anderson & Quinn
Honolulu, Hawaii

Jeanne Richman*
Village Trustee
Scarsdale, New York

William W. Scranton*
Former Governor of Pennsylvania
Former President, National Municipal
League
Scranton, Pennsylvania

Earl Sneed*
Member, American Bar Association
Special Committee on Election
Reform (1976)
Crowe, Dunleavy, Thweatt, Swinford,
Johnson & Birdick
Oklahoma City, Oklahoma

Marjorie R. Sneed*
Member, California Constitutional
Revision Commission
San Diego, California

Richard C. Van Dusen*
Dickinson, Wright, McKean, Cudlip &
Moon
Detroit, Michigan

David I. Wells*
Assistant Director, Political Affairs
International Ladies' Garment Workers'
Union
New York, New York

Fay H. Williams*
Trustee, Legis/50—The Center for
Legislative Improvement
Former Assistant Majority Counsel,
Indiana Senate
Indianapolis, Indiana

Wilson W. Wyatt*
Former Lieutenant Governor of
Kentucky
Former President, National Municipal
League
Louisville, Kentucky

*Denotes present or former member of National Municipal League Council

ADVISORY COMMITTEE 1975-1978

Richard H. Andersen
Chief of Campaign Disclosure
Illinois Board of Elections

Jerome R. Bahlmann*
Former Executive Director
Ohio Ethics Commission

Michael Bennett
Executive Director
California Fair Political Practices
Commission

Anthony M. Carey
Executive Secretary
Maryland State Board of Ethics

W. Robert Chestnut
Vice Chairman
South Carolina State Ethics
Commission

Melvin G. Cooper
Executive Director
Alabama Ethics Commission

Elizabeth Ebbott
Member
Minnesota Ethical Practices Board

Sheila Gaughan*
Former Executive Director
Illinois Board of Ethics

Lawrence A. Gonzalez
Executive Director
Florida Commission on Ethics

Lynn Hellebust*
Former Executive Director
Kansas Governmental Ethics
Commission

Claire Jacobs
Vice Chairman
Connecticut Elections Commission

Graham E. Johnson
Administrator
Washington Public Disclosure
Commission

David F. Norcross*
Former Executive Director
New Jersey Election Law Enforcement
Commission

Barbara Snethen*
Former Executive Director
Iowa Campaign Finance Disclosure
Commission

Richard G. Terapak
Executive Director
Ohio Ethics Commission

*Resigned on leaving the commission



Alaska State Legislature

Senate

JUNEAU, ALASKA

M E M O R A N D U M

Date: 1/24/81

To: Senate President Jalmar Kerttula

From: Senator Vic Fischer

Re: Ethics, etc. legislation

I am currently having a bill drafted on ethics, conflict of interest, financial disclosure, etc., applicable to state officials and employees. I'm also interested in issues of campaign financing.

I will greatly appreciate your referring bills dealing with these topics to the State Affairs Committee.

Thanks.

A handwritten signature in cursive script, appearing to read "Vic".

PRESIDENT
Robert H. Rawson

VICE PRESIDENTS
Stephen K. Galpin, Fairfield, CT
James L. Heland, Jr., Minneapolis
George L. McGonigle, Houston
William F. Quinn, Honolulu
Terry Sanford, Durham, NC
Marjorie R. Spear, San Diego

Carl H. Pforzheimer, Jr., Chairman
Executive Committee & National
Conference on Government
Wilson W. Wyatt, Chairman
of the Council
Frank E. Curley, Treasurer

REGIONAL VICE PRESIDENTS

Robert B. Alwood, Anchorage
Rex M. Bail, Oklahoma City
Terrell Blodgett, Austin
Earl Blumenauer, Portland, OR
Robert F. Buck, Seattle
James W. Callison, Des Moines
George E. Campbell, Little Rock
Wayne A. Corpening, Winston-Salem, NC
Angelo A. Constanza, Rochester
J. J. Daniel, Jacksonville
Edwin D. Dodd, Toledo
Daniel J. Evans, Olympia, WA
T. Scott Fillebrown, Nashville
A. D. Frazier, Jr., Atlanta
Richard W. Freeman, Jr., New Orleans
Charles E. Glib, Los Angeles
William T. Gosselt, Detroit
Fred A. Herrington, Lincoln
Lawrence Howo, Chicago
Edward M. Kresky, New York
John A. Love, Denver
Charles E. McCallum, Grand Rapids
M. Luc Payne, Norfolk
Richard H. Peako, Jr., Pittsburgh
Neal R. Peirce, Washington, D.C.
Russell W. Peterson, New York
William A. Pyle, Jackson, MS
Joseph Robbio, Miami
W. H. Roberts, Dallas
Harvey C. Russell, Purchase, N.Y.
Frank P. Sebree, Kansas City, MO
Joseph F. Turley, Boston
E. Robert Turner, Boulder
John R. Vella, San Francisco
Fay H. Williams, Indianapolis

COUNCIL

Marion P. Ames, Rye, N.Y.
Charles A. Ballard, New York
Nella G. Barkley, Charleston, S.C.
Alan K. Campbell, Washington, D.C.
Anthony M. Carey, Baltimore
Thomas J. Clark, Long Beach, CA
LeRoy Collins, Tallahassee
Samuel M. Convisser, New York
Leonard E. Davis, San Antonio
Roy P. Drachman, Tucson
Harold W. Dodds, Princeton
Michael S. Dukakis, Boston
Richard A. Edwards, New York
Curtis E. Frank, Greenwich, CT
George Gallup, Princeton
Samuel K. Gove, Urbana, IL
Franklin P. Hall, Richmond
W. Leo Hill, Boulder
Ruth J. Innerfeld, Mamaroneck, N.Y.
Barbara Jordan, Austin
Richard Kizer, New York
N. Warner Lee, Phoenix
Frank Light, Providence
Go don E. McDonald, Chicago
Allen J. McDowell, Lincoln
Howard D. McMahon, Fort Worth
Cecil Morgan, New Orleans
James A. Norton, Cleveland
John B. O'Hara, Philadelphia
Roy H. Oswald, Louisville
William T. Patrick, Jr., New York
Thelma Press, San Bernardino
William L. Randall, Milwaukee
Ray T. Reed, Jr., Wichita
Arlene E. Richert, Great Falls, MT
Joanne Richman, Scarsdale, N.Y.
George Romney, Bloomfield Hills, MI
Victoria Schuck, Washington, D.C.
William W. Scranton, Scranton, PA
Murray Seatongood, Cincinnati
William F. Taggart, East Brunswick, N.J.
Marjorie L. Taylor, Wichita
Cecil H. Underwood, Huntington, WV
Richard C. VanDusen, Detroit
David I. Wells, New York
Stanley J. Winkelman, Detroit
John C. Wyckoff III, Memphis

A Citizens' Organization for Better Government • Founded 1894

NATIONAL MUNICIPAL LEAGUE

Sponsor of

National Conference on Government

86th Annual Conference—Houston—November 15-18, 1980

December 8, 1980

Mr. Vic Fischer
211 East Seventh Avenue No. 204
Anchorage, Alaska 99501

Dear Vic:

I was particularly disappointed that you couldn't get to New York, but distressed about your accident. John Bebout filled me in. Campaigning is dangerous business.

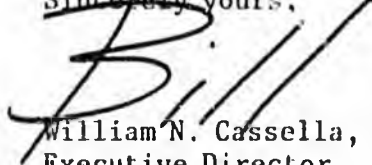
We are quite pleased with our two "ethics" models. Both are enclosed. If you have any questions on either "conflict of interests" or "campaign finance" contact Page Bigelow of our staff.

Legislating "clean" elections is something else. We wouldn't attempt a model because we aren't sure that anything can be done about this that will pass muster constitutionally. The clipping from the NY TIMES and attached materials tell the story.

We enjoyed having Guy Van Doren with us here in NYC and also at the Conference. We want to be helpful in every possible way. Incidentally, please send me a copy of your report on the Hawaii Convention. It sounds like it should be published in NCR. We will keep in touch.

AND NOW. CONGRATULATIONS TO YOU AND YOUR DISTRICT!! Best wishes!!

Sincerely yours,


William N. Cassella, Jr.
Executive Director

WNC/gm
Enclosures

Carl H. Pforzheimer Building, 47 East 68th Street, New York, N. Y. 10021
Telephone: (212) 535-5700

William N. Cassella, Jr., Executive Director
William G. Anderson, Jr., Assistant Director
Joan A. Casey, Director, Library/Publications
Page Elizabeth Bigelow, Staff Associate
Marion A. Kelly, Administrative Assistant
Gerald N. Hardy, Field Consultant
Peter L. Shaw, Field Consultant
Troy R. Westmeyer, Field Consultant
William K. Woods, Field Consultant
Frank P. Grad, Counsel

Vic Fischer

State Senate

221 East Seventh Avenue No. 204/Anchorage, Alaska 99501/(907) 276-0621

November 16, 1980

CASSELLA

Dear Bill ---

I trust this finds you semi-recuperated after your convention. I'll be interested how conference responded to goals and programs...

And that I hope to find out soon. I will be in New York late Tuesday, Nov. 25. Probably in the city on Wed, 25th. Back to New York early Wed. Dec 3. Leaving for Anchorage afternoon of Mon, 8th; a couple of days in Boston during this Dec. 3-8 period.

? May I stay in NML hostelry Dec 3 to 8? No need to write, I'll call you on 26th.

Aside from everything else, I do want to spend a bit of time with you and others on "business" matters. I have won election to state senate, and now that the albatross is around my neck, I'm going to make the beast fly somewhere...

(interruption --- dinner with John Bebout and Vic Jones; last night spent with John and Tom Stewart!!!!)

Anyway --- had a real tough campaign, a lot of malicious, gutter tactics used against me. Want to introduce some good and responsible legislation for clean election ~~campaign~~ campaigns, as well as ethical conduct and conflict-of-interest laws. Obviously, NML. Plus lots of other topics.

I will call you once in New York to see what would be convenient for you.

Till then, very best

November 29, 1980

BILL CASSELLA

Dear Bill ---

This is a sad letter -- for I've had to cancel my trip east for medical reasons. Had injured my leg five weeks ago, and doctor said it's not healing well enough for me to expose it to a busy travel schedule.

Lots of regrets, including opportunity to spend some time with you and others at NML. But I still need your help.

Even though it's early, we've already organized the state senate for the next sessions. One of my assignments is chairman of state affairs committee. Among many other functions, that covers responsibility for elections and the like, including state personnel, overall state government, etc, etc.

I am, as I mentioned in my previous note, very interested in enacting some good legislation on ethical conduct and conflict of interest covering legislative and other state employees, as well as possibly applying same rules to local governments and school districts. In addition, would like to see some machinery established to promote more ethical or "clean" elections, especially after being exposed to the most viciously lying campaign ever seen in Alaska -- without any recourse to any machinery that could adjudge veracity of charges being indiscriminately thrown around. (I've decided that this course would be more constructive than pursuing a tough libel case.)

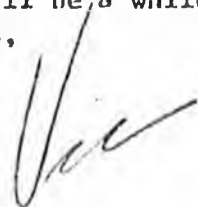
Anyway -- I'd appreciate anything you could send me on these topics, especially model legislation and information on what other states have done.

If you have anything recent and useful on legislative reform, apportionment, or anything else I should know as an active legislator -- do let me know please.

Thanks for any help you can give me. I do regret that I have to send you this written request, rather than delivering it in person...

I do hope you were able to get Atwood back on an active track. If enthused, he can do much good.

Since I don't expect any trips east til next fall, it will be a while before I do get to see. But til then, all my very best regards,



LEGISLATIVE STUDY COMMITTEE REPORT

PART 1

SPONSORED BY GFWC ANCHORAGE WOMAN'S CLUB FREE COMMITTEE

INTRODUCTION

While monitoring the activities of the Alaska State Legislature, it became apparent to the members of the Anchorage FREE Committee that legislative rules (or lack of) and procedures could be used to circumvent the wishes of the majority.

In an effort to educate ourselves as well as the citizens of Alaska, FREE formed a Legislative Study Committee in September of 1980. The purpose of the committee was to try to discover how policies and procedures of our state legislature might be modified or changed in order to make the legislative process run smoother, allow for additional public input, and make it less vulnerable to abuse.

We have interviewed or received written comments and suggestions from 24 legislators involving 100 hours of discussion. We have talked to former legislators and many other knowledgeable people. We have also studied and analyzed the rules of other states. We have come up with the following recommendations: If you concur with our findings please send a hand written note to your legislators at Pouch V, Juneau, Alaska 99811. This is the only way that we will get these rules implemented.

SUMMARY OF RECOMMENDATIONS

1. Two consecutive conference committees should be appointed, deliberate in good faith, and be unable to reach a compromise before granting powers of free conference to a third committee.
2. A simple "bill content" rule is needed to define "germane" and prevent bill "piggybacking" from occurring. The rule should read: "No bill shall be passed by either house containing more than one subject, which should be clearly expressed in the title."
3. The public should be informed of the standing committee meetings and their agendas at least five days prior to the meeting.
4. The House and Senate Finance Committees should meet jointly for the purpose of holding public hearings or considering any proposed or pending legislation.
5. Precise procedures for standing committees are vital. Fiscal impact statements and legislative intent should be included with all bills. The committee report should include one of three recommendations from each member. - "Do pass", "do pass as amended", or "do not pass".
6. No interim committees should be provided except those authorized by the state constitution, or either or both houses jointly may by resolution or statute, provide for the appointment of interim committees.
7. The legislative session should be limited to 120 days. Any extension beyond that time should require a 2/3 vote of both houses and include a "limited call" provision. The extension should be for a specific number of days.
8. There should be a limitation on the number of consecutive terms for legislators. Our recommendation: Two 4-year terms for Senators, and four 2-year terms for representatives. Possible to alternate houses every 8 yrs.
9. A Code of Ethics should be added to the Uniform Rules. A disciplinary mechanism should be established to deal with alleged violations.
10. A simple precise procedure is needed in awarding legislative professional service contracts.

If you have any questions concerning these recommendations, or if you wish to know the names of your legislators, please call Jan Bomhoff, 243-1099, or Jan Faiks, 344-0454.

Please help us. Your opinion really does count. - Thank you.

977 Delana
Financial disclosure

NANCY 276-4176

CARLSON

low charges



Executive Recruiters
For Alaska's Future.

TOLL Associates, Inc.

Suite 603
NBA Building
301 W. Northern Lights Blvd.
Anchorage, Alaska 99503

(907) 276-6901

March 16, 1981

Vic Fisher
Pouch V
State Capitol
Juneau, AK 99811

Dear Vic:

There were two very impressive ladies who presented the enclosed material to our Rotary club. They seem to have a handle on the ways to reform legislative procedures.

I would consider it a sign of good faith toward Alaska's progress if you could seriously consider giving them your wholehearted support to pass the more critical changes they endorse.

Sincerely,


Richard Decker, PhD
Management

RD:ta
Encl: legislative report

Broadcast commission will debate future of director

By PETE SPIVEY
Daily News reporter

Two members of the Alaska Public Broadcasting Commission want the 9-person board to meet in secret session next week for a frank discussion of the commission's future and possibly that of its executive director, Michael Porcaro.

Commissioner Elaine Mitchell of Juneau has asked for the closed talks — a legal "executive session" under state law — to be placed on the agenda of the board's regular public meeting Friday. Mitchell's request is supported by a second member of the commission, Cathy Ulmer.

In the secret session, Mitchell plans to criticize Porcaro for the commission's deficiencies in budgeting and planning, and for moonlighting on his \$58,656-a-year public job by making radio and television advertisements for private businesses and politicians, sources told The Daily News Friday.

Mitchell, who refused to discuss her plans with a reporter, also may offer a resolution that would demand Porcaro's resignation, if approved by the board, the sources said.

"I have requested an executive session. That's all I can tell you," Mitchell said.

Porcaro was the subject of a controversy of sorts last month when the Alaska Public Radio Network — a charge of the broadcasting commission — reported his proposal to use a state satellite hookup for a commercial broadcast of the Sugar Ray Leonard-Roberto Duran championship boxing match.

Although the fight eventually was beamed over a commercial transponder, the network did a second news report — disputed by Porcaro and commission chairman Stowell Johnstone — in which it claimed Porcaro was ordered to explain to the commission his role in the effort to secure the public satellite for a private cable television company.

The satellite incident is expected to be a minor part of the complaints about Porcaro.

But there apparently will be much more talk about his commercial moonlighting and discussion of what several persons

in the broadcasting system say is a consistent failure by Porcaro to do any planning or to fight for funding critical to the operation of public broadcasting.

Porcaro, who's held the director's job since June 1976, says the criticism is groundless. He said he's done much more than his job requires and says he would be surprised if any commission member makes an effort to fire him.

"I've done one hell of a good job. As far as I'm concerned, the people have gotten their money's worth out of public broadcasting since I got here," Porcaro said.

Porcaro said he believes he's drawn the ire of some commission members and some managers of public radio and television stations because he's convenient to blame, as executive director. He also says most of that criticism may really be aimed at his personality, which he likens to that of baseball's superhustler, Pete Rose.

"Anytime you're in a position that's visible like this one and you're the kind of person I am — a doer; someone who doesn't let the grass grow under his feet — you're bound to be criticized by others," Porcaro said.

Others in the system don't write off the criticism so quickly, however.

Elmo Sackett, general manager of KAKM Channel 7 public television, said his station lost a \$200,000 budget request to Gov. Jay Hammond's veto last year because neither Porcaro nor anyone else on the commission relayed the importance of the request to Hammond.

"We needed that money for equipment that would enable us to do live-remote broadcasts, but Michael just sent the request to Juneau and no one did any follow-up on it, which you have to do in the budget process," Sackett said. "We have the request in again this year and if nobody's going to push it, we'll track the thing ourselves."

Porcaro, however, says that cut and others the system suffered were expected from the start. And he says while no public broadcasting facility gets all the funding its managers want, he follows their budget requests for the commission

as best he can.

"I keep up with it by phone and by correspondence and when I'm called to Juneau for a hearing, I go," he said. "Unlike some people, I don't believe you have to be prowling the halls of the capitol all the time during the legislative session."

Others in the system are concerned that his commercial work on the side could present the appearance of a conflict of interest.

Porcaro does commercials for a variety of businesses, has done political advertising and he is paid by The Daily News for a weekly column on the origin of popular products and their brand names.

Bill Brooks, manager of public radio station KSKA, says he is one who told Porcaro it wasn't a good idea to do political advertisements for defeated state Sen. Bill Sumner, R-Anchorage.

"I told him I wasn't sure he was serving the public by doing those ads, because what if Vic Fischer (who defeated Sumner) wanted to hold a grudge when our budget came up later? I'm not saying Fischer would, but some politicians might," Brooks said. "It's not something I'd fire the guy for, but I sure would ask him to think about it first."

Porcaro says he has thought about it.

"If I thought I shouldn't be doing it, I wouldn't be doing it," he said. "There was nothing wrong with it, because I was just hired for a job. I would have done the same for Fischer if he wanted to pay the price."

Porcaro says criticism of his other commercial work is "indecorous" and "crazy." He does commercials "for pocket money," he says, and does it only as a voice or a face — never as the director of the state's public broadcasting system.

"A raw talent, I am no more involved with the creation of ads than is an artist's pencil — I'm a pencil; a paintbrush. The producer just uses me to create something," he said. "Because it's my voice doing it, that doesn't mean it's me doing it."

Porcaro ordered to explain fight promotions

Associated Press

The executive director of the Alaska Public Broadcasting Commission has been ordered to explain his involvement in a paid promotional campaign for Visions Ltd. the same week he recommended the cable company be allowed to use the state satellite to air a championship boxing match.

Stowell Johnstone, chairman of the commission, said Thursday he has instructed Michael Porcaro to make a full report Dec. 19 on his role in the promoting and televising of the Sugar Ray Leonard-Roberto Duran title fight last month.

A story on Porcaro's activities was carried on Thursday's news report by the Alaska Public Radio Network, one of the broadcast outlets funded by the commission.

The commission operates the state satellite project and funds 13

public radio stations and three television stations with an annual budget of \$4 million in state money.

Porcaro, under contract to an Anchorage advertising firm, put together a series of radio spots promoting the bout. The ads included interviews with fight promoter Don King, heavyweight boxing champion Larry Holmes and Visions president Bob Uchitel.

According to Jack Lloyd of the advertising firm of Murray, Bradley & Rockey, the spots were produced as part of "an ongoing relationship" between his firm and Alaska Broadcast Services, a company in which Porcaro is a partner.

Lloyd said Porcaro's company will be paid between \$150 and \$200 for the series of ads which were distributed to radio stations in Anchorage, Bethel and Southeast Alaska.

Citing the small amount of money

involved, Porcaro, Lloyd and Uchitel denied that Porcaro's work for the advertising firm constituted a conflict of interest.

"What was my gain?" Porcaro asked when questioned about the advertising venture. "For there to be a conflict of interest there has to be some big gain."

Johnstone said he did not know about the radio spots when he approved Visions' use of the state satellite system to telecast the fight.

"I was told this was a clean operation," Johnstone said. "I was assured that no one would object to it."

Plans to use the state satellite to funnel the Leonard-Duran fight to pay-TV customers were scrapped the day of the bout, following questions from several state officials and at least one legislator about the propriety of the idea.

Lt. Gov. Terry Miller said the

proposal "obviously raised some pretty serious policy issues."

Porcaro and Uchitel denied the complaints played any part in their decision to switch the event to a commercially leased transponder. Porcaro insists the change was made because an Alascom transponder — previously booked — became available at the last minute.

"It's nobody's business what I do in my private affairs," Porcaro said, adding that what he does after 4:30 p.m. each day is a private matter.

"The state doesn't own me," he said.

Lloyd said Porcaro's company provides a radio actuality service for Murray, Bradley & Rockey. He said Alaska Broadcast Services was not hired because of Porcaro's position with public broadcasting.

Lloyd also said Porcaro does not exercise any executive judgment on the accounts he handles. In producing the fight promotion, Porcaro was "simply doing a mechanical job,"

As he has in the past, Uchitel criticized media coverage of the con-

troversy. He said it is an example of the media creating the news instead of reporting it. He said Porcaro should be complimented for pulling off a "mechanical miracle."

This is not the first time that Porcaro's private business activities have been questioned. His work on political ads for Democratic U.S. Sen. Mike Gravel, state Sen. Bill Sumner, R-Anchorage, and commercials for the Alaska Bank of the North also have been criticized.

Those ads were done by Audio Enterprises, another firm of which he is part-owner. Porcaro refused to discuss the company.

Porcaro acknowledged that North Slope Borough officials had raised conflict-of-interest questions last month in connection with a controversy over the airing of a documentary on the dangers of Arctic oil exploration.

Public television station KAKM in Anchorage pulled the documentary the day before it was to run, claiming it was unbalanced. One of Porcaro's partners in Alaska Broadcast

Services is Pete Carran, a reporter-producer for KAKM. Through Alaska Broadcast Services, Carran has done promotional work for Atlantic Richfield Co., one of the major oil producers on Alaska's North Slope.

Carran dismissed the objections and said he played no part in the station's decision to pull the film, which eventually ran followed a night later with a film approved by the oil industry.

Bill Dubay of the borough's Anchorage office called the activities of Carran and Alaska Broadcast Services a "questionable mixture of public and private interest."

Bob Clark, director of communications for Gov. Jay Hammond, said he was unaware of the outside business interests of Carran and Porcaro and declined to comment on the matter.

According to Clark, there is no legal definition in Alaska law of conflict of interest. "It comes down to one individual's interpretation of what his moral limits are," he said.

Porcaro downplays fight flap

by Steve Hansen
Times Writer

12-7-80

June 1976.

Alaska Public Broadcasting Commission director Mike Porcaro says the report he will give the commission's directors on his involvement in plans to use the state satellite to broadcast a boxing match is "a matter of routine."

It was reported Friday that he was ordered to give a special report on the incident after conflict of interest allegations surfaced.

Porcaro said his position as executive director warrants regular reports to the nine-person board to keep it informed of the agency's actions.

Reports from Juneau said Porcaro, a one-fourth owner of an Anchorage advertising firm, had been involved in producing radio spots promoting the Roberto Duran-Sugar Ray Leonard fight at the same time the commission was making decisions to allow Visions Ltd. to use the state satellite to broadcast the fight statewide.

Porcaro said allegations that this was a conflict of interest were "non-sense."

He said his agency — Alaska Broadcast Services — had a contract with the advertising firm Murray Bradley and Rockey to produce radio spots whenever its services are requested. Porcaro said Visions had a contract with Murray Bradley and Rockey to promote the fight telecast. He added that Murray Bradley and Rockey — not Visions — had called Alaska Broadcast Services to produce the radio spots.

"We are a client of Murray Bradley and Rockey. Visions retained (the services) of Murray Bradley and Rockey, not me. They (the advertising agency) tell us exactly what to do and we do it. We get paid by them."

"If I were to say to Visions, 'we'll give you the satellite but I want you to give my company a lot of money,' that's a conflict of interest," he said.

Porcaro said Murray Bradley and Rockey had not yet been billed for the Visions radio spots. But he estimated the bill would probably be from \$150 to \$200. The fee is then to be divided among the company's four owners.

Porcaro has been the executive director of the commission since

"The idea that there's any monetary gain is ridiculous," he said. "Basically what I'm saying is 'where is the conflict of interest? What advantage am I getting?'"

Porcaro repeated that he did not make the decision for Visions to use the state satellite. Board chairman Stowell Johnstone made the decision. And when a private transponder became available, Porcaro added, it was he who made the decision for Visions to use the private transponder instead of the state satellite.

"Stowell and I have talked about this and he's treating the matter quite routinely," Porcaro said. "He says he doesn't see any conflict of interest."

Johnstone is in Portland, Ore., and was unavailable for comment.

"It's being absolutely overblown," Porcaro said of news reports. "I think empty barrels make a lot of noise. Does it merit all of this attention ... do people really care?"

Visions officials Bob Uchitel and Bob Gould agreed with Porcaro.

"In my opinion this whole brouhaha ... is kind of unfortunate," said Gould, a co-owner of Visions. "It's kind of surprising to me that it's considered newsworthy."

Uchitel, also a co-owner of the cable television firm, said he had wanted to broadcast the fight to the entire state for free. But because of a lack of equipment, some Bush areas were excluded from seeing the fight.

Uchitel said persons who accused Porcaro of unethical conduct were "creating a controversy out of a positive achievement."

"It just makes me mad to realize people who try to do things for people are getting criticized," Uchitel said. "The citizens haven't gotten mad. There hasn't been a complaint from anybody except a few ... that call themselves leaders."

Uchitel said he wondered why no one complained after the first Duran-Leonard fight in June, which was telecast from the state satellite in the same fashion the recent fight was originally proposed to be telecast.

"If they stop Porcaro and people like him, I'll tell you who'll get hurt — it'll be the taxpayers," Uchitel said. "We did something in Alaska that no other state had. It's so dumb.

We need more tryers and less critics."

But Gene Deck of the Robert Wold Co., a communications firm, said George Shaginaw, the director of marketing and planning for Alascom, told Porcaro and officials from Visions that a private transponder was available five days before the fight Nov. 25.

"The decision could have been made the night of the 20th if they wanted to," Deck said.

Robert Wold Co. was contracted by Visions to provide engineering service for the fight.

Porcaro, Uchitel and Gould said Deck was mistaken.

"Deck is telling you something that isn't true," Uchitel said. "Deck in my opinion should keep his mouth shut because he didn't do very good work. We basically didn't use them but we still had to pay them."

In a letter to a state communications official, Shaginaw said everyone attending the meeting where broadcast details were arranged "agreed that the only way we could be sure Alaska fight coverage would be provided was by using the state satellite."



MIKE PORCARO
Where's the conflict?

Porcaro fends off criticism of boxing match broadcast

by Steve Hansen
Times Writer

11-27-80

An angry Mike Porcaro Wednesday defended the Alaska Public Broadcasting Commission's effort to aid the broadcast of Tuesday's championship fight between Roberto Duran and Sugar Ray Leonard.

Porcaro, executive director of the commission, then turned the tables and leveled a barrage of criticism at a state communications official who publicly criticized the commission's efforts. Porcaro said the official didn't know what he was talking about.

"What we did in my opinion was right and proper and I'd do it again," Porcaro said. "I take offense to the posture of the governor's office and the manner that they took it."

Porcaro was responding to statements by Larry Chaplin, a communications aide for Gov. Jay Hammond, and a handful of other public officials who criticized the commission for tentatively allowing Visions Ltd. the use of the state-leased satellite to broadcast the fight. They questioned the propriety of allowing the satellite to be used for commercial purposes.

But the state satellite was not used. A transponder normally used by NBC-TV was substituted at the last minute to broadcast the fight live from New Orleans. Porcaro said the decision to change was made after he was informed that another one was available.

Chaplin, however, said other transponders were available to Visions prior to the change Tuesday. Porcaro said Chaplin is wrong.

"I'm outraged at those statements," Porcaro fumed. "They're totally uncalled for. The situation changed every day because we had a whole different set of circumstances each day. And he's (Chaplin) sitting there in Juneau making statements about something he knows nothing about and things he shouldn't be

commenting about anyway.

"Up until Tuesday morning there was no other way to bring the fight up. What he's says simply is not true."

Porcaro said he had no qualms about being criticized by state officials. But he wants to hear the criticism personally rather than first read it in the newspapers.

Porcaro said he originally was told by Alascom officials Tom Jensen and George Shaginaw that the only way Visions could telecast the fight in Alaska was by using the state satellite.

"The credibility they have on this is a lot more than that guy in Juneau has," Porcaro said.

Visions co-owner Bob Uchitel said his firm would have reimbursed the state by purchasing an equal amount of satellite time later. Anchorage Visions subscribers watched the fight for free, as did residents in Kotzebue, Kodiak and a few other rural villages. Persons in Juneau and Fairbanks, however, were charged admission fees up to \$50.

"I was told the only way to get the fight to the state was on the state transponder," Porcaro said. "I said 'fine, let's do it.'"

"Can you imagine this fight being seen in Argentina, Japan . . . and not being seen in Alaska," he later added. "I'm confident we did the right thing. Our only sin is that we're trying to serve. I'd rather serve and be criticized than sit back and take the safe, bureaucratic (way out)."

Porcaro said using the state satellite would have cost the state about \$3,000.

"What's curious to me is how on the one hand we can be criticized for being unethical . . . and they're sending a state official to New Zealand to study farms," he said.

Porcaro was referring to W.I. "Bob" Palmer's 3½ week state-paid trip to Australia and New Zealand to

study agricultural projects. Palmer is the Special Project Coordinator for Hammond. State officials say they don't know the details of Palmer's trip. The trip is costing the state \$2,412 for airfare and an undetermined amount of expense money and per diem pay.

"It just shows you he who lives in glass houses shouldn't throw rocks," Porcaro said.

He added later that his comments were directed at the governor's office, not at Palmer "in any way, shape or form."

Liquor license law questioned

by Al Campbell
for The Times

12 8-80

Palmer — The Palmer City Council will reconsider Tuesday a controversial liquor license application by a corporation whose officers include state Sen. Jalmar Kerttula.

Meanwhile, an organization representing 350 existing license holders is asking the Alcoholic Beverage Control Board to clarify new legislation under which so-called "public convenience" licenses may be granted even though a community may have more liquor outlets than the law allows, based on population.

Jim Thibodeau, executive director of Char, the Cabaret, Hotel and Restaurant Association, says the new status for license applicants "slipped through" the Legislature this year through the efforts of Republican Sen. Mike Coletta of Anchorage and Sen. Bill Ray, D-Juneau.

Generally, existing state liquor statutes allow the board to issue one license for every 1,500 people in the applicant's community. The city of Palmer, with about 2,200 people, is then entitled to two licenses. A third could only be issued after population here exceeds 3,000 people.

However, under grandfather rights, license holders who were in business before the population restrictions became law are allowed to keep, transfer or sell their licenses. Under grandfather provisions, there are already three liquor stores in Palmer.

The 1980 statutory amendment provides for new licenses to be issued in certain circumstances even though population limits have been passed if the applicant can demonstrate a public demand and "convenience" in the community.

Char's Thibodeau says Kerttula was not a sponsor of the amendment, although he was probably aware of it. Kerttula, his wife, Joyce, retailer Eldon Sandvik and realtor Harold Newcomb are officers of a corporation operating the Valley Fair Mall, where Mrs. Kerttula has applied for a liquor store license.

Kerttula, a veteran legislator, will be president of the Senate under an organization worked out last

month.

The ABC board routinely notified the Palmer City Council of the application and the controversy erupted here. Existing licensees, clergymen and people against drinking in general found themselves strange bedfellows in opposing the Valley Fair Mall license.

Churchmen such as the Rev. Glen Little of the First Baptist Church of Palmer flatly opposed any new licenses on the grounds that more liquor outlets were not in the public interest. Little stressed he was speaking for himself, not his congregation, although he said many of them probably felt the same way.

City Council members told The Anchorage Times they had been contacted by other church leaders who oppose the new license but did not wish to identify their congregations with any official protest.

For liquor dealers, the question is not temperance but economics. A new license can be issued for a \$1,000 fee to the state, but because of their limited number, those sold under grandfather rights are valued at up to \$90,000 in Palmer on the free market.

Says Herb Boyle of the Glass Bar and Liquor Store: "These licenses are an asset, bought and paid for. If they (the ABC board) start giving them away, they will become worthless."

While the board has the final decision on granting of licenses, board members have traditionally given considerable weight to the wishes of local governments in the involved communities.

The new law in fact stipulates that the board must deny the license if it is protested and the applicant cannot show that the local government acted in an "arbitrary, capricious or unreasonable manner" in protesting.

The board will consider the application in January, after receiving an indication of the city of Palmer position.

One public convenience license was granted this year to a Girdwood store, after the Anchorage Municipal Assembly did not protest its issuance. (See LIQUOR, page B-2)

ser

also has at-
thern Califor-
Los Angeles
featured a
yeska Resort
erroneously

kier can now
Palm Springs
wake up dip,
Airlines plane
our flight that
age about 11
time change.
on of skiing on

es over seven
15 p.m.

... the state ... open to lawsuits from appli-
cants who are rejected while others
are given ...

HAZARDOUS
MATERIALS
AND

WASTE
MANAGEMENT
COMMITTEE



The Council of State Governments

July 8, 1981

TO: CSG Suggested State Legislation Committee, Panel I

FROM: Dick Howard

Attached are sections of laws from several states addressing the questions of hazardous waste, siting and authority. I have been asked by Woody Kozloff, who chairs the special subcommittee that was created at the last meeting of the SSL Scope and Agenda meeting, to send it to you. As Mr. Kozloff will explain to you at the meeting of your panel, the subcommittee will recommend inclusion of these provisions as suggested approaches to dealing with this significant problem.

Enc.

cc: Senator Thomas A. Casey, SSL Committee Chairman, La.
Louis B. Kozloff, Chairman, Special Subcommittee on Hazardous Waste, Pa.
Representative Fred Brown, Alaska, Committee Member
Representative Manuel Fernandez, Louisiana, Committee Member
Steven B. Frakt, Senior Research Associate, N.J., Committee Member

1981 SUGGESTED STATE LEGISLATION

Hazardous Waste Site Approval

1. Siting Board
 - a. Michigan Hazardous Waste Management Act, 1979
Section 299.517
2. State Agency
 - a. Oregon Hazardous Waste Management Rules
Section 340-62-035
- * 3. Local Option
 - a. Illinois
Senate Bill 172, Amendment to Law and Environmental
Protection Act

Hazardous Waste Site Selection

1. State Initiative
 - a. Arizona Hazardous Waste Disposal Law,
Chap. 119, 1980
Senate Bill 1033
- * 2. Special Board
 - a. New York Industrial Hazardous Waste Management Act, Title 11
New York Public Authority Law, Title 12
3. Developer Approach
 - a. House Bill 1481, Maryland

*Not enclosed. Will be available at Niagara Falls meeting.

1981 SUGGESTED STATE LEGISLATION

Hazardous Waste Site Approval

1. Siting Board

a. Michigan Hazardous Waste Management Act, 1979 Site Approval Board

299.517 Site approval board; establishment; purpose; appointment, qualifications, and terms of members; duties of chairperson; quorum; legal action; meetings; staff. [M.S.A. 13.30(17)]

Sec. 17 (1) The site approval board shall be established to review and grant or deny final approval for each site construction permit application recommended for approval by the department. A separate board shall be established in each municipality in which a disposal facility is proposed to be located which is the subject of a construction permit application. The members of the board who serve in the permanent positions shall serve on each board created. The members of the board who serve in temporary positions shall be appointed as provided in subsection (2). The members in temporary positions shall serve until the construction permit application subject to their review is approved, or until the construction permit application is rejected and is no longer subject to their review.

(2) The site approval board shall consist of 5 permanent positions and 4 temporary positions as follows:

(a) Three permanent positions shall be held by representatives of this state, 1 each from the department of public health, the department of state police, and the department of natural resources. A representative of this state shall be appointed by each of the directors of the respective departments and a vacancy shall be filled as necessary by the appropriate director. A representative of the state shall not serve for more than 2 years.

(b) Two members shall be public members appointed by the governor, with the advice and consent of the senate, to fill permanent positions on the board. One public member shall be a geologist and 1 a chemical engineer. Each shall be on the faculty of a state institution of higher education. To assist the governor in the selection of the public members, the respective professional organizations and township or municipal associations may submit a list of candidates to the governor for his or her information. A vacancy shall be filled for the unexpired term in the same manner as the original appointments. The term of the public members shall be 3 years.

(c) Two temporary positions shall be filled by residents of the municipality in which the disposal facility is primarily proposed to be located. The 2 temporary position members shall be appointed by the governing body of the municipality in which the disposal facility is primarily proposed to be located.

(d) Two of the temporary positions shall be filled by residents of the county where the disposal facility is proposed to be located, 1 of whom shall be a resident of the municipality where the disposal facility is proposed to be located, and shall be appointed by the county board of commissioners.

(3) The member of the board from the department shall be chairperson of the board and shall notify the local governing body of the municipality and county government of a construction permit application filed with the department, and shall instruct the municipality or county to appoint the necessary representatives to the board.

(4) Five of the 9 members of the board shall constitute a quorum for the transaction of business of the board and the concurrence of 5 members of the board shall constitute a legal action of the board. All meetings of the board shall be conducted pursuant to Act No. 267 of the Public Acts of 1976, as amended, being sections 15 261 to 15 275 of the Michigan Compiled Laws.

(5) The director shall make staff available to assist the board in carrying out its responsibilities.

299.520 Notice; selection of temporary members; creation of site approval board; timetable; duties of board; comment and input; impact; final determination; considerations; concerns and objections; integration of local ordinances, permits, or requirements; seeking advice. [M.S.A. 13.30(20)]

Sec. 20. (1) If, within 75 days after receipt of a construction permit application, the director has not rejected the application, the director shall notify the chairperson of the board, who immediately shall notify the representatives of the state and the public members on the board. The chairperson also shall notify the county and the municipality in which the proposed disposal facility is to be located for their appointment of the temporary positions to the board. Within 45 days after the notification, the county and the municipality shall select the temporary members. The board shall be created at that time and notification of the creation of the board shall be made to the chairperson.

(2) If the director recommends approval of a construction permit application within 75 days after its receipt, the director, at the time of approval, shall notify the chairperson of the board who shall immediately notify the representatives of the state to the board and the public members. The chairperson also shall notify the county and the municipality in which the proposed disposal facility is to be located for their appointment of the temporary members of the board. Within 45 days after the notification, the county and the municipality shall select the temporary members. The board shall be created at that time and notification shall be made to the chairperson.

(3) Within 10 days after creation of the board, the board shall meet to review and establish a timetable for the consideration of a proposed disposal facility. The timetable for a final action of the board shall not exceed 120 days after the date the board convenes.

(4) The board shall:

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site, at its first meeting. The public notice shall:

(i) Contain a map indicating the location of the proposed disposal facility, a description of the proposed action, and the location where the application for a construction permit may be reviewed and where copies may be obtained.

(ii) Identify the time, place, and location for the public hearing held to receive public comment and input on the application for a construction permit.

(b) Publish the notice not less than 30 days before the date of the public hearing.

(5) Comment and input on the proposed disposal facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the board for 15 days after the public hearing date.

(6) The board shall deliberate the impact of the proposed disposal facility on the municipality in which it is to be located and make a final determination on the construction permit application.

(7) The board shall consider, at a minimum:

(a) The risk and impact of accident during the transportation of hazardous waste.

(b) The risk and impact of contamination of ground and surface water by leaching and runoff from the proposed disposal facility.

(c) The risk of fires or explosions from improper storage and disposal methods.

(d) The impact on the municipality where the proposed disposal facility is to be located in terms of the health, safety, cost, and consistency with local planning and existing development. The board also shall consider local ordinances, permits, or other requirements and their potential relationship to the proposed disposal facility.

(e) The nature of the probable environmental impact, including the specification of the predictable adverse effects on the following:

(i) The natural environment and ecology.

(ii) Public health and safety.

(iii) Scenic, historic, cultural, and recreational value.

(iv) Water and air quality, and wildlife.

(v) An evaluation of measures to mitigate adverse effects.

(8) The board also shall consider the concerns and objections submitted by the public. The board shall facilitate efforts to provide that the concerns and objections are mitigated by establishing additional stipulations specifically applicable to the disposal facility and operation at that site. The board also shall to the fullest extent practicable integrate by stipulation the provisions of the local ordinances, permits, or requirements.

(9) The board may seek the advice of any person in order to render a decision to approve or deny the construction permit application.

299.521 Approval or rejection of construction permit application; issuance or denial of construction permit; effect of local ordinance, permit requirement, or other requirement; reason for rejection; indicating changes. [M.S.A. 13.30(21)]

Sec. 21. (1) The board either shall approve or reject the construction permit application, and the director shall issue or deny the construction permit accordingly. The director also shall issue the permits described in the notice of intent under section 19(2). A local ordinance, permit requirement, or other requirement shall not prohibit the construction of a disposal facility.

(2) If the board rejects a construction permit application, the board shall state its reason in writing and indicate the necessary changes to make the application acceptable, if a new application is made.

State: MichiganEffective Date: 01/01/80Bill #'s or Chapter: HB 4380Sponsors: Rep. TombaulianTitle: Hazardous Waste Management Act

Scope of Law

I. Approach:

- o Nine member Site Approval Board to act on each site construction permit application recommended for approval by Department of Natural Resources. Board composed of 5 permanent members, including 3 state government representatives appointed by department directors and 2 State University faculty scientists appointed by Governor, and 4 temporary members, including 2 representatives of host county and 2 representatives of host municipality, appointed by their respective local governments.
- o Fourteen member Hazardous Waste Management Planning Committee, appointed by Governor and representing diverse geographical areas of state, to prepare in 2 years a state hazardous waste management plan. Plan to: provide geographic distribution of facilities, inventory general locations for future facilities, and explore state ownership of facilities. Department to adopt plan with advice of Commission of Natural Resources and the health Department Committee to review plan every 5 years.
- o Department to encourage local health departments to engage in administration of portions of waste program.

II. Override:

- o Site Approval Board shall review and grant final approval for each site construction permit application recommended by Department. The Board shall to the fullest extent practicable integrate by stipulation the provisions of local ordinances, permits, or requirements.
- o Department shall make final decision on operating license application. Local ordinances, permits, or other requirements shall not prohibit the operation of a licensed disposal facility.

III. Public Participation:

- o Each Site Approval Board contains representatives of host community.
- o Board to hold public hearing, following notice in newspaper, in host community.
- o HWM Planning Committee to hold three public hearings across state prior to submission of plan to Department.
- o Department to notify local governments in host community of permit applications as well as the Soil Erosion Agency, regional planning agency, and local newspapers.

- o Department to hold three public hearings across state prior to proposing formal rules or siting process and criteria to Legislature.

Financial Assurances:

- o Developer to provide bond or other surety to cover closure costs and 15 years of post-closure monitoring and maintenance costs.
- o Disposal Facility Trust Fund, containing \$20 - \$30,000,000, funded by surcharges on facilities, to cover state costs in long term care after assumption of site responsibilities.
- o Hazardous Waste Service Fund, containing \$1,000,000 in legislative appropriations, created to finance emergency actions taken by state.

Non-Financial Assurances:

- o Developer to include emergency contingency plans in application.
- o Developer to execute covenant restricting futures use of site without approval of Department.
- o Health Department may declare state of imminent and substantial hazard to health if suspects dangers in any facility operation. Empowers Department to undertake precautionary measures, including facility close-down, waste removal, environmental clean-up.
- o Developer to provide right of search and seizure without warrant, by officials of Department.
- o Department to issue operation permit after construction and prior to commencement of facility operations. Permit issued only after certification that construction met specifications approved in construction permit issued by Bard, and after formal inspection of facility by Department.

I. Incentives and Compensation:

- o Not specified in Act.

1981 SUGGESTED STATE LEGISLATION

Hazardous Waste Site Selection

1. State Agency Approval

a. Arizona Hazardous Waste Disposal Law, 1980, Chap 119

36-2801. Definitions

In this chapter, unless the context otherwise requires:

1. "Department" means the department of health services.

2. "Director" means the director of the department of health services.

3. "State hazardous waste disposal facility" means a hazardous waste disposal facility owned or operated by this state.

36-2802. Selection of site; public hearing

A. The director shall select a site for a state hazardous waste disposal facility for the disposal, storage, recovery and treatment of hazardous wastes.

B. A hazardous waste site selected by the director shall not be located within:

1. A one hundred year floodplain, as defined in §45-2341

2. An area so close to public roads, residences, public and private water wells and water supplies as to constitute a threat to human health or the environment

3. An area where up to one mile from the perimeter of the site the depth to groundwater level is less than one hundred fifty feet

4. An area where the surrounding land use for one square mile may impede the proper long-term maintenance of such site.

5. An area where the hydrology and geology is incompatible with such use.

6. An area where subsidence has occurred or is likely to occur.

C. Transportation distances and routings from areas within the state that are major sources of hazardous waste shall be a factor in determining site location.

D. The director shall hold public hearings prior to selecting a hazardous waste site.

36-2803. Recommendation of director; legislative approval

A. The director shall present to the

legislature his recommendation for a state hazardous waste disposal facility site. Such recommendation shall include an explanation of the basis on which the recommendation is made and written documentation supporting the appropriateness of the selected site, including comparison with other potential hazardous waste disposal facility sites.

B. Upon receipt of the recommendation of the director, the legislature may by concurrent resolution approve or disapprove the site selected by the director or may request that the director provide additional site recommendations.

State of Arizona
Senate
Thirty-fifth Legislature
First Regular Session
1981

SENATE BILL 1033

AN ACT

RELATING TO PUBLIC HEALTH AND SAFETY; PRESCRIBING CERTAIN DEFINITIONS; PROVIDING FOR THE ACQUISITION OF A HAZARDOUS WASTE DISPOSAL SITE BY DIRECTOR; PROVIDING FOR A BUFFER ZONE AND EASEMENT FOR ACCESS; PRESCRIBING DUTIES OF DIRECTOR AND DEPARTMENT; PRESCRIBING CERTAIN CONFORMING CHANGES; PRESCRIBING CRITERIA TO BE CONSIDERED FOR FUTURE SITES; PRESCRIBING USES OF HAZARDOUS WASTE TRUST FUND; PROVIDING FOR RULES AND REGULATIONS; AMENDING SECTIONS 36-2801, 36-2802, 36-2804 AND 36-2805, ARIZONA REVISED STATUTES; REPEALING SECTION 36-2803, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 28, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2806, AND MAKING APPROPRIATIONS.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Legislative intent

Any purchase or other acquisition of lands currently retained by the federal government authorized by the state of Arizona to accomplish the purposes of this act shall not be construed as an abrogation or diminution of any legal claims the state of Arizona has made upon such federal lands pursuant to Laws 1980, chapter 33.

Sec. 2. Section 36-2801, Arizona Revised Statutes, is amended to read:

36-2801. Definitions

In this chapter, unless the context otherwise requires:

1. "Department" means the department of health services.

2. "Director" means the director of the department of health services.

3. "State Hazardous waste disposal facility" means a hazardous waste disposal facility ~~owned or operated~~ CONTRACTED FOR by this state.

4. "SITE" MEANS THAT PORTION OF REAL PROPERTY DESIGNATED IN SECTION 36-2802 OWNED BY THIS STATE WHEREON A HAZARDOUS WASTE DISPOSAL FACILITY IS CONSTRUCTED.

Sec. 3. Section 36-2802, Arizona Revised Statutes, is amended to read:

36-2802. Acquisition of site; powers and duties of director; criteria applicable to future sites

A. The director shall ~~select~~ ACQUIRE CLEAR TITLE IN THE NAME OF THIS STATE TO a site for a ~~state~~ hazardous waste disposal facility for the disposal, storage, recovery and treatment of hazardous wastes CONSISTING OF ONE SQUARE MILE LOCATED IN MARICOPA COUNTY WHICH LEGAL DESCRIPTION IS SECTION 32, TOWNSHIP 4 SOUTH, RANGE 1 WEST, GILA AND SALT RIVER BASE AND MERIDIAN.

1 B. THE DIRECTOR SHALL LEASE IN THE NAME OF THIS STATE A BUFFER ZONE
2 CONSISTING OF AT LEAST ONE-HALF MILE SURROUNDING THE SITE ACQUIRED
3 PURSUANT TO SUBSECTION A OF THIS SECTION.

4 C. THE DIRECTOR SHALL OBTAIN SUCH PUBLIC EASEMENTS AS ARE NECESSARY
5 FOR INGRESS OR EGRESS TO THE SITE ACQUIRED PURSUANT TO SUBSECTION A OF THIS
6 SECTION.

7 D. TO CARRY OUT THE PROVISIONS OF SUBSECTION A OF THIS SECTION, THE
8 DIRECTOR MAY OBTAIN LANDS BY PURCHASE, LEASE, LEASE-PURCHASE, GRANT,
9 CONDEMNATION OR OTHER LAWFUL MEANS.

10 ~~B.~~ E. WHEN A HAZARDOUS WASTE DISPOSAL FACILITY BECOMES
11 OPERATIONAL, ~~NO NEW FACILITY FOR THE PERMANENT DISPOSAL OF hazardous~~
12 ~~waste site selected by the director shall not~~ OPERATING AWAY FROM THE
13 SOURCE OF GENERATION OF THE WASTE MAY be located within:

14 1. A one hundred year floodplain, as defined in section 45-2341.
15 2. An area so close to public roads, residences, public and private
16 water wells and water supplies as to constitute a threat to human health or
17 the environment.

18 3. An area where up to one mile from the perimeter of the site the
19 depth to groundwater level is less than one hundred fifty feet.

20 4. An area where the surrounding land use for one square mile may
21 impede the proper long-term SITE maintenance. ~~of such site.~~

22 5. An area where the hydrology and geology ~~is~~ ARE incompatible with
23 such use.

24 6. An area where subsidence has occurred or is likely to occur.

25 ~~C. Transportation distances and routings from areas within the~~
26 ~~state that are major sources of hazardous waste shall be a factor in~~
27 ~~determining site location.~~

28 ~~D. The director shall hold public hearings prior to selecting a~~
29 ~~hazardous waste site.~~

30 Sec. 4. Repeal

31 Section 36-2303, Arizona Revised Statutes, is repealed.

32 Sec. 5. Section 36-2804, Arizona Revised Statutes, is amended to
33 read:

34 36-2304. Construction and operation of a site;
35 definition

36 A. ~~Upon selection of a hazardous waste site pursuant to section~~
37 ~~36-2303, subsection 3, the director may:~~

38 1. ~~Acquire, construct or operate a hazardous waste disposal site or~~
39 ~~hazardous waste disposal facility.~~

40 2. THE DIRECTOR SHALL contract for the acquisition, construction or
41 AND operation of a hazardous waste disposal ~~site or hazardous waste~~
42 ~~disposal facility.~~

43 ~~B. To carry out the provisions of subsection A, the director may~~
44 ~~obtain lands and facilities by purchase, lease, lease-purchase, grant,~~
45 ~~condemnation or other lawful means.~~

46 ~~C.~~ B. For the purpose of identifying wastes to be disposed of at
47 the hazardous waste facility established pursuant to this article,
48 "hazardous waste" means a waste or combination of wastes which because of

1 Sec. 8. Appropriations; purposes; lapsing

2 A. The sum of one hundred sixty-seven thousand one hundred dollars
3 is appropriated from the state general fund to the department of health
4 services for additional studies, sampling, analysis and monitoring of the
5 hazardous waste disposal site.

6 B. The sum of two hundred fifty thousand dollars is appropriated
7 from the state general fund to the department of health services for the
8 acquisition of land for a hazardous waste disposal site pursuant to section
9 3 of this act.

10 C. The sum of two hundred thirteen thousand dollars is appropriated
11 from the state general fund to the department of health services for the
12 administrative expenses incurred by the department relating to the
13 hazardous waste disposal site acquired pursuant to section 3 of this act
14 for the thirty-six month period July 1, 1981 through June 30, 1984.

15 D. The appropriations made by this section are exempt from the
16 provisions of section 35-190, relating to lapsing of appropriations,
17 except that any amounts remaining unencumbered or unexpended on June 30,
18 1984, shall revert to the state general fund.

public health; hazardous
waste disposal
FISCAL NOTE INDICATED

COVER SHEET

S. B. 1033

(Reference to House engrossed Senate bill)

Page 1

Line 15, after the first quote struck "State"

Line 16, after "facility" struck "owned"; after "~~operated~~" inserted
"CONTRACTED FOR"

After line 16, inserted paragraph 4

Line 25, after "for a" struck "state"

Line 27, after "LOCATED" struck "AT THE RAINBOW VALLEY SITE"

Page 2

Line 10, after "A" struck "STATE"

Page 4

At beginning of line 5, struck "Rainbow Valley"

At beginning of line 9, struck "2" and inserted "3"

Line 13, after "section" struck "2" and inserted "3"

Amended title to conform

State: Arizona

Effective Date: 04/22/80

Bill #'s or Chapter: Ch. 119, 1980
SB 1283

Sponsors: Rep. Diane McCarthy

Title: Hazardous Waste Disposal Act

Scope of Law

I. Approach:

- o Department of Health Services to select, and recommend to Legislature, site for State Hazardous Waste Disposal Facility. Legislature to act on Department's recommendation through concurrent resolution
- o Department authorized to acquire, construct or operate disposal facilities, to contract for such operation, and to obtain lands by purchase, lease, lease-purchase, grant or condemnation.
- o Department prohibited from selecting sites located within specified environmental/ecological area.

II. Override:

- o Vote of Legislature preempts provisions of local law.

III. Public Participation:

- o Department to hold public hearings prior to selecting site.

IV. Financial Assurances:

- o Assurances not required of State facilities.
- o Department to establish Hazardous Waste Disposal Trust Fund, financed through fees levied upon users of State facilities. Fund to be utilized for facility operation, maintenance and perpetual care, to cover costs incurred in monitoring operation and environmental impacts of facilities, and to abate imminent and substantial threats to health and environment arising out of facility operation.

V. Non-Financial Assurances:

- o Not specified in Act.

VI. Incentives and Compensation:

- o Not specified in Act.

2. State Agency

a. Oregon Hazardous Waste Management Rules

Section 340-62-035

Hearings and Issuance or Denial of a Hazardous Waste Disposal Site License

340-62-035 (1) Upon receipt of an application, the Department shall cause copies of the application to be sent to affected state agencies, including the State Health Division, the Public Utility Commissioner, the State Fish and Wildlife Commission, and the Water Resources Director. ORS 459.570 provides that each agency shall respond by making a recommendation as to whether the license application should be granted. If the State Health Division recommends against granting the license, the Commission must deny the license.

(2) After determination that an application for a license is complete, the Department will notify the applicant of its intent to schedule a hearing or hearings and the timetable and procedures to be followed. The Commission shall conduct hearings at such other places as the Department considers suitable. At the hearing the applicant may present his application and the public may appear to be represented in

support of or in opposition of the application.

(3) Prior to holding hearings on the license application, the Commission shall cause notice to be given in the county or counties where the proposed disposal site is located, in a manner reasonably calculated to notify interested and affected persons of the license application.

(4) The Department shall make such investigation as it considers necessary and following public hearings make a recommendation to the Commission as to whether or not a license should be issued. The recommendations of the Department, including proposed license provisions and conditions if the Department recommends issuance of a license, shall be forwarded to the applicant, to members of the Commission and, at the discretion of the Department, to other interested persons for comment. All comments must be submitted in writing within fourteen (14) days after mailing of the Department's recommendations if such comments are to receive consideration prior to final action on the application.

(5) After fourteen (14) days have elapsed since the date of mailing of the Department's recommendations and after reviewing the Department's recommendations, the Commission shall decide whether to issue the license or not. It shall cause notice of its decision to be given to the applicant by certified mail at the address designated by him in his application.

(6) If the Commission refuses to issue a license, it shall afford the license applicant an opportunity for hearing after reasonable notice, served personally or by registered or certified mail. The notice shall contain:

(a) A statement of the party's right to a hearing or a statement of the time and place of the hearing.

(b) A statement of the authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted or charged.

State: OregonEffective Date: 10/3/79

Bill #'s or Chapter: SB 76, amending Oregon
Statutes to include provisions
for hazardous waste management

Sponsors: Department of
Environmental Quality

Scope of Law

I. Approach:

- o Act distinguishes waste disposal facilities from collection or treatment facilities to provide for more extensive review and regulation of disposal sites.
- o Department of Environmental Quality to administer waste program, recommend license approval to Environmental Quality Commission, and regulate the designation of sites in consultation with county planning commissions.
- o Department authorized to declassify wastes rendered non-hazardous upon recommendation of commission, assume ownership of land where wastes disposed in or upon, and can authorize emergency short-term storage anywhere in state.

II. Override:

- o Environmental Quality Commission must reject applications for disposal facility licences to which the State Health Division objects.

III. Public Participation:

- o Commission to hold public hearing in host county, with prior notice in local newspapers, before action on disposal facility applications. Commission to invite and encourage all interested parties to attend and participate.
- o Department to hold public hearing prior to acting on commission's recommendation to declassify wastes rendered non-hazardous.
- o Department to send copies of disposal facility applications to state health, safety, utility and resources commissioners.

IV. Financial Assurances:

- o Developer to post cash bond to ensure compliance with environmental requirements and to cover closure and post-closure monitoring and security costs.
- o Developer to maintain sufficient liability insurance to assure financial responsibility for environmental and human health and safety impacts during operation.
- o Annual license fees to be collected from developer to cover post-closure costs. When sum equals cash bond, bond may be returned.

V. Non-Financial Assurances:

- o License application to contain: personnel qualifications, including training and experience; description of emergency procedures, safety and security precautions.
- o Developer to restore site to original condition upon termination of operations.
- o Developer to provide access to Department monitoring and inspection personnel, to facilities, wastes and records.
- o Developers to deed to state all that portion of the disposal site in or upon which wastes are disposed.

VI. Incentives and Compensation:

- o Not specified in Act.

3. Local Option

a. Illinois Senate Bill 172, 1981

2. Special Board

- a. New York Industrial Hazardous Waste Management Act, Title 11
New York Public Authority Act, Title 12

TITLE 11—INDUSTRIAL SITING HAZARDOUS
WASTE FACILITIES

Sec.

27-1101. Definitions.

27-1103. Criteria for siting industrial hazardous waste treatment, storage and disposal facilities.

27-1105. Siting industrial hazardous waste facilities.

27-1107. Powers of municipalities.

§ 27-1101. Definitions

As used in this title, unless the context otherwise requires:

1. "Person" means any individual, public or private corporation, political subdivision, government agency, industry, partnership, association, firm, trust, estate or any other legal entity whatsoever.

2. "Corporation" means the New York state environmental facilities corporation.

3. "Board" means a facility siting board constituted pursuant to the provisions of section 27-1105 of this title.

4. "Industrial hazardous waste" shall mean an industrial waste or combination of wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may:

a. Cause, or significantly contribute to an increase in serious irreversible, or incapacitating reversible illness; and/or

b. Pose a substantial present or potential hazard to human health or the environment and, therefore, must be segregated and excluded from the general municipal waste system and sewage collection and treatment process.

5. "Industrial hazardous waste treatment, storage and disposal facility" shall mean a specialized facility or site other than a sewage treatment for the purpose of treating, storing, compacting, recycling, exchanging, or disposing of industrial hazardous waste materials, including treatment, compacting, resource recovery or disposal plants, equipment and furnishings thereof used for the storage, treatment, compacting, composting, shredding, converting, utilization, processing, or final disposal of hazardous waste, including but not limited to mechanical, chemical or thermal processing systems, incinerators, sanitary landfills, other facilities for the storage, reduction or conversion of hazardous waste, including but not limited to transfer stations, baling facilities, railroad and maritime facilities, motor trucks or vehicles and appurtenances, furnishings, equipment and machinery deemed necessary thereto.

§ 27-1103. Criteria for siting industrial hazardous waste treatment, storage and disposal facilities

1. The commissioner shall, after investigation and opportunity for public comment, within one year from the effective date of this section, publish criteria for siting industrial hazardous waste treatment, storage and disposal facilities. Such siting criteria shall be designed to insure the maximum safety of the public from hazards associated with treatment, storage, and disposal of hazardous wastes. The commissioner shall also within one year from such effective date adopt criteria prescribing the form and content of applications for a certificate of environmental safety and public necessity to construct an industrial hazardous waste treatment, storage and disposal facility.

New York Title 11

2. The criteria issued pursuant to subdivision one of this section for the siting of industrial hazardous waste treatment, storage and disposal facilities shall take into account, among other factors:

- a. The density of population in areas neighboring such facility,
- b. The density of population in areas adjacent to delivery routes to such facility,
- c. The risk of accident during the transportation of hazardous wastes,
- d. The risk of contamination of ground and surface waters by leaching and runoff from such facility,
- e. The risk of fires or explosions from improper storage and disposal methods,
- f. The impact on the municipality where the facility is to be sited in terms of health, safety, cost and consistency with local planning, and
- g. The nature of the probable environmental impact, including specification of the predictable adverse effects on the natural environment and ecology, public health and safety, scenic, historic, cultural and recreational value, water and air quality, wildlife and an evaluation measures to mitigate adverse effects.

3. The criteria issued by the commissioner pursuant to subdivision one of this section prescribing the form of an application for a certificate of environmental safety and public necessity to construct an industrial hazardous waste treatment, storage and disposal facility shall require the applicant to supply detailed information regarding:

- a. The location of the proposed facility,
- b. A description of the design and capacity of the facility,
- c. The expected sources of hazardous wastes for the facility, the proposed methods of transporting such wastes to and from the facility, and the routes which deliveries will traverse,
- d. The need for the facility,
- e. The environmental impacts of the proposed facility,
- f. A description of reasonable alternative locations for the proposed facility, and
- g. Such other information as the commissioner shall prescribe as to whether the proposed facility is necessary and compatible with the surrounding environment and with the health, safety and welfare of neighboring populations.

§ 27-1105. Siting industrial hazardous waste facilities

1. After the publication of siting criteria pursuant to subdivision one of section 27-1103 of this title but not later than one year from the effective date of this section, no person may commence construction or operation of a new industrial hazardous waste facility, hereinafter referred to as "facility", without having received a certificate of environmental safety and public necessity from the facility siting board as hereinafter provided. Applications for industrial hazardous waste facilities submitted to the department, and not denied, prior to the effective date of this act shall be exempt from the provisions of this section.

2. To obtain the certificate of environmental safety and public necessity required pursuant to subdivision one of this section, the following procedures shall be followed:

(a) An application must be submitted to the department in the form required pursuant to subdivisions one and three of section 27-1103 of this title.

(b) On or before fifteen calendar days after the receipt of such application, the department shall mail written notice to the applicant whether or not the application is complete. If the application is not complete, the provisions of paragraphs (c) and (d) of subdivision one of section 27-0109 of this chapter shall be applicable. If, or when, the application is complete, the department shall, concurrent with notification to the applicant, send the application and written notice to the office of the governor requesting that a facility siting board be constituted consistent with this subdivision.

(c) Immediately upon determining that an application is complete, the department shall cause a notice of application to be published in the next available environmental notice bulletin which shall be not later than ten calendar days after the date of such notice and shall provide notice to the chief executive officer of each municipality in which the pro-

posed project is located, and may direct the applicant to provide such reasonable notice and opportunity for comment to the public as the department deems appropriate. Such notice shall also be given to all property owners of record within three hundred feet of the subject facility. In addition, notice shall be published in at least two newspapers having a general circulation in the area in which the proposed activity is located, and in contiguous areas potentially affected by the proposed action.

(d) On or before fifteen calendar days after the receipt of such notification the governor shall constitute a facility siting board to be composed of the commissioners of transportation, environmental conservation, health and commerce, the secretary of state and three ad hoc members appointed by the governor, two of whom must be residents of the judicial district in which the facility is primarily proposed to be located. The term of the ad hoc members shall continue until a final determination has been made in the particular proceeding for which they were appointed. Five of the eight persons on the board shall constitute a quorum for the transaction of any business of the board, and the decision of five members of the board shall constitute action of the board. In addition to the requirements of the public officers law, no person shall be eligible to be an appointee of the governor to the board who holds another state or local office. The governor shall appoint the chairman of the board and the commissioner of environmental conservation shall make staff available to support the board in carrying out its responsibilities.

(e) On or before sixty calendar days after the facility siting board is constituted, the chairman of the board shall commence the conduct of an adjudicatory public hearing upon the application. Such hearing shall be preceded by public notice, in the same form and manner as provided in paragraph (c) of this subdivision, given not less than thirty days prior to such hearing.

(f) The board shall render a decision based upon the record either granting the application, denying it, or granting it upon such terms, conditions, limitations, or modifications thereof as the board may deem appropriate. The board shall deny an application to construct or operate a facility if residential areas and contiguous populations will be endangered, if construction or operation of such facility would be contrary to local zoning or land use regulations in force on the date of the application, or if it otherwise does not conform to the siting criteria established for such facility pursuant to section 27-1103 of this title or the board finds that the facility is not necessary, or is otherwise not in the public interest to be approved.

(g) The chairman of the facility siting board shall mail its decision to the applicant, to the department, and to all parties to the hearing on or before sixty calendar days after receipt by the board of a complete record, as that term is defined in paragraphs (a) through (e) of subdivision one of section 302 of the state administrative procedure act.

(h) The provisions of article 70 of this chapter¹ shall apply to applications pursuant to this title, to the extent such provisions are not inconsistent herewith.

§ 27-1107. Powers of municipalities

Notwithstanding any other provision of law, no municipality may, except as expressly authorized by this article or the board, require any approval, consent, permit, certificate or other condition regarding the operation of a facility with respect to which a certificate hereunder has been granted: provided, however, that such municipality has received notice of the filing of the application therefor.

State: New York

Effective Date: 09/01/78

Bill #'s or Chapter: S-9557, A-12770, Ch. 639,
1978; "Industrial Hazardous
Waste Management Act"

Sponsors: Sen. B.C. Smith
Speaker S. Steingut

Title: Title 11 - Industrial Siting Hazardous Waste Facilities

Scope of Law

I. Approach:

- o Certificates of environmental safety and public necessity required for operation of facilities issued by 8 member temporary siting board. Board composed of Secretary of State, 4 state commissioners, and 3 ad hoc, non-office holding members appointed by Governor, 2 of whom must reside in host judicial district. Applications submitted to Department of Environmental Conservation for analysis and technical review.
- o Department to promulgate siting criteria and application requirements, including mandate to include analysis of alternative sites.

II. Override:

- o Siting board must deny license if facility is contrary to local zoning or land use ordinances in effect on date of application.

III. Public Participation:

- o Local representatives sit on siting board.
- o Department to publish notice of application in environmental bulletin, 2 newspapers serving host community and contiguous areas, and notify chief executive officers of host communities, as well as property owners within 300 feet of proposed site. Department may require developer to publish similar notices and accept public comment.
- o Board to hold public hearing, following notice, prior to determination on issuance of certificate.
- o Board to notify all parties of hearing of decision on certificate.

IV. Financial Assurances:

- o Not specified in Act. Department to include in regulations.

V. Non-Financial Assurances:

- o Not specified in Act. Department to include in regulations.

VI. Incentives and Compensation:

- o Not specified in Act.

NOTE: The developer is not the only person who can acquire sites in New York State. The E.F.C. can also select sites.

"The EFC of New York is empowered to acquire interests in real property for the purpose of constituting and operating industrial hazardous waste treatment, storage and disposal facilities."

*New York Pub. Auth. Law, Title 12, New York State Environmental Facilities Corp, sec. 1285(c).

3. Developer Approach
a. Maryland, House Bill 1481

HOUSE BILL No. 1481
(01r3529)

Introduced by The Speaker and Environmental Matters 25
Committee (Administration) 26

Read and Examined by Proofreader 28

Proofreader. 30
31

Proofreader. 33
34

Sealed with the Great Seal and presented to the Governor, 36

for his approval this _____ day of _____ 38

at _____ o'clock, _____ M. 40

APPROVED

BY THE GOVERNOR 42

Speaker. 43

CHAPTER 528

MAY 20 '80 46

AN ACT concerning 50

Hazardous Waste Facility Siting Program 53

FOR the purpose of creating a Hazardous Waste Facility 57
Siting Board; providing for the membership, 58
compensation, tenure, and voting requirements of the 59
Board; defining certain terms; providing legislative 60
purpose; providing certain powers, duties, and 61
responsibilities of the Board; requiring certain 62
reports prior to issuance of a certificate of public
necessity of the siting of hazardous waste facilities 64
by the Board; providing the procedures for application 65
and effect and purpose of the certificate issued by the 66
Board; providing that certain changes may not be made 67
in a certified site or facility without Board approval; 68
providing staff and funding for the Board; requiring 69
that prior to a certain date and annually thereafter 70
the Maryland Environmental Service must prepare an 71
inventory of potential hazardous waste facility sites, 72
in consultation with certain agencies and governing
bodies; requiring certain governing bodies to prepare a 73
certain list; providing that the Service may select 74
certain sites if a condition is not met; requiring the 75

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

Strike-through indicates matter stricken by amendment.

(B) (1) THE BOARD CONSISTS OF SEVEN MEMBERS APPOINTED BY THE GOVERNOR- WHO SHALL REPRESENT THE VARIOUS GEOGRAPHICAL AREAS OF THE STATE. NO MORE THAN ONE MEMBER OF THE BOARD SHALL BE A RESIDENT OF THE SAME COUNTY OR OF BALTIMORE CITY.

*Board
membership*

(2) OF THE SEVEN MEMBERS:

(I) TWO SHALL BE MEMBERS OF THE SCIENTIFIC COMMUNITY IN THE STATE, ONE OF WHOM SHALL BE A GEOLOGIST;

(II) TWO SHALL BE MEMBERS OF THE GENERAL PUBLIC WHO HAVE NO FINANCIAL INTEREST IN THE WASTE DISPOSAL INDUSTRY, AT LEAST ONE OF WHOM HAS HAD A DEMONSTRATED INVOLVEMENT IN ENVIRONMENTAL MATTERS;

(III) ONE SHALL BE APPOINTED FROM A LIST OF THREE OR MORE PERSONS NOMINATED BY THE MARYLAND ASSOCIATION OF COUNTIES;

(IV) ONE SHALL BE APPOINTED FROM A LIST OF THREE OR MORE PERSONS NOMINATED BY THE MARYLAND CHAMBER OF COMMERCE; AND

(V) ONE SHALL BE APPOINTED FROM A LIST OF THREE OR MORE PERSONS NOMINATED BY THE MARYLAND MUNICIPAL LEAGUE.

(C) BEFORE TAKING OFFICE, EACH APPOINTEE TO THE BOARD SHALL TAKE THE OATH REQUIRED BY ARTICLE I, § 9 OF THE STATE CONSTITUTION.

(D) (1) THE TERM OF A MEMBER IS 4 YEARS.

(2) THE TERMS OF THE INITIAL APPOINTEES EXPIRE AS FOLLOWS: ~~THE MEMBERS ONE MEMBER REPRESENTING THE GENERAL PUBLIC AND ONE MEMBER REPRESENTING THE SCIENTIFIC COMMUNITY ON JANUARY 1, 1967; THE MEMBERS REPRESENTING THE SCIENTIFIC COMMUNITY ON JANUARY 1, 1967; 1961, ONE MEMBER REPRESENTING THE GENERAL PUBLIC AND ONE MEMBER REPRESENTING THE SCIENTIFIC COMMUNITY ON JANUARY 1, 1965 AND THE REMAINING MEMBERS ON JANUARY 1, 1964 1963.~~

(E) THE GOVERNOR SHALL APPOINT A CHAIRMAN FROM AMONG THE SEVEN MEMBERS.

(F) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(G) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY THE REMAINDER OF THAT TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES.

(H) A MEMBER MAY BE REMOVED BY THE APPOINTING AUTHORITY FOR INCOMPETENCY OR MISCONDUCT.

(I) EACH MEMBER OF THE BOARD IS ENTITLED TO:	293
(1) COMPENSATION IN ACCORDANCE WITH THE STATE BUDGET; AND	294 295
(2) REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.	296 297 298
(J) THE AFFIRMATIVE VOTE OF A MAJORITY OF THE MEMBERS OF THE BOARD THEN SERVING IS NECESSARY FOR ANY DECISION OF THE BOARD.	299 300 302
3-704.	304
IN ADDITION TO THE POWERS SET FORTH ELSEWHERE IN THIS SUBTITLE, THE BOARD MAY ADOPT RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE.	305 306 309
3-705.	311
(A) (1) <u>THE BOARD SHALL ISSUE CERTIFICATES OF PUBLIC NECESSITY FOR THE SITING OF HAZARDOUS WASTE FACILITIES PURSUANT TO THE PROVISIONS OF THIS SUBTITLE.</u>	314 315 317
(2) <u>A CERTIFICATE UNDER THIS SUBTITLE IS NOT REQUIRED IF A SITE AND FACILITY ARE OTHERWISE AUTHORIZED BY LAW.</u>	318 319 320
(3) <u>A CERTIFICATE IS NOT REQUIRED FOR A FACILITY USED FOR RECEIPT, TRANSFER, RECOVERY, OR DISPOSAL OF NONHAZARDOUS RESIDENTIAL, COMMERCIAL, OR INDUSTRIAL WASTE.</u>	321 322
(B) IN DECIDING WHETHER TO ISSUE A CERTIFICATE, THE BOARD SHALL CONSIDER BUT NOT BE LIMITED TO THE FOLLOWING:	324 326
(1) ENVIRONMENTAL, SOCIAL, TECHNICAL, AND ECONOMIC FACTORS AS THEY APPLY TO A PARTICULAR PROPOSED SITE; AND	327 329 330
(2) THE NEED FOR AND PROBLEMS ASSOCIATED WITH THE COMPREHENSIVE STATEWIDE DISPOSAL OF HAZARDOUS WASTE.	331 333
(C) THE DESIGN, CONSTRUCTION, AND OPERATION OF A FACILITY ON A SITE FOR WHICH A CERTIFICATE HAS BEEN ISSUED AND THE ASSOCIATED TRANSPORTATION OF HAZARDOUS WASTE TO AND FROM THE FACILITY, SHALL BE SUBJECT TO ALL ENVIRONMENTAL, HEALTH, AND SAFETY RESTRICTIONS THAT MAY BE IMPOSED BY STATE REGULATORY AGENCIES UNDER APPLICABLE LAW AND REGULATION.	334 336 337 338 339 341
(D) THE ISSUANCE OF A CERTIFICATE OF PUBLIC NECESSITY FOR A SITE EXEMPTS THE SITE, THE DESIGN, CONSTRUCTION, AND OPERATION OF THE FACILITIES ON THE SITE, AND THE TRANSPORTATION OF HAZARDOUS WASTE TO AND FROM THE FACILITIES ON THE SITE FROM ANY REGULATION, POLICY, LAW, OR ORDINANCE,	342 344 346 347

*CERTIFICATE
of
Public
Necessity*

INCLUDING ZONING, OF ANY POLITICAL SUBDIVISION OF THIS STATE, AND FROM ANY STATE LAW OR REGULATION THAT REQUIRES APPROVAL OF ANY POLITICAL SUBDIVISION OF THIS STATE.

(E) THE ISSUANCE OF A CERTIFICATE DOES NOT REQUIRE THE APPROVAL OF ANY COUNTY OR MUNICIPAL COUNCIL, BOARD, AUTHORITY, OR UNIT. ANY PLAN FOR MANAGEMENT OF LIQUID, SOLID, OR HAZARDOUS WASTE ADOPTED BY ANY SUBDIVISION OF THE STATE SHALL BE CONSISTENT WITH THE TERMS OF THE CERTIFICATE.

(F) THE CERTIFICATE SHALL CONTAIN A STATEMENT OF THE PURPOSE FOR WHICH IT IS ISSUED AND A DESCRIPTION OF THE SITE AND PROPOSED FACILITY, AND SHALL INDICATE THE LOCATIONS ON THE SITE OF ALL FACILITIES, ALL BUFFER AND SECURITY AREAS, AND ALL AREAS TO BE USED FOR APPURTENANT FUNCTIONS.

(G) A CERTIFICATE IS VALID ONLY FOR THE SITE AND FACILITY FOR WHICH IT IS ISSUED.

(H) A PERSON MAY NOT MAKE ANY MATERIAL CHANGE THAT, AS TO A FACILITY OR THE USE OF A SITE, IS CONTRARY TO THE PURPOSE OR CONDITIONS FOR WHICH A CERTIFICATE WAS ISSUED, UNLESS:

(1) THE PERSON FIRST SUBMITS THE PROPOSED CHANGE TO THE BOARD FOR RECONSIDERATION OF THE CERTIFICATE; AND

(2) THE BOARD APPROVES THE CHANGE; AND

(3) AN APPLICATION FOR RECONSIDERATION SHALL BE MADE BY AN APPLICANT AND PROCESSED BY THE BOARD IN ACCORDANCE WITH THE SAME REQUIREMENTS, PROCEDURES, AND RESTRICTIONS THAT ARE APPLICABLE TO AN INITIAL APPLICATION FOR A CERTIFICATE UNDER THIS SUBTITLE.

3-706.

(A) EACH APPLICATION FOR A CERTIFICATE SUBMITTED TO THE BOARD SHALL CONTAIN A REPORT WITH INFORMATION OF THE TYPE, QUALITY, AND DETAIL THAT WILL PERMIT ADEQUATE CONSIDERATION OF THE ENVIRONMENTAL, SOCIAL, TECHNICAL, AND ECONOMIC FACTORS INVOLVED IN THE ESTABLISHMENT AND OPERATION OF THE PROPOSED FACILITIES. THE APPLICANT SHALL MAKE THE REPORT AVAILABLE TO AFFECTED SUBDIVISIONS AND TO THE PUBLIC.

(B) (1) ON RECEIPT OF THE APPLICATION FOR A CERTIFICATE THE BOARD SHALL FORWARD A COPY OF THAT APPLICATION TO THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE. THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL CONSIDER THE APPLICATION FOR A CERTIFICATE AS AN APPLICATION FOR THE FACILITY PERMIT THAT IS REQUIRED UNDER ARTICLE 43 OF THE ANNOTATED CODE.

(2) ON RECEIPT OF ANY APPLICATION FOR A FACILITY PERMIT THAT IS REQUIRED UNDER ARTICLE 43 OF THE ANNOTATED CODE, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL

*Application
Procedure*

FORWARD A COPY OF THE FACILITY PERMIT APPLICATION TO THE BOARD. 406
407

(C) (1) THE PORTION OF THE APPLICANT'S REPORT DEALING 408
WITH ENVIRONMENTAL AND SOCIAL ASSESSMENTS SHALL CONTAIN, BUT 409
NOT BE LIMITED TO: 410

(1) THE POTENTIAL IMPACT OF THE METHOD AND 411
ROUTE OF TRANSPORTATION OF HAZARDOUS WASTE TO THE SITE AND 412
THE POTENTIAL IMPACT OF THE ESTABLISHMENT AND OPERATION OF 413
THE PROPOSED FACILITY ON AIR AND WATER QUALITY, EXISTING 414
LAND USE, TRANSPORTATION, AND NATURAL RESOURCES IN THE AREA 415
AFFECTED BY PROPOSED FACILITIES; 416

(II) A DESCRIPTION OF THE EXPECTED EFFECT 418
OF THE FACILITY; AND 419

(III) RECOMMENDATIONS FOR MINIMIZING ANY 421
ADVERSE IMPACT. 422

(2) THE PORTION OF THE APPLICANT'S REPORT 423
DEALING WITH TECHNICAL AND ECONOMIC ASSESSMENTS SHALL 424
CONTAIN, BUT NOT BE LIMITED TO: 425

(I) DETAILED DESCRIPTIONS OF THE PROPOSED 427
SITE AND FACILITY, INCLUDING SITE LOCATION AND BOUNDARIES 428
AND FACILITY PURPOSE, TYPE, SIZE, CAPACITY, AND LOCATION ON 429
THE SITE AND ESTIMATES OF THE COST AND CHARGES TO BE MADE 430
FOR MATERIAL ACCEPTED; AND

(II) PROVISIONS FOR MANAGING THE SITE 433
FOLLOWING CESSATION OF OPERATION OF THE FACILITY. 434

(D) ACCEPTANCE BY THE BOARD OF ANY APPLICATION FOR 435
PROCESSING DOES NOT PRECLUDE THE BOARD FROM REQUIRING 436
FURTHER INFORMATION FROM THE APPLICANT IF THE BOARD 437
CONSIDERS THE ADDITIONAL INFORMATION NECESSARY FOR ADEQUATE 438
CONSIDERATION OF THE APPLICATION.

(E) PRIOR TO MARCH 1, 1981, THE BOARD SHALL PRESENT AT 439
PUBLIC HEARING, ADOPT, AND PUBLISH RULES DESCRIBING AND 441
GOVERNING THE PROCEDURE FOR OBTAINING A CERTIFICATE. THE 442
PROVISIONS OF THIS SECTION DO NOT EXEMPT THE BOARD FROM THE 444
REQUIREMENTS OF ARTICLE 41, § 244 ET SEQ. OF THE CODE. 445

(F) (1) AT LEAST 90 DAYS PRIOR TO ISSUANCE OF A 446
CERTIFICATE, THE BOARD SHALL SEEK THE ADVICE AND COMMENT OF 448
THE FOLLOWING: 449

(1) THE SECRETARIES OF NATURAL RESOURCES, 450
HEALTH AND MENTAL HYGIENE, ECONOMIC AND COMMUNITY 451
DEVELOPMENT, STATE PLANNING, AND AGRICULTURE; 452

(II) THE COUNCIL ON TOXIC SUBSTANCES AND 453
THE HAZARDOUS SUBSTANCES ADVISORY COUNCIL; AND 455

State: MarylandEffective Date: 01/01/80Bill #'s or Chapter: HB 1481, expanding Natural Resources Article to include new Subtitle 7Sponsors: Speaker, Environmental Matters CommitteeTitle: Hazardous Waste Facilities Siting Program

Scope of Law

I. Approach:

- o 7 member permanent siting board to issue certificates of public necessity required for facility permits. Board composed of 2 scientists, 2 members of the public with no financial interest in waste industries, and nominees of the Association of Counties, Chamber of Commerce, and Municipal League, appointed by Governor. Board to consider locating facilities near generation points, to avoid disproportionate siting in one area, and to ensure due consideration of alternatives to land disposal.
- o Maryland Environmental Service (MES) to develop waste management plan, including siting criteria and inventory of potential sites.
- o MES authorized to apply for certificates of public necessity, acquire designated sites, and utilize or operate facilities, subject to same procedures and regulations required of private developers.

II. Override:

- o Certificate of public necessity exempts facility from regulation by political subdivisions. Approval of facilities or sites by local governments not required.

III. Public Participation:

- o 2 members of public sit on siting board.
- o Developer to make permit applications available to public and host community officials.
- o Board to seek comment, prior to acting on applications, from state secretaries, councils on toxic and hazardous substances, host community government, governments of adjoining communities, and property owners within 1000 feet of proposed site.
- o Board to hold public hearing in host community.
- o Service to seek suggestions on potential sites from political subdivisions, and to seek their comments on proposed waste plan.
- o Records of facility inspections to be open to public.

VI. Financial Assurances:

- o Developer to provide bond or other sureties to cover costs of monitoring, maintaining, and closing facility, and post-closure security, and to ensure compliance with permit requirements.

V. Non-Financial Assurances:

- o Emergency contingency plans to be included in regulations.
- o Developer to restore site to original condition, to extent practicable.
- o Developer to provide access to site by Department and local health agency officials or representative of mayor.
- o Facilities to be inspected monthly. Landfill facilities to be inspected weekly.

VI. Incentives and Compensation:

- o Not specified in Act.

Medicaid, Reagan and the States: An Urgent Issue Heats Up

Cable Television: Should States Regulate It or Not?

State Legislatures

June 1981
National Conference
of State Legislatures

Negotiable Junk

• **The
Politics of
Low-Level
Radioactive
Waste**





Federal law and an emerging state consensus point toward regional cooperation as the key to managing low-level waste. The states are beginning to meet the challenge, but they find a host of obstacles in their path—and they have no time to lose.

Time to Take Control:

Unlike most politically sensitive issues, the management of low-level radioactive waste is a problem that can be solved. Whether and how it will actually be solved depend, for now, on the states.

Under a federal law enacted last year, and under policies developed by national organizations of state legislators and governors, the states are taking steps toward regional cooperation in the siting of waste disposal facilities. If they succeed, they will address two problems at once: the immediate need for new disposal sites, and a long-term need for additional sites to handle steadily increasing amounts of low-level waste.

Success, however, will require that everyone involved "take ownership of the problem," in the words of

**The States
and
Low-Level
Radioactive Waste**

Minnesota Representative Ken Nelson. The first step, he says, is to recognize openly the benefits we all derive from activities that produce

Gail Melson

Low-Level Radioactive Waste

low-level radioactive wastes. The second is to accept responsibility for developing solutions that protect both public health and the environment.

The states have begun to "take ownership" during the last two years. Before 1979, low-level radioactive waste was generally handled by exporting it to a faraway state for disposal—the "out of state, out of mind" approach. Late in that year, however, two of the nation's three disposal sites were temporarily closed; that fact, combined with the increasing volume of low-level waste from commercial reactors, hospitals, universities, clinics and industries, nearly resulted in the cessation of important university, medical and industrial operations. Something had to be done.

In response, the states began to accept responsibility for managing low-level wastes generated within their borders, either by starting to develop their own sites or, more often, by opening discussions on interstate compacts. These were the approaches advocated by the National Conference of State Legislatures, the National Governors' Association, and the federal State Planning Council on Radioactive Waste Management. The three groups placed particular emphasis on regional efforts to handle low-level waste.

Their recommendations were given statutory force by the Low-Level Radioactive Waste Policy Act, which was passed in the final days of the 96th Congress. This law encourages the formation of interstate compacts for dealing with low-level radioactive waste. By 1986, in fact, a disposal site can refuse to accept wastes from a state that is not part of an interstate compact. Every state therefore confronts three choices: developing its own site; joining an interstate compact with other states in the region; or stopping the production of low-level radioactive waste.

The third option is the least desirable one, and in some cases is out of the question. Regardless of one's position on commercial nuclear power, significant quantities of low-level waste are generated by hospitals and clinics in therapeutic and diagnostic techniques, universities in research and teaching, and various kinds of industries. For a state to stop producing these wastes, it would have to forego the benefits arising from medical, research, and industrial uses. For many states, especially the 24 with operating commercial reactors, this option is unrealistic.

The remaining options are for a state to build its own disposal site or to join with other states to develop a regional site. These options need not be mutually exclusive; a state could decide to develop a site as well as join with other states at a later time. Either approach,

however, will force states to come to terms with the sensitive political issues of siting and maintaining a disposal facility.

State legislators will be especially involved with these decisions. If a state develops its own site, then the legislature will have to enact enabling legislation for the regulatory authorities to site, regulate, and close the facility. It will need to adopt financial provisions that will ensure long-term monitoring and, when necessary, remedial actions. If a state chooses to join a regional group, and if the mechanism for creating that group is an interstate compact, then the legislature must enact the compact. Such legislation will contain the same provisions that would be necessary to establish a single state site—but will also include sections creating an interstate commission and describing the rights and obligations of the member states.

The category of radioactive waste includes spent fuel from commercial reactors, defense wastes, uranium mine and mill tailings, and low-level wastes. Low-level waste is the catch-all category that includes anything from contaminated paper towels and protective clothing to machinery parts and sludges. Because the levels of radioactivity are low and the hazards considerably less than for other types of radioactive wastes, low-level waste can be safely disposed of by shallow land burial. Great care must be taken, however, to ensure that a site is hydrologically and geologically sound and that packaging and disposal practices conform to strict regulations. Federal and state regulations on packaging, transportation and disposal should ensure that these wastes are safely managed and disposed of.

Every state has three choices: It can develop its own site, join an interstate compact, or stop producing low-level radioactive waste.

The federal government was assigned the lead role in regulating radioactive materials. The U.S. Nuclear Regulatory Commission (NRC) issues regulations and licenses for people and institutions that possess and use radioactive materials.

In 1959, an amendment was added to the Atomic Energy Act that allowed the transfer of some regulatory authority to the states under the Agreement States Program. The choice was left to the states: If a state agreed to enforce regulations as stringent as the federal government's, then it received authority to regulate small quantities of certain radioactive materials. To date, 26 states have become agreement states. These states would be responsible for regulating a low-level disposal site within their boundaries. The three operating sites are located within agreement states and are directly regulated by the host states.

In the early 1970s, six commercial disposal sites were operating in the United States. These sites were privately operated, located on state or federal land, and regulated by the federal and state governments. The six sites were Maxey Flats, Kentucky; West Valley, New York; Sheffield, Illinois; Beatty, Nevada; Hanford, Washington; and Barnwell, South Carolina. By early 1979, three of these sites had closed. Maxey Flats and West Valley were closed after migration of radioactive elements away from the burial trenches was detected; although there was no immediate threat to public health and safety, public reaction ensured that the sites would not reopen. The licensed disposal trenches at Sheffield were filled in 1978, and the filled site was closed after an application to expand it met with stiff opposition.

The crunch of 1979 was felt for many reasons, both political and technical. With the volume of low-level waste increasing annually and with only three sites open in 1979, the three remaining host states (Nevada, South Carolina and Washington) were beginning to feel uncomfortable in their role as national disposal sites. Many other factors were at work on the national political scene: the post-Three Mile Island debate over nuclear power; the debate over hazardous chemical wastes, as exemplified by Love Canal; and the continuing problem of what to do with spent fuel from commercial reactors. All of these issues combined to produce intense public scrutiny of the low-level waste problem.

This scrutiny has led to a recognition that states should share the responsibility because all states, in varying degrees, benefit from the use of radioactive materials. The

lessons have been hard to learn—and have largely been forced by restrictions that the three host states have placed on the disposal sites. All three sites have imposed stricter regulations on packages accepted at the site. In addition, Governor Richard Riley of South Carolina announced in 1979 that the Barnwell site would reduce by 50 percent the amount of low-level waste that it would accept annually. Since Barnwell at one time accepted 85 percent of the nation's low-level waste, this restriction required immediate action by low-level waste generators.

Last year, voters in Washington State approved an initiative stating that by July 1, 1981, non-medical radioactive waste would not be accepted from states that had not entered into an interstate compact with Washington. This action is now being challenged in federal court on several grounds, including restriction of interstate commerce. This initiative led to passage of the first state statutes creating an interstate compact for low-level radioactive waste management. The current member states are Idaho and Washington; Oregon is considering legislation that would bring it into the compact.

The July 1, 1980, deadline set by Congress, and the clear nature of the problem, are forcing action in other states across the country.

The practical problems they confront—especially the issue of siting—have been faced many times before in controversies over sanitary landfills. The controversy is heightened in this case because of the nature of the waste material. "Just the word 'nuclear' makes low-level waste a difficult issue," notes Representative Mary Lou Muntz of Wisconsin.

State legislators will play a central role on this issue. . . . If a state chooses to join an interstate compact, the legislature must enact it.

Education programs that begin early in the process can help to allay some of these fears. Nevertheless, siting means choosing a piece of land, which means that some members of the nearby community will be directly affected, and very much concerned. Other issues that must be considered include regulation, financing, liability, public involvement, and perpetual care.

One of the first decisions for a state is whether to develop its own site or join a regional group. Economic considerations support regional solutions for most states. In 1979, the top 10 producing states accounted for more than 70 percent of all low-level waste volume. Most of the remaining states are fairly small generators. If these states developed their own sites, they would have to charge exorbitant rates to recover the large initial capital investments. Ultimately, the costs would be passed along to the consumer in the form of higher electrical and medical bills. States producing small volumes would probably not want to choose this approach.

Some states, however, do produce enough low-level waste to consider developing their own sites. Despite the likelihood of local opposition, this option is being considered by a few states.

One advantage of the approach is its flexibility, especially if a state retains the option of joining a regional group at a later time. A second is that a state with its own site would be assured of having a place to dispose of low-level waste and would be less vulnerable to the temporary closing of sites in other states. A third is that the state would have greater regulatory control of the site and greater ability to insure the continual availability of disposal capacity. And, of course, the state would no longer have to face the legal and institutional uncertainties of negotiating and enacting interstate agreements.

Some states do produce enough low-level waste to consider developing their own sites.

It may be, however, that the best reason for a state to have its own site is that it will be in a better bargaining position if it enters regional negotiations. For example, a state with a low-level disposal site could bargain with other states to accept its chemical waste. Revenues would also accrue to the host state and local government.

Of course, a state that decides to develop its own site will also confront problems. Some are long-term issues, such as how to monitor the site throughout its life and how to address problems that arise after the operator's lease has expired; others are of more immediate concern to state legislators. Local participation in siting is one of these. Another is whether or not the state will have ultimate veto authority over a local government, and, if so, what provisions for judicial review exist. There is no real precedent for these questions, because past siting decisions were not scrutinized as today's are. The sites in South Carolina, Nevada, and Washington are located in areas that have lived with the nuclear industry for years, and are near government facilities that have been involved with nuclear-power development since World War II. Resistance to such facilities was therefore low initially and remains low today.

North Carolina is one state that is considering legislation to establish its own site as well as to take part in discussions on an interstate compact.

"Since North Carolina is the fourth largest generator of low-level waste, we decided we had to treat and dispose of our own," according to State Representative Charles Holt. He was referring to recommendations by a state task force, in which he and Senator Russell Walker participated, which studied the problems of hazardous and low-level radioactive waste in North Carolina. As a result, he and Senator Walker have introduced legislation creating a Governor's Waste Management Board to implement the task force recommendations. The most controversial issues in these bills are provisions for state pre-emption of local zoning decisions and condemnation proceedings for land.

Texas has already enacted a bill (SB 480) that will strengthen the state's authority to regulate a low-level waste disposal site, establish a process for citizen participation, and exclude wastes generated in other states unless those states are members of an interstate compact or reciprocal agreement with Texas. A second bill (HB 1533), just passed in the final days of the legislative session, creates the Texas Low-Level Radioactive Waste Disposal Authority to establish and operate a disposal site for wastes generated within the state.



Among the difficult issues surrounding these bills is whether a state *can* exclude out-of-state waste. The courts have generally found such exclusion to be an unconstitutional restriction on interstate commerce. That interpretation may change, however, now that the Low-Level Waste Policy Act allows states that participate in an interstate compact to exclude non-compact states from their facility. The case before the federal court in Washington State should shed some light on this issue in the next month.

An interstate compact—the approach now favored by more states than any other—has several obvious advantages: It leads to fewer sites, safer operation, and lower cost for disposal and transportation. Still, there is no denying the problems inherent in an approach that requires several states to coordinate their efforts and obtain agreement on so complex an issue. It is difficult enough for one state to reach agreement; the problem may be expected to multiply exponentially as more states participate.

Once a state has decided to seek regional cooperation on this issue, however, an interstate compact is the obvious mechanism. The reason is simply that it provides needed stability. Other tools for interstate agreement and cooperation, such as parallel statutes and executive orders, would probably not sustain an agreement that demands so much long-term regulation. A compact can do so.

An interstate compact is a legal instrument that combines the attributes of a contract and a state statute. Each participating state would enact a compact much as it enacts any other piece of legislation. A compact can make

substantive or procedural law, confer rights and obligations on private persons and public agencies, establish an administrative agency and define its authority, and provide for the operation of public works. They are formal, binding agreements that represent a special commitment of the member states to a permanent or relatively long-range interstate undertaking. Compacts take precedence over ordinary state statutes and thus represent powerful constitutional tools for intergovernmental action. Once a commitment has been made, it is difficult for a specific state to unilaterally withdraw its participation. Compacts already in force deal with issues such as mass transit, pollution control, law enforcement, and energy conservation.

The U.S. Congress must give its consent to an interstate compact. It does so by passing an act or joint resolution that embodies the text of the compact. The Low-Level Radioactive Waste Policy Act states that a compact enacted by the states shall not be effective without congressional consent and that Congress can reconsider its consent at five-year intervals.

A major problem with interstate compacts is the length of time required to negotiate and enact them. Low-level waste disposal is the most sensitive issue yet considered as the subject of a compact. States entering a compact would have to agree on such politically sensitive issues as siting, authority of the member states and the host states, and establishing a commission with certain powers that would supersede authorities in the member states.

Also, the executive and legislative branches will have to work together closely on some very unpopular issues. In some states, especially those where party control is split, this may worsen their problems and prevent them from adopting the strongest possible stance in compact negotiations. Practically speaking, the ability of a state to resolve potential differences and present a unified front at interstate negotiations will depend on the relationship between legislative leadership and the governor's staff.

There are other complications. The mere fact that legislative sessions vary from state to state could delay the enactment of a compact for two years or more. The ability of a state to authorize and appropriate funds may also be linked to the legislative session. A state's decision to enter a compact rather than to proceed with its own site depends in a practical sense on timing—that is, on the extent to which other states in the region have seriously committed themselves to the possibility of becoming a regional site.

(continued on page 29)

Low-Level Waste

(continued from page 11)

Despite all these potential difficulties, some states are moving ahead with compact negotiations. Not surprisingly, the regions that already have disposal sites have led the way. The first region to begin talking seriously about compacts was the Northwest—spurred not so much by the relatively modest amount of low-level waste generated in the region, but by the voter initiative passed in Washington last November.

Legislators became involved at an early stage. Several legislators from the Northwest, including Speaker Ralph Olmstead of Idaho and Senator Sue Gould of Washington, attended NCSL's national meeting on low-level waste in Albuquerque, N.M., last summer. In Idaho, an informal working group was established, comprised of five legislators, the governor and his staff. It was agreed that the executive branch was responsible for negotiating interstate agreements, but legislators were involved in discussions throughout the drafting of the compact.

Pat Costello, assistant to Idaho Governor John Evans, was responsible for representing the governor and the legislature in discussions with other states. In Costello's view, "legislators have to be consulted; otherwise you may be in the position of agreeing to something in other states that won't pass in your own state." Idaho was the first state to pass the Northwestern interstate compact.

Identical legislation was introduced in Washington at Governor John Spellman's request. Although there were disagreements over details, the overriding need for a compact was generally conceded, according to Senator Gould, who sponsored the bill. The only other state in this region that will be able to enact a law this session is Oregon, where the bill has been introduced.

These states were fortunate: Their state officials were concerned about the issue—and they already had a site. With the major controversial issues already decided at least until the site is exhausted, they were able to enact a "bare-bones" compact. The harder issues that will emerge when a new site is needed will be worked out at a later time.

The South is also in good shape because of the site at Barnwell, South Carolina. Several meetings have already been held under the auspices of the Southern States Energy Board (SSEB),

and have involved primarily representatives of governors' offices and executive agencies. Three southern groups have been meeting. The group that has probably made most progress is made up of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. This group has been discussing a preliminary working draft of a compact written by the SSEB. They have been able to reach some agreement on the legally binding rights and obligations of member states (for example, the obligation of each state to provide a site), and the regulatory power of a regional commission. The major issue left for discussion is the development and operation of a disposal site.

A second group of Southern and border states includes Kansas, Louisiana, Missouri, Oklahoma and Texas. Representative Bob Miller of Kansas has been instrumental in his state's discussions. He had also attended NCSL's Albuquerque meeting last summer, and was convinced that something had to be done. Immediately after his return to Kansas, he met with Governor John Carlin, who has since taken a leading role in contacting other governors in the region. Kansas established a more formal committee—the Kansas Policy and Technical Committee—than Idaho had. The governor chaired the committee; members included legislators from both houses, legislative staff, and executive agency representatives. The decisions made by the committee, where all members have an equal vote, have helped give Kansas a strong position in meetings with other states.

The other active area of the country is the Northeast. While the states that will be included in this region are not yet final, the most active states so far have been Maine, Connecticut, New Hampshire, Vermont, Massachusetts, and Rhode Island. Other states likely to be included in this region are New York, New Jersey, and Pennsylvania.

Representative Arnie Wight of New Hampshire has been especially active in getting the New England meetings under way. He considers it "absolutely essential" that legislators and the governor of each state work together on this issue at very early stages, so states can negotiate effectively and compacts can be enacted more quickly.

The upper Midwest states, despite an early start, have probably been the slowest to move so far. In early 1980, representatives from the governors' offices

in Indiana, Illinois, Michigan, Ohio, Minnesota, and Wisconsin met to discuss an interstate compact. Since last summer, however, no action has been taken and no state has stepped forward to take the lead in calling meetings to again take up the issue of forming an interstate compact.

In Wisconsin, Representative Mary Lou Muntz and Senator Joseph Strohl have been actively encouraging cooperation between the Democratic legislature and the Republican governor. Initially, the legislature was concerned about the state becoming a repository for spent fuel from commercial reactors. When the low-level issue arose several months later, therefore, a core group of legislators was already immersed in the technical and institutional issues of radioactive waste. The governor and concerned legislators have been working together, although a regional grouping of Midwestern states has not been decided.

Many states are actually "taking ownership" of low-level waste management problems. Two trends are apparent: enacting legislation to establish a state site, and joining discussions about interstate compacts with other states. Early legislative involvement, at least by a few key legislators, is vital for those states interested in a regional solution. The model has been for governors and legislators to work together to establish unified policies for the state that allow the state to speak with one voice at interstate meetings.

States that have not yet faced the issues may, by 1986, find themselves with no way to dispose of low-level wastes safely. The consequences are serious. Given the complexities of the issue, states not already involved will need much lead time to work out the sensitive political issues.

Legislators can take a strong role in solving this problem—and will have to do so before 1986. The decisions made on this issue could become models for interstate agreements on a wide variety of topics and given the current trend toward giving more power back to the states, experience with low-level waste management could prove invaluable.



Gail Malson is research associate with NCSL's Low-Level Radioactive Waste Management Project. For further information on the project, see page 27.

Dateline Washington

NATIONAL CONFERENCE OF STATE LEGISLATURES MAY 18, 1981, VOL. VI NO. 7

In the News

Block grant proposals are wending their way through Congress and NCSL will serve as a clearing-house to keep state legislators up-to-date on the status of the alternative consolidation plans.

(pages 4, 5)

A 9% federal Medicaid cap—rather than the Administration's 5%—has been approved by Senate Finance, but the panel also wants to reduce the minimum federal match from 50 to 40%.

(page 2)

State administration of small cities (CDBG), proposed by the White House, has been rejected in House subcommittee.

(page 5)

Legislators' Tax Home

State legislators' tax home legislation is still pending in the House Ways and Means Committee and no hearings have been scheduled. Chairman Dan Rostenkowski's (D-IL) staff has said that a tax matter would not be considered as an amendment to the general tax bill scheduled to be reported later this month unless it has had a public hearing. Legislators are urged to contact their House delegations to request that Ways and Means hold hearings on H.R. 2605 as soon as possible. NCSL contact: Bill Hagan, 202/624-5414.

House Substitute Cuts \$6.5 Billion From Administration's FY82 Spending Proposal

The Reagan Administration won a significant victory with the May 7 passage of the Gramm-Latta budget substitute for the House first budget resolution. Sixty-three Democrats joined all of the Republicans to adopt the proposal by a 253-176 vote. Senate budget adoption was expected at press time. Even with quick conference action, there was little expectation that the first concurrent resolution could be passed by May 15.

The resolution originally reported by the House Budget Committee (see *Dateline*, 4/27/81, p. 1) totaled \$2 billion over the Administration's plan, but reduced the deficit by \$20 billion by allowing for a smaller tax cut. With defense spending reduced by \$5 billion, the committee spread the added \$7 billion over a variety of domestic programs.

During House floor debate, however, members adopted a substitute floor amendment offered by Reps. Phil Gramm (D-Tx.) and Delbert Latta (R-Oh.). The so-called "Reagan Bipartisan Substitute" cut spending \$6.5 billion below the President's budget by eliminating funds for the Strategic Petroleum reserve (\$3 billion); saving on interest because of a smaller deficit (\$750 million); eliminating a contingency reserve designed to meet unforeseen circumstances (\$1.1 billion); saving more on Medicaid (\$100 million); cutting mass transit operating subsidies (\$130 million); saving administrative costs in education, training, employment and social services (\$130 million); and counting on settlement of oil pricing violations (\$1.5 billion).

Assuming higher GNP growth in

1981 for an added \$7.5 billion in 1982 revenues, the House substitute plan winds up with a \$15 billion lower deficit than the original Reagan budget after increasing spending for veterans' benefits (\$400 million), vocational education (\$15 million) and the Economic Development Administration (\$12 million).

The Senate measure would cut \$4 billion in domestic spending from the Reagan budget, but totals \$4 billion more than the White House proposal due to a higher assumption for interest rates (12% vs. 8.9%). Other Senate changes include a reduction in indexing of Social Security, SSI, disability, civil service and veterans' pensions (\$2.5 billion); shifting the annual cost-of-living increase in these programs from July 1 to October 1 (\$4.5 billion); and more funds for elementary and secondary education, direct student loans, CETA youth and rehabilitation programs (\$1.5 billion).

Strategic Petroleum Reserve funding was also dropped by the Senate. Congress will thus have to come up with a program to ensure private financing—possibly by issuing "oil bonds" or allowing borrowing from the government's synthetic fuels account. The House has already rejected combined public-private financing.

Conference action will be needed to resolve program differences and interest rate assumptions, the key setting targets for reconciliation instructions totaling \$37 billion to authorizing and appropriating committees. These panels will have one month to report legislation with sufficient savings. If the

(continued on page 2)

Greater State Role Likely in Hazardous Materials Transport



Rep. Arnie Wight

Panels in both the House and Senate are considering legislation that would give states responsibility for enforcing federal hazardous materials transportation regulations, but would not provide additional funds for the task. The House version does, however, include some "seed" money for the establishment of regional training centers, strongly supported by NCSL.

The House Energy and Commerce Subcommittee on Transportation has

agreed to an amendment offered by Rep. Norman Lent (R-N.Y.), on behalf of NCSL, authorizing the Department of Transportation (DOT) to provide 40 percent of first-year start-up costs and 25 percent of operating costs for the next two years. The regional centers, run either by the state or by private entities, would train state and local personnel in inspection, enforcement and emergency response techniques.

S 960, reported by the Senate Commerce Committee, calls for a DOT feasibility study of a national pre-notification system. In April 28 testimony before the panel, New Hampshire State Rep. Arnie Wight told members that states should be able to require pre-notification of hazardous materials shipments.

The Senate measure also asks DOT to encourage an expanded state role in enforcement of hazardous materials regulations and to study whether or not to extend federal regulations on the routing of radioactive wastes to all hazardous materials. Under the Hazardous Materials Transportation Act, which expired last year, federal regu-

lations were promulgated only in regard to high-level materials. Sen. Jack Danforth (R-Mo.) plans to offer a floor amendment to preempt state regulations on the routing of all hazardous materials.

Wight, reiterating earlier NCSL testimony (see *Dateline*, 3/23/81, p. 4), advised the Commerce panel that NCSL is prepared to encourage states to adopt regulations consistent with federal standards if there is "an adequate commitment of manpower and resources by the federal government." Otherwise, the legislator said, NCSL would have to oppose preemption of state laws and regulations.

NCSL contacts: Donna Wise, 202/624-5431; Fran Valluzzo, 202/624-5419.

Budget Assumptions Seen As Optimistic

(continued from page 1)

committees do not then hold to the budget ceilings, their bills will be held at the desk. This is a much stronger procedure than used in the past.

Except for the Senate's interest rate level, both chambers accepted the economic assumptions set by the President which many believe to be too optimistic. If Congressional Budget Office forecasts prove accurate, the Administration's deficit could be nearly \$10 billion higher than projected.

NCSL contacts: Tim Masanz, 202/624-5408; Gary Falle, 202/624-5416.



Kansas State Rep. J. Sanford Duncan testified April 23 as an expert witness on his state's use of the legislative veto.

Legislation Should Limit State Liability Without Infringing On Individual Rights

NCSL has called on the Congress to limit the scope of Sections 1983 and 1988 of the Civil Rights Act so that states and their political subdivisions are not so broadly exposed to civil liability.

Testifying May 7 before the Senate Subcommittee on the Constitution, Maryland State Sen. J. Joseph Curran Jr. said that legislation should be designed to limit the civil liability of states and localities without lessening the ability of individuals to use the law for civil rights enforcement.

Curran's statement was prompted largely by the Supreme Court's *Maine v. Thiboutot* decision (see *Dateline*, 8/4/80, p. 8) holding state and local governments liable for violation of any fed-



Sen. J. Joseph Curran, Jr.

eral law, whether or not an individual is deprived of constitutional, civil or equal protection rights. The decision also allowed recovery of attorney's fees.

Noting that the decision "has been viewed with alarm by elected officials," Curran suggested that Section 1983 be amended to apply only to constitutional rights, that a "good faith" defense be available in the case of suits for money damages, and that limits be considered on the award of attorney's fees.

NCSL contact: Karen Morgan, 202/624-7860.

State-Federal Hotline

NCSL's State-Federal Hotline will continue on a trial basis through the end of May, providing state legislators with a weekly update on federal issues likely to be of particular interest to NCSL members.

The number to call in Washington is 202/624-7861.

Industrial Development Bonds, June 4

"Rethinking Industrial Development Bonds: Alternatives for State Action"—June 4, Hall of the States, Washington, D.C. The program will review the current use of IDBs as a development tool, assess market impacts and forces, and look at other state options.

For further information, please contact Susanne Hiegel, 202/624-5418.

NCSL Annual Meeting, July 27-31

The opening plenary session of NCSL's Seventh Annual Meeting, to be held in Atlanta, Georgia, July 27-31, will focus on "The Future of Communications Technology," featuring a demonstration of video-teleconferencing from the Alaska Legislature. The keynote presentation will include discussion of the public policy implications of new communications techniques.

More than 40 concurrent meetings held on Wednesday and Thursday, July 29-30, will deal with a variety of topics ranging from reapportionment to controlling Medicaid costs.

For further information and reservation forms, which must be returned by July 6, please contact Bonnie Kulaas, 1125 Seventeenth St., Suite 1500, Denver, Colorado, 303/623-6600.

Calendar

JUNE 1-3—CETA/Education Consortium Assembly, Hospitality House, Williamsburg, Virginia (Mary Lesler**)

JUNE 4—Rethinking Industrial Development Bonds: Alternatives for State Action, Hall of the States, Washington, D.C. (Susanne Hiegel**)

JUNE 18-19—Severance Taxation Seminar, Plaza Cosmopolitan, Denver, Colorado (Carl Tubbesing*)

JUNE 29-JULY 1—"Prisons Overcrowding: The Legislative Response," The Antlers, Colorado Springs, Colorado (Cathie Sample*)

JULY 27—Legislative Program Evaluation Workshop, Atlanta Hilton, Atlanta, Georgia (Vincent Brown*)

JULY 27-31—NCSL Annual Meeting, Atlanta Hilton, Atlanta, Georgia (Bonnie Kulaas*)

*Denver, 303/623-6600

**Washington, 202/624-5400

Dateline Washington

Editor

Andrea Kailo

Production and Photography

Genilee Swope

NCSL Officers

President: Rep. Richard Hodes (Fl.); President-Elect: Sen. Ross Doyen (Ks.); Vice President: Asst. William Passanante (N.Y.); Immediate Past President: Spkr. George B. Roberts, Jr. (N.H.); Staff Vice President: Pat Flahaven, Secretary of the Senate (Md.); Staff Vice Chairman: Robert Smurth, Deputy Director, Assembly (N.J.); Immediate Past Staff Vice President: David Johnston, Director of the Legislative Services Commission (Oh.); SFA Chairman: Spkr. Benjamin Cardin (D.)

Subscriptions

This publication is provided at no cost to state legislators and their staffs. Others may subscribe at the rate of \$25 annually.

Published twice a month by the National Conference of State Legislatures, 444 North Capitol Street, N.W., Washington, D.C. 20001, (202) 624-5400. Headquarters located at 1125 Seventeenth Street, Denver, Colorado 80202. Executive Director: Earl S. Mackey; Director of State-Federal Relations: Robert P. Goss

Senate Finance Increases Medicaid Cap, But Decreases Minimum Federal Match

A spending reduction package adopted May 5 by the Senate Finance Committee includes nearly \$1 billion more than the Administration request and increases the proposed Medicaid cap from 5 to 9 percent.

The \$10.4 billion plan, Finance Chairman Robert Dole's (R-Ks.) alternative to the White House proposal, would also reduce the minimum federal match for Medicaid from 50 to 40 percent, a move that would particularly hurt California, Connecticut, Illinois, Michigan, New Jersey and the District of Columbia. The committee defeated 13-2 an amendment by Sen. Bill Bradley (D-N.J.) that would have lessened the effect of changing the match. Other states adversely affected by the change include Alaska, Delaware, Hawaii, Maryland, Nevada, Washington and Wyoming.

Although details of other provisions are not firm, the Dole package assumes that states would be given flexibility to

more efficiently manage their Medicaid programs. Changes under consideration include: elimination of the freedom of choice provision and the requirement on reimbursement methods for hospitals and physicians; competitive bidding; and waiver authority on the 50/50 limitation on Medicare-Medicaid enrollees in HMOs. NCSL has strongly advocated the removal of federal requirements inhibiting cost-effective state management of Medicaid programs.

The Administration bill, expected later this month, may propose repeal of specific statutory requirements—as sought by NCSL—as well as giving the Secretary increased waiver authority. On two key issues—freedom of choice and reasonable cost requirements—the White House was leaning toward statutory repeal.

NCSL contacts: David Riemer, 202/624-5413; Kathy Brennan Wiggins, 202/624-5441.

Senate Ag Committee Rejects State Food Stamps "Workfare"

The Senate Agriculture Committee, led by Sen. Robert Dole (R-Ks.), has defeated a number of food stamp provisions supported both by the Administration and by committee Chairman Jesse Helms (R-N.C.), including a proposal to mandate state establishment of "workfare" programs. The food stamp spending cap remains unresolved.

The most significant defeat for the Administration came on a 14-3 vote

against reducing household benefits by the value of school lunches for those eligible under the School Lunch program. Also rejected was the Helms' plan to reinstitute the purchase requirement.

While ignoring school lunches, the panel did decide to count money received for energy assistance as income in determining benefits. This is seen as a disincentive for states to provide added energy aid, since food stamp

benefits would be reduced \$3 for every \$10 of state or local assistance. The gross income level was set at 130 percent of poverty.

States are given the option of setting up workfare programs. They also can choose whether or not to use retrospective accounting and periodic reporting in FY82; after that, such procedures would be mandatory.

Mark-up in the House Agriculture Committee is expected to result in a bill that will win full NCSL approval. At press time, the panel had exempted federal, state and local energy assistance for use in determining benefit levels, decided to permit (not mandate) state workfare programs, and voted to allow state use of retrospective accounting and periodic reporting in FY82, with mandatory use in FY83. The committee would also mandate a Department of Agriculture study of such procedures as they relate to the Food Stamp program.

Although a House Agriculture subcommittee had already rejected the Administration's school lunch offset proposal and a funding cap, amendments on both issues were expected before mark-up was completed.

Floor action is not yet scheduled but state legislators are urged to contact their delegations to oppose likely floor amendments on: (1) the school lunch offset, (2) reinstitution of the purchase requirement and (3) counting state and local energy assistance payments in determining benefit levels.

NCSL contact: Joy Joanson Wilson, 202/624-5410.

House Spurns Administration Measure to Consolidate Older Americans Programs

The Administration's proposed three-year reauthorization of the Older Americans Act (S 1121) would consolidate social services, nutrition assistance and senior centers into a block to states, but the House Education and Labor Committee has already completed action to extend existing legislation until FY83.

Under the Administration plan, mandates requiring that half of state funding be spent on provision of access, legal and in-home services would be eliminated, as would the requirement that each state spend at least \$20,000 for a long-term care ombudsman program. The installation of security devices in the homes of elderly persons is also added as an eligible activity under the Act.

A similar measure (S 1086) introduced by Sen. Jeremiah Denton (R-Al.), chairman of the Senate Subcom-

mittee on Aging, Family and Human Services, provides for a three-year extension of the Title V Community Services Employment program, rather than the one-year extension sought by the Administration. *NCSL favors Denton's three-year proposal.*

In approving extension of the existing legislation, the House Committee added amendments to:

- permit a 20 percent shift in funds between programs, rather than consolidating them;
- elevate the Commissioner on Aging to Assistant Secretary; and
- increase Community Services Employment authorizations from \$277 million to \$350 million.

Mark-up of the Senate legislation was expected at press time.

NCSL contact: Joy Joanson Wilson, 202/624-5410.


**National Conference of
State Legislatures**

444 North Capitol Street, NW
Washington, D.C. 20001

Third Class Mailing
Non-Profit Org.
U.S. Postage
PAID
Riverdale, Md.
Permit No. 869

MEMORIAL FIDELITY
STATE SENATOR
221 E 7TH AVE, #204

ARCHIVE

AP 99501



WESTERN CONFERENCE

THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

(415) 986-3760

Date: September 21, 1981

To: **Hazardous Materials Committee** Members

From: Leah Brumer, Committee Staff *Leah*

Subject: Committee Minutes from August 24-26, 1981 Meeting

Enclosed are the minutes from the Committee's Reno meeting. I have also attached copies of relevant resolutions passed by the full Conference.

The next Committee meeting will be held December 8 and 9, 1981, in Santa Fe, New Mexico. Please reserve these dates. An agenda and additional information will follow.

I look forward to seeing you in Santa Fe.

Composed of Legislators representing the following States:

Alaska • American Samoa • Arizona • California • Colorado • Commonwealth of the Northern Mariana Islands • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming

Hazardous Materials Committee Meeting Minutes

Western Conference Annual Meeting
Reno, Nevada

August 24, 1981
1:30 p.m. - 4:30 p.m.

The meeting was opened by Senator Lawrence E. Jacobsen (Nevada), Chair. He advised the committee that at the conclusion of the meetings, the pending resolution from last year's meeting would be acted on, and a Vice-Chair for the committee selected. The committee was to hear from a panel whose topic of discussion would be "Who Does What" in regulating hazardous materials. Some concerns to be addressed would be public awareness, economics, public land issues, care and maintenance (legislative role) and interstate cooperation and agreements (executive).

Panel

Robert Nelson, Director, Waste Management Project Office, Nevada Operations Office, U.S. Department of Energy (Las Vegas, Nevada) explained the Department's responsibilities (non-regulatory) and the commercial activities: low level hazardous waste disposal, research and development, sites-repository, test facilities, National Waste Terminal Storage Program (overseeing role of DOE) and state grants program.

Bruce W. Church, Director, Health Physics Division, Nevada Operations Office, U.S. Department of Energy (Las Vegas, Nevada), gave a briefing on the DOE's policy and criteria for shipping/packaging of low level radioactive material, and the emergency response procedures.

Dean Kunihiro, Regional State Liaison Officer, Nuclear Regulatory Commission, Region V (Walnut Creek, CA), gave a briefing and video presentation on the NRC's authority for hazardous materials.

Lawrence A. Wapensky, Chief, Hazardous Waste Facilities Section, U.S. Environmental Protection Agency, Region VIII, gave a presentation on the EPA's regulatory authority, which was established in the Resources Conservation Recovery Act.

There was a discussion period and the committee recessed.

After the recess, the committee was shown film from the Department of Transportation concerning the shipment of hazardous materials.

There was further discussion and Senator Jacobsen highlighted the following points for the members' consideration:

1. Communications - Who, What, When, Where.
2. State's Rights vs. Federal law-policy.
3. Responsibility.
4. Federal Grants (DOE) - Superfund (EPA).
5. Time Frames - NRC, DOE, EPA.
6. Chemical Hazardous Wastes - Review State Responsibility.
7. Definition of Hazardous and Radioactive Material.
8. Cooperative State efforts in Routes.
9. State/Local expertise in Hazardous and Radioactive Materials Management - Block Grants?
10. Statement of intent for direction of Hazardous Materials Committee.

Senator Jacobsen announced that he wished to select the Vice-Chair, as he would need to work closely with that individual. Motion was made to that effect and unanimously approved.

The meeting was adjourned.

Hazardous Materials Committee Meeting Minutes

Western Conference Annual Meeting
Reno, Nevada

August 25, 1981
9:00 a.m. - 12:00 noon

Senator Jacobsen, Chair, opened the meeting. He advised the members that the committee would consider two resolutions (Preemption and Training) at the end of the meeting. The committee was to hear from a panel whose topic of discussion would be the federal role in hazardous material incidents.

Panel

Jake Mackenzie, Director, Surveillance and Analysis Division, Region IX, U.S. Environmental Protection Agency, gave a presentation on the EPA's Superfund, which is for clean up of chemical waste and abandoned hazardous waste, and response in emergency situations.

Gerald R. Schimke, Project Specialist, Toxic and Hazardous Materials Project, California Office of Emergency Services, gave a presentation of effective state emergency response plans.

Richard L. Hanneman, Director, Government and Public Affairs, National Solid Wastes Management Association, gave a presentation on responding to environmental emergencies.

J. Vance Hughes, Chief, Policy and Legislation Section, Land and Natural Resources Division, U.S. Department of Justice, gave a presentation on the federal approach to liability and enforcements on hazardous materials clean-ups.

Committee Action

Senator Jacobsen moved that last year's Resolution No. 2 (Supplementary Agreement(s) for Regional Solutions to Problems of Low-level hazardous waste) be sunsetted. There was an objection and a motion to revise the resolution to be ongoing. There being no objection, the committee recommendation was modification of the resolution.

Resolution No. 1 (Training) was before the committee. Motion was made to amend the resolution to give reference to the Department of Transportation and have it go to the Secretary of Transportation. There being no objection, the resolution was adopted with the amendment.

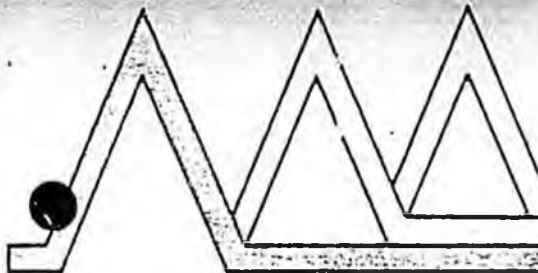
Resolution No. 2 (Pre-emption) was before the committee. The resolution was unanimously adopted.

Senator Jacobsen instructed the staff to draft a letter of policy/intent for direction of the committee through the coming year containing the points of interest from the previous meeting.

The Chair advised that he had chosen Representative Randy Phillips of Alaska to be Vice-Chair of the Hazardous Materials Committee. There was a nominating motion and Representative Phillips was unanimously voted Vice-Chair.

Senator Jacobsen announced that the next meeting of the committee would be in New Mexico with the Executive Committee.

There being no further business, the meeting was adjourned.



WESTERN CONFERENCE

THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

(415) 986-3760

RESOLUTION NO. 81-19:

FEDERAL PRE-EMPTION OF STATE LAWS AND REGULATIONS

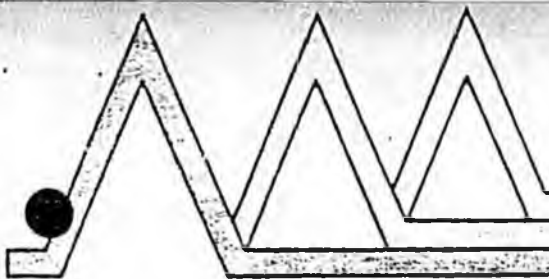
WHEREAS, serious issues of federalism are raised by federal pre-emption of state prerogatives in issues of transportation, resource utilization, and regulation thereof; and

WHEREAS, state government finds itself burdened with administering federal programs in times of declining resources;

NOW, THEREFORE, BE IT RESOLVED by the Western Conference of the Council of State Governments that the United States Congress and particularly the Senate Committee on Intergovernmental Relations hold hearings on the issue of pre-emption of state responsibility by the federal government.

Comprised of Legislators, representing the following States:

Alaska • American Samoa • Arizona • California • Colorado • Commonwealth of the Northern Mariana Islands
Guam • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming



WESTERN CONFERENCE

THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

(415) 986-3760

RESOLUTION NO. 81-20 :

TRAINING FOR HAZARDOUS AND RADIOACTIVE MATERIAL EMERGENCY RESPONSE

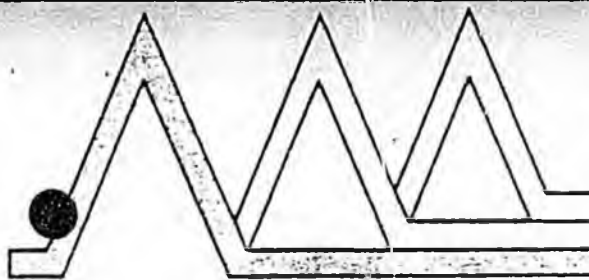
WHEREAS, the generation, transportation and disposal of hazardous materials poses grave threats to life, property and the environment; and

WHEREAS, lack of training for carriers, regulators, and emergency response persons has been determined to be the single greatest and most correctable problem in protecting the public from hazardous materials incidents;

NOW, THEREFORE, BE IT RESOLVED by the Western Conference of the Council of State Governments that the President of the United States and Congress be urged to require the United States Department of Transportation to establish two hazardous materials training centers, one in Federal Region IX and one in Federal Region X.

Comprised of Legislators, representing the following States:

Alaska • American Samoa • Arizona • California • Colorado • Commonwealth of the Northern Mariana Islands
Guam • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming



WESTERN CONFERENCE

THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

(415) 986-3760

RESOLUTION NO. 81-21:

SUPERFUND MONIES FOR LOCAL TRAINING

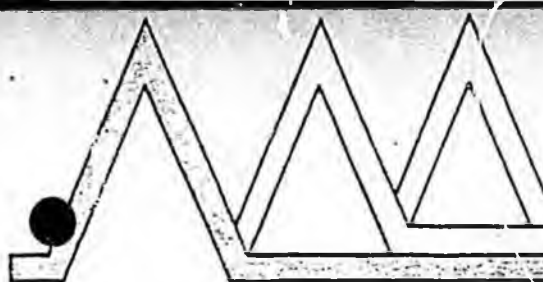
WHEREAS, the generation, transportation and disposal of hazardous materials poses grave threats to life, property and the environment; and

WHEREAS, lack of training for carriers, regulators, and emergency response persons has been determined to be the single greatest and most correctable problem in protecting the public from hazardous materials incidents;

NOW, THEREFORE, BE IT RESOLVED by the Western Conference of the Council of State Governments that the President of the United States and Congress be urged to allow superfund monies to be expended by state governments to provide local training for emergency response.

(Comprised of Legislators representing the following States

Alaska • American Samoa • Arizona • California • Colorado • Commonwealth of the Northern Mariana Islands
Guam • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming



WESTERN CONFERENCE

THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

(415) 986-3760

RESOLUTION NO. 81-22

SUPPLEMENTARY AGREEMENT(S) FOR REGIONAL SOLUTIONS TO PROBLEMS OF HAZARDOUS, CHEMICAL, TOXIC, AND RADIOACTIVE MATERIALS

WHEREAS, such activities as medical care, research, industrial processes, nuclear power production, and military work results in the production of hazardous, chemical, toxic and radioactive materials; and

WHEREAS, the need for safe hazardous, chemical, toxic and radioactive materials disposal will remain, and indeed is expected to grow in the years ahead; and

WHEREAS, the Western states realize that many of the activities within their borders which result in the production of hazardous, chemical, toxic and radioactive materials benefit their citizens; and

WHEREAS, the Western states wish to continue such benefits while realizing the responsibility each state has in seeing to the safe production, packaging, transportation and disposal of these materials; and

WHEREAS, the Western Conference of the Council of State Governments recognizes its responsibility to help prepare, maintain, and implement regional plans for carrying out the duties, powers or functions and to undertake responsibilities imposed or necessarily involved with regional participation pursuant to such cooperative programs of the federal government as are useful to the member states; and

WHEREAS, it is vitally important that the states, on a regional basis, take the initiative in exploring workable solutions to the disposal question; and

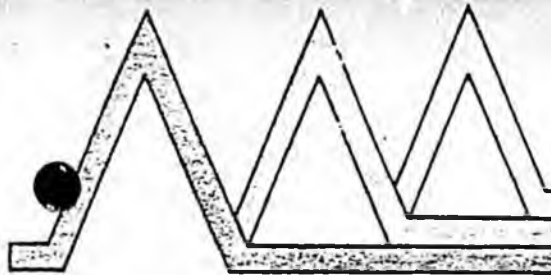
WHEREAS, it is imperative that states devise regional working relationships they deem appropriate without federal mandating or coercion;

Composed of Legislators representing the following States:

Alaska • American Samoa • Arizona • California • Colorado • Commonwealth of the Northern Mariana Islands
Guam • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming

NOW, THEREFORE, BE IT RESOLVED that the Western Conference of the Council of State Governments recommends establishment, by executive agreement, of a supplementary agreement(s) to develop regional solutions to problems of hazardous, chemical, toxic and radioactive materials including the development and proposal of such interstate agreement or compact language as may be deemed appropriate, in consultation with the legislatures which must ultimately approve such an agreement or compact; and

BE IT FURTHER RESOLVED that the supplementary agreement be developed in full coordination with related dangerous material activities that may be carried on by the Western Conference of the Council of State Governments and other appropriate organizations.



WESTERN CONFERENCE

THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

[415] 986-3760

RESOLUTION NO. 81-23

EXECUTIVE/LEGISLATIVE COOPERATION ON DEVELOPING AND APPROVING REGIONAL COMPACTS FOR HAZARDOUS WASTE DISPOSAL

WHEREAS, such activities as medical care, research, industrial processes, nuclear power production, and military work results in the production of hazardous wastes in each state; and

WHEREAS, the need for safe hazardous waste disposal will remain, and indeed is expected to grow in the years ahead; and

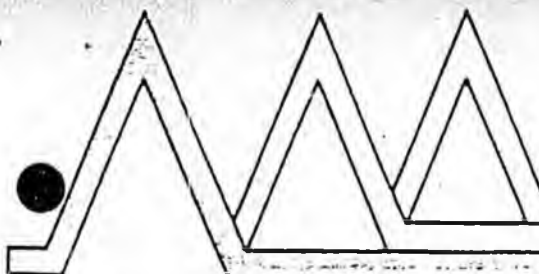
WHEREAS, the Western States wish to improve their capabilities with respect to the safe packaging, transportation and disposal of low-level hazardous waste; and

WHEREAS, hazardous wastes are generally defined as low level radioactive wastes and chemical wastes;

NOW, THEREFORE, BE IT RESOLVED that the Western Conference of the Council of State Governments strongly endorses state executive/legislative cooperation in developing and approving regional compacts for hazardous waste disposal.

Composed of Legislators, representing the following States:

Alaska • American Samoa • Arizona • California • Colorado • Commonwealth of the Northern Mariana Islands
Guam • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming



WESTERN CONFERENCE

THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

(415) 986-3760

RESOLUTION NO. 81-24

INVENTORIES AND STANDARDS FOR DISPOSAL

WHEREAS, The federal mandate requires state participation in regional compacts for disposal of low-level radioactive wastes; and

WHEREAS, Participation by individual states in compacts must be approved by Congress; and

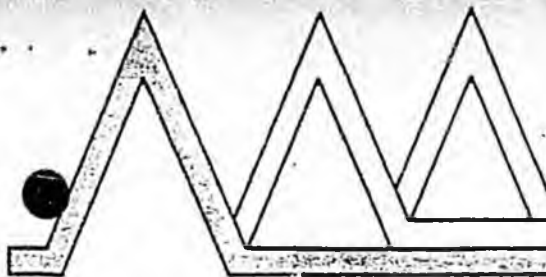
WHEREAS, No present state-by-state inventory of generators is available even though purchase of radioactive materials is a matter of record; and

WHEREAS, No criteria for construction of low-level radioactive disposal facilities have been developed at the federal level;

NOW, THEREFORE, BE IT RESOLVED by the Western Conference of the Council of State Governments that the Nuclear Regulatory Commission and the U.S. Department of Energy develop inventories indigenous to each state and develop and make standards and criteria for construction of disposal facilities available to the states prior to congressional action on any proposed regional compact.

Comprised of Legislators, representing the following States

Alaska • American Samoa • Arizona • California • Colorado • Commonwealth of the Northern Mariana Islands
Guam • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming



WESTERN CONFERENCE

THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

[415] 966-3760

RESOLUTION NO. 81-25

BLOCK GRANTS

WHEREAS, states feel inferior in their relationships with the Federal Government in the field of hazardous waste management, the result being conflict and not cooperation; and

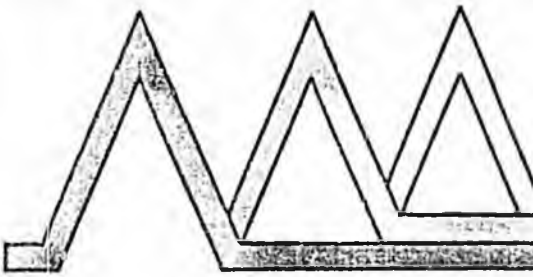
WHEREAS, given adequate technical expertise and equipment and improved training of personnel, the states can manage hazardous waste regulation in an effective manner; and

WHEREAS, the best regulation of hazardous waste will result from cooperation between the states and the Federal Government acting as equals;

NOW, THEREFORE, BE IT RESOLVED, by the Western Conference of the Council of State Governments that the Federal Government provide block grants to the states to improve management of hazardous waste programs, to acquire technical expertise and equipment and to train personnel so that a competent and technically sophisticated hazardous waste program can be developed by the states.

Comprised of Legislators, representing the following States:

Alaska • American Samoa • Arizona • California • Colorado • Commonwealth of the Northern Mariana Islands
Guam • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming



WESTERN CONFERENCE

THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

(415) 986-3760

October 14, 1981

To: Members, Hazardous Materials and Transportation Committees 

From: Leah Brumer and Claudia Marseille, Committee Staff

Subject: Hazardous Materials Transportation Act, S. 960 and H.R. 3403

In late September or early October, the Senate will consider S. 960, the Hazardous Materials Transportation Act, sponsored by Senator Howard Cannon (D-Nev.), which would assist states and localities in preventing and responding to accidents involving the transportation of hazardous materials. (Transportation of radioactive waste is not covered in the bill). As now drafted, S. 960 does not preempt state and local laws regarding transportation of hazardous materials. Section 116 of the bill (see copy enclosed), however, would authorize the Secretary of Transportation to determine within 18 months whether it is necessary to issue regulations regarding the routing and transportation of hazardous waste materials.* The National Governors' Association, the National Conference of State Legislatures, and numerous other state and local associations that oppose preemptive federal standards for hazardous materials believe that Section 116 is intended to signal DOT that Congress would not object if the Secretary issued preemptive regulations for hazardous wastes.

Further, Senator John Danforth (R-Mo.) may propose an amendment to S. 960 that would specifically preempt state and local requirements for the transportation of hazardous materials (see draft enclosed), even if these requirements were more stringent than the federal law. Senator Danforth is the Chairman of the Surface Transportation Subcommittee that held hearings on S. 960, during which the trucking industry advocated federal preemption of state and local hazardous materials regulations. The rail and chemical industries also support preemption. Under the proposed Danforth Amendment, if DOT determined that the state requirement were consistent with the federal regulations, DOT could exempt that state from preemptive federal standards.

If you wish to comment on S. 960 or the proposed Danforth Amendment, please send your remarks to your own delegation; to Senator Cannon, 259 Russell Building, Washington, D.C. 20510; and to Senator Danforth, 460 Russell Building, Washington, D.C. 20510.

*As you know, DOT issued regulations on January 19 (see Federal Register p. 5298 to p. 5318), which preempted state and local radioactive waste regulations.

Comprised of Legislators, representing the following States:

Alaska • American Samoa • Arizona • California • Colorado • Commonwealth of the Northern Mariana Islands
Guam • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming

In a related development, Senator William Proxmire (D-Wis.) has drafted two amendments to S. 960 involving transportation of radioactive waste. One amendment (see Proxmire Amendment 1 attached) would overturn the DOT radioactive waste regulations issued in January 1981 by allowing states to require shippers to provide information about transports passing through their jurisdictions and by permitting states and localities to impose certain restrictions on the transportation of radioactive waste. The other amendment (See Proxmire Amendment 2 attached) would authorize the Secretary of Transportation to establish a panel to study and to make recommendations within two years on the appropriate local, state, and federal roles in hazardous materials routing, pre-notification, and emergency and enforcement activities. The 1981 regulations would be precluded from going into effect until that study is completed. If you wish to comment on these proposals, please send your remarks to your own delegation and to Senator Proxmire, 5241 Dirksen Building, Washington, D.C. 20510, with a copy to us as well.

In the House, on May 4, the House Commerce and House Public Works Committees approved H.R. 3403, the Hazardous Materials Transportation Act, which is similar to S. 960. Its sponsor is Representative James Florio (D-N.J.). As now drafted, the bill does not have a section comparable to Section 116 of the Senate version but a preemption amendment may be offered.

~~REQUEST FOR PROPOSALS~~

Ball

I General Information for the Contractor

I-1 PURPOSE. This request for proposals (RFP) provides interested contractors with sufficient information to prepare and submit proposals on the State of Alaska's need for a review of regulatory practices relating to storage of toxic and hazardous materials.

I-2 ISSUING OFFICE. This RFP is issued for the State by the Department of Environmental Conservation. The Division of Environmental Quality Management, in Juneau, is the Issuing Office (Pouch O, Juneau, AK, 99811, 465-2636). The Issuing Office is the sole point of contact in the State for this RFP.

I-3 PROBLEM STATEMENT. A variety of studies related to petrochemical development in Alaska have been carried out over the past year. The public has expressed concern over the environmental problems associated with the use and production of hazardous materials. These concerns were raised at a series of public meetings on petrochemical issues which were held by the State during this past year.

There are many Federal statutes which regulate hazardous wastes and substances. These include the Resource Conservation and Recovery Act (RCRA), Toxic Substances Control Act, Department of Transportation regulations and the Clean Water Act. These and other laws seek to protect the public and the natural environment from dangerous materials which may be used or produced in industrial and commercial activities. In addition, the Department of Environmental Conservation was given the authority during the last session of the Legislature to develop a program to regulate the generation, transport and disposal of hazardous wastes in Alaska. This Department is preparing implementing programs and regulations under this authority.

However, these regulations are each designed to cover specific circumstances. While not all circumstances may need to be regulated, there may be areas where additional regulations would be prudent. For instance, some hazardous or toxic materials may be regulated only when they become wastes, but not while they are stored or transported for other industrial or commercial purposes. Also, not all hazardous or potentially hazardous materials may be subject to regulation during production or use.

The purpose of this project is to provide the State with a written evaluation of existing and proposed Federal and State regulations on the storage, transportation and handling of hazardous materials not classified as wastes.

((((

Particular attention should be paid to on-site storage of materials used or generated during the manufacturing processes. This Department's concerns relate to protecting the public and the natural environment from dangerous materials. This does not categorically exclude direct manufacturing employee exposure problems, however that is not the emphasis of this project. The materials should be restricted to those associated with petrochemical development or other oil and gas related developments.

The objectives of this project are to:

- evaluate existing and proposed Federal and State laws and regulations,
- identify gaps in the regulatory structure,
- identify approaches used in other parts of the United States,
- identify the need for further actions or regulations within Alaska; and,
- if necessary, identify regulatory options for consideration by the State.

The results of this project will be used by the agency in their ongoing evaluation of Alaska's toxic and hazardous materials program. The contract will not exceed \$12,000 and it is proposed to last no longer than six months.

I-4. TYPE OF CONTRACT. It is proposed that, if a contract is entered into as a result of this RFP, it will be an environmental studies type 10 contract. Negotiations may be undertaken with those contractors whose proposals show them to be qualified, responsible and capable of performing the work. The contract that may be entered into will be that most advantageous to the State, price and other factors considered. The State reserves the right to consider proposals or modifications thereof received at any time before award is made, if such action be in the interest of the State.

I-5. REJECTION OF PROPOSALS. The State reserves the right to reject any and all proposals received as a result of this RFP, or to negotiate separately with any source whatsoever in any manner necessary to serve the best interests of the State. This RFP is made for information or planning purposes only. The State does not pay for the information solicited or obtained through this RFP.

Task 1 Evaluate current laws and regulations:

Identify laws and regulations to be evaluated; these are subject to Department of Environmental Conservation approval.

Restrict evaluation to those laws regarding manufacture, use, storage and transportation of hazardous materials. Hazardous wastes management should not be included in the evaluation.

EPA listings of hazardous and toxic materials should be used as guidelines; or, with Department approval, other listings that the contractor feels are appropriate. This listing is subject to Department approval. Pesticides and radioactive materials should not be included in the list.

A complete index and bibliography should be provided as part of the documentation.

Task 2 Identify regulatory gaps in the storage, handling and transportation of hazardous materials:

Document the gaps and the nature of the problem which could be expected to exist in Alaska regulatory structure.

Restrict evaluations to current developments, likely proposed developments and materials targeted in Task 1.

Task 3 Identify and evaluate approaches used in other states:

Identify states chosen for comparison. Justify their choice. This will be subject to Department approval.

Evaluate applicability of their approaches to Alaskan needs. Document all findings.

Task 4 Identify regulatory options should a need for other regulations be determined:

Document and justify need for all proposed actions, particularly as they relate to Alaskan needs.

Recommend a preferred approach and provide justification for that recommendation. Provide alternative approaches.

III-4 REPORTING REQUIREMENTS. The Contractor shall submit for review by the Project Officer the following required reports/materials in the quantities and the times listed:

- Monthly progress reports, with the monthly billings, detailing status of project to date by task and any problems. Progress reports should include a list of contacts made on each task. Five (5) copies of the monthly reports and two (2) of the monthly billings should be submitted each month.
- Draft final report within 4 months of contract effective date. Five copies are required.
- Final report within 6 months of contract effective date. Fifty copies of the final report are required.

III-5 STAFFING PLAN. For each of the tasks, the respondent should provide detailed information on the level of effort required and identification of staff working on the various tasks. The proposed staff should demonstrate experience in evaluating legal issues, familiarity with environmental regulations, familiarity with Alaskan issues, familiarity with the petrochemical analyses which have been underway, and their capability to review other state's regulatory structures. Resumes should be provided. Current commitments of proposed key personnel should be identified to assure availability. Past relevant experience on similar issues should be demonstrated for both the staff and the organization.

Project summaries of relevant experience should be brief and emphasize their relevance to the proposed project.

A contact person should be identified, giving name, phone number and address.

III-6 MANAGEMENT PLAN. A description of the management and conduct of this contract is required. It should contain general information on the organization and management processes of the firm and specific information on how this particular contract will be managed. Overall responsibility, daily contact person, allocation of staff time and fiscal responsibilities should be identified. Also, allocation of management, research and support services time should be identified.

III-7 COST PROPOSAL. A separately bound cost proposal should be provided. It should include: an official offer to undertake the proposed project at the quoted price, general financial and business information about the respondents, and a detailed explanation of the quoted price. The official offer should include a commitment to perform all financial

responsibilities relative to the performance of the proposed contract including submitting all vouchers, accounting for all funds, making all disbursements. The offer should be valid for at least 60 days.

The cost proposal should provide a breakdown of expenses by line item budget and task.

III-8 Contract manager and RFP contact is Deborah Kirk, Petrochemical Coordinator, State of Alaska Department of Environmental Conservation, Pouch 0, Juneau, Alaska, 99811.

DRAFT

ALASKA
HAZARDOUS WASTE PROGRAM

I N T R O D U C T I O N

In a report to Congress in 1973, the U. S. Environmental Protection Agency recommended passage of a federal law to regulate hazardous waste. Existing legislation was adequate to protect the air, surface waters, and oceans from improper disposal of hazardous waste, but there were no controls over its disposal on land. Moreover, the air and water pollution laws requiring industry to adopt acceptable treatment and disposal practices increased the amount of hazardous waste being disposed on the land.

Congress responded by including hazardous waste provisions in the Resource Conservation and Recovery Act (RCRA). The Alaska Department of Environmental Conservation is writing hazardous waste regulations incorporating many of these provisions, as well as addressing the specific needs and problems in Alaska.

What Is A Hazardous Waste?

The 1981 Alaska Statutes define hazardous waste as follows:

"Hazardous waste" means a waste or combination of wastes which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may:

- a) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating illness; or
- b) pose a substantial present or potential hazard to human health or the environment when improperly managed, treated, stored, transported, or disposed.

Some common hazardous wastes are acids, bases, heavy metals, industrial solvents, paint thinners, pesticides, and asbestos. Alaska also includes the management of PCBs in its hazardous waste program although they are not listed as hazardous wastes under RCRA.

A special category of hazardous waste is "acute" hazardous waste. These substances can be extremely dangerous even in very small quantities and require specific management considerations. Some common acute hazardous wastes are cyanides, strychnines, pesticides, and some rat poisons.

DRAFT
3/31/82

Who Generates Hazardous Waste?

Virtually every manufacturing operation may generate some potentially hazardous byproduct. Small businesses such as metal plating and electroplating, battery reclamation, dry cleaners, and welders, all produce hazardous waste. Some reuse these wastes, precluding the need for disposal. Petroleum development and processing, and military activities are major generators of hazardous waste in Alaska. Agricultural, medical, and research activities generate hazardous waste, such as pesticides, pathological and radioactive wastes.

A recent Department report indicates that approximately 8,000 tons of hazardous waste are produced annually in the state. About 500 tons per year are generated by the Alaska public and small commercial businesses. The industrial sector generates an estimated 3,900 tons per year, and the military produces nearly 4,000 tons per year.

Most of the hazardous waste generated, approximately 70%, comes from central Alaska, particularly Anchorage and Kenai, while 28% comes from the northern region, primarily Prudhoe Bay.

As population and economic diversification increase in Alaska, the amount of hazardous waste generated is expected to increase.

How is Hazardous Waste Disposed of?

Hazardous waste must be disposed of in specially designed facilities, called secure landfills, which are staffed, and equipped to prevent adverse effects on the environment and health. There are no approved facilities for hazardous waste disposal in Alaska. Generators of hazardous waste must take wastes out of the state for disposal. This is costly and the farther they must be transported the more opportunities there are for accidents.

To date two to four tons of Alaska's hazardous waste have reportedly been shipped to a special waste disposal facility in Oregon. This means that almost all of Alaska's hazardous waste remains in the state. Although some of it is being stored, reused or recycled, at least a portion of it may be disposed of improperly.

How Can Hazardous Waste Cause Problems?

Improper handling of hazardous waste can contaminate ground water and surface waters, pollute the air, burn or explode, cause poisoning through the food chain, or cause poisoning or injury through direct contact. Negligence in storage, transport, or disposal can result in damage to natural resources, loss of property, personal injury or illness, even death. Environmental damage and health problems caused by hazardous waste may not be evident for months, or in many cases, years after the initial incident. Thus proper handling must be ensured, through strict regulations and enforcement.

WHAT IS THE PROPOSED STATE OF ALASKA PROGRAM FOR HAZARDOUS WASTE MANAGEMENT?

The Department is responsible for the regulation, administration and enforcement of the hazardous waste program in Alaska. Its program activities will be closely coordinated with other agencies, particularly: 1) the U. S. Department of Transportation to regulate the transport of hazardous materials, 2) the State Troopers, to assist in cleanup and enforcement activities; and 3) local fire departments to assist in cleanup activities.

The goal of the hazardous waste program is the preservation of public health, environmental quality, and the conservation of resources through proper management of hazardous waste.

The objectives of the Department to accomplish that goal are to:

1. Provide information and assistance to minimize the amount of hazardous waste generated in Alaska.
2. Create a public information program to increase public awareness concerning hazardous waste.
3. Strengthen communication with industry and implement a technical assistance program by September 1982.
4. Monitor and track regulated hazardous waste activities by December 1982.
5. Establish an effective emergency response system for the prompt cleanup of discharges involving hazardous waste by December 1982.
6. Conduct a comprehensive inventory to locate regulated hazardous waste generators in the state and review the volume and characteristics of waste produced by January 1983.
7. Determine the need for a hazardous waste disposal facility in Alaska by September 1983, and, if needed, establish an effective disposal system by December 1986.
8. Train and certify transporters of hazardous waste in the State by December 1983.
9. Develop a system by which hazardous waste can be exchanged, recycled or reused in the state by December 1984.
10. Bring regulated generation, transportation, storage, treatment, and disposal activities into compliance under state regulations and standards by January 1986.

11. Locate and clean up all known abandoned hazardous waste disposal sites by December 1987.
12. Increase enforcement efforts on improper management of hazardous wastes which threaten the people and environment.

Who Would Be Regulated by the State's Hazardous Waste Program?

A. Generators of 1,000 kilograms per month or more of hazardous waste and one kilogram or more of acute hazardous waste must meet federal requirements. However, in Alaska there are a number of small businesses which also generate hazardous waste. Although they each produce waste in small quantities, improper disposal of these wastes could be dangerous. For this reason the Department proposes that small generators keep records of the type and amount of hazardous waste disposed of and the location of the disposal site. It is also proposed that all state regulated hazardous waste be deposited in a permitted solid waste landfill. Small generators would be defined as: 1) those which produce 100-999 kilogram per month or 1,000 kilograms or more per year of any combination of hazardous wastes, and 2) those which produce 100 grams per month or 1,000 grams or more per year of acute hazardous waste. Activities generating less than these amounts would still be required to meet general state requirements for the preservation of health and environmental quality.

B. Transporters of 100 kilograms of hazardous waste, or 100 grams of acute hazardous waste in a single load.

C. All Treatment Facilities.

D. Storage Facilities storing 1,000 kilograms or more for over 90 days.

E. All Disposal Facilities accepting wastes from generators described in "A" above.

Technical Assistance

The Department will assist industry, the military, and small businesses to minimize the amount of waste generated. They will also assist in the design, construction, and operation of facilities to prevent accidental discharges. The Department is also proposing to establish a waste exchange newsletter to promote recycling of potential hazardous waste.

The Department's philosophy on this and other programs is to emphasize information and technical assistance to enable compliance with state standards. Enforcement actions will be taken when these initial efforts to prevent or remedy a problem have failed.

Permitting, Certification, Identification Numbers.

All regulated hazardous waste activities (generation, transport, disposal, treatment, storage) must have a federal identification (ID) number. Small generators regulated only by the Department would be required to have a state ID number. The ID number would be assigned primarily to identify and record specific information about hazardous waste activities in the state.

Truck drivers transporting hazardous waste would be required to attend Department approved safety training course and receive certification. The course would then enable transporters to be more knowledgeable about the dangers and precautions associated with the wastes they are carrying and procedures to follow in the event of an accidental discharge.

Operators who store, treat, transport or dispose of regulated amounts of hazardous waste, in any amount, would be required to obtain a state permit. Generators would not be required to obtain a permit unless they also store, treat, transport, or dispose of hazardous waste.

Hazardous Waste Tracking and Reporting System

The federal government has developed a manifest system to identify and track waste from "cradle to grave". This system is designed to prevent improper management of wastes and identify problem areas. The manifest system is being adopted by the State of Alaska. Generators, transporters, storage, treatment, and disposal facilities will participate in the manifest program. This system will require the person who generates a regulated quantity of hazardous waste to complete the manifest form. This form will accompany the waste to final disposal. The final treatment or disposal facility operator will return copies of the manifest to the generator, to establish that the waste reached its proper destination, precluding improper disposal or storage.

A transporter, storage facility, treatment facility, or even a disposal facility can break the chain of improper hazardous waste management by refusing any waste not properly containerized or labeled or which is not accompanied by a properly completed manifest. Incidents should be immediately reported to the Department.

Generators will also be required to report to the Department the nonarrival of any waste sent to a designated disposal facility. The Department proposes that it be notified within 45 days for unreceived shipments to in-state facilities, and within 90 days for shipments made to out-of-state facilities.

Generators, transporters, and operators of storage, treatment, and disposal facilities will be required to keep accurate records of their activities and make these records available for inspection by the Department at all times. It is proposed that a yearly report would be required of generators producing over 100 kilograms per month of hazardous waste or 100 grams per month of acute hazardous waste. Transporters and operators of treatment, storage, or

disposal facilities would also be required to file this report. The report would consist primarily of a tabulation of information from the manifests used throughout the year. A quarterly report would be required for any hazardous waste disposal facility constructed and operated in Alaska. Report information would be used to analyze volumes and types of waste generated, identify problems, and ascertain future needs.

Emergency Response

When a spill of hazardous material occurs, it will be the responsibility of the persons or company handling it to assure that it is effectively cleaned up. The Department should be contacted immediately after an incident, and it is proposed that a written report be filed with the Department within seven days of the incident.

The Department is establishing an emergency response team composed of several regional office staff personnel and representatives in other concerned agencies, such as the Department of Transportation and the Environmental Protection agency, who will be trained to quickly and effectively respond to all types of discharges of hazardous substances.

A toll-free number, Zenith 9300, the same used to report oil spills, is available in the event of an accidental discharge. Transporters, police, and fire departments will be trained to take immediate action to prevent further or more serious damage from a discharge until the response team can contain the incident and contact the appropriate cleanup company or responsible party.

PUBLIC INVOLVEMENT

The Alaska hazardous waste regulations are being written and the public will be actively involved in their review prior to adoption. Public hearings will be held and public documents, news articles, and newsletters will be written to explain the hazardous waste program, or to address specific issues of public concern. The Department will also coordinate its activities with other state, local, and federal agencies and environmental groups to make use of their expertise and to keep them informed of program plans.

A 10-15 person work group is proposed to assist in planning and decision-making, especially with regard to disposal facility siting and regulation development. The Department will ask industry, government agencies, environmental groups, and other interested organizations to select representatives to participate in this work group.

For further information about hazardous waste management or the state's hazardous waste management program, contact:

Hazardous Waste Management
Department of Environmental Conservation
Pouch O
Juneau, Alaska 99811
(907) 465-2666

To report emergencies, problems or incidents call:

TOLL FREE NUMBER: Zenith 9300

Regional offices:

Southcentral Regional Office
437 E Street
Anchorage, Alaska 99501
(907) 274-2533

Northern Regional Office
P. O. Box 1601
Fairbanks, Alaska 99707
(907) 452-1714

Southeast Regional Office
P. O. Box 2420
Juneau, Alaska 99803
(907) 789-3151

Low Level Radiation
Compact Groupings & States as of March 30, 1982

EXHIBIT NO. 1

<u>Midwest</u>	<u>Northwest</u>	<u>Central States</u>	<u>Rocky Mountain</u>	<u>Southeast</u>	<u>Mid-Atlantic</u>	<u>Northeast</u>	<u>Unaffiliated States</u>
Illinois	Alaska	Arkansas	Arizona	Alabama-i	Delaware	Connecticut	California
Indiana	Hawaii-i	Iowa*-i	Colorado-i	Florida-p	Kentucky*	Maine	Texas
Iowa*	Idaho-e	Kansas*-p	Nevada	Georgia-p	Maryland	Massachusetts	
Kansas*	Montana	Louisiana	New Mexico-i	Mississippi-i	North Carolina	New Hampshire	
Kentucky*	Oregon-e	Minnesota*	Wyoming*	North Carolina	Puerto Rico	New Jersey	
Michigan	Utah-e	Missouri*-i		South Carolina-i	Virgin Islands	New York	
Minnesota*	Washington-e	Nebraska*		Tennessee-i	Virginia*-p	Pennsylvania	
Missouri*	Wyoming*	North Dakota*		Virginia*-p	Washington, D.C.	Rhode Island	
Nebraska*		Oklahoma			West Virginia	Vermont	
North Dakota*							
Ohio							
South Dakota							
Virginia*							
Wisconsin							

KEY:

*States eligible for more than one region

p-Passed both houses

e-Enacted

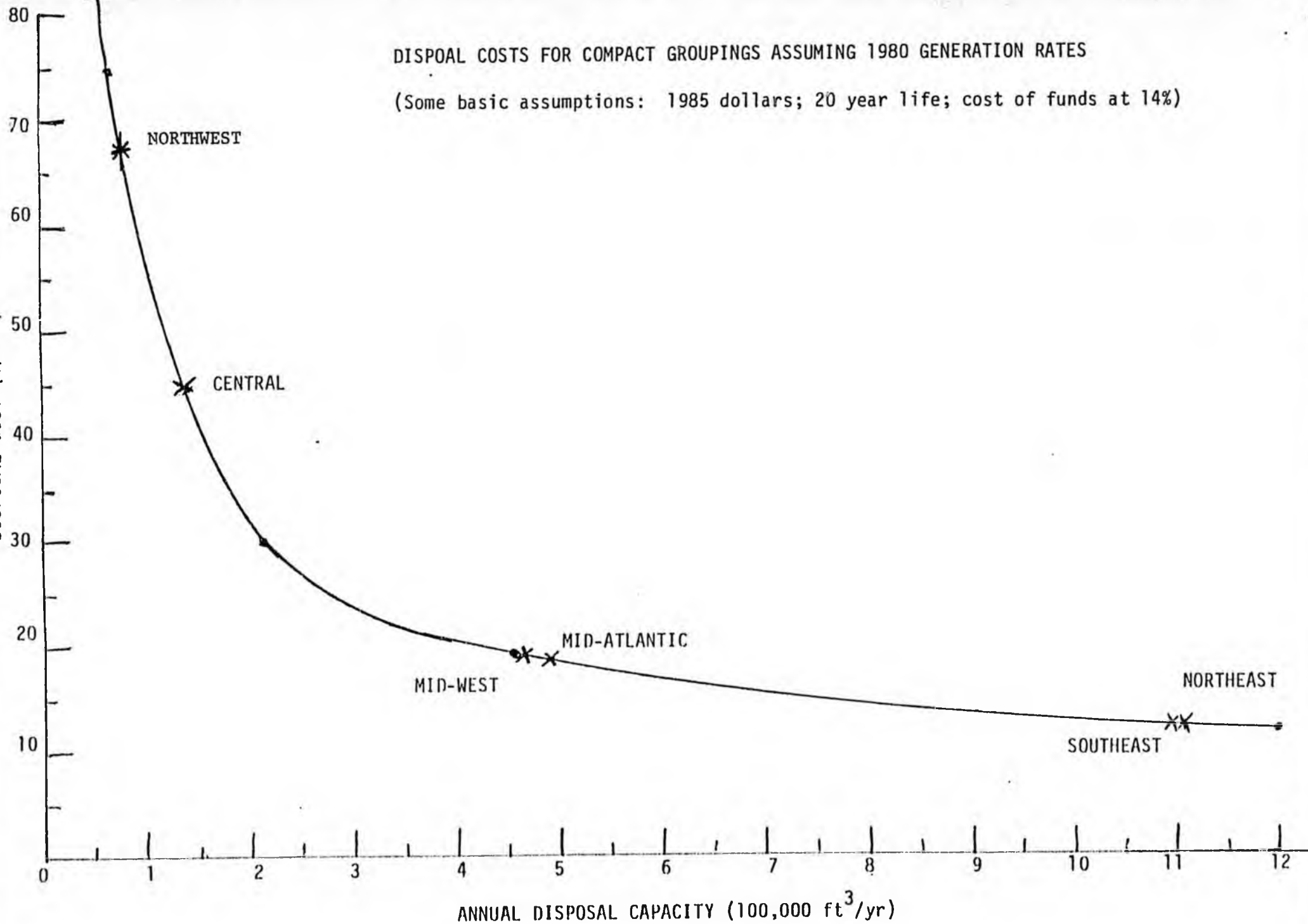
i-Introduced

GENERATION RATE (1,000 ft³)

<u>COMPACT</u>	<u>STATES</u>	<u>1979</u>	<u>1980</u>	<u>1985</u>	<u>1990</u>	<u>1995</u>	<u>2000</u>
Rocky Mountain	AZ,CO,NV,NM	13	12	71	102	104	108
Northwest	AK,HI,ID,MT,OR,UT,WA,WY	78	78	146	269	276	300
Central	AR,IA,KS,LA,MN,MO,NB,ND,OK	137	143				
Mid-West	IL,IN,MI,OH,WI	367	464				
Mid-Atlantic	DE,DC,KY,MD,NC,VA,WV,PR,VI	387	499				
Southeast	AL,FL,GA,MS,SC,TN	593	1,097				
Northeast	CT,ME,MA,NH,RI,VT/NJ,NY,PA	1,043	1,110				
----- California	CA	153	61	173	187	200	216
Texas	TX	19	75				

DISPOAL COSTS FOR COMPACT GROUPINGS ASSUMING 1980 GENERATION RATES

(Some basic assumptions: 1985 dollars; 20 year life; cost of funds at 14%)

DISPOAL COST (\$/ft³)

Fred Miller
Potomac Alliance
1743 Q Street, N.W.
Washington, D.C. 20009
(202) 232-3149

II

Calendar No. 123

97TH CONGRESS
1ST SESSION

S. 960

[Report No. 97-99]

To amend the Hazardous Materials Transportation Act to encourage a greater effort in the prevention and response to transportation incidents involving hazardous materials, to provide assistance to State and local governments in preventing and responding to such incidents, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 9 (legislative day, FEBRUARY 16), 1981

Mr. CANNON introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MAY 15, 1981

Reported, under authority of the order of the Senate of May 13 (legislative day, April 27), 1981, by Mr. PACKWOOD, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Hazardous Materials Transportation Act to encourage a greater effort in the prevention and response to transportation incidents involving hazardous materials, to provide assistance to State and local governments in preventing and responding to such incidents, and for other purposes.

1 REPORTING SYSTEM AND DATA CENTER

2 SEC. 5: Section 100(d) of the Hazardous Materials
3 Transportation Act (49 U.S.C. 1808(d)) is amended—

4 (1) by inserting "(1)" immediately before "The
5 Secretary";

6 (2) by redesignating paragraphs (1), (2), and (3) as
7 subparagraphs (A), (B), and (C), respectively; and

8 (3) by adding at the end thereof the following new
9 paragraph:

10 "~~(2)~~ Nothing in this subsection shall be construed
11 to limit the authority of the Secretary to enter into a
12 contract with a private entity for use of a supplemental
13 reporting system and data center operated and main-
14 tained by such entity."

15 CONFORMING AMENDMENTS

16 SEC. 6: Sections 110, 111, and 115 of the Hazardous
17 Materials Transportation Act (49 U.S.C. 1809, 1810, and
18 1812) are amended by striking "title" wherever it appears
19 and inserting in lieu thereof "subtitle" in each such place.
20 *That this Act may be cited as the "Hazardous Materials*
21 *Transportation Act Amendments of 1981".*

22 FINDINGS AND PURPOSE

23 SEC. 2. (a) *The Congress finds that—*

24 (1) *the transportation of hazardous materials can*
25 *create severe hazards to the public safety;*

1 (2) such transportation is nonetheless essential to
2 commerce;

3 (3) in the interest of uniformity, the Hazardous
4 Materials Transportation Act provides for the preemp-
5 tion of State and local governmental regulation of haz-
6 ardous materials transportation to the extent it is not
7 consistent with Federal requirements and regulations;

8 (4) despite this preemption, when serious hazard-
9 ous materials incidents occur, it is the State and local
10 governments which necessarily have the primary re-
11 sponsibility for emergency response; and

12 (5) increased coordination and greater consistency
13 between the Federal Government and State and local
14 governments would assist in the prevention of hazard-
15 ous materials transportation incidents and in the over-
16 all ability of State and local governments to respond to
17 such incidents.

18 (b) It is the purpose of this Act to—

19 (1) promote the public safety by providing for in-
20 creased coordination among the various levels of gov-
21 ernment;

22 (2) encourage and assist State and local govern-
23 ments to play a major role in the prevention of hazard-
24 ous materials transportation incidents; and

(3) provide for greater assistance to State and local governments in responding to such incidents through coordinated and well-planned advice, training and technical assistance programs, and planning to encourage the adoption of coordinated incident response programs.

TECHNICAL ASSISTANCE FOR STATE AND LOCAL
GOVERNMENTS

SEC. 3. Section 109(d) of the Hazardous Materials Transportation Act (49 U.S.C. 1808(d)) is amended—

(1) by inserting "(1)" immediately before "The Secretary";

(2) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(3) by striking "; and" in subparagraph (B), as so redesignated by this Act, and substituting ",";

(4) by striking the period at the end of subparagraph (C), as so redesignated by this Act, and substituting ",";

(5) by inserting after subparagraph (C), as so redesignated by this Act, the following new subparagraphs:

"(D) maintain within the Department an information dissemination service, which shall provide instructional materials in the training, skills, and knowl-

1 . . . edge necessary to assist Federal, State, and local agen-
2 cies, and private organizations in training personnel in
3 safe and proper methods for the transportation of haz-
4 ardous materials and for the response to hazardous ma-
5 terials incidents;

6 “(E) take all necessary measures to improve the
7 coordination and effectiveness of all Federal, State,
8 local, and private training programs, including, to the
9 extent practicable, the establishment or the encourage-
10 ment of the establishment of regional training centers;

11 “(F) promote the development of and planning
12 for, coordinated and effective emergency response pro-
13 grams at State, local and regional levels for incidents
14 involving the transportation of hazardous materials;
15 and

16 “(G) encourage and assist States and political
17 subdivisions thereof in developing and implementing
18 programs for the enforcement of Federal rules, regula-
19 tions, standards, and orders issued pursuant to this
20 title and of consistent State or local rules, regulations,
21 standards, and orders relating to the transportation of
22 hazardous materials.”; and

23 (6) by adding at the end of the subsection the fol-
24 lowing new paragraph:

1 “(2) Nothing in this subsection shall be construed to
 2 limit the authority of the Secretary to enter into a contract
 3 with a private entity for use of a supplemental reporting
 4 system and data center operated and maintained by such
 5 entity.”

6 ROUTING AND PRENOTIFICATION

7 SEC. 4. The Hazardous Materials Transportation Act
 8 is amended by adding at the end thereof the following new
 9 section:

10 “ROUTING AND PRENOTIFICATION

11 “SEC. 116. (a) Within 18 months after the date of en-
 12 actment of this section, the Secretary shall, in consultation
 13 with State, local, and regional governments; appropriate
 14 Federal agencies; and other interested persons, determine
 15 whether it is necessary and proper to issue regulations in
 16 accordance with the provisions of this section and pursuant to
 17 section 105 of this title with respect to the routing of hazard-
 18 ous materials being transported in commerce. As part of such
 19 study, the Secretary shall further determine a means of as-
 20 suring adequate participation by State, local, and regional
 21 governments in selecting preferred routes for transportation of
 22 hazardous materials within their respective jurisdictions.

23 “(b)(1) Within 12 months after the date of enactment of
 24 this section, the Secretary shall submit a report to the Con-
 25 gress with respect to the feasibility, cost, desirability of estab-

1 lishing, and the problems and potential burdens on commerce
2 of implementing a prenotification system or systems which
3 would inform State or local governments in advance of the
4 timing, nature, and routing of hazardous materials shipments
5 through their jurisdictions.

6 “(2) In preparing such report, the Secretary shall con-
7 sult with State, local, and regional governments and with
8 appropriate Federal agencies, and shall seek the advice of
9 various groups interested in the safety of the transportation of
10 hazardous materials, including shippers, carriers, and users
11 of hazardous materials and bulk package or container manu-
12 facturers; organizations which represent employees engaged
13 in the transportation of hazardous materials; citizens’ and
14 environmental groups; and private organizations concerned
15 with transportation safety or the provision of emergency serv-
16 ices in response to a major accident involving the transporta-
17 tion of hazardous materials.

18 “(c) In order to acquire information in accordance with
19 this section, the Secretary may establish one or more demon-
20 stration projects.”

21 AUTHORIZATION OF APPROPRIATIONS

22 SEC. 5. Section 115 of the Hazardous Materials Trans-
23 portation Act (49 U.S.C. 1812) is amended by adding the
24 following new sentence at the end thereof: “There are author-
25 ized to be appropriated to carry out the provisions of this title

1 not to exceed \$8,332,000 for the fiscal year ending Septem-
2 ber 30, 1982 (including not less than \$1,000,000 for the
3 purposes of carrying out the provisions of subparagraphs (F)
4 and (G) of section 109(d)(1) of this title), and not to exceed
5 \$8,332,000 for the fiscal year ending September 30, 1983
6 (including not less than \$1,250,000 for the purp. of car-
7 rying out the provisions of subparagraphs (F) and (G) of
8 section 109(d)(1) of this title).”.

Amend the title so as to read: “A bill to amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal years 1982 and 1983, to encourage a greater effort in the prevention and response to transportation incidents involving hazardous materials; to provide assistance to State, local, and regional governments in preventing and responding to such incidents; and for other purposes.”.

AMENDMENT NO. _____ Ex. _____ Calendar No. _____

Purpose: _____

IN THE SENATE OF THE UNITED STATES— 97th Cong., 1st Sess.

S. 960 _____

H.R. _____ (or Treaty _____) SHORT TITLE

(title) To amend the Hazardous Materials Transportation Act to
encourage a greater effort in the prevention and response to trans-
portation incidents involving hazardous materials, to provide
assistance to State and local governments in preventing and
responding to such incidents and for other purposes.

() Referred to the Committee on _____
and ordered to be printed

() Ordered to lie on the table and to be printed

INTENDED to be proposed by PENDING APPROVAL BY TRANSPORTATION

Viz: At the end of the bill, add the following new sections:

1 NATIONAL UNIFORM STANDARDS

2 Sec. 6. Section 101 of the Hazardous Materials Trans-
3 portation Act (49 U.S.C. 1801) is amended by inserting the
4 following immediately before the period at the end thereof;
5 "and to assure that laws, rules, regulations, orders and
6 standards relating to hazardous materials transportation
7 shall be nationally uniform to the extent practicable".

8 GUIDANCE TO STATE AND LOCAL GOVERNMENTS
9 IN FEDERAL REGULATIONS

10 Sec. 7. Section 105 of the Hazardous Material Trans-
11 portation Act (49 U.S.C. 1804) is amended by adding at the
12 end thereof the following new subsection:
13

1 "(d) CONSISTENCY. -- In issuing regulations pursuant to
 2 subsection (a) of this section, the Secretary ^{may} ~~shall~~ provide
 3 guidance as to whether any existing or potential requirements
 4 of a State or political subdivision thereof would be ⁱⁿ⁻ ~~be~~ consis-
 5 tent with ^{such} ~~nationally uniform requirements or~~ regulations under
 6 section 112 of this Act."

7 REVIEW OF STATE AND LOCAL REQUIREMENTS

8 Sec. 8. Section 112 of the Hazardous Materials Transpor-
 9 tation Act (49 U.S.C. 1811) is amended by striking subsections
 10 (a) and (b), redesignating subsection (c) as subsection (e),
 11 and inserting the following new subsections:

12 "(a) GENERAL. -- Any requirement of a State or politi-
 13 cal subdivision thereof is preempted if it is determined under
 14 subsection (b) of this section to be inconsistent with any
 15 requirement set forth in this title or in a regulation issued
 16 under this title and not waived under subsection (c) of this
 17 section.

18 "(b) CONSISTENCY REVIEW. -- Any person affected by a
 19 requirement of a State or political subdivision thereof dealing
 20 with the transportation of hazardous materials may petition
 21 the Secretary, in accordance with procedures to be prescribed
 22 by regulation, for a review of that requirement. Upon re-
 23 ceiving a petition, and after affording interested parties
 24 notice and opportunity to comment, the Secretary shall deter-
 25 mine whether the requirement of such State or political sub-

1 division thereof is inconsistent with any requirement set forth
2 in this title, or in a regulation issued under this title. In
3 making such determination, the Secretary shall consider:

4 "(1) whether compliance with both the requirement under
5 review and the requirements of this title or the regulations
6 issued thereunder is possible;

7 "(2) whether the requirement under review conflicts with
8 the need for nationally uniform requirements, including, but not
9 limited to, whether the same subject matter is already covered
10 by Federal regulation;

11 "(3) whether the requirement under review creates an
12 undue burden on interstate commerce; and

13 "(4) the extent to which the requirement under review
14 is otherwise an obstacle to the accomplishment and execution *of the*
15 of this title or the regulations issued thereunder. *purpose*

16 "(c) WAIVER. -- In accordance with procedures to be
17 prescribed by regulation, the Secretary may, upon petition of
18 the State or political subdivision affected, waive preemption
19 of a requirement determined to be inconsistent under subsection
20 (b) of this section if he determines, after affording interested
21 parties notice and opportunity to comment, that the requirement
22 addresses a unique and compelling local concern of such mag-
23 nitude as to outweigh the considerations upon which the deter-
24 mination of inconsistency was based. The waiver shall remain
25 in effect until such time as the Secretary determines that
26 the basis for the waiver no longer exists.

1 "(d) STAY -- Upon the filing under subsection (b) of
 2 this section of a petition for consistency review of a require-
 3 ment of a State or political subdivision, a stay of such re-
 4 quirement may be obtained by any person who has petitioned for
 5 such review upon the filing by such person of a petition for
 6 stay with the United States District Court of the District of
 7 Columbia or for the District wherein petitioner is domiciled
 8 or has its principal place of business. Such a petition for
 9 stay must be filed within ^{five} ~~four~~ days of the filing of the
 10 petition for consistency review and shall be granted upon a
 11 showing that such petition for consistency review has been
 12 filed in accordance with subsection (b) of this section and
 13 regulations issued thereunder, and upon petitioner's demon-
 14 stration of a prima facie showing of inconsistency between the
 15 requirement of the State or political subdivision ^{thereof any requirement} and the Federal
 16 ^{set forth in this title or in a regulation issued under this title.} requirement. Such stay shall remain in effect until the requirement
 17 of the State or political subdivision is determined to be consistent
 18 with ^{such} the Federal requirement or until the Secretary issues a waiver
 19 under subsection (c) of this section."

20 RECONSIDERATION AND JUDICIAL REVIEW

21 Sec. 9. The Hazardous Materials Transportation Act is
 22 amended by adding at the end thereof the following new section:

23 "RECONSIDERATION AND JUDICIAL REVIEW

24 "Sec. 117. (a) PETITIONS FOR RECONSIDERATION--

25 Any person who is or will be adversely affected or
 26 aggrieved by any determination made under section 112 (b)
 27 or (c) of this Act may petition the Secretary for recon-
 28 sideration of that determination pursuant to procedures

1 to be established by the Secretary. Unless the Secretary
2 takes final action which is dispositive of the petition
3 for reconsideration within 90 days of the date it is
4 filed, such petition may be deemed to have been denied
5 for purposes of judicial review.

6 "(b) JUDICIAL REVIEW-- (1) No person may seek
7 judicial review of any determination made under section
8 112 of this Act unless such person shall have submitted
9 a petition for reconsideration to the Secretary. Judicial
10 review may be obtained by filing a petition for review
11 with the United States Court of Appeals for the District
12 of Columbia Circuit or for the Circuit wherein the
13 petitioner is domiciled or has its principal place of
14 business within 60 days after the date of final dispo-
15 sition by the Secretary on the petition for reconsideration,
16 or the date on which it is deemed denied. A copy of the
17 petition for review shall be transmitted promptly by the
18 clerk of the court to the Secretary or other officer
19 designated by him for that purpose.

0 "(2) Upon the filing of a petition under subsection
1 (a), the court shall have jurisdiction to review the
2 determination in accordance with chapter 7 of title 5
3 of the United States Code and to grant appropriate relief
4 as provided therein.

5 "(3) The judgment of the court affirming or setting
6 aside, in whole or in part, any determination of the

1 Secretary shall be final, subject to review by the
2 Supreme Court of the United States upon certiorari or
3 certification as provided in section 1254 of title 28
4 of the United States Code.

5 "(4) Any action instituted under this section
6 shall survive, notwithstanding any change in the person
7 occupying the office of Secretary or any vacancy in
8 such office."

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

PROXIMITY AMENDMENT 1

(d) Upon enactment of this section, all parts of HM-164, except for Part 172, Part 173, and Part 177.825(c), (d) and (e), is suspended until it can be amended to:

(1) Allow states to require of shippers information on Type B or LQ (large quantity) radioactive shipments passing through their borders, before or after the shipments are made, in addition to whatever information may be required of shippers by the Department of Transportation, in order to ensure the safety of the radioactive shipments. The types of information can include but not be limited to information on the frequency of shipments, the number of shipments, the kinds and kilogram- and curie-quantity of each shipment, the routes of shipments, the packaging of shipments and the timing of shipments. The states are expected to share this information with interested local jurisdictions to facilitate emergency response preparation.

(2) Explicitly recognize the right of any state, local or regional government, or bridge, tunnel or turnpike authority, in instances where they determine in consultation with other affected jurisdictions that a federal routing decision endangers local health and welfare, to impose transportation restrictions and controls on Type B or LQ radioactive shipments more stringent than those imposed by HM-164, as long as such restrictions and controls conform with 49 U.S.C. 1811(a) and (b).

Such restrictions and controls shall include but not be limited to:

- a. Time-of-day restrictions.
- b. Designation of route and mode of shipment.
- c. Permit fees on shippers for the purpose of funding the enforcement of radioactive materials transportation regulations and emergency response capabilities.

(3) Provide that no federal, state or regional designation of preferred routes for Type B or LQ radioactive shipments take effect until a duly-authorized State or Regional Advisory Group, composed of representatives of the city, county, regional and state governments, has certified that:

- a. Adequate emergency response plans and capabilities are in existence.

PROXMIRE AMENDMENT 2

Section 116. (a) The Secretary shall establish a panel to conduct a study and make recommendations within 24 months on the appropriate local, state and federal roles in hazardous materials routing, prenotification, and emergency response and enforcement activities. The study should also assess and make recommendations concerning: (1) safety problems; (2) the adequacy of available technical and financial assistance to state and local governments to perform enforcement, emergency response, and route selection responsibilities; (3) the adequacy of existing prenotification systems, emergency response plans and capabilities, enforcement capabilities, and the desirability of improvements in these areas; (4) the social, environmental and financial impact on state and local governments due to the transporting of hazardous materials; (5) the responsibility of state and local governments to exercise their traditional police powers in imposing restrictions and controls over the transporting of hazardous materials.

(b) The panel shall consist of 15 members with knowledge or experience in the transportation of hazardous materials and shall include representatives of shippers and carriers of hazardous materials by various modes, organizations which represent employees involved in the transportation of hazardous materials, the Department of Transportation, state, regional and local governments, emergency response agencies, and citizens' and environmental groups. The Secretary shall select the members of the panel from lists of qualified candidates supplied by organizations representing the parties to be included in the panel.

(c) In preparing such report, the panel shall consult with State, local, and regional governments and with appropriate Federal agencies, and shall seek the advice of various groups interested in the safety of the transportation of hazardous materials, including shippers, carriers, and users of hazardous materials and bulk package or container manufacturers; organizations which represent employees engaged in the transportation of hazardous materials; citizens' and environmental groups; and private organizations concerned with transportation safety or the provision of emergency services in response to a major accident involving the transportation of hazardous materials.

(d) The Secretary shall provide such staff and other support as may be necessary for the panel to perform its duties from funds within the Department of Transportation budget.

(e) In order to acquire information for the study, the panel shall evaluate the ongoing research and demonstration projects of the Department of Transportation.

(f) The panel will prepare a report and recommendations from its study that will be submitted to the Secretary and Congress for appropriate action.

(g) Upon enactment of this section, the final rule relating to highway routing of radioactive materials (HM-164), which was issued by the Secretary of Transportation on January 19, 1981 and which is scheduled to go into effect on February 1, 1982, is suspended with the exception of Parts 172, 173, 177.825(c), (d), and (e). Before lifting the suspension of HM-164, the Secretary shall review the final report and recommendations of the panel, and shall incorporate the recommendations of the panel in amending HM-164.

CONFERENCE OF WESTERN ATTORNEYS GENERAL
WESTERN (LEGISLATIVE) CONFERENCE
WESTERN GOVERNORS' CONFERENCE



WESTERN OFFICE

The Council of State Governments

**CONFERENCE OF WESTERN ATTORNEYS GENERAL
WESTERN (LEGISLATIVE) CONFERENCE
WESTERN GOVERNORS' CONFERENCE**

**WESTERN OFFICE
OF THE
COUNCIL OF STATE GOVERNMENTS**

The Western Office of the Council of State Governments is supported and directed by elected state officials in the fourteen western states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, Utah, Washington, Wyoming, and three Pacific Island Territories of American Samoa, Guam and the Northern Mariana Islands.

The Western Office serves as the principal staff to three regional leadership conferences:

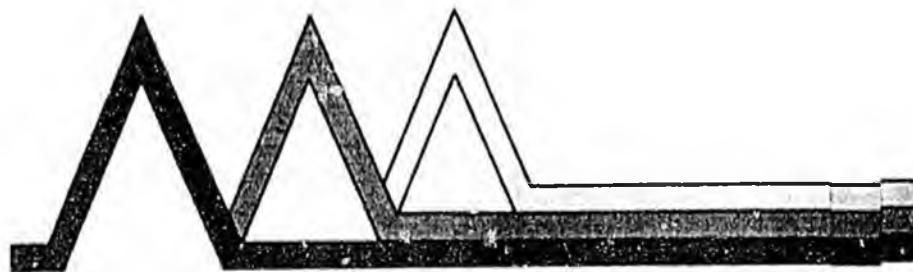
- The Western Governors' Conference
- The Western (Legislative) Conference
- The Conference of Western Attorneys General

These conferences are organized to discuss, study and take action on significant regional situations and problems. Each year, the conferences select priority western state issues such as energy development, environmental regulation, hazardous materials disposal, land management, transportation financing, and water policy as the focus of their work. Interim study committees are appointed to analyze the policy areas identified by the conferences. The Western Office, working closely with western states' staff and other regional organizations, provides policy analysis, survey research, and program planning services to the three conferences.

The central goals of the Western Office and the Western Conferences are:

- to provide an informed medium for state leaders to exchange views on significant western and national issues,
- to foster effective interstate cooperation and input on national policy formulation, and
- to promote improved joint problem-solving among the participating western states.

The Western Office, in addition to its conference responsibilities, publishes a quarterly newsletter, prepares position papers, and writes journal articles on public policies in the western states. The Western Office also collaborates on national studies and research projects of interest to state government with the Lexington, New York, Atlanta, Chicago and Washington, D.C. offices of the Council of State Governments.



THE WESTERN GOVERNORS' CONFERENCE

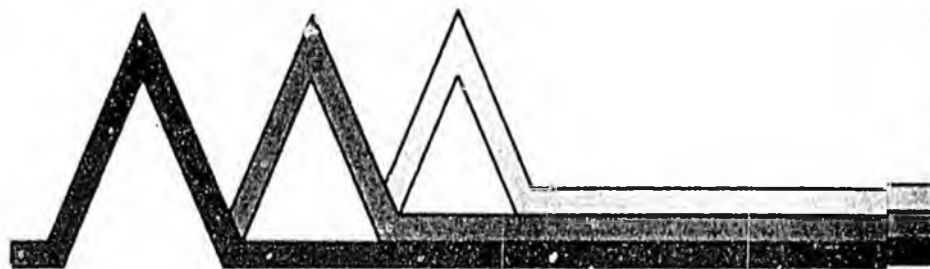
The Western Governors' Conference provides an effective forum for the member governors to exchange information, sponsor policy analysis, and take joint action on important Western State issues. Some topics of concern include energy development, environmental protection, hazardous waste disposal, international trade promotion, land use management, water allocation, correctional policies, and fiscal policies.

The following principles underlie the Conference's work:

- The Western States, because of their rapidly expanding populations, accelerating economies, and vast open spaces, share similar problems and opportunities;
- The nation's needs for the energy resources of the Western States require an integrated regional voice and perspective; and
- The competing demands on the limited resources of the West (such as the demands on water for energy development, agricultural production, and urban/industrial growth) necessitate a constructive and responsive relationship among the States. Such a relationship is indispensable in formulating and implementing effective regional and national policies.

The governors elect a chair and vice chair each year to oversee the activities of the Conference. A Staff Advisory Committee (SAC), comprised of the senior aides to the governors, participates in the policy studies of the Conference and advises the officers on the annual meeting program.

The Western Office is staff to the Western Governors' Conference and the Staff Advisory Committee.



THE WESTERN (LEGISLATIVE) CONFERENCE

The Western Conference is comprised of elected and appointed officials of the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, and the Pacific Territories of American Samoa, Guam, and the Northern Mariana Islands.

The purpose and objectives of the Western Conference are to foster and encourage interstate cooperation on and participation in the consideration of common problems in the west. The Conference provides a medium for state legislators to exchange ideas, knowledge and experience toward the development of action research and policy positions on major western issues.

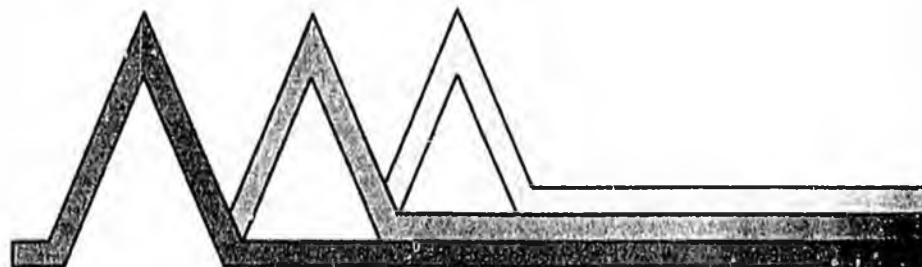
The Western Conference is governed by an Executive Committee composed of the Conference's elected officers, appointed state delegates, and chairs of the conference study committees. The Executive Committee sets interim conference policy and recommends bylaws to implement conference rules.

Conference members meet in committee sessions several times a year, and the entire membership meets annually for three days. During the committee meetings and the annual conference, held throughout the western region, legislators and appointed officials address a variety of issues of concern to the region. Each year, the Conference's leadership determines the priority issues within the region, and establishes policy committees to examine these issues.

For 1980-82, legislative committees include:

- corrections
- energy and minerals development
- energy conservation and renewable resources
- hazardous materials and waste management
- international trade
- public lands
- transportation
- water policy

The committees meet to examine policy approaches to these issues in member states. For example, the transportation committee would consider alternative methods of highway funding, and the corrections committee would review sentencing structures across the states. Committees also review federal legislation and develop regional policy positions on national statutory and administrative policies. Committee membership includes legislators appointed from both houses of each state, legislative staff and executive agency representatives.



THE CONFERENCE OF WESTERN ATTORNEYS GENERAL

The Conference of Western Attorneys General is comprised of the state attorneys general of the following fourteen western states and two Pacific territories: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, Utah, Washington, Wyoming, American Samoa and Guam.

While the Conference is a part of and staffed by the Western Office of the Council of State Governments (CSG) in San Francisco, the Conference is closely associated and coordinates its work with the National Association of Attorneys General (NAAG), with offices in Washington, D.C.

Because of recent history and developments in the West, much of the interest and many of the activities of the Conference are directed toward natural resources and energy issues. Yet, the Conference seeks to be responsive to other issues such as the unfortunate prison tragedies that befell the States of New Mexico and Idaho and the hazards of radioactive waste disposal and transportation.

The Attorneys General who are members of the Conference meet at least four times a year. The Conference holds an annual three-day meeting in one of the western states - usually in July. Members of the Conference also caucus at three major NAAG meetings throughout the United States.

Much of the ongoing work of the Conference is conducted through committees which usually have as members the deputy attorney general or solicitor from each of the offices. The Litigation Action Committee attempts to facilitate the exchange of information and expertise on civil and criminal litigation having broad interest. The Subcommittee on Public Lands has undertaken a systematic study of the many legal issues presented by the federal ownership and management of lands in the western states and continues to provide a forum for the sharing of litigation information. Recent *ad hoc* committees have addressed correctional and prison law problems and the underpayment of oil and gas royalties to the western states by federal lessees.

OFFICERS OF THE CONFERENCE OF WESTERN ATTORNEYS GENERAL



David Leroy

CHAIR, 1981-82

David Leroy
Attorney General, Idaho

VICE CHAIR, 1981-82

Robert K. Corbin

CHAIR ELECT, 1982-83

Attorney General, Arizona

MEMBERS OF THE CONFERENCE

Wilson Condon, Alaska
Aviata Fa'Alevao, American Samoa
Robert Corbin, Arizona
George Deukmejian, California
John MacFarlane, Colorado
Jack Avery, Guam
Tany Hong, Hawaii
David Leroy, Idaho
Michael Greely, Montana
Richard Bryan, Nevada
Jeff Bingaman, New Mexico
Robert Wefald, North Dakota
Dave Frohnmyer, Oregon
David Wilkinson, Utah
Kenneth Eikenberry, Washington
Steven Freudenthal, Wyoming

**COMMITTEES OF THE
CONFERENCE OF
WESTERN ATTORNEYS GENERAL**

- LITIGATION ACTION COMMITTEE
- SUBCOMMITTEE ON PUBLIC LANDS

AD HOC Subcommittee on Oil and Gas Royalties

AD HOC Subcommittee on Correctional Law and Policy

**OFFICERS
OF THE
WESTERN (LEGISLATIVE) CONFERENCE**



Senator Cary Peterson

CHAIR, 1981-82	Senator Cary Peterson Utah
CHAIR ELECT, 1982-83	Representative Russ Donley Wyoming
VICE CHAIR	Senator Sam Guess Washington
PAST CHAIR	Senator Keith Ashworth Nevada

WESTERN CONFERENCE EXECUTIVE COMMITTEE

The Executive Committee is composed of legislative leadership from each state and serves as the interim governing body between annual meetings. It is the primary organizational policy-setting and operational oversight body for the Conference.

1980-1982 CONFERENCE WORKPLAN

WESTERN CONFERENCE COMMITTEES

Committees are composed of appointed members from each house of member state legislators to each committee. The committees constitute the policy research, analysis and action committees of the Conference. The 1980-82 committees and their purposes are:

Corrections Committee - to improve western states' corrections policies and institutional practices by clarifying the corrections problems in each western state and by developing alternative policy responses to these problems, including possible regional approaches in selected areas.

Energy and Mineral Development Committee - to review the nature and consequences of the trade-offs between environmental quality, rapid population growth, resource development and demands for water; and to develop an informed western states' position on how to reconcile the inherent conflicts through amended statutory, regulatory and administrative policies.

Energy Conservation and Renewable Resources Committee - to encourage the increase in supply of existing energy resources through conservation and expanded renewable resource programs by evaluating and disseminating information on the most promising governmental and private sector programs.

Hazardous Materials and Waste Management Committee - to develop an interstate nuclear compact for identifying and implementing a regional low-level radioactive waste siting and management system for the western states, and to encourage individual state legislation to lessen the danger from toxic and chemical wastes.

International Trade Committee - to increase legislator knowledge of exporting problems and, working in conjunction with western states' International Trade Directors, to develop legislation designed to expand exporting opportunities for small and medium-sized business in the western states.

Public Lands Committee - to document particular public lands ownership and management problems and to develop alternative proposals - state and federal - for dealing with them.

Transportation Committee - to develop alternative ways to increase western state highway funding in light of lower gas revenues, to expand the number of states participating in the Multi-State Highway Transportation Agreement; and to propose improved handling, manifesting and transportation of hazardous material.

Water Policy Committee - to establish an effective western legislative voice in water resource policy so as to protect states' water rights.

OFFICERS OF THE WESTERN GOVERNORS' CONFERENCE



Governor Ed Herschler

CHAIR, 1981-82	Governor Ed Herschler Wyoming
VICE CHAIR AND CHAIR ELECT, 1982-83	Governor Victor Atiyeh Oregon
PAST CHAIR, 1980-81	Governor Robert List Nevada

MEMBERS OF THE CONFERENCE

Governor Jay S. Hammond, Alaska
Governor Peter Coleman, American Samoa
Governor Bruce Babbitt, Arizona
Governor Edmund Brown, Jr., California
Governor Richard D. Lamm, Colorado
Governor Paul Calvo, Guam
Governor George Ariyoshi, Hawaii
Governor John V. Evans, Idaho
Governor J. Schwinden, Montana
Governor Robert List, Nevada
Governor Bruce King, New Mexico
Governor Allen I. Olson, North Dakota
Governor Pedro P. Toranzo, Northern Marianas
Governor Victor Atiyeh, Oregon
Governor Scott M. Matheson, Utah
Governor John Spellman, Washington
Governor Ed Herschler, Wyoming

WESTERN GOVERNORS' CONFERENCE PAST CHAIRS

1980-1981	Governor Robert List Nevada
1979-1980	Governor Peter Coleman American Samoa
1978-1979	Governor John Evans Idaho
1977-1978	Governor George Airyoshi Hawaii
1976-1977	Governor Jay Hammond Alaska
1975-1976	Governor Mike O'Callaghan Nevada
1974-1975	Governor Mike O'Callaghan Nevada
1973-1974	Governor Bruce King New Mexico
1972-1973	Governor Tom McCall Oregon
1971-1972	Governor Forrest Anderson Montana
1970-1971	Governor Stanley Hathway Wyoming
1969-1970	Governor Calvin Rampton Utah
1968-1969	Governor Daniel Evans Washington
1967-1968	Governor John Burns Hawaii
1966-1967	Governor Tim Babcock Montana
1965-1966	Governor Grant Sawyer Nevada
1964-1965	Governor Mark Hatfield Oregon
1963-1964	Governor Edmund G. Brown California
1962-1963	Governor William Egan Alaska

STAFF OF THE WESTERN OFFICE

Dan Sprague Director Staff Director for Western Governors and Legislative Conferences Administration and Management of Western Office Program, Personnel and Publications
John Thorson Associate Director Staff Attorney Staff Director for Attorneys General Energy and Minerals Development Committee Public Lands Committee Clean Air Project
Leah Brumer Associate Director Energy Conservation and Renewable Resources Committee Corrections Committee Hazardous Materials Committee
Claudia Marselle Associate Director Water Policy Committee Transportation Committee
Jan Leno Research Associate
Barbara Perdue Executive Assistant Coordinator, Annual Meetings
Cheryl Schweitzer Gwon Zwahlen Conference, Newsletter and Office Management Staff

REGIONAL RESPONSIVENESS IN THE '80's

WESTERN OFFICE

165 Post Street
Fifth Floor
San Francisco, CA 94108
(415) 986-3760



WESTERN CONFERENCE

THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

[415] 986-3760

WESTERN CONFERENCE COMMITTEE MEETING SCHEDULE

SHERATON-PALACE HOTEL
SAN FRANCISCO, CALIFORNIA
APRIL 2-5, 1982

REGISTRATION - Outside French Parlor Room, 2nd Floor

Times: Friday: 8:00 a.m. - 1:00 p.m.
5:00 p.m. - 6:00 p.m.
Saturday: 8:00 a.m. - 9:30 a.m.
Monday: 7:30 a.m. - 9:00 a.m.

FRIDAY, APRIL 2

Energy & Mineral Development	Parlor D	8:45 a.m. - 11:45 a.m.
Public Lands	Bonanza Room	9:00 a.m. - 5:00 p.m.

FREE FOR LUNCHEON

Energy & Mineral Development	Tour of Chevron Refinery	12:00 Noon - 4:30 p.m.
Corrections	Tour of San Quentin	1:00 p.m. - 5:00 p.m.
Transportation	Tour of BART & MUNI	1:00 p.m. - 5:00 p.m.
Resolutions/Rules Subcommittee	Bonanza Room	5:15 p.m. - 6:15 p.m.

HOSTED RECEPTION

French Parlor	6:00 p.m. - 7:30 p.m.

SATURDAY, APRIL 3

Executive Committee Breakfast	French Parlor	7:00 a.m. - 9:00 a.m.
Legislative Service Agency Dir.	Parlor E	9:00 a.m. - 12:00 Noon
Public Lands	Parlor G	9:00 a.m. - 12:00 Noon
Energy & Mineral Development	Bonanza Room	9:00 a.m. - 12:00 Noon
Corrections	Parlor D	9:00 a.m. - 5:00 p.m.
Transportation	Parlor C	9:00 a.m. - 5:00 p.m.

HOSTED LUNCHEON - (Speaker -
Frank McCormick, Senior
Economist, Bank of America)

French Parlor	12:15 p.m. - 1:30 p.m.

SUNDAY, APRIL 4 - NO MEETINGS SCHEDULED

MONDAY, APRIL 5

Energy Conservation	Parlor D	8:30 a.m. - 5:00 p.m.
Hazardous Materials	Sierra Room	9:00 a.m. - 5:00 p.m.
GROUP LUNCHEON	Parlor C	12:00 Noon - 1:00 p.m.

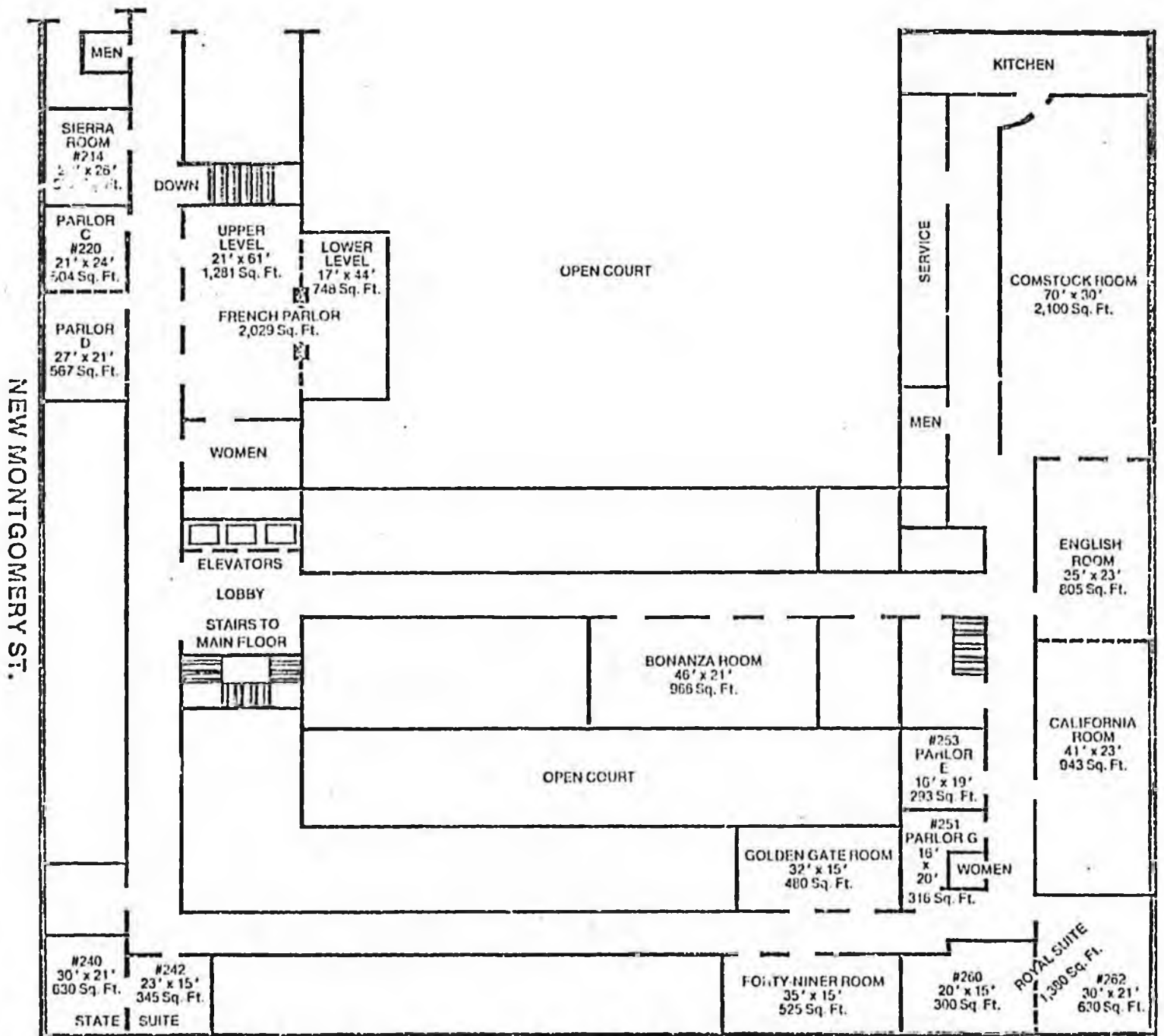
Composed of Legislators, representing the following States:

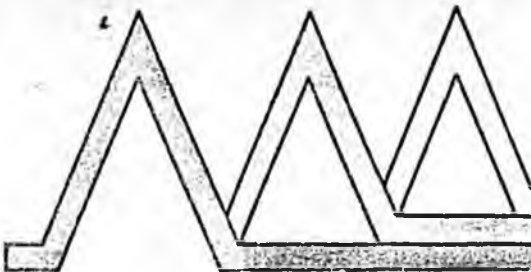
Alaska • American Samoa • Arizona • California • Colorado • Commonwealth of the Northern Mariana Islands
Guam • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming



Sheraton-Palace Hotel

CONVENTION FACILITIES





WESTERN CONFERENCE

THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

(415) 386-3760

WESTERN CONFERENCE COMMITTEE MEETINGS

Sheraton-Palace Hotel
San Francisco, California
April 2-5, 1982

PRELIMINARY ATTENDANCE LIST

ARIETA, Dave, Chevron, U.S.A., Energy & Mineral, CA

ABEL, Pamela, Energy Conservation, Cheyenne, WY

BACON, Art, (Speaker), Interstate Commerce Commission, San Francisco, CA

BAILEY, Frank H., Executive Director, CSG Headquarters, Lexington, KY

BANGERTER, Senator Jack, Energy Conservation/Executive, Bountiful, UT

BARENGO, Speaker Robert R., Executive, Reno, NV

BARLOW, Senator Haven J., Corrections, Layton, UT

BARR, Michael, (Speaker), Pillsbury Madison & Sutro, San Francisco, CA

BENDIX, Dr. Selina, (Speaker), Bendix Environmental Research, San Francisco, CA

BERRY, Representative Dan C., Executive, Eunice, NM

BIBLE, William A., (Speaker), Legislative Council Bureau, Carson City, NV

BILBRAY, James H., Transportation, Las Vegas, NV

BLACK, Senator Wilford R., Jr., Executive, Salt Lake City, UT

BOWEN, Jack, (Speaker), State Senate Transportation Committee, Olympia, WA

BUDGE, Representative Reed, Transportation, Silver Springs, ID

BURT, Nancy, Legislative, Sacramento, CA

CHATBURN, Representative J. Vard, Hazardous, Alvion, ID

CURTISS, Representative Aubyn A., Public Lands, Fortine, MT

DAILY, Senator O. R. "Bud", Corrections, Rawlins, WY

DONLEY, Representative Russ, Executive, Casper, WY

DOVER, Senator Harold L., Energy Conservation, Lewiston, MT

DOWLING, Diana S., Legislative, Helena, MT

ELIASON, Senator Dick, Energy & Mineral, Juneau, AK

ERIKSON, Robert E., Legislative, Public Lands, NV

FAATZ, Representative Jeanne, Transportation, Denver, CO

FAHRENKAMP, Bettye, Alaska State Senator, Energy & Mineral, Juneau, AK

FISCHER, Victor, Hazardous, Juneau, AK

Comprised of Legislators, representing the following States:

Alaska • American Samoa • Arizona • California • Colorado • Commonwealth of the Northern Mariana Islands
Guam • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming

Preliminary Attendance List
Western Conference Committee Meetings
April 2-5, 1982
Page 2

GABE, Jeff, (Speaker), Citizens for a Better Environment, San Francisco, CA
GLASER, Senator Norman D., Public Lands/Executive, Halleck, NV
GOLDER, Representative James D., Hazardous, Boise, ID
GOODOVER, Senator Pat, Executive, San Francisco, CA
GRANDIS, Ed, (Speaker), Environmental Policy Institute, Washington, D.C.
GROSE, Andrew P., Legislative Council Bureau, Legislative, Carson City, NV

HARRIS, Richard, (Speaker), New Mexico State Corporation Commission, Santa Fe, NM
HICKEY, Assemblyman Thomas J., Public Lands, North Las Vegas, NV

JACKSON, Betsy, Office of Legislative Research, Salt Lake City, UT
JOHNSON, Representative Dwayne T., Transportation, West Valley City, UT

KEATING, Senator Thomas F., Hazardous, Billing, MT
KRISBERG, Barry, (Speaker), National Council on Crime and Delinquency, Corrections
KOLSTAD, Senator Allen C., Corrections, Chester, MT
KUNASEK, Representative Carl J., Hazardous, Mesa, AZ

LANE, Representative Joe, Public Lands, Phoenix, AZ
LEWIS, Representative C. W. "Bill", Energy & Mineral, Phoenix, AZ
LOMBARD, Representative Kip, Executive, OR
LORY, Representative Earl C., Hazardous, Missoula, MT
LUTU, Paasuka, Legislative Office, AS

MARKS, Representative Robert L., Executive, Clancy, MT
MARTIN, Hank (Speaker), California Manufacturers' Association, Sacramento, CA
MARTINEX, Senator Alex G., Executive, Santa Fe, NM
MATHESON, Senator Ivan M., Public Lands, Cedar City, NV
MATTEUCCI, Judy, Legislative Council Bureau, Corrections, Carson City, NV
MENAHAH, Representative William, Corrections, Anaconda, MT
MERRILL, Senator Israel, Energy & Mineral, Blackfoot, ID
MOORE, Jeanne, Chevron, U.S.A., San Francisco, CA
MORGAN, Senator Jack M., Energy & Mineral, Farmington, NM
MOWDAY, David, (Speaker), U. S. Environmental Protection Agency, San Francisco, CA

McDERMOTT, Representative Patricia L., Corrections, Pocatello, ID

NELSON, Roger, (Speaker), Utah International, San Francisco, CA
NICHOLS, Senator Milt, Energy Conservation, Cheyenne, WY
NEELSON, Melissa, (Speaker), Office of Surface Mining, Washington, D.C.

OTLEY, Patricia, Burlington - Northern, Inc., Seattle, WA

Preliminary Attendance List
Western Conference Committee Meetings
April 2-5, 1982
Page 3

PALMER, Arthur J., Legislative, Carson City, NV
PARKS, Representative Raymond, Energy & Mineral, Elackfoot, ID
PERDUE, Carl H., Castle & Cooke, Inc., San Francisco, CA
PETERSON, Senator Cary G., Executive, Nephi, UT
POPE, Carl, (Speaker), Sierra Club, San Francisco, CA
PRICE, Assemblyman Bob, Transportation, North Las Vegas, NV

RAWSON, Representative Roger, Energy Conservation, Hooper, UT
RILEY, Thomas W., (Speaker), P.G. & E., San Francisco, CA
RISCH, Senator Jim, Executive, Boise, ID
ROBERTSTON, Richard, (Speaker), Planning & Policy Development, Washington, D.C.

SAURENMAN, John, (Speaker), Department of Justice, Los Angeles, CA
SCHMIDT, Deborah, Environmental Quality Council, Energy Conservation, Helena, MT
SCHOFIELD, Assemblyman Jim, Hazardous, Las Vegas, NV
SCOTT, Edward, (Speaker), Chevron, U.S.A., Concord, CA
SESSIONS, Representative John C., Transportation, Driggs, ID
SHELTON, David, (Speaker), Mine Land Reclamation Division, Denver, CO
SHOEMAKER, Representative Robert N., Corrections, Denver, CO
SIEGAL, Sara, U. S. Environmental Protection Agency, San Francisco, CA
SIMONS, Representative Marlene, Public Lands, Beulah, WY
SLODKY, Leonard, (Speaker), Governor's Office, Denver, CO
SOSNAMAN, Representative James J., Executive, Phoenix, AZ
STEPHENS, Senator Stan, Corrections, Havre, MT
STEVENS, Jan, (Speaker), Office of Attorney General, Sacramento, CA
STODDARD, Kent, (Speaker), State Office of Appropriate Technology, Sacramento, CA
STRAND, Representative Ann, Hazardous, Rock Springs, WY
STRATTEN, Representative Hal, Energy Conservation, Albuquerque, NM
STRAUS, David, (Speaker), Interaction Associates, San Francisco, CA
STRONG, Richard, Transportation, Salt Lake City, UT

THOMAS, Ralph E., Legislative Service Office, Legislative, Cheyenne, WY
TROWBRIDGE, Representative Tom, Corrections, Encampment, WY

VALDES, Martha, (Speaker), Assembly Committee on Consumer Protection & Toxic
Materials, Sacramento, CA
VERGIELS, Representative John M., Corrections, Las Vegas, NV
VINICH, Representative John, Energy Conservation, Hudson, WY

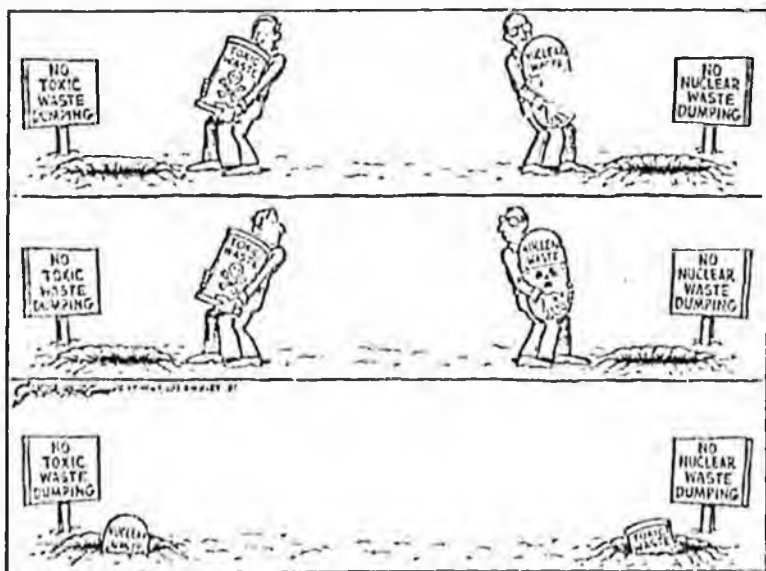
WAGNER, Senator Sue, Corrections, Reno, NV
WARD, Jerry, (Speaker), Motor Vehicle Department, Phoenix, AZ
WALLIS, Representative Dick, Energy & Mineral, Gillette, WY
WEINER, Peter, (Speaker), Governor's Office, Sacramento, CA
WHALLON, Representative Glen, (Speaker), Transportation, Milwaukie, OR
WILSON, Leonard V., Council of State Governments, Waitsfield, VT

ZIEGLER, Senator Robert H., Sr., Executive, Juneau, AK

Toxic chemicals: How much does the public need to know?

By HAL RUBIN

For more than half a century, polychlorinated biphenyl (PCB) has been used commercially to insulate and to retard fires in electrical transformers as well as for other purposes. Some workers exposed to PCB developed skin ailments and other physical problems. But not until the past decade has refined testing provided evidence that PCB causes cancer. In 1976, after numerous leaks and spills had occurred, the manufacture of PCB was banned by the federal Environmental Protection Agency.



Recently the Assembly Committee on Consumer Protection and Toxic Materials held hearings on a bill requiring that utility poles still having PCB-loaded components be marked with eye-level reflective bands. Firemen supported the bill because it would help them and nearby residents to avoid PCB exposure during power line fires or other emergencies. Utility spokesmen opposed the bill, saying there already were yellow squares marking the dangerous capacitors and transformers.

The bill never got out of committee, but the debate revealed one of the thorny aspects of the toxic-chemical issue: How much does the public need to know? It's no secret that industry uses 60,000 to 70,000 chemical compounds, many of them petroleum-derived synthetics developed since World War II. About 5,000 state businesses annually generate more than 5 million tons of hazardous wastes as by-products of production. In addition, about 300 million pounds of pesticides, herbicides and fungicides are applied annually to California agricultural fields. But what does all of that mean to the public welfare?

The need to know is only one of the complex issues con-

Hal Rubin is a free-lance writer in Sacramento and a frequent contributor to the Journal.

fronting both the industries which produce the hazardous wastes and the government which must decide how to protect the public. The Brown Administration has given toxic-waste problems high priority in recent years, and the Legislature has passed a stream of bills dealing with disposal and transportation of dangerous materials. (See box.) But these questions still await answers:

- Do the laws guarantee greater public safety? Not necessarily, said a state auditor general's report in October. The auditor general charged that the state Department of Health Services' four-year-old control program for toxic wastes has failed because of inefficiency and lack of enforcement. State health chief Beverlee Myers agreed with the criticism and promised that a departmental reorganization would improve enforcement. She said funding and manpower shortages were the chief problems.

- Who is responsible for paying the costs of toxic-waste cleanup? Should it be the businesses and industries that produce the waste or the government that requires the cleanup? In a recent out-of-court settlement of a \$45 million lawsuit filed by the state, Occidental Chemical Company agreed to pump contaminated ground water from its Lathrop plant — water that contains dangerous levels of agricultural chemicals such as DBCP and EDP — and to treat the extracted water in a specially constructed plant on its premises. The state called the settlement a potential "model for the chemical industry." But the high costs of dealing with the state's total toxic-waste problems are bound to be the subject of continuing court tests. So far, state investigators have identified 93 hazardous waste sites and expect to find hundreds more. Many will be cleaned up by industry, but abandoned sites will have to be paid for by the state.

- Do state or local governments control toxic-waste decisions? A court test on this issue was avoided last month when West Covina voters rejected a ballot proposition that would have banned all hazardous wastes from the BKK landfill in West Covina — the last state-certified dumpsite for such waste south of the Tehachapi Mountains. The state feared that industries would dump their toxic wastes illegally if voters approved the local ban, and it promised a prompt court challenge if the proposition passed.

Cleanups and inspections

A total of 24 toxic-chemical bills was introduced in the Legislature in the past two years; 15 out of 16 passed in 1980 and three more passed this year. The two most significant laws of 1981 assign the costs of most future cleanup of dumps and spills (SB 618) and of new inspections of vehicles carrying hazardous materials (AB 1012) to the businesses involved — a policy that pleases the Brown Administration and is generally accepted by the chemical industry.

"People responsible for wastes are paying for the program — that is the principle to pursue," says Ken Finney, the governor's assistant on toxic substances.

In October Governor Brown signed a controversial executive order which effectively reversed how California handles its policy on toxic waste. In the past, the state has relied on "secure" landfill for waste disposal — that is,

Major toxic-substance legislation and executive orders, 1980-81

1980

Occupational safety and health

SB 1874 (Nejedly) — Gives workers the right to know the hazards they face from exposure to chemicals on the job. Requires manufacturers to inform employers and requires employers to train workers on acute and chronic health risks. Adds 11 industrial hygienists to inspect workplaces; funds expanded occupational health epidemiology.

Response system

SB 183 (Nejedly) — Establishes a statewide emergency response program system for toxic spills, including a training program for local police and fire personnel.

Transportation

AB 2747 (Wray); AB 2140 (Torres); SB 1903 (Marks) — Tightens regulation of hazardous-waste transportation, including nuclear fuel shipments.

Liability

SB 1465 (Garamendi); AB 3132 (Egeland); AB 2823 (Berman) — Establishes new civil and criminal penalties for illegal hazardous-waste disposal.

Enforcement powers

AB 2700 (McCarthy); AB 2408 (Tanner); AB 2691 (Tucker); AB 2362 (Gage) — Expands state and local enforcement powers; doubles state inspection and monitoring activities to combat illegal disposal practices.

Construction bans

SB 1499 (Presley); AB 2370 (Filante) — Prevents construction on properties contaminated by hazardous wastes; provides for identification, evaluation and treatment of abandoned hazardous-waste sites.

Fees

SB 1466, SB 1477 (Garamendi) — Establishes fees for hazardous-waste dischargers.

New programs

Authorizes the Office of Appropriate Technology to investigate alternatives to land-based waste disposal and to develop new regulations for airborne carcinogens.

Coordination

By executive order, Governor Brown created the Toxic Substances Coordination Council to eliminate duplication and inconsistencies in state programs regulating toxic substances.

1981

Superfund

SB 618 (Carpenter) — Imposes industry fees to help finance cleanup of abandoned dumps and toxic spills; compensates victims of toxic exposure for medical expenses; funds research into new technology at the University of California.

Vehicle inspections

AB 1012 (McCarthy) — Establishes California Highway Patrol program of terminals and inspections for vehicles transporting hazardous materials.

Statute of limitations

SB 802 (Garamendi) — Extends statute of limitations for illegal dumping of toxic wastes from one year from date of disposal to three years from the discovery of the dumping.

Landfill phaseout

By executive order, Governor Brown directed phaseout of landfilling for six categories of toxic wastes and the substitution of alternative technologies for treatment and disposal. A new Division of Toxic Substances in the state Department of Health Services also was set up to be directed by Robert D. Stephens, former chief of the department's materials laboratory in Berkeley.

burying poisonous and dangerous chemical garbage in the established dumping sites. But landfill locations are filling rapidly, and no local agencies are volunteering to provide new dump sites. Brown's executive order begins the phase-out (in 1983) of land disposal for six highly toxic and persistent wastes, including PCBs, cyanides and toxic metals, among others. Alternative methods of disposal are mandated — but finding those methods in time to replace landfills will be costly and technically difficult.

Bob Judd, director of the Office of Appropriate Technology (OAT), had a key role in formulating the governor's new policy. "To my knowledge there never has been a 'secure' landfill," Judd says. "Some are more secure than others. California's Love Canal — the Stringfellow Quarry Class I site near Riverside — is now shut down. For three years it has been leaking acids and other pesticides. A multi-million dollar cleanup is necessary."

Under the old strategy, toxic wastes were controlled only by specifying where they had to go. Highly toxic materials were limited to Class I sites, of which there were 11 through the state. But in the past two years, four of those sites have been closed down and because of local opposition, no new Class I dumps have been added for seven years.

Producers and shippers of wastes are already required to submit a manifest (a ticket) to the Department of Health Services indicating what kind of wastes they have and what they do with them. The system works reasonably well with companies which play by the rules, but "midnight dumpers" easily ignore the manifests and there aren't enough enforcement officers to hamper their operations.

Another problem: 60 to 70 percent of the toxic wastes produced never leave the site where they are generated. Until recently, the Department of Health Services had to rely on an honor system with companies using on-site disposal. The department expects to gain on-site inspection power with its reorganization and new legislation. (One of the on-site disposals — at the Aerojet-General Corporation near Sacramento — is included in the EPA list of the most dangerous chemical waste deposits in the nation. The state is suing Aerojet for negligently polluting the water supply in the area with a variety of toxic compounds.)

What are the alternatives to landfill? OAT Director Judd says that in Holland and Scandinavia, land disposal is forbidden and advanced techniques of treatment and disposal are used. (Some of the techniques have already been adopted in New York and Louisiana.) "About 75 percent of the highly toxic wastes that now go to landfill can be better treated in other ways," Judd says. The OAT plan is to encourage construction of privately owned facilities that use chemical or biological techniques. Other alternatives include high-temperature incineration, recycling, reduction of the amount of toxics produced, and interim encapsulation and surface storage until the needed technology is developed.

Kent Stoddard, director of OAT's Toxic Waste Assessment Program, concedes that the siting of new facilities is not going to be easy. "Nobody wants to be the dumping ground for hazardous materials," he says. "It is understandable why West Covina doesn't want to become a dumping ground for all of Southern California." Stoddard favors a system of small, specialized facilities close to the generating sources — facilities that would not represent any greater danger than the plant that produces the waste. If reasonable liability provisions are added, local communities could be won over, he believes.

Bryant Fischback, who participated in the OAT study, is the chairman of the toxic substance subcommittee of the Chemical Industry Council of California. He has reservations about the feasibility of life without landfills. "There should be a trend toward alternatives to landfill," he con-

cedes. "That's a good direction, but we (the industry) have to be careful that we are not mandated into how we make our business decisions — unless there is a clear public health or environmental problem associated with how we run our business." Fischback still sees a need for landfill sites, and he worries that the state may try to dictate which of the alternative treatment methods a company should use. In addition, the six categories of toxic materials to be banned from landfill are too inclusive, Fischback asserts.

The Chemical Manufacturers Association (CMA) considers the need for new landfill sites to be so critical that it advocates permanent state landfill-siting approval boards, with local representation, that have the authority to override local zoning regulations. Fischback prefers local control "unless local authorities are unwilling or unable to address the siting issue."

Answering public concern

Others in the industry are not convinced that alternative methods can be put on-line in time for the phasing out of six categories of highly hazardous wastes by 1983. But Stoddard of OAT feels public opinion will support alternative handling of toxic wastes and reject new dumping sites: "Polls show we are more likely to be at a site a sophisticated treatment facility before we can site a new landfill, so we feel we are on a much faster track going after better treatment facilities."

The state still has to make some basic decisions about how

it will respond to public concern over possible correlations between toxic chemicals and health problems.

David Roe, regional counsel for the Environmental Defense Fund, has urged the governor to help clear up public confusion about the toxics issue. He wants the state government's theme to be, "We may not know everything, but what we know, you and the public are entitled to know." But chemical-industry officials are genuinely troubled about the prospect of having to divulge what they know to government agencies and the public. For practical reasons they are reluctant to divulge details about their products; trade secrets are jealously guarded. They also doubt that the effects of toxic chemicals, involving the technical subjects of toxicology and epidemiology, can be understood by a lay person. To reassure the public, they are investing in media campaigns that stress their companies' expertise and concern for public safety. The chemical industry also relies on the theme that everything in life involves risk; in exchange for the good things in life from modern chemistry, a statistically negligible risk is acceptable.

Reviewing the past two years and looking ahead, OAT Director Judd concedes that government is moving into ever more sensitive areas. "I don't see how any new administration can sidestep dealing with the toxics issue," he says. "What has been put in place as the first step is enormously important."

(For additional information, see "Toxic-chemical storm over California," *CJ*, December 1979.)

Available for small change . . .

Pamphlet guides to California politics

Only the *California Journal* has published a detailed, low-cost booklet describing all 165 of the proposed legislative and congressional districts for next year's elections — complete with nine maps. This 16-page Reapportionment 1981 special report was published in the November issue of the *Journal* but is now available as a separate item at the following prices: 50 or more copies, 50 cents each; 10-49 copies, 75 cents each; two to 9 copies, 95 cents each; single copy, \$1.25.

You can't tell the names and numbers of all the players in the California government game without the *California Journal Roster and Government Guide*. This 12-page pamphlet contains the names, titles, addresses and telephone numbers of all important state officials and all large state agencies, the makeup of legislative committees, a legislative-process chart and plenty of other useful information. Every year, the Roster is the biggest selling item for the *California Journal Press*, and



the low price schedule is one reason why. Prices: 100 or more copies, 25 cents each; 50-99 copies, 35 cents each; 10-49 copies, 45 cents each; 2-9 copies, 60 cents each; single copy, \$1.



Send your orders to the *California Journal Press*, 1714 Capitol Ave., Sacramento 95814. Postage and handling are free on pre-paid, Visa and MasterCard orders. Add sales tax to all but single-copy orders.

ENVIRONMENTAL PROTECTION PROGRAMS

The President's FY 1983 request for the U.S. Environmental Protection Agency (EPA) is \$3.6 billion which represents a 2.3% decrease from FY 1982 and a 32% decrease from FY 1981 levels. Research and development activities will decrease by 30% from FY 1982 and by 45% from FY 1981. A significant decrease in FY 1983 is proposed for federal abatement, control and compliance activities which would result in a total cut from FY 1982 of 17% and from FY 1981 of 33%. Grants to states and local governments for air, water and land pollution control programs would total \$182 million, down 23% from FY 1982 and 33% from FY 1981. The Administration has requested a supplemental appropriation of \$2.4 billion for FY 1982 to cover promised funding of the wastewater treatment construction grants program. An FY 1983 request of \$230 million for "Superfund" represents a \$40 million increase over FY 1982 levels.

Under the President's proposal, state and local governments would no longer receive funding for the following programs: Clean Lakes, Arcwide Water Quality Management Planning (Sec. 208), Solid Waste Management, Resource Recovery, Noise Control and Toxics Enforcement. EPA will instead encourage states to assume more responsibility for environmental programs and expedite regulatory reform efforts to reduce the burden on the regulated community, state and local governments.

FY 1983 Budget Proposal:

EPA Budget (in millions)	FY 1981	FY 1982	FY 1983
State Grants for			
Pollution Abatement:			
Air Pollution	87.7	87.7	70.0
Hazardous Waste	26.5	41.0	35.1
Safe Drinking Water:			
Public Systems			
Supervision	29.5	29.5	23.6
Underground Injection			
Control	6.6	6.6	5.5
Water Quality Management			
(Sec 106)	51.2	51.2	40.8
Pesticide Enforcement			
Grants	8.0	8.7	6.9
Superfund	40.3	190.0	230.0
Wastewater Treatment			
Construction Grants	3,900.2	2,400.0*	2,400.0

* Supplemental appropriation pending in Congress.

Source: The Proposed FY 1983 Federal Budget 'Impact on the States

NCA / NCSL

Impact on the States: The Administration's proposal to significantly reduce state grants for pollution control may hamper some states' efforts to meet compliance deadlines established by federal law. It should be noted, however, that mandates and compliance deadlines under the Clean Water Act and Clean Air Act are subject to congressional reauthorization this year. With fewer federal resources devoted to research and development and enforcement, states may anticipate receiving less technical assistance from EPA. On the other hand, EPA will work to streamline existing state program requirements aimed at reducing state administrative costs. While a significant increase in "Superfund" expenditures is forecast, the clean-up of abandoned hazardous waste sites may be hindered by EPA projections that only 19 remedial site clean-ups will be completed by the end of FY 1983.

NATURAL RESOURCES PROGRAMS

The Administration has identified the small state discretionary grant programs used for resource management as low priority and, therefore, does not request FY 1983 funding. The programs eliminated which were provided funds in the past include:

- water resources planning and management (Water Resources Council);
- coastal zone management state grants;
- urban park improvement and acquisition;
- historic preservation; and
- state park land acquisition (Land and Water Conservation Fund).

The Administration feels that these programs should be at the prerogative of state and local governments where priorities can be determined by the willingness of taxpayers and the private sector to finance such activities. Planning and construction financed at the local level will also result in more cost-effective solutions to land and water resource problems. Budget authority in FY 1981 for these eliminated programs was \$248 million.

FY 1983 Budget Proposal: The Administration's budget would increase direct federal expenditures for western water projects funded by the Department of the Interior. The Administration will recommend funding new project construction after adoption of new financing and cost-sharing guidelines to shift the costs of such projects from the federal government to the direct beneficiaries. State grants for surface mining reclamation and enforcement activities are increased by \$9 million in outlays from FY 1982 levels.

The budget continues to emphasize user charges and fee systems as a potential federal revenue source, e.g., increased user fees for

national parks, recreation areas, historic sites, wild and scenic rivers, fish hatcheries and wildlife refuges. The FY 1983 budget reiterates the 1982 theme that user charges be employed to support deep draft harbors and channels as well as inland waterways.

Impact on the States: Many states were dependent upon the funds to assist them in resource management activities. Without this federal assistance, some states will have to abandon these activities or seek alternative funding sources.

ENVIRONMENTAL HEALTH

EPA BUDGET BLUES - Senate Environment marks up its recommendations on the Environmental Protection Agency's fiscal year 1983 budget this week, while on the House side, Science's natural resources subcommittee continues spotlighting EPA's research and development funding proposals.

Environment's recommendations to the Budget Committee will be drawn up at sessions on Wednesday, March 3, Thursday, March 4, and, if necessary, on Friday, March 5. All meetings are at 10 a.m. in 4200 Dirksen.

The committee recommendations will cover the Nuclear Regulatory Commission, Fish & Wildlife Service, water resources and other programs, as well as EPA. (See related stories in this issue.)

Science's hearings resume on Tuesday, March 2, at 2 p.m. in 2325 Rayburn, and on Thursday, March 4, at 2 p.m. in 2318 Rayburn.

Senators' Concerns: Environment members' reactions to the Reagan administration's proposed \$961 million budget for EPA ranged from Sen. Gary Hart's (D-Colo.) suggestion to beef the budget up to 1981 levels to Sen. Steve Symms' (R-Idaho) contention that an additional \$130 million or more "ought to be cut out."

Given members' stated concerns about possible effects of the proposed cuts on enforcement, water and air quality programs, toxic substances control and research, as well as their doubts about states' capability to shoulder the programs, Environment is unlikely to endorse the administration's fiscal 1983 numbers.

One strong possibility is that the committee will opt to keep EPA at its current FY 1982 level of \$1.1 billion for operating programs, plus funding for the "Superfund" and sewer construction grant accounts.

EPA's Reply: EPA Administrator Anne M. Gorsuch reiterated before the committee last week the administration's belief that by improving

management, spending money only on efforts required by statute and delegating programs to states "as Congress intended," EPA can do a good job with less money.

The "vast majority" of the environmental legislation EPA is charged with carrying out is not "new," Gorsuch said, nor has the agency's workload just now doubled. "Enormous investments" made in environmental programs in the past several years are allowing EPA now to fully implement those efforts with reduced amounts of money, she said.

Part of this investment has gone to states, Gorsuch said, preparing them to take on more program responsibilities.

But Sen. Jennings Randolph (D-W.Va.) questioned the use of this delegation approach when it is accompanied by sharp cuts in grants to the states. "It seem inconsistent to ask the states to shoulder more of the regulatory burden and at the same time reduce the assistance necessary for them to carry out this responsibility."

Science Hearings: The adequacy of EPA's budget for health effects research to support the agency's standard-setting activities is the main topic of the natural resources subcommittee's March 2 hearing. Witnesses include former Occupational Safety and Health Administration official Morton Corn, now with Johns Hopkins University, and representatives of several research institutes.

On March 4, EPA's Gorsuch and other agency officials testify.

At hearings last week, former Council on Environmental Quality Chairman Russell W. Peterson urged a tripling of the EPA R&D budget to bring it back up to the 1979 funding level. He charged that the agency is inconsistent in arguing that it lacks scientific basis for environmental regulation -- such as to control acid rain -- while it eliminates the means to develop the needed data.

Former EPA research official

Richard M. Dowd told the subcommittee that federal environmental research becomes more important as additional regulatory responsibilities are placed on the states. Generally, he noted, states fund "very little research," an observation backed by Peterson, who also is a former Delaware governor.

General Mills, Inc. Vice President J. William Haun said Congress should consider legislation to define more clearly the role and objectives of an EPA R&D program, which now "is somewhat of a mystery to many of us in industry."

Also, because many companies are working on pollution control technology, Haun said, EPA should not duplicate those research and demonstration activities.

He suggested that EPA set up industry advisory committees to get "direct expert advice" on available pollution control technology, pollution control costs and the "environmental side-effects" of "overly stringent" standards aimed at controlling pollution in a single "medium," such as air.

Senate Environment staff contacts: Jim Davenport, x48212, or Jackie Schafer, x46032, both majority; Phil Cummings, x47543, minority. House Science: Tony Clark, x51121, majority; Maryanne Bach, x55029, minority. -- Rose Jacobius

BUDGET

SENATE ENERGY AGENDA - Little is known about Senate Energy's plans for preparing its budget recommendations other than that the panel will be meeting a lot this week.

Sessions are scheduled to begin at 2 p.m. Tuesday, March 2, in 3110 Dirksen. They continue at 10 a.m. Wednesday, and at 10:30 Thursday in the same room.

Staff say the panel will take up the agencies under its jurisdiction in alphabetical order. The agenda includes: the president's Naval Petroleum Reserves office, the Advisory

Council on Historic Preservation, Alaska Land Use Planning Commission, the Army Corps of Engineers, the Energy Department, the Housing and Urban Development Department's Solar Energy and Energy Conservation Bank, the Interior Department, the Treasury Department, the National Science Foundation, the office of the federal inspector for the Alaska Natural Gas Transportation System and the U.S. Synthetic Fuels Corp.

The committee's tack in preparing budget recommendations will depend heavily on the progress made between Republican and Democratic leaders and the administration in negotiating a compromise national budget proposal. (See related Budget story.)

The committee, in any instance, is not expected to simply accept the president's 1983 program requests. At budget hearings last week, members complained, among other things, about cuts proposed in Energy's fossil fuels and renewable energy budgets and about reports that the administration is overstating receipts expected from the outer continental shelf leasing program.

Energy Democrat Wendell H. Ford (D-Ky.), for one, bluntly warned Energy Secretary James Edwards last week that "your nuclear plans may well die if fossil plans die too. The Clinch River [breeder reactor] program lived last year because the fossil fuel programs lived.... People on this committee understand this."

Energy Chairman James McClure (R-Idaho) differed with Edwards, too, on the basis for the administration's decision to drop conservation and renewable programs. "The basic policy seems to indicate that all energy choices are simply economic as far as our government is concerned," said McClure. But because of the potential for energy supply disruptions and the need to create alternatives, McClure said, "there are reasons for non-economic choices."

Energy contacts: Richard Grundy, majority, x42564; Mike Harvey, minority, x40611.

Controlling Toxic Chemicals

	Authorized FY 81		Actual FY 83 Needs		Reagan/Gorsuch FY 83	
	Permanent Positions	Dollars (000)	Permanent Positions	Dollars (000)	Permanent Positions	Dollars (000)
Research & Development						
Intramural		11,838.3		29,707.7		14,617.2
Extramural		28,673.4		56,520.1		15,295.3
Total	187.1	40,511.7	349.4	86,227.8	171.9	29,912.5
Abatement and Control						
Intramural		20,481.7		44,715.0		17,314.9
Extramural		43,734.8		76,712.5		22,396.0
Total	502.1	64,216.5	991.6	121,427.5	401.1	39,710.9
Enforcement						
Intramural		2,695.1		18,199.3		2,817.3
Extramural		1,480.8		1,936.5		0.0
Total	86.2	4,175.9	427.0	20,135.8	68.8	2,817.3
State Grants						
Total	-	1,000.0	7.1	40,126.7	7.0	0.0
Total Program						
Intramural		35,015.1		92,622.0		34,749.4
Extramural		74,889.0		162,490.1		37,691.3
Grand Total	775.4	109,904.1	1,775.1	255,112.1	641.5	72,440.7

Protecting Water Quality

	Authorized FY 81		Actual FY 83 Needs		Reagan/Gorsuch FY 83	
	Permanent Positions	Dollars (000)	Permanent Positions	Dollars (000)	Permanent Positions	Dollars (000)
Research & Development						
Intramural		25,665.5		31,441.6		19,708.9
Extramural		38,361.8		45,892.7		5,305.0
Total	494.3	64,027.3	511.0	77,334.3	296.3	25,013.9
Abatement and Control						
Intramural		54,174.9		68,092.4		53,572.6
Extramural		70,843.5		49,575.5		37,126.3
Total	1,487.6	125,018.4	1,483.6	117,667.9	1,037.8	90,698.9
Enforcement						
Intramural		24,764.8		55,036.3		19,797.4
Extramural		9,835.9		15,782.6		3,386.8
Total	752.9	34,600.7	1,452.0	70,818.9	492.9	23,184.2
State Grants						
Total		96,230.0		142,963.7		46,080.0
Total Program						
Intramural		104,605.2		154,570.3		97,078.9
Extramural		215,271.2		254,214.5		96,198.1
Grand Total	2,734.8	319,874.4	3,446.6	408,784.8	1,827.0	188,277.0

Ensuring Clean Air

	Authorized FY 81		Actual FY 83 Needs		Reagan/Gorsuch FY 83	
	Permanent Positions	Dollars (000)	Permanent Positions	Dollars (000)	Permanent Positions	Dollars (000)
Research & Development						
Intramural		28,855.6		39,335.0		24,134.7
Extramural		45,587.7		69,745.0		26,253.0
Total	451.8	74,443.3	501.6	109,080.0	308.5	50,387.7
Abatement and Control						
Intramural		34,671.7		58,751.0		13,703.6
Extramural		27,208.8		33,127.7		15,930.6
Total	890.6	61,880.7	1,357.9	91,878.7	701.2	47,634.2
Enforcement						
Intramural		18,045.3		34,349.0		13,563.5
Extramural		13,663.0		18,145.7		6,915.6
Total	9.4	31,708.3	904.3	52,494.7	345.3	20,479.1
State Grants						
Total		87,673.0		173,434.8		78,987.8
Total Program						
Intramural		81,572.6		132,435.0		65,401.8
Extramural		174,132.5		294,453.2		128,087.0
Grand Total	1,931.8	255,705.1	2,763.8	426,888.2	1,355.0	197,488.8

Protecting Against Pesticides

	Authorized FY 81		Actual FY 83 Needs		Reagan/Gorsuch FY 83	
	Permanent Positions	Dollars (000)	Permanent Positions	Dollars (000)	Permanent Positions	Dollars (000)
Research & Development						
Intramural		6,136.4		6,445.3		3,983.2
Extramural		3,897.7		4,510.5		1,987.2
Total	114.1	10,034.1	114.1	10,955.8	67.7	5,970.4
Abatement and Control						
Intramural		22,275.3		37,713.8		20,903.0
Extramural		28,260.6		46,891.0		11,570.7
Total	673.2	50,285.7	937.8	84,604.8	505.7	32,473.7
Enforcement						
Intramural		3,907.8		5,840.8		3,212.8
Extramural		111.6		2,180.8		45.3
Total	121.4	4,019.4	169.3	8,021.6	96.6	3,258.1
State Grants						
Intramural		433.8		455.0		
Extramural		10,920.0		12,636.8		
Total	16.1	11,353.8	16.1	13,091.8		8,918.4
Total Program						
Intramural		32,753.3		50,454.9		28,099.0
Extramural		43,189.9		66,219.1		22,571.0
Grand Total	924.9	75,943.2	1,237.3	116,674.0	669.8	50,620.3

Reagan's Environmental Federalism— Are the States Up to the Challenge?

The Administration wants the states to pick up a greater share of the enforcement burden with less federal help, but critics argue that they already lack the capacity.

BY LAWRENCE MOSHER

After a year in office, the Reagan Administration has launched a profound shift in power from Washington to the state capitals that will dramatically alter how environmental programs are carried out in the future.

Proponents of these changes promise that they will lead to a more efficient system of environmental protection at much less cost. But critics warn that the Reaganites are ruthlessly destroying the federal environmental machinery with no guarantees that the states can or will pick up the pieces.

Regardless of who are right, it's now clear that by this summer, the Administration's new environmental policy direction will become almost impossible to reverse, at least through most of this decade. In that respect, President Reagan's New Federalism doctrine could be described as the great environmental gamble of the 1980s.

The federalism concept has always been a key part of the nation's environmental protection system. Under the major federal statutes dealing with air, water, solid and hazardous wastes and surface mining, the states have the option of running their own programs with federal assistance.

So far, the states have varied considerably in their willingness to administer these programs. The determining factors have been local industry pressures, public support of environmental protection and the attitudes of the bureaucrats at the Environmental Protection Agency (EPA), and the Interior Department.

State environmental officials have long complained about what they considered to be an overbearing and unnecessary federal presence that signified a lack of confidence in their capacity to administer environmental affairs. During the Carter

Administration, when many environmentalists held federal positions, federal-state relations grew even thornier.

The federalism tug of wars of the past decade now appear to be over. The reasons are not only the Administration's New Federalism but also its now apparent determination to dismantle EPA as the nation's primary environmental protection institution.

Not only have the Reaganites wrought a sea change in that agency's bureaucratic attitudes, but they have also induced an institutional shrinkage through budget cuts and a strikingly high attrition rate that could significantly diminish the agency's potency by the end of this year. Ready or not, the states and cities may soon have to administer and pay for the major environmental programs because the EPA of the 1970s will no longer be around. (See *NJ*, 10/24/81, p. 1899.)

Although such White House staffers as Rich Williamson, the President's intergovernmental assistant, refer to the New Federalism as "the quiet revolution," that label may soon be drowned out by the din of institutional complaints now beginning to resound across the land.

"We are groping our way down a dark passageway and hoping it will turn out all right," Utah Gov. Scott M. Matheson admitted in an interview. Matheson is a member of the Presidential Advisory Committee on Federalism and is chairman of the National Governors' Association's water management subcommittee.

"We don't want to just balance the federal budget," Matheson said. "We have to balance the federal system, too. I'm a great believer in the federalism concept. But the problem is that from the mouth of the President, there is no agreement on what federalism means."

State officials are keenly aware of the potential collision between Reagan's New

Federalism and the public's demand for a clean environment. Matheson, for one, is concerned that unless the states are helped with sufficient funds, statutory changes and regulatory reforms, they will not be able to handle their added environmental responsibilities.

Interior Secretary James G. Watt is more optimistic, predicting that the states will "rise to the challenge." Watt has assumed a leadership role in this area as chairman of the Advisory Commission on Intergovernmental Relations and an active member of the Presidential Advisory Committee on Federalism.

"The many new responsibilities thrust upon the federal government in the past two decades have exceeded the capability of the federal system to handle them," Watt told the House Government Operations Subcommittee on Intergovernmental Relations and Human Resources on Oct. 6. "Large amounts of money have been thrown at problems simply in the hopes of achieving some benefits."

Watt believes the environmental area is particularly ripe for a major shift in responsibility to the states, where he says the job can be done at less cost and with more public accountability.

"The states have been suffering from their years of relative neglect in the federal system," he said. He predicted that higher user fees and greater cost sharing would "diminish the demands for federal involvement" in many programs.

MORE FOR LESS?

That may or may not be true. But in the meantime, state and city officials are afraid of being saddled with more environmental responsibilities while receiving less money to discharge them.

So far, with the exception of sewage treatment construction grants, there have been no cuts in the federal aid EPA gives to the states that carry out their own

environmental programs. But the federal free ride is about to end. For fiscal 1983, state grants face a sizable slash.

Late last year, Congress gave the Administration most of what it sought by way of reducing the federal role in building municipal sewage treatment systems. By 1985, the federal share will have shrunk from 75 per cent of the cost to 55 per cent as funds are restricted by a narrower definition of water quality benefits.

State grants for other environmental programs, however, remain at \$87 million for the current fiscal year, which comes to 7.3 per cent of EPA's \$1.19 billion budget for fiscal 1982. How much less the Administration will seek for 1983 is still not clear.

EPA administrator Anne M. Gorsuch did not succeed in staving off a significant cut in state grants proposed by the Office of Management and Budget (OMB) for 1983, according to agency sources. Last September, Gorsuch suggested cutting EPA's over-all 1983 spending by 18 per cent, but OMB reportedly pressed for a 34 per cent reduction. After a meeting with Reagan, a compromise was reportedly reached that came closer to Gorsuch's figure. Either way, however, the agency faces continued budgetary attacks of massive proportions.

"We're not going to zero out state grants," Joseph A. Cannon, EPA's acting associate administrator for policy and resource management, said in an interview. "We're doing everything we can to minimize the impact of the budget reductions. But I admit these cuts are still perceived to be a problem by the states."

Cannon was responding in particular to the recent comments of John Anderson, Connecticut's deputy commissioner of environmental protection. Anderson said if the states do not get the funds they need, the Administration's New Federalism will fail.

"We simply don't have the resources to pick up the slack when federal grants are cut," he said. "If the federal government is thinking of turning over more programs to the states without funding, they will find the states are already spread too thin."

A case in point is Iowa. Its 1982 environmental budget is 15 per cent less than last year's outlay of \$2.6 million.

The reduction forced the state to drop its municipal water monitoring program under the 1974 Safe Drinking Water Act.

Iowa had started the program in 1977. When it cut its funds for the program, that triggered the loss of a matching federal grant. And when the state then withdrew, EPA had to take back the job of monitoring Iowa's drinking water. But the federal agency is performing only about 15 per cent of the inspection work the state had been doing, according to J. Edward Brown, Iowa's water quality director.

"We are now concerned that EPA is not doing as good a job as the state did,"



Ready or not, the states and cities may soon have to administer and pay for the major environmental programs because the EPA of the 1970s will no longer be around.

Brown said. "Also, if there is a problem, the state regulatory process is closer at hand to deal with."

Enforcement through lawsuits is another area where the states may not be able to fill what is perceived to be a growing federal vacuum.

"Any cutback in EPA as a viable organization hurts us," said Dennis Abrams, West Virginia's deputy attorney general. "Threatening EPA lawsuits is how we mostly get voluntary compliance. We don't have the resources to conduct special investigations. Our hands are totally tied."

EPA's enforcement director, William

A. Sullivan, says he has kept his staff at about 90 lawyers. But he disclosed in an interview that he will be placing greater emphasis on negotiating settlements with pollution offenders before resorting to the courts.

Under EPA's administrative reorganization last year, most enforcement activities were taken from one office and assigned to the agency's various concerns—air, water, wastes and toxics. Sullivan said one of his top goals is to "improve the quality of the cases brought forward." He faulted the previous Administrations for not providing the Justice Department with sufficient case information and for lax supervision of EPA's own lawyers. He said no time records had ever been kept on cases prepared by EPA's attorneys.

In a Dec. 29 memorandum to the agency's 10 regional administrators, Sullivan directed priority attention to emergency pollution problems such as unsafe hazardous waste sites subject to cleanup under the new superfund statute. He also ordered a speed-up in case management, giving regional offices 30 days to issue violation notices and his own staff two weeks to determine whether to refer cases to the Justice Department for litigation.

But EPA will be looking more to the states for general enforcement. "We need to eliminate the race to the courthouse with the states," Sullivan said, "which means we will not file automatically but will carve up the action with the states. And this will vary dramatically."

The quality of EPA's legal staff, however, also may vary. "We are seeing the cream of experienced, skilled, mature people leaving," said William

Drayton Jr., EPA's assistant administrator for planning and management during the Carter Administration.

"These people have been there since the Nixon and Ford Administrations, and are now bailing out. Without them, the current industry challenge will leave a snarl of bad precedents."

EPA CUTBACKS

Drayton, now a private consultant in Washington, organized a Save EPA Committee last fall to protest the Reagan budgetary cutbacks. Drayton now contends that the Administration is skirting legality by attempting to implement still

unannounced 1983 staff reduction plans before Congress has the opportunity to debate and approve the budget.

"By June, the Reagan Administration will have driven out, fired or demoted roughly 80 per cent of EPA's headquarters civil servants," Drayton charged in a Jan. 2 committee memorandum. "Any manager knows what this means—the organization's effective end."

Drayton said in an interview that EPA will begin to fire 800 to 1,500 of its Washington staff in March to achieve a total staff reduction to 8,112 permanent, full-time employees before the current fiscal year ends on Sept. 30. This is the level of agency staffing the President will request for fiscal 1983, Drayton said, and would amount to a cut of 3,295 employees from the actual 1981 level of 11,407.

How many firings actually take place will depend on the number of staffers who quit. Since the beginning of Reagan's term, EPA's attrition rate has averaged 2.7 per cent a month, according to Drayton. The net staff decline after figuring hirings comes to 1.7 per cent a month.

Drayton estimates that out of EPA's headquarters staff of 5,298 who were there at the beginning of the Reagan Administration, only about 1,000 will not have quit, been fired or "bumped" to a lesser job by June. He said the Administration itself estimates that for every two persons fired, three others get downgraded, shifted from permanent to temporary status or shifted involuntarily to a less desirable job that doesn't fit their skills or interests.

"Anger, divisiveness, fear and institutional paralysis unavoidably flow from such losses and bumping," Drayton said. "Imagine the impact on the agency's capacity to get its complex, technical work done at all, let alone competently."

John P. Horton, EPA's assistant administrator for administration, has admitted that the new reorganization would take the agency below its 1982 authorized personnel level. But he justified this on the basis that the staff reductions are "in the direction this Administration wants to go."

Horton disputes Drayton's assertion that he and Gorsuch are attempting to reach the agency's fiscal 1983 staff level by this summer. He acknowledged, however, that at least 400 persons would be fired by late spring and did not rule out the possibility that as many as 800 could be discharged.

"A lot of what we are doing should have been done years ago," Horton said. He rejected environmentalist fears that EPA will not be able to discharge its legislative duties because of the successive budget cuts.

A MIXED BAG

If EPA reduces its activities and the states are required to shoulder much of the environmental control burden, the results could be very mixed, to judge by the recent record.

Watt's own western states, for example, have been less than enthusiastic about his major reorganization of Interior's surface mining office. Watt's changes have cut federal enforcement and caused a total rewrite of the federal regulations implementing the 1977 Surface Mining and Reclama-



Utah Gov. Scott M. Matheson: "We're groping our way down a dark passageway and hoping it will turn out all right."

Carter Administration and have been unenthusiastic about making further changes now. But the Appalachian coal states, with many marginal coal operators fighting the added costs, have been receptive to the more flexible rules.

In the last Administration, the surface mining office flanked the programs of eight states: Alabama, Illinois, Indiana, Kentucky, Ohio, Pennsylvania, Tennessee and Virginia. Indiana and Virginia then sued Interior, contesting the constitutionality of two regulations. (See *NJ*, 5/30/81, p. 971.)

Although the two states lost their court fight, Watt approved Virginia's resubmit-

ted program last December under the new mining office's streamlined rules and expects to approve Indiana's by the end of January. The other six states are in the process of resubmitting their programs under state court injunctions.

Edward Grandis of the Environmental Policy Center, a Washington lobbying group, called the changes "disheartening" and warned that all the Appalachian states will weaken their programs to "the lowest common denominator, Virginia's." Grandis asserted in an interview that Virginia's new program would result in less public oversight and more reclamation abuses through less specific rules

dealing with the dumping of "spoils," or earth removed from the mining site.

The mining office's deputy director, J. Stephen Griles, counters that the simplified rules more accurately reflect the intent of the statute. "The act intended this to be a true example of federalism," Griles said, "by leaving the details to the states. The previous Administration violated this intent."

Griles said his office will still require "environmentally sound" state programs and will issue violations if the states fail to require proper spoils disposal and contour reclamation. Under the new rules, however, federal cessation orders can be triggered only if there is "imminent danger" to the public health and safety.

In other areas, Watt has taken conflicting actions involving states' rights. In disclaiming federal water rights affecting fish and wildlife, Watt supported the supremacy of western states' water law. He also backed the states in opposing a bill (HR 4230) last November that seeks to extend federal eminent domain authority to coal slurry pipelines.

But in rewriting coal leasing regulations and in his position on oil shale leasing legislation (S 1484), Watt went against the wishes of key western governors by watering down the state role in energy development planning. (See *NJ*, 12/5/81, p. 2144.)

TOXICS AND WATER

At EPA, the status and prospects of the Administration's federalism effort are also mixed. The toxics program is entirely federal, and the 1976 Toxic Substances Control Act provides for no state administration. The agency's pesticides program, however, has been fully delegated for three years. Under the 1972



EPA official Joseph A. Cannon: "We're doing everything we can to minimize the impact of the budget reductions."

tion Act to make them more flexible.

Most western coal states had worked hard to obtain conditional approval of their reclamation programs during the

Federal Insecticide, Fungicide and Rodenticide Act, the states enforce labeling rules and evaluate health hazards.

All but six states and the District of Columbia are running their own tap water programs under the 1974 Safe Drinking Water Act. The holdouts are Indiana, Oregon, Pennsylvania, South Dakota and Wyoming, in addition to Iowa, which handed the program back to EPA last year.

Significantly, fear of a future cutoff of federal funds is one of the reasons those states refused to take on the program, according to Marian Mlay, deputy director of EPA's drinking water office.

The statute also regulates underground injections carried out by the oil and gas industry, mining companies and municipalities. In 1980, Congress amended the act to make it easier for states to qualify for administering the oil and gas provisions. So far, only Oklahoma has qualified, although Texas and New Mexico reportedly are close.

EPA's brightest prospects for a successful transition to state control is in the water permit program under the 1972 Federal Water Pollution Control Act. This has been one of the areas of greatest frustration to state environmental officials. After eight years, there are still 23 states and territories that have not elected to take over management of the program.

"Many states complain that the administrative burdens discourage them from assuming responsibility for the program," said Martha G. Prothro, EPA's acting director for water enforcement and permits.

EPA initiated a consolidated permit regulation review last April to simplify the process and cut the costs of state administration. The streamlined version, scheduled for completion by March, should cut the permit processing time by up to 40 per cent, Prothro predicted. She said water permits have taken as long as a year to issue.

"Our regulatory programs have been too fat," Bruce R. Barrett, EPA's acting assistant administrator for water, said in an interview. "Their endless requirements have been counterproductive. If we keep them lean and mean, we will get more pollution control in the end." To help ease coming federal cuts, EPA is urging more states to use permit fees, he adds.

EPA officials are less optimistic, however, about the hazardous waste program

under the 1976 Resources Conservation and Recovery Act. Only 27 states and territories have been granted authority to administer portions of "phase one" activities, such as defining hazardous wastes and setting standards for their transportation. No states are into "phase two," issuing permits for interim and permanent waste facilities.

John Skinner, EPA's director of hazardous waste state programs, blamed much of the "chaos and confusion" on regulations developed by the Carter Administration and on a lawsuit brought by the Environmental Defense Fund Inc., a Chicago group called Citizens for a Better Environment and the National Solid Waste Management Association. The suit forced EPA to issue regulations more than a year ago that should have been issued in



Bruce R. Barrett of EPA: "Our regulatory programs have been too fat. Their endless requirements have been counterproductive."

April 1978 under the statute.

Last October, after reviewing and suspending some of the regulations, Gorsuch said EPA could not issue final rules on waste sites until October 1983. The U.S. District Court for the District of Columbia has ordered EPA to issue the regulations by Feb. 1 and has denied Gorsuch's motion to reconsider the deadline.

Roger A. Kanerva, Illinois's environmental programs manager, criticized EPA's regulations issued under the previous Administration as too inflexible. "We had a pretty good program," he said, "but then we had to substantially revise our regulations and we still didn't have federal approval for even the phase one program."

More significantly, Kanerva said he doesn't see much change in the direction

of more flexibility at EPA under the Reagan Administration. But he acknowledged that the environmental lawsuits were "not helpful." And, as Skinner indicated, new EPA "guidances" to the states have just been issued, and the continuing confusion will still take time to remedy.

Skinner said 18 more states and territories are expected to apply to run their own phase one operations this year and the agency expects to authorize 15 states to begin phase two operations by the end of 1982. States that appear to be uninterested in qualifying to administer any of the federal hazardous waste programs are Alaska, Colorado, Hawaii, Idaho, Indiana, Michigan, Minnesota, Nebraska, Nevada, Ohio, Washington, West Virginia and Wyoming.

CLEARING THE AIR

EPA's most important program, in the minds of many, is clean air. How Congress revises the Clean Air Act will greatly affect the Administration's ability to shift more of the administration of environmental protection to the states.

But the states are not united on what changes they want, and the Administration has avoided a leadership role in revising the statute during the current debate over the legislation.

Unlike other environmental laws, the act does not establish a system for states to take over administration. Instead, it specifically gives the states management responsibility to control air pollutants, authorizing them to set emission limits for such "stationary source" pollutants as sulfur dioxide and particulates. But for "mobile source" pollutants—carbon monoxide, nitrogen oxides and hydrocarbons from cars—Congress itself sets the limits, which are designed to meet national air quality standards set by EPA.

Currently, every time a state wants to revise specific emission limits—something that may take place dozens of times a year—it must get EPA's approval.

EPA has traditionally had a backlog of hundreds of state plan revisions, which sometimes have taken two years to wind their way through its regional and headquarters labyrinths. This process constitutes one of the major sore points between the states and EPA because the states feel such close supervision is no longer needed.

"What we have now just doesn't work," said Kanerva. "The system is all



Former EPA official William Drayton Jr.: "If Gorsuch succeeds, no one will be able to put the agency back together again for years."

jammed up. And if EPA's state grants get cut by 30 per cent, which is the rumor, then we just won't be able to handle the program."

The Western Governors Policy Office (Westpo), representing 14 states, is now advocating that federal approval of state plans be automatic after 90 days unless EPA specifically objects.

The National Governors' Association, the State and Territorial Air Pollution Program Administrators and other groups have supported a similar change that is incorporated in a bill (HR 5252) introduced by Rep. Thomas A. Luken, D-Ohio, and also sponsored by Energy and

with only a pro forma sign-off in Washington. Soon after taking office, however, Gorsuch insisted on personally approving each state request. Only later was she persuaded to delegate the task to Kathleen M. Bennett, assistant administrator for air, noise and radiation.

"The move is inconsistent with promoting greater state flexibility," said Daniel M. Barolo, a New York state environmental official. "The basic decision should be made at the regional level. They talk as if this is only temporary. But the delays only add to our problems."

The states, however, do not agree on what to do about such interstate pollution

A congressional move to give EPA more authority to deal with long-range pollution transport problems would obviously exacerbate the Administration's twin goals of cutting back EPA and strengthening state power. The irony here is that acid rain may not remain a threat just to the Northeast and eastern Canada. Portions of the West, too, could suffer if nitrogen dioxide, a source of acid rain, worsens.

TAKING OVER

Whether the Administration's policies result in less environmental protection will be known only after the states come to grips with their new role and the cutbacks at EPA begin to take hold.

New York's Barolo thinks that fears of reduced pollution control are overblown. "We are not going to walk away from the gains we have made up to now," he said. "The polls show that people want a clean environment and will see that the programs are not gutted at the state level."

James R. Marshall, EPA's regional chief of staff in New York, agrees. "No governor can afford to let these environmental programs drop," he said. "The public visibility of these issues is too high."

There is concern at the state level, however, over EPA's continued ability to provide technical support services, particularly in the area of toxic substances, where most states lack expertise. "We have to rely on EPA to deal with some of these exotic toxics," Iowa's Brown said.

Illinois's Kanerva summed up the nature of the Administration's environmental gamble this way:

"The bottom line is whether the Administration in Washington provides enough transition time. So far, all we see is the budget cutting, but we are not sure yet how much administrative flexibility is coming too."

"What we don't need anymore is EPA's omnipotent presence. I was in this business before EPA was around, and before there was strong citizen support for environmental enforcement. And I certainly don't want to go back to that period. What we want now is the ability to team up with EPA. As long as EPA is there for backup, that's all we need."

But will a viable EPA exist after successive budget cuts and staff losses? EPA's top officials are quick to dismiss this worry. But Drayton and a flock of disillusioned staffers who have quit or been fired do worry.

"Time is running out for EPA," Drayton said. "If Gorsuch succeeds in her budget and personnel policies, no one will be able to put the agency back together again for years. By June it will be too late." □

'Good Neighbor' Program Has Enemies

Last February, less than a month after taking office, Interior Secretary James G. Watt invited western governors to submit requests to buy small parcels of federal land for such public purposes as schools and parks. Under several federal laws, the government can sell or swap federal lands for state or private parcels, and part of the so-called sagebrush rebellion arose over western frustrations in getting Interior's Bureau of Land Management (BLM) to act.

"The Department of the Interior's land managers must be more responsive to community needs," Watt said, "especially in those western states where much of the land is owned by the federal government." Nevada, for example, is 87 per cent federally owned, and the ownership pattern in Utah, which is 65 per cent federally owned, resembles a checkerboard over much of the state. (See *NJ*, 3/21/81, p. 477.)

Land swaps require a complicated, time-consuming process that includes establishing equivalent values. The number of swaps dwindled from 212 in 1970 to 46 in 1979, and federal land traded in 1979 amounted to only 31,620 acres. But regulations issued last April and the publication of a land exchange manual are expected to speed up the process. There are now some 400 land exchange proposals, with 95 awaiting final BLM approval.

In response to Watt's February 1981 request, western governors have asked to buy 351 federal parcels totaling 916,179 acres. Of these, BLM has acted so far on 60 tracts that total about 33,500 acres. Most of the requested acreage is in Nevada (321,000), Wyoming (203,530) and California (179,350).

But in Colorado, a proposal by Rangely, one of the state's energy boomtowns, to buy 106 acres of BLM land to build housing for construction workers has hit a snag. Twelve local landowners are suing BLM for allegedly offering the land at below-market prices. They argue that the town would be better off using some of its own 1,800 empty lots, which would save the costs of municipal expansion of services to the outlying federal land.

Similar complaints are reportedly cropping up in Idaho and Montana. Watt's "good neighbor" program appears to be running into another of his ideological tenets—the free market.

Commerce Committee chairmen John D. Dingell, D-Mich., and ranking Republican James T. Broyhill of North Carolina.

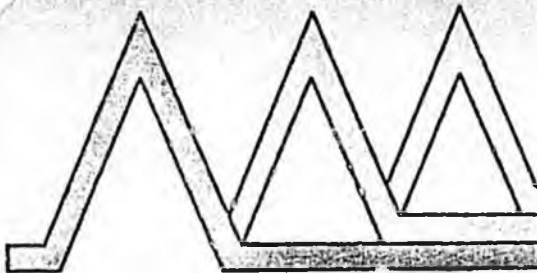
Rather than propose its own comprehensive bill, the Administration has decided to support the Luken bill, although it appears to focus on changes that affect the auto industry. The Luken-Dingell bill, as it is now called on Capitol Hill, is touted as a bipartisan effort to revise the Clean Air Act. But that perception may change if the bill begins to look too anti-environmental.

In the past, EPA made the critical decisions on state plans to achieve air quality goals in its 10 regional offices,

problems as acid rain. The Clean Air Act does not address the problem directly, and environmentalists are calling for statutory changes.

Northeastern states, the recipients of acid rain, urged Congress last November to give EPA specific statutory authority to curb the formation of acid rain.

But Westpo is urging a hands-off approach by the federal government "to allow the states an opportunity to develop 'unique and different regional solutions,'" as Matheson described it. The western states would back an imposed federal solution "only after state efforts to resolve the problem have failed."



WESTERN CONFERENCE

THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

[415] 986-3760

HAZARDOUS MATERIALS COMMITTEE

BRIEFING MATERIALS

T A B L E O F C O N T E N T S

- I. Rocky Mountain Low-Level Radioactive Waste Compact - Summary of Key Provisions
- II. Reagan's Environmental Federalism - Are the States Up to the Challenge? / National Journal
- III. EPA Budget Analysis / National Wildlife Federation
- IV. EPA Budget Blues / Environmental and Energy Study Conference Weekly Bulletin
- V. Environmental Protection Programs - Proposed Federal FY 1983 Budget Overview / NGA, NCSL
- VI. Toxic Chemicals: How much does the public need to know? / California Journal

Comprised of Legislators, representing the following States:

Alaska • American Samoa • Arizona • California • Colorado • Commonwealth of the Northern Mariana Islands
Guam • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming

from: *National Energy Update*
February 24, 1972

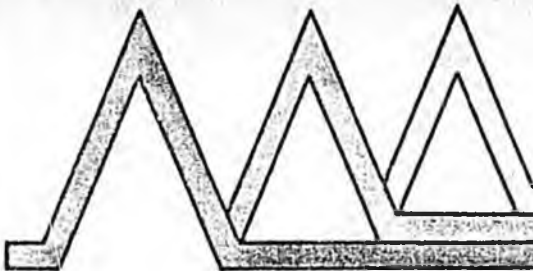
EPA Budget Proposal 11½ Percent Less Than FY-82. The administration's proposed FY-83 budget for the Environmental Protection Agency is \$961 million, down 11½% from the FY-82 budget estimate of \$1,086.1 million. According to EPA officials, the hallmark of the new budget is more "lean and effecient" programs, but environmentalists and democratic leaders characterize the budget differently. The National Wildlife Federation, which had already analyzed an earlier, \$975 million FY-83 budget that was prepared by EPA Administrator Anne Gorsuch, called the lower administration proposal a "clear case of homicide by strangulation." Meanwhile, Speaker of the House Tip O'Neill called the budget "a radical demolition program" and promised to make the budget a major campaign issue that the Democrats are "going to fight every step of the way." Rep. Gillis Long, (D-LA) chairman of the House Democratic Caucus, has announced the creation of a special task force on the environment to develop a Democratic budget alternative to the President's proposal.

The three hardest hit programs in the new budget proposal are Air -- down 16.2%, water quality -- down 21.4%, and drinking water -- down 16.7%.

According to projections, the EPA staff will be reduced by almost 12% in FY-83 to implement the budget cuts. Interestingly, Gorsuch has assured EPA staff that there will be "no involuntary separations due to reductions in force during the remainder of FY-82" and that this policy will continue in effect during FY-83. EPA's top budget chief Morgan Kingborn has denied allegations that the Gorsuch announcement was in response to EPA high attrition rates. He stated that attrition in FY-80, the last year of the Carter Administration, was higher than attrition in FY-81. (Inside EPA, Feb. 12)

EPA'S PROPOSED FY-83 OPERATING BUDGET - COMPARED TO PRIOR YEARS, INITIAL PROPOSAL*					
	(\$ in millions)				
	Carter FY-81 (actual)	FY-82 (estimate)	Gorsuch FY-83** (proposal)	1983 President	1983 difference from 1982 estimate
Air	\$ 235.4	\$ 219.8	\$197.5	\$184.1	-16.2%
Water quality	318.3	236.8	191.2	186.0	-21.4%
Drinking water	79.3	83.8	72.6	69.8	-16.7%
Hazardous waste	141.4	107.2	103.4	101.3	-3.6%
Pesticides	64.8	53.7	50.9	50.8	-5.4%
Radiation	14.2	10.4	11.2	10.4	0%
Noise	12.2	2.0	--	--	across unit
Interdisciplinary	13.9	17.2	23.6	20.7	+16.9%
Toxics	91.1	77.4	72.4	68.6	-11.4%
Energy	84.6	52.5	35.6	34.5	-34.3%
Management & support	215.7	224.7	208.5	233.3	+3.8%
Reimbursements	21.3	0.1	--	0.1	--
Scientific activities overseas	0.1	--	--	--	--
U.S. regulatory council	2.4	--	--	--	--
TOTAL	\$1,297.7	\$1,086.1	\$971.9	\$961.4	-11.5%

* Figures may not add up precisely because of rounding.
** Proposal as reported in Inside EPA, Oct. 1, p.1.



WESTERN CONFERENCE

THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

[415] 986-3760

AGENDA

Hazardous Materials Committee

Sheraton-Palace Hotel
San Francisco, California

Monday, April 5, 1982

Senator Laurence Jacobsen (Nevada), Chair

9:00-10:00 am

Welcome

Senator Jacobson

Issue Update

- Rocky Mountain Compact
Leonard Slosky, Colorado Governor's Office
- Radioactive Waste Management
Tom Riley, Pacific Gas and Electric
- Federal Transportation Regulations
- High Level Nuclear Waste Legislation
Sam Hohmann

10:00-12:00 noon

Environmental Federalism - Federal Perspective/EPA Budget
Changes and their Impact on the States

Panel Participants

- David Mowday, Director Toxics and Waste Management
Division - U. S. Environmental Protection Agency,
Region IX
- Jeffrey Gabe, Citizens for a Better Environment
- Peter Weiner, Special Assistant to the Governor
for Toxic Substances Control (California)

Comprised of Legislators, representing the following States:

Alaska • American Samoa • Arizona • California • Colorado • Commonwealth of the Northern Mariana Islands
Guam • Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming

12:00 - 1:30 p.m. Luncheon

1:30 - 2:30 p.m. Business Session/Annual Meeting Agenda and Resolutions

Senator Jacobsen

2:30 - 4:30 p.m. Environmental Federalism - California Perspective

Legislative Overview

Martha Valdes, Senior Consultant to the Assembly
Committee on Consumer Protection and Toxic Materials

Panel Discussion: California's Approach to Facility
Siting and Landfill Alternatives

Selina Bendix, Benuix Environmental Research, Inc.

Hank Martin, California Manufacturers Association

Kent Stoddard, State Office of Appropriate Technology

Martha Valdes, Assembly Committee on Consumer
Protection and Toxic Materials



Official Business

Alaska State Legislature

Senate

Office of the President

February 10, 1981

file
Pouch V
State Capitol
Juneau, Alaska 99811

TO: Senator Vic Fischer
FROM: Senator Jay Kerttula
Senate President

You have been appointed to the Western Conference Hazardous Materials and Waste Management Committee.

This committee will study certain provisions of the Resource Conservation and Recovery Act (and regulations) and examine regional risks in the generation, use, packaging, handling, storage and ultimate disposal of hazardous substances in the region.

Purpose: to develop an interstate nuclear compact for identifying and implementing a regional low-level radioactive waste siting and management system for the western states, and to encourage individual state legislation to lessen the danger from toxic and chemical wastes.

You have also been appointed to the Committee on Suggested State Legislation (SSL)

This committee collects and formulates draft bills relating to a wide variety of important state legislative issues. The most significant and relevant proposals are disseminated through an annual publication. The committee's membership, in addition to legislators, includes a cross-section of state officials, Commissioners on Uniform State Laws, Commissioners on interstate Cooperation, Attorneys General, legislative staff.

**CONFERENCE OF
WESTERN ATTORNEYS GENERAL**
THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

(415) 986-3760

To: Hazardous Materials Committee

From: Jan Leno, Staff Consultant

Date: May 6, 1982

Re: April Meeting Minutes

Enclosed you will find an attendance list and minutes from the recent meeting held April 5 in San Francisco. Also enclosed is a copy of a recent article from the Governor's Bulletin, put out by the National Governor's Association, concerning the status of the various regional low-level waste compacts, and an article on Hazardous Waste Cleanup from NCSL's Dateline Washington (April 5)

The Annual Meeting is scheduled for August 22-25 in Salt Lake City. Please contact me if you have any further agenda item suggestions. I look forward to seeing you in Salt Lake.

WC12-3

Alaska • American Samoa • Arizona • California • Colorado • Guam • Hawaii • Idaho • Montana
Nevada • New Mexico • North Dakota • Oregon • Utah • Washington • Wyoming

Hazardous Materials Committee

Attendance List

Members:

Representative Earl Cory (Montana) - Acting Chair
Senator Vic Fischer (Alaska)
Representative Jim Golder (Idaho)
Representative Thomas Keating (Montana)
Representative Carl Kunasek (Arizona)
Representative Jim Schofield (Nevada)
Representative Ann Strand (Wyoming)

Observers

Dave Arrieta (Chevron USA)
Jeanne Moore (Chevron USA)
Sara Siegal (U.S. Environmental Protection Agency, Region IX)
Jan Leno (CSG Staff)

Minutes
Hazardous Materials Committee
April 5, 1982

The meeting was called to order by Representative Earl Lory (Montana) who acted as chair in the absence of Committee Chair Senator Laurence Jacobsen (Nevada). Representative Lory welcomed the members and opened the meeting with a number of issue updates.

- The first of these was a presentation on the Rocky Mountain low-level Waste Update made by Leonard Slosky, from the Colorado Governor's Office.

Mr. Slosky summarized the historical background related to the development of the Rocky Mountain Low-Level Radioactive Waste Compact. Discussion among western states was initiated following the passage of the Low-Level Radioactive Waste Policy Act of 1980 (P.L. 96-573F) which delegated responsibility for the disposal of low-level radioactive waste to the states. Regional solutions were recommended.

Initially, the states of Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming were considered eligible for participation in a "southwest" regional compact. As discussions proceeded, California was eliminated because of the large volume of waste it generates, and Utah joined the Northwest REgional Copmpact. Although, Wyoming has not committed itself to a compact region, Arizona, Colorado, Nevada and New Mexico have negotiated a compact agreement which basically only remains to be adpted by member states.

The Colorado and New Mexico legislatures had bill introductions in 1982 which contained the compact and enabling legislation. The Nevada legislature does not meet in 1982, and no action was taken in Arizona.

- Next, the Committee heard a presenation by Thomas Riley, of Pacific Gas & Electric, on low-level Radioactive Waste Management in the Western States. Mr. Riley began by noting that the states - and particularly those from the Rocky Mountains - has responded with great promptness in implementing the low-level Radioactive Waste Policy Act, signed into law in December, 1980. He commented that in the Northwest the compact have already been enacted by the States of Washington, Oregon, Idaho and Utah, has passed one house in Hawaii, and is likely to be considered by legislatures in Alaska, Montana, and Wyoming next year. As for the Rocky Mountain states, legislation has been introduced in Colorado and New Mexico, and legislation will most likely be introduced in Nevada and Arizona next year.

Mr. Riley distributed three handouts: Exhibit 1 listed the Compact Groupings and states as of March 30, 1982; Exhibit 2 displayed the rate of waste generation by Compact grouping; and Exhibit 3 portrayed a graph of projected annual disposal capacity and disposal cost. These data showed that the Rocky Mountain and Northwest States are producing far less material than the other compact regions, and as a result the disposal costs are far higher.

This cost differential is explained by the fixed costs associated with the operation of this type of facility. Since the costs function on a scale of volume, the larger the volume the lower the unit cost will be. Mr. Riley underlined the necessity of considering the imp-

lications of these economic data in our ongoing implementation of the low-level Radioactive Waste Policy Act.

At this point the Committee was joined by members of the Energy Conservation Committee for the remainder of the morning.

EPA Budget Changes and their Impact on the States

Panel Participants:

- David Mowday, Director of Toxics and Waste Management Division,
U.S. Environmental Protection Agency, Region IX
- Jeffrey Gabe, Citizens for a Better Environment
- Peter Weiner, Special Assistant to the Governor,
for Toxic Substances Control (California)

Mr. Mowday began by assuring the committee members that hazardous materials control is the EPA's highest priority for the 1980's. Despite large reductions in other areas, the FY1982-83 budget provides for continued commitment to funding for Superfund, which provides both remedial and immediate emergency responses to toxic spills and abandoned waste sites. This commitment is illustrated, Mowday said, by a 21% increase over 1981 Superfund spending levels.

Mr. Gabe responded by offering his doubts of the Administration's commitment to protect the environment. He pointed to decreased budgets for most EPA programs, which overall represented (with inflation) a 45% reduction from FY1981. He said the cuts were being made on the basis of three assumptions, which he challenged. These are: decreased workload within the EPA, increased efficiency, and state assumption of responsibility. These assumptions are not sound, he claimed, because some of the programs for which EPA has responsibility have only just begun to operate, there are an evergrowing number of pollutants, and federal grants to the States have been cut 16%. He also cited a survey conducted by the National Resources Defense Council which revealed that 45 states are reducing their enforcement efforts in this area, and 35 cannot assume additional responsibilities. He suggested that states should examine their own legislative records and environmental needs (for example, stringency restrictions) and create new revenue sources (such as permit fees) to help support protection of the environment.

Mr. Weiner began by claiming that EPA is both anti-industry and anti-environment, since its policies are leading to hobbling industrial growth and deterioration of the environment. His budget analysis suggests cuts of 39% in EPA purchasing power, a reduction in staff from 11,400 to 8,100 and a decrease in state grants for hazardous waste programs of over 20% (taking inflation into account). As for increases in the Superfund budget, he remarked that this budget should increase since the money is coming from industry.

He noted that California industry is upset about EPA's failure to spend funds available for hazardous waste clean-up. California's "mini-Superfund" was created to supplement inadequate federal funding. However, to the extent that state tax revenues from industry are used in place of collected, yet unspent federal tax dollars, California industry is paying twice for the same service.

Mr. Weiner observed that the EPA cuts threaten economic and industrial development because, without on-going research on new disposal technologies, on siting, and without insurance requirements, potential host site communities will be less willing to accept

sites. EPA's lack of enforcement further contributes to community reluctance to host a site because community leaders can offer no assurances to the public that sites will be adequately monitored and that public health will be protected. He noted that since June, 1981 EPA has not sent any cases to the Justice Department for enforcement.

- Sam Hohmann (Nevada Legislative Staff) presented an update on recent Congressional and State activities in the area of high level nuclear waste management. He began by explaining the 1979 recommendations of a Congressionally-man-dated interagency review group. Although this group's report did not lead to any action in the 96th Congress, the 97th Congress is seeing a fair amount of interest in this issue. A number of bills have been filed - notably HR5016, HR3806, and S1662 - all of which address the following main issues: interim spent fuel storage, monitored retrievable storage, permanent repositories, financing fees, testing and experimental facilities, and state and public participation and Congressional oversight. States have responded to the various Congressional proposals in a number of ways, including prohibition of out-of-state spent fuel disposal, prohibition of permanent state facility development, creation of a commission to consult with the federal government on AFR storage, and support for a moratorium on storage and disposal unless the governor and legislature concur.

Environmental Federalism - California Perspective

Ms. Martha Valdes, Senior Consultant to the State Assembly Committee on Consumer Protection and Hazardous Materials, began by giving an overview of legislative proposals enacted by the California legislature in the past year. One of the two major bills enacted creates a fund, financed by a progressive tax on hazardous waste disposal, to clean up abandoned hazardous waste sites, contain emergency situations caused by hazardous substances, and indemnify victims damaged by a release of hazardous substances. This "superfund" provides up to \$10 million a year for the next 10 years and is intended to supplement federal superfund monies. A second major legislative initiative created a Hazardous Waste Management Council to develop and recommend a method and criteria for siting hazardous waste facilities.

Ms. Valdes was then joined by the three other panelists in a discussion of California's approach to facility siting and alternatives to landfill.

Dr. Selina Bendix, Director, of Bendix Environmental Research, inc., started off by noting that California is the fourth largest generator of hazardous waste in the country. She noted that landfill postpones problems and creates unsolvable risks, especially in light of seismic problems. With respect to recycling, she said it is important to get users and producers together and in so doing a new industry is being created. Dr. Bendix commented that the public fears of incineration as an alternative to landfill are unfounded because risk is minimal when incineration is done properly. She also cited a study done by the State Office of Appropriate Technology which concluded that 70% of hazardous waste could be dealt with through reuse, chemical treatment, or destruction.

Kent Stoddard, from the State Office of Appropriate Technology, underlined that studies show how little we know about the generation and management of hazardous substances despite a comprehensive tracking system. He also emphasized a tremendous discrepancy in the volume estimates of hazardous materials. With respect to facility siting, he noted that the issue is more complex than merely where to locate a site and that public opposition is rational. At this time landfill is considered the last resort, since there are migration and air pollution problems in even excellent natural sites. He suggested that treatment facilities should be located close to the source of generation, where the benefits

are felt. When the right type of facility is proposed in the right location, it is possible to obtain public support.

Hank Martin, Environmental Director of the California Manufacturers Association, said it is in industry's interest to have good management of facilities. He noted that industry's concern is not with phasing out land disposal, but in "getting from here to there." He said industry is expected to come up with alternative capacities, which he referred to as "technology forcing".

IDEAS AND TRENDS

STATES CITE PROGRESS IN LOW LEVEL WASTE DISPOSAL NEGOTIATIONS

In late 1979, the problem of low level radioactive waste disposal received national attention. Following a series of transportation and packaging incidents at the three operating commercial sites, two of the sites — Beatty, Nevada and Hanford, Washington — closed down. The third facility, located at Barnwell, South Carolina, instituted a program to reduce by half the waste it accepted.

The increasing volume of the wastes meant that unless a method of dealing with their safe disposal was found, what was a serious national problem would soon become a crisis. The nation is expected to generate 321,000 cubic meters of low-level waste by 1990 compared to 99,000 cubic meters in 1980.

Most commercial low-level waste is contaminated paper, plastics rubble, filters, construction tools and protective clothing from nuclear power plants. The growing use of radioactive materials in such products as luminous watch dials, measurement devices and smoke alarms, contributed to the increased volume of industrial waste. The medical and academic community also increased their use of radioactive materials over the past decade. The threat of reduced or curtailed disposal capacity for medical facilities, industry and nuclear utilities moved Congress to action.

The first response was to propose a federally-mandated solution, but the governors of the three affected states had a different perspective. In November of 1979, they proposed that Congress allow states an opportunity to devise their own state-oriented solution. A month later, the Executive Committee of the National Governors' Association asked a special Low Level Radioactive Waste Task Force, chaired by Governor Bruce Babbitt of Arizona, to submit a report to the NGA annual meeting in August of 1980. The report recommended that states be responsible for low level waste, that regional compacts be negotiated and that the regions be allowed to exclude out-of-region waste.

"Since low-level waste is generated in every state, it is unfair to expect three states to shoulder the sole responsibility for the safe disposal of the nation's waste," the task force report said. "Unlike high-level waste, the problem is not so technologically complex that it requires the leadership of the federal government." The task force opted for a regional

approach because, with the exception of a few of the biggest waste generating states, the volume of waste generated in a single state would be too small to make operation of a disposal site economical.

In December of 1980, Congress adopted the Low Level Waste Policy Act which reflected many of the NGA recommendations. This law delegated full responsibility for providing low level waste disposal capacity to each state, encouraged regional compacting, and permitted the exclusion by regions of wastes generated beyond their borders as of January 1, 1986. Since passage of the legislation, the National Governors' Association, other regional organizations, and individual states have been working to implement the provisions of the act.

The following summaries indicate that states have accepted the challenge of assuming responsibility for low level waste disposal and have made significant progress in what has been viewed as a test of the principles of new federalism. The summaries are based on the presentations of regional representatives who attended an NGA-sponsored seminar on February 22.

The Northwest Region

The Northwest Compact was the first to gain ratification when the Idaho state legislature voted its approval in April of 1981. It was joined soon thereafter by Washington state and Oregon. Utah joined by Executive Order last year and has subsequently ratified the compact by legislative action. In January of this year, Montana became the fifth compact member by means of an Executive Order. Alaska, Hawaii and Wyoming are the remaining eligible states. The site selection process was not a problem in the Northwest because of the existence of the Hanford facility. Congressional ratification hearings are likely to focus on one element of the Northwest compact — the prohibition of out-of-region waste after July 1, 1983.

The Southeast Region

A second region, the Southeast, which has an operating commercial repository has also made rapid progress in concluding a compact. Final language was agreed to in January, and the compact has been introduced in six of the seven eligible states. Both houses of the Georgia legis-

lature have ratified the compact. South Carolina, Florida, Alabama, and Mississippi also hope to achieve ratification this year. Tennessee and North Carolina are the remaining eligible states. North Carolina, however, has not introduced the compact and has met with the mid-Atlantic group. Negotiators emphasize the Southeast compact creates an institutional framework to manage low level waste, not a document to govern every contingency.

The compact assures all member states access to a regional facility but also requires that each state share equally in the chance of hosting a future facility. A regional commission is authorized to draw up criteria for a regional facility and may designate a host state if necessary. The Southeast compact will exclude out-of-region waste as of January 1, 1986.

The Northeast Region

The Northeast region includes the six New England states, plus New York, New Jersey and Pennsylvania. These nine states generate over 40 percent of the nation's low level waste by volume. The task of negotiating a compact is complicated by the absence of an existing operating site.

The Northeastern governors have endorsed the concept of a low level waste compact or compacts for their region, and a policy-level working group, composed of executive and legislative branch personnel, is currently devising a low level waste management plan for the Northeast. Aided by a technical subcommittee, the working group intends to conclude a compact by the end of the year for submission to state legislatures in 1983.

The Central Region

The Central region agreed on compact language in January. Two states — Kansas and Missouri — of the nine eligible have introduced ratification legislation. The remaining eligible states — Minnesota, North Dakota, Iowa, Nebraska, Oklahoma, Arkansas and Louisiana — are expected to seek ratification next session. The Central Regional compact contains a unique siting feature, if no state volunteers. After the commission establishes siting criteria, private waste disposal contractors would be asked to submit proposals to the commission. Following a review of the proposals, the commission would make a choice based on technical criteria. The Central compact also contains a provision allowing the region, rather

than the host state alone, to establish disposal fees.

The Mid-Atlantic Region

The Mid-Atlantic region, in its present form, is one of the newer regions, and several of its members are negotiating with other regions. States which have participated in recent negotiations include Delaware, Maryland, Virginia, West Virginia, North Carolina, Kentucky and the District of Columbia. A draft compact has evolved following several recent meetings. The draft document states that all members are equal partners, sharing benefits and responsibilities. The management structure created by the compact will be sustained through generator fees, and the regional commission will have broad powers, including siting authority if that proves necessary. Final wording of the compact and membership in the region are not yet determined. Ratification by member states is not expected until next year.

The Rocky Mountain Region

This region consists of Arizona, Colorado, Nevada, New Mexico, and Wyoming. Compact language was completed last year and has been introduced in New Mexico and Colorado. Other member states are expected to introduce the compact next session. The Rocky Mountain document includes several provisions that separate it from other compacts. First, the compact anticipates a state volunteering to host the regional facility. Second, no member state is required to host a site unless they generate at least 20 percent of the region's waste.

The Midwest Region

Nearly a year before passage of the federal law, a group of five Midwestern states — Ohio, Indiana, Illinois, Wisconsin and Michigan — met to discuss interstate cooperation. Following passage of the act, the Midwest group expanded to include representatives from North Dakota and Maryland. Many attendees at Midwest meetings may eventually join other regions. The Midwest has adopted a singular procedure for obtaining a final version of their compact. The draft, completed late last year, has been sent to the relevant legislative committees in interested states for review over the next four months.

Any amendments will be considered in early July. A final text will be ready for submission to Midwest legislatures in early 1983.

Hazardous Waste Cleanup: EPA Dumps Higher Costs on States

States will be required to shoulder a greater share of hazardous waste cleanup costs than anticipated under the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

According to the guidance document recently released by the Environmental Protection Agency (EPA), states will have to pay 10 percent of all costs associated with cleanup at privately-owned sites and 50 percent of all costs for publicly-owned sites. It was originally thought that state expenses would only be related to construction costs, but this provision covers costs from the initial feasibility study through construction.

Moreover, contrary to the intent of the legislation, states will be responsible for 100 percent of site operation and maintenance costs following an initial six months of federal funding.

Leaving some leeway for state legislative involvement, the guidance document says that an "authorized state official" must assure that the state will meet the necessary financial matching requirements.

EPA maintained its position (reported in *Dateline*, 3/8/82, p. 2) that states can impose taxes on industry for the same purposes as the federal hazardous waste "superfund." A final de-

cision on this issue must still be made by the courts, however.

Cleanup Guidelines

Under proposed rules detailing the operation of the federal hazardous waste program, EPA has opted to review each site on its own merit rather than adopt uniform national standards.

The extent of the hazard would be weighed against the cost of various cleanup alternatives.

Copies of the National Contingency Plan outlining implementation can be obtained from Donna Wise in NCSL's Washington office. The guidance document is also available.

6/23 3:30pm

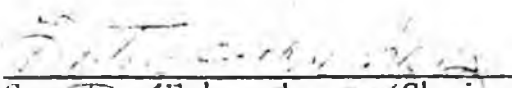
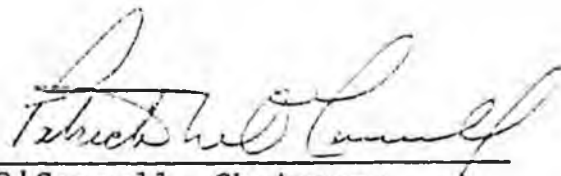
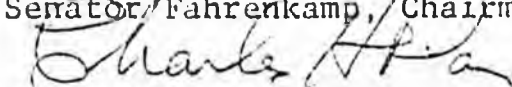
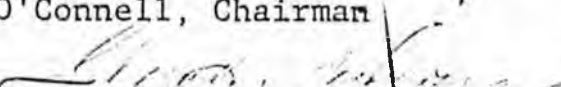
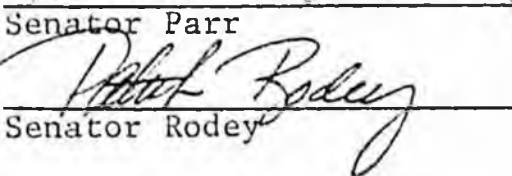
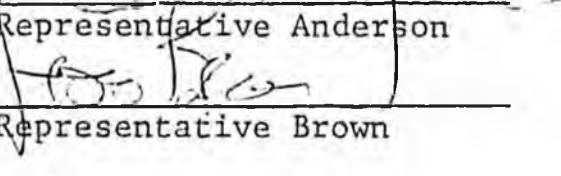
FREE CONFERENCE COMMITTEE REPORT

Date June 23, 1981

Mr. President:
Mr. Speaker:

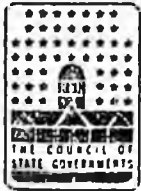
The Free Conference Committee considering CS FOR SENATE BILL NO. 29 (JUD) (nuclear materials) and HOUSE CS FOR CS FOR SENATE BILL NO. 29 (JUD) (hazardous wastes and to nuclear and radioactive facilities and materials; eff. date) recommends that
(type in bill version and title)

Free Conference CS for Senate Bill 29 "An Act relating to hazardous wastes and to nuclear and radioactive facilities and materials; and providing for an effective date." be adopted along with a letter of intent.

	
Senator Fahrenkamp, Chairman	Rep. O'Connell, Chairman
	
Senator Parr	Representative Anderson
	
Senator Rodey	Representative Brown

FCC Letter of Intent for FCCSSB 29

In passing this Free Conference Committee report it is the intention of the Legislature that the Department of Environmental Conservation shall not administer the Hazardous Waste Program such that either private citizens or businesses are required to obtain permits from both the federal and state governments for the same activity.



THE WESTERN CONFERENCE of The Council of State Governments



Conference Staff
The Council of State Governments
Western Office
165 Post Street, 5th Floor
San Francisco, California 94108
(415) 986-3760

Date: June 15, 1981

To: Members, Hazardous Materials Committee

From: Senator Lawrence Jacobsen, Chairman

Subject: First Meeting of the Hazardous Materials Committee, Sun Valley, Idaho, June 28-30, 1981

I enclose the agenda for the conference on low-level radioactive waste, to be held in Sun Valley, Idaho, June 28-30, 1981. The meeting is co-sponsored by the Western Conference of the Council of State Governments, the Conference of Western Attorneys General, and the National Conference of State Legislatures.

The Sun Valley Conference will attempt to address the problems of management, transportation, and disposal of low-level radioactive wastes. In particular the conference will examine the following issues:

Practicalities of interstate compacts and agreements to manage LLW on a regional basis

- Is this feasible?
- What is required to make regional compacts work?
- What are their drawbacks?

Establishment of a disposal site

- What are desirable site characteristics and what characteristics impede the movement of waste materials?
- What are the safeguards required to protect the public health and environment?
- How should the states, legislators and the public be involved in the siting process?

Transportation of LLW

- What is the response of local and state governments to the recent DOT regulations regarding highway routing?
- How are they responding?
- What problems exist in the area of driver training, packaging, inspection, and emergency response capabilities?

There will be panels of speakers for each of the workshop sessions to present federal, industry, state and local perspectives and experiences on these issues.

Please note that the Hazardous Materials Committee will meet for a working dinner at Godfrey's (Elkhorn Village Inn) at 7 p.m. on Monday, June 29. At that time, we will discuss the issues to be addressed in our two-year work plan. We will also select the topic for the Committee session at the Annual Meeting, to be held in Reno in late August. We will use the survey responses you sent to begin the discussion. I urge you to give the work plan some additional thought. You may find the attached articles useful (and provocative) in preparing for the meeting:

1. Status of Nuclear Waste Legislation in the 97th Congress
2. "The Toxic Connection: Synfuels and Toxic Substances"
3. "Will the Hazardous Waste Regulations Protect Us?"
4. "Controlling Toxic Wastes: A Model State Program"

Finally, if you plan to attend the meeting but have not yet sent in your reservation form, please phone Olga Byrd at the Western Office as soon as possible. Ms. Byrd will handle your reservation at the Elkhorn Village Inn.



THE WESTERN CONFERENCE of The Council of State Governments



Conference Staff
The Council of State Governments
Western Office
165 Post Street, 5th Floor
San Francisco, California 94108
(415) 986-3760

April 15, 1981

Senator Vic Fisher
State Capitol, Pouch V
Juneau, Alaska 99811

Dear Senator Fisher:

I am pleased to learn that you have been appointed to serve on the Western Conference's Hazardous Materials Committee for 1981-82. The Committee will hold its first meeting in conjunction with the Western Conference's Transportation Committee, at Elkhorn Village Inn in Sun Valley, Idaho, on June 28-30. The agenda will focus on low-level radioactive waste issues. The meeting is co-sponsored by the Council of State Governments, the National Conference of State Legislatures, and the Idaho Attorney General's office.

As you know, two of the three low-level radioactive waste disposal sites in the United States are in our region: Beatty, Nevada and Hanford, Washington. These sites have experienced a variety of operating problems, have been closed periodically, and may face limits on the amounts of waste they can continue to receive.

The nature and scope of the low-level waste disposal problem is of great importance to the western states. The Committee will consider a variety of topics, including:

- national low-level waste policy and the authority and responsibility it assigns to the states;
- current regional efforts, including interstate compacts and other cooperative mechanisms;
- the economics of low-level waste disposal and other criteria for site selection;
- packaging and transportation of low-level wastes; and
- interim solutions for disposal shortages.

The meeting will include a tour of the Idaho National Engineering Laboratory and an opportunity to examine its disposal facilities.

Senator Fisher
April 15, 1981
Page 2

Please plan to arrive in Sun Valley by Sunday evening, June 28, so that you can participate in the program on Monday morning. We have reserved a block of rooms at Elkhorn Village Inn. Please return the enclosed registration form to the Western Office.

The program and agenda will be full and informative. We will set aside time for the Western Conference Committee to meet and discuss other hazardous materials issues that they would like to address at the Annual Meeting and other future Committee meetings. So that the Western Office staff can learn of your interests and concerns in this area, please complete the enclosed questionnaire and return it by May 6, with your registration form, to Leah Brumer at the Western Office. Ms. Brumer will staff our Committee.

I look forward to meeting you in the coming months. You will receive a detailed agenda and briefing materials prior to the meeting.

Yours truly,

Lawrence Jacobsen

Senator Lawrence Jacobsen (Nevada)
Chair, Hazardous Materials Committee

Enclosures



THE WESTERN CONFERENCE of The Council of State Governments



Conference Staff
The Council of State Governments
Western Office
165 Post Street, 5th Floor
San Francisco, California 94108
(415) 986-3760

HAZARDOUS MATERIALS COMMITTEE

QUESTIONNAIRE

1981-1982

I. Please identify your major policy interests in hazardous materials (rank):

- ☐ chemical substances
 - ☐ hazardous air pollutants
 - ☐ toxic water pollutants
 - ☐ pesticides
 - ☐ solid and hazardous wastes
 - ☐ Other (Specify; e.g., uranium mill tailings)
-
-

2. Please identify the issues of greatest concern to you (rank):

- ☐ siting of waste facilities
- ☐ treatment, storage and disposal technologies
- ☐ clean-up
- ☐ facility and site ownership
- ☐ transportation
- ☐ emergency response
- ☐ worker safety
- ☐ abandoned sites
- ☐ regulatory enforcement

3. Which of the following pieces of federal legislation would you like updates on:

- ☐ Resource Conservation and Recovery Act
- ☐ Federal Insecticide, Fugicide and Rodenticide Act
- ☐ Toxic Substances Control Act
- ☐ Clean Water Act
- ☐ Clean Air Act
- ☐ "Superfund"

4. Please attach copies of legislation which illustrate the major hazardous waste issues in your state.

5. Which programs or legislation in your state illustrate innovative or successful ways of handling hazardous materials?

6. Please provide copies of recent legislative or agency reports that describe the nature and scope of the hazardous materials problem in your state.



THE WESTERN CONFERENCE

of

The Council of State Governments



Conference Staff
The Council of State Governments
Western Office
165 Post Street, 5th Floor
San Francisco, California 94108
(415) 986-3760

Meeting of the

HAZARDOUS MATERIALS COMMITTEE

Elkhorn Village Inn
Sun Valley, Idaho 83353

June 28-30, 1981

Name: _____

Address: _____

Phone: (work) _____ (home) _____

Legislative Committees: _____

Staff Contact: _____ Phone: _____

ROOM RESERVATIONS: Single (\$44) _____ Double (\$52) _____

TRAVEL PLANS: Arrival - June ____; _____ am/pm

Departure - June ____; _____ am/pm

(If arriving after 6 pm, please list a credit card number: _____)

____ I will attend the meeting but will not need a room reservation.

____ I am unable to attend the meeting.

Registration fee: \$50 (includes several meals)

Please return this form no later than May 6, 1981 to: THE COUNCIL OF STATE GOVERNMENTS
165 POST STREET, SUITE 501
SAN FRANCISCO, CA 94108

June 18, 1981

Senator Lawrence Jacobsen
Chair, Hazardous Materials
Committee
Council of State Governments
Western Office
165 Post Street, 5th Floor
San Francisco, CA 94108

Dear Senator Jacobsen:

Please forgive me for not responding sooner to your letter regarding the June 28-30 meeting of the Western Conference's Hazardous Materials Committee.

I have been waiting for our legislative session to adjourn, but it seems to be dragging on forever. Talk now is of adjournment by June 27, but we have had lots of dates mentioned before that never materialized.

In view of the situation, I will not be able to attend the Sun Valley meeting. However, I am extremely interested in the work of this particular committee, and will want to participate as best I can in future activities.

My best wishes for a most successful meeting, and I look forward to meeting you personally in the future.

Sincerely,

Sen. Vic Fischer

/sq



Resource Development Council

for Alaska, Inc.

444 West 7th Avenue, Anchorage, Alaska 99501
Box 516, Anchorage, Alaska 99510 - 907/278-9615

EXECUTIVE DIRECTOR
Paula P. Easley

EXECUTIVE COMMITTEE
Charles F. Herbert, President
Mona Frey, Vice President
Dorothy Jones, Vice President
Bob Swainum, Secretary
Darrell Reawinkel, Treasurer
Tom Fink, Past President
E.W. "Pete" Casper
Paul Dunham
Bob Fleming
O.K. "Easy" Gilbreth
M. "Glen" Glenzer, Jr.
Dan Hinkle
Jed Hulley
John Kelsey
Tom Pargeter
Bill Sumner

DIRECTORS/FOUNDERS

Hameed Ahmad
Doug Bechtel
Charles Becker
Dr. Earl Beisline
Rex Bishopp
Terry Brady
Glen Briggs
Frank Chapados
Bob Childers
John Creed
Erwin Davis
Patricia DeJung
Dr. James Drew
James G. "Bird" Dye
William O. English
Janice Farrell
Wayne L. Fincher
Lee E. Fisher
John Galea
Kelly Gay
Bob Gilliland
Howard Gray
Gordon Harang
Dave Harbour
Roger Huebly
Hazel Heath
Carl Hemminger
James Hendershot
Robert Hickel
R. Eldridge Hicks
George Hillar
Phil Holdsworth
Jerry Jean
James LaBelle
Dr. Philip Locker
Dr. Charles Logsdon
Dennis Lohse
Robert Louche
Roger Mack
Richard Morgan
Ethel "Pete" Nelson
Greg O'Clarry
Nate Olemaun
Tom Owen
Robert Penney
Hayd Parnala
William Parnington
Pat Quilan
Sig. Rostad
William Ross
G.E. "Dunk" Schuch
Curtis Shattuck
Darrell Smith
Patrick Smith
James Saurant
Pat Sharoff
Gale Teel
Joe Thomas
Duane L. Triplett
James Wakefield
Lee Vannoy
Don Wohl

STAFF CONSULTANTS

Terry Brady
Sara Hemphill
Robert Mack
Frank H. Jones
Dr. James Drew
Dale Tobbs

URGENT ATTENTION, PLEASE

April 30, 1981

Dear ^{Vice} Legislator:

The Resource Development Council, at a meeting on April 22, 1981, adopted the following position on House CS for CS for Senate Bill No. 29 "An Act relating to nuclear materials and extremely hazardous and hazardous wastes; and providing for an effective date."

The Resource Development Council finds it is not in the best interests of Alaska for the following reasons:

(1) The bill would create a duplication in areas which are already controlled by the federal government. This means an increase of permits, regulations and bureaucracy.

At present there does not appear to be a demonstrable need or justification for this legislation. The recent stringent RCRA regulations provide more than adequate protection from hazardous waste storage, transportation and disposal in Alaska.

Determination of radioactivity that constitutes a threat to public health is presently regulated by the U. S. Nuclear Regulatory Commission and the Department of Transportation Hazardous Materials Office.

(2) The bill attempts to treat three separate problems as one: nuclear power plants, nuclear waste and hazardous waste. Each problem needs to be addressed on its merits.

(3) The bill with its all-inclusive definition of low level waste and hazardous waste would be impossible to enforce. The definitions are so broad that a person who is a small generator of almost any kind of waste will be subject to this bill.

The definition could include everything from a smoke alarm, a digital watch to old carburetors. Any equipment presently being used in Alaska with a

Legislators--2

nuclear component is now sent back to the source for disposal (example--the densometer used in construction for measuring gravel density on road beds, etc.).

(4) The bill is premature and not technically sound. It would make it impossible to use any sort of nuclear power pack, and as technology improves this could eliminate the possibility of inexpensive power in the bush.

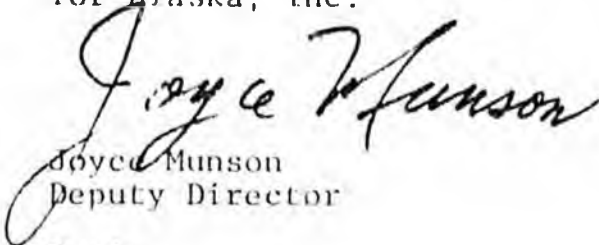
In Canada there will be a reactor ready for market by 1984 that will generate a scant 2 thermal Megawatts of power which will be enough to heat a building complex, hotel or perhaps a village. (See attachment.)

In conclusion, the Resource Development Council believes further research needs to be done, possibly by the newly created Alaska Energy Center, before the passage of such legislation.

It is the Resource Development Council's position that unless there is a proven need for such legislation, it will only create more problems than it can possibly solve.

Sincerely,

RESOURCE DEVELOPMENT COUNCIL
for Alaska, Inc.



Joyce Munson
Deputy Director

Encl.

Downsizing nuclear plants

Over the years, the nuclear industry has built larger and larger reactors to produce electric power. Such reactors require elaborate safety systems because they operate at high pressures and contain large amounts of radioactive material. But now Canada's government-owned nuclear company is going in the opposite direction. It is developing the cheapest and smallest reactor ever designed for commercial use. Instead of producing superheated steam to turn electrical generators, it will produce hot water to heat buildings. The Canadians claim that it is so safe it can literally be put in basements to replace conventional furnaces.

The reactor, known as Slowpoke, is being developed by Atomic Energy of Canada Ltd. (AEC), which has also successfully marketed a power reactor known as the Candu. But Slowpoke, which stands for "safe low-power critical

up, it could be practical," concedes one Canadian utility executive.

Extreme simplicity. The key to both the low cost and safety of the system is its extreme simplicity of design. The reactor is modeled after small, pool-type research reactors used at many universities. Its vessel is a 25-ft.-deep concrete-lined pool dug in the ground. The small fuel core is immersed directly in the water-filled pool. The nuclear reaction heats the water in the pool to 190°F, and the heat is removed through a double loop of heat exchangers that isolate the heated water from the radioactive core.

Unlike commercial power reactors, Slowpoke does not generate the high temperatures typical of large reactors. As a result, the reactor does not need to be pressurized, eliminating the need for expensive and potentially faulty safety systems such as the one that failed at Three Mile Island. Nor does the fuel con-

tain enough plutonium to be practical for weapon production.

"If we want to put reactors close to people, they have to be inherently safe without engineered safety systems and simple enough to be understood by the public," argues W. Hilborn, AEC project manager. The

says that Slowpoke is designed so that the reaction cannot continue unless hydrogen atoms present in the water reflect nuclear particles back into the fuel rods. If the water would overheat and begin to boil, the bubbles formed would reduce the

amount of water around the core, and the reaction would slow automatically. Moreover, if the water would boil completely away, he adds, the nuclear reaction would be unable to continue, and the remaining heat could be dissipated into the air without any additional cooling.

Untended. The Canadians are banking on the inherent safety of the reactor design to pare operating costs. They argue that constant, on-site monitoring—which typically accounts for 25% of the operating costs of a reactor—is not necessary with Slowpoke. "An untended reactor is safer in many ways than one to which people have access," says Hilborn. AEC hopes to gain approval for a system in

which several sealed heating reactors could be inspected weekly but monitored from a single remote control board.

Still, the public is not likely to take readily to the idea of having radiation sources in building basements, however safe the reactor. "Can you imagine the response of the public if we start putting reactors in basements all over Ottawa?" asks one Canadian energy official. And the remote monitoring concept is almost certain not to fly in the U.S., where the Nuclear Regulatory Commission requires constant surveillance for operating reactors and where public opposition to nuclear power is intense.

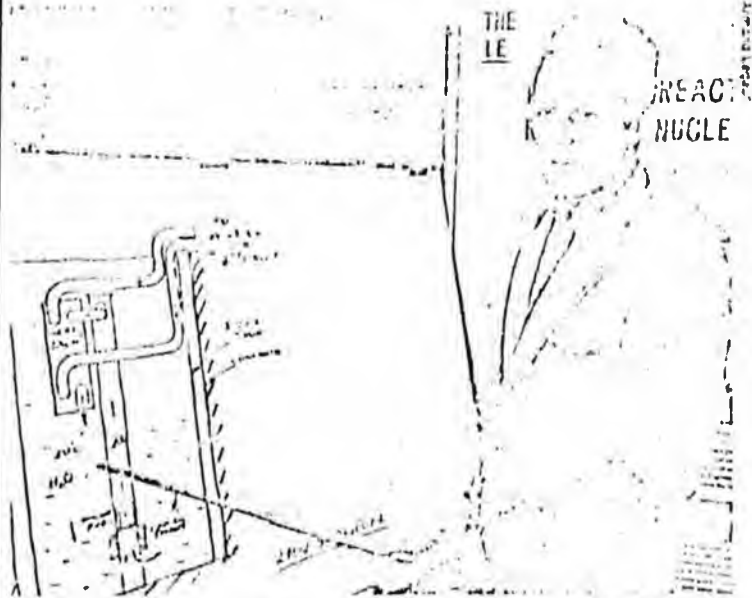
But AEC is eyeing the world market, where it has already built a solid reputation for its 600 Mw Candu reactor. The Slowpoke could shore up AEC's sales, which have been hurt by rising fears over nuclear safety. With a scant 3.1% profit on sales of \$432 million last year, the company badly needs new products, and it expects to have a prototype of the

Canada's Slowpoke will be just big enough to heat a large hotel

heating reactor ready by 1984. That would give it a product at the opposite end of the spectrum that could have strong sales appeal in the face of rising prices for oil and natural gas.

Acceptance. There are indications that the world will be receptive to the Slowpoke concept. The Soviets, not bothered by public opposition, started up a 5 Mw heating reactor in the small town of Dmitrovgrad last January and now they are building two much larger pressurized units to supply heat to the cities of Gorki and Novovoronezh. And the French are developing a pool-type reactor called Thermos. That reactor, which produces 100 Mw of thermal energy, is being considered for heating up to 30,000 homes in Grenoble. If the project is approved next summer, the reactor could be in place as early as 1985 at an estimated cost of \$100 million. In addition, a similar project is being pursued jointly by Sweden and Finland.

Officials at the Canadian company point out that their Slowpoke system does not require the elaborate core-cooling safeguards of the larger reactors, and it eliminates the need for district distribution systems required for the French and Soviet approaches. Hilborn maintains that inexpensive Slowpoke will offset the economies of scale of the bigger projects. And he foresees its use in many parts of the world where petroleum is expensive and district heating systems are not practical. "We're not trying to build an elaborate machine," he says. "We're trying to go back and rediscover the Model T Ford."



Project Slowpoke's Hilborn: An "inherently safe" reactor.

experiment," will generate a scant 2 thermal Mw of power—just enough to heat a large hotel or building complex.

The idea of using small reactors to provide heat is also being explored in France, Scandinavia, and the Soviet Union, and has been used in some military applications. But AEC believes that Slowpoke is the safest and least expensive system under consideration. Although the concept is still in the test stage, the company estimates that it can build the reactor for as little as \$350,000. That works out to \$125 a thermal kw, compared with \$400 to \$500 for equivalent power generated by conventional nuclear reactors. "If their numbers hold

File - WESTERN CONFERENCE
HAZARDOUS MATERIALS
& WASTE COMMITTEE

FROM THE DESK OF
Senator Jalmar Keritula

Attached are charts showing
the locations, amounts and
classification of both low
level and high level radioactive
waste disposal areas.....figures
from the Department of Energy

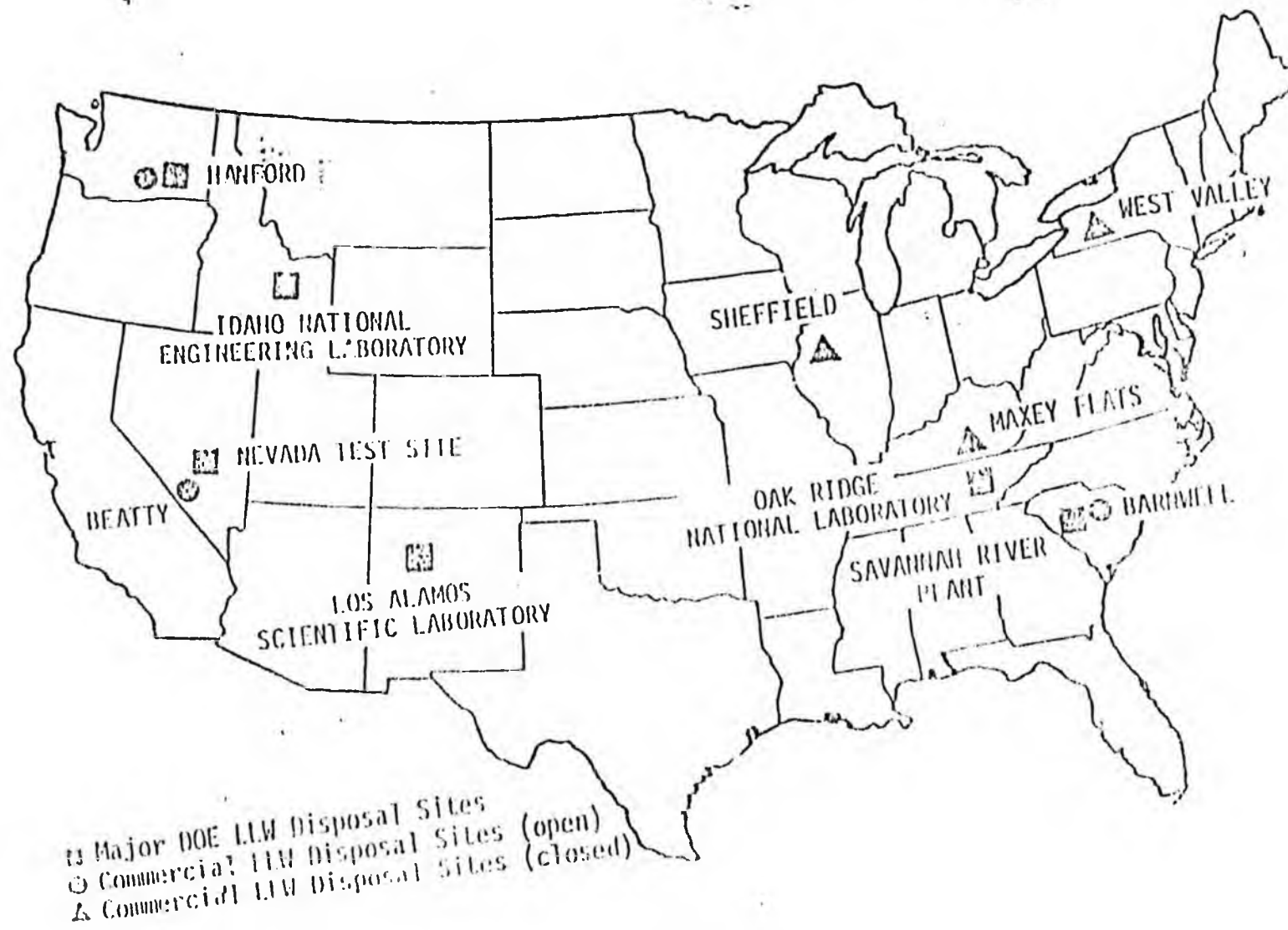


FIGURE 3-8
LOCATIONS OF MAJOR DOE AND COMMERCIAL LLW BURIAL SITES

1/6/81

removed
fuel

no
time,
cal
ranics,

or
a
e are,
operate
on order.
3, most of
on in this
fuel is

cial

sites

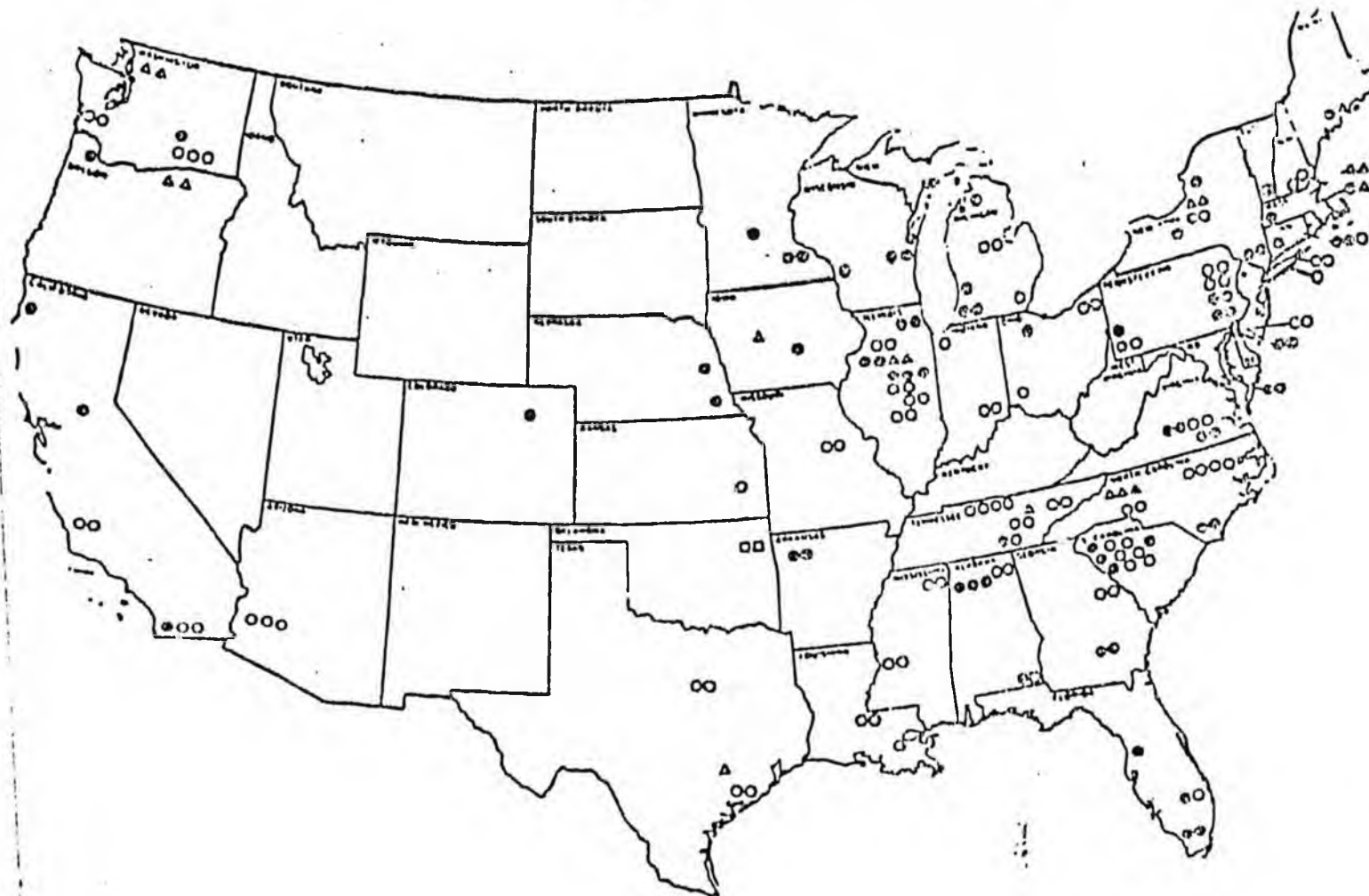
rage

riteria

and
or AFR's

tion
n a geologic

orage



Key
 ● Operable
 ○ Under Construction
 □ With Limited Work Authorizations
 ▲ On Order

74 Reactors with operating licenses	64,988 MW/e
87 Reactors with construction permits	96,830 MW/e
2 Reactors with limited work authorizations	2,300 MW/e
19 Reactors on order (including 2 units not sited on map)	22,282 MW/e
182 Total	173,400 MW/e

June 30, 1980

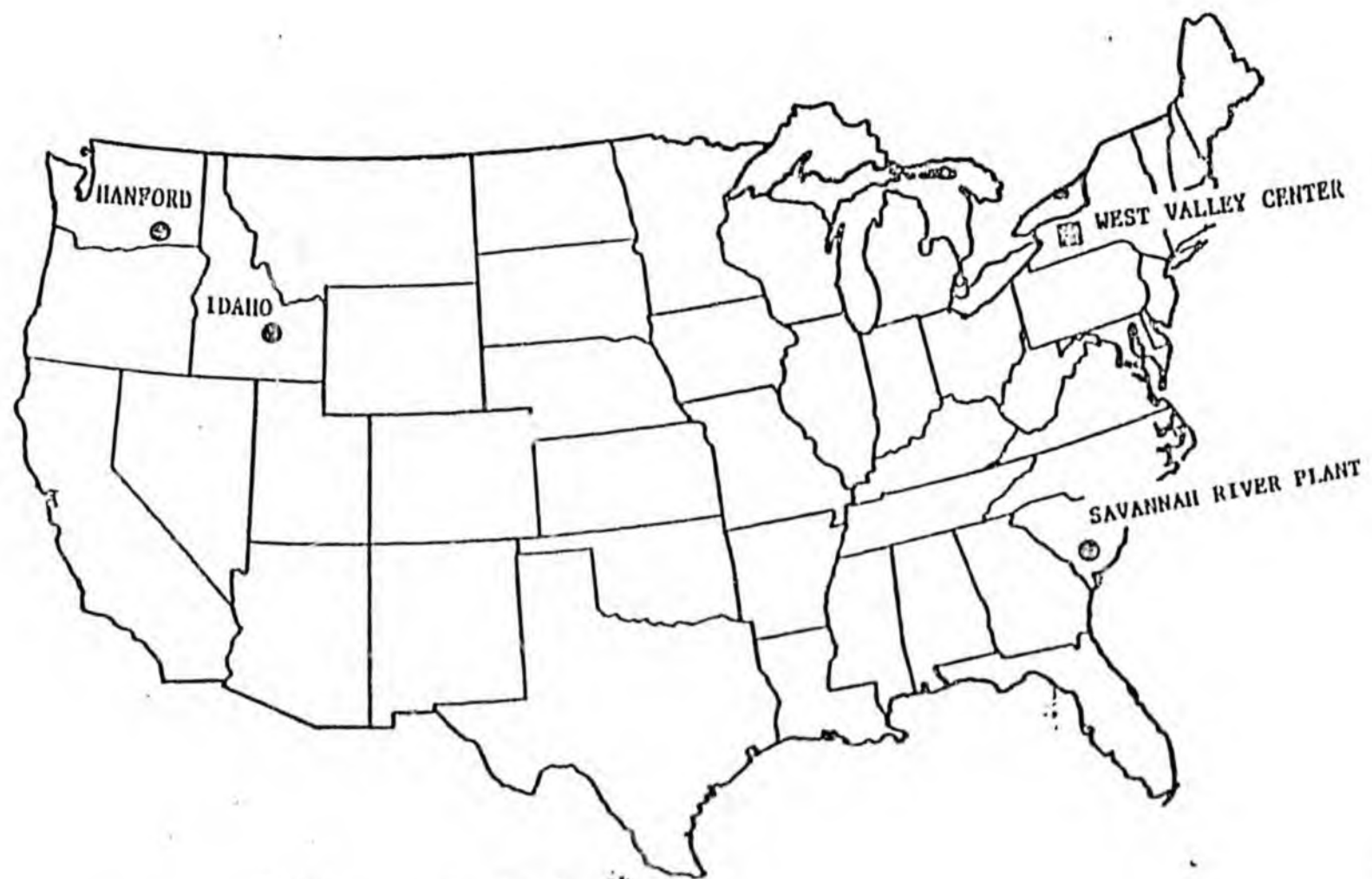
Source: Atomic Industrial Forum, 1980.



FIGURE 9-1

LOCATION OF SITES THAT REQUIRE OR MAY REQUIRE REMEDIAL ACTION

source: U.S. Department of Energy, 1980.
 A Report to the Congress to Accompany the
 Proposed Residual Radioactive Material
 Control Act, OPH/Sub 80 13329/1.

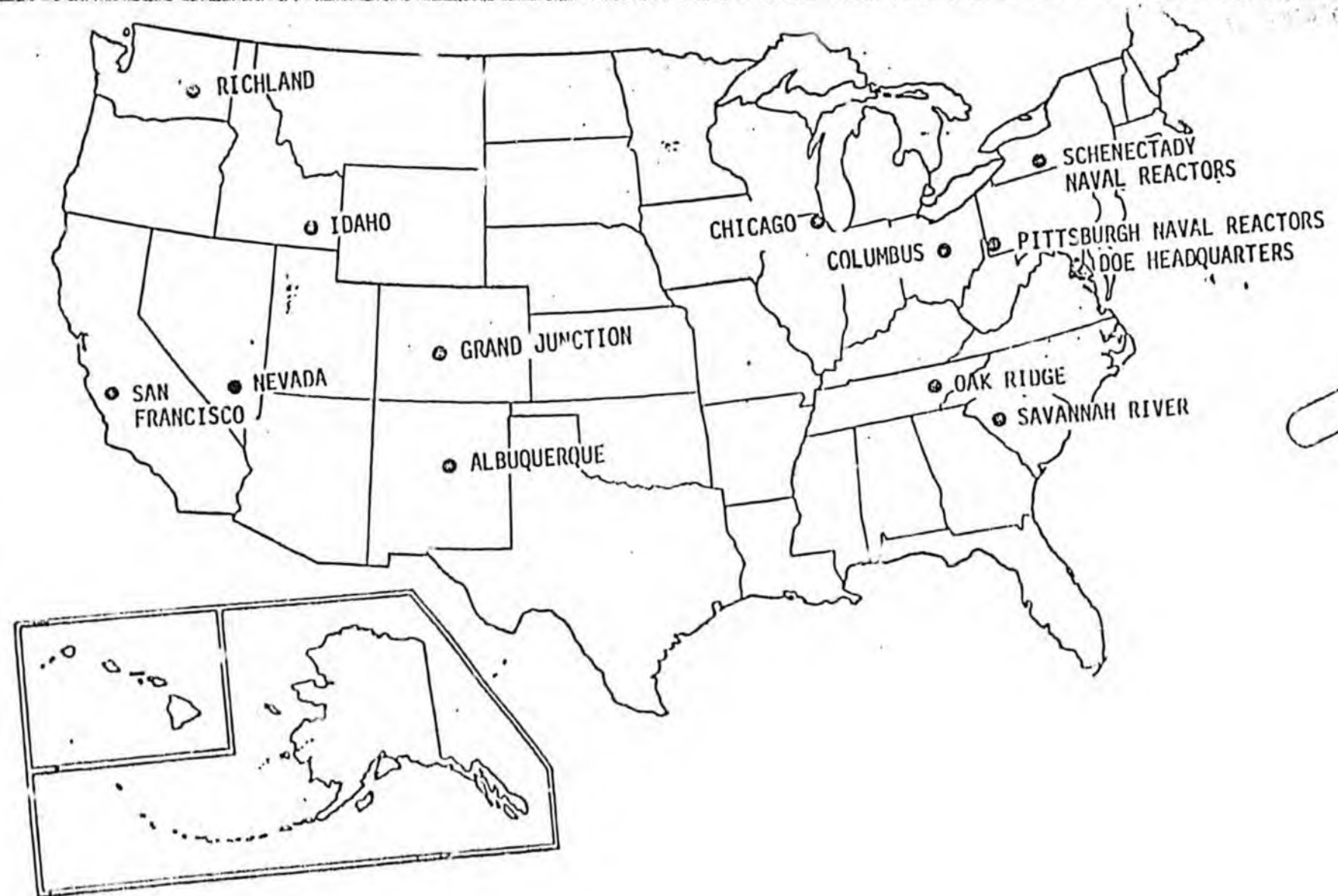


3-2

○ DOE

■ COMMERCIAL

FIGURE 3-1
LOCATIONS OF HIGH-LEVEL WASTE
STORAGE SITES



F-13

FIGURE F-3
DOE FIELD OFFICE LOCATIONS

The major classes of radioactive materials considered in this document are as follows:

- o High-Level Wastes--These wastes are generated in reprocessing and contain virtually all of the fission products and most of the actinides not separated out during reprocessing. These wastes are being considered for disposal in geologic repositories or by other technical options designed to provide long-term isolation of the wastes from the biosphere.
- o Transuranic Wastes--These wastes are produced primarily from the reprocessing of defense spent reactor fuels, the fabrication of plutonium to produce nuclear weapons and, if it should occur, plutonium fuel fabrication for use in nuclear power reactors. Transuranic wastes contain low levels of radioactivity but varying amounts of long-lived elements above uranium in the Periodic Table of Elements, mainly plutonium. This waste is currently defined as material containing more than 10 nanocuries of transuranic activity per gram of material.
- o Spent Nuclear Fuel--These are the irradiated fuel assemblies that are removed from a nuclear reactor after having served their useful life. This material (if declared waste) is considered for disposal in geologic repositories.
- o Uranium Mine and Mill Tailings--These wastes are the residues from uranium mining and milling operations. They are hazardous because they contain low concentrations of radioactive materials which, although naturally occurring, contain long-lived radionuclides. The tailings, with a consistency similar to sand, are generated in large volumes--about 10 to 15 million tons annually--and are presently stored in waste piles at the site of mining and milling operations.
- o Decontamination and Decommissioning Wastes--As defense and civilian reactors and other nuclear facilities reach the end of their productive lifetimes, parts of them will have to be handled as either transuranic or low-level wastes, and disposed of accordingly. Decontamination and decommissioning activities will generate significant quantities of wastes in the future.
- o Low-Level Wastes--These wastes exclude HLW, spent fuel, transuranics, and uranium mill tailings as defined above. Low-level wastes are generated in almost all activities involving radioactive materials and are presently being disposed of by shallow land burial.

LOCATIONS OF HIGH-LEVEL WASTE
STORAGE SITES

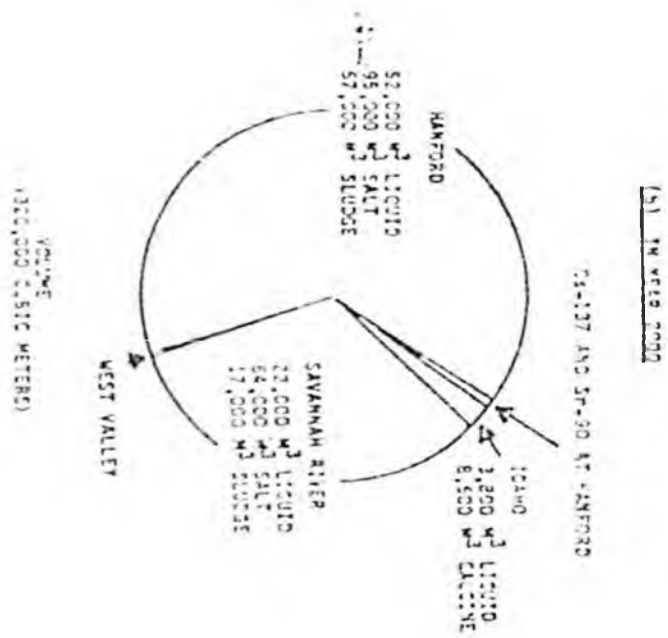
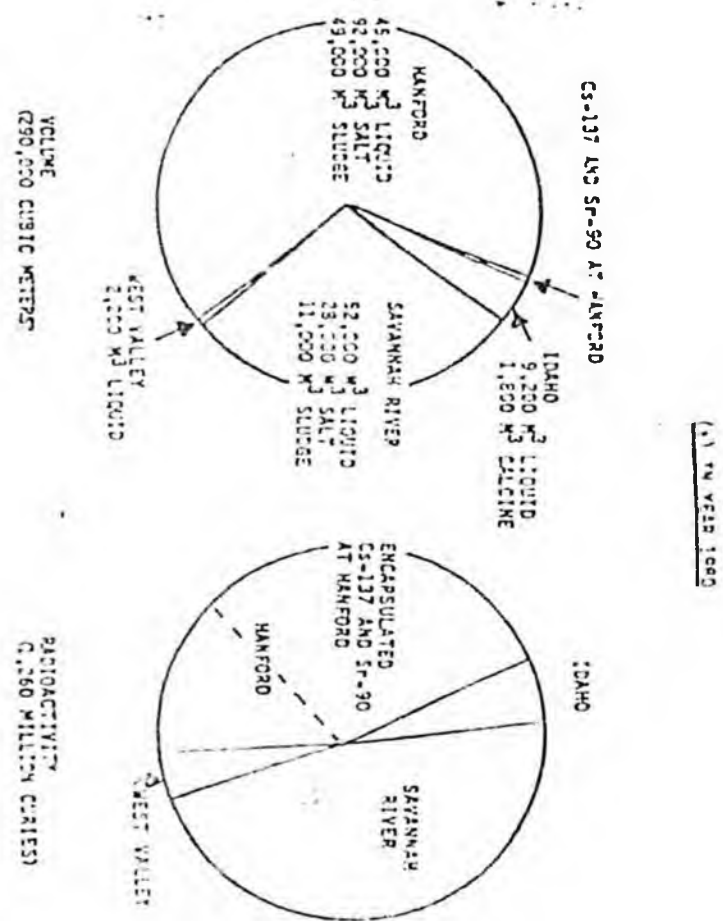


FIGURE 3-3

PRESENT AND PROJECTED QUANTITIES OF HIGH-LEVEL WASTE



Official Business

Alaska State Legislature

Senate

Office of the Secretary

January 27, 1981

Pouch V
State Capitol
Juneau, Alaska 99811

MEMORANDUM TO: Senator Fischer, Room 205, Behrends

From: The Secretary of the Senate

Subject: *Peggy M.* Appointments by the President

On January 26, 1981 President Kerttula appointed you to
the following committees:

Hazardous Materials & Waste Management Committee

Committee on Suggested State Legislation
(for the COUNCIL OF STATE GOVERNMENTS)

$\frac{d}{dt} \left(\frac{\partial L}{\partial \dot{x}} \right) = \frac{\partial L}{\partial x}$

Western Conference of the Council of State Governments,

Conference of Western Attorneys General,

and

National Conference of State Legislatures

Elkhorn Village Inn, Sun Valley, Idaho

June 28 -30, 1981

AGENDA

Sunday, June 28

5:00 - 7:00 p.m. Registration

Evening Hosted Dinner, Elkhorn Village

Monday, June 29

7:30 - 8:30 a.m. Registration

8:30 - 9:30 Breakfast/Welcome and Opening Remarks
 . Attorney General Leroy
 . Senator McClure

9:30 - 10:30 LLW: Overview - Scope of the Problem

10:30 - 12:00 noon	<u>The Evolving National LLW Policy</u>

12:00 - 1:00 p.m. Group Lunch: Permit Renewal Process for Beatty, Nevada
LLW site

1:00 - 2:00 State of the States: Legislative Review;
Status of Department of Justice
suit on Initiative 383

2:00 - 3:00	Review of Current Regional Efforts

3:15 - 5:30 Concurrent Workshop Sessions

Session A: Interstate Compacts, State Planning Activities

Session B: LLW Issues - Economics and Site Selection

Session C: Transportation of LHM – Impact of DOT regulations

Session D: Review of the National Strategy

-over-

Monday, June 29 (cont'd)

7:00 Western Conference Hazardous Materials Committee
- Dinner at Godfreys, Elkhorn Village Inn

Committee business and development of two-year work plan

Tuesday, June 30

8:15 - 10:00 a.m. Repeat Workshop Sessions

10:00 - 12:00 noon Reporting from workshop groups

Group Discussions on Regionalization

12:00 noon Leave for Idaho National Engineering Laboratory (optional)

✓LB
✓CM
✓JT
✓DS

file:
nuclear/hazardous
wastes

ENVIRONMENTAL POLICY CENTER

317 Pennsylvania Ave., S.E., Washington, D.C. 20003
202/547-5330

April 17, 1981

To: Interested Parties

From: Dave Berick, Washington Representative

STATUS OF NUCLEAR WASTE LEGISLATION IN THE NEW 97th CONGRESS AND REAGAN ADMINISTRATION

This status report is a continuation of the Environmental Policy Center's series of summaries of nuclear waste legislation begun last year. These reports are intended to keep representatives of state and local governments, members of the press, and concerned citizens up to date on developments concerning federal nuclear waste legislation and policies. Your comments and suggestions for improving this effort are appreciated.

Outlook for the 97th Congress---Nuclear waste legislation progressed further in the last Congress than many expected. Although the final tally shows that the only legislation to be enacted dealt only with assignment of responsibility for low-level waste disposal to state governments(see discussion of Low-Level Radioactive Waste Policy Act below), comprehensive nuclear waste bills passed both Houses of Congress and only lack of time at the end of the session kept these bills from a genuine House-Senate conference. As a result of this "progress" and continued pressure from the nuclear industry and the implications of ongoing rulemaking activities at the Nuclear Regulatory Commission(especially the "waste confidence proceeding"), final enactment of nuclear waste legislation is expected before the end of the 97th Congress.

On the surface, the current legislative debate is shaping up as a replay of action last year. The same committees are positioning themselves in much the same posture, to play much the same roles. For example, Senators Percy(R-IL) and Glenn(D-OH) have reintroduced their bill to establish a State Planning Council and containing a detailed structure for state/federal waste repository siting decisions(see details on S. 95 below). Senator Johnston(D-LA) has introduced a bill, along with Sen. Jackson(D-WA), almost identical to the Senate Energy Committee bill which the Senate passed last July(see details on S. 637 below). Rep. Barry Goldwater, Jr. has introduced a bill, on behalf of the House Science and Technology Committee, which is identical in intent to last year's McCormack Bill(then numbered H.R. 7418), to authorize the construction of two unlicensed waste disposal demonstration repositories(now numbered H.R. 1909; details below).

While there are numerous and subtle differences between these new bills and those developed last year, the intent of the sponsors is essentially unchanged. Similarly, the flow of legislative action is also expected to develop along much the same pattern as last year. The Senate Environment and Public Works Committee(chaired by Sen. Robert Stafford(R-VT) and its Subcommittee on Nuclear Regulation(chaired by Sen. Alan Simpson(R-WY) are expected to challenge the Senate Energy Committee initiatives. The Senate Energy Committee(now chaired by Sen. James McClure(R-ID) can be expected to continue its role as an advocate for the nuclear industry with a vengeance. While not endorsing the Johnston-Jackson Bill, McClure has repeatedly stated the his belief in the importance of waste legislation to the nuclear industry. His position, however, differs significantly from Johnston's in his support for demonstration repositories. Senators Percy and Glenn can be expected to intrude, as they did last year, in the debate on the state consultation and concurrence issue.

Outlook in the House---As in the Senate, action is expected to follow last year's plot, but with some new twists. It is clear that the Science and Tech Committee, notably Rep. Marilyn Bouquard(D-TN) (who assumed the chair of the nuclear subcommittee from Mike McCormack and Republican members Manuel Lujan(R-NM) and Goldwater(R-CA) intend to follow last year's gameplan and attempt to completely redirect the Department of Energy's waste programs. Rather than a more methodical program aimed at eventual development of licensed, full-scale repositories, Science and Tech hopes to funnel DOE's efforts into immediate construction of at least two unlicensed demonstration facilities to be in operation by 1988.

Action in the Science and Technology Committee is already drawing opposition within the Committee. At least one member, Rep. Stan Lundine(D-NY), has introduced alternative legislation(see details of H.R. 1993 below). Science and Tech can be expected to try to carry out its agenda for demonstration repositories in its mark-up of the DOE Authorization Act for Fiscal Year 1982 beginning the last week in April, as well as through passage of the Goldwater Bill(H.R. 1909). Science and Tech can also be expected to try to convince the House Appropriations Committee to follow its lead and reallocate DOE's waste budget towards demonstration repositories, as they successfully did last year. These actions in the House Appropriations and Science and Technology Committees will be the first important developments on nuclear waste in this Congress.

Both the House Interior and Commerce Committees, chaired by Rep. Mo Udall(D-AZ) and Rep. John Dingell(D-MI) respectively, are expected to offer alternatives to the Goldwater Bill in the House. Both are expected to support the type of step-by-step procedure for siting and licensing of geologic repositories they advocated last year. In addition, Rep. Richard Ottinger(D-NY), a nuclear critic, has taken over the chair of the Commerce subcommittee handling nuclear legislation. While neither Udall nor Dingell have introduced any nuclear waste legislation, Udall is expected to introduce the waste bill which passed the House at the end of the session(then numbered H.R. 8378).

Reagan Administration Waste Policy---Despite the Reagan Administration's early advocacy of nuclear energy, the details of the Administration's nuclear waste policies are far from clear. Preliminary statements by DOE officials indicate that Reagan plan will call for a speed-up of the Carter Administration timetable for development of waste repositories, but there is no indication at this point that there will be a shift toward the type of permanent surface storage technology advocated by Sen. Johnston and Jackson. Current DOE plans call for development of three prime sites at Hanford, Washington in basalt and at the Nevada Test Site in volcanic tuff and one additional site in salt; rather than the Carter plan for deferral of site selection until more sites in more media were available sometime in 1985 or 1986. The selection of the salt site is now scheduled to take place in 1982 from among Gulf Coast salt domes and bedded salt formations. Drilling of exploratory shafts is scheduled to be underway by 1983. Furthermore, DOE now intends to build a "testing and evaluation facility", or demonstration repository, at one of the three prime sites beginning in 1985. This demonstration repository is expected to be in operation by 1988. Under the DOE plan, this demonstration repository would be expanded into a full-scale repository. DOE would not, however, submit an application to the NRC until after the demonstration had begun.

This accelerated schedule is a significant departure from the Carter Administration timetable and policy against "demonstration" repositories. While DOE intends to continue to explore other geologic media including selection of a site in granite in 1988 or 1989, it is clear that the program is being reoriented toward an early demonstration of waste disposal without NRC licensing. DOE offers assurances of NRC review and compliance with NEPA so as not to jeopardize eventual use of the "demonstration" site as a full-scale repository. No information is available at this time on the Reagan Administration's views toward the role of state and local governments or the Carter "consultation and concurrence" policy.

As if to underscore its commitment to demonstration of waste disposal, the Reagan Administration has endorsed and expedited construction of the Waste Isolation Pilot Plant (WIPP) near Carlsbad, New Mexico as a first waste disposal facility thereby reversing the Carter Administration policy to bank the WIPP site. The Reagan Administration has also endorsed the separation of nuclear waste programs for commercial and defense production, also reversing the Carter policy of combining commercial and defense waste programs to the extent possible. Responsibility for developing management and disposal facilities for defense wastes has been transferred to the DOE Assistant Secretary for Defense Programs under the new DOE reorganization.

Reagan Administration Policy on Spent Fuel and Reprocessing -- In related developments, the Reagan Administration has declared that it will not endorse federal away-from-reactor spent fuel storage and that spent fuel storage is the exclusive responsibility of the private sector. The DOE spent fuel program is being reoriented to help utilities develop improved ways to store spent fuel at reactor sites. The President has also informed the DOE Secretary Edwards that the federal government would not finance or subsidize operation of the Allied-General Nuclear Services reprocessing plant at Barnwell, S.C. These "private enterprise" decisions reflect a narrowing of the federal role in managing the "back end" of the nuclear fuel cycle. The Reagan reversal of the Carter spent fuel policy coupled with the "economic" moratorium on reprocessing outwardly appears to limit federal responsibility to "disposal only".

Summaries of Current Nuclear Waste Bills in the Congress:

S. 95 Nuclear Waste Management Reorganization Act (Percy-Glenn) This bill is identical to S. 742, originally introduced by Percy and Glenn in 1979. Provisions include:

- * Establishment of a state planning council, called a "waste management planning council" in the bill, but having the same intent as that proposed under the Carter waste policy.
- * Establishment of a federal interagency coordinating committee, modeled on the Interagency Review Group on Nuclear Waste Management, to be responsible for federal waste policy.
- * Establishment of specific state/federal responsibilities for siting nuclear waste repositories including a negotiated memorandum of understanding, specific reports to the state at site selection, repository design, loading, and closure.
- * Creation of a veto/override process in which the state is allowed to expressly disapprove a DOE siting decision. DOE must obtain approval of both the Senate and the House in order to override the state and construct the repository.
- * Provisions for state review panels to review DOE's repository plans and to act as the principal state contact with the federal government.

S. 637 Nuclear Waste Policy Act (Johnston-Johnson) This bill is very similar to the waste bill which passed the Senate in July. The major provisions include:

- * The bill is limited to civilian nuclear waste only.
- * Establishment of an unlimited away-from-reactor spent fuel storage program to be operated by DOE. DOE would be given explicit authority to acquire at least one AFR facility. Title to spent fuel would transfer to DOE at the nuclear power plant gate and utilities would retain a nontransferable right to the residual fuel value, if any.
- * The bill would create a revolving fund to pay for spent fuel storage, transportation, and long-term storage of the spent fuel.
- * Deferral of permanent disposal as a primary waste management goal in favor of a program for long-term storage in surface, or near-surface, engineered facilities. Wastes would be perpetually retrievable and monitored.
- * Alternatives to long-term storage would be specifically prohibited. Neither the NRC nor DOE in its compliance with NEPA could consider an alternative to long-term storage as prescribed in the bill.
- * Long-term storage would be statutorily equivalent to "permanent disposal" with containment only to the extent the hazard is equivalent to uranium ore.
- * States would be allowed to object to DOE's decision to site a long-term storage facility, referred to as a "safe repository", subject to approval of either the Senate or the House. Upon receipt of a state's formal objections, the President would review them and either uphold them or forward them to the Congress.
- * A policy of "consultation and concurrence" would be imposed, and DOE would be authorized to enter into cooperative agreements with potential host states. These provisions do not apply to any defense or research and development waste facilities or spent fuel AFR storage.

H.R. 1909 Nuclear Waste Management Research, Development, and Demonstration Act (Goldwater) This bill is modeled on legislation which passed the House Science and Technology Committee last year to require DOE to construct unlicensed demonstration repositories. It is narrowly drafted to fall exclusively within the jurisdiction of the Science Committee and prevent either the Interior or Commerce Committee from getting referral of the bill, as they were able to do last year. The major provisions of the bill are:

- * Redirect the entire DOE waste isolation program towards the construction of two "technology demonstration" repositories to be in operation in 1987 and 1988.
- * DOE must select two sites in different geologic media, within 180 days of enactment, to hold at least 40 canisters of vitrified high-level waste.
- * Wastes would be fully retrievable and demonstrations would run 20 years to 2007.
- * The bill explicitly prohibits these demonstrations from being converted into full-scale repositories; a provision which may prevent referral to other House committees.
- * Repositories would be designed to protect public health and safety through engineered barriers and containers, not geology, and would contain the wastes only to a level of risk comparable to that of uranium ore.
- * State would be given only a "consultation role". There would be no NRC licensing.

H.R. 1993 Radioactive Waste Research, Development and Policy Act (Lundine) This bill, introduced by Rep. Stanley Lundine (D-NY) represents most immediate alternative to the Goldwater Bill in the Science and Tech Committee. Provisions include:

- * Requires DOE to develop a "mission plan" modeled on NASA's comprehensive planning process for the resolution of technology and siting problems for high-level waste disposal. The plan would be subject to Congressional approval & map future DOE waste policy.
- * Authorizes construction of demonstration repositories, if approved in the mission plan. Demonstration repositories would be limited to 40 metric tons of spent fuel and would be exempt from NEPA and NRC licensing, although states would be consulted.
- * Authorizes construction of intermediate scale facilities, if approved in the mission plan. These facilities would be limited to 1000 metric tons of spent fuel, but would be expected to be expanded to full-scale repositories.
- * Creates an independent mediation board for binding arbitration of state/federal conflicts in siting or construction of intermediate or full-scale repositories.
- * DOE would be required to select sites for intermediate scale facilities by January 1, 1987. These facilities would be subject to NEPA and NRC "preliminary" review.
- * Authorizes state review boards to serve as principal representative of state.
- * Authorizes payments in lieu of taxes to host states of all three types of waste facilities, in amounts determined by DOE.
- * Creates a trust fund for the purpose of financing all nuclear waste activities and payments in lieu of taxes. The trust fund would be supported by a "tax" on spent fuel. These fees would be assessed on the amount of spent fuel in interim storage.
- * Establishes an interagency review group to oversee federal nuclear waste policy.
- * Establishes a federal state planning council.
- * Prohibits transfer of title of spent fuel to the federal government until it is received at a repository for disposal.
- * Establishes a spent fuel dry storage demonstration program to assist utilities with development of improved on-site storage.
- * Establishes a policy of commercial-only reprocessing with no federal subsidy or operation of commercial reprocessing, although it continues R & D.

Low-Level Nuclear Waste Policy Act Enacted last year, this legislation establishes a policy that states are responsible for low-level radioactive wastes generated within their borders. States may manage disposal either by establishing their own disposal sites or by entering into cooperative agreements with other states. Such compacts must be approved by Congress, but may exclude commercial wastes generated outside of the compact after Jan. 1, 1986. The Act does not apply to any wastes generated by federal defense or R & D activities. Congress may review and revoke such compacts every five years. (Public Law P.L. 96-573)

The Toxic Connection

Synfuels and Toxic Substances

by James Cannon

"The energy shortage is America's number one problem."

"No, the spread of poisons and toxic wastes in our environment is."

"STOP! You're both right."

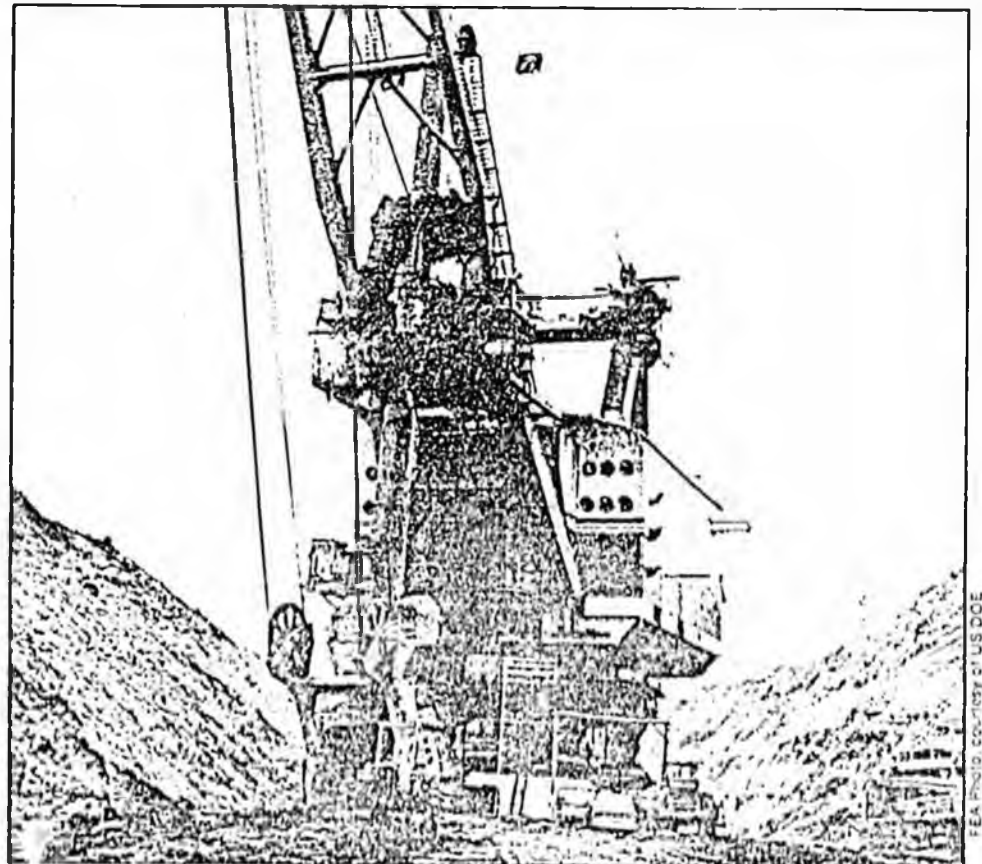
Sound like an old TV commercial? Maybe it does, but this argument points to a frightening reality: some of the proposed technologies for solving the energy crisis release toxic by-products that pose grave dangers to human health and the environment.

On June 30, 1979, Congress enacted the Energy Security Act, the most recent of several laws setting in motion a national energy program that could guide us for at least the next few years. It lays heavy emphasis on the use of coal for electric power plants and coal and shale oil for synfuel production. Most environmentalists, including CBE, oppose this energy strategy because of the tremendous air pollution and environmental devastation that it will cause. And the multibillion dollar national program to establish a synfuels industry will deflect money from the development of more environmentally sound and reliable (and probably cheaper in the long run) "alternative" energy options, such as solar and wind power and conservation.

However, another equally serious though less frequently discussed problem attends the increased use of coal and the development of synfuels: toxic by-products that must somehow be safely disposed.

Coal mining has already disturbed about 8 million acres of land, mostly forested hillsides in Appalachia; and more and more strip mining is taking place in the Midwest and West. Each new 1,000 megawatt (Mw) power plant requires either the strip mining of between 1,000 and 12,700 acres of land or the deep mining of between 27,000 and 32,000 acres.¹

The mining process, in addition to destroying the surface of land, exposes toxic substances that are found in coal. The major component of coal is carbon—the



A 20-story high coal shovel loader at a surface mine near Matissa, Illinois

substance that burns in the presence of oxygen and liberates energy in the form of heat. Several percent of coal is made of sulfur and nitrogen, substances that, when burned, form the dangerous pollutants sulfur dioxide and nitrogen oxides; when sulfur dioxide and nitrogen oxides dissolve in water, they form strong acids.

Synfuel production releases toxic by-products.

The bulk of the remainder is ash. The fraction of one percent still unaccounted for is an amalgam of highly toxic chemicals, including carcinogens, such as nickel and chromium; teratogens, such as arsenic; very toxic heavy metals, such as beryllium, cadmium, and mercury, and even radioactive uranium.

When the coal is mined, these toxic substances are exposed and can leach into the environment. Like the chemical change that turns the inside of an apple

brown within seconds after it has been sliced open, toxic substances are released as soon as the picks and dynamite shatter the geologic prison that encapsulates the coal.

For example, when coal is mined, the now-exposed sulfur mixes with air and water and forms sulfuric acid. When this acidic water runs off from the mine site into ponds, streams, and rivers, it raises the acidity of these bodies of water. The acidic water can be poisonous to fish and other aquatic life and can corrode metal structures and concrete. Perhaps more importantly, the acids, as they leave the mine, dissolve heavy metals and other toxic chemicals contained in the coal. These chemicals, too, are carried to places where they can wreak environmental harm. Water quality in about 10,000 miles of streams and rivers in Appalachia has been degraded by the toxic pollutants from coal mine runoff. Some streams have become so polluted that they are completely devoid of life.²

James Cannon is CBE's executive director.

Yet the extraction of coal is only part of the problem. Not all of the coal that is mined is marketable. About 20 to 29% remains at the mine site, where it is mixed with rock, dirt, and other mine wastes in huge "gob" piles. Toxic substances in these piles can easily leach into the environment through the action of wind and rain. According to a recent Congressional Office of Technology Assessment (OTA) study, about 50 million tons of solid wastes containing toxic chemicals were left at mine sites in 1975. In this century, about 3 billion tons of wastes have accumulated in 3,000 to 5,000 refuse dumps in eastern coal fields alone.²

When coal is burned in an electric power plant, not all of the material is consumed in the boilers. Most of the toxic substances remain unaltered. They either accumulate at the bottom of the boiler as ash and slag, or they escape through the smokestack as airborne particulate matter. If the power plant is equipped with the best available air pollution control technology, some of these toxic particulates

The water quality in 10,000 miles of streams and rivers in Appalachia has been degraded by the toxic substances in coal mine runoff.

are removed from the air. The ash, slag, and sludge from air pollution control devices are all destined for the power plant's disposal heap. Among the toxic substances in the ash are barium, cadmium, cobalt, lead, nickel, uranium, and zinc.³

In 1978, utilities discarded some 70 million tons of ash, slag, and sludge near their coal burning plants. About one quarter of this waste has been reclaimed and used in products such as cinder blocks and cement. However, the remainder, which contains most of the toxic substances, is sitting in huge dumps and will remain there indefinitely. A large (1,600 Mw) coal burning plant, over its lifetime, will produce enough solid waste to cover more than one square mile of land to a height of 20 feet.⁴

However, simple stockpiling of this waste may threaten the environment. Rain water can carry the toxic pollutants to underground drinking water supplies or to nearby streams. In dry climates, the toxic substances can be whipped into the air by gusts of wind. But dumping coal wastes near the power plant is cheap—only \$2 per ton.⁵

The United States Environmental Protection Agency (US EPA) is considering regulations under the Resource Conservation and Recovery Act (RCRA) that would require that utilities take special precautions against leaching chemicals or blowing dust when disposing of ash. For example, utilities could be required to line all disposal sites with impermeable shields. Or they could be required to capture and clean the water that runs off from the disposal sites. Such disposal practices are not currently in wide use, at least in part because such practices would raise the cost of ash disposal to between \$50 and \$100 per ton.⁵ Even if US EPA acts promptly to establish such regulations, it will be a long time before this disposal problem is solved.

The United States owns more oil in oil shale deposits—some 600 billion barrels—than the Arab countries have in all their vast oil deposits. Technically, oil shale contains neither oil nor shale. It is composed of an organic compound, called kerogen, which is bound in a marble-like rock. If oil shale is heated in an oxygen-deprived atmosphere, the kerogen is converted into a crude oil-like liquid that flows from the rock. If all of this oil from shale were extracted from the nation's shale deposits, it would total more than 10 times the proven domestic reserves of conventional oil.

Unfortunately the mining of shale and the extraction of its oil pose difficult problems. Each ton, even of high grade shale rock, contains less than one barrel of oil—about 30 gallons. (The United States consumes about 18 million barrels of oil per day.) Thus, to be of any use, vast amounts of shale rock, including some

The retorting process for oil shale is like sucking the juice from an orange and ending up with a bowling ball.

overlying dirt and rubble, must be mined.* Over 25 million tons of high grade shale (more of lower grade varieties) would be mined each year to supply a commercial shale plant (50,000 barrels of oil per day). In other words, 30% more earth must be moved for a shale plant than is currently

*Technologies are being developed so that the oil can be extracted from the rock without removing it from the ground ("in situ" processes), but these are further from commercialization than the retorting techniques and pose environmental hazards underground.

moved at the largest coal strip mine in the country. The environmental problems posed by dynamiting, digging, loading onto trucks, and transporting such huge quantities of shale are truly staggering. Reclamation alone exceeds by far any challenge ever undertaken by a mining company.

Once mined, shale is baked until the oil is liberated, in furnaces at the mine site called retorts. This leads to the second major problem with oil shale. Unlike coal, which, once mined, can be shipped to a power plant and forgotten by the mine operator, the shale rock remains after oil is extracted from it. This "spent" shale poses the largest waste disposal problem ever faced by American industry. The problem is worsened by a peculiar characteristic of the retorting process: Shale rock expands as it is heated, and remains expanded even after it has cooled. Thus the spent shale occupies more space after the oil has been removed than before. The retorting process is like sucking the juice from an orange and ending up with a bowling ball.

One shale oil plant will produce enough spent shale to fill a canyon 6 football fields wide, 200 feet deep, and 10 miles long.

Just as you can't fit a round peg into a square hole, you can't squeeze all of the spent shale into the hole from which it was originally mined. It simply won't fit. Thus, companies designing the first commercial retorting plants, as well as environmentalists, are worried about how to dispose of the incredible piles of rubble produced by processing shale. To give you an idea of the magnitude of the problem, a 100,000 barrel per day shale plant would, during its lifetime, produce enough shale to fill a canyon 6 football fields wide, 200 feet deep, and 10 miles long.⁶ The national plan for production of synthetic fuel calls for nine such plants by 1995.

As with coal waste, spent shale is not inert. Whereas coal wastes yield acids, spent shale is extremely alkaline. Runoff from small test shale projects often has a pH of 12.5 or more.⁷ The runoff also contains an assortment of toxic contaminants

*The pH is a scale that measures acidity or alkalinity of solutions. pH 1 is the most acid, pH 7 is neutral (pure water), and pH 14 is the most alkaline.

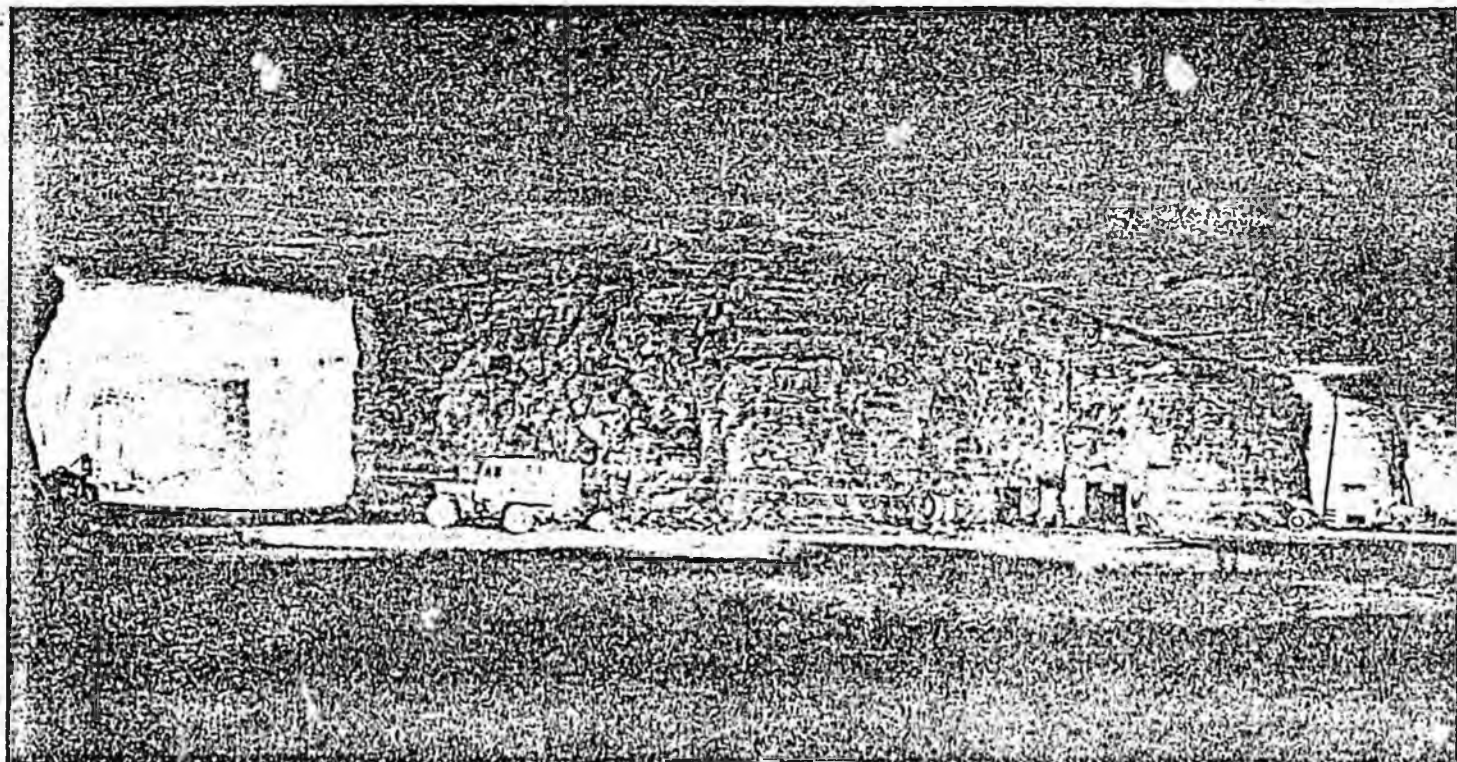


Photo courtesy of US DOE

Underground view of US Department of Energy's Anvil Points oil shale mine, located near Tulle, Colorado

similar to those found in coal wastes. Blowing winds from spent shale piles, unless covered by vegetation or grasses, could transport the toxic substances in shale dust to population centers near the disposal sites.

Much of the coal and all of the shale oil that will be mined under the national energy program will be used to produce synfuels—liquid petroleum fuels similar to crude oil. The retorting process, which converts shale oil to synfuel, leaves the problematic spent shale. Coal conversion plants, which convert solid coal to liquid synfuel, generate ash and slag similar to the waste produced from coal-burning power plants. The dangers of these substances have already been discussed. But there is yet another problem with synfuels.

The processing of coal or shale-derived oil into commercially saleable products, such as gasoline, may release high concentrations of toxic substances. Synfuel production plants will operate in a fashion similar to oil refineries and are likely to generate a host of known or suspected carcinogenic hydrocarbons similar to those from their oil refinery siblings.

A pilot coal liquefaction plant in Tacoma, Washington, run by Gulf Oil Corp., has already had several accidents that resulted in the release of highly toxic materials. On December 19, 1979, for example, 2,300 gallons of coal-derived liquids es-

caped when a worker accidentally left a critical valve open. The discharges, which contained dangerous concentrations of toxic and corrosive phenols, seeped into the soil and invaded the underground water table. Thirty-five feet of soil were later removed by Gulf and deposited in a nearby hazardous waste dump. A \$500,000 government-funded cleanup effort was then conducted by the Department of Energy to drain the contaminated underground water. Gulf was fined \$20,000 for failing to report the spill to state authorities and for violations of three water pollution regulations.¹

The toxic wastes from synfuels might catapult this energy strategy from ill-advised to catastrophic.

Gulf is now heading a group composed of foreign corporations and the governments of Japan and Germany. This group hopes to build a much larger \$1.4 billion synfuels plant (50% funded by the US Department of Energy) in Morgantown, West Virginia. But its efforts are being opposed by local environmentalists who fear the toxic pollution and subsequent health effects that such a plant might cause.

Society's problems do not exist in isolation; they are interrelated. In the best of

circumstances, we can "kill two birds with one stone" by solving two interrelated problems with one action; but this is rare. In some cases, actions that correct one problem worsen another.

And then there are actions that, no matter how well intentioned, not only fail to solve the problem that they were designed to correct, but also exacerbate another. A major increase in the use of coal and shale oil might very well be such a case. Because of the costs and technological problems, synfuels might not be America's best bet to provide lasting energy sources. But it is toxic wastes from synfuels that might catapult this energy strategy from ill-advised to catastrophic.

Notes

1. US Environmental Protection Agency: *Energy from the West*. Washington, DC, July, 1977, and calculations done by the Office of Technology Assessment, Washington, DC.
2. US Environmental Protection Agency: *Report of the Committee on Health and Environmental Effects of Increased Coal Utilization*. Washington, DC, 1978.
3. Office of Technology Assessment: *The Direct Use of Coal*. Washington, DC, 1978.
4. Pacific Gas and Electric Co.: *Notice of Intention* (a 3 volume analysis of a proposed coal burning power plant). San Francisco, CA, 1978.
5. Edison Electric Research Institute, "Solid Waste Update." *EPRI Journal*, April, 1979.
6. American Society of Agronomy: *Reclamation of Drastically Disturbed Lands*. Madison, Wisconsin, 1978 and CBE calculations.
7. *Wall Street Journal*, July 31, 1980.

Will the Hazardous Waste Regulations Protect Us?

Besides being over 2 years late, the hazardous waste regulations are not even complete. They are also "the most complex federal regulations ever issued." Why were they delayed so long? What will they actually accomplish?

by Bill Forcade and Amy Berk

The Problem

Long before 1976, the year when the Resource Conservation and Recovery Act was enacted, the US Congress was aware of the dangers to human health and the environment that were posed by the careless handling of hazardous wastes. In the 1920s and 30s, when the United States' chemical and other industries were in their infancy, most industry scientists knew that some of their wastes could be harmful. But most figured that if these wastes were taken far from human habitation and were buried in the purifying earth, all would be well. However, as the chemical and other industries grew in the 40s, 50s, and 60s, several things happened. First, the cities began expanding out to areas that in the 20s were "far from human habitation." Second, scientific research began to reveal the insidious ways that minute quantities of highly toxic materials could damage human health. Third, scientists also began to discover that wastes left in unlined lagoons or dumped onto ordinary landfills could leach into the underground water system and contaminate public drinking water.

Meanwhile, the quantities of hazardous wastes produced by industry were growing by leaps and bounds. And the convenient conventional wisdom that burying wastes was sufficient, prevailed. It was easier and cheaper to stockpile wastes on one's property, bury them, dump them in an ordinary landfill, or give them to a hauler to worry about, than to design manufacturing methods that produce less waste or to treat the waste once it was produced. Most manufacturers just didn't think too much about their chemical offal.

And for unscrupulous haulers, there was big money to be made in hauling wastes and just dumping them any old place instead of treating them.

The Resource Conservation and Recovery Act

In the 60s and 70s, the public and their elected representatives in state and federal legislatures became aware of the serious hazards posed by the irresponsible handling of hazardous wastes. Reports of poisonings, explosions, and contaminated water supplies were growing.

By October 21, 1976, the US Congress finally passed the Resource Conservation and Recovery Act (RCRA), a comprehensive law designed to control and recycle all kinds of wastes. Specific emphasis was placed on controlling hazardous wastes, which Congress considered to be an urgent problem. Thus Congress mandated the US Environmental Protection Agency (US EPA) to issue the hazardous waste control regulations within 18 months—by April 21, 1978—the minimum time that Congress felt that US EPA would need to transform the mandate of RCRA into enforceable regulations.

In October, 1976, the environmentalists were congratulating themselves that they had secured the enactment of a good law that would result in the control of hazardous wastes. They believed that a solution for this horrible problem would be initiated in eighteen months. However, that was not what happened.

The Regulations Are Late

As late as April, 1978, it seemed as if the regulations would be issued on time and that they would establish strong controls. A few weeks before the regulations were due, the deputy administrator of US EPA



Bill Forcade is a CBE attorney.
Amy Berk is editor of the CBE Environmental Review.

testified before Congress that everything was on time. But by late June, 1978, no regulations had been issued. There were no good explanations for the delay and no indication of when the regulations would be issued.

The problems causing the delay were never fully explained. It appears that regulations covering hazardous waste disposal did exist early in 1978 and that those regulations could have been issued on time. However, those regulations were for some reason deemed unsatisfactory by US EPA administrator Douglas Costle, and were rejected.



Photo by John Kudia, courtesy of the Niagara Gazette, Niagara Falls, NY

There are at least two theories for the rejection. First, because US EPA had just lost several cases in the courts, it felt that its regulations must be able to withstand challenges in court by industry. The original hazardous waste regulations may have had weaknesses that had to be corrected. Second, the cost to implement the original regulations may have been excessive and inflationary. US EPA may have decided to rewrite the regulations to reduce the costs to US EPA to run the program and the costs to industry to comply with the program. Whatever the reasons, the original regulations were rejected in 1978, and the program to control hazardous wastes was significantly rewritten over the following two years.

Shortly after US EPA decided to rewrite the hazardous waste regulations, two significant things occurred. In July, 1978, several environmental groups, including CBE, sued US EPA because the regulations were late; and in August, 1978, the New York State Health Commissioner recommended that pregnant women and children under 2 years leave an area known as Love Canal.

Environmentalists Sue US EPA

Environmentalists had sued US EPA as a way to expedite the issuance of the regulations. When Congress passes a law requiring US EPA to issue regulations by a certain date and US EPA does not do it, the courts can hear the problem and attempt to solve it. However, the courts cannot override other laws, including the laws that set the budget for US EPA. The attorneys for US EPA made clear to the judge that the amount of money and people available to US EPA prevented them from developing regulations before mid 1979 that would be acceptable to Douglas Costle. Environmentalists pointed out that Congress had given US EPA significantly more money than US EPA had asked for, and that US EPA was not presently seeking more money. The Court was in a precarious position, and Judge Gesell did not believe that he should throw Douglas Costle in jail because the Congress had not given US EPA enough money to issue the regulations on time. Thus, the judge ordered US EPA to issue the regulations in mid 1979 and to expedite them wherever possible.

Love Canal

Love Canal is an area of Niagara Falls, New York, whose name is now synony-

mous with the tragedies caused by improper hazardous waste disposal. In the 30s and 40s, Hooker Chemical Company carelessly dumped some of the most toxic chemicals known to humankind—including benzene, PCBs, and dioxin-contaminated pesticide residues—into a shallow, abandoned canal known as Love Canal. In 1953, Hooker deeded the land containing Love Canal to the Niagara Falls Board of Education for a mere one dollar. Hooker knew that there were dangerous chemicals there and that an elementary school would be built on the site. By August, 1979, reports began appearing in national newspapers about the abnormally high levels of miscarriages, birth defects, cancer, kidney diseases, and deafness among the residents and school children living near Love Canal. All evidence indicated that the toxic chemicals were leaking from Love Canal into the air, homes, and school in the area. And these chemicals were seriously affecting the health and well-being of the residents. (For a truly terrifying and detailed account of what happened at Love Canal and other places in the country, read *Laying Waste: The Poisoning of America by Toxic Chemicals* written by Michael Brown.) The evacuation recommended by the health commissioner in August only marked the first public acknowledgement of an ongoing tragedy.

Public outrage over Hooker's actions at Love Canal and the growing publicity of other "chemical time bombs" exerted great pressure on the Congress and White House to pressure US EPA to issue the hazardous waste regulations. Despite several Congressional hearings concerning the delays, US EPA maintained that they were proceeding as fast as they could, that the problem of regulatory control of hazardous wastes was much larger than they had anticipated, and that no internal US EPA problems were contributing to the delay.

Delay Is Detrimental

By May 19, 1980, most of the required regulations were satisfactory to Douglas Costle, and he officially signed them into law. However, that two year delay proved to be very detrimental.

First, irresponsible dumping of hazardous materials continued unimpeded for an extra two years. In fact, dumping may have increased in expectation of strict and expensive federal regulations.

Second, the delay slowed down state

structure of state programs

control of the problem. In the United States, when Congress passes a federal law requiring control of an environmental problem, either the federal or state government can run the program (a program consists of people, laws, and money to stop pollution). The federal government will run the hazardous waste program in every state until the state adopts a program that meets certain minimum federal guidelines. When a state adopts such a program, the federal government will provide technical and financial support for the state program; but if the state does not adopt such a program the federal government program will remain in effect. Where the state adopts a program that does not meet the federal minimum guidelines, the federal program remains in effect. In such a case the federal program is funded and managed by the federal government, and the state program is funded and managed by the state government.

CITIZENS HAVE MANY WAYS TO ACT

In the face of frequent malfeasance and nonfeasance by manufacturers, handlers, and government officials, as well as legal and regulatory loopholes, the nation's citizens are to a great extent left to protect themselves. Fortunately, there are many actions they can take.

Under the Resource Conservation and Recovery Act, they can demand public hearings before EPA issues a permit for a hazardous waste disposal site. They can register complaints about sites and performance at them. They can bring suit against operators for noncompliance, or on grounds of creating a public nuisance. They can petition for new types of waste to be added to the list of those covered under the law.

The Environmental Protection Agency is giving financial support to a program called "Waste Alert!" which is being carried out by six national organizations—American Public Health Association, Environmental Action Foundation, Technical Information Project, National Wildlife Federation, Izaak Walton League of America, and League of Women Voters Education Fund. The program involves conferences around the country on issues related to abandoned sites, siting of new facilities, implementation of RCRA regulations, and other aspects of waste management.

The Sierra Club and Environmental Action have initiated a national "Hunt the Dump" campaign, distributing hand-

Most states want to run their own programs, and thus design them to meet federal requirements. However, before May 19, 1980, states were reluctant to develop their own hazardous waste programs because the federal minimum requirements had not yet been published. Since RCRA's passage in 1976, states had been assured that the requirements for federal funding would be issued at any moment. States were receiving the same public pressure to control hazardous wastes that Congress was, and many states were anxious to initiate their programs. Yet they did not want to design a program that might not meet the future requirements for federal funding, for most states could not afford the total cost of a hazardous waste control program and did not want both a state and a federal program operating at the same time. Thus the federal delay resulted in state delays.

Although the two year delay was costly,

books with instructions for citizens on how to collect information and expose unsafe disposal sites, organize action groups, put pressure on company officials, and force local officials to act.

EPA's Region V in the Midwest has organized a "Seek and Find" program which provides information to help the public identify hazardous waste problems and a hotline number to call. Of more than 50 phone calls received in the first week, a number came from employees reporting activities of their companies.

Reprinted by permission from *Conservation Foundation Letter*, April, 1980.

Notes

1. Bruce Mibeck, Waste Alert Coordinator, Hazardous Waste Management Section, US EPA Region 5 (includes Illinois and Wisconsin), 230 S. Dearborn, Chicago, IL 60604; (312) 886-3712.

2. Instructions available for \$0.25 from Marchant Wentworth, Environmental Action, 1346 Connecticut Ave NW, Washington, DC, 20036; (202) 833-1045.

3. The Seek and Find program is for region 5: Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. For more information on what to look for, the brochure "Seek and Find" is available free from the Office of Public Information, US EPA Region 5, 230 S. Dearborn, Chicago, IL 60604; (312) 353-2072. The Hazardous Waste Hotline number is 800-972-3170 for Illinois and 800-621-3191 for the other states.

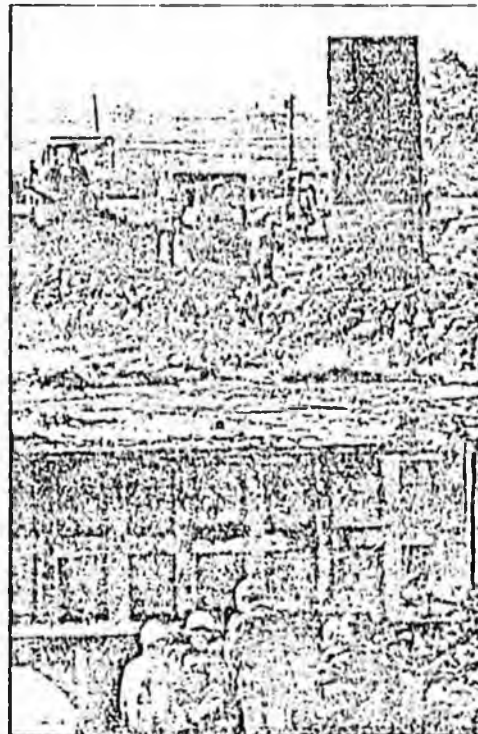
The state of California has a State Abandoned Site Project. To obtain a report on abandoned sites in Contra Costa County or to report any suspicious site that could be an abandoned dump, contact Mark White, State Abandoned Site Project, California Department of Health Services, Sacramento, CA 95814; (916) 322-2337.

a more sinister evil was the weakening of the regulations that occurred during the delay. A comparison between the early versions of the regulations and the final version reveals that the final regulations control a smaller quantity of hazardous materials.

The Regulations

Most of the hazardous waste regulations were issued on May 19, 1980 and go into effect on November 19, 1980. The rest of the regulations are expected sometime in 1981. The remainder of this article will attempt to explain some of the May regulations and will point out their weaknesses.

RCRA commands US EPA to do two things: (1) establish specific standards for determining which wastes are hazardous and (2) devise a system to control the generation, transportation, treatment, storage, and disposal of those wastes deemed hazardous, so that they will not harm human health and the environment. The control of environmental contamination by hazardous wastes requires two things: (1) the prohibition through regulations of unsafe practices and (2) the acquisition of information about the handling of hazardous wastes so that violations of the regulations can be detected. The following discussion will be broken into three parts: (1) defining hazardous wastes, (2) requirements for record keeping (the manifest system), and (3) regula-



Workers install

tions for existing hazardous waste facilities. Regulations for new hazardous waste facilities have not yet been issued; these are the regulations expected in 1981.

Which Wastes Are Hazardous?

RCRA defines a hazardous waste as follows: "A solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause...

(an) increase in mortality or an increase in serious illness... or... pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed."

In the regulations, US EPA has established specific criteria and scientific tests for determining which wastes are hazardous. Hazardous wastes have one or more of the following characteristics: (1) ignitability, (2) corrosivity, (3) reactivity, (4) toxicity. Toxicity is divided into three categories: (a) EP toxicity—this is determined by an extraction procedure (EP) in which a specific concentration of one of 14 specified chemicals* appears in an extract from the waste, (b) acutely toxic—the substance is fatal to humans in small doses, (c) toxic—scientific studies have shown the substance to have toxic, carcinogenic, mutagenic, or teratogenic (causing

*The chemicals are arsenic, barium, cadmium, chromium, lead, mercury, selenium, silver, endrin, lindane, methoxychlor, toxaphene, 2,4-D, and 2,4,5-TP Silvex.

birth defects) effects on humans or other animals.

Using these criteria and the associated scientific tests, US EPA evaluated the wastes from a wide range of industrial operations. It determined which specific chemicals and which types of effluent from specific processes are hazardous. The regulations contain several lists of these hazardous wastes and waste streams.

Weakening the Regulations

An examination of the extraction procedure (EP) for testing hazardous wastes illustrates how the final regulations are weaker than the original drafts. The EP test involves mixing the waste in question with water. The water is then extracted and tested for the 14 specified contaminants. By this procedure, US EPA hopes to approximate the most common problem that results from dumping haz-

ardous wastes in ordinary landfills. The test approximates the trickling of rain water through the ground of a chemical landfill and gives an idea of the amount of chemicals that would be carried with the water to underground drinking water supplies. If any of the 14 chemicals appears in the extraction water above a certain level, the waste is considered hazardous. However, between the early drafts and the final regulations, the level of contamination permitted was raised, in most cases by a factor of 10. With this change, wastes that would have failed the test under early drafts now pass and are not considered hazardous. In addition, about 5 chemicals were eliminated from the list, though US EPA says more may be added later. In this manner, US EPA reduced the amount of wastes that would fall within the regulations and thus the size and cost of the program. The cost to industry would also be less, for the wastes that now

PUT THE BLAME ON MAME

Some people like to place much of the blame for the hazardous waste mess on the public. After all, isn't it the public that demands and uses the products of modern chemistry? A *Fortune* magazine writer says that "every segment of society has played some part in generating" hazardous wastes.¹ Robert A. Roland, president of the Chemical Manufacturers Association, while conceding that the chemical industry is "a part of the problem," says it is a result of "society's advanced technology and pursuit of an increasingly complex lifestyle."

Roland says that "every individual and all of industry and even government itself... have contributed to this horrible mess.... Everyone should realize that the blame does not belong to a single company, or a single industry, but to all of us as individuals and as an advanced society."²

Even EPA sometimes reflects a similar line of thought—though in an understandable effort to encourage the public to accept some responsibility for the disposal problem rather than always insisting that hazardous wastes be put in someone else's community. In EPA booklet paraphrased Pogo: "We have found the sources of hazardous waste and they are us."³ Eckardt C. Beck, EPA's assistant administrator for water and waste management, said, "It is in the final analysis the public who must realize that the products they

consume produce the wastes they deplore."⁴

Beck also has said, "With a mind-boggling \$100 billion a year in sales, the chemical industry is firmly here to stay, along with its wastes and the wastes of its clients."⁵

However, one should keep in mind that those public clients are not provided information on the consequences of chemical products, or on alternatives to them. They are not asked serious questions about what products should be developed by industry. Or what products should be promoted in magazines and TV commercials. They are not told anything about hazardous ingredients, problems with disposal of hazardous waste, or how wastes are handled.

A major step to encourage more rational public choices would be a system under which the prices of products reflect the full costs of hazardous waste disposal related to them.

Notes

1. *Fortune*, April 21, 1980.
2. *Washington Post*, April 21, 1980.
3. "Everybody's Problem: Hazardous Waste," EPA, 1980. This illustrated booklet is an excellent exposition of the hazardous waste problem.
4. Speech to National Solid Waste Management Association conference, Chicago, October 3, 1979.
5. *New York Times*, June 7, 1979.

Reprinted by permission from *Conservation Foundation Letter*, April, 1980.



the flies at Lovo Canal

pass the test are not considered hazardous and are cheaper to dispose of.

Exclusions

Once a material is listed as a hazardous waste or fails the specified scientific tests, it should be subject to all the hazardous waste regulations issued under RCRA. However, virtually every person, business, and industry generates harmful materials, from the empty pesticide container that a homeowner used on the rosebushes to the massive quantities generated by an electroplating or pesticide manufacturing facility. US EPA clearly couldn't regulate all of these wastes. First, certain substances were excluded. Household wastes are excluded as are substances regulated under other acts, notably nuclear wastes, which are controlled under the Atomic Energy Act. Certain mining wastes were excluded, largely due to a powerful lobby that convinced Congress that to include these wastes would ruin the mining industry and stifle exploration of new fuel sources. Certain agricultural wastes and irrigation flows were also excluded.

Second, there are mechanisms by which wastes that are considered hazardous according to the regulations can avoid the regulatory control mechanisms. If the hazardous waste generator generates only a small quantity of hazardous

wastes, he or she is exempt from the record keeping and disposal requirements.

Originally, those who generated less than 100 kilograms per month (about 220 pounds or about half of a 55 gallon drum of liquid) would be exempt from the regulations. In the final regulations, however, the cutoff point was raised to 1,000 kilograms per month. (The cutoff point for those who generate wastes considered to be acutely toxic remains at one kilogram per month.) Ostensibly, the reason that US EPA raised the cutoff point was to enable US EPA to concentrate its limited resources on the major hazardous waste generators. By decreasing the number of generators that it would have to monitor, US EPA also cut the cost of the program.

However, what these cutoffs mean is that if a generator produces 980 kilograms of hazardous waste or 0.98 kilograms of acutely toxic hazardous waste in a month, he or she does not have to keep records for that waste. More importantly, these wastes, certainly considered hazardous by USEPA standards, may be disposed of in an ordinary sanitary landfill, thus allowing the very hazards that the regulations are seeking to prohibit. US EPA states that it plans to extend the regulations to cover the small generators, but that may not happen for five or more years.

(Note: The proposed regulations for the state hazardous waste program in Illinois establishes the cutoff of 100 kilograms per

month and requires those who generate less than 100 kilograms to dispose of their wastes in an approved hazardous waste site, although records need not be kept.)

The Recycling Controversy

If a waste is beneficially used, reused, recycled, or reclaimed, then it is not a waste and is not subject to the hazardous waste regulations. If a hazardous waste is sold, it is also no longer a waste. This creates problems. For example, if most industries discard waste oil from a certain process and that oil is hazardous, but one company sells that waste oil for use in another chemical process, what regulations should apply to the oil? US EPA maintains that if the material is sometimes discarded by the industry as a whole, then all of that material is subject to the hazardous waste controls. However, the specific company that reuses the waste can apply for exclusion of its waste from the regulations. Some industries claim that the US EPA ruling is overly strict and will impede recycling. However, unscrupulous generators could "sell" their hazardous wastes (and thus avoid the record keeping regulations) to persons who would subsequently mismanage them. This issue will cause significant controversy as US EPA seeks to maintain control over all real wastes, while trying not to impede recycling. (See "Recycling Haz-

Hazardous Waste Facts¹

Major Routes of Environmental Damage by Hazardous Wastes

- Groundwater contamination via leachate
- Surface water contamination via runoff or overflow
- Air pollution via open burning, evaporation, sublimation, and wind erosion
- Fire and explosion
- Poison via the food chain
- Human contact

Other Legislation that Controls Hazardous Substances

Atomic Energy Act covers the disposal of nuclear wastes.

Clean Air Act sets standards for hazardous air pollutants.

Clean Water Act prohibits discharge of pollutants in significant amounts into navigable waters of the United States.

Safe Drinking Water Act authorizes US EPA to set maximum contaminant levels for public drinking water systems

Federal Insecticide, Fungicide, and Rodenticide Act authorizes US EPA to regulate registration, treatment, disposal, and storage of all pesticides; includes labeling requirements.

Toxic Substances Control Act authorizes US EPA to obtain data on health effects of chemical substances and to regulate the manufacture, use, and disposal of a chemical substance or mixture, where warranted. (Note: Just because these acts have been passed does not mean that they are effectively achieving their goals.)

Cost of Complying with the Hazardous Waste Regulations

- For industry—less than 0.2% of annual sales
- For the public—about \$3.00 per year

Disposal Options²

Source Reduction Modify industrial processes so that the volume or toxicity of waste is reduced

Waste Exchange One company's waste may be another's raw material. Often wastes can be reclaimed so that they can be used as raw materials for another company.

Treatment Chemical procedures, such as neutralization of acids, can be used to render the waste less hazardous. Incineration may be useful, provided that there are safeguards against air pollution.

Landfill The last, least desirable, and least safe option; landfilling is the method that has led to the problems that the hazardous waste regulations are trying to solve. (Note: The hazardous waste regulations do nothing to facilitate, encourage, or provide funds for research into the first three options.)

Notes

1. Information from the US Environmental Protection Agency.

2. Based on article by Pojasek RB: "Developing Solutions to Hazardous Waste Problems," *Environmental Science & Technology* 14(6):327, August, 1980.

ardous Wastes: The Only Way to Go" in this issue.)

Sewage Sludge

One waste that CBE was particularly concerned about was sewage sludge. Research done by CBE had shown that sewage sludge often contains large amounts of the toxic chemical cadmium; and if the sludge were not carefully handled, human health could be endangered. Congress had specifically included sewage sludge as one of the substances that RCRA regulations were to control. The early regulations indicated that sewage sludge would be treated like any other solid waste—if it failed the tests, it would be considered hazardous and would be subject to controls. However, when drafts of the regulations were published in December, 1978, sewage sludge was excluded. According to this draft, sludge would never be considered hazardous, no matter how much toxic material was in it.

CBE submitted extensive comments to US EPA that explained why the exclusion of sewage sludge was unwise. CBE had also sued US EPA because sludge was excluded. Although the US Court of Appeals had decided that CBE had brought the case to court too early in the regulatory process, the case seems to have influenced US EPA. When the regulations finally came out, sewage sludge was no longer excluded.

Hazardous Waste Facts

Amount Generated in 1980

- 57 million metric tons (wet)—US EPA estimate.
- Only 10% are currently being handled in a safe manner.
- Ten states generate 60% of all hazardous waste. In order by volume of waste generated, they are: New Jersey, Illinois, Ohio, California, Pennsylvania, Texas, New York, Michigan, Tennessee, Indiana.
- The quantity of hazardous waste generated is expected to increase by about 3.5% each year.

Hazardous Waste Sources

Industrial Generators	Percent
Chemicals and allied products	60
Machinery (except electrical)	10
Primary metals	8
Paper and allied products	6
Fabricated metal products	4
Stone, clay, and glass products	3
All others	9

Information from the US Environmental Protection Agency

The Manifest System

Now that we have an understanding of which wastes come under the regulations, we can turn to the record keeping procedures. The US EPA will keep records on all facilities that generate, transport, treat, store, or dispose of hazardous wastes. In addition, records will be kept on all hazardous wastes, from the moment of generation, through transport to storage, treatment, or disposal (cradle-to-grave tracking). When a hazardous waste is generated, the generator must fill out a form, called a manifest, that describes the waste and lists the names and addresses of the generator, the transporters, and the ultimate destination (a permitted treatment, storage, or disposal facility). This manifest must accompany the waste from its generation to ultimate disposal and must be signed by the appropriate people and returned to the generator. The manifest must be kept for three years; and generators and storage, treatment, and disposal facilities must submit annual summaries of their activities to US EPA. This system would minimize unauthorized disposal of hazardous wastes and enables US EPA to assign responsibility if a specific waste or disposal site causes damage in the future.

Interim Permits

Now that we know which wastes are hazardous, where they come from, how

much is generated, and where they are going, we will examine what happens at existing waste disposal sites.

Under the regulations, all an existing site has to do is notify US EPA of its location, its activities, and the identity of the waste it receives. Upon receiving this information, US EPA issues the facility an interim permit. This permit enables the facility to continue its operations, whether they are safe or not. In addition, by November, 1981, all operating facilities must have the following: wells to monitor leakage; analysis of incoming wastes; barriers, warning signs, and other security measures; an inspection system; trained personnel; emergency plans, including communications with local police and fire departments; and of course, the manifest system. All these items, however, are basically cosmetic.

The existing facilities must also apply for a permanent permit; and at some unspecified time in the future, US EPA will evaluate each existing site and decide, based on its potential for harm, how the facility should be improved.

US EPA had the authority to prohibit unsafe practices at existing sites. For example, US EPA could have mandated the closing of sites built on sand or 200 feet from an underground water source. Such regulations would have protected the public from the leaking of toxic wastes, such as occurred at Love Canal. However,



Photo by John Kudja. Courtesy of the Niagara Gazette, Niagara Falls, NY

US EPA did not do so.

Under these rules, Love Canal (if it were still in use) could continue operating well into 1981 (and probably beyond) before any records of its leaking were made and evaluated.

The Major Flaw

This is the major flaw in the regulations. Until US EPA evaluates and acts on the massive amounts of information that it will receive, nothing will change. The regulations do not require that existing sites meet any minimum waste containment standards. US EPA seems to have the following attitude. What happened in the past is too complicated to deal with in a uniform regulation. Also, if the standards for interim sites are too strict, then many will close; and there will be no place to put the 57 million metric tons (wet) of hazardous wastes that we will generate in 1980 alone. It would be better to have those wastes in a poor site than dumped on a back road. We will concentrate on making the requirements for new sites as rigorous as possible to prevent future calamities. (These are the regulations expected in 1981.) We will evaluate the established sites one by one and then determine what changes should be made at each site.

How soon the review of existing sites is accomplished depends on many variables—from the intangible attitude within US EPA to the tangible questions of whether there is enough money and qualified people to do the job. The present regulations could be used to promptly control current unsafe disposal practices. Or US EPA could do very little.

In addition to allowing the unsafe practices to proceed for an indefinite amount of time, US EPA's omission of prohibitions for unsafe practices at existing sites actually benefits those unsafe sites. For example, let's suppose that Love Canal is still operating. Its owners would apply for an interim permit, put up fences and warning signs, buy fire extinguishers, notify local police and fire departments of Love Canal's existence, and apply for a permanent permit. The owners then issue a press release saying that they have complied with all the requirements of the new federal hazardous waste regulations. A nervous public is relieved, thinking that if all the federal regulations are complied with, then they are safe from any hazard from the site. Shortly thereafter, one of the residents notices a foul odor in the basement of his house. He also breaks out in rashes whenever he enters the basement. After doing research, he concludes that the odor and rashes are resulting from chemicals leaking from the Love Canal. He then sues the owners. The owners, however, have a ready defense. They claim that since a federal agency has issued regulations to protect the public's health in such situations, and since the owners have complied with those regulations, the owners are therefore not liable. The resident would have difficulty overcoming this defense.

Conclusion

Now that the hazardous waste regulations are issued, some problems will diminish, some will become more evident. On the positive side, US EPA will for the

first time have an accurate record of the generation, transportation, and disposition of hazardous waste in America. This will provide valuable insight for preventing future calamities. Once the last part of the regulations is issued next year, government agencies and citizens can work to ensure that final burial of hazardous wastes will not present problems to future generations.

On the negative side, many wastes that do present hazards will be improperly disposed of because they are generated by small quantity generators. Also, unless new hazardous waste sites are approved, we may shortly find ourselves with more wastes than we can properly dispose of. In such circumstances the risk of improper disposal by midnight dumpers is high.

In addition, the regulations do not address the issue of reducing the volume of hazardous wastes. We hope that US EPA will immediately begin encouraging new procedures for recycling or neutralizing hazardous wastes to diminish the amount of land disposal space we will need.

The long-term solution to the hazardous waste problem is not finding more places to bury the wastes, but rather finding ways to minimize the amount of wastes needing disposal.

Bibliography

1. *The Resource Conservation and Recovery Act*, Public Law 94-533, 94th Congress, October 21, 1976, Sections 1004(5)(A) and (B) and 3001 to 3005.
2. *94 US Code Congressional and Administrative News*, pp6240-6249, 6254-6261 1976 (FEDERAL LEGISLATIVE HISTORY).
3. Brown M: *Laying Waste: The Poisoning of America by Toxic Chemicals*. Pantheon Books, NY, 1980.
4. Conservation Foundation Letter: "Hazardous Waste Control Efforts: A Frightful Mess." April, 1980 (1717 Massachusetts Ave NW, Washington, DC, 20036).
5. Federal Register: "Environmental Protection Agency: Hazardous Waste and Consolidated Permit Regulations." Vol 45, no 98, book 2. May 19, 1980.
6. "Haulers Dump Toxic Wastes to Beat Rules." *Chicago Tribune*, August 4, 1980.
7. US Environmental Protection Agency: "Everybody's Problem: Hazardous Waste." SW-826, 1980.
8. —: "Hazardous Waste Information," a set of information sheets summarizing each aspect of the hazardous waste regulations. These sheets, plus the booklet "Everybody's Problem" are available from Solid Waste Publications, 26 West St. Clair Street, Cincinnati, OH 45268. Ordering codes: booklet-SW-826, Hazardous Waste Facts-SW-737, Transporters-SW-830, Generators-SW-839, Notification Requirements-SW-840, State Programs-SW-847, Identification and Listing-SW-850, Facility Standards-SW-851, Facility Permits-SW-852.

Products that Yield Hazardous Wastes	
Product	Hazardous Waste
Plastics	Organic chlorine compounds
Pesticides	Organic chlorine compounds, organic phosphate compounds
Medicines	Organic solvents and residues, heavy metals (eg, mercury and zinc)
Paints	Heavy metals, pigments, solvents, organic residues
Oil, gasoline, other petroleum products	Oil, phenols, organic compounds, heavy metals, ammonia salts, acids, caustics
Metals	Heavy metals, fluorides, cyanides, acid and alkaline cleaners, solvents, pigments, abrasives, plating salts, oils, phenols
Leather	Heavy metals, organic solvents
Textiles	Heavy metals, dyes, organic chlorine compounds, solvents

Information from the US Environmental Protection Agency

Controlling Toxic Wastes: A Model State Program

by Marchant Wentworth

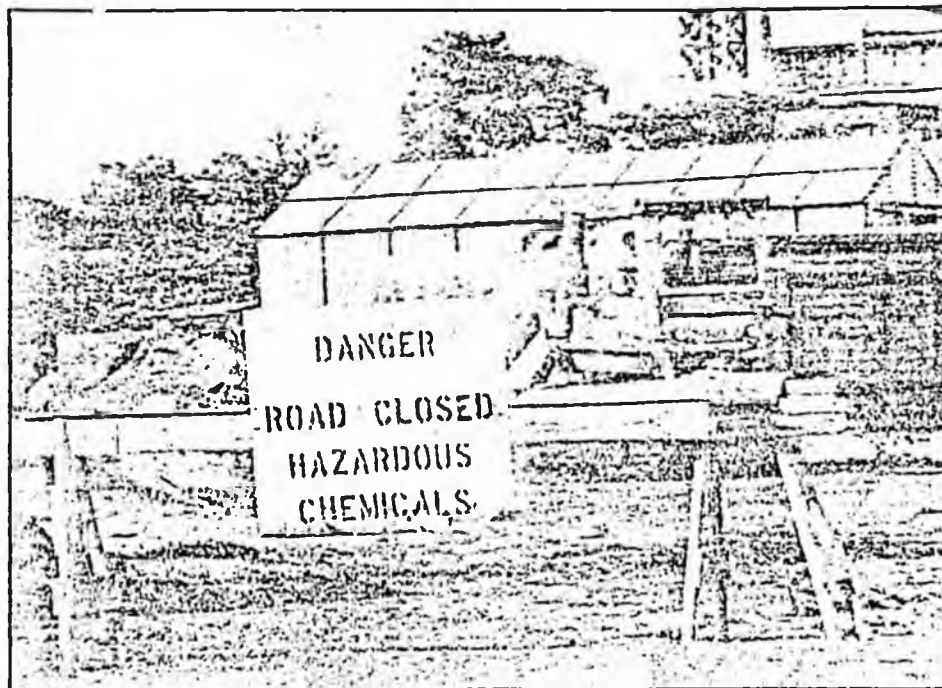
One of the greatest problems progressive public officials face today is the lack of specific programs to offer to address the many pressing problems in today's society. To help fill that void, Ways & Means will carry a series of model state and local programs on a broad range of issues in the coming months. We are pleased to have, as the first in the series, a program for controlling toxic wastes written by the well-known environmental lobbyist, Marchant Wentworth.

On January 22, 1981, Philadelphia became the first major city to enact legislation giving workers and city residents the right to know what kinds of toxic wastes are around them. Passed through the efforts of a broad coalition of workers, environmentalists and community residents, this "right to know" legislation forces manufacturers to disclose to the public what toxic chemicals are emitted into the air or stored on the premises. This legislation is part of a comprehensive program which should be implemented in every state to reduce the ever increasing dangers posed by toxic waste disposal.

Responsibility for establishing a comprehensive hazardous waste disposal program falls squarely on the shoulders of state and local officials. While federal studies have documented the magnitude of the problem—millions exposed to health hazards from leaky dumps; a hundred million tons of improperly managed toxic waste generated each year; and thousands of yet to be discovered dumpsites—federal efforts to address this situation have been underfunded and narrow in scope. With almost no hope for additional federal incentives, progressive public officials must take the lead in designing programs to address this growing concern.

Some states, notably those with severe chemical contamination problems, have responded early to address some of these issues. Most states, however, have been content to propose a minimal program in order to qualify for federal support. To prevent industries from shopping around for the weakest state program, legislators and other state officials must act to fill the gaps and provide the real protection that citizens are demanding.

While specific threats vary from state to state, a comprehensive hazardous waste program should contain four key elements:



1. strong guidelines;
2. a hazardous waste facility siting procedure;
3. aid to victims of chemical contamination;
4. reliable funding.

Strong Guidelines

In 1976, Congress passed the Resource Conservation and Recovery Act (RCRA) which established a management scheme for the treatment, transportation, and disposal of solid waste. Unfortunately, EPA's interpretation of RCRA created regulations which are far too weak to provide adequate protection from the dangers of chemical wastes.

For example, EPA's regulations exclude any company that produces less than 1,000 kilograms (2,200 pounds) of hazardous waste per month. This "small generator" waste will almost surely end up in landfills which are not designed to contain dangerous chemicals possibly resulting in contaminated water supplies.

Suggested State Response

- Include all hazardous waste generators, regardless of size, under any state hazardous waste act.

Citizen groups and those working with

hazardous waste often become aware of problems associated with the handling and disposal of toxic wastes long before state officials find out about a problem. At this time, no state gives these groups the right to find out from chemical producers and users what types of chemicals they are shipping and dumping.

Suggested State Response

- Enact "right-to-know" legislation giving citizen groups and workers the right to determine what kinds of hazardous wastes are stored, processed and disposed of by chemical manufacturers and processors.

An early warning system to alert state officials that a toxic shipment has not reached its proper destination is vital. The manifest designed by EPA to track waste from "cradle to grave" merely requires the generator to forward documentation of proper disposal to the federal government within three months of final disposal, and contains no requirement for state notification.

Illinois has developed a computerized system which allows officials to act quickly in case of problems. Maryland and New York have similar systems and the New England states have developed common manifest systems to locate wastes in their area.

(continued on page 4)

Controlling Toxic Wastes:

Suggested State Response

- *Require that the state solid waste agency be notified within two weeks of final disposal.*

Federal regulations are weak in one other important area. Shippers of ultra-hazardous wastes, such as pesticide wastes containing dioxin, are not required to notify state officials when shipments pass through their states.

Suggested State Response

- *Require shippers to notify state officials of any ultra hazardous shipments as defined by the EPA regulations.*

Siting

Locating suitable solid waste disposal sites is an old and difficult problem. Citizen groups are reluctant to allow facilities in their communities—questioning government's ability to protect them through regulation and industry's ability to protect them through technology. Siting a new facility is often reduced to finding a place of least opposition which means either continued use of already existing, leaking dumps or transportation of wastes over long distances, increasing the chances for accident or injury.

Without doubt, citizens should be encouraged to vigorously question any proposed sites in their area. But once a need has been proven, the goal should be to create a well-designed site at the best possible location. Rejection of any site, regardless of its design or location, could merely exacerbate the problem.

In spite of the controversy that has raged over siting for years, little federal guidance is available. Even minimal siting criteria for determining the environmental acceptability of a site have not been written.

On the other hand, the industry sponsored Chemical Manufacturers Association has drafted model state legislation calling for a governor-appointed siting board with broad powers to totally preempt all state and local zoning and land use laws.

Fortunately, most states which have passed siting laws provide for some form of public participation. Michigan creates an independent siting board composed of nine members—with four representatives from the area of the proposed site—each time a new site is proposed. Oregon allows the state health department to veto any site that it believes could present a threat to public health. Massachusetts has a system which requires the permittee to prepare a Notice of Intent describing the facility and its operation as the

starting point for negotiations between the community and permittee.

Four main issues must be addressed in any siting legislation:

1. Pre-emption —

Experience shows that citizen pressure is capable of rejecting any site, regardless of the facts in the case. As a result, most states have drafted siting legislation creating boards that can preempt local authority. Of the ten states, either with or considering siting boards, nine provide some form of pre-emptive authority.

Suggested State Response

- *Create a siting board with pre-emptive authority which represents local concerns through some form of citizen or public representation.*

2. Need —

Hazardous waste generators have historically used landfills as the cheapest and easiest method of disposal—in spite of the environmental problems they create. In fact, generators are just beginning to realize the recycling potential of their hazardous wastes. Often they can be recycled and reused—either inside the plant or as an ingredient in another plant's process. But because disposal costs have traditionally been so low, managers rarely consider new approaches.

States can help change these attitudes by requiring waste generators to file a "certificate of need" detailing their efforts to recycle and reduce waste. Waste disposal, particularly in landfills, should be seen as the resting place of last resort. The certificate would force generators to exhaust all other possibilities before seeking a new landfill and would force them

to justify the need for a new landfill.

The certificate of need can be a powerful tool for both citizens and local officials. First, information on the origins and delivery routes of wastes can provide an early warning system that can allow for long range planning. Second, making this information public forces the generators to be held directly accountable for the wastes they produce. Too often in the past, waste generators stood silently in the background while site operators took the heat for a dangerous facility.

Suggested State Response

- *Require that generators submit a certificate of need to the state solid waste management agency before disposing of any hazardous waste. The certificate should detail who the actual user of the facility will be, where the waste will come from, how much and what kinds of waste will be disposed of, and what other options were pursued for recycling the waste.*

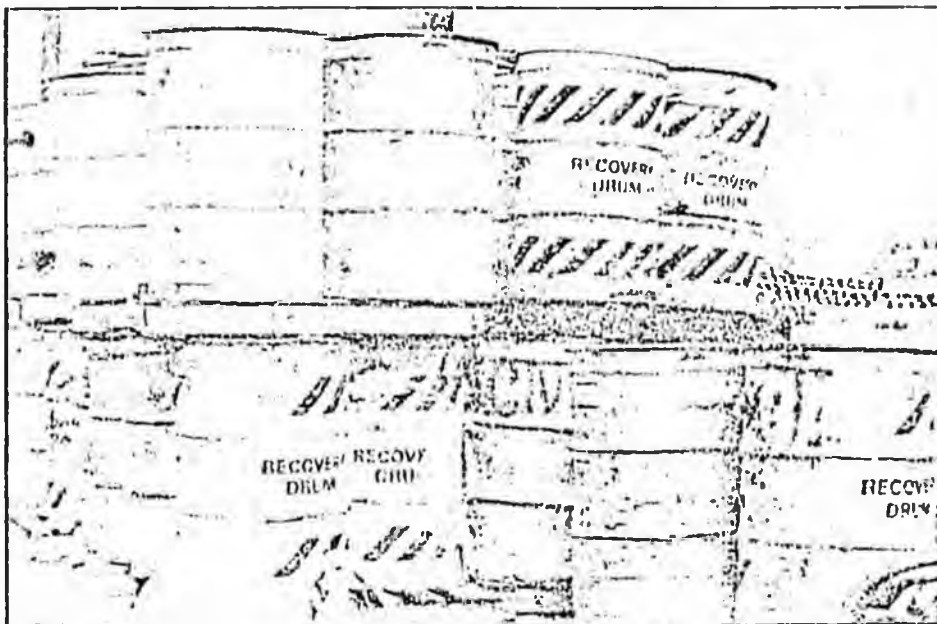
3. Technical Assistance to Citizen Organizations —

Siting decisions require careful evaluation from a variety of experts in the fields of hydrogeology, solid waste management, biology, chemistry, and toxicology. But since these experts are usually quite costly, site evaluations are typically available only to corporations and local officials. Citizen groups must depend on second hand information and volunteers to evaluate possible options.

Suggested State Response

- *Provide funding, either through a budget authorization or user fees, to allow technical experts to consult with citizen groups.*

(continued on page 5)



4. Incentives —

In the past, most communities involved in siting decisions have been forced to accept all of the risks of a facility without gaining any of the proposed benefits. In order to reverse this, some jurisdictions have proposed incentives that can be used as negotiating points between the permit applicant and the community. These incentives can be direct cash payments to the community, emergency equipment, job opportunities at the site, or road and bridge improvements leading to the site. Site operators can also provide a wide range of amenities including landscaping, elimination of odors and debris and noise control.

Suggested State Response

- *Require the permittee to develop a contract with the community detailing what types of incentives the permittee will make available and at what times during the construction and operation of the site.*

Relief for Victims

Despite the tragedy surrounding Love Canal and the thousands of industrial workers who have been crippled by exposure to toxics, federal law has consistently failed to provide any easy recourse for toxic casualties. Even the recent Superfund legislation, which was proposed to solve this problem, was stripped of provisions for victim relief before final passage in December, 1980.

Studies by the Congressional Research Service have shown that our present tort systems is inadequate to address the complexities of toxic release. And because the effects are latent, proving a direct cause and effect relationship can be very difficult. Victims rarely have the time, money, or expertise to bring their case to court, let alone win. As a result, they are usually forced to accept a small part of court settlement rather than face years of expensive litigation.

Suggested State Response

- *Change the state tort law to allow the victim to prove that an injury or disease is "reasonably related" to a particular release or discharge rather than having to prove a direct causal relationship.*

The long latency period between exposure and discovery of many toxic related illnesses may prohibit victims from suing under current state statute of limitations. Under the present system, victims who, for example, contract cancer years after initial exposure cannot bring litigation against the operator or employer

responsible for the exposure.

Suggested State Response

- *Alter the statute of limitations to begin at the point of discovery of a serious illness instead of the point of exposure.*

Determining the extent of chemical contamination often requires expensive diagnostic tests. Since victims rarely have the money to pay for such tests, little or nothing is done until their health deteriorates. By the time the disease is treated, long term expensive care is often required.

In 1974, residents of tiny Toone, Tennessee were unable to pay for expensive diagnostic tests to help them determine what was causing the noticeable deterioration in their health. Not until 1978 did public health officials discover that the damage was caused by pesticide dumping from a local chemical company into the town's water supply. By that time, extensive permanent damage had occurred.

Suggested State Response

- *Provide for early diagnostic treatment for toxic chemical victims either through user fees or expanded liability provisions to include repayment for diagnostic expenses from the guilty party.*

Reliable Funding

The key to creating an adequate state program is developing a reliable source of funding. Clearly, the federal government will not provide the necessary funding. The U.S. General Accounting Office, in reviewing the national hazardous waste management effort, found that none of the 26 states it contacted had sufficient staff to develop and operate a program that could meet even minimal federal standards with the funds available.

In the face of the needs of this program, alternative funding sources must be found. The most obvious source is users fees for disposers of hazardous waste. GAO, in its recommendations to EPA, echoed this idea stating "... no long term funding sources are available for hazardous waste programs on the federal, state, and local levels. Self-supporting programs which charge for waste disposal—such as fee systems—would provide an alternative source to supplement existing funds and provide a means of long term program support."

In addition, GAO recommended that EPA should encourage state governments and agencies to develop fee systems, develop model legislation for such systems and propose amendments to the

Resource Conservation and Recovery Act to include a fee system in cases where EPA is forced to implement a state's program.

Disposal fees offer a number of advantages over federal or state appropriations. Besides being more reliable, they place the burden of the program on the users of the system instead of the taxpayer. And because there are relatively few permitted hazardous waste disposers in most states, the fees are easily collected, keeping administrative costs low.

A fee system can also support an effective enforcement and monitoring program—the backbone of any regulatory effort. Without a well funded enforcement program, the entire effort to control illegal and improper disposal could amount to little more than piles of papers shuffled between lawyers.

At least two states have instituted fee systems. California has created a hazardous waste disposal fee of \$1.00 per ton which raised 2 million in 1978—enough to fund the state's entire hazardous waste management program. Maryland has developed a three part system consisting of a filing fee, an annual permit fee based on type and quantities of wastes and a per vehicle charge, which supports the system and provides funds for emergency removal spills.

While some state officials have expressed concern that fees increase illegal dumping or provoke bitter resistance from disposers and site operators, officials from California and Maryland have discounted these problems. They contend that a strong enforcement program is the most effective weapon against illegal dumping and note that the incremental cost increase of approximately five percent is hardly enough to encourage illegal dumping.

Suggested State Response

- *Establish a state fee schedule for hazardous waste generators which will cover the costs, over and above federal appropriations, of management, enforcement, clean up of spills and illegal dumping and provide diagnostic testing for victims.*

On January 30, President Reagan instituted a freeze on all federal regulations not yet issued. This can only further slow the federal response to the problem of toxics in the environment. The burden now falls on state and local governments to institute strong programs citizens are demanding.

Marchant Wentworth is a legislative specialist for Environmental Action in Washington, D.C.

Attack on Hazardous Waste: The Challenge of the 1980's

The Problem

Our country has recently endured an unprecedented spate of toxic-related episodes. It has become difficult to pick up a newspaper without reading about drums of hazardous waste left rotting in areas precariously close to aquatic resources, or even human communities. One need only draw on some recent historical events as examples of the effects:

Pollution of Ground Water

In 1978, the water supply of Toone, Tennessee, was found to be contaminated, six years after a nearby landfill containing pesticide wastes had been closed.

Contamination of Rivers and Lakes

In 1978, poisons leached from a dumpsite in Charles City, Iowa, into the Cedar River in quantities sufficient enough to be detected in the water supplies of communities 60 miles downstream.

Air Pollution

In 1972, hazardous chemicals vaporized from a landfill near the towns of Darrow and Geismar, Louisiana. People and livestock were exposed to toxic vapor.

Explosion and Fire

In 1978, a fire erupted at a Chester, Pennsylvania, disposal site. Forty-five firefighters were stricken after inhaling chemical fumes and a major bridge had to be closed.

Poisoning

In 1978, President Carter declared Love Canal the first national disaster area for events other than "an act of God." Miscarriages, birth defects and other serious health problems appear to have been caused by chemical wastes buried nearly a quarter of a century ago.

Although specific horror stories vary greatly in terms of the severity of the impacts upon health and the

environment, the hazardous waste problem has reached epidemic proportions. The seeds of this problem, in many cases, were planted years ago, beginning with the advent of the widespread use of synthetic materials following World War II.

Over the last 20 years, extensive national efforts have focused on cleaning up air and water, as well as on making the workplace safer for the American laborer. These were logical, immediate priorities. But overlooked were the by-product wastes from industrial processes.

We have now become painfully aware that some 50 million metric tons of potentially hazardous wastes are produced annually in the United States. This amount grows at a projected rate of about 3.5 percent a year. And less than 10 percent is probably being disposed of in an environmentally sound manner.

By a combination of ignorance of the hazards and deliberate avoidance of the costs of waste control by some industries, we find ourselves saddled with a problem which will take years to resolve.

How Wastes are Presently Handled

We are the most highly industrialized society the world has ever known. Yet no system has been institutionalized for properly disposing of our toxic wastes. More effort has heretofore gone into the regulation of restaurants or taxicabs than into establishing a safe network for waste disposal.

Furthermore, the number of actors who are involved with hazardous waste is immense:

- over 750,000 businesses generate some amount of hazardous waste
- over 10,000 transporters are involved in shipping it
- over 30,000 sites are used for treatment, disposal, or storage, some on the premises of the generator, others located elsewhere.
- an unknown number of "midnight dumpers" — transporters who take the wastes off generators' hands for a low price, then dispose of it irresponsibly — also operate on a widespread basis. The end product of their

services often turns out to be drums of wastes discarded into sewers, in the woods, in open fields, on the sides of roads. . . often near municipal drinking water supplies.

Hazardous wastes—whether from a chemical plant, battery producer, or electroplater, to cite three examples—are either disposed of at the factory or off-site. In either case, the disposal options are nearly identical:

- disposal on the land
- incineration
- placement in lagoons
- injection wells
- cycling or reclaiming

If wastes are not retained on-site, they are transported elsewhere by truck, barge, or rail.

Most hazardous waste incidents arise as the result of indiscriminate disposal by midnight dumpers, improper management at inadequate treatment, storage or disposal facilities or spills in transport.

Present Inadequacies

Industry, quite properly, seeks to dispose of wastes at the lowest possible cost, consistent with the requirements imposed upon them by laws and regulations. Presently, in most parts of the United States, such rules and regulations are non-existent or incomplete. As a result, there now are a number of glaring inadequacies in how hazardous wastes are managed in America:

**Inadequate
identification of
wastes that are
hazardous**

All wastes have the potential to be harmful, but certain wastes are particularly hazardous. Until these wastes are identified as hazardous, mismanagement is likely to continue.

**Inadequate
assignment of
responsibility for
safe management**

Currently, except in a few states, a generator, after handing waste over to a transporter, need assume no further responsibility. The transporter, in turn, is under no requirement to dispose of the waste properly. No records need be kept, hence liability for midnight

dumping incidents cannot be traced. No one is accountable, and in case of surreptitious dumping or an accident, the public gets stuck with health and environmental damage—and the cleanup tab.

Inadequate standards for waste management facilities

With the exception of some state programs, no process exists to define and enforce rigorous design and operating standards to ensure safe containment or destruction of hazardous wastes, or to ensure that sites are not abandoned and left unmonitored and forgotten.

Inadequate information on wastes

Except in a few states, no one is presently required to keep records of hazardous waste activities, so it is impossible to know who is generating hazardous wastes, how much, how handled, or where.

Inadequate emergency notification system

No method now exists to assure swift cleanup of hazardous waste spills during transport.

Inadequate incentives to improve technology

Safe waste management should embody the best technologies that can be developed. Yet without rules and regulations to ensure protection of public health and the environment, the costs of disposal have been low. As a result, industry has had little incentive to apply resources or brainpower to developing better, safer technologies for managing wastes.

The World According to RCRA

The Congress passed the Resource Conservation and Recovery Act to address these inadequacies and thereby require industry to change its practices to ensure safe management of hazardous waste. RCRA provides specific remedies which will be embodied in EPA regulations to be issued over the next several months:

Identification of wastes that are hazardous

EPA will publish a list of approximately 200 waste streams that are hazardous, as well as characteristics and testing procedures whereby waste generators can identify other waste streams of theirs which are ignitable, corrosive, reactive, or toxic.

Assignment of responsibility for safe management

Generators will determine if their wastes are hazardous by consulting EPA's list, or by testing the wastes. Alternately, a generator may simply declare his waste hazardous based on his knowledge of its properties.

When generators ship wastes to off-site facilities,

they must identify an approved facility to which the wastes are to go; they must contract with a transporter to take it there; and they must initiate a manifest which will track the waste through every step enroute to its destination. Both the transporter and the management facility are required to sign the manifest and return the signed copy to the generator.

Generators must follow up in cases where a signed manifest is not returned and inform EPA of any missing wastes.

Transporters are obligated to follow the generator's instructions and deliver the waste to the designated facility.

Standards for waste management facilities

All facilities which store, treat, or dispose of hazardous waste, whether on-site or off-site, will have to comply with a series of operating standards, which includes proper safety measures, development of emergency procedures, monitoring and training of employees, long-term financial responsibility, and participate in the manifest system.

Those facilities will also require permits based upon the latest technological advances in waste management. Facilities failing to meet standards must close down (or will not be permitted to begin) operations.

As the new national hazardous waste program begins, existing treatment, storage, and disposal facilities which notify EPA and submit a permit application may receive interim status to continue their operations until their permit applications can be reviewed. Those facilities must comply with extensive operating standards during interim status.

Because of the number of sites involved, the permitting process will necessarily be implemented over time. The most potentially dangerous sites will be reviewed first, so that they can be upgraded or closed. Priority will also be given to new hazardous waste facilities.

Information on wastes

During the 90 days following promulgation of the regulation defining hazardous waste — i.e., during May, June, and July of this year — every firm which handles hazardous waste (whether it be a generator, transporter, treater, storer, or disposer) must notify EPA of that fact. EPA will then assign each firm which notifies an identification number. The firm cannot continue any hazardous waste activities without using that identification number.

To help inform those affected, EPA will mail

information about notification to over 350,000 firms which it believes may be involved. The mailing will contain a notification form to be completed and returned to EPA. If any waste handler fails to be contacted, it is still his responsibility to notify EPA within the 90-day period.

Subsequently, every firm which generates, transports, stores, treats, or disposes of hazardous waste will submit an annual report to EPA, providing information what wastes were handled, in what volume, and in what way.

Emergency notification system

Generators must make sure that wastes which are being shipped are properly containerized and labeled.

Transporters are obligated to take prompt cleanup actions and report any spills or accidents to the proper authorities.

Incentives to improve technology

With responsibilities clearly assigned, and with standards of safe practice clearly defined, a new era will begin in which industry will have a strong incentive to put its best, most imaginative minds to work toward developing new technologies and new approaches to the complex problems of safe waste management.

When Will This Happen?

On *February 26*, EPA will issue regulations defining the responsibilities of generators of hazardous waste, of transporters of hazardous waste, and the requirements of the notification process. These regulations will specify how the manifest system is to work. Because these regulations are being issued early, the regulated firms will have extra time to understand their new responsibilities.

In *April*, EPA will issue regulations defining what wastes are hazardous and set forth operating standards for treatment, storage, and disposal facilities. It will also issue procedural regulations stating how the permit program will work, and what states must do to be authorized to run the Federal program.

In *May, June, and July*, all firms which handle hazardous waste must notify EPA.

In *September*, all firms that store, treat, or dispose of hazardous waste must apply for a permit. Those who apply for a permit can obtain interim status to continue their operations.

Also in *October*, the program takes effect and goes into operation. The manifest system must be used for all

waste shipments. All sites with interim status must be in compliance with the interim operating standards.

In the *fall*, EPA will issue the standards on which the permits for storage, treatment, and disposal systems will be developed.

In the spring of 1981, permitting of facilities will begin.

State involvement is critical to the success of RCRA. Under the law, EPA can authorize States to implement and enforce RCRA — on an interim basis for two years and then on a final basis. A State program must be equivalent to the Federal program (substantially equivalent during the interim period) to be authorized. Many States have indicated a strong interest in operating the program. EPA hopes that some 37 states will qualify for authorization. EPA will administer the program in any unauthorized States.

Will RCRA Work?

To carry out the mandates of RCRA will require a massive transformation in the way that industry has been accustomed to managing its wastes. A skeptic might question whether these changes will occur. But a variety of forces will be at work to press towards the rapid adoption of safer approaches to waste management.

Public Opinion

Public policy is an outgrowth of public demand. There is no greater force in a democratic society than that of public opinion. And by any measure, the current public attitude is one of outrage directed against the indiscriminate poisoning of our environment through hazardous waste mismanagement. Lawmakers, regulators, the business community — all are aware of a strong national mood toward tightening the screws on chemical carelessness.

Forces in the Marketplace

Under the influence of the new hazardous waste controls, a number of incentives will be introduced into the economic marketplace which were previously missing. Firms offering advanced treatment and disposal approaches, which formally could not sell their services, will be swamped by the demand. New firms will enter the waste management field. Waste storers, treaters and disposers will seek out more sophisticated technological processes to properly handle their wastes. And the costs of environmentally sound waste management will rise, producing a powerful incentive

for generators to change methods of production so as to minimize their output of hazardous wastes.

The Courts and Liability

RCRA contains numerous provisions designed to make those who handle hazardous waste legally and financially liable for violations of the regulations. The degree of liability will, of course, depend on the circumstances. Through liability suits and other lawsuits based on RCRA infractions, the judicial system will play a large role in interpreting the RCRA program and clearly defining the penalties for non-compliance.

The Role of Citizens

"Public participation" has become a bureaucratic platitude in many quarters. That is unfortunate, because RCRA contains many real and potent opportunities for citizens to exert meaningful influence: RCRA provides for public hearings as part of the facility permitting process; it grants citizens opportunities to petition to add additional wastes to the hazardous waste list; it provides means for citizens to register complaints about existing sites or procedures which may pose public health threats; and it authorizes citizens to bring legal suits against corporate non-compliers. In short, RCRA authorizes citizens to play a central role in protecting themselves against the dangers brought on by the excesses of our synthetic-oriented society.

Monitoring and Enforcement

Federal regulations carry the force of law. Enforcement activities to ensure compliance with the various aspects of the RCRA program will be conducted at the State, regional, and national levels. Failure to comply with specific provisions will result in prosecution. The initial enforcement effort will be on making sure that the manifest system and interim status standards are complied with. Once facilities have been permitted, major emphasis will be placed on ensuring that permit requirements are met. But equally as important, the flexing of RCRA's legal muscle will establish a system for responsible waste management which will be buttressed by public opinion, forces in the marketplace, the courts and liability, and the role of individual citizens.

What the Future Holds

As this decade begins, so too begins a new effort to control the serious threats posed by mismanagement of hazardous waste. If the initiation of RCRA opens the door to better managerial practices, by the mid 1980's we should begin to realize noticeable changes in treatment, storage and disposal of hazardous wastes. New, safer facilities with highly developed technological capabilities should appear. Also, the cost and responsibility of properly handling wastes will be placed where it belongs — on the generators. This in turn will create incentives to reduce the production of hazardous waste in the second half of the 80's, as alternative products and production processes are developed.

But the 1980's will also bring a continuing array of difficult issues which must be dealt with as the attack on hazardous waste moves forward:

Uncontrolled and Abandoned Sites

Tens of thousands of disposal sites exist all across the nation. Many are uncontrolled and/or abandoned. These sites need to be identified, analyzed, and, where necessary, brought under control, which will be an enormous task by any measure.

EPA, Justice, and the States are aggressively developing enforcement cases against such sites. But enactment of a Superfund by the Congress is essential to provide better tools. With a Superfund, EPA will be able to move in and protect health by cleaning up problem sites before, not after, time-consuming litigation. Further, a Superfund will provide funds for cleanup of abandoned sites, for which no resources are now available.

Capacity and Siting

Our nation lacks sufficient hazardous waste management facilities. Establishment of new facilities almost always results in intense opposition of local citizens. Current public hostility to new waste disposal facilities is understandable; people are afraid. But industry can't properly manage wastes without sites at which improved management can take place. Hence every citizen has a personal stake in the resolution of the siting issue. Our society needs new processes and procedures whereby sites can be selected at which the best technologies can be applied to assure the safe management of hazardous waste.

Liability

Persons who store, treat, or dispose of hazardous waste must be required to assume some liability for their actions to assure high standards of performance. But if liability exposure is too great, responsible industry may be driven from, or never enter, the marketplace. If that happens, private capital may fail to finance the new hazardous waste management facilities which our nation desperately needs, and the way will be open for midnight dumpers to resume their illicit operations on a black-market basis.

Expanded Listing of Hazardous Waste

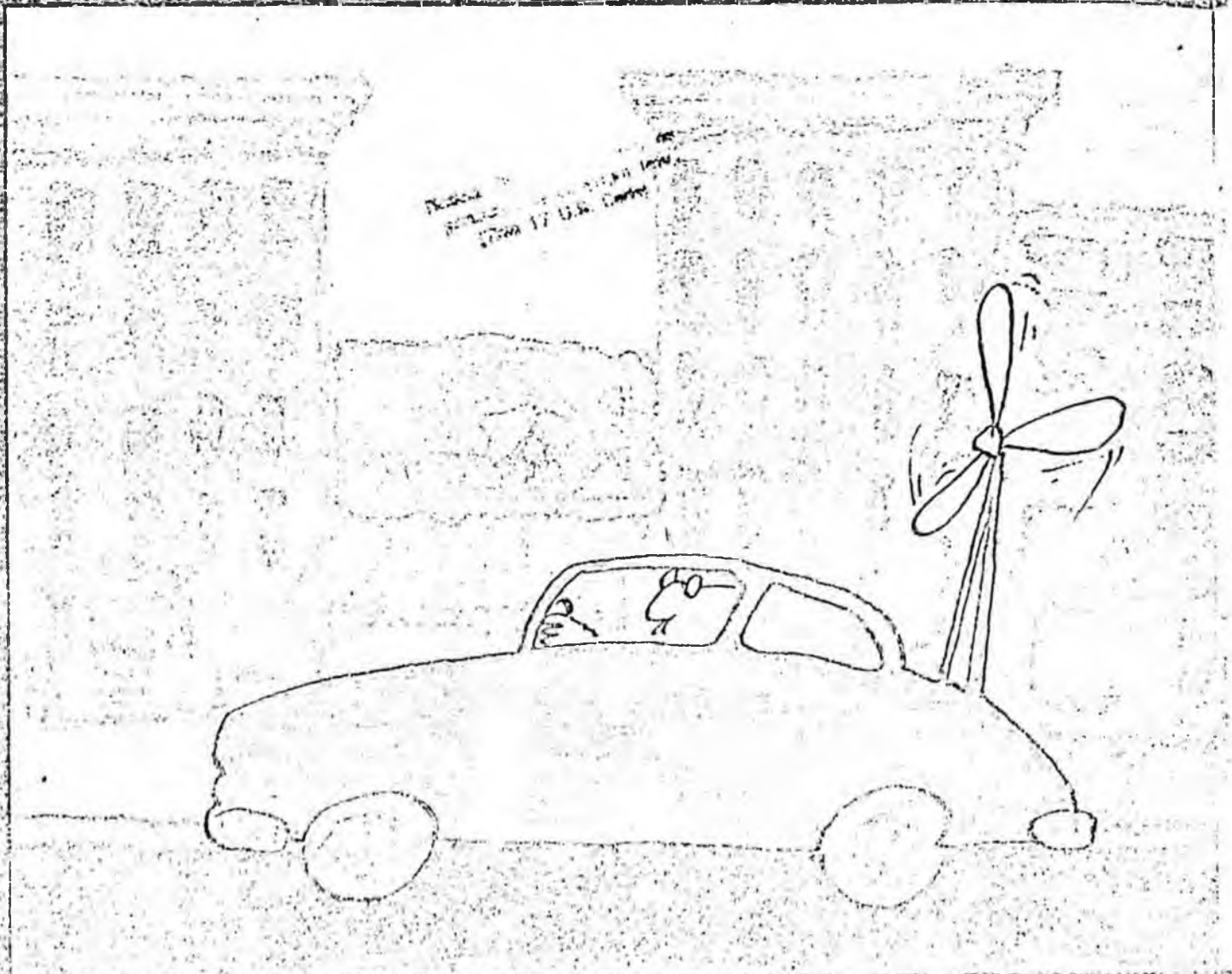
Knowledge of which wastes are hazardous is still imperfect. A continuing process must go forward to expand and refine the listing and management of hazardous wastes.

Refined Standards for Hazardous Waste Management Facilities

EPA's standards for treatment, storage and disposal facilities are based on state-of-the-art knowledge about how wastes can best be managed. But the base of knowledge will expand and improve, and so too must the standards. Hazardous waste management facilities must be upgraded and improved over time so as to reflect an evolving understanding of how wastes can be managed most safely.

These are only a few of the issues which the hazardous waste Hydra will force us to confront throughout the foreseeable future. For, if the truth be known, the problem of hazardous waste management will be never ending. As long as society generates toxic wastes, society will be forced to find safe ways to manage these wastes — and the solutions will not be easy. Nevertheless — as any former resident of Love Canal can tell you — there comes a time when hazardous waste management problems can no longer be ignored or shoved under the rug. That time is now.

Two Views on the Car



Reduction at the Source

by Don C. Stoughton and
Robert J. L. Harris

We must account for
consuming energy and accelerating the
transition to renewable sources.
Widespread, sustainable, and affordable
energy is essential.

A source of independent action is the
American Automobile Manufacturers Association
which has been the leading force in the
industry's efforts to reduce energy consumption
and to promote energy conservation. The
association has been successful in its efforts
to reduce energy consumption and to promote
energy conservation. The association has been
successful in its efforts to reduce energy
consumption and to promote energy conservation.
The association has been successful in its efforts
to reduce energy consumption and to promote
energy conservation. The association has been
successful in its efforts to reduce energy
consumption and to promote energy conservation.

Acid Dioxide Problem



A More Feasible Social Response by Robert R. Rorty

When we think of the problem of acid rain, we think of the damage it does to the environment and to the economy. But we also think of the damage it does to the health of the people who live in the areas affected by it. This is the problem that we are trying to solve.

A more feasible social response to the problem of acid rain is one that takes into account the needs of the people who live in the areas affected by it. This means that we need to find ways to reduce the amount of acid rain that is produced, while also making sure that the people who live in the areas affected by it are not harmed. This is a complex problem, but it is one that we must solve if we are to protect the health of the people who live in the areas affected by it.

Limiting CO₂ concentrations does not imply immediate reductions in total fossil-fuel use, but only in the rate of growth.

in the developed nations can offset the fossil-fuel use in the less-developed nations to allow them to grow. Such a balance could continue well into the next century, with total global CO₂ emissions still under control. Moreover, high levels of energy efficiency and reliance on renewable energy sources could be incorporated into the economies of developing countries, thus providing assurance that their energy and economic systems would not later require the major overhaul now necessary in the developed countries.

To forge an international response to an intangible problem with still-uncertain consequences is no easy task. But the United States and other industrialized nations can set an example through energy planning. The developed nations can demonstrate to the rest of the world that a decreased reliance on conventional energy sources, together with an increased application of conservation and renewable energy sources, are consistent with a growing and prosperous economy.

Even without the risks of climatic change, the more basic considerations of economics, national security, and other environmental harm offer persuasive arguments for a global policy to deemphasize dependence on fossil fuel and emphasize energy efficiency and renewable sources. With the risk of potentially disastrous CO₂-induced climatic changes added to the picture, these arguments are all the more compelling.

Don G. Scroggin practices law at Beveridge & Diamond in Washington, D.C. He has a Ph.D. in physical chemistry from Harvard University and a J.D. from Yale Law School. As a staff member of the Council on Environmental Quality, Dr. Scroggin was a coauthor of the recent report, *Global Energy Futures and the Carbon-Dioxide Problem*.

Robert H. Harris has a Ph.D. in environmental sciences and engineering from Harvard University and was director of the Toxic Chemicals Program at the Environmental Defense Fund for five years before being appointed to the Council on Environmental Quality by Jimmy Carter. He is coauthor of *Malignant Neglect* (Random House, 1979). Dr. Harris is currently an environmental consultant in Washington.

Bibliography

"Carbon Dioxide and Climate: A Scientific Assessment." Report of an Ad Hoc Study Group on Carbon Dioxide and Climate, Woods Hole, Mass., July 23-27, 1979. National Academy of Sciences, National Research Council.

Elliott, William P., and Lester Machta, *Carbon-Dioxide Effects Research and Assessment Program: Workshop on the Global Effects of Carbon Dioxide from Fossil Fuels*, Miami Beach, March 7-11, 1977. U.S. Department of Energy CONF-770385 UC-11, 1977.

Kellogg, W.W., and R. Schwart, *Climate Change and Societal Consequences of Increasing Atmospheric Carbon Dioxide*. Boulder, Col.: Westview Press, 1981.

MacDonald, G.J.F., *An Overview of the Impact of Carbon Dioxide on Climate*. McLean, Va.: MITRE Corp., M78-79, 1978.

Speth, G., J. MacKenzie, J. Davidson, and D. Scroggin, *Global Energy Futures and the Carbon-Dioxide Problem*. Council on Environmental Quality, 1981.

U.S. Department of Energy, Carbon-Dioxide Research Assessment Program, *Workshop on Environmental and Societal Consequences of a Possible CO₂-Induced Climate Change*, Annapolis, Md., April 2-6, 1979. Springfield, Va.: National Technical Information Service, 1980.

Woodwell, G.M., "The Carbon-Dioxide Questions," *Scientific American* 238 (1978): 34.



Continued from page 23

emissions: the amount of fossil fuel that will be burned each year (depending on world population, economic activity, the costs and availability of each energy source, and technologies for utilizing energy); the resulting changes in the atmosphere, the polar ice caps, and the oceans; the ecological responses; and the extent to which humans can mitigate the adverse

effects of the changes or even utilize them to better accomplish individual and social goals.

A Virtual Inevitability

Policies designed to lessen carbon-dioxide emissions are inherently unattractive. Fossil fuels are currently the cheapest source of energy; proscribing them would be difficult and expensive. And since we can neither estimate the magnitude of global changes

Fossil fuels are currently
the cheapest source of energy; proscribing
them would be difficult
and expensive.

from increased CO₂ with assurance nor be certain that the physical changes will be predominantly detrimental, it would be extremely difficult to convince any nation to bear the higher costs associated with switching to other fuels.

Three lags in particular make prospects for abatement of carbon-dioxide emissions quite unlikely before the middle of the next century; even then, steps will be taken only if the effects are important and predominantly adverse and adaptation cannot mitigate the costs. The first is a recognition lag: conclusive proof that carbon dioxide will cause large, adverse effects does not yet exist, and we will have to wait at least until 2000 for confirmation that the simulation models are correctly predicting the global climatic change. Yet uncertainty would remain—the models could roughly predict the effects of small increases in carbon dioxide but err on the effects of larger concentrations. For example, features of climate that are currently of secondary importance could become of primary importance with large increases in carbon-dioxide levels. Even greater uncertainty arises over whether a particular climatic change would produce beneficial or adverse effects.

A second lag involves deciding on a solution. The perceived seriousness of the CO₂ problem would vary with location, affluence, and alternatives. Given the international nature of the carbon-dioxide problem, obtaining agreement on the problem—much less its solution—could take decades. Moreover, a small nation's abatement program would not noticeably affect climate, and some nations who stand to gain from climatic change might actually *encourage* fossil-fuel burning.

Finally, assuming that worldwide agreement were reached on policies, there would be a third lag in switching to alternative fuel sources, a decades-long proposition.

The three lags are likely to be so long that carbon-dioxide emissions could not be substantially curtailed until the latter part of the next century. Without other compelling reasons for relinquishing fossil fuels, therefore, it seems virtually certain that substantial climatic change from CO₂ will occur and persist. Thus, if society is to do something about this potential problem, the emphasis should be on adapting to it.

Subtle Cues, Implicit Adjustments

Conscious adaptation is a thoughtful response by an institution or individual to a perceived problem or

need for change. The action can result from legal compulsion or spontaneous recognition, but in both cases behavior is modified through widespread dissemination of information. Climatic change could affect investment decisions, education and training, migration and location generally, jobs, and the production and purchase of goods and services. Explicit government intervention to change behavior might take the form of laws, licensing, zoning, and control of conditions of operation. But mitigating the problems caused by carbon dioxide is likely to require subtle changes in individual behavior that could not be induced by such regulation. The pertinent facts, the people to be reached, and the points of leverage all vary with each target.

A range of other possible governmental actions, such as taxes, subsidies, and attempts at moral suasion, do not compel changes in behavior but do exert an influence. Although these actions stem from conscious decisions by government, they need not result in conscious decisions by consumers.

Taxes and subsidies can provide various degrees of incentive to change behavior, but implementation is difficult and applicability is limited. More important, there is the temptation to use taxes, subsidies, and licenses to reward special groups or accomplish unrelated, often socially undesirable goals. Economists have learned painfully that subsidies and regulations are predominantly political processes with outcomes that usually have little semblance of economic efficiency.

But the government's power of moral suasion should not be underestimated. When not against an individual's perceived self-interest, moral suasion can lead to important changes in behavior. Even if individuals are required to make sacrifices, most will do so provided there is a perceived threat to society and a belief that all individuals will share the burden. Examples of such actions include service in the armed forces during wartime or conservation of water and energy during crises. If people were convinced that carbon dioxide is a serious problem, they would probably respond to appeals to conserve energy.

More important than conscious adaptation, however, is implicit or automatic adjustment. For example, adjustment to changes in consumer preferences for goods and services is done automatically via prices and profits in the marketplace. The market provides unmistakable signals in the form of crop failures, unemployment, and bankruptcy, or more subtly in the form of lower wages and profits for some busi-

The ability to adapt to carbon-dioxide-induced changes will be determined by our general ability to adapt to social and economic change.

nesses compared with profit increases and higher wages for others. Closely related are social structures and pressures that affect family size, economic activity, geographic location, and consumption patterns and indirectly affect CO₂ emission rates and adaptability to climatic change.

Unconscious adaptation is the translation of subtle cues into individual and social change. But whether such adaptation is helpful to a community, a nation, or the world depends on the aggregation of individual actions. Ultimately, the institutional and technological structures of society determine whether individuals acting in their self-interest will speed or impede social adjustments. The economic model of perfect competition, for example, is one institutional framework wherein individual actions are perfectly consonant with social obligations.

Adaptation for All Seasons

Carbon-dioxide-induced environmental changes may require the relocation of businesses, residences, and social-overhead capital such as streets and sewers. Plant and equipment may have to be replaced and workers may be obliged to find new jobs, which often require new skills. Firms may have to redesign their products and manufacturing processes. Yet these changes will accompany other, more profound changes caused by shifts in taste, technological innovation, the availability of raw materials, and patterns of international trade and relations, as well as "normal" climatic variations. The ability to adapt to the carbon-dioxide-induced changes will be determined by our ability to adapt to these other changes.

Will the automatic mechanisms send the proper signals? Will governmental and other decision makers perceive the problem and implement policies to expedite adaptation? If people perceive the need to change their behavior, will they have the resources and knowledge to do so? Will social and economic institutions be able to keep pace with climatic and social change? In other words, will our social and economic institutions respond to the changing conditions or break down under the pressure?

Whether society will have the required resources to adapt will be measured by several indicators. The first is gross national product (or income) per capita. This is a measure of aggregate economic activity and a surrogate for the economic resources available to build new facilities or move people. (The precise variable is "free" economic resources per capita. A poor

society, such as a nomadic one, might be able to adapt more easily than a rich society unwilling or unable to direct resources to implement needed changes.)

The second indicator is the gross rate of investment, or ratio of investment to GNP. A high ratio means that the economy is putting many new facilities into place and turning over its capital stock rapidly. Since plant and equipment can be designed for the new situations and be built in the right places, rapid turnover means that most capital would be tailored to the new regime. For example, consider an economy in which capital lasts 50 years—only 2 percent is replaced each year. Although climatic change could make much of the capital obsolete, it would remain in place for a long time. In contrast, an economy that turns over its capital stock rapidly—say, every decade—could better respond as changes were perceived.

A third measure of an economy's capacity to adapt is the general educational level of workers. Well-educated workers can better redesign products and facilities to respond to new conditions, and they find it easier to acquire the skills needed for new jobs.

Other characteristics facilitating adaptation are not so simple to measure. One is the flexibility and diversity of capital stock. Some plant and equipment are so highly specialized that minor changes in raw materials, product design, or fuels are impossible to accommodate. Some oil refineries, for example, were built to process only one type of crude oil and produce a fixed set of outputs. A counterexample is an electrical generating unit that burns oil, coal, natural gas, any two, or even all three fuels at once. Diversity of the capital stock also gives the economy the resiliency to avoid disaster in the face of changing external conditions such as climate. However, flexibility generally entails higher capital cost and lower efficiency.

Another vital but difficult-to-measure characteristic is the level of basic scientific knowledge, which can be used to increase the number of technological alternatives currently available or that can be quickly developed. And another, related characteristic is the capacity of individuals to interpret the signals of changing conditions correctly and adapt to them—in both cases by using the available tools.

Society should take steps to enhance each of these characteristics so that we have the ability to adapt more easily to carbon-dioxide-induced changes. But note that each attribute (with the possible exception of data collection and analysis focused on climate) benefits society generally and is not unique to carbon-



dioxide-induced problems. Carbon-dioxide buildup can provide a rationale—but more probably it will be a catalyst—for enhancing society's ability to adapt to and exploit a changing environment. The issue is but one of many that will have an enormous impact on the world economy and social institutions in the twenty-first century, and it provides one more argument to make these institutions flexible, adaptable, and strong.

References

- Council on Environmental Quality, *Global Energy Futures and the Carbon-Dioxide Problem*. Government Printing Office, January 1981.
- Eppler, Dennis, and Lester Lave, "Planning for Climate Change: Scenario Construction and Evaluation," American Association for the Advancement of Science, 1980.
- Flohn, H., *Possible Climatic Consequences of a Manmade Global Warming*, International Institute for Applied Systems Analysis, December 1980.
- Maddan, R., and V. Ramanathan, "Detecting Climate Change Due to Increasing Carbon Dioxide," *Science* 209, 4458 (August 15, 1980).
- Manabe, Syuko, and R.T. Wetherald, "The Effects of Doubling the CO₂ Concentration on the Climate of a General Circulation Model," *Journal of Atmospheric Sciences* 32 (1975).
- Manabe, Syuko, and Ronald J. Stouffer, "Sensitivity of a Global Climate Model to an Increase of CO₂ Concentrations in the Atmosphere," *Journal of Geophysical Research* 85 (October 20, 1980).
- Meyer-Albich, Klaus M., "Chalk up the White War? On the Transformation of Climatological Facts into Political Facts," In *Climate Constraints and Human Activities*, Jesse Ausubel and Asit K. Kiwas, eds. Oxford: Pergamon Press, 1980.
- National Academy of Sciences, *Carbon Dioxide and Climate: A Scientific Assessment*, 1979.
- Nordhaus, William, "Thinking About Carbon Dioxide: Theoretical and Empirical Aspects of Optimal Control Strategies," Yale University working paper, July 1980.
- Olson, Mancur, "A Conceptual Framework for Research About the Likelihood of a Greenhouse Effect," University of Maryland working paper, July 1980.
- Proceedings of the Carbon Dioxide and Climate Research Program Conference*, U.S. Department of Energy, Carbon-Dioxide Effects Research and Assessment Program, CONF-80/04110, December 1980.
- Revelle, R., E. Pouliding, C.F. Cooper, L. Lave, S. Schneider, and S. Wittwer, *Environmental and Societal Consequences of CO₂-Induced Climate Change: A Research Agenda*, Department of Energy, DOE/EI/10019-01, December 1980.
- Robinson, Jennifer, and Jesse Ausubel, "A Framework for Scenario Generation for CO₂ Gaming," International Institute for Applied Systems Analysis, March 1981.
- Schelling, "The Ecology of Micro Motives," *Public Interest* 25 (1971): 61-98.
- Lester B. Lave received his Ph.D. in economics from Harvard University in 1963. He is presently a senior fellow in the Economic Studies Program of the Brookings Institution and professor of economics at Carnegie-Mellon University, where he was chairman of the Economics Department from 1971 to 1978. From 1977 to 1981 he served on the steering committee of the American Association for the Advancement of Science's study to design a research agenda for carbon dioxide.

mixed year in 1981, with food processing employment dropping eight percent. In the salmon sector, however, 1981 was another banner year with the harvest totaling 110 million fish. In 1982, this positive trend is expected to continue with the salmon harvest registering between 110 and 130 million fish. Declining salmon prices are expected, however, due to high inventories, another anticipated record harvest and currency exchange disadvantages. The shellfish side of the industry suffered during 1981, with the king crab catch declining to less than one-half of 1980's level and the shrimp harvest dropping by one-half as well. In 1982, these low harvests for shellfish are expected to continue.

Forest Products

Alaska's forest products industry, reflecting very poor world markets for lumber and pulp, is in the midst of possibly the worst down cycle in industry history. Forest products employment dropped 16 percent in 1981 in Alaska. High interest rates in the United States and continued sluggishness in the Japanese economy both will have to turn around before the forest products industry can regain some ground. Industry experts anticipate, however, some improvement in late 1982 or early 1983.

Visitor Industry

Tourists to Alaska spend about \$300 million annually, with the typical tourist ranging in age from 35 to 55 with a household income of at least \$35,000 per year. Between 650,000 and 700,000 visitors arrived in Alaska during 1981, registering a 10 to 15 percent increase from 1980. This pattern, which has been relatively constant over the last several years, will continue during 1982. In the future, foreign travelers will account for an increased portion of Alaska's visitor picture. Presently at least one-fifth of all Alaska visitors originate in Japan or Europe.

Distributive Industries

Alaska's distributive industries employ approximately one-half of the total Alaska non-agriculture workforce, excluding the military. In 1981, all segments of the distributive industries registered gains, most notably transportation and finance. Total distributive sector employment increased four percent. In 1982, the support industries will continue to mirror the steady advance of the Alaska economy as a whole.

Government

Government has been a major stabilizing force on the Alaska economy, providing about 40 percent of all the jobs statewide, when including the military. Prudhoe Bay petroleum revenues again will support state government growth with \$3.3 billion in FY81, \$3.9 billion in FY82 and \$4.3 billion in FY83 (net of required permanent fund contribution). The overall presence of state government will remain strong in the future. Alaskans must make fundamental decisions soon concerning the direction and the extent of involvement that government will take in the future growth of the Alaska economy.



Notice: This material is reproduced by copyright. (Title 17 U.S. Code)

Reagan Spurs Corps Construction

\$100 Million for '82



By COL. LEE R. NUNN
Corps of Engineers
Alaska District



buoyed by increased military spending, the Alaska District's construction program for fiscal year 1982 will cost 57 percent more than 1981. The 1982 military program will total \$75 million, while civil works projects will add another \$26 million. This compares to \$40 million of construction contracts awarded by the district during FY 1981.

We expect a continuing increase in military construction for the next few years as a result of President Reagan's decision to strengthen the country's military posture. Our 1983 military construction program will approach \$110 million. Additionally, we already have early design starts on projects totalling more than \$33 million for FY 1984, indicating that program also may exceed \$100 million.

The Alaska District achieved a significant goal in 1981. It issued three general permits for oil development activities on the North Slope. These general permits — which have been issued for a five-year period — will practically eliminate the need to process individual Corps permits for construction of access roads, drilling pads, storage areas and

other petroleum-related developments north of the Brooks Range. We expect these GPs to encompass nearly 90 percent of the North Slope permit actions, especially those that receive few comments and yet take so much processing time.

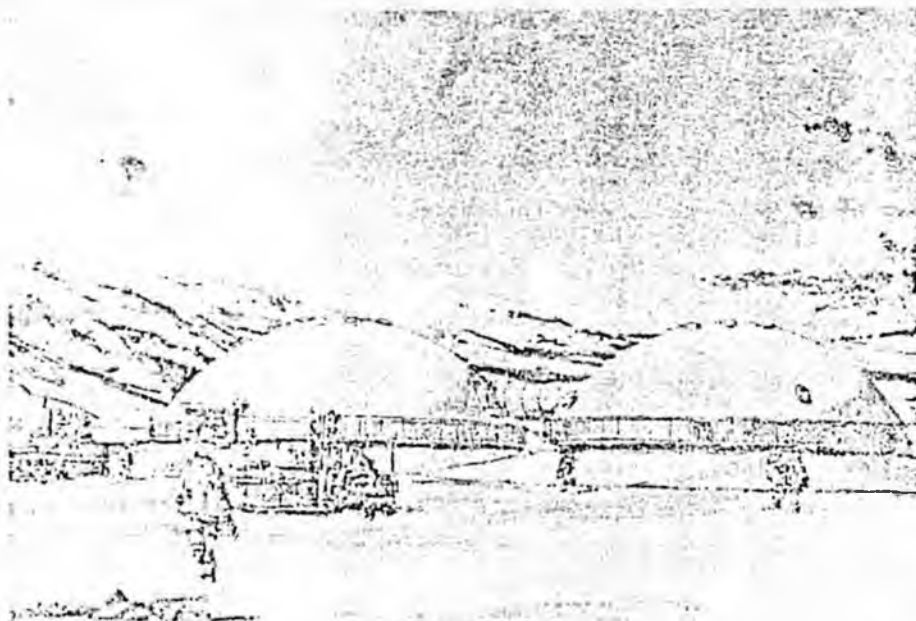
Fills up to 150,000 cu. yd. are permitted in two of the permits and access roads up to five miles in length are permitted in the other. A pre-application coordination conference is required to help iron out problems before final application plans are prepared. These conferences are similar to the gravel conferences already held by oil companies and resource agencies. Because of the size of the fills, the district requires submission of an application so that we can tabulate and assess cumulative impacts. Then following a short 15 day period for comments from resource agencies, we can generally issue a letter of authorization.

The district also expects to issue general permits for each of the regional housing authority areas in Alaska.

MAR Construction to Start

The largest military construction start this year is phase one of the Minimally Attended Radar (MAR) project. The Air Force is planning to replace 1950-vintage facilities throughout western and interior Alaska that are part of the Aircraft Control and Warning System. This spring the Corps of Engineers will begin constructing support facilities at Indian Mountain, Cape Romanzof, Sparrevohn and Tatalina. We will call for bids soon on a single contract for all four sites. The cost is expected to range from \$30 to \$50 million. The Alaska District design is based on a concept developed by the architectural firm of Mayne and Partch. A 90-ft. diameter dome for living quarters and a 100-ft. diameter dome for industrial and maintenance functions will be constructed at each site.

Phase two of MAR construction will begin in 1983. Existing buildings will be renovated and facilities consolidated at Cape Lisburne, Cape Newenham, Cold Bay and Tin City. Smaller facilities will be located at Kotzebue, Fort Yukon, Galena and Murphy Dome.



Artist's rendering of the Minimally Attended Radar project, Phase One, designed for the U.S. Army Corps of Engineers by Maynard and Partch.

Design of the FY83 phase will be accomplished by the district's design branch and by contract with architectural-engineering firms. Construction for phase two also is expected to cost between \$30 and \$50 million.

Military Construction Scheduled

The FY82 construction program for Eielson AFB includes four projects. New construction includes an 8,000-sq.-ft. asphalt concrete ammunition holding area with associated gravel road and a 6,000-sq.-ft. flight simulator building containing fire protection, air conditioning and environmental control systems. The ammo maintenance upgrade will cost less than \$1 million and the flight simulator project will cost between \$1 million and \$5 million.

Two projects will modify existing facilities. A munitions maintenance shop will be improved by adding 800 sq. ft. of parking pads for explosive-handling vehicles and approximately 2,500 ft. of security fencing. The project is estimated to cost between \$1 million and \$5 million. A project expected to cost less than \$1 million will modify an existing telecommunications building.

On Elmendorf AFB, two existing barracks will be remodeled to house unaccompanied enlisted personnel. The project will cost \$5-\$10 million and will be advertised in the third quarter of FY 1982.

Other projects scheduled for Elmendorf include alterations to a transmitter building and a fuel cell hanger. The second project includes installations of fire suppression systems, alarm systems and upgrading of the existing electrical system. Both projects are expected to cost between \$1 million and \$5 million.

Another project in the same cost range will convert an existing building to a training facility. The facility will contain classrooms, a mobile training set, visual aid rooms and a hydroelectric power room.

Two projects are scheduled for construction at King Salmon AFS. Repairs to a taxiway will be combined with an operations and maintenance job for runway repairs. The project was scheduled for early advertisement so that materials can be shipped by Cool Barge which leaves Seattle in mid-March. A taxiway project is expected to cost between \$1 million and \$5 million. A composite building, expected to cost more than \$10 million, consists of replacing the existing facilities with a new 22,780-sq.-ft. building. The composite building will provide office space, dining facilities and industrial functions.

A \$1-\$5-million project close to award will install vehicle exhaust systems in shop buildings at Ft. Wainwright and Ft. Greely. The base contract includes three buildings on Ft. Wainwright and two buildings at Ft. Greely.

Corps, State Cooperate at Homer

Civil works projects in Fairbanks and Homer are scheduled for 1982. Scheduled for advertising in the second quarter of FY82 is a project to enlarge the existing small boat harbor at Homer. Estimated to cost in excess of \$10 million, the project includes construction of new breakwaters, removal of existing breakers and dredging. The harbor would be expanded from its present 16.5 acres to 50 acres and moorage capacity would be increased from 400 spaces to a total of 1,500.

The State of Alaska and the City of Homer feel the project is needed urgently enough for the state to pay the bulk of construction costs if this will make early contract award possible. The Corps and the State are trying to develop a unique agreement whereby the state would pay the federal portion of the construction costs but the project would remain a Corps project. The Corps would prepare plans and specifications and administer the construction contract as usual.

This type of cooperation between the

Corps and the state also could be used to expedite construction of two hydroelectric projects, Bradley Lake and Snettisham, phase two. The Alaska Legislature appropriated \$15 million for the Bradley Lake project and \$4.5 million for the Snettisham project.

The Alaska congressional delegation strongly supports initiatives to accelerate construction of needed hydropower projects and is working on legislation which would allow the Corps to accept state funds and start work. Depending on funds available this year, the district will prepare plans and specifications for constructing a temporary construction camp to accommodate up to 200 workers. Continuing drilling and survey work will be conducted, and two local service roads, one from the airstrip to the powerhouse and the other from the powerhouse to the dam site will be designed.

The Bradley Lake project includes a concrete gravity dam with a lake tap diversion into a concrete-lined power tunnel which will carry the water to a steel penstock. Water will then fall through the penstock to an above-ground powerhouse near sea level. The present schedule calls for power to come on line in 1987.

The Snettisham project, located near Juneau, has congressional authorization but has not yet been funded. If funds are authorized, the Corps will begin preparing plans and specifications for construction of the powerhouse tunnel, construction camp, a short access road and a third turbine generator set to be installed in the existing underground powerhouse.

Snettisham was designed in phases to meet expanding demand. Construction of the Long Lake phase was completed in 1974. Interest has been revived in the second phase, tapping Crater Lake, which would involve constructing a 7,820-ft. power tunnel and penstock, about one mile of roads and installing the third turbine.

More Work at Chena

In Fairbanks, the third major interior drainage channel (Channel A) was scheduled to be advertised in December. This project will provide interior drainage features on the lower portion of the Tanana levee in the vicinity of the Fairbanks airport.

Major construction contracts to provide seepage control measures also are under design for Chena. Scheduled for advertisement early this year, the projects will consist of placing silt blankets and drilling relief wells. This remedial work is a result of an operations test the Corps conducted on the project this summer.

Main features of the project, including a seven-mile-long Moose Creek Dam with its outlet works, a floodway and a 20-mile-long levee have been in operation since 1979. However, until recently, water levels in the Chena River had not been high enough to operate the project and divert water from the Chena to the larger Tanana River. Heavy rains in July allowed the gates to be closed for the first time.

The District used the event as a test fill to

evaluate the performance of the structure. Surveillance of the embankment and downstream areas resulted in the discovery of a minor erosion problem on the upstream slope and several sand boils in low areas downstream of the dam. A small groin was constructed to correct the erosion problem. The scheduled contract work will correct the downstream problems.

A contract for constructing recreation facilities at the Moose Creek Dam project is on the district's schedule with a spring advertising date.

Dredging Project Added

In addition to the annual maintenance dredging at Nome, Homer, Ninilchik, Dillingham and Anchorage, the district will be dredging Dry Pass this year. Dry Pass is the

waterway between El Capitan Passage and Shakan Strait which provides a safer, shorter route for passage of fishing vessels, log rafts and small vessels from the northwest coast of Prince of Wales Island. The Corps has not dredged the passage since 1958-59. A contract valued at less than \$1 million will be advertised in February.

Carryover and Completed Work

Carryover work includes expansion of the Cordova small boat harbor and installation of the Barrow gas line. The Alaska District has a \$5.7-million contract with JLI Construction Co. of Ferndale, Wash., to double Cordova's harbor size. Twenty acres will be added by enclosing a near rectangular area with rubblemound breakwaters and remov-

ing the existing breakwater. Now closed down for the winter, the project is scheduled for completion in November 1982.

In Barrow, the Corps is building a natural gas distribution line for the Bureau of Indian Affairs. Work on the \$45 million project takes place in the winter when the ground is frozen enough to protect the tundra.

Three major civil construction contracts were accomplished during FY81. Peter Kiewit Sons' Co. completed the small harbor at Port Lions on Kodiak Island a year early. The \$1.5-million contract included construction of a 170-ft. stub breakwater and a 600-ft. main breakwater. Two quarries were developed and approximately 66,000 cu. yd. of materials were placed.

At Craig, T.O. Paddock Construction Co. Construction Rigging, a joint venture, completed a 150-ft. stub breakwater and a 275-ft. main breaker to provide additional wave protection to the entrance of Craig's South Cove Harbor. The \$4,000,000 project was completed in September.

Another project completed by Peter Kiewit was the Tanana River Levee, phase three. The \$7-million project protects a large area of southeast Fairbanks as well as property used by the airport, the Alaska Railroad and many industrial companies. The contractor started the work in early February and completed the project by early April.

Major military construction projects accomplished during FY81 included the Regional Operations Control Center on Elmendorf AFB. The Interstate Co. constructed a 23,600-sq.-ft., two-story steel-framed, precast concrete panel enclosed operations structure and similar generator building, both adjacent to existing headquarters. The \$6.9-million contract also included paving the parking lots, associated utilities and site work. Phase two will begin this year when Interstate remodels the control center facility after the Air Force completes installation of communications and radar equipment.

Other Elmendorf projects completed during FY81 included a \$2.8-million contract with McWili, Inc., to alter a base enlisted quarters building, a \$1.2-million contract with Sandland Construction to construct a concrete block addition to the fire station and a \$3-million contract with Green Construction to repair airfield pavement.

At Ft. Richardson, major contracts included \$610,000 to McLee Construction Co. to construct a 4,605-sq.-ft. airfield fire and rescue station, and \$4.7 million to Alaska Diversified/Finchbach for modernizing two barracks buildings and the dining facility.

At Shemya, Hoffman Construction completed a \$4.5-million contract to construct a 729 sq. ft. approach facility, concrete foundations, and stands for landing equipment and antennae. Work also included repair on the dock with new sheet piling and 111-piling. City Electric had a \$222,000 contract to furnish and install instruments for the electrical power generating plant. At King Salmon, Rockford Corp. had a \$416,000 contract to construct a new aerated sewage lagoon and modify and add to the existing blower house. □

A-L Welding. Alaska's finest natural resource for the finest welding products.

It's only natural to come to A-L Welding for all your welding supplies. Because we're the largest source for the finest welding equipment and gases in Alaska.

Fact is, we stock one of the largest inventories in the state. So we can supply your needs without delay.

What's more, the welding products business is our only business. So we know your special requirements and have the experience and knowledge able staff to handle them.

The best selection of the best products.

We want to make your welding operation more productive, more profitable. That's why we supply you with the most comprehensive selection of superior welding products. Plus the most advanced technical expertise and complete customer service—before, during and after your order.

So bring us your order today. Come to A-L Welding, Alaska's largest single source for the finest shop and industrial welding products.

After all, it's only natural to come to the industry leader when you want the best.

Oxy-fuel gas equipment.

- Cutting, welding & regulation equipment.
- Shape cutting machines.
- Accessories—welding hose & fittings, spark lighters, tip cleaners, soapstone & fluxes.

Gas welding & brazing filler metals.

- Bronze, mild steel, silver alloys & general maintenance alloys.

ARC welding equipment.

- Machines—engine driven, stick electrode, MIG, TIG & plasma.
- Accessories—welding & power cable, electrode holder, ground clamps, MIG guns & parts, TIG torches and parts, tungsten electrodes.

Electric welding filler metals.

- Mild steel electrodes, solid wires, alloy electrodes & wires, flux cored wires, stainless electrodes & wires, aluminum wires, TIG wires (36" aluminum, mild steel, stainless steel), maintenance alloys.

Safety equipment.

- Welding hoods, goggles, spectacles, face shields, respirators, full protective leathers and gloves.

Miscellaneous products.

- Hard facing electrodes & wires, carbon arc torches and electrodes, wire brushes, chipping hammers and abrasive products.

Cylinder gases.

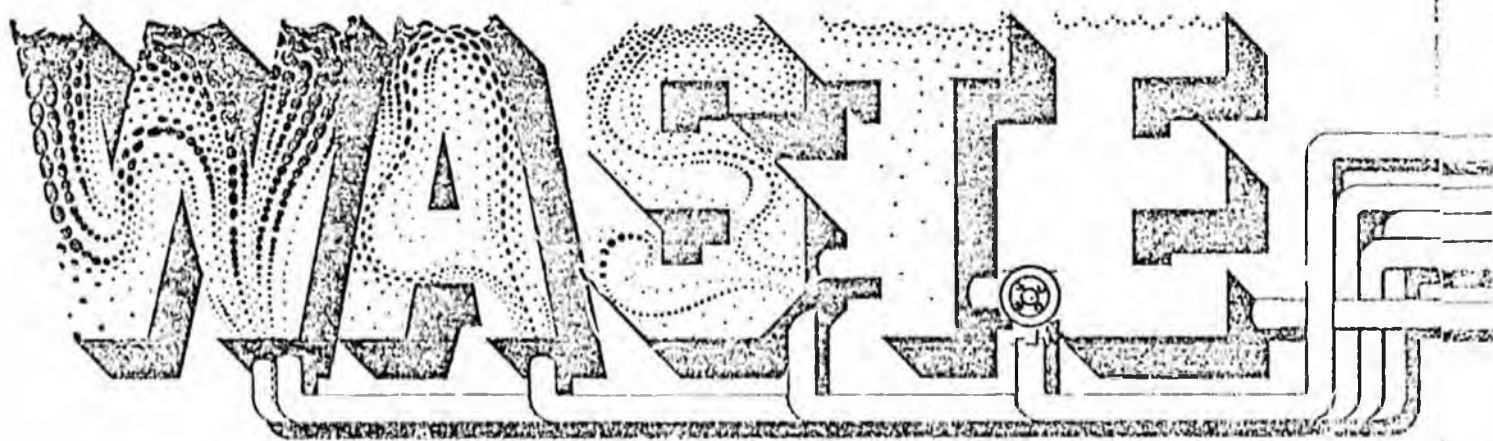
- Oxygen, nitrogen, argon, acetylene, hydrogen, helium, breathing air, carbon dioxide, Liquid Air FUEL-GAS™, specialty gases—pure & mixes.

The Productivity People.

A-L WELDING PRODUCTS, INC.

A Subsidiary of L'An Equipe
Main Office
6510 Arctic Spur Road
Anchorage, AK 99502
(907) 278-4658
Mile 13, North Kenai Road
Box 861, Kenai, AK 99611
(907) 283-7141
1854 Second Avenue
Fairbanks, AK 99701
(907) 452-4781

WHAT TO DO WITH HAZARDOUS



by Selim M. Senkan and Nancy W. Stauffer

Toxic and hazardous chemical wastes, the inevitable by-products of a technological society, rank as one of our most serious problems. But proper management practices can prevent them from threatening life or its environment.

FOR many decades industrialized society has produced hazardous chemical wastes. They threaten human health and the environment because they have dangerous properties; many are toxic and some can explode or undergo destructive reactions. In the 1970s a series of highly publicized incidents began linking human tragedy with hazardous wastes handled improperly in the past, either through negligence or lack of knowledge. People became terrified of waste-disposal sites, viewing them as time bombs. The fragile nature of our environment became clear, but much damage had already been done.

Meanwhile, industrial and other activities continued to produce billions of pounds of potentially hazardous wastes. Responding to growing concern, many companies adopted the safest waste-handling techniques available, and some began to invest substantial funds into improving current technologies and developing new ones. Unfortunately, some companies continued to handle their wastes irresponsibly. After all, the economic incentive is great: it costs ten to a hundred times more to use proper waste-treatment methods than simply to dump untreated wastes in unsecured landfills, rivers, lakes, and oceans. The prices

charged by companies using unsafe methods did not reflect the full social cost of production, and the conscientious producers found themselves at a serious competitive disadvantage. Recognizing the economic pressures within industry and the potential dangers posed by hazardous wastes, the federal government began to take legal and political steps to ensure better waste management.

However, developing sound waste-management policies has proved controversial and complex. The Resource Conservation and Recovery Act (RCRA) of 1976 gives the U.S. Environmental Protection Agency (EPA) overall responsibility for setting hazardous-waste regulations and assigns individual states responsibility for developing specific hazardous-waste programs. Both tasks have been difficult. After considerable effort, EPA published its first set of rules and regulations in May of 1980, including criteria for identifying hazardous and toxic wastes, a list of specific and nonspecific hazardous-waste streams, and a manifest system for controlling them from production to disposal ("cradle-to-grave").

Industry immediately criticized the regulations as expensive and stifling, calling for—at a minimum—added provisions establishing "degree of hazard." (Under the current system, all substances that fit EPA's broad definition of "hazardous" are subject to the same rules.) EPA is trying to respond to industry's demand, but developing an acceptable scheme may be impossible: the agency had considerable difficulty just creating a broad definition (see page 40).

While EPA and industry continue their controversy, the states have problems of their own. Many states want or need regulations stricter than those set by EPA, but while they have the legal right to set stricter laws, they might find it impossible to enact them without federal backing (see page 48). Like environmental groups, the states are worried about the Reagan administration's steps to cut EPA's budget and ease current regulations in an attempt to improve the economy.

The Federal Perspective

Despite those steps, the Reagan administration claims that the cleanup of hazardous spills and dumpsites is its highest priority. Such cleanup activities are covered by the Comprehensive Environmental Response Act of December 1980, which establishes a trust fund to pay for cleanup of waste sites and spills and assigns EPA responsibility for administering it. Of the \$1.6

billion in this "Superfund," 87.5 percent will be collected from the chemical industry over a five-year period. Under the Superfund program, by July 1981, EPA had identified 9,300 hazardous waste sites, undertaken preliminary assessments of 5,900, completed investigations of 2,700, and begun emergency actions at 52. Both EPA and the Justice Department have been pursuing vigorous enforcement programs.

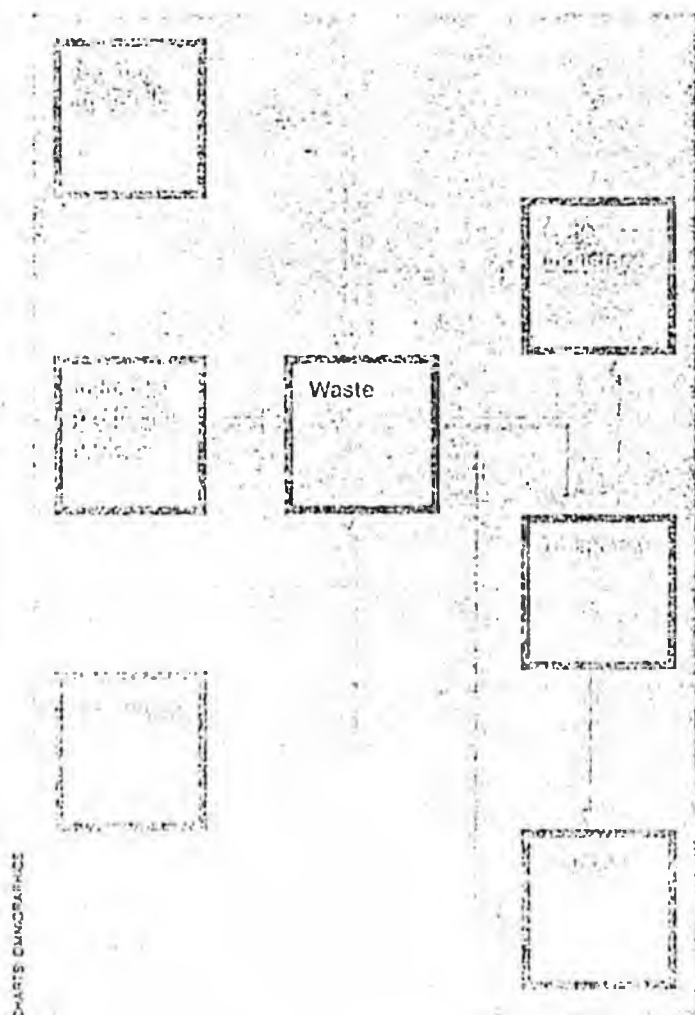
Nevertheless, some congresspeople and environmentalists are charging the administration with dragging its feet in administering the Superfund program. Many are concerned that EPA missed the June 1981 deadline for developing a National Contingency Plan, slated to be the cornerstone of the Superfund response actions. Furthermore, EPA has not completed a uniform scheme for states to rank sites they identify as threatening. And emergency actions taken thus far have focused mostly on preventing further leaching of hazardous materials from existing waste sites into groundwater; little actual hazardous-waste removal and treatment has occurred. There is also much speculation that Superfund money will not be sufficient for cleanup, with administration of the program taking most of the funds.

Environmental groups and many states fear the administration will not spend all the fees collected from industry to clean up priority sites. States could be faced with cleaning up both priority and nonpriority sites—a task exceeding the capabilities of most state budgets. Likewise, industry worries that it will end up with excessive financial responsibilities. If EPA judges a company's cleanup efforts inadequate, the agency will do the work and bill the company three times its expenses. But when a company cleans up its own sites, there is no limit on its cleanup responsibilities—no definition of what is "adequate."

The crux of the hazardous-waste regulation problem is clear: we do not have enough solid scientific information to identify with certainty the "right" level of regulation. And it is not surprising that battles are highly emotional: too much regulation can severely impair our economic well-being, while too little regulation can threaten our very lives. Nevertheless, we must not let the regulatory furor obscure one encouraging fact: while we may not fully understand all aspects of the hazardous-waste issue, we do have the basic technology to handle most waste-related problems. Many of the processes are expensive, but their costs are outweighed by the potential gains associated with saving human lives, decreasing human

To manage hazardous wastes, the general pathways of industrial waste generation, recycle, and disposal must be considered. The best solution includes reducing the initial quantity and danger of hazardous wastes, and many industries

are modifying their processes to accomplish this source reduction. Wastes can also be recycled or reused; what's left must be treated and disposed of in an environmentally acceptable way.



suffering, and protecting our environment from toxic chemical contamination. Also, research is underway in government, industry, and academia to improve the technology, and the prospects for even more effective, less costly methods of treatment and disposal are good.

The Magnitude of the Problem

According to EPA's definition, between 10 and 17 percent of all chemical wastes are "hazardous"—some 35 to 60 million metric tons (77 to 130 billion pounds) in 1980. Although some toxic substances are now being banned, production of chemicals is increasing and new materials are being identified as hazardous, resulting in a 5 to 10 percent growth in the amount of hazardous wastes generated each year.

Essentially all industries, both manufacturing and nonmanufacturing, produce hazardous wastes in

varying amounts and compositions. Most wastes come from very large generators, typically large manufacturing facilities located in the Mid-Atlantic, Southeast, Great Lakes, and Gulf Coast regions. In the nonmanufacturing sector, generators include schools, hospitals, gas stations, and repair garages.

In all, there are about 760,000 individual generators of hazardous wastes. About 40,000 produce more than five metric tons of wastes per month, while 695,000 produce less than one metric ton per month. The top 5 percent of the generators are responsible for 98 percent of the nation's wastes, while 91 percent of the generators together contribute only 1 percent of the total. However, the geographical distribution of large and small generators is not uniform nationwide (see the figure at the right). This regional variation is one of the factors making federal regulation of hazardous wastes difficult.

The EPA has estimated the total wastes and hazardous wastes generated by 14 specific industries (see the figure on page 38). Primary-metals and inorganic-chemicals industries are the biggest waste producers on the list, yet proportionally the fractions of their wastes that are hazardous are extremely low: 7.5 percent and 5 percent, respectively. Excluding pharmaceuticals, the other industries produce wastes that range from 24 percent to 100 percent hazardous. Together the primary-metal, organic-chemicals, pesticides, explosives, electroplating, and inorganic-chemicals industries produce about 83 percent of the total hazardous wastes generated by the industries.

A complete picture of the hazardous-waste problem must include wastes produced and handled in the past. It's estimated that from 330 to 570 million metric tons of hazardous wastes were produced between 1960 and 1980. Though some of these wastes have been eliminated through proper treatment and disposal, significant quantities have been kept in over 100,000 industrial disposal sites, many still operating today. In addition to the identified sites, we must assume there are many sites that have long been closed and cannot now be accounted for. Clearly, not all industrial sites pose an immediate threat to human health, but experts estimate that between 1,200 and 34,000 sites may cause problems, such as underground water contamination, and eliminating dangers at those sites may cost more than \$50 billion.

Unfortunately, precise sources, volumes, and components of the nation's hazardous wastes are not yet known and may never be public knowledge: the industrial sector is highly competitive and secretive, and

In 1980, an estimated 760,000 generators produced 35 to 60 million metric tons of hazardous waste. Most wastes come from large generators—typically large manufacturing plants in the Mid-Atlantic, Southeast, Great Lakes, and Gulf Coast

regions. Proper treatment and disposal of hazardous wastes from large generators will make the greatest national impact, but in many regions small hazardous-waste generators pose serious local problems.



Percentage of total hazardous waste
Percentage of total waste generators

many companies believe information on their waste streams should remain confidential. But if we consider the enormous quantities of hazardous wastes being generated and stored, the persistence of many of the constituent compounds, and the difficulties involved in identifying their short-term and long-term toxic effects, we must conclude that our hazardous-waste problem is very serious indeed.

Waste Generation and Management

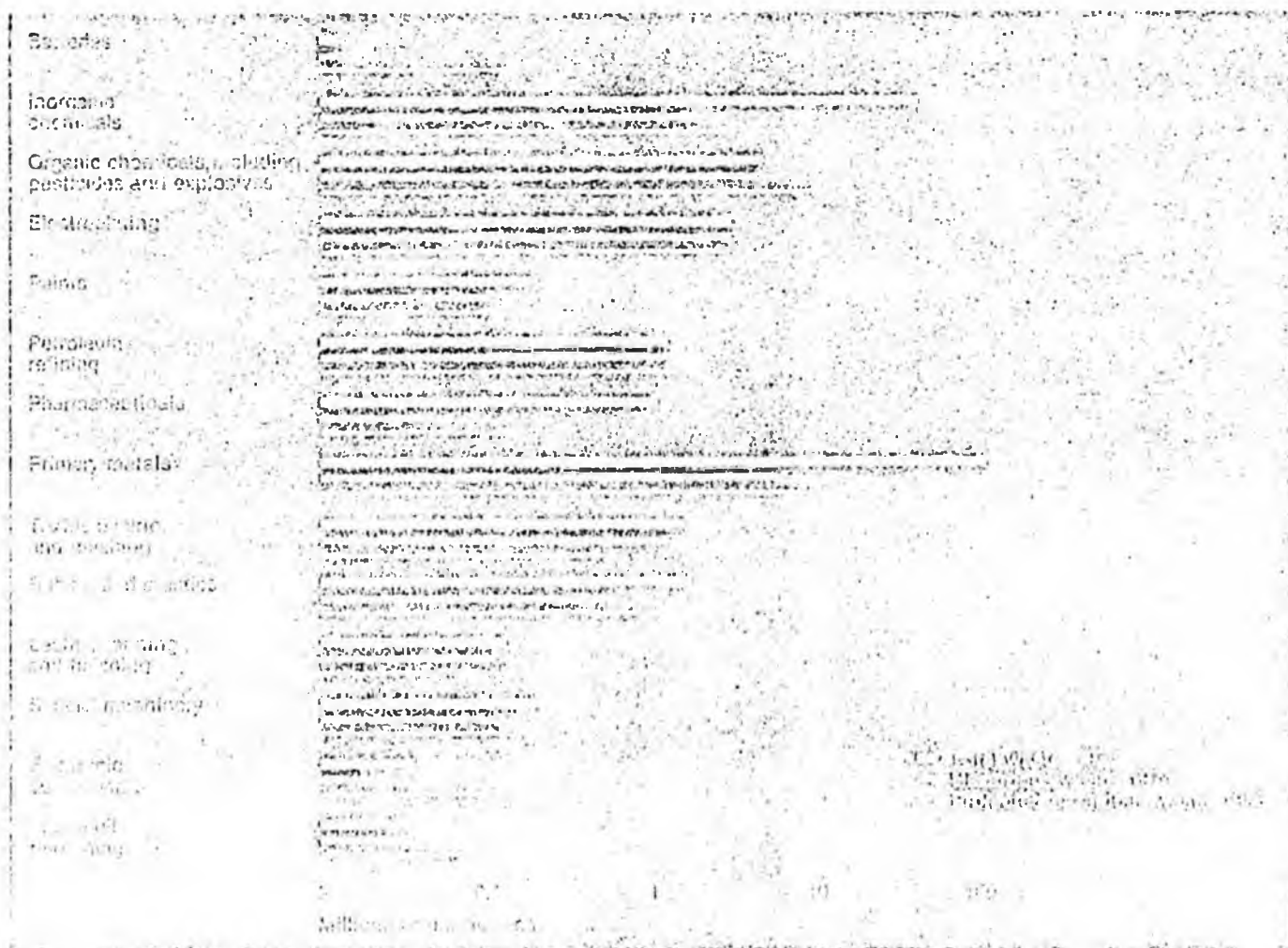
Hazardous wastes are produced by virtually all types of industries, and characteristics of the waste streams are as variable as the industries themselves. Although many cleanup and disposal options exist, no single process can be applied to all types of waste streams. Considerable knowledge and judgment are needed to select a suitable process for each specific waste or class of wastes.

To clarify the approaches to managing hazardous wastes, it is helpful to consider general pathways by which wastes are generated. There are essentially three sources of wastes (*see the figure on p. 36*). All industries require raw materials, and frequently a fraction of those materials ends up as waste streams. The process of using raw materials to form a product or perform a service also produces a substantial amount of waste. Finally, consumers create wastes by using and discarding the products.

There are several options for managing wastes, also shown in the figure:

- They can be recycled within the industry that produced them.
- They can be sold to another industry.
- They can be treated and recycled within the same industry, sold to another industry, or disposed.
- They can be disposed of without pretreatment (a practice that is illegal for hazardous wastes).

Total and hazardous wastes generated by 14 specific U.S. industries, estimated by the Environmental Protection Agency.



This analysis is valuable because it makes clear the several strategies available for reducing the hazardous-waste problem.

Source Reduction. Clearly, the ideal solution involves reducing the quantity and danger of hazardous wastes produced in the first place. Although source reduction is not always feasible, many industries are working to modify their processes to accomplish that end. Some companies are altering or pre-treating their feedstocks, while others are changing processes or selected operating conditions to reduce the formation of hazardous compounds. The expenses will be partly offset by lower treatment and disposal costs and reduced potential for future problems.

Such economic incentives have recently been increased: industry must use expensive treatment and disposal practices mandated by RCRA, and must pay high prices for raw materials, particularly petroleum, petroleum-derived intermediates, and strategic min-

erals. Nevertheless, regulatory action may be required to ensure that all waste producers pursue source reduction. It is encouraging that industry has made significant changes, a notable example being the development of easily biodegradable pesticides to replace persistent ones such as DDT.

Waste Recycling and Reuse. Despite source reduction, however, some hazardous wastes will no doubt be produced. Before disposing of those materials, industry can explore another option: recycling and reuse. In the past, environmental regulations were minimal, and the cost of recovering materials from waste streams was greater than the cost of acquiring new materials; recycling was therefore rare. But higher costs of treatment, disposal, and raw materials are making recycling far more attractive.

Most companies are actively pursuing new ways to recover and reuse their own wastes. But given the wide variety of companies nationwide, the greatest

Clearly, the ideal solution involves reducing the quantity and danger of hazardous wastes produced in the first place.

opportunity for increased recycling clearly lies in industry-to-industry transfers. However, such transfers are difficult to arrange because of competition; industry places great value on secrecy, so it is difficult if not impossible for one company to know what materials are available from another.

This problem is being solved through establishment of waste clearinghouses and waste-exchange organizations that list available materials without identifying their sources. When RCRA was passed in 1976, there were 4 such waste exchanges; in 1981 there are at least 29. And many of today's exchangers are quite aggressive: while some still simply provide lists of available materials, others seek out both producers and potential consumers. There are also waste brokers who act as agents for waste-generating companies, receiving a commission for each successful sale.

One of the fastest-growing recycling markets is in chemical solvents. Recycling solvents has always been feasible; these high-value compounds can frequently be recovered by simple distillation techniques. RCRA further encouraged such recycling by making disposal of spent solvents difficult and expensive. By early 1981, solvent recycling involved some \$200 million per year, and experts foresee a billion-dollar yearly market by 1986. The National Association of Solvent Recyclers, formed in Dayton, Ohio, in 1980, now has 43 members. These and other companies are making plans to construct improved facilities to handle chemical solvents. Some of the plants will recycle all the solvent, some will recycle part of the material and recover the rest as synthetic fuel oil, and others will convert all the waste to fuel.

While the trend toward recycling is clear, more can be done. Today only about 10 percent of the materials listed with waste exchanges actually changes hands; in older European organizations 30 to 40 percent is traded. Part of the problem stems from current regulations. Provisions of RCRA do not cover recycling activities comprehensively. For example, under present law some recyclers are not required to have permits for processing wastes unless they generate their own hazardous wastes. (However, recyclers may need permits for storage and transportation.) Such complications may make waste-generating companies hesitant to deal with recyclers and brokers, because if the company receiving the waste does not handle it correctly, the liability may revert to the waste generator.

The EPA is now considering revising RCRA to provide for better control over waste recyclers. However, the Chemical Manufacturers Association and a

host of chemical companies are challenging EPA on the grounds that materials destined for recovery, recycling, and reuse are, by definition, not waste and thus should be exempt from hazardous-waste regulations. Although this point is valid, the likelihood that such an exemption will materialize is quite slim, as some recyclers were among the major offenders of environmental law in the past.

Meanwhile, two bills supporting recycling are being considered by Congress. One would make procedural changes in RCRA that encourage creation of pollution-control facilities, including recycling units. The other would increase the investment tax credit for companies involved in energy conservation and waste recycling. Senate hearings on the former bill were held in June 1981; hearings on the latter bill have yet to be scheduled. With such changes pending, the outlook for recycling is better than ever.

However, we must not have unrealistic expectations: according to a 1976 study by Arthur D. Little, only 3 percent of the 350 million metric tons of industrial wastes generated that year were potentially recyclable, although the fraction of hazardous wastes that is recyclable is probably higher. Changing regulations and rising prices have no doubt increased both percentages, but the fact remains that for certain types of wastes, recovery and recycling are simply not yet practical. The best we can do is to treat and dispose of such wastes in an environmentally safe way.

Classifying Hazardous Wastes

There are many waste-treatment and disposal processes, each best suited to certain types of materials. Therefore, the first step toward effective waste management is to examine an individual waste stream in enough detail to identify the appropriate processing techniques. The most practical method of classifying substances is according to their basic physical and chemical properties.

The first decision involves the state of the waste stream: is it predominantly a gas, a liquid, a solid, or a mixture? Next, the waste is classified according to its chemical constituents: are they organic or inorganic? Explosive materials should be identified, as they require special handling. Both organics and inorganics are subdivided into aqueous and nonaqueous categories, and then classified according to their concentrations of heavy metals. Heavy metals are important because their presence complicates many waste-treatment operations. Organic wastes can be further classi-

The Difficulties of Defining Hazardous Wastes

ESTABLISHING effective and just hazardous-waste regulations is difficult, in part because it is hard to define precisely which materials should be considered hazardous. Should a chemical be classified as hazardous because at some dosage it is toxic to humans? If so, should it be regulated only at certain levels of generation?

Not surprisingly, different people offer drastically different answers to such questions. At one extreme are those who believe human activities should generate no pollutants; they advocate very strict government regulations. At the other extreme are those who believe industry can and should take responsibility for protecting the public; they are opposed to any government regulation of any industry.

A Delicate Balance

The practical optimum is somewhere between those extremes, and therein lies the problem. The best regulations would protect human health and the environment while imposing the minimum economic hardship on industry and thus our national economy. Unfortunately, we do not fully understand the possible long-term adverse health effects of many chemicals. Indeed, only recently has environmental contamination been recognized as a problem worthy of intensive scientific research. Regulators have thus been faced with the problem of imposing quantitative pollutant emission controls in the presence of little (if any) solid scientific data.

Some hazardous wastes have properties that are easy to recognize—for example, ignitability, corrosivity, reactivity, and acute toxicity—making their definition and regulation relatively uncontroversial. However, chronically toxic

chemicals are harder to identify and thus are the subject of considerable controversy. Chronically toxic compounds can take 15 to 20 years or longer to produce adverse health effects. Because everyone is exposed to a wide variety of chemicals for many years, it is difficult to identify cause-and-effect relationships. Although epidemiological studies, bioassays, and other research efforts provide some insight, our understanding of the scientific principles of chronic toxicology is in its infancy and inadequate for clearing up regulatory disputes.

Defining and identifying acutely toxic chemicals can also be a problem because virtually all substances become toxic at sufficiently high doses. Some chemicals produce death in microgram doses and thus are commonly considered extremely hazardous or toxic. Others are essentially harmless, inducing a toxic response only at doses over several grams. But most chemicals fall between those two extremes, posing the question of where on such a scale we make the (perhaps arbitrary) switch from "toxic" to "safe."

There is yet another prob-

lem in deciding whether specific compounds are hazardous. Laboratory tests generally focus on a single compound, but compounds almost always exist in mixtures, and there is growing evidence of synergisms between them. Thus, the health impacts of the mixture may be totally unlike those of the individual components. For example, we may determine that a compound is harmless, but in combination with another (perhaps harmless) chemical, this compound may become highly toxic. Since we do not understand how these interactions occur, we need to examine not only an enormous number of chemicals but also all possible combinations—a formidable task. Furthermore, most standard laboratory studies use nonhuman subjects and high chemical doses, so another troublesome question is how reliably we can extrapolate the results to people. Although this is also a highly controversial area, single-cell and animal tests will be the major source of quantitative toxicity data until better means are developed.

Despite the present shortage of information, in response to public outcry, the

U.S. Environmental Protection Agency (EPA) developed a system for identifying hazardous wastes through well-defined characteristics such as ignitability, corrosivity, reactivity, and acute toxicity as determined through a specific extraction and testing procedure. The EPA system also considers each chemical's chronic toxicity, changes in its health impacts at various concentrations, its potential for degrading into toxic products, its persistence in nature, and its potential for bioaccumulation. The EPA has also created a list of specific and non-specific hazardous-waste streams.

There are several indications of the difficulty EPA had in establishing hazardous-waste regulations. First is the long time delay before any action was taken. The Resource Conservation and Recovery Act mandated that EPA establish hazardous-waste regulations in 1976, but the agency did not publish any rulings until May of 1980, primarily because of its problems in defining the legal and technical terms on which the rulings are based. Even today, those terms are not defined with sufficient scientific rigor—this situation leads to continuing conflict between industry and regulatory agencies.

As the List Changes

As an even clearer demonstration of the problems of regulating hazardous wastes, the official list of hazardous wastes is constantly changing. In May 1980 that list contained about 300 chemicals and 80 waste streams (*see the figure*). There have been almost daily additions to the list as more toxicological evidence is obtained about specific compounds or groups. Not surprisingly, many substances



Arguments among environmentalists, waste-producing industries, and regulators (who consider themselves caught in the middle) are energetic and often emotional. The difficulties of regulating hazardous wastes can be re-

duced only through the acquisition of better scientific data. Recognizing that fact, researchers are now creating new fields of study combining engineering, environmental chemistry, and toxicology to help define and quantify the risks associated with various types of potentially hazardous wastes. With such information we will be in a better position to attack the complex issue of determining which risks can be reduced or eliminated, and what levels of risk we may have to accept to maintain our industrialized society.—S.M.S. and N.W.S. □

fied according to whether they are biological.

Unfortunately, most waste streams contain mixtures of all sorts of materials, and it is necessary to use several processes, either in series or in parallel. Since this practice leads to even higher treatment costs, it is likely that industries generating hazardous wastes will move in the direction of making their waste streams more uniform.

Designing Facilities

Choosing an optimal design for a waste-treatment and disposal facility is not simple, as different generators have different needs and options. There are at least three possible choices for generators of small quantities of hazardous wastes. They can install permanent, small-scale treatment facilities at plant sites and then use regional sites for ultimate disposal of treatment residues. They can use a contractor with specialized, mobile treatment units that operate at the plant site from time to time. Or they can use the services of a specialized treatment/disposal company.

The concept of a completely integrated regional facility is appealing but hard to implement (*see the figure on page 44*). Such a facility must be able to handle both large and small quantities of hazardous wastes at a reasonable cost, and must be readily accessible to a large number of generators. The siting of such a facility involves careful analysis of the geography, geology, topography, and hydrology of an area, along with social, economic, and political factors.

While integrated regional facilities are useful for small generators, companies that generate large quantities of wastes may be best served by having their own waste-treatment systems, even if there is no suitable landfill nearby for disposal of the treatment residues. Treating the wastes at the point of generation frequently reduces the amount and danger of the waste material and provides substantial reduction in transportation and related costs. Having their own treatment plants also enables companies to take greater advantage of recovery and recycling.

Treatment and Disposal Methods

There is a long list of processes for treating hazardous wastes (*see the table on page 43*). These processes are basically designed to reduce the volume of the waste, separate it into individual components that are easier to process, and/or detoxify it. Often certain processes also allow resources to be recovered. Each

[illegible]

The Environmental Protection Agency has compiled a list of hazardous wastes and waste streams, considering such factors as acute and chronic toxicity, ignitability, corrosivity, breakdown products, and potential bioaccumulation. In May 1980,

the list contained 300 chemicals and 60 waste streams; examples are shown in the table. There have been many additions and deletions as the list has developed, with changes often bringing charges of "overregulation" from some industries.

Treatment processes are designed
to reduce the volume of the waste, separate it into individual
components that are easier to process,
and detoxify it.

process ultimately produces residues that require a final disposal site, typically a secured landfill. Rather than describe each process, we will focus on a few that have a relatively broad range of applicability.

Incineration and Pyrolysis. The hazardous nature of certain wastes may be due to the structure of the molecules present rather than to the properties of the elements contained. In such cases, high-temperature treatment may simultaneously detoxify the waste and reduce its volume. The most common thermal treatment methods are incineration and pyrolysis.

Incineration involves burning wastes in the presence of sufficient oxygen with or without the use of an auxiliary fuel source. The products are generally gases (carbon dioxide, steam, hydrochloric acid, and sulfur dioxide) and ash with essentially no heating value. Pyrolysis essentially involves heating wastes in the absence of oxygen; the wastes thermally decompose to form a solid carbonaceous residue along with gaseous products. Often these two processes are combined.

The advantages of incineration and pyrolysis are substantial. These processes can in principle be applied to almost all organic wastes not severely contaminated by volatile heavy metals, and they can be used equally well on some inorganics. The facilities are capable of handling large volumes at a time, there is potential for energy and materials recovery, and the necessary equipment requires relatively little land. Finally, the processes can reduce the volume of most wastes to a minimum, reducing their danger and the costs of storing and transporting them.

However, there are several disadvantages to incineration and pyrolysis. The processes tend to be technically complicated and costly to operate—as high as \$300 per cubic meter of waste. The methods may not be directly applicable to some hazardous-waste streams because of the unusual combustion characteristics of some toxic wastes, especially those containing halogenated compounds. In addition, under some circumstances the processes produce a toxic residue that requires special disposal techniques, and they frequently give off pollutants such as carbon monoxide, hydrochloric acid, chlorinated dioxins, sulfur dioxide, or soot, requiring strict operating controls and additional pollution-control equipment.

Incinerators are used both at industrial plants where wastes are generated and at specialized disposal facilities. Incineration requires the user to select a system design suited to the type of waste, and operating conditions should be fine-tuned to the particular waste being burned. Certain materials in wastes also

require special handling. For instance, heavy metals such as arsenic, selenium, sodium, and mercury must be removed before incineration.

Our understanding of the subtleties of incineration and pyrolysis is limited, but advances are being made. For example, the Midwest Research Institute in Kansas City is opening a facility that will provide information on the compounds formed in an incinerator. The facility simulates actual incinerator conditions, but includes ports from which samples can be taken; the compounds in those samples can be identified and quantified. By running the system under different operating conditions, the researchers claim they can identify conditions that result in 99.99 percent destruction of the principal organic hazardous constituents—the level required by EPA.

In our laboratories in the Department of Chemical Engineering and the Energy Laboratory at M.I.T., fundamental combustion studies are in progress. We are examining the basic combustion characteristics of a variety of chlorinated hydrocarbons and their mixtures, thereby establishing a better understanding of the scientific principles involved in the incineration of toxic chemical wastes. And at the University of Dayton, researchers are examining the pyrolysis characteristics of toxic chemicals using a laboratory-scale thermal-decomposition analytical system.

Biological Methods. Biological treatment offers an effective means of handling organic and some inorganic toxic wastes. The waste stream is brought into contact with microorganisms that detoxify the waste material—decomposing organic molecules into carbon dioxide, water, or compounds with lower molecular weights. If the microorganisms are aerobes, molecular oxygen must be added to the systems; if they are anaerobes, oxygen is not necessary for them to degrade the wastes. (There are also certain microorganisms that can act either as aerobes or as anaerobes.) Of the aerobic and anaerobic processes, the former are generally faster and have wider applicability.

Principal biological treatment processes include activated sludge systems, trickling filters, aerated lagoons, anaerobic digestion systems, and composters. The first three processes can be used for aqueous waste streams with total contaminant levels under 1 percent. The activated sludge system is particularly well-developed and tested, having been used in industry for many years. Its attractive features include compactness, flexibility, and relatively rapid rates of degradation.

Major hazardous-waste treatment and disposal processes

Process	Function Performed	Type of Waste	Forms of Waste	Typical cost range (Dollars per cubic meter of waste)
Incineration	Thermal destruction	Organic, inorganic	Solid, liquid, gas	\$100-\$1,000
Landfill	Isolation	Organic, inorganic	Solid	\$5-\$20
Bioremediation	Biodegradation	Organic	Solid, liquid	\$10-\$100
Chemical treatment	Chemical transformation	Organic, inorganic	Solid, liquid	\$10-\$100
Physical treatment	Physical separation	Organic, inorganic	Solid, liquid	\$10-\$100
Electrolysis	Electrochemical transformation	Organic, inorganic	Solid, liquid	\$10-\$100
Membrane separation	Membrane filtration	Organic, inorganic	Solid, liquid	\$10-\$100
Adsorption	Adsorption	Organic, inorganic	Solid, liquid	\$5-\$20
Extraction	Extraction	Organic, inorganic	Solid, liquid	\$10-\$100
Distillation	Distillation	Organic, inorganic	Solid, liquid	\$10-\$100
Crystallization	Crystallization	Organic, inorganic	Solid, liquid	\$10-\$100
Evaporation	Evaporation	Organic, inorganic	Solid, liquid	\$10-\$100
Flotation	Flotation	Organic, inorganic	Solid, liquid	\$10-\$100
Filtration	Filtration	Organic, inorganic	Solid, liquid	\$10-\$100
Centrifugation	Centrifugation	Organic, inorganic	Solid, liquid	\$10-\$100
Reverse osmosis	Reverse osmosis	Organic, inorganic	Solid, liquid	\$10-\$100
Ultrafiltration	Ultrafiltration	Organic, inorganic	Solid, liquid	\$10-\$100
Microfiltration	Microfiltration	Organic, inorganic	Solid, liquid	\$10-\$100
Ion exchange	Ion exchange	Organic, inorganic	Solid, liquid	\$10-\$100
Chromatography	Chromatography	Organic, inorganic	Solid, liquid	\$10-\$100
Extraction	Extraction	Organic, inorganic	Solid, liquid	\$10-\$100
Distillation	Distillation	Organic, inorganic	Solid, liquid	\$10-\$100
Crystallization	Crystallization	Organic, inorganic	Solid, liquid	\$10-\$100
Evaporation	Evaporation	Organic, inorganic	Solid, liquid	\$10-\$100
Flotation	Flotation	Organic, inorganic	Solid, liquid	\$10-\$100
Filtration	Filtration	Organic, inorganic	Solid, liquid	\$10-\$100
Centrifugation	Centrifugation	Organic, inorganic	Solid, liquid	\$10-\$100
Reverse osmosis	Reverse osmosis	Organic, inorganic	Solid, liquid	\$10-\$100
Ultrafiltration	Ultrafiltration	Organic, inorganic	Solid, liquid	\$10-\$100
Microfiltration	Microfiltration	Organic, inorganic	Solid, liquid	\$10-\$100
Ion exchange	Ion exchange	Organic, inorganic	Solid, liquid	\$10-\$100
Chromatography	Chromatography	Organic, inorganic	Solid, liquid	\$10-\$100

Anaerobic digestion and composting systems can tolerate concentrations of contaminants up to 10 percent and 50 percent, respectively. Of all biodegradation systems, composting is probably the best choice for most organic waste streams, primarily because it is not as sensitive to changes in flow rates, composition, and concentrations of the wastes. Composting uses organisms that can live at relatively high temperatures (45°C and up), and those temperatures and long residence times make bioconversion thorough.

Almost all organic compounds, including halogenated hydrocarbons, are biodegradable. However, there are a few limitations. The compounds in the waste must be nontoxic to the microorganisms. The wastes also must contain some water; enzymes play a key role in the microorganisms' degradation of wastes, and enzymes require water for their activity. Soluble inorganics must be kept to a minimum as they can inhibit the enzymatic conversion process and are generally unaffected by biological treatment.

Nevertheless, biological methods are widely applicable to organic wastes, and operating costs of most methods are low. Depending on the waste stream and the process used, typical costs range from \$1 to \$20 per cubic meter of waste. The major drawback is that large land areas can be required to hold wastes during the long, slow biodegradation process.

Adsorption. This well-established technology removes organic as well as some inorganic contaminants from aqueous streams. The waste stream is brought into contact with porous particles that adsorb the contaminants; the contaminant-bearing particles are then removed from the system. The adsorption process is often reversible, so removed material can be recovered or treated for disposal, and the sorbent can be regenerated and recycled. The costs of such treatment are generally between \$5 and \$20 per cubic meter of waste treated.

The most common sorbent is carbon. Activated carbon has been used for years to treat drinking and

Secured landfills are designed
specifically to contain hazardous wastes, and when operated
properly should minimize contamination
of the environment.

waste waters, decolorize liquids, control odors, and recover solvents. Activated carbon is obtained from coal, wood, coconut shells, and other organic materials, and is used in either granular or powdered form. The specific raw materials and manufacturing method determine the carbon's structure, adsorption characteristics, and regenerability. Regeneration is usually accomplished by heating the carbon particles until materials held in their pores desorb—a procedure that is expensive because of its high energy requirements. However, this thermal technique may one day be replaced by improved methods, such as critical solvent extraction, which uses milder temperatures and therefore is less costly.

The other common sorbent is resin. Resin has a lower adsorption capacity than activated carbon, but its chemical nature can be manipulated to make it highly selective. Also, resin regeneration does not require such high temperatures; thus, resin may be better than carbon when material recovery is desirable. In combination, the activated-carbon and resin adsorption systems could become widely used, as together they offer flexibility at an acceptable cost.

Solidification/Encapsulation. This is the process of deactivating and immobilizing toxic chemicals by incorporating them into the structure of a stable solid compound with high physical strength, minimal leachability, and (ideally) minimal cost. Although solidification/encapsulation is now used for a small fraction of hazardous wastes, it promises to become one of the most important disposal techniques.

Practically all processes for treating hazardous wastes produce some residue, and frequently that residue is also toxic. Therefore, solidification is usually the last treatment operation before waste streams are sent to a secured landfill for storage. Also, for concentrated heavy-metal solutions and hazardous wastes that cannot be incinerated or detoxified by other methods, solidification is the only environmentally sound method of preparing the wastes for storage.

There are four major kinds of solidification technologies: cement-based, lime-based, thermoplastic, and polymerization. Techniques using cement are most common because they are cheap and easiest to use. They are effective principally for inorganic wastes, especially those containing heavy-metal cations such as cadmium, chromium, copper, lead, mercury, and nickel. The alkalinity of the cement stabilizes the heavy metals in the form of hydroxides, much as did the ores from which the metals originated. Asbestos, metal filings, and other materials

often present in waste streams add strength to the cement matrix, and companies generally use proprietary additives to make the cement even stronger. However, organic materials in the wastes generally weaken the cement.

A major advantage of cement-based techniques is that wastes need not be dried before processing. On the other hand, the resulting solid matrix is vulnerable to acid leaching and the freeze-thaw and wet-dry cycles of the environment. However, these problems can be overcome by burial beneath the frost line.

Lime-based techniques are similar to cement-based methods in principle and application. They are somewhat less expensive, but the solid matrix is weaker and thus more vulnerable to environmental changes.

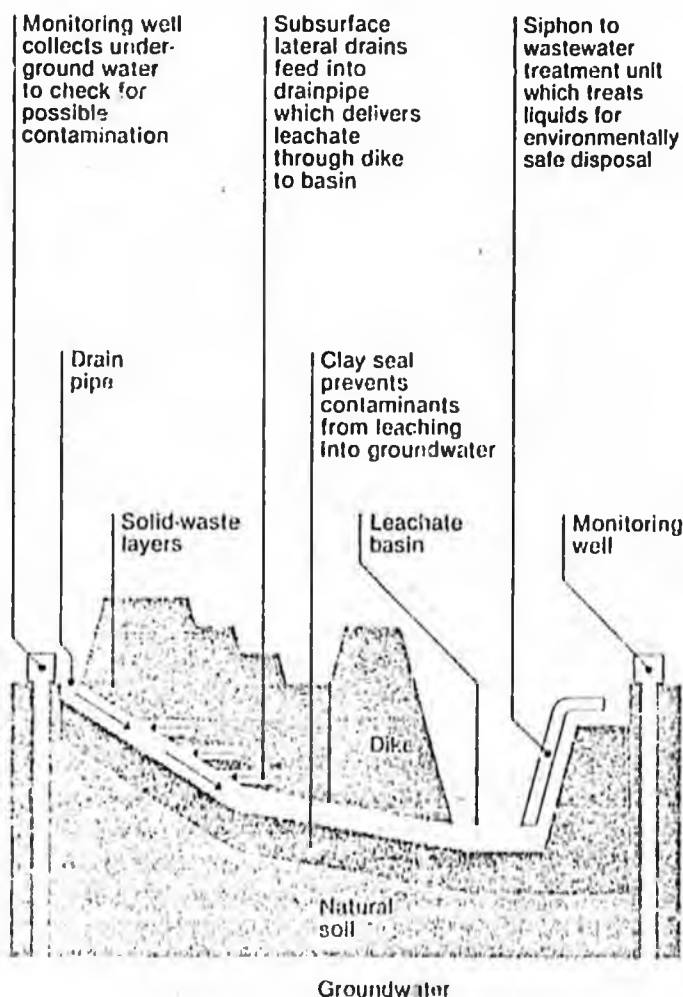
Thermoplastic techniques use bitumen, asphalt, and other materials that soften when heated, bind tightly to waste materials, and solidify when cooled. Wastes frequently must be dried before being mixed with the hot thermoplastic material. The principal advantage is that the binders immobilize waste materials very well, and the resulting solid structure allows minimal leaching, being very resistant to most aqueous solutions and acids. Thermoplastic techniques are thus especially suited to highly hazardous and concentrated wastes. However, the solid structure may be flammable and deteriorate if exposed to organic solvents. Another drawback is that thermoplastic processes have high material and operating costs.

In the polymerization method, a monomer is mixed with the wastes and allowed to polymerize, trapping the toxic materials in the resulting matrix. Because material requirements are lower, this process is less expensive than thermoplastic methods. The process also is applicable to both aqueous and nonaqueous hazardous-waste streams.

Many of the approaches used in solidifying hazardous industrial wastes are based on processes developed for the treatment of radioactive wastes. Those processes have been modified to take into account the larger volumes associated with toxic chemical wastes.

Secured Landfill. Secured landfills are sites for the ultimate disposal of liquid and solid wastes, mixtures, and residues from *all* waste-treatment operations. Such sites are designed specifically to contain hazardous wastes, and when operated properly should minimize contamination of the environment.

Past experiences with landfills have been dismal. Many landfills were created in marshlands, abandoned sand and gravel pits, and other sites that have



A secured landfill has a number of essential geological, hydrological, and geographical features. Past experiences with landfills have been dismal, with many sited where they could contaminate underground

water. However, secured landfills offer the best method for disposal of many hazardous wastes and are the only viable method for most inorganics. (Diagram: Chemical Manufacturers Association)

hydraulic connections with underground water. Poor strategic planning also meant wastes were often transported great distances. Despite such a bad track record, secured landfills offer the best method for disposal of many hazardous wastes, and the only viable one for most inorganics.

Proper landfill design involves geological, hydrological, and geographical considerations (*see the figure above*). Of utmost importance is location in thick natural clay deposits where the hydraulic transport of leachate to an underground water source is unlikely. Ideally, wastes in the landfill will have been properly solidified, but drums or other containers can be used

for storage of liquids and sludges. Individual clay-lined cells may also be required to ensure that incompatible wastes do not come in contact with one another. To ensure proper operation of the site, special techniques that prevent failures are required, as are quick repair methods to be used in an accident. The facility's operating procedure must also include scientific studies that assess the risk of system failure and the impacts of possible accidents on people and the environment.

Recent regulations set by EPA under the provisions of RCRA were designed, in part, to ensure safer construction, operation, and closure of landfills. For example, the regulations require collection, monitoring, and treatment of the leachate. And the owner or operator of a facility is required to provide for post-closure care of the landfill for 30 years or more, as determined on a case-by-case basis. One may argue that such a period of post-closure responsibility is impractical since the operating company may not exist for that long. Moreover, many heavy metals remain toxic forever, so perpetual monitoring should be required. The EPA is now considering establishing some form of national insurance plan to cover such extended monitoring programs.

Improving Our Options

To encourage proper handling of hazardous wastes, many research organizations and pioneering companies are trying to improve technological options. Some of their efforts are leading to novel ways of using standard techniques. For example, burning halogenated organic wastes at sea—on ships or on used oil rigs—has been shown to be both feasible and less expensive than standard land incineration because exhaust-gas treatment is not necessary.

But many techniques under development are quite different from old ones. Lockheed and EPA have developed a microwave plasma process for detoxification of pesticides and other toxic wastes. Rockwell International is using molten-salt combustion to attain complete and rapid destruction of many toxic organic wastes; molten sodium carbonate rapidly absorbs many toxic emissions from the system, making exhaust scrubbers unnecessary. The Department of Agriculture is developing a method for treating chlorinated hydrocarbon-bearing wastes by simultaneously bubbling oxygen through the wastes and irradiating them with ultraviolet light. This process apparently breaks the chlorine-carbon bonds, and the

Only with more basic research
can we increase the fundamental knowledge needed to develop
policies and technologies that provide maximum safety
at reasonable cost.

remaining compounds can be biodegraded by soil microorganisms.

Several companies are developing organisms that thrive on certain hazardous materials. For instance, Hooker Chemical has commissioned Battelle-Columbus to engineer an organism that thrives on chlorinated aromatics, and Koppers has contracted with Genex to develop an organism that detoxifies coal-tar wastes. Battelle Pacific Northwest Laboratories will soon begin field tests of a technique for immobilizing buried toxic-metal wastes. An electric current is passed between electrodes placed in the ground around the wastes, melting the wastes, soil, and rocks into a solid. The vitrified material becomes compact, leaving a hole that can be filled in.

Other new techniques are designed not only to treat hazardous wastes but to recover energy and materials—an important combination as we try to adopt processing techniques that conserve our resources. For example, Chem-Trol Pollution Services has burned chlorinated hydrocarbon-bearing wastes together with conventional fuels in a cement kiln, accomplishing waste treatment while producing cement and saving energy.

Similarly, several U.S. utilities burn wastes in combination with fuel oil to run boilers and generate electricity. In Geismen, La., Borden Chemical Co. is building a French-designed incinerator that burns chlorinated hydrocarbon wastes; the system provides recovery of both hydrochloric acid and a significant fraction of the heat of combustion. The use of water hyacinths—fast-growing plants—for treatment of both industrial and municipal wastes is being explored by Exxon and through a joint effort by EPA, the state of California, and the city of San Diego. While water hyacinths cannot tolerate high salinity, they efficiently degrade many organic materials (especially municipal wastes) and remove heavy metals. The hyacinths can later be harvested and either used for animal feed, composted, or fed to a digester that produces methane to fuel the facility.

Industry and government have set up special programs to study another aspect of the hazardous-waste problem: how to identify specific substances that pose a threat to humans and the environment. In 1975 the chemical industry established the Chemical Industry Institute of Toxicology (CIIT) in Research Triangle Park, N.C., to conduct tests on commodity chemicals, develop toxicological methodologies, and provide postdoctoral training of toxicologists. Thirty-six companies now support the CIIT, which has already pro-

duced important results, most notably evidence of the carcinogenicity of formaldehyde. The federal government performs many activities relating to the testing of hazardous chemicals through its National Toxicology Program.

In addition to testing specific chemicals, these and other organizations are designing new tests that will prove simpler, cheaper, and more accurate than existing methods. CIIT has recently developed a test for carcinogenicity that uses animals instead of cell cultures, allowing for the effects of chemical processes in the animal's body. The National Institute of Environmental Health Sciences has published the results of a two-year study involving 12 nations; it shows that no single test can be used on all potentially carcinogenic compounds, but suggests a series of tests that may be effective. Such procedures will help identify the most threatening wastes and combinations, enabling us to set priorities in tackling waste problems.

In spite of all our past and present work, our fundamental understanding remains limited. We do not know the exact mechanisms by which hazardous compounds damage the human body and the environment, nor do we have the full scientific knowledge needed to design and operate optimal waste-treatment and disposal processes. Indeed, our achievements have mostly resulted from empirical methods. Only with considerable basic research can we increase the fundamental knowledge needed to develop policies and technologies for hazardous-waste management that are scientifically sound and that provide maximum safety at reasonable cost.

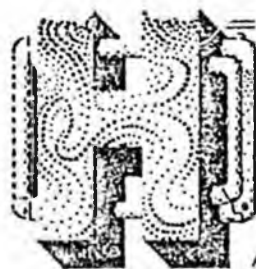
Further Reading

- Doull, J., C. Klassen, and M. Amdur, eds., *Casaretti and Doull's Toxicology*. New York: Macmillan, 1980.
- Holdgate, M.W., *A Perspective of Environmental Pollution*. Cambridge: Cambridge University Press, 1979.
- Lippmann, M., and R.B. Schlesinger, *Chemical Contamination in the Human Environment*. New York: Oxford University Press, 1979.
- Maugh, T.H. *Science*, May 25-June 22, 1979.
- Noyes Data Corp., *Unit Operations for Treatment of Hazardous Industrial Wastes*. Park Ridge, N.J., 1978.
- Pojasek, R.B., ed. *Toxic and Hazardous-Waste Disposal*. Ann Arbor: Ann Arbor Science, 1980.
- Sax, N.I., *Dangerous Properties of Industrial Materials*. New York: Van Nostrand, 1979.
- U.S. Environmental Protection Agency, *Disposal of Hazardous Wastes*. Report to Congress, EPA SW-115, 1974.
- U.S. Environmental Protection Agency, *State Decision Maker's Guide for Hazardous-Waste Management*. EPA SW-612, 1977.

Selim M. Senkan is an assistant professor of chemical engineering at M.I.T., where he received his Sc.D. degree. Nancy W. Stauffer is a science writer for the M.I.T. Energy Laboratory and editor of *e-lab*, a quarterly report on the laboratory's research.

The Federal-State Dilemma

by Ann Rappaport



AVING

the necessary treatment and disposal technologies available is one part of the complex equation for solving the hazardous-waste problem. Ensuring that the technology is appropriately used is the other. Although government has adequate legal authority to require sound waste management, as a practical matter that authority cannot be exercised without substantial public and private support.

Many firms and institutions have not internalized waste-treatment and disposal costs, so adoption of treatment methods may require new investment in equipment or services. While regulations requiring waste management are clearly beneficial to public health, the environment, and the waste-disposal industry, other sectors of the economy face dramatic increases in the cost of doing business and are therefore fighting for exemptions and exclusions from regulations.

As directed by the Resource Conservation and Recovery Act of 1976, in May of 1980 the U.S. Environmental Protection Agency (EPA) published a comprehensive regulatory program to set a national pace. States are encouraged to assume responsibility for regulating their own hazardous wastes and ensuring their proper management. After all, individual states are in a better position than the federal government to tailor programs and regulations to local patterns of hazardous-waste generation and hydro-

geological features.

An issue now being resolved on a state-by-state basis is the extent to which states may develop programs that go beyond the federal model. These concerns are illustrated by two examples: the manifest system and the exemption level.

The Manifest System. This is often referred to as the heart of the "cradle-to-grave" hazardous-waste tracking process established by federal law. The manifest is a shipping document indicating the origin, destination, type, and volume of waste and containing certification from each party that the waste is properly packaged and accurately characterized. All wastes in transit from a waste generator to a waste-handling facility must be accompanied by a manifest, and the facility must return a signed copy to the generator showing that the material has been received.

EPA decided to require that it be notified only when a signed copy from the waste-handling facility had not been received by the generator within 45 days of shipment. This is referred to as an "exception-reporting" system because government is informed that a shipment is in transit only after the waste and/or its paperwork cannot be located.

States such as California, New York, Illinois, New Jersey, Pennsylvania, and Maryland have implemented "load-by-load" tracking systems in which the generator and the facility send copies of all manifests to the state. Such a load-by-load system enables the state to identify trends and enforcement problems, pinpoint industry education needs, ensure that unsound practices are quickly stopped, and augment its data base on waste transactions.

For example, individuals have sometimes inaccurately represented themselves to generators as being licensed to handle hazardous wastes. Under the federal system, a state must rely on annual reports and exception reports to identify a transfer to such an unlicensed party. Thus, a full year of disposal at an illegal facility can occur, with potentially serious consequences to public health and the environment. Under the load-by-load system, the state would receive a manifest indicating the transfer, and state staff could immediately provide a generator with a list of licensees and offer other assistance in interpreting regulations.

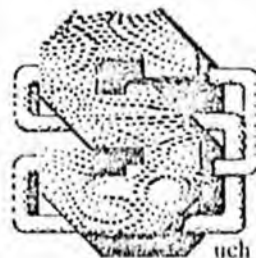
Opponents of the load-by-load tracking system argue that the paperwork is burdensome and that the federal system is adequate. Proponents of load-by-load tracking feel the paperwork burden is justified by benefits in protection, enforcement, and education.

The Exemption Level. States frequently have elected to be more stringent than the federal government in establishing exemption levels limiting the applicability of hazardous-waste regulations. Except for a few acutely toxic wastes, federal regulations provide that sources generating or accumulating less than 1,000 kilograms per month of hazardous waste need not comply with record-keeping, reporting, and handling requirements, and need not send their waste to an approved hazardous-waste disposal facility. This exemption level was based on the fact that 91 percent of hazardous-waste generators nationwide produce less than 1,000 kilograms per month, contributing only about 1 percent of the total hazardous waste produced

each year. A closer look, however, reveals that national statistics may not be a sound basis for state policy.

For example, in the Northeast there are many small companies in the metal-plating, metal-finishing, paint and coating, and other industries that produce small amounts of hazardous waste. Consequently, concern has been growing about the potential effects of a large number of small generators depositing hazardous wastes in municipal landfills, particularly in areas where poorly protected aquifers are a major source of drinking water.

States Take Different Route



such concern

has prompted Rhode Island to establish a zero exemption, and New Hampshire, Vermont, Maine, and New York to set the exemption limits at 100 kilograms per month. Massachusetts' comprehensive regulatory program is in the draft stage, but a study of available data indicates that at 1,000 kilograms per month, perhaps 25 percent of the waste generated in the state would escape regulation, and at 100 kilograms per month approximately 5 to 7 percent would escape regulation. Obviously, exclusion levels must be practical. As the exemption level goes down, the potential for environmental protection increases, but eventually the limits of program administration are reached. There is clearly a need for compromise between exemption limits and

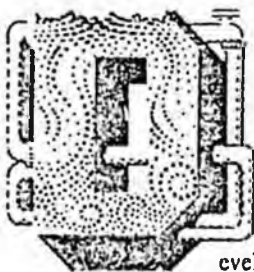
PHOTOGRAPH BY MICHAEL G. CREEB

effective law enforcement in attempting to maintain acceptable public health and environmental protection.

While states are allowed to develop and enforce regulatory programs more stringent than federal programs, they often encounter formidable barriers—particularly lack of resources and influence. Most state governments have traditionally had a harder time than private industry and the federal government in attracting and keeping qualified staff and in obtaining sufficient resources for research and program administration. Each state also needs to attract new businesses and keep old ones, and competition among the states is stiff. Compounding these difficulties are new initiatives to limit government spending and a growing sentiment that government regulation stifles economic expansion and contributes to inflation. These factors can adversely affect both the timing and quality of state efforts to ensure sound waste-handling practices quickly enough to prevent future problems.

Also, industry groups that win exemption from federal regulations will usually oppose state efforts to establish different exemptions or requirements. States seeking to protect a local phenomenon, such as a vulnerable aquifer used for drinking-water supplies, could face real problems if challenged, since few states can match industry resources. States must then look to the concerned public and innovative industries to support strong regulatory programs. Firms that make early investments in source reduction and sound waste handling may rely on government efforts to prompt their competitors into making comparable expenditures.

The Public's View



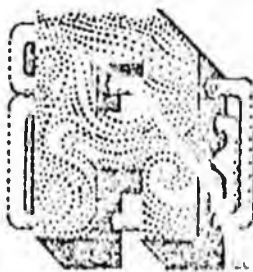
Developing sound and effective programs for hazardous-waste management is complicated by an often emotional public reaction to real and perceived threats. Without scientific data, environmental and health consequences of particular situations are often speculative. As a result, communities adversely affected by chemical contamination often push for conservative remedial actions. In Plymouth County, Mass., for example, a variety of toxic chemicals, apparently leaching from a municipal landfill, reached wells providing drinking water to homes. The levels of contaminants detected were well below the "Suggested No Adverse Response Level" (SNARL) established by EPA, based on the limited available epidemiological and toxicological data.

Local decision makers therefore had two choices: they could do nothing, based on the rationale that contaminant levels are far below SNARL; or they could appropriate \$775,000 to provide affected homes with water from an uncontaminated town well. The town chose to pay for the alternative water supply.

Risk-averse behavior of this type is to be expected at the local level. However, when risk aversion is extrapolated to the state or national level, it suggests a scale of corrective actions with a dollar value that far exceeds government's ability to pay. In fact, federal "Superfund" monies allotted

for site cleanup are expected to be so meager in many states that only the most serious problems will be tackled. For example, the current list of problems in Massachusetts includes contamination by polychlorinated biphenyls (PCBs, a family of persistent synthetic compounds) of an estuary and major fishing port, possible thallium poisoning of residents in a rural town, and several sites where stockpiled wastes threaten major public sources of drinking water. Thus, the Plymouth County situation and others like it are not serious contenders for federal or state funds. Massachusetts and other industrialized states with many contamination problems clearly lack the resources to provide zero-risk remedies that the public expects. Industries performing their own cleanup operations face the same problem.

Cost Cuts Cause Criticism



Recognizing serious fiscal constraints, government increasingly looks for ways to minimize costs in providing acceptable solutions to site contamination problems. Sometimes this means taking actions that critics see as government capitulation to industry pressure. For example, in cases where responsible parties can be identified and the threat to public health is not imminent, agencies may negotiate compliance and schedules for remedial action designed to keep the violator solvent and ensure corporate responsibility for cleanup or

containment. But where an agency considers the threat to public health imminent, it may take immediate measures to stop polluting activities, running the risk that taxpayers will have to pay for corrective action if the violator declares bankruptcy.

Hazardous-waste regulations now contain details on performance standards, operating procedures, security measures, contingency plans, and a host of other provisions designed to protect public health and the environment. New statutes and regulations also require establishment of trust funds or other mechanisms to prevent taxpayers from assuming the financial burdens for unsuccessful or mismanaged waste-disposal ventures. But skeptics still question the adequacy of regulations and the ability of government or any other group to enforce their provisions.

To overcome such skepticism and community resistance to the siting of new facilities, regulators are encouraging widespread public participation in all aspects of the program: in developing the regulations, in monitoring facilities' compliance with performance standards, and in carefully selecting sites for waste-treatment facilities. These methods have yet to be put to a suitable test on the national level, but community participation in the development of regulations at the state level has already yielded positive results. □

Ann Rappaport is chief of policy and program development for the Massachusetts Department of Environmental Quality Engineering's Division of Hazardous Waste. She holds a master's degree in civil engineering from M.I.T.

Table of Contents

Introduction	5
1. EPA: The Full Story	7
OPERATING PROGRAMS	
2. Managing Hazardous Wastes	15
3. Controlling Toxic Chemicals	19
4. Protecting Water Quality	23
5. Ensuring Clean Air	27
6. Protecting Against Pesticides	33
7. Smaller Programs	37
CAPITAL PROGRAMS	
8. Superfund	41
9. Wastewater Treatment Construction Grants	43
APPENDIX	
 Comprehensive Budget Summaries	44

REVISED AND CORRECTED AS OF FEBRUARY 4, 1982

Copyright © 1982
National Wildlife Federation
This material may be used without
permission provided credit is given.

Acknowledgement

The National Wildlife Federation gratefully acknowledges the contribution of the many people without whom the full story behind the budgetary attack on the U.S. Environmental Protection Agency could not be told. Some of these people worked for the EPA in previous administrations, Republican and Democratic. Some have spent their professional careers with independent environmental and conservation organizations monitoring the programs now under attack. Special thanks goes to the American Environmental Safety Council (SAVE EPA), and the people who spent countless hours keeping our facts straight: Elizabeth Hayman and Thomas Wall. In the past the contributors to this effort have disagreed with each other on issues of program direction, priorities and strategy. All, however, share a strong commitment to the protection of public health through the sensible implementation of our basic environmental laws. The Federation also is grateful for the tireless efforts and good humor of the design and layout staff at Arts & Words including Terry Atkinson, Art Director; Eduino Pereira, Production Manager; Ann Bucklew, Shirl Der Nevas, Jim Goodman, Vicki Harrell, Janet Krezell, Geoff Simonds, and Jody Tjvss, as well as Milton Garber and his staff in the NWF print shop. Finally, special thanks go to those who for personal reasons cannot be named here. They are the unsung heroes of this effort.

Introduction

Last fall sharp actual and planned budget and personnel cuts at the U.S. Environmental Protection Agency (EPA) became the subject of great public concern. It became apparent to the National Wildlife Federation, especially after a series of Senate and House hearings, that sensible decision-making required a careful, analytic, objective statement of EPA's workload and consequent real budget needs.

The Federation asked the American Environmental Safety Council (SAVE EPA) to prepare this 1983 budget for the Agency and to translate its numbers into a clear, English-language statement of its needs. It asked the Council to do so using EPA's own best workload models and data. The Federation staff worked intensively with the Council and roughly 30 program experts, each with extensive experience at the state and/or Federal levels. It especially sought to challenge every fact, number and assertion. It also arranged for independent reviews of the draft chapters by further independent program experts.

It is because so many people, with so much understanding of environmental management, have worked so hard over the last months that this document is, we believe, the first fully independent, detailed, reliable statement of EPA's real program needs. The National Wildlife Federation gratefully acknowledges their contribution.

This document does not go into the details typical of a full budget presentation. Its purpose is to give the public a clear, careful, independent analysis of the major issues in this year's EPA budget. It seeks to explain the workloads imposed on EPA by its major environmental responsibilities, many of them recent, and to calculate with the best available analytic techniques and information the resources needed to manage these workloads. The document also compares these needs to both the 1981 baseline year and the Administration's 1983 proposal.

This analysis focuses on EPA's operating budget, which includes its critical research, regulatory, and field implementation/enforcement work. This is the core of the nation's environmental management capacity. The last two chapters quickly cover EPA's two capital programs, wastewater treatment construction grants and the "Superfund" for cleaning up abandoned hazardous waste sites. The capital budget is several times the operating budget, but is less critical to the implementation of most of EPA's statutory mandate.

Our proposals cover resources both for in-house staff (intramural expenses) and for outside procurements (extramural expenses). They are broken down into the following categories:

- **Research and Development:** This covers all research conducted by EPA laboratories or by outside organizations such as universities or non-profit foundations.
- **Abatement and Control:** This includes all program activities related to the design and implementation of control programs, including regulation writing.
- **State Grants:** This category includes all state grants related to the general program area (air, water, toxics, etc.), and generally cover both abatement and control and enforcement activities.
- **Enforcement:** The Reagan/Gorsuch Administration has abolished the traditional enforcement organization. Budget figures presented here are based on the previous organization, and are designed to illustrate the exact magnitude of proposed cuts in this critical area of EPA's budget.

The following rules have been applied consistently throughout this proposal:

1. We have figured all FY 83 personnel costs based on the implicit costs shown in the Reagan/Gorsuch FY 83 submission of September 1981 *for the subprogram element concerned*. Costs per position vary by the duties assigned: laboratory staff costs include specific allocations for supplies and equipment, enforcement staff costs include higher-than-average allowances for travel. Occasionally, explicit adjustments are suggested, such as for increased travel allowances for field inspectors.
2. Where we have extrapolated extramural costs from one year to another, they have been inflated according to historical data generated by the Bureau of Economic Analysis (BEA) for dates up to the last quarter of 1981, and beyond that by a (conservative) inflation estimate of five percent (5%) per year.

Where a calculation of the staff effort necessary to achieve a program objective is entirely subjective (such as the level of mobile source enforcement needed to encourage voluntary compliance) the subjectivity of that statement is acknowledged. Elsewhere we have generally used EPA's own workload models, pricing, and data supplemented by independent workload analyses where necessary. We are confident that the resulting budget is a fair, objective presentation of real program needs.

EPA Programs: Needs vs. Reagan Budget

	1981 Budget		Actual FY 83 Needs		Reagan-Gorsuch FY 83 Budget	
	Permanent Positions	Dollars (000)	Permanent Positions	Dollars (000)	Permanent Positions	Dollars (000)
OPERATING BUDGET						
Hazardous Waste ¹	992	138,872.7	2,386.8	346,858.9	661.3	111,308.5
Toxic Chemicals	775	109,904.1	1,775.1	255,112.1	641.5	72,440.7
Clean Water ¹	2,735	319,876.4	3,446.6	408,784.8	1,827.0	188,277.9
Clean Air	1,932	255,705.1	2,763.8	426,888.2	1,355.0	197,448.8
Pesticides	925	75,943.2	1,237.3	116,674.0	669.8	50,620.6
Other ²	1,473	237,772.7	1,228.1	313,700.5	1,066.1	146,085.6
Management	2,576	214,802.0	3,711.2	310,750.0	2,178.3	208,479.1
Total Operating	11,407	1,352,876.2	16,548.9	2,178,748.5	8,399.0	974,660.3
Supertund	142	78,000.0	965.0	690,000.0	554.6	275,000.0
Construction Grants		3,304,837.0				2,400,000.0

1. For comparison purposes, the hazardous waste and water quality figures have been adjusted to reflect such things as the subsequent expiration of the conventional solid waste program, the transfer of spill response duties from the water office to the new Office of Solid Waste and Emergency Response, and other minor adjustments.

2. Contains drinking water, radiation, noise, and other minor programs, plus certain special items (such as the conventional solid waste program) that have been subtracted from the hazardous waste and water quality media for comparison purposes (see footnote #1).

EPA: The Real Story

"This administration does not intend to deny the needed resources to carry out environmental statutes that are on the books."

Edwin L. Dale, Jr.
Office of Management and Budget
December 19, 1981

The accuracy of Mr. Dale's statement is the subject of this inquiry. It is an inquiry of enormous importance both to those responsible for legislating, implementing and complying with the major environmental and public health laws of the United States and to the public that relies on the protections established by these statutes. These laws, all administered by the United States Environmental Protection Agency (EPA), include the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Resource Conservation and Recovery (hazardous wastes) Act, the Safe Drinking Water Act, the Federal Environmental Pesticide Control Act, and the Comprehensive Environmental Response, Compensation and Liability Act ("Superfund"). Together, they represent the environmental "safety net" which protects each citizen from the by-products and wastes of our high-technology society. This includes over 55,000 chemicals (with 600-1,000 additions per year); 50,000 plants discharging wastes into U.S. rivers and streams; another 40,000 firms discharging toxics into our municipal sewer systems; over 160 million tons of air pollutants such as sulfur oxides, carbon monoxides, nitrogen oxides, soot and other particles; billions of gallons of municipal sewage and stormwater run-off; and approximately 20,000 hazardous waste facilities, the repositories for the over 40 million tons of hazardous wastes generated each year. In addition, as many as 35,000 abandoned hazardous waste dump sites require attention. Without effective public control of these waste products our public health, and the health of our basic biological support systems (air, water, soil) cannot be maintained.

Environmental protection, like police protection, costs money. Last fall the National Wildlife Federation commissioned a thorough study of EPA's workload and its consequent 1983 resource requirements. The Federation staff, roughly 30 independent program experts, and the American Environmental Safety Council (SAVE EPA), worked intensively on the study.

Every effort has been made to be as accurate and statistically sound as possible. For purposes of comparison we used as a baseline a clearly verifiable figure: the Congressionally-approved EPA operating budget for FY 1981 of \$1.353 billion. Since it is still

unclear how the current FY 1982 budget resolutions will be implemented within EPA on a program-by-program basis, it is impossible to use 1982 figures as a basis of substantive program comparisons. Moreover, the 1981 budget, which describes the level of protection provided the public until September 30, 1981, is the most logical base against which to compare the Reagan Administration's cumulative budget cuts.

This budget has computed EPA's FY 1983 minimum funding needs, both in personnel and in money, on the basis of state-of-the-art budgeting principles. Where they exist, we have used EPA's own workload analyses to compute program needs, including the excellent analysis done for the hazardous waste program. Throughout, we have adjusted for inflation using the deflator for government goods and services to date and have assumed only a five percent inflation in the future. Fully recognizing the state of the economy and the need for budget restraint, we have assumed that many of the new toxic programs will stretch out the transition to full implementation until 1984-85. We have also cut existing programs where possible and assumed efficiencies elsewhere.

In comparing these estimates of EPA's real program needs with the Administration's proposed 1983 budget, we've generally used Administrator Gorsuch's detailed budget proposal, with its thorough program and workload information (not available in the Congressional submission). For summary charts, however, we have used the President's final totals. Because the final budget is three percent smaller than the Gorsuch proposal, the resource levels identified in this document as the "Reagan-Gorsuch Budget" will sometimes be a bit higher.

On the basis of this analysis, we have reached the inescapable conclusion that Mr. Dale's statement is wrong. In fact, it is dead wrong: if EPA is forced to accept these cuts, EPA will be unable to implement many of the laws that are essential components of the nation's environmental safety net. If Congress accepts the Reagan-Gorsuch budget, the country will face the following programmatic results:

- * EPA will be cut in half – just as its workload doubles. It doubles because it is in the early 1980s that all the programs enacted to protect the public from environmental toxics must be implemented. The older problems, e.g., sulfur, continue.
- * The nation's environmental research and management institutions, already badly hurt, will disintegrate. Given the very long time required to rebuild such complex institutions, let alone their credibility, we can expect a decade of rising environmental and public health risks.

We should not legislate such fundamental *de facto* statutory repeal through the budget process. If, as a nation, we conclude that the cost of protection from exposure to toxic chemicals and other pollutants is too high, Congress should defer or repeal significant portions of the wave of toxics legislation just now reaching the point of field implementation. In any event, the public should be involved in this debate. The present attempt to cloak programmatic decisions in the budget process makes public debate impossible.

This volume tries to provide a careful, independent analysis of the resources needed to make our environmental safety net a reality, not a legislative mirage. In 1983 these costs add up to \$2.18 billion, a 40 percent inflation-adjusted increase over 1981. It also briefly touches on several possible ways the Congress could pay for providing this protection.

The major resource increases required in EPA's 1983-85 budgets flow directly from the scientific discoveries and consequent legislative actions of the last decade. In 1970 the country decided to clean up the air and water. The resulting regulatory program worked. Today we have much lower levels of the sorts of pollution we decided to control—e.g., sulfur in the air and biological oxygen demand in the water—than we otherwise would have. For example, whereas the air would have been roughly 50 percent more sulfurous in 1980 than in 1970 without environmental regulation, in fact it contained 17 percent less sulfur. However, continued economic expansion requires additional controls just to stay even. On the basis of the existing control program (i.e., without new controls) by 1990 we will emit 50 percent more sulfur than we do now.

By the mid-1970s science demonstrated that hundreds of toxic pollutants were an even more serious environmental and health threat. As a result, Congress promptly redesigned the nation's environmental safety net. It directed EPA to take on toxics in addition to the "traditional" pollutants through revisions to the Clean Water, Clean Air, and Safe Drinking Water Acts. It strengthened the pesticides law. It required EPA to review and control, when necessary, all 55,000 chemicals existing and

the roughly 1000 new chemicals introduced each year (The Toxics Substances Control Act). It ordered EPA to regulate over 42 million tons of hazardous waste from initial shipment through permanent safe disposal. Finally, and most recently, it gave EPA responsibility for cleaning up hazardous spills and abandoned waste dumps ("Superfund"). In the several years since this legislative assault on toxics was enacted, EPA has established the scientific, regulatory, and initial organizational foundations necessary to implement these programs.

Now, over the first years of the 1980s, EPA must go "on line," i.e., actually bring environmental toxics under control in the field. Doing so, on top of the Agency's existing tasks, doubles its workload. For example, the number of industrial firms for which specific effluent limitations must be negotiated and then enforced more than doubles to 90,000, and the hazardous waste law requires EPA and the states to control the waste management practices of another 120,000 firms. Moreover, almost all this new toxics work is technically complex and therefore resource-intensive.

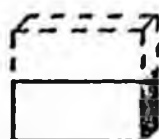
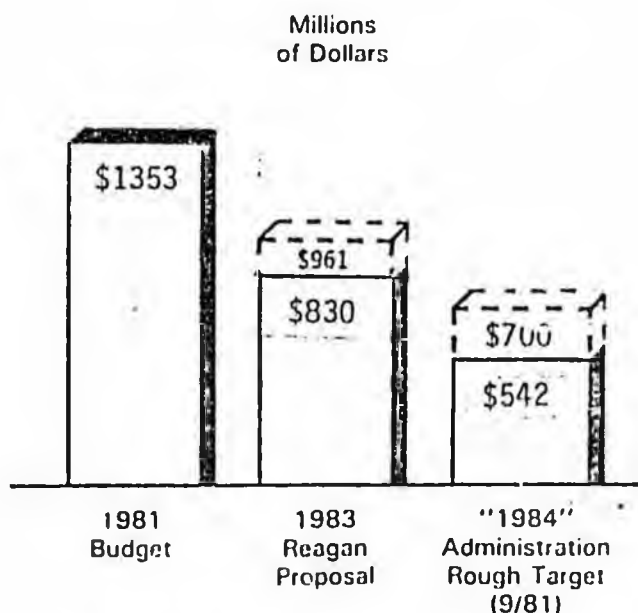
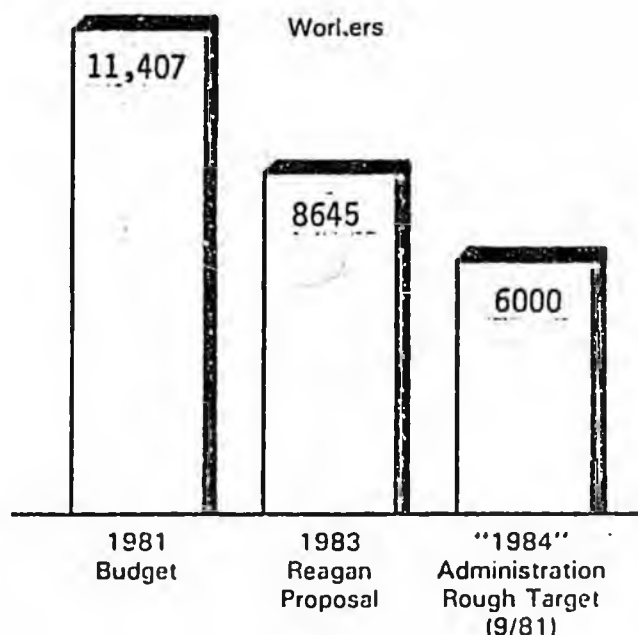
In the face of this doubling workload, the Reagan 1983 budget proposal would cut the EPA's 1981 purchasing power in half. (See Chart I.) This proposal would cripple the "traditional" programs, such as clean air and clean water, supported by the 1981 budget levels. It would make control of environmental toxics entirely illusory.

Since Administrator Gorsuch plans to reduce her headquarters staff to the proposed 1983 budget level by June, 1982, we know exactly what these reductions mean in terms of existing program management. Unless legal objections force postponement of the plan, by June 30 over 90 percent of the headquarters staff the Reagan Administration inherited on January 24, 1981, will have (1) been made to quit, (2) been fired, or (3) been downgraded to less attractive jobs less well suited to their skills. In other words, in only a year and a half, two-thirds of the staff built up over a decade will be gone and almost no one remaining will be doing a job with which they are familiar.

Since last September the Administration apparently has also been working on a "1984" budget it hopes to implement in 1983. This budget would cut EPA's 11,400 permanent workers and \$1,353 million of 1981 to roughly 6,000 workers and \$700 million (\$546 million once adjusted for inflation). (See Chart I.) This budget represents at least short of a 50 percent cut in personnel and almost a two-thirds reduction in purchasing power.

Chart I

The Administration Proposes Cutting EPA in Half



Nominal Dollars, Lost to Inflation

Real 1981 Purchasing Power

Half the Agency cannot do twice the job. Accepting the Administration's proposal means the destruction of the country's institutional capacity to understand and manage the environment—not just for 1983 but for the rest of the decade. Once these complex, heavily scientific institutions are gone, it will take many years of strenuous and very extensive effort to recreate the capacity and credibility so easily and quickly demolished:

- The budget that pays for research outside EPA (20 percent of the 1981 Agency budget) will be cut by two-thirds. This means an abrupt loss to the field of roughly 1,500 senior researchers and 4,000 to 5,000 of their associates and graduate students, the sudden closing of university laboratories, and the loss of the continuity of data bases. If the country decides several years hence it wants to regenerate its environmental research capacity, it will take two to three years to work that decision through the Federal budget process and to rebuild the structure of EPA supervisors and scientists capable of managing private research grants and contracts. Then it will take several more years for the universities to hire the senior researchers and then junior staff and graduate students, and to negotiate and actually perform the needed research. A decision to rebuild in 1984 would not get a flow of research results equivalent to the present program until 1990.

* This budget's fourfold increase in workload per employee (twice the work, half the workers) means that EPA must lose enforcement credibility with both the states and industry. It simply won't be able to cover the ground. In hazardous wastes, for example, the Reagan budget would cut the 1981 workforce (then devoted to start-up planning) 33 percent just as the program must start dealing with its 120,000 firms in the field. Once EPA begins losing its field credibility, it will be caught in a virtually irreversible downward spiral of lost credibility, lessening voluntary compliance, therefore quickly multiplying field workload, and consequent further loss of credibility. Once hundreds of thousands of people believe that these laws are little enforced, anyone seeking to rebuild an acceptable compliance rate will have to affect the behavior of these footdragging firms, not just the few percent that require enforcement attention now. That is a task that will take a good many years—even assuming enormously expanded resources.

These consequences tend to reinforce one another. For example, the loss of scientific capacity hurts enforcement, and the loss of credibility in both fields further adds to the Agency's demoralization and consequent loss of the core of excellent, spirited civil servants that have grown with the Agency since its creation in the early 1970s. (Already, the quitting

rate agency-wide is roughly 30 percent on an annualized basis.) Such a loss of scientific expertise is particularly alarming in light of the Reagan Administration's announced intention to base regulations on "good science".

If America is left without competent environmental management through the 1980s, its citizens will suffer:

- The average citizen's exposure to environmental toxics will increase well over 50 percent, and will probably roughly double in ten years. The volume and number of toxic pollutants grow especially rapidly because they are the byproducts of one of the economy's chief growth thrusts—the continuing chemical revolution.
- Air and water quality will deteriorate. Consider the impact of 50 percent more sulfur in ten years on acid rain, visibility and smog.
- We will go into the next decade still startlingly ignorant of what we are doing to the environment, what it is doing to us in return, and how we might most effectively manage those impacts.

Business is also at risk. An incompetent, backlogged EPA will not be able to make prompt permitting or regulatory decisions that will hold up under challenge. Moreover, as several industry representatives have pointed out, EPA will no longer be capable of balanced, sophisticated regulation when the political pendulum eventually swings back towards enforcement of environmental legislation.

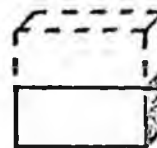
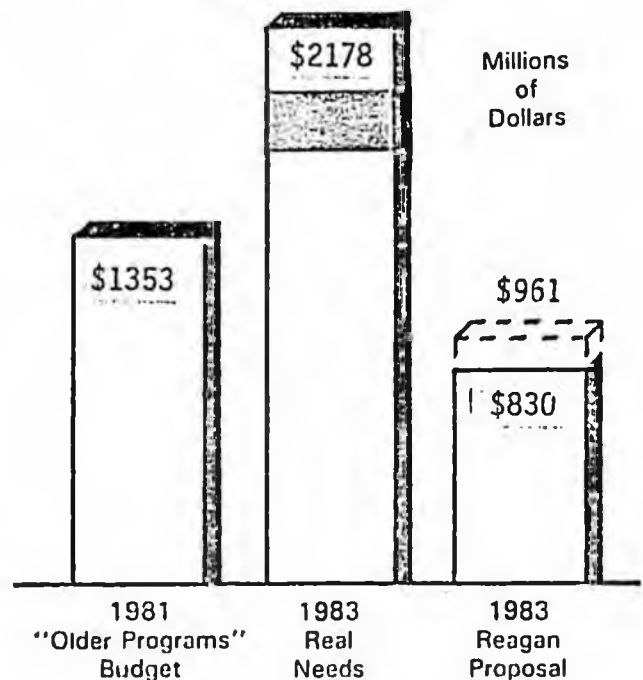
If Congress decides not to accept this future, if it decides that it does want an environmental safety net in place, it must make that decision now. EPA needs a \$826 million increase over its FY 81 budget if it is to seriously provide field protection to the public against environmental toxics in 1983. After correcting for inflation, that's a 40 percent increase over FY 81. Full implementation in FY 84-85 will require substantial further resources. In contrast, the Administration's proposal is 39 percent below the inflation-adjusted 1981 base and 55 percent below what is needed to take on both the traditional pollutants and the new toxics job. (See Chart II.)

Most of the rest of this volume explains, program by program, why this increase is needed. A few of the key needs that will go unmet without such an increase are:

- Ensuring that hazardous wastes get to safe, permitted disposal sites, not future Love Canals—a task that requires working with 120,000 firms. This new program requires \$180.3 million.

Chart 2

The Administration's Proposal Covers Less Than Half FY 83's Need



Nominal Dollars, Lost to Inflation
Real 1981 Purchasing Power

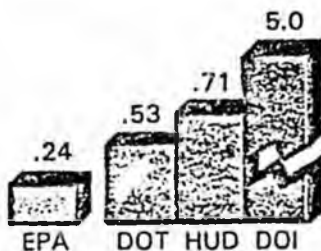
- Weeding out these substances from the 55,000 chemicals in U.S. commerce that are dangerous, especially those with which the public has extensive contact—and then taking the necessary regulatory action. Also reviewing (and controlling where necessary) up to 1,000 new chemicals a year. Also a new program. Added resources required: \$123.3 million.
- Getting priority toxic discharges out of the water: \$96.3 million.

EPA can't fund this new workload, let alone the Administration's proposed cuts, from internal efficiencies. Even before the toxics workload wave, EPA workers typically had very much more work to do than employees with similar functions elsewhere in government. (See Chart III.) Nor were they poorly

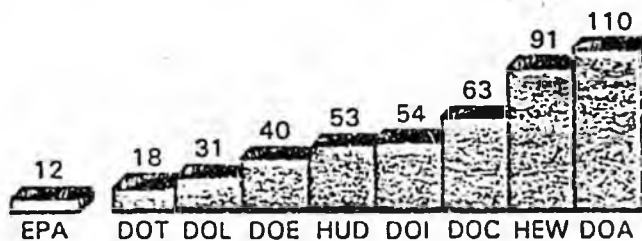
Chart 3

EPA Has Had More Work per Worker Than Other Agencies

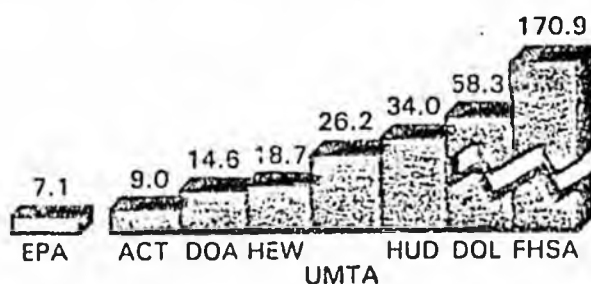
EPA Has Fewer Positions per \$M Construction Outlay



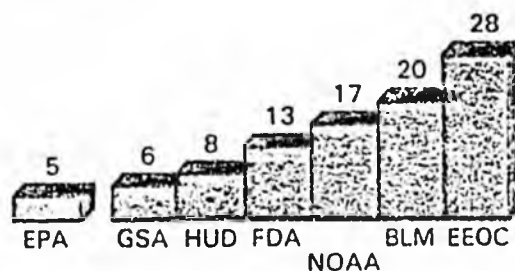
EPA Has Fewer Lawyers per Significant Regulation



EPA Has Fewer Auditors per 1000 Grantees



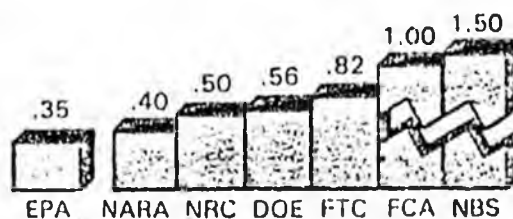
EPA Has the Least Administrative Management per 100 Employees



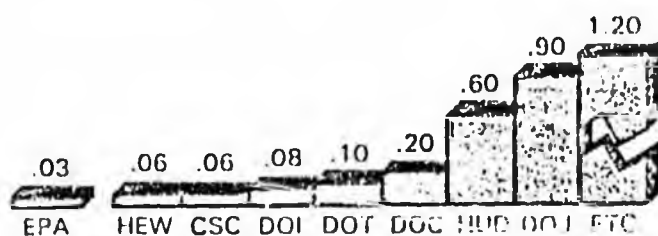
EPA Has The Smallest Percentage of Management and Operation Staff



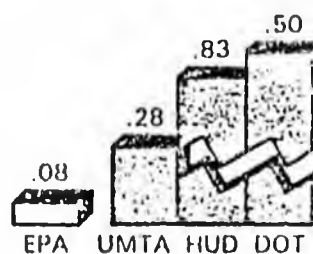
EPA Has Smallest Percentage of Library/Information Staff per Professional User



EPA Has Fewer Evaluation Dollars as a Percent of Operating Budget



EPA Has Fewer Positions per Active Construction Project



Source: U.S. EPA budget submission, 1981, based on studies by the Office of Management and Budget, the Office of Personnel Management, independent contractors, and EPA

managed. Donald Lambrow, the author of *Fat City: How Washington Wastes Your Taxes*, a book President Reagan sent his cabinet members, listed EPA, the IRS and the SEC as Washington's best-run agencies "for maintaining scandal-free administrations as well as conducting themselves with a high degree of professionalism and competence."

The very idea of an increase is startling this year. Congress and the public have been presented with a budget framework where the only apparently legitimate issue is cutting. And the deficits driving that perspective are real enough. If Congress decides to do the job of protecting against both traditional and toxic pollutants, it will also have to decide how to pay the bill. Here is a sampling of some attractive possibilities:

- It could cut out several large capital projects such as dams with low cost-benefit yields.
- It could review some of the \$265 billion a year of revenue foregone to various tax loopholes.
- It could impose an "acid rain tax" on major sources of sulfur based on historical emissions but allowing credits for reductions due to coal cleaning or the installation of control equipment. This may be an effective way to reduce emissions inexpensively from older plants, is not a threat to Eastern coal, and is worth several billion dollars.

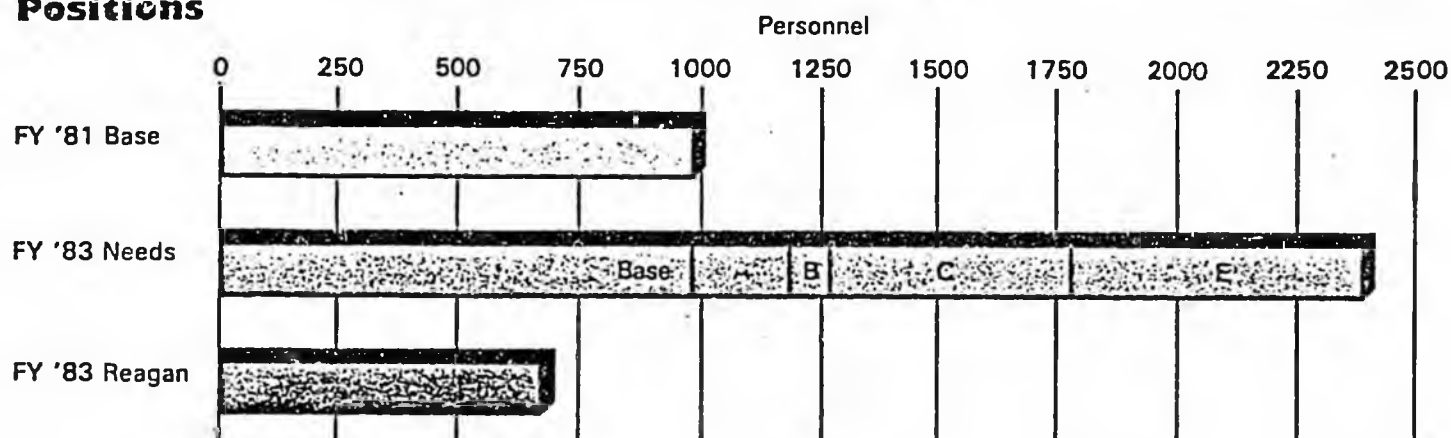
- It could increase the cigarette tax for high tar and nicotine brands only, thereby encouraging both industry and consumers to switch. A four cent tax on the most dangerous top seventy-five percent of all cigarettes sold would raise \$930 million.
- It could stretch out Agency capital expenditures to preserve core operating programs.
- It could implement Section 110(a)(2)(k) of the Clean Air act which requires permittees to pay the cost of permit review and issuance. To date, this requirement has been ignored.

There are, of course, many other possibilities.

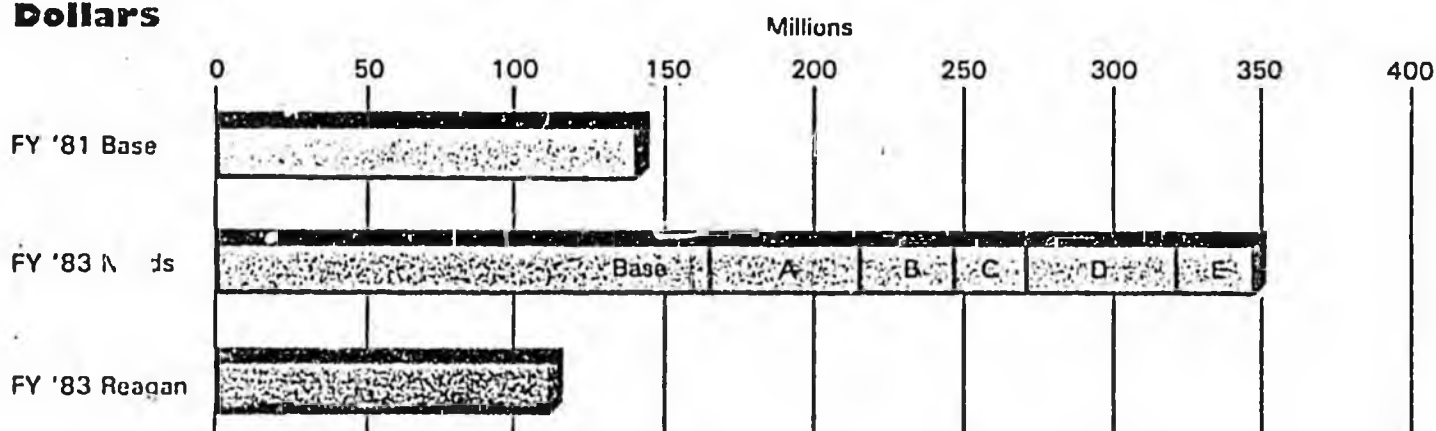
The Administration's 39 percent cut in EPA's budget saves the equivalent of \$2.68 per capita each year. Increasing the budget to make toxics implementation possible would cost \$2.50 per capita. Is the protection worth such insurance premiums? Poll after poll reports that most Americans are willing to pay for clean air and water and that they are almost unanimous in their anxiety to have more done to protect them from toxics.

Now Congress must decide.

Positions



Dollars



Budget Summary

	Permanent Positions	Extramural (\$000)	Total (\$000)
1981 Base (Adjusted for Inflation)	991.7	107,726.3	166,573.1
A. Research on how hazardous substances in dumps interact, how they move and change, and how to get rid of them safely	191.6	44,996.8	49,566.4
B. Writing rules on how hazardous disposal facilities are to be designed and operated	73.0	30,142.2	34,246.0
C. Making sure that actual sites are safe and issuing permits for them; running the manifest system that ensures that hazardous waste really goes from source to safe disposal	513.5	4,260.0	24,160.9
D. Grants to states to help pay for hazardous waste program development	—	48,605.0	48,605.0
E. Enforcing hazardous waste rules on all sources, transporters and disposal sites; dealing with violators; investigating discrepancies in waste shipment manifests	617.0	1,463.2	23,687.5
Total Increment	1,395.1	129,467.4	180,265.8
Program Total	2,386.8	237,193.7	346,838.9

Managing Hazardous Wastes

Our society generates about 42 million tons of wastes each year that are a threat to human health due to their toxicity, nondegradability, persistence in nature or susceptibility to biological magnification (bio-accumulation). These hazardous wastes, which come in every imaginable form, include inorganic toxic metals; salts, acids or bases; synthetic organics; flammables; explosives, and pathological, biological and radioactive materials. Until now about 80 percent of these wastes have been scattered about quite unsafely in dumps, in shallow ponds dug out back of a factory, in a nearby woods or wetlands, down old mines or quarries, just about anywhere. No one knows just how many of these dangerous time capsules we have about us, or how much damage has already been done to the land, to both surface and groundwaters, to ourselves. However, we've begun to pay the consequences (e.g., Love Canal), and Congress and President Ford resolved in 1976 to bring irresponsible handling of hazardous wastes to an end. That year's legislation required comprehensive control of these wastes from the point of generation through shipment, storage, treatment, and final disposal. Although this law was passed in 1976, and although comprehensive implementing regulations finally followed in 1980 and early 1981, effective control has yet to begin.

Recognizing the great dangers to the public of continuing to let tens of millions of tons of dangerous waste be scattered carelessly about the environment, Congress enacted the Resource Conservation and Recovery Act of 1976 (RCRA). RCRA requires EPA to track hazardous wastes from "cradle to grave" and to ensure their ultimate safe disposal. After years of scientific and legal preparation, this massive, complex program--easily as large as the traditional air or water programs--now must be put into effect. It is an enormous task. The most likely estimates tell us that EPA must control:

- the wastes from the 90,000 "producers" that each generate more than 1000 kilograms a month;
- the activities of some 10,000 transporters of hazardous waste;
- the design and operation of at least 14,000 and possibly as many as 20,000 facilities for the storage, treatment or disposal of hazardous waste.

It must begin to do this even though the base of knowledge about hazardous waste and its safe management is still rudimentary and the regulatory structure supporting the program is still incomplete.

Love Canal is not simply the name of an unfortunate community; it has come to symbolize the national resolve not to mortgage our future again by cutting

corners in the present disposal of toxic wastes. Although EPA has the task of making real that resolve, it has never been given the resources to do so properly. The costs of good management, including government costs, are far less than the costs of remedial action in the future, not to mention the hidden and unpredictable costs of human disease and environmental damage. But the program we now have is inadequate for the job.

Our knowledge of hazardous waste is primitive. Partly in consequence we have not been able, despite several years of effort and several court deadlines, to regulate the chief waste streams. Fully 30 percent of the total wastes covered by the program remain unregulated. They include residues from the organic chemical industry, which are usually likely to contain substances having carcinogenic or other toxic characteristics, and which are relatively difficult to analyze, identify, and control. Once they are covered, the program's workload will grow more than 30 percent because of their complexity and risk. Neither the states nor EPA have the resources to ensure that wastes are tracked as already required by law, let alone the technical skills and staff to evaluate the safety of the thousands of disposal facilities awaiting licensing.

As recently as fiscal 1978 the Agency had, in effect, no real hazardous waste budget. A detailed EPA analysis of the resources required to start a minimally credible program clearly shows that the hazardous waste budget must grow to several times the FY 81 level. To make sensible permitting guidance possible and to develop the practical remedies required, a \$49.6 million investment in research is necessary. In

addition, at least 73 permanent staff are needed to design the implementation program and write the guidance documents. The biggest increases must come in the front line, including a 617 position increase in EPA's hazardous waste enforcement staff and a \$48.6 million added investment in state grants. Instead, Mrs. Gorsuch's September 1983 budget proposal would have cut the staff 33 percent and its purchasing power 31 percent.

Research

While air and water pollution have been studied for some time, the disciplined study of what happens when toxic chemicals are disposed of on land has barely begun. Virtually nothing was spent on hazardous waste research prior to 1979.

We do not know what various industry waste streams contain. We have no reliable models of how liquid wastes move through the earth, or what happens to their complex toxic mixtures over time. Thus we cannot set the standards each industry needs for waste management. This is particularly costly and frustrating for industry, which cannot develop sensible or secure control strategies until such standards are established. We also do not know nearly enough about the design and operation of hazardous waste facilities—landfills, incinerators and the like—nor do we have the investment in engineering research to develop better and cheaper disposal technologies for the future. As a result, we have developed few remedies, and we don't know how long they will work.

The problems are as complex and urgent, and the backlog of undone research needs are as extensive as they are in the air or water programs. We need a \$100 million research effort to close these pressing gaps. Such an effort would be comparable to research expenditures on air and water, but smaller than the resources committed to analyzing the environmental risks associated with energy production and developing the necessary control technologies. It would be three times higher than the funds proposed by the Reagan-Gorsuch budget.

Setting Standards

RCRA directs EPA to develop standards for each type of hazardous waste facility—landfills, surface impoundments, incinerators, etc. These standards define the design of such facilities and tell how they must be operated in order to preserve public health. They also guide permit writers in determining which sites and facilities are safe and which must be closed down. Although a number of standards had been promulgated by 1981, the Gorsuch Administration withdrew almost all of them. The facility review and

permitting process has stopped and no guidance exists as to what constitutes safe and acceptable practice. As a result, either no decision is made or inspectors must make high risk, high cost decisions that are difficult to justify if challenged.

Developing these hazardous waste guidelines is an extremely difficult, detailed, slow process requiring the most intricate scientific, technical, and economic analysis. The Agency needs the hiring flexibility to bring on a number of highly skilled professionals to accelerate and improve its standard-setting process. The costs of poor products or of further uncertainty and delay far exceed the budgetary costs.

To move this job forward, EPA needs an increase of 20 work years and \$25 million in contract support. Without a minimum commitment, essential standards will not be established in FY 83. The Reagan-Gorsuch budget would reduce the 1981 authorization for this effort by 13.7 workyears and 1.5 million contract dollars.

Managing Hazardous Wastes

Although no one knows for certain, there may be 20,000 hazardous waste facilities now operating in this country. At present these are only required to comply with very simple "good housekeeping" rules. RCRA intended that (1) the design and operation of each facility be individually reviewed, (2) those meeting standards be issued permits, and (3) those failing to do so be closed. This permit review was intended to be conducted on an expedited schedule, for until these reviews are complete there can be no assurance of public safety.

The permitting process is politically sensitive, technically very difficult, and therefore necessarily complex. The facility owner must first submit detailed information on facility design, types of wastes handled, and normal operating procedures. Competent engineering and other technical personnel must then review this information and preliminarily determine whether the facility is in compliance with standards or not. The staff then must visit each site, following up by requiring further tests if necessary. The public must be given an opportunity to be heard. EPA has estimated that a landfill permit will require 226 work days, an incinerator permit 122-208 work days, and a storage site permit 64 work days. If local fears politicize the process, it can take much longer.

Congress intended that permitting be completed in three to five years, and few residents near one of these facilities want to wait a decade before someone competent reviews its safety. Getting the job done in five to six years would require 260 workyears if there are 14,000 facilities and 375 if there are 20,000. This budget uses the lower figure for 1983, subject to further review in FY84. The Reagan-Gorsuch budget would reduce existing manpower to a level that, according to EPA's own analysis, would require ten years to permit all estimated sites. But that analysis assumes that there are only about 14,000 facilities, and if there turn out to be 20,000 such operators, which people with the program believe to be more likely, than some communities will not have anyone review their facilities until the mid-1990s. Moreover, unless EPA can hire some of the rare experts, e.g. geohydrologists, necessary to this work, neither it nor the states, which can't afford such people, are likely to be able to ensure an effective review even when one is done.

The Agency also needs added personnel to oversee the manifest system. This system, designed to track wastes from generator through transporter to final disposal, is the law's chief defense against the terrible damage that has been done repeatedly by irresponsible generators or "midnight dumpers." EPA estimates that there will be an average of 18.2 shipments under manifest from the typical generator every year—which means there will be 15 million shipments of hazardous waste annually.

Properly managing this vast traffic would require 400 additional workyears at the combined Federal and state levels, at least during the first several years of program start-up. The Reagan-Gorsuch budget provides 2.6 workyears to supervise the manifest system in the 17 states in which EPA has responsibility for running the program.

Enforcement

The hazardous waste program must deal with 120,000 firms, many of which are small, independent operations. Most of them have never been regulated by an environmental office. Where they have, poor voluntary compliance records are common. A credible enforcement effort is therefore more vital to this program than to most others in EPA, especially during the program's first years, when the participants' expectations will be formed.

The enforcement workload includes the following tasks:

- identifying and bringing into the regulatory system the estimated 21,000 subject firms that have never informed EPA of their existence;
- making inspections and dealing with the 20 percent expected to identify serious violations;
- acting against the two percent of all waste shipments that will entail an exception or discrepancy.

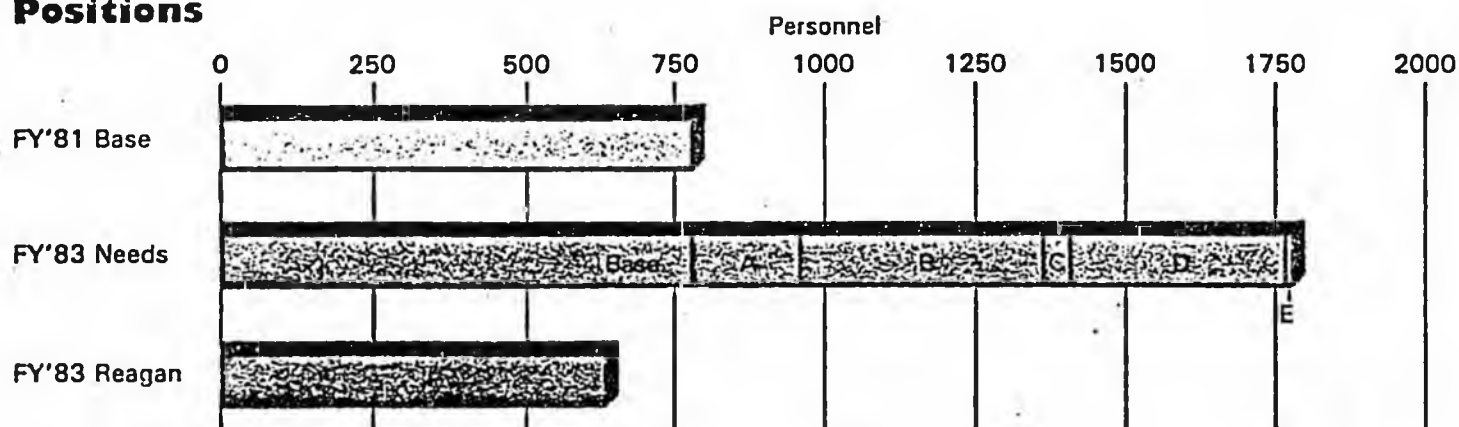
These and other tasks add up to an enforcement program requiring roughly 700 workyears. That this number is larger than the 570-member water enforcement staff reflects the nature of the workload: the large number of regulated concerns, the technical complexity and uncertainty of the field, and Congress's specific requirement that it be regulated more intensively than its predecessors given the risks involved and the prevalence of irresponsible practices. The Reagan-Gorsuch budget allows 46 workyears for hazardous waste enforcement, a decline of 45 percent from the 1981 level.

State Grant Support

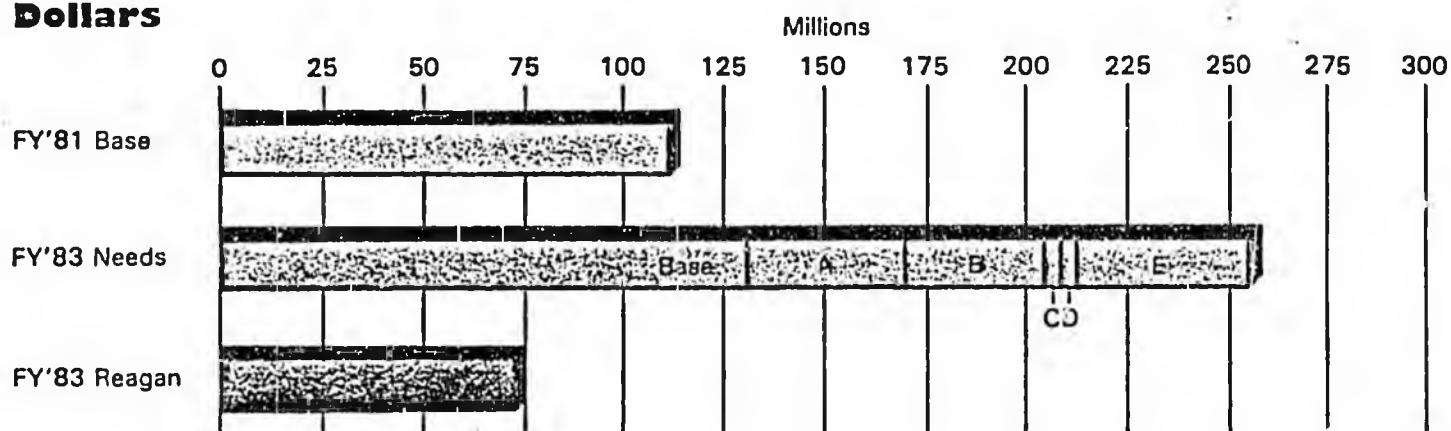
If the states are to hold up their end for permitting alone, they will require another 887 positions in FY 83, which at state labor rates translates to approximately another \$30 million. Adequate funding for program development and enforcement will add another \$18 million, bringing the total to \$87.1 million.

Under the law, if states refuse to accept a program, responsibility reverts to the Federal government. The Reagan-Gorsuch budget calls for a complete phase-out of the Section C hazardous waste grants over the next five years, after which time the states will have to fund this politically-charged program completely unassisted, a burden hardly likely to encourage strong state commitment.

Positions



Dollars



Budget Summary

	Permanent Positions	Extramural (\$000)	Total (\$000)
1981 Base (Adjusted for Inflation)	775.4	86,662.9	131,813.1
A. Research to develop better ways of testing the risks posed by suspect chemicals.	162.3	23,338.9	37,129.5
B. Reviewing 100 substances judged as being potentially the most dangerous and exercising control where warranted.	406.1	20,337.2	36,009.8
C. Reviewing 100 proposals from manufacturers wanting to make new chemicals or use existing ones in major new ways, and following up where necessary.	49.2	3,084.2	4,982.8
D. Enforcing at least 20 toxic chemical rules—finding such chemicals and ensuring that they are removed from environment to safe disposal.	375.0	1,936.5	5,050.2
E. Grants to states to help them run toxics control programs.	7.1	40,000.0	40,126.7
Total Increment	999.7	88,696.8	123,299.0
Program Total	1,775.1	175,359.7	255,112.1

Controlling Toxic Chemicals

3

Toxic chemicals are poisons. However, most chemicals are not toxic. Prior to passage of the Toxics Substances Control Act of 1976 (TSCA) no federal program existed to screen toxic from non-toxic chemicals and protect the public from those chemicals found to endanger public health. TSCA controls the use of toxic chemicals in two ways. First, it requires EPA to gather information, test, and (if necessary) limit the use of toxic chemicals before they are placed on the market. This is called premarketing review. Second, TSCA requires EPA to review all chemicals already in use and to regulate those that pose unreasonable risks. TSCA promises the public the first comprehensive screening for, and follow-up control of, dangerous chemicals. It also encourages industry to research the health implications of its own products as they are being developed, and it avoids investments in products that later prove harmful.

Over the last decade, the chemical revolution has transformed our environment as well as our economy. As our use of chemicals has grown, so has the presence of their toxic byproducts in the environment. Our consequent accelerating exposure to these byproducts has become a significant environmental health risk.

There are over 55,000 chemicals in commerce. In addition, at least 600, probably closer to 1000 new chemicals will come to EPA for premarketing reviews next year. We don't know what the vast majority of these chemicals do to living creatures. We don't know where they enter the environment, or how they travel through it, or where they may be accumulating. We don't know how they change after they enter the environment, how they interact with other chemicals, or what new risks are created by these changes and reactions. Cloaked in such ignorance, the possibility of a catastrophic mistake is significant.

In 1976 the Ford Administration and Congress took action. The Toxic Substances Control Act (TSCA) represents the first systematic attempt to evaluate and control the manufacture of toxic chemicals. The Act requires EPA to identify and prevent "unreasonable risks," and requires industry to test chemicals for safety and report the results to EPA before manufacturing a new chemical or using specified chemicals in significant new ways.

For the last several years the EPA toxics program established the research, organizational, and legal foundations necessary to regulate this extremely complex field. It took two years after the passage of TSCA merely to find out—for the first time ever—how many chemicals were in use in the U.S. More work was then necessary to build up the computer capacity to identify and compare these tens of thousands of chemicals structurally; to gather the information and build the staff required to conduct

risk assessments and other tasks; to focus in on the roughly 2000 (3.5 per cent) of these chemicals requiring priority attention; and to complete the legal framework for a regulatory process. By 1981 this work was largely complete, and the Toxic regulatory program came "on line."

The Toxics program now faces a full agenda. By 1982, and certainly by 1983, the Toxic Substances Control staff should be conducting the research required to support faster, cheaper, and more accurate evaluations of chemical risk; should carefully review roughly 100 new chemicals per year; should complete at least preliminary risk evaluations of the first group of several hundred of the most risky of the existing chemicals; and should carry out the field and enforcement work required to ensure that the public actually receives the protection promised by the Act once real dangers have been identified.

Almost every step—research, risk assessment, regulation, and enforcement—is difficult and resource intensive. Because the economic stakes of taking action against an existing chemical are high, Congress requires EPA to conduct both a scientific assessment of the risks and an economic evaluation and then balance the results. Field implementation will be no easier because each chemical requiring control will have its own unique group of users and exposed populations.

If TSCA is to achieve its promise, it will need very substantially increased resources over these first years of implementation. Specifically, (1) research, especially to develop better ways of testing the risks of suspect substances reliably and inexpensively, will require 162 new staffers and \$23.3 million; (2) review and field control of 100 existing priority suspect substances will cost 406 extra people and \$20.3 million, and (3) review and field follow-up (as necessary) on 100 new chemicals will cost 49.2 new

workers and \$3.1 million. In contrast, the Reagan-Gorsuch budget would cut the TSCA staff 17 percent, its research budget 36 percent, and its real ability to buy outside research and services by 56 percent.

Research

We are barely beginning to understand what we don't know in this area. For example, we have only a very incomplete, sketchy understanding of the full spectrum of toxic chemical effects. Much of what we know is related to tests for cancer, and much of that is based on relatively unreliable short-term tests. Almost no work has been done regarding long-term toxic chemical effects on the brain; the nervous, cardiovascular, or excretory systems; human inheritance, or unborn children. However, we know enough to understand that this vast undone job is urgently needed.

If TSCA is ever to be fully implemented, toxicity testing must be made cheaper, faster, and more reliable. That's as important for the chemical industry as for EPA. Just the development of reliable and economic tests for the full range of health effects is a major task that will require substantial resources.

An adequate research budget designed to develop cheaper, more reliable tests for a variety of effects, to develop better test standards, to fund work on finding how chemicals "travel" through the environment, how they interact and are changed, where they accumulate, and what their ultimate fate is, and to exert more effective quality control over the private laboratories that accomplish most testing, would require 350 permanent positions (up about 160 over FY 81 levels), supported by a \$86.2 million budget including \$56.5 million for use by private laboratories. In contrast, the Reagan-Gorsuch budget proposes to cut the real purchasing power of EPA's toxics research by 36 percent.

Controlling Existing Chemicals

The most ambitious aspect of the Toxic Substances law is the requirement that EPA screen existing chemicals to determine which pose unreasonable risks and, where necessary, regulate those that do. This task has never been adequately funded and the Agency has consequently done little more than promise eventual control of existing chemicals.

Workload calculations indicate that a serious effort to control existing chemicals would require an additional 406 workyears and \$20.3 million. This level of resources would allow the Agency to test most of the current backlog of the most suspect chemicals in five to six years. That won't finish the job, however, because the initial list of 2000 suspects is being continually augmented as reports of industry testing, scientific research, health problems experienced by

particular groups of workers and consumers, and the review of analogous chemicals suggest additional substances for review.

The screening process is complex. It involves:

- a preliminary determination of what information is available and what additional information needs to be collected;
- preparation of testing and/or information collection rules to require industry to provide the additional information required. Statutory simplification could cut the costs of this inefficient requirement, possibly significantly.
- preliminary risk assessments to determine where the risks exist;
- required engineering and economic analyses; and
- preparation of support documents for the specific regulations being issued.

Review of New Chemicals

TSCA requires industries to notify EPA before manufacturing a new chemical or using a chemical in a significant new way. Effective review of such premanufacturing notifications (PMNs) is the most powerful tool EPA has to identify potentially dangerous chemicals before they enter commerce and to take whatever steps are necessary to control or limit their contact with workers, consumers, and the environment. For 1983, we estimate that EPA will be notified of nearly 1,000 new chemicals, of which approximately one half will be exempt from further review due to the absence of potential hazard or the lack of significant exposure. The remainder, however, will require several levels of increasingly rigorous scientific review leading, in approximately 30 percent of the cases, to further testing, regulatory action, or voluntary agreements by manufacturers to test or restrict use. We estimate that a sound new chemical review program will require an additional 49 permanent positions and \$3.1 million in FY . This investment will protect public health and the environment from the risk of poorly tested, inadequately controlled, and potentially dangerous new chemicals.

Enforcement

Enforcement of the toxic program's rules, if the initial experience with PCBs is any indication, is a potentially immense undertaking. The PCB control effort has so far required the work of approximately 50 people for over 5 years. Enforcement required (1) the termination of this chemical's manufacture, (2) the identification of PCBs in equipment all over the country, (3) their removal to safe storage areas, (4) the identification of safe incineration facilities, (5)

tests for human or animal uptake, (6) technical help to state and local officials, and (7) the pursuit of legal remedies where necessary.

There are roughly 2000 priority existing chemicals awaiting review. Since, as noted above, at least a hundred others will be added to the priority list each year, the staff would have to process roughly 500 priority substances a year to work its way through this backlog in five years, or 200 a year if a 10 year review cycle were acceptable to Congress. Only then could review of the other 53,000 chemicals in use begin.

Probably six to eight hundred of the existing priority list of 2000 will eventually require field work. (Six hundred have been specifically identified by other public bodies as dangerous or highly suspect substances.) Thus, if the Agency were in fact to review 500 priority existing chemicals a year, it might well generate 350 control actions a year. Almost all would require field follow-up.

If every one of these 350 actions required as much field work and took as long to do as the PCBs rule, this program would require as much effort as the rest of the Agency's programs combined. Fortunately, most actions will probably require less work. A few will require more. For example, if the Agency decided that formaldehyde was unsafe, it and the states would have to deal with 11 major applications (including home insulation) and many minor ones. Although we can expect significant efficiencies as the number of chemicals covered increases and as industry and government learn how to manage such cases, this remains a huge job—if we take seriously the clear intent of the law.

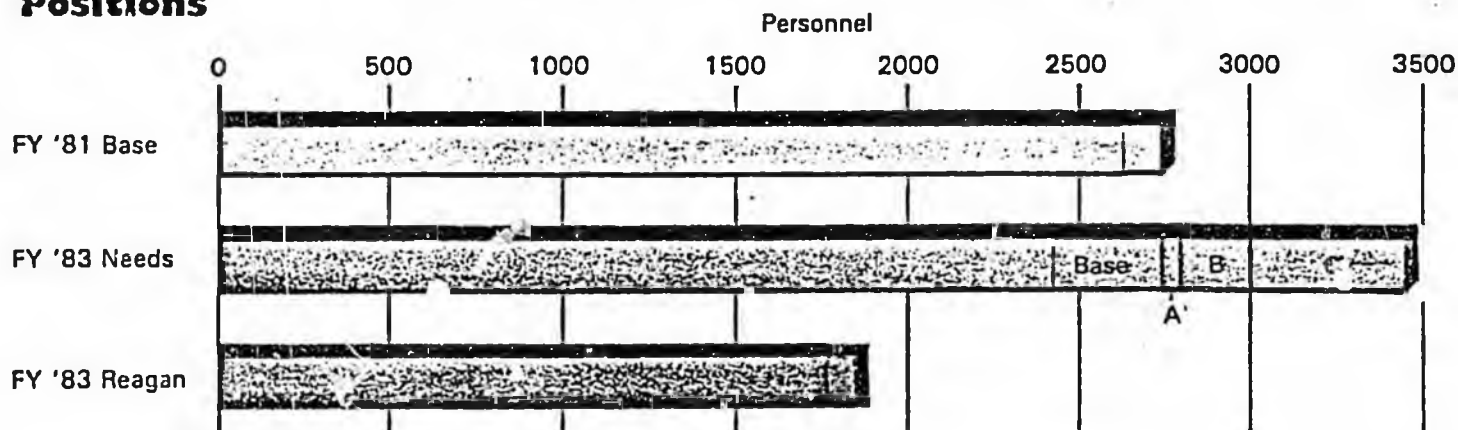
Given the number of cases now in the risk assessment/regulatory pipeline and the time required to process such cases, we estimate that the enforcement office will have to deal with 20 existing chemical actions in 1983. The number should jump to at least 35 in 1984 and could easily be several times that. If the existing distribution of heavy to modest workload actions remains constant (1 to 3), and adjusting for the states doing an increasing proportion of the work and for likely economies of scale and experience, the EPA enforcement staff responsible for implementing these toxics decisions should add 375 permanent positions in 1983 and 600-650 in 1984. The states, at least those with major toxic chemical enforcement problems, should be given sufficient grant funds to build the staff and facilities to take an increasing proportion of the field load: \$40 million in 1983 (including start-up funds for necessary technical facilities) and \$55-60 million in 1984.

Probably by 1984, and certainly by 1985, the Agency should be implementing toxic control programs in the field. During 1983 and 1984 the Agency and states should build the organizational and support framework to support the very large field staff needed to allow the country to gain ground for the first time on the growing backlog of suspect but ignored substances in the environment. This requires a level of effort of about the same order of magnitude as the traditional air and water quality enforcement staffs.

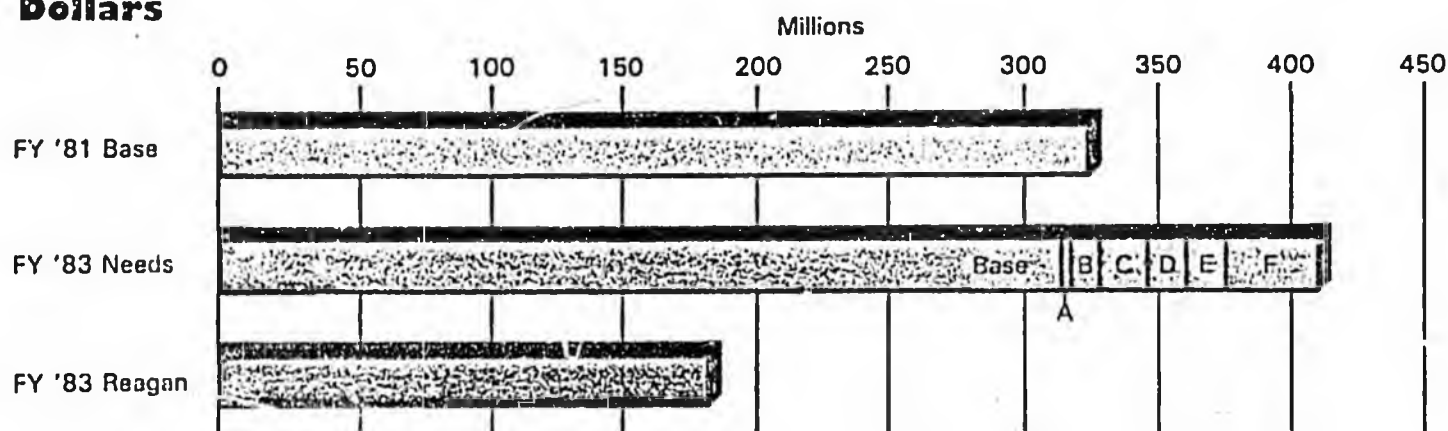
By 1983 EPA should also have the capacity to follow up on its new chemical decisions. Chemicals approved subject to production or use restrictions, for example, need periodic checks to make sure that the restrictions are being respected. Because it will be hard to get state help initially, and because several hundred new chemical requirements should be in place by mid-1983, EPA will need 90-100 new staff members to do the job.

If the Congress is determined to see the Toxics Substances law take effect, it will have to make a major resource commitment. It could also insist that a minimum number of suspect chemicals, both new and old, be reviewed and acted on each year. If it does not intervene, the Administration's program is clear: the Agency will suspend its efforts to implement the existing chemicals part of the Act, and its proposed 1983 budget will cut the purchasing power of the Toxic Substances Control program over fifty percent.

Positions



Dollars



Budget Summary

	Permanent Positions	Extramural (\$000)	Total (\$000)
1981 Base (Adjusted for Inflation)	2,729.9	184,811.0	312,470.0
A. Developing better tools for monitoring toxic substances in water and assuring the quality of sampling procedures	16.2	1,500.0	1,517.9
B. Determining how toxic effluents from 40,000 industrial sources must be treated before entering sewage systems, and writing the appropriate pre-treatment permits	200.0	3,800.1	12,012.4
C. Enforcement of pre-treatment standards	500.0	600.6	10,281.7
D. Grants to help states issue pre-treatment permits	—	15,000.0	15,000.0
E. Grants to help states enforce pre-treatment rules	—	15,000.0	15,000.0
F. Grants to states for exploring the extent of groundwater pollution, developing control strategies, and writing rules to prevent it	—	33,502.8	33,502.8
Total Increment	716.7	69,403.5	96,314.8
Program Total	3,446.6	254,214.5	403,784.8

APRIL 1982

Waste Management in the States

**The
Council of
State
Governments**



The Council of State Governments

The Council is a joint agency of all the state governments—created, supported, and directed by them. It conducts research on state programs and problems; maintains an information service available to state agencies, officials, and legislators; issues a variety of publications; assists in state-federal liaison; promotes regional and state-local cooperation; and provides staff for affiliated organizations.

©Copyright January 1982
The Council of State Governments
P.O. Box 11910, Iron Works Pike
Lexington, Kentucky 40578

RM-706
Price — \$3.00

WASTE MANAGEMENT IN THE STATES

States continue to struggle with the problems of waste disposal at a time of federal budget cuts and increasing regulatory authority. The purpose of this report is to provide an overview of the key issues and the state/federal statutes affecting the management of solid, hazardous and low-level wastes. This report was compiled from existing reports and a survey conducted by The Council of State Governments during September 1981. Individual states should be contacted for more detailed information.

SOLID WASTE/RESOURCE RECOVERY

Beginning with the enactment of the Solid Waste Disposal Act and continuing with the Resource Recovery Act of 1970 and the Resource Conservation and Recovery Act of 1976 (RCRA), Congress recognized that such traditional solid waste disposal methods as open dumping, landfilling, uncontrolled incineration and ocean burial were environmentally and economically unacceptable. These laws directed the federal government to develop and encourage the use of better systems for the disposal of solid waste. Subtitle D of the RCRA established a broad-based national program to improve solid waste management through the development of state and regional solid waste management plans. The Act offered federal financial assistance to states interested in developing and implementing a solid waste management plan. The state plans, under federal guidelines, identify respective responsibilities of local, state and regional authorities, and encourage resource recovery and conservation and the application and enforcement of environmentally sound disposal practices. By November 16, 1981, 34 states had submitted their adopted state plans to the Federal Environmental Protection Agency (EPA) for approval. One state plan, Iowa, has received federal approval. Thirteen other states and four U.S. territories are in the process of developing or adopting a state plan, with one state, New Mexico, choosing not to participate under the Subtitle D program.

Another major element of RCRA's Subtitle D program is the open dump inventory. The inventory is designed to inform Congress and the public of the extent of the open dump problem and also provide states with a listing of problem sites which need correction. The first national listing of open dumps appeared in 1981 and identified 1,029 existing dumps.

Although the federal government has, under RCRA, provided grant assistance to states for their solid waste management programs, federal support has been reduced from \$14 million in federal fiscal 1979 to \$8 million in fiscal 1981. Further cutbacks have resulted in the elimination of all federal Subtitle D funds for fiscal 1982. Many of these cutbacks can be attributed to the shifting of federal and state programs from solid waste to hazardous waste management. This will confront many state solid waste

This report was prepared by Leslie Cole, Environmental Resources and Development, Office of Research and Management Services, The Council of State Governments, Lexington, Kentucky.

programs with severe financial problems. As a result, some states will assume a minimum level of effort and activity in their solid waste management programs. Many other states are seeking increased legislative appropriations as an alternative source of program funds. Other funding sources now under consideration in several states are license/permit fees, disposal surcharges and taxes, inspection fees and increased fines.

States which have implemented statewide solid waste/resource recovery authorities have felt less impact from the loss of federal funds. The authorities are considered something of a hybrid--part governmental agency and part private corporation. Similar to a government agency, they may issue tax free obligations to meet the large capital requirements of solid waste facilities. As a private enterprise, the obligations issued are secured only by the financial viability of the project. The solid waste facilities are generally self supporting through service charges and user fees. Regional or multi-county solid waste authorities exist in Texas, Georgia and Vermont. State authorities exist in Louisiana, Connecticut, Puerto Rico, Delaware, Rhode Island and Wisconsin. Other states, such as New York, Maryland and Ohio have state authorities whose scope also encompasses other areas of environmental concern. Many of the authorities are also active in resource recovery facility development.

Although resource recovery is not a new idea, technological advances and the rising costs of land disposal have made the concept economically feasible. Under RCRA, Congress recognized the important role of resource recovery in solid waste management. Of the eight objectives under Subtitle A, five refer to resource recovery as a practice that should be developed and encouraged. Faced with increasing environmental, economic and energy pressures, states are considering resource recovery as one of today's most workable solutions to the high costs and physical limitations of landfills and the establishment of new open dump sites.

State resource recovery efforts range from high technology energy resource recovery projects to much simpler source separation and waste reduction. Source separation first became popular in the 1970s. According to EPA there are now over 1,000 community recycling centers. One of the most successful source separation programs, Arizona's Beverage Industry Recycling Program (BIRP), was established in 1971 and now operates 14 centers around the state. Similar Beverage Industry Recycling Programs are now operating in New Mexico, Maryland and Kentucky. Another litter reduction program which has encountered wide success in over 200 communities is the Clean Community System--a behavioral approach to the litter problem based on teaching the public not to litter. Other state approaches to promote and encourage recycling include the development of state recycling associations in Nebraska and Colorado and the popular use of state and regional waste exchanges.

The general purpose of a waste exchange is to put waste users in touch with waste producers in order to minimize disposal expense and recover as much value from waste as possible. A number of waste exchange programs which were originally begun and funded by government agencies are now operated by private sponsors such as Chambers of Commerce and Trade Associations. Industry waste exchanges were established by industries or associations to provide a direct service to industry and an indirect environmental and resource service to the general public. Twenty-three states currently participate in some form of

state or regional waste exchange.

Many of these state litter reduction efforts were alternatives to a mandatory beverage container deposit law. The first deposit law was enacted by Oregon in 1972. As of November 19, 1981, nine states--Connecticut, Delaware, Iowa, Maine, Michigan, Oregon, Rhode Island, Vermont and Massachusetts--had passed mandatory deposit laws. Delaware's bottle bill has not yet gone into effect pending appropriations. The Virgin Islands has similar legislation pending. Two states, Nebraska and Washington, have enacted legislation which levies a tax on litter prone goods. The revenue generated from the tax is used for litter programs and grants to local communities developing recycling programs. California and Connecticut repealed similar legislation and Connecticut allowed its litter material tax to expire earlier this year. Additional state resource recovery efforts include tax incentives and loan and grant programs. North Carolina provides tax incentives to individuals or corporations who purchase resource recovery or recycling equipment or construct resource recovery facilities. Oregon offers tax credits, 5 percent per year for 10 years, for eligible resource recovery projects. Connecticut, Washington, Nebraska, Pennsylvania, Minnesota, California and New Jersey all provide some form of loan or grant assistance for resource recovery activities including city and county waste to energy systems. According to the American Iron and Steel Institute, there are over 100 cities and counties operating, building or developing waste to energy facilities. Although some of these facilities have been eligible for state grants and loans a majority have been financed by public means, usually tax exempt long-term bonds. The Connecticut Solid Waste/Resource Recovery Authority has four waste-to-energy projects in various stages of development. Delaware, Rhode Island, Louisiana and Wisconsin authorities are also in the process of constructing or developing city and regional systems. Oregon, Tennessee, Washington, Illinois, New Jersey, New York, Ohio and Maine provide state financial assistance for the construction and operation of resource recovery facilities through the issuance of bonds.

Although a few state resource recovery programs are self supporting, most have relied on federal financial support. Unfortunately, recent cutbacks have also eliminated federal funding for state resource recovery programs for fiscal 1982 (\$4 million in 1981). In light of this, many states are considering funding alternatives for their resource recovery programs. Maine recently passed a bond issue in support of resource recovery activities and facility development while West Virginia and the Virgin Islands are exploring bonding alternatives. Many states are prepared to request additional state legislative appropriations for program funding. New Jersey recently passed a landfill tax which will be used to develop, over a long period, a 30 million dollar resource recovery program. Other states are considering similar taxes and fees in an effort to protect and preserve their resource recovery programs.

HAZARDOUS WASTES

RCRA was the first comprehensive federal legislation to deal with the hazardous waste issue. Under Subtitle C of the Act, the EPA was directed to establish a national program to regulate hazardous wastes from the "cradle to grave." Furthermore and similar to the provisions of the Clean Water Act and the Clean Air Act, the law enables states which have promulgated appropriate

statutory and regulatory programs to operate and enforce the federal hazardous waste program. Federal monies were made available to encourage state participation. Federal funding for Subtitle C of RCRA rose from \$30 million in fiscal 1981 to \$41.7 million in fiscal 1982.

Under the Subtitle C of the RCRA, EPA approves state hazardous waste management programs in two phases. Phase I authorization gives states the right to control transportation and generation of hazardous wastes within their borders and to regulate existing Treatment, Storage and Disposal (TSD) facilities. Phase II authorization grants states authority to issue permits to hazardous waste facilities. As of January 26, 1982, 28 states had received EPA authorization for Phase I of their hazardous waste management programs and five states had applied for final authorization. Where states have not established HWM (Hazardous Waste Management) programs or the programs do not meet federal standards, EPA is required to assume regulatory control.

On May 19, 1980, EPA published the first set of standards under Subtitle C of RCRA. Phase I regulations contain "self-executing, largely administrative and operational standards which existing hazardous waste facilities must meet during interim status." Phase I regulations also include the listing of wastes considered hazardous, the establishment of a state manifest system and the establishment of an initial set of performance standards for TSD facilities.

EPA defines hazardous wastes through four characteristics: ignitability, corrosivity, reactivity and toxicity. EPA regulations also list 500 wastes as hazardous. If a waste exhibits one or more of the characteristics or is found on the list, it is deemed to be a hazardous waste for regulatory purposes. Current EPA regulations allow some exemptions for small-quantity generators; however, inclusion of this provision into a state program is not required. States seeking Phase I interim authorization have incorporated, with slight modification (at least eight states have indicated their substances list is more stringent than the federal list), EPA's identification and definition standards of hazardous wastes into their state's HWM program. Other states, such as Washington and California, have adopted an alternative approach which defines hazardous wastes on the basis of its "degree of hazard" by specifying, in their respective programs, different standards of control for different hazardous wastes. EPA has begun to analyze whether the hazardous waste regulations under RCRA can be adjusted to control specific wastes based on waste type, the usual management technology, and the surrounding environment. The EPA "degree of hazard" analysis is expected in February 1982, with standards adjusted to this approach by 1984.

Another major element of Phase I authorization is the development of a manifest system for tracking a waste shipment to its designated destination. In general, the manifest system requires the generator to use only licensed transporters and to designate only a permitted TSD facility to take delivery of wastes. Currently, 35 states provide for a manifest system in their HWM programs, however, citing a lack of uniformity among the states manifest documents, EPA plans to make final, by April 1982, a prescribed uniform manifest form to achieve standardization and efficiency in the manifest system. The New England states were the first to implement a regional manifest system in 1980 to provide uniformity and improve the overall management of hazardous wastes between the states. This regional manifest has

allowed states in the New England region, for example, Connecticut, to track shipments of waste through their states.

The Phase I interim status regulations also require creation of closure and postclosure plans as well as financial responsibilities. Under the financial responsibility regulations, which were to take effect on October 13, 1981, owners and operators of 14,300 existing facilities seeking interim status must show evidence of at least \$1 million of liability insurance per occurrence or \$2 million per year for "accidental occurrences" to cover claims awarded by courts for property damage and personal injury caused by releases from hazardous waste facilities. The rules also would require another 4,400 land disposal facilities to insure against long-term waste seepage accidents at a limit of \$3 million per claim or \$6 million per year for "non-sudden" occurrences. However, EPA is now considering a proposal to suspend permanently federal requirements for liability insurance and has deferred the financial regulations effective date to April 13, 1982, pending a decision. A majority of the states require proof of financial responsibility and hold an owner or operator of a HWM facility liable for damages. However, since some states statutes, such as Texas and Massachusetts, have incorporated RCRA's financial regulations by reference, their status is also pending the EPA decision.

In January 1981, Phase I regulations were supplemented by more technical Phase II standards. Phase II standards include technical and environmental performance criteria designated to guide EPA in issuing permits.

EPA divided Phase II state interim authorization into three components, A, B and C.

Phase II A. -- standards for granting permits for storage and treatment facilities, effective July 13, 1981.

Phase II B. -- standards for permitting hazardous waste incinerators, effective July 22, 1981.

Phase II C. -- standards for permitting land disposal facilities, pending.

However, EPA has temporarily suspended Phase II A and B standards for existing incinerators and storage surface impoundments due to industry comments on retrofitting existing facilities and 1980 amendments to RCRA which require EPA to distinguish between new and existing facilities. In addition, EPA has yet to issue regulations under Phase II C, land disposal facilities. While the Agency first proposed standards for permitting land disposal facilities on December 18, 1978, due to the receipt of hundreds of critical comments, EPA decided to develop revised regulations. On February 5, 1981, EPA published its revised proposed landfill regulations with final rules to be promulgated no earlier than the beginning of 1982, later amended to 1983.

However, through a suit brought about by Illinois, two environmental groups and the National Solid Waste Management Association, U.S. federal district court Judge Gessell ordered on November 13, 1981 that regulations "setting design and operation standards for existing hazardous waste land disposal facilities must be issued by the EPA by February 1, 1982." EPA and the Department of Justice will appeal the Court's decision. In another ruling, Judge Gessell declined to order EPA to reverse its decision to

suspend temporarily the standards for issuing permits for existing surface storage impoundments and incinerators.

Of the five states seeking Phase II authorization to issue permits for storage and treatment facilities and incinerators, Texas and Georgia are also seeking authority to write land disposal permits although EPA regulations do not currently allow for that.

Phase III standards or final authorization will resolve complex technical issues and establish detailed requirements for design, construction and operation of facilities. For states seeking final authorization, RCRA regulations require the administration of a strict enforcement program which generally includes within a compliance evaluation program: reports and notices, an independent inspection and surveillance program, entry, inspection and monitoring authority, and proper evidence gathering procedures. Most states provide for civil and criminal fines; however, many states have moved toward classifying hazardous waste violations as felonies. Twenty states have amended their statutes to provide for felony status.

In addition to the minimum requirements under Subtitle C of RCRA many states are also active in facility siting, comprehensive planning and emergency response.

One of the major issues related to siting is permitting authority. In most states an existing department issues the permit; however in several cases, a state-level board consisting often of state-level agency heads issues the permit. Five states have developed a state-level siting board specifically for hazardous waste facilities. The nine-member Connecticut Siting Council allows three electors from the affected municipality and one from the neighboring municipality most affected to sit on the council. The council, following receipt of a complete application and hearings, has the authority to grant or deny a certificate of public safety and necessity. The Michigan site approval board, in another approach, is comprised of permanent statewide members and temporary additional members selected from the affected area. The board acts on site construction permit applications that have been approved by the State Department of Natural Resources and has final authority. Two on-site facilities were recently sited by the Michigan approval board.

The way siting legislation deals with local governments varies significantly between states. Seventeen states provide state-level preemption of local zoning ordinances while eight states specifically give local governing bodies approval over hazardous waste land disposal facilities. Illinois Hazardous Waste Regulations require final approval of sites by county or municipal governing bodies.

In some cases, states provide for mediation and arbitration to resolve siting conflicts. Florida, for example, has an appeals procedure set up for dealing with conflicts. Under Florida law if the Department of Environmental Regulation issues a permit for a hazardous waste facility on technical grounds and if the local government finds the facility inconsistent with local plans, the permittee may seek a variance from the local plan. If the local government denies a variance, the permittee may appeal to the Regional Planning Council for a recommendation. If the Regional Planning Council recommends that a variance be granted, the permittee may appeal to the

Governor and Cabinet to grant the variance.

Fourteen states currently provide for public involvement in the ownership and operation of hazardous waste facilities. Virginia, under its HWM program, allows the state to own and operate an HWM facility, while states such as Georgia and Texas have established quasi-public state authorities to own, operate and lease HWM facilities.

Several states are also active in comprehensive planning in order to assess and evaluate hazardous waste issues and problems and develop, in general, state siting, resource recovery, funding policies and program strategies. A majority of the states have undertaken waste surveys to determine the scope of the hazardous waste problem.

Although RCRA and additional state actions have made great progress in establishing comprehensive safeguards against the release of hazardous wastes into the environment, they have not dealt with the problems of past waste disposal practices. Many inactive and abandoned hazardous waste disposal sites have proven to be a serious threat to public health and the environment.

In December 1980, Congress enacted the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This law, known as Superfund, created a five year, \$1.6 billion fund which will be used to clean up about 400 sites nationwide. The fund will be paid for by a tax on generators (87.5 percent) and federal appropriations (12.5 percent). EPA has identified 115 of the worst dumpsites and targeted the locations for clean-up under Superfund. The sites are located in 45 states and territories, with the 16 sites in Florida, 12 in New Jersey, eight in New York and Pennsylvania and 26 state and territories have one site on the list.

A major concern to some states is the preemptive language of Superfund. The present controversy focuses on section 114(c) of the Superfund legislation, which provides:

Except as provided in this Act, no person may be required to contribute to any fund, the purpose which is to pay compensation for claims for any costs of response or damages or claims which may be compensated under this title. Nothing in this section shall preclude any State from using general revenues for such a fund, or from imposing a tax or fee upon any person or upon any substance in order to finance the purchase or prepositioning of hazardous substance response equipment or of other preparations for the response to a release of hazardous substances which affects such State.

The Exxon Corporation and four other corporations required to pay taxes under the New Jersey Spill Act brought suit in federal district court in New Jersey alleging preemption and seeking a refund of taxes paid. On July 27, 1981 the suit was dismissed holding that the corporations have an affective and efficient remedy for their grievances in state courts. In an effort to seek federal court approval of the tax New Jersey later sought a declaratory judgement that the provisions of the State Spill Compensation and Control Act of 1979 are not preempted by the federal Superfund Act of 1980. New Jersey lost its bid for federal court approval when the U.S. district court of the District of Columbia dismissed the suit on November 10, 1981. Five

petrochemical companies have resumed the battle on December 18, 1981 asking a state tax court to bar the state from collecting the surcharges. The awaited outcome on the New Jersey case leaves the legal status of many state funds in question. Florida has reacted by adding language to its state fund indicating that it will not be used in a manner inconsistent with CERCLA. State laws authorizing the establishment of trust funds often spell out the funding source. California recently enacted Superfund legislation in response to a 1980 state survey which identified 67 hazardous wastes sites in need of cleanup. The \$100 million dollar fund, to be collected over the next ten years, will be supported entirely on industry-paid fees on hazardous waste disposal. Thirty states have some type of spill or trust fund to provide funding for an assortment of hazardous waste management activities. Several states can activate their funds to provide for emergency response and cleanup. Other funds, such as Kentucky and Massachusetts, have been set up to also encourage volume reduction and alternatives to land disposal of hazardous wastes.

Although most states encourage the recycling of all wastes and many require alternative options to be considered prior to land disposal, few actually provide incentives to recycle hazardous wastes. Utah, Montana, South Carolina, Washington and Michigan exempt or partially exempt generators from regulation under the state hazardous waste management program if the wastes are recycled. Florida and Missouri provide fee and tax exemptions for generators who recycle. Oregon provides a 100 percent tax credit on capital costs for projects recovering usable material or energy from wastes and New Jersey funds low-interest, state-subsidized loans for equipment and other capital expenditures related to recycling residentially generated waste oils. New Jersey municipalities which recycle residential waste oils receive a separate state rebate derived from a tax on landfills. Many states have also become involved in state and regional solid/hazardous waste exchanges in an effort to recycle wastes. The New York Waste Exchange Law authorized New York State Environmental Facilities Corporation (a public benefit corporation) to study and establish a statewide effort in order to reduce the quantities of hazardous wastes that need ultimate disposal.

Other state recycling efforts include research and development. Illinois has earmarked 25 percent of its Hazardous Waste Fund to be used for research in order to reduce, recycle or detoxify hazardous wastes in the state and Oklahoma has set up a separate Resource Recovery Division to research and encourage recycling.

LOW-LEVEL NUCLEAR WASTE

Before 1954, the management and use of atomic energy and radioactive materials were largely confined to the federal government, however, the Atomic Energy Act of 1954 enabled private entities to operate nuclear facilities and use radioactive materials. Although the Atomic Energy Commission (AEC) was charged to carry out the regulations of the act, many states voiced concern over public health and safety and expressed an interest in state regulation of atomic energy and radioactive materials. In response to the states concern, section 274 of the Atomic Energy Act was passed in 1959 and gave the governor of a state the right to enter into an agreement program with the AEC and later the Nuclear Regulatory Commission (NRC) and assume certain regulatory

authority over radioactive by-products, source materials, and small quantities of special nuclear materials. Low-level waste would fall under the regulatory purview of the states participating in the program (low-level wastes are defined as industrial, medical or research waste contaminated with small amounts of radioactive material). To enter into the agreement program a state is required to pass enabling legislation authorizing the governor to enter into such an agreement and have a state radiation control program compatible with regulations and standards set by the AEC.

Low-level wastes were not generated in significant quantities by the private sector until the 1960s. At that time most radioactive wastes were disposed of at federal government sites. However, as larger volumes of low-level radioactive wastes were produced, the need for commercial disposal sites increased. Between 1962 and 1971, six commercial low-level waste burial sites opened: Maxey Flats, Kentucky; West Valley, New York; Sheffield, Illinois; Barnwell, South Carolina; Richland, Washington; and Beatty, Nevada. Government facilities which generate and dispose of low-level waste on site are: Oak Ridge National Laboratory, Tennessee; Los Alamos National Laboratory, New Mexico; Idaho National Engineering Laboratory; Hanford Reservation, Washington; and Savannah River Plant, South Carolina. There are also government disposal facilities in Texas, New Mexico, Ohio, New York, Kentucky, Tennessee and Missouri.

Under the state agreements with the AEC, state authorities have regulated five of the six disposal sites under the federal/state agreement program. As of November 15, 1981, 26 states had agreement state status and 18 others have have enabling legislation. The non-agreement states have also developed radiation control programs in an effort to protect the public health and safety of its citizens regarding those radiation sources which are not controlled by the federal government. By 1979, three of the six low-level waste commercial sites had closed. The three states in which commercial facilities are currently operating, Nevada, South Carolina and Washington, have since exerted considerable pressure on the states which send waste to their respective commercial sites by limiting the types and amounts of out-of-state wastes to be accepted. Furthermore, over the past five years, at least 25 states have placed restrictions on the disposal of radioactive wastes within their borders.

Recognizing the nation's needs for developing additional low-level disposal sites, Congress passed the Low-Level Radioactive Waste Policy Act of 1980. Under the act, states are responsible for providing low-level radioactive waste disposal capacity for wastes generated in their states, except for wastes generated by the military or federal research and development activities. To carry out that responsibility the act authorizes states to enter into regional compacts to establish and operate regional disposal facilities for low-level radioactive wastes.

To date, more than 20 states have completed or are conducting studies of their low-level waste management requirements. During the last nine months, groups of states in each region of the country have met to discuss regional management of low-level wastes. The Northwestern states are the first to seek federal approval of a regional low-level waste compact. The Northwest Compact established an eight-state region with a low-level waste disposal facility located at Hanford, Washington. Washington, Idaho and Oregon have adopted the

compact and Utah has joined by executive order, pending action by the 1982 legislative session. Alaska, Hawaii and Wyoming are expected to submit the agreement in their next legislative session. The Northwest Compact provides that all party states conform to the host state's packaging and transportation laws. The act also provides for the management of hazardous chemical wastes and states that "in consideration of the state of Washington allowing access to its low-level waste disposal facility by generators in other party states, party states such as Oregon and Idaho which host hazardous chemical waste disposal facilities will allow access to such facilities by generators within other party states." These bills provide that effective July 1, 1983, if Congress approves the Northwest Compact, then "no facility located in any party state may accept low-level waste generated outside of the region comprised of the party states unless the low-level waste committee votes otherwise." Because some states wastes are forbidden and not all states' wastes could violate the Commerce Clause, Congress must consent to this provision before it becomes law.

The Southern states expect to have a draft low-level waste compact ready for submission to state legislatures by January 1982. Other meetings concerning the regional siting of low-level facilities have been held in the Midwest and New England. The status of potential party states of low-level radioactive waste interstate compacts (as of January, 1982) is as follows <1>: Northwest--Alaska, Hawaii, Idaho, Montana, Oregon, Utah, Washington, Wyoming;* Rocky Mountain--Arizona, Colorado, Nevada, New Mexico, Utah*, Wyoming*; Midwest--Delaware, Illinois, Indiana, Iowa*, Maryland, Kansas*, Kentucky, Michigan, Minnesota*, Missouri*, Nebraska*, North Dakota*, Ohio, Virginia, Wisconsin; Central--Arkansas, Iowa*, Kansas*, Louisiana, Minnesota*, Missouri*, Nebraska*, North Dakota*, Oklahoma; Southeast--Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee; Northeast--Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont; Going Alone--California, Texas; Unaffiliated--South Dakota, West Virginia, District of Columbia, Puerto Rico, Virgin Islands, Guam, Northern Mariana Islands, Trust Territory of the Pacific Islands.

Other areas of state regulation of low-level materials include transportation and emergency response. While some states have left radioactive material transportation regulation to the federal government others have been active in providing regulatory authority in areas such as pre-notification, financial responsibility, and surveillance, monitoring and inspection. Twenty states have adopted pre-notification requirements, 12 states have defined financial responsibility transporter limits, and 24 states have enacted some form of transporter monitoring, surveillance and inspection program. The most frequent transportation actions by states are the adoption of federal DOT regulations and requiring some form of registration, fee payment, permit or license.

<1> National Association of Attorney Generals

* States potentially belonging to more than one compact.

The Three Mile Island incident and recent experiences of improper disposal and storage of hazardous wastes at Love Canal and the Valley of the Drums accelerated state concern regarding emergency response planning. Many state emergency response programs are directed at nuclear reactor incidents, but several states have developed or expanded their emergency response to consider all radioactive and hazardous materials incidents. Currently, 45 states provide some kind of state emergency response program.

SUMMARY OF STATE SOLID WASTE AND RESOURCE RECOVERY PROGRAMS

State or other jurisdiction	Solid Waste		Resource Recovery				
	State solid waste management plans	State solid waste/resource recovery authorities	State used oil recycling programs	Industrial waste exchange programs		Bottle bill legislation enacted	State litter control program
				State operated	Industry/ private operated		
Alabama.....	*,o	...	x	...	—	1	x
Alaska.....	#	...	x	...	...	...	x
Arizona.....	*	...	...	...	pdg	...	...
Arkansas.....	o(a)	...	...	...	...	...	...
California.....	o	...	x	...	...	...	x(b,r)
Colorado.....	*,o	...	...	...	—	...	x(b,e)
Connecticut.....	*,o	x	...	...	...	x	x(b,r)
Delaware.....	#	x	...	...	...	pdg	...
Florida.....	*,o	...	1	...	—	...	...
Georgia.....	o(a)	x	...	...	—	...	x
Hawaii.....	(c)	...	x	...	...	...	x
Idaho.....	#	...	...	...	...	...	x
Illinois.....	*,o	...	x	—	...	...	...
Indiana.....	*,o	...	x	—	...	...	x
Iowa.....	o(a)	...	...	...	—	x	...
Kansas.....	*,o	...	x	—	...	...	...
Kentucky.....	*,o	...	x	...	...	...	...
Louisiana.....	*,o	x	...	...	...	...	...
Maine.....	*,o	...	x	...	...	x	...
Maryland.....	#	x	x	...	—	...	...
Massachusetts.....	*,o	...	x	...	...	x	...
Michigan.....	*,o	...	x	...	...	x	...
Minnesota.....	*,o	...	x	...	—	...	...
Mississippi.....	*,o	...	...	...	...	...	...
Missouri.....	*,o	...	x	...	—	...	...
Montana.....	*	...	x	...	...	...	...
Nebraska.....	#	...	...	...	—	...	x(b)
Nevada.....	#	...	...	...	...	...	...
New Hampshire.....	(g)	...	x	...	...	...	...
New Jersey.....	#	...	x	...	—	...	x
New Mexico.....	"	...	...	...	...	...	...
New York.....	#	x	x	—	...	...	...
North Carolina.....	*,o	...	...	...	—	...	...
North Dakota.....	*,o	...	...	...	...	...	...
Ohio.....	*,o	x	pdg	—	...	...	x
Oklahoma.....	*,o	...	...	...	...	...	...
Oregon.....	*,o	...	x	—	—	x	...
Pennsylvania.....	*,o	...	x	—	—	...	...
Rhode Island.....	*,o	x	x	...	...	x	...
South Carolina.....	#	...	...	...	...	...	...
South Dakota.....	*,o	...	...	...	...	...	x
Tennessee.....	*,o	...	pdg	—	—	...	x
Texas.....	*,o	x	...	...	—	...	...
Utah.....	*	...	x	...	...	...	...
Vermont.....	*,o	x	...	...	—	x	...
Virginia.....	o	x	...	...	...	...	x
Washington.....	*,o	...	...	...	—	...	x(b)
West Virginia.....	#	...	...	...	...	...	...
Wisconsin.....	*,o	...	1	...	...	...	...
Wyoming.....	#	x	...	...	...	...	...
American Samoa.....	*,o	...	...	...	...	...	...
Guam.....	#	...	...	...	...	...	...
No. Mariana Is.....	#	...	...	...	...	...	...
Puerto Rico.....	#	x	...	...	...	...	...
Virgin Islands.....	#	x	...	...	...	pdg	...

Key:

* - Completed plans awaiting federal approval.
o - Completed plan adopted by state.
- Plan in draft stages.
" - No subtitle D program.
x - Active program.
i - Inactive program.
pdg - Pending.
- - Information exchange.

= - Material exchange.

(a) - Federal approval.
(b) - State litter materials tax.
(c) - Completed plan awaiting state adoption.
(r) - Tax repealed.
(e) - Tax legislation expired, not renewed.
(g) - Completed plan awaiting adoption.

Source: Compiled by The Council of State governments,
November, 1981.

THE COUNCIL OF STATE GOVERNMENTS
HAZARDOUS WASTE MANAGEMENT IN THE STATES

November 1981

Siting Hazardous Waste Facilities

State or other jurisdiction	State 2 hazardous waste management programs	State hazardous waste management plans	Permitting/Approval Authority			Siting Provisions			Transportation	Enforcement
			State level department	State level board	State level siting board	State ownership/ operation	State preemption	Local veto	State manifest system	Felony Status
Alabama.....	*	pdg	...	x	...	...	...	...	x	x
Alaska.....	†	...	x	...	...	...	...	...	...	x
Arizona.....	+	...	x	...	...	x	x	...	...	...
Arkansas.....	*	x	x	...	...	...	...	x	x	...
California.....	*	x	x	...	...	...	...	...	x	...
Colorado.....	+	x	x	...	...	...	...	x	...	...
Connecticut.....	(*) pdg	...	x	...	x	...	x	...	x	x
Delaware.....	*	x	...	...	...	...	...	...	x	...
Florida.....	(*) pdg	x	x	...	...	...	x	...	...	x
Georgia.....	*	x	x	...	...	x	x	...	x	x
Hawaii.....	+	...	...	...	...	...	...	...	...	...
Idaho.....	x	pdg	...	...	...	...	...	...	...	...
Illinois.....	(*) pdg	x	x	...	...	...	...	x	x	x
Indiana.....	+	...	...	x	x	...	x	x	...	...
Iowa.....	*	x	...	...	...	...	x	...	x	...
Kansas.....	*	pdg	x	x	...	x	x	...	x	x
Kentucky.....	*	x	x	...	...	...	...	x	x	x
Louisiana.....	*	...	x	x	...	...	...	...	x	...
Maine.....	*	x	...	x	...	...	x	...	x	x
Maryland.....	*	x	x	...	x	x	x	...	x	x
Massachusetts.....	*	x	x	...	...	...	...	...	x	x
Michigan.....	+	x	x	...	x	...	x	...	...	...
Minnesota.....	+	x	x	...	x	x	x	...	...	...
Mississippi.....	*	...	...	x	...	...	...	...	x	...
Missouri.....	+	x	x	...	...	...	...	...	x	...
Montana.....	*	x	x	...	...	x	...	...	...	...
Nebraska.....	*	x	x	...	...	x	...	x	...	...
Nevada.....	+	pdg	pdg	...	...	x	...	...	x	x
New Hampshire.....	*	...	x	...	...	...	...	...	x	...
New Jersey.....	(*) pdg	...	x	...	pdg	...	pdg	...	x	x(c)
New Mexico.....	+	...	x	...	...	...	x(b)	...	x	...
New York.....	(*) pdg	pdg	x	...	x	x	...	x	pdg	x
North Carolina.....	*	x(a)	x	x	...	x	x(b)	...	x	...
North Dakota.....	*	...	x	...	...	...	...	x	...	...
Ohio.....	(*) pdg	...	x	...	...	...	x	...	x	x
Oklahoma.....	*	...	x	...	...	...	...	...	x	...
Oregon.....	*	x	x	...	...	x	...	...	x	x
Pennsylvania.....	*	...	x	...	...	...	x	...	x	x
Rhode Island.....	*	pdg	x	...	...	...	...	...	x	x
South Carolina.....	*	...	x	...	...	...	...	...	x	...
South Dakota.....	+	x	...	x	...	...	...	...	...	...
Tennessee.....	*	...	x	x	...	...	...	...	x	x
Texas.....	*	...	...	x	...	...	...	...	x	...
Utah.....	*	...	...	...	...	...	...	...	...	...
Vermont.....	*	x	...	...	...	...	...	...	x	...
Virginia.....	*	x(a)	x	...	...	x	x	...	...	x
Washington.....	+	x	x	...	...	x	...	...	x	pdg
West Virginia.....	n	x	...	...	...	...	...	...	...	x
Wisconsin.....	*	...	x	...	...	...	x	...	x	...
Wyoming.....	x	...	...	...	...	...	...	...	...	...
American Samoa.....	...	...	...	...	...	...	...	...	...	...
Guam.....	+	pdg	pdg	...	...	pdg	...	...	pdg	pdg
Puerto Rico.....	(*) pdg	...	...	...	...	...	...	...	...	...
Virgin Islands.....	...	...	...	...	...	...	...	...	...	...
D.C.....	pdg	pdg	x	...	...	...	...	...	x	...

Key:

- * — EPA interim authorization (Phase I).
- x — Active state program.
- † — Inactive.
- +

Source: Compiled by The Council of State Governments, November, 1981.

Updated January 26, 1982.

HAZARDOUS WASTE FUNDS

State or other jurisdiction	State Hazardous Waste Trust and Spill Funds	Source of fund	Major scope of fund
Alabama.....	Hazardous Waste Management Fund	F(o)	Administrative costs.
	Perpetual Care Fund	F(o)	Monitoring beyond the active use of the site.
Alaska.....	---	---	---
Arizona.....	Hazardous Waste Trust Fund	F(o)	Operation, maintenance, perpetual care.
Arkansas.....	---	---	---
California.....	Hazardous Substances Account	T(g)	Match federal superfund monies, cleanup, incident contingency fund, victim compensation fund, health studies, emergency equipment.
Colorado.....	Hazardous Waste Disposal Fund	L,P	---
	Emergency Response Cash Fund	L	Emergency response.
Connecticut.....	Emergency Spill Response Fund	L,R	Oil and hazardous spills
Delaware.....	---	---	---
Florida.....	Hazardous Waste Management Trust Fund	L,T,P(o),R,P	Reduce hazard at abandoned sites.
Georgia.....	Hazardous Waste Trust Fund	F(o),B*	Maintenance of abandoned sites.
Hawaii.....	---	---	---
Idaho.....	---	---	---
Illinois.....	Hazardous Waste Fund	F(o)	Tax action against long term danger, research and development of recycling.
Indiana.....	Hazardous Substances Emergency Trust Fund	T(g)	Emergency response, match under superfund.
	Environmental Management Special Fund	F,P	Multipurpose environmental response.
Iowa.....	---	---	---
Kansas.....	Perpetual Care Trust Fund	F(o),L	Cleanup and monitoring.
Kentucky.....	Hazardous Waste Management Fund	F(g)(n),R	Emergency response, postclosure, monitoring, and maintenance.
Louisiana.....	Hazardous Waste Protection Fund	B*,L	Perpetual care, assume financial responsibility.
	Abandoned Hazardous Waste Site Fund	excess S,L	Match federal funds, cleanup at abandoned sites.
	Environmental Emergency Response Fund	R,L,P	Environmental emergency responses, match federal funds.
Maine.....	Hazardous Waste Fund	F(g),F(t*)	Emergency response.
Maryland.....	Oil Disaster Containment Cleanup & Ctry Fund	F(o),P,R	Oil and petroleum products spills.
	Hazardous Substance Control Fund	F(o),L	Hazardous substances in water cleanup.
Massachusetts.....	---	---	---
Michigan.....	Disposal Facility Trust Fund	F(o)	Long term care of closed facilities.
	Hazardous Waste Service Fund	L,R	Emergency response.
Minnesota.....	---	---	---
Mississippi.....	---	---	---
Missouri.....	Hazardous Waste Fund	F(q),I(o),L	Administrative costs, cleanup.
Montana.....	---	---	---
Nebraska.....	---	---	---
Nevada.....	State Emergency Fund	L	Emergency response.
New Hampshire.....	Hazardous Waste Cleanup Fund	L,L,L	Cleanup.
New Jersey.....	Spill Compensation Fund	F(o),L	Cleanup of spills.
New Mexico.....	Hazardous Waste Emergency Fund	L,R,P	Cleanup, disposal, containment.
New York.....	Hazardous Waste Remedial Fund	L	Emergency response.
	Environmental Protection & Spill Comp. Fund	P	Oil spills only.
North Carolina.....	---	---	---
North Dakota.....	---	---	---
Ohio.....	Hazardous Waste Facility Regt. Special Acc.	F(g)	Administration, closure, abatement, grants.
	Emergency Response Spill Fund	L,P	Emergency response to spills.
Oklahoma.....	---	---	---
Oregon.....	Hazardous Waste Account	F(g)	Perpetual care.
Pennsylvania.....	Solid Waste Abatement Fund	F,R,B*	Emergency situations, spills.
Rhode Island.....	Hazardous Substance Emergency Fund	L,R	Abandoned site spills.
South Carolina.....	Hazardous Waste Contingency Fund	F(g)	Emergencies at permitted landfills.
South Dakota.....	---	---	---
Tennessee.....	Hazardous Waste Trust Fund	B*	Cleanup, perpetual care.
	Perpetual Care Trust Fund	F(o)	Containment of abandoned sites.
Texas.....	Disposal Facility Response Fund	L	Match federal superfund monies.
Utah.....	---	---	---
Vermont.....	Oil and Hazardous Spill Contingency Fund	L,R	Response to spills, hazardous substances.
Virginia.....	---	---	---
Washington.....	---	---	---
West Virginia.....	---	---	---
Wisconsin.....	Hazardous Waste Fund	F(o)	Closing and longterm care.
	Hazardous Substances Spill Fund	L,R	Cleanup and disposal.
Wyoming.....	---	---	---
D.C.....	Pending	---	---
American Samoa.....	---	---	---
Guam.....	---	---	---
N. Mariana Is.....	---	---	---
Puerto Rico.....	---	---	---
Virgin Islands.....	---	---	---

Key:

F - Fees
L - Legislative appropriations
P - Penalties
R - Reimbursements
B* - Bond forfeiture
T - Taxes

B - Bond supported

o - Operator

g - Generator

t* - Out-of-state transporters

Source: Compiled by The Council of State Governments, November, 1981.

RADIOACTIVE MATERIAL MANAGEMENT IN THE STATES

State or other jurisdiction	State Emergency Response Programs			Transportation		Regulation	
	State radiation control program	Nuclear reactor specific	All radioactive materials incidents	Federal source of transportation requirements adopted by states	Requires registration fees, permits, licensing, certificates	Commercial low level waste disposal facilities	Regulation of radioactive waste disposal
Alabama.....	x(a)	x	x	DOT	L	...	a
Alaska.....	x	...	...	DOT	R	...	+
Arizona.....	x(a)	x	x	DOT	L	pdg	pdg
Arkansas.....	x(a)	x	x	DOT	P	...	...
California.....	x(a)	x	x	NRC, DOT	R	...	...
Colorado.....	x(a)	x	x	DOT	L	...	o
Connecticut.....	x	x	...	ICC	P, F	...	b
Delaware.....	x	x	x	DOT(a)	P	...	o
Florida.....	x(a)	x	x	DOT(a)	F	...	I
Georgia.....	x(a)	x	x	DOT(a)	P, L	...	...
Hawaii.....	x	...	...	...	...	...	o
Idaho.....	x(a)	...	...	DOT(a)	L	...	...
Illinois.....	x	x	x	DOT(a)	P, C	pdg	o
Indiana.....	x	...	x	...	...	...	...
Iowa.....	x	...	x	DOT	...	...	...
Kansas.....	x(a)	...	x	DOT(a)	R	...	o
Kentucky.....	x(a)	x	x	DOT(a), NRC(a)	L	I	o
Louisiana.....	x(a)	x	x	DOT	L	...	H
Maine.....	x	x	I	DOT(a)	P	...	o
Maryland.....	x(a)	...	x	DOT(a)	...	...	...
Massachusetts.....	x	x	x	DOT(a)	...	...	...
Michigan.....	x	x	x	DOT(a)	R, F	...	a
Minnesota.....	x	...	x	DOT(a)	...	...	o
Mississippi.....	x(a)	x	x	...	...	...	o
Missouri.....	x	x	x	...	...	...	...
Montana.....	x	...	x	...	L	...	o
Nebraska.....	x(a)	...	x	DOT	L	...	...
Nevada.....	x(a)	...	x	DOT(a)	P, L	S	L, F
New Hampshire.....	x(a)	...	...	DOT	...	...	b
New Jersey.....	x	x	x	...	C	...	...
New Mexico.....	x(a)	...	x	DOT	...	...	+
New York.....	x(a)	x	x	DOT(a)	P	I	+
North Carolina.....	x(a)	x	x	DOT, NRC	...	...	...
North Dakota.....	x(a)	...	x	DOT	L	...	o
Ohio.....	x	...	x	DOT(a)	...	...	...
Oklahoma.....	x	...	x	...	...	...	+
Oregon.....	x(a)	x	x	DOT	L	...	...
Pennsylvania.....	x	x	x	DOT(a)	P	...	...
Rhode Island.....	x(a)	...	...	DOT, NRC	P	...	...
South Carolina.....	x(a)	x	x	...	P	S	L
South Dakota.....	x	...	x	(DOT, pdg)	...	...	+, -
Tennessee.....	x(a)	...	x	DOT	...	...	...
Texas.....	x(a)	...	x	DOT, NRC	P, L	pdg	+, a
Utah.....	x	...	x	DOT	...	...	...
Vermont.....	x	x	x	DOT(a)	R	...	a
Virginia.....	x	x	x	DOT	R, C	...	b
Washington.....	x(a)	x	x	DOT, NRC	L	S	P, F, C
West Virginia.....	x	...	x	DOT, NRC	...	...	o
Wisconsin.....	x	x	x	DOT	...	...	...
Wyoming.....	x	...	...	DOT(a)	L	...	...
D.C.....	x	...	x	...	...	...	...

Key:

(a) - Federal/state agreement
 DOT - Department of Transportation
 NRC - Nuclear Regulatory Commission
 ICC - Interstate Commerce Commission
 AEC - Atomic Energy Commission
 (a) - Specific titles
 F - Fees
 P - Permits
 L - Licensing
 R - Registration
 C - Certificates
 x - Active state program
 I - Inactive
 + - Bans disposal of all radioactive waste generated outside state.

- Bans disposal of high level waste.

o - Requires legislative approval prior to disposal of radioactive waste.

+

- Requires consultation and concurrence before disposal is permitted.

I - Requires disposal operator to meet specific technical and environmental criteria.

- Requires Governor's approval prior to disposal.

- Bans all radioactive waste disposal within the state.

S - Commercial disposal site.

H - Requires Asst. Secretary of Office of Environmental Affairs approval prior to disposal.

b - Bans disposal of high-level waste, low level radioactive waste disposal requires prior legislative approval.

STATE WASTE MANAGEMENT OFFICIALS

ALABAMA

Alfred S. Chipley, Director (3)
Div. of Solid Waste & Vector Control
Dept. of Public Health
Union Bank Building, Room 1212
Montgomery, AL 36130
(205) 832-6728

ALASKA

Alan Boggs (3)
Air & Solid Waste Management
Dept. of Environmental Conservation
Pouch O
Juneau, AK 99811
(907) 465-2635

ARIZONA

Tibaldo Canez, Bureau Chief (3)
Bureau of Waste Control
Arizona Dept. of Health Services
1740 West Adams
Phoenix, AZ 85007
(602) 255-1170

ARKANSAS

Jim Beardon, Assistant Chief (1)
Arkansas Dept. of Pollution Control &
Ecology
8405 Stanton Road
Little Rock, AR 73309

Wilson Tolefree, Chief (2)
Air & Hazardous Waste Division
Dept. of Pollution Control & Ecology
P.O. Box 9583
8001 National Drive
Little Rock, AR 72219
(501) 371-1135

CALIFORNIA

Peter A. Rogers, Chief (2)
Hazardous Waste Management Branch
Dept. of Health Services
714/744 P Street
Sacramento, CA 95814
(916) 322-2337

Terry Trumball, Chairman (1)
State Solid Waste Management
1020 9th Street, Suite 300
Sacramento, CA 95814
(916) 322-3330

COLORADO

Orville Stoddard (1)
Senior Public Health
Colorado Dept. of Health
4210 East 11th Street
Denver, CO 80220
(303) 320-8333

Ken Waesche, Div. Director (2)
Waste Management Division
Dept. of Health
4210 East 11th Street
Denver CO 80220
(303) 320-8333

CONNECTICUT

Stephen Hitchcock, Director (2)
Hazardous Waste Management Unit
Dept. of Environmental Protection
State Office Building
165 Capitol Avenue
Hartford, CT 06115
(203) 566-5148

Charles Kurker, Director (1)
Solid Waste Management
Dept. of Environmental Protection
State Office Building
165 Capitol Avenue
Hartford, CT 06115
(203) 566-3672

- 1 Solid wastes
- 2 Hazardous wastes
- 3 Solid & Hazardous wastes

STATE WASTE MANAGEMENT OFFICIALS

DELAWARE

Kenneth Weiss, Supervisor/Res. Eng. (3)
Solid Waste Management Section
Dept. of Natural Resources &
Environmental Control
Edward Tatnall Building
P.O. Box 1401
Dover, DE 19901
(302) 736-4781

FLORIDA

Robert Hawfield (2)
Hazardous Waste Division
Dept. of Environmental Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32301
(904) 488-0330

Bob McVety, Chairman (1)
Solid Waste Management Program
Dept. of Environmental Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, FL 32301
(904) 488-0300

GEORGIA

Moses McCall, Chief (3)
Land Protection Branch
Georgia Dept. of Natural Resources
270 Washington Street, SW
Atlanta, GA 30334
(404) 656-2833

HAWAII

Melvin Koizumi, Deputy Director (3)
Environmental Health Division
Dept. of Health
P.O. Box 3378
Honolulu, HI 96801
(808) 548-4139

IDAHO

Robert P. Olson (3)
Solid/Hazardous Materials Section
Dept. of Health & Welfare
State House
Boise, ID 83720
(208) 334-4108

ILLINOIS

Bob Kuykendall (3)
Div. of Land & Noise Pollution Control
Environmental Protection Agency
2200 Churchill Road, Rm. A104
Springfield, IL 62706
(217) 782-6760

INDIANA

David Lamm, Chief (3)
Solid Waste Management Section
Div. of Sanitary Engineering
State Board of Health
1330 W. Michigan Street, Rm. A304
Indianapolis, IN 46206
(317) 633-0176

IOWA

Charles C. Miller, Director (?)
Air & Land Quality Division
Dept. of Environmental Quality
Henry A. Wallace Bldg.
900 E. Grand Street, 3rd Fl.
Des Moines, IA 50319
(515) 281-8853

KANSAS

John Paul Goetz, P.E., Chief (2)
Hazardous Waste Management Unit
Dept. of Health & Environment
Forbes Field
Topeka, KS 66620
(913) 862-9360

Charles H. Linn, Chief (1)
Solid Waste Management Section
Dept. of Health & Environment
Forbes Field, Bldg. 321
Topeka, KS 66620
(913) 862-9390, ext. 297

- 1 Solid wastes
- 2 Hazardous wastes
- 3 Solid & Hazardous waste

STATE WASTE MANAGEMENT OFFICIALS

KENTUCKY

Carl Schroeder
Div. of Hazardous Material & Waste
Management
Dept. of Natural Resources &
Environmental Protection
1121 Louisville Road
Pineville Plaza
Frankfort, KY 40601
(502) 564-6716

LOUISIANA

Gerald Healy, Jr., Administrator (1)
Dept. of Natural Resources
P.O. Box 44066
Baton Rouge, LA 70864
(504) 342-1255

James Hutchinson, Deputy Secretary (2)
Dept. of Natural Resources
P.O. Box 44396
Baton Rouge, LA 70804
(504) 342-4506

MAINE

John Brochu, Director (2)
Bureau of Oil & Hazardous Waste Material
Dept. of Environmental Protection
State House--Station 17
Augusta, ME 04333
(207) 289-3355

Florence Hoar, Acting Director (1)
Waste Management Division
Dept. of Environmental Protection
State House
Augusta, ME 04333
(207) 289-2111

MARYLAND

Ronald Nelson, Director (3)
Waste Management Administration
Office of Environmental Programs
Dept. of Health & Mental Hygiene
201 W. Preston Street, Rm. 212
Baltimore, MD 21201
(301) 366-2771

MASSACHUSETTS

William Cass, Director (3)
Div. of Hazardous Waste
Dept. of Environmental Quality
Engineering
One Winter Street
Boston, MA 02108
(617) 727-5431

MICHIGAN

Fred Kellow, Div. Chief (1)
Resource Recovery Division
Dept. of Natural Resources
Westland Plaza
Lansing, MI 48909
(517) 373-0540

Delbert Rector, Acting Chief (2)
Office of Hazardous Waste Management
Environmental Services Division
Dept. of Natural Resources
P.O. Box 30028
Lansing, MI 48909
(517) 373-3560

MINNESOTA

Dale L. Wikre, Director (3)
Div. of Solid & Hazardous Waste
Pollution Control Agency
1935 W. County Road, B-2
Roseville, MN 55113
(612) 297-2735

MISSISSIPPI

Jack McMillan, Director (3)
Div. of Solid Waste Management & Vector
Control
State Board of Health
P.O. Box 10385
Jackson, MS 39209
(601) 961-5171

MISSOURI

David Bedan (3)
Solid Waste Management Program
Dept. of Natural Resources
State Office Building
P.O. Box 1368
Jefferson City, MO 65102
(314) 751-3241

- 1 Solid wastes
- 2 Hazardous wastes
- 3 Solid & Hazardous wastes

STATE WASTE MANAGEMENT OFFICIALS

MONTANA

Duane Robertson, Chief (3)
Solid Waste Management Bureau
Dept. of Health & Environmental Sciences
Cogswell Bldg., Rm. A201
Helena, MT 59601
(406) 449-2821

NEBRASKA

Bill Sheil, Chief (3)
Solid Waste Control
Box 94877, Statehouse Station
301 Centennial Mall, South
Lincoln, NE 68509
(402) 471-2186

NEVADA

Lewis Dodgin, Administrator (3)
Div. of Environmental Protection
Dept. of Conservation & Natural
Resources
Capitol Complex
Carson City, NV 89710
(702) 885-4670

NEW HAMPSHIRE

Thomas L. Sweeney, Chief (3)
Bureau of Solid Waste
Dept. of Health & Welfare
Health & Welfare Bldg.
Hazen Drive
Concord, NH 03301
(603) 271-4610

NEW JERSEY

Lee Pereira, Administrator (3)
Solid Waste Administration
Div. of Environmental Quality
P.O. Box CNO27
Trenton, NJ 08625
(609) 292-9120

NEW MEXICO

Ray Krehoff, Program Manager (3)
Solid & Hazardous Waste Management
Programs
Community Support Services Section
Health & Environmental Dept.
P.O. Box 968, Crown Bldg.
Santa Fe, NM 97503
(505) 827-5271, ext. 282

NEW YORK

Norman H. Nosenchuck, Director (3)
Div. of Solid Waste
Dept. of Environmental Conservation
50 Wolf Road, Rm. 415
Albany, NY 12233
(518) 457-6603

NORTH CAROLINA

O. W. Strickland, Head (3)
Solid & Hazardous Waste Management
Branch
Div. of Health Services
Dept. of Human Resources
P.O. Box 2091
Raleigh, NC 27602
(919) 733-2178

NORTH DAKOTA

Jay Crawford, Director (3)
Div. of Environmental Waste Management &
Research
Dept. of Health
1200 Missouri Ave., 3rd Fl.
Bismark, ND 58505
(701) 224-2382

OHIO

Donald E. Day, Chief (1)
Office of L& Pollution Control
P.O. Box 1049
Columbus, OH 43216
(614) 466-8934

Charles Wilhelm, Chief (2)
Office of Hazardous Materials Management
Ohio EPA
361 E. Broad Street
Columbus, OH 43215
(614) 466-8934

- 1 Solid wastes
- 2 Hazardous wastes
- 3 Solid & Hazardous wastes

STATE WASTE MANAGEMENT OFFICIALS

s, Chief (3)
1 & Solid Waste Service
Health
P.O. x 53551
1000 NE 10th Street, Rm. 803
Oklahoma City, OK 73152
(405) 271-5338

OREGON

Ernest A. Schmidt, Administrator (3)
Solid Waste Management Division
Dept. of Environmental Quality
P.O. Box 1760
522 SW 5th Avenue
Portland, OR 97207
(503) 229-5913

PENNSYLVANIA

Gary Galida, Chief (2)
Div. of Hazardous Waste Management
Bureau of Solid Waste Management
Dept. of Environmental Resources
Fulton Bldg., 8th Floor
P.O. Box 2063
Harrisburg, PA 17120
(717) 787-7381

Donald A. Lazarchik (1)
Bureau of Solid Waste Management
Dept. of Environmental Resources
Fulton Bldg., 8th Floor
P.O. Box 2063
Harrisburg, PA 17120

RHODE ISLAND

John S. Quinn, Chief (1)
Solid Waste Management Program
Dept. of Environmental Management
75 Davis Street
Providence, RI 02908
(401) 277-2808

Tom Wright, Chief (2)
Air & Hazardous Materials
Dept. of Environmental Management
75 Davis Street
Providence, RI 02908
(401) 277-2808

- 1 Solid wastes
- 2 Hazardous wastes
- 3 Solid & Hazardous wastes

SOUTH CAROLINA

Robert Malpass, Chief (3)
Bureau of Solid & Hazardous Waste
Management
Dept. of Health & Environmental Control
J. Marion Limms Bldg.
2600 Bull Street
Columbia, SC 29201
(803) 758-5681

SOUTH DAKOTA

Joel Smith, Chief (3)
Air Quality & Solid Waste Programs
Dept. of Health
Joe Foss Bldg.
Pierre, SD 57501
(605) 773-3329

TENNESSEE

Tom Tiesler, Director (3)
Div. of Solid Waste Management
Bureau of Environmental Services
Dept. of Public Health
Capitol Hill Bldg., Suite 326
Nashville, TN 37219
(615) 741-3424

TEXAS

Jack C. Carmichael, Chief (3)
Div. of Solid Waste Management
Texas Dept. of Health
1100 W. 49th Street, T-602
Austin, TX 78756
(512) 475-2041

UTAH

Dale Parker, Director (3)
Bureau of Solid Waste Management
Div. of Health
P.O. Box 2500
150 West North Temple
Salt Lake City, UT 84101
(801) 533-4145

STATE WASTE MANAGEMENT OFFICIALS

VERMONT

John Malter, Chief (2)
Hazardous Materials Management Section
Agency of Environmental Conservation
State Office Bldg.
Montpelier, VT 05602
(802) 828-3395

Richard A. Valentineti, Chief (3)
Air & Solid Waste Programs
Agency of Environmental Conservation
State Office Bldg.
Montpelier, VT 05602
(802) 828-3395

VIRGINIA

William Gilley, Director (3) Bureau of
Solid & Hazardous Waste Management
Dept. of Health
Madison Bldg., Rm. 927
109 Governor Street
Richmond, VA 23219
(804) 786-5271

WASHINGTON

Tom Cook, Section Head (2)
Hazardous Waste Section
Dept. of Ecology
Olympia, WA 98504
(206) 753-4276

Earl Tower, Division Supervisor (1)
Solid Waste Management Division
Dept. of Ecology
Olympia, WA 98504
(206) 459-6317

WEST VIRGINIA

John Northheimer (2)
Div. of Water Resources
Dept. of Natural Resources
1201 Greenbrier Street, 2nd Floor
Charleston, WV 25311
(304) 348-5935

Dale Parsons, Director (1)
Solid Waste Division
Dept. of Health
1800 Washington Street, E.
Room 520
Charleston, WV 25305
(304) 348-2987

WISCONSIN

Robert Krill, Director (3)
Bureau of Solid Waste Management
Dept. of Natural Resources
P.O. Box 7921
Madison, WI 53707
(608) 266-1327

WYOMING

David Finley, Supervisor (2)
Hazardous Waste Management
Dept. of Environmental Quality
Solid/Hazardous Waste Management
401 West 19th Street
Cheyenne, WY 82002
(307) 777-7752

Charles Porter, Supervisor (1)
Solid Waste Management Program
State of Wyoming
Dept. of Environmental Quality
Equality State Bank Bldg.
401 West 19th Street, Rm. 3011
Cheyenne, WY 82002
(307) 777-7752

AMERICAN SAMOA

Pati Faiai, Executive Secretary (3)
Environmental Quality Commission
American Samoa Government
Pago Pago, AS 96799
Overseas Operator
(Commercial Call 633-4141)

- 1 Solid wastes
- 2 Hazardous wastes
- 3 Solid & Hazardous wastes

STATE WASTE MANAGEMENT OFFICIALS

DISTRICT OF COLUMBIA

Ken Laden, RCRA Coordinator (3)
Dept. of Environmental Services
5000 Overlook Avenue, SW
Washington, DC 20032
(202) 724-4102

GUAM

James Branch, Deputy Administrator (3)
EPA, Government of Guam
P.O. Box 2999
Agana, GU 96910
Overseas Operator
(Commercial Call 646-8863)

NORTH MARIANA ISLANDS

Carl Goldstein (2)
Div. of Environmental Quality
Dept. of Public Health & Environmental
Services
Commonwealth of the North Mariana
Islands
Saipan, MARIS 96950
Overseas Operator
(Commercial Call 6984-6114)

PUERTO RICO

Santos Rohena
Environmental Quality Board
Office of the Governor
P.O. Box 11488
Sanjurjo, PR 00910
(809) 725-2062, 725-5140, ext. 229

- 1 Solid wastes
- 2 Hazardous wastes
- 3 Solid & Hazardous wastes

Headquarters Office
Iron Works Pike
Lexington, Kentucky 40578
(606) 252-2291

Eastern Office
1500 Broadway, 18th Floor
New York, New York 10036
(212) 221-3630

Midwestern Office
203 North Wabash Avenue
Chicago, Illinois 60601
(312) 236-4011

Southern Office
3384 Peachtree Road, NE
Atlanta, Georgia 30326
(404) 266-1271

Western Office
165 Post Street, 5th Floor
San Francisco, California 94108
(415) 986-3760

Washington Office
Hall of the States, 444 North Capitol Street
Washington, D.C. 20001
(202) 624-5450

The
Council of
State
Governments

P.O. Box 11910
Iron Works Pike
Lexington, Kentucky 40578

NONPROFIT ORG.
U.S. POSTAGE
PAID
LEXINGTON, KY.
PERMIT NO. 355

Concerning Low-Level Radioactive Waste
and Making Appropriation in Relation
Thereeto

SUMMARY OF KEY PROVISIONS

Rocky Mountain Low-Level Radioactive Waste Compact

I Findings & Purpose

1. States are responsible for providing for the management of non-federal low-level radioactive waste.
2. Low-level radioactive waste can be most safely and efficiently managed on a regional basis.

II Definitions

1. Host state means a state in which is located a regional facility for the disposal or incineration of low-level radioactive waste.
2. Low-level waste excludes federal waste, high-level waste, material contaminated with transuranic elements emitting more than 10 nanocuries per gram and mining and milling waste.

III Responsibilities of Party & Host States

1. At least one regional facility other than Beatty, NV must be open and operating in a party state other than Nevada within 6 years after Nevada and at least one other state have adopted the compact.
2. Each party state that generates at least 20% of the region's waste has an obligation to host a regional facility.
3. The decisions on how and where to site a facility are left to the laws and policies of the host state.
4. All member states must enforce transportation and packaging regulations.

IV Board Approval of Regional Facilities

The board must approve or disapprove all regional facilities, based only on considerations of their economic feasibility and capacity requirements.

V Surcharges

1. The board will impose a surcharge on waste disposed at regional facilities to provide funding for administration of the compact.

2. A host state may impose a surcharge on waste disposed at a regional facility in order to offset regulatory costs, local government impacts, to provide for closure and long-term care and to provide a positive financial incentive for state and local governments.
3. The board is authorized to ensure that all surcharges are reasonable.

VI The Board

1. The Board is composed of one representative from each party state.
2. Each party state must pay \$70,000 to fund the initial two year operating costs of the compact.
3. The Board is authorized to assure that charges by regional facilities are reasonable.

VII Prohibited Acts

1. Low-level radioactive waste may not be shipped out of the region without approval of the Board and host state.
2. No low-level radioactive waste may be shipped into the region unless approved by the Board and host state.
3. No defense or federal low-level radioactive waste or any other type of waste may be managed at a regional facility unless authorized by the Board and host state.

VIII Eligibility, Entry Into Effect, Congressional Consent, Withdrawal, Exclusion

1. The States of Arizona, Colorado, Nevada, New Mexico, Utah and Wyoming are eligible to join.
2. Other states may join with the unanimous consent of the Board.
3. The compact must be congressionally ratified.
4. If a state fails to fulfill its obligations under the compact, it may be excluded by a two-thirds vote of the remaining states on the Board.
5. A state may withdraw from the compact two years after legislative repeal of the compact.
6. If a host state chooses to withdraw from the compact, its facility will continue to be available to the remaining member states for five years so that another facility can be developed.

Compact Authorizing Legislation

103 Definitions

Low-level waste excludes federal waste, high-level waste, material contaminated with transuranic elements emitting more than 10 nanocuries per gram and mining and milling waste.

104 Administration - Application of Other Laws

1. All low-level radioactive waste facilities must receive a certificate of designation from the county in which it is located, pursuant to the Solid Waste Act 30-20-101 et seq., CRS, 1973. In addition, all facilities must be licensed by the Department of Health under the Radiation Control Act 25-11-101 et seq., CRS, 1973.
2. Clarifies that low-level waste is not covered by Part 2 of the Radiation Control Act (25-11-201) which governs the disposal of high-level radioactive waste.
3. Authorizes the Department of Health to administer the act.

105 Site Recommendation by Counties

1. Provides counties with opportunity to recommend facility sites.
2. In making a recommendation, the county must consider comments from the Department of Health, Rocky Mountain LLW Board and Colorado LLW Advisory Committee.
3. A proposed facility must first obtain a certificate of designation (under the Solid Waste Act) from the Board of County Commissioners of the county in which it is to be located.
4. If a county fails to recommend a facility site by July 1, 1983, the Department of Health may prepare a state-wide site assessment.

106 State-Wide Assessment of Facility Sites

1. Authorizes the Health Department to acquire property by gift, transfer or purchase for a regional low-level radioactive waste facility and by eminent domain if authorized by the General Assembly.
2. Requires the Department of Health to conduct, with opportunity for public input, a state-wide assessment and evaluation of potential areas for location of a regional low-level radioactive waste facility.
3. Prohibits Department of Health approval of any proposed regional low-level radioactive waste facility not located in state or county identified areas, unless applicant demonstrates that proposed site is at least as technically suitable.

4. In the event no regional facility is proposed or approved by January 1, 1985, the Department of Health is required to prepare an alternative plan for facility development, to be submitted to the legislature for review and approval.

107 State Surcharge

1. Authorizes local governments to negotiate an annual fee to be paid by the regional facility operator, that does not exceed 2% of its annual gross revenues.
2. Requires the regional facility operator to pay to the state a surcharge of 1% of its annual gross revenues.

108 Governor to Appoint Member to Compact Board

Authorizes the Governor to appoint, with the consent of the Senate, the Colorado member of the Rocky Mountain LLW Board.

109 Colorado Low-Level Radioactive Waste Advisory Committee

1. Establishes a Colorado Low-Level Radioactive Waste Advisory Committee comprised of:
 - a) Executive Director of the Department of Health;
 - b) Director of Colorado Geological Survey;
 - c) Three members appointed by President of Senate;
 - d) Three members appointed by Speaker of House; and
 - e) Four members appointed by Governor.
2. Authorizes the committee to advise the Department of Health and Colorado member of the Rocky Mountain compact on low-level radioactive waste matters.

110 Coordination with Other Programs and Agencies

Requires the Department of Health to coordinate the low-level radioactive waste program with its other programs and those of other local, state or federal agencies.

111 Regulation of Charges

1. Authorizes the Board of Health to regulate regional low-level radioactive waste facility charges to assure they are just and reasonable.
2. Requires the regional low-level radioactive waste facility operator to file its proposed rate change at least 60 days prior to its effective date.
3. Requires opportunity for public inspection and hearings for proposed rate changes.

Sec.3 Appropriation

1. Provides for the appropriation of funds to the Department of Health to implement this compact.
2. Provides for the appropriation of \$70,000 to fund Colorado's share of the initial two year operating expenses of the regional board.