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Resource Conservation and Recovery Act

42 U.S.C. §§6901-6992k

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Subchapter I—General Provisions

§6901. [RCRA §1001]

Congressional findings

(a) Solid waste

The Congress finds with respect to solid waste—

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

(2) that the economic and population growth of our Nation, and the improvements in the standard of living enjoyed by our population, have required increased industrial production to meet our needs, and have made necessary the demolition of old buildings, the construction of new buildings, and the provision of highways and other avenues of transportation, which, together with related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste materials;

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

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

(b) Environment and health

The Congress finds with respect to the environment and health, that—

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

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

(3) as a result of the Clean Air Act (42 U.S.C. 7401 et seq.), the Water Pollution Control Act (33 U.S.C. 1251 et seq.), and other Federal and State laws respecting public health and the environment, greater amounts of solid waste (in the form of sludge and other pollution treatment residues) have been created. Similarly, inadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health;

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

(5) the placement of inadequate controls on hazardous waste management will result in substantial risks to human health and the environment;

(6) if hazardous waste management is improperly performed in the first instance, corrective action is likely to be expensive, complex, and time consuming;

(7) certain classes of land disposal facilities are not capable of assuring long-term containment of certain hazardous wastes, and to avoid substantial risk to human health and the environment, reliance on land disposal should be minimized or eliminated, and land disposal, particularly landfill and surface impoundment, should be the least favored method for managing hazardous wastes; and

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

(c) Materials

The Congress finds with respect to materials, that—

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

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

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

(d) Energy

The Congress finds with respect to energy, that—

(1) solid waste represents a potential source of solid fuel, oil, or gas that can be converted into energy;

(2) the need exists to develop alternative energy sources for public and private consumption in order to reduce our dependence on such sources as petroleum products, natural gas, nuclear and hydroelectric generation; and

(3) technology exists to produce usable energy from solid waste.

(Pub. L. 89-272, title II, §1002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2796, and amended Pub. L. 95-609, §7(a), Nov. 8, 1978, 92 Stat. 3081; Pub. L. 98-616, title I, §101(a), Nov. 8, 1984, 98 Stat. 3224.)

References In Text

The Clean Air Act, referred to in subsec. (b)(3), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (Sec. 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Water Pollution Control Act, referred to in subsec. (b)(3), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, Sec. 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (Sec. 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

Codification

The statutory system governing the disposal of solid wastes set out in this chapter is found in Pub. L. 89-272, title II, as amended in its entirety and completely revised by section 2 of Pub. L. 94-580, Oct. 21, 1976, 90 Stat. 2795. See Short Title note below.

The act, as set out in this chapter, carries a statutory credit showing the sections as having been added by Pub. L. 94-580, without reference to amendments to the act between its original enactment in 1965 and its complete revision in 1976. The act, as originally enacted in 1965, was classified to section 3251 et seq. of this title. For a recapitulation of the provisions of the act as originally enacted, see notes in chapter 39 (Sec. 3251 et seq.) of this title where the act was originally set out.

Prior Provisions

Provisions similar to those comprising this section were contained in section 3251 of this title prior to the complete revision of the Solid Waste Disposal Act by Pub. L. 94-580.

Short Title of 1996 Amendments

Pub. L. 104-119, §1, Mar. 26, 1996, 110 Stat. 830, provided that: "This Act [amending sections 6921, 6924, 6925, 6947, and 6949a of this title, and enacting provisions set out as a note under section 6949a of this title] may be cited as the 'Land Disposal Program Flexibility Act of 1996'."

Short Title of 1992 Amendments

Pub. L. 102-386, sec. 101, Oct. 6, 1992, 106 Stat. 1505, provided that: "This title may be cited as the 'Federal Facility Compliance Act of 1992'."

Short Title of 1988 Amendment

Pub. L. 100-582, Sec. 1, Nov. 1, 1988, 102 Stat. 2950, provided that: "This Act (enacting sections 6992 to 6992b of this title and section 3063 of Title 18, Crimes and Criminal Procedure, and amending section 6903 of this title) may be cited as the 'Medical Waste Tracking Act of 1988'."

Short Title of 1984 Amendment

Section 1 of Pub. L. 98-616 provided that: "This Act (enacting sections 6917, 6936 to 6939a, 6949a, 6979a, 6979b, and 6991 to 6991i of this title, amending sections 6901, 6902, 6905, 6912, 6915, 6916, 6921 to 6933, 6935, 6941 to 6945, 6948, 6956, 6962, 6972, 6973, 6976, 6982 and 6984 of this title and enacting provisions set

out as notes under sections 6905, 6921 and 6926 of this title) may be cited as 'The Hazardous and Solid Waste Amendments of 1984'."

Short Title of 1980 Amendments

Pub. L. 96-482, Sec. 1, Oct. 21, 1980, 94 Stat. 2334, provided:

"This Act (enacting sections 6933, 6934, 6941a, 6955, and 6956 of this title, amending sections 6903, 6905, 6911, 6912, 6916, 6921, 6922, 6924, 6925, 6927 to 6931, 6941 to 6943, 6945, 6946, 6948, 6949, 6952, 6953, 6962, 6963, 6964, 6971, 6973, 6974, 6976, 6979, and 6982 of this title; and enacting and repealing provisions set out as a note under section 6981 of this title) may be cited as the 'Solid Waste Disposal Act Amendments of 1980'."

Pub. L. 96-463, Sec. 1, Oct. 15, 1980, 94 Stat. 2055, provided:

"This Act (enacting sections 6901a, 6914a and 6932 of this title, amending sections 6903, 6943 and 6948 of this title, and enacting provisions set out as notes under sections 6363 and 6932 of this title) may be cited as the 'Used Oil Recycling Act of 1980'."

Short Title of 1976 Amendments

Section 1 of Pub. L. 94-580 provided that: "This Act [enacting this chapter and provisions set out as notes under this section and section 6981 of this title] may be cited as the 'Resource Conservation and Recovery Act of 1976'."

Short Title

Section 1521 of Pub. L. 109-58 provided that: "This subtitle may be cited as the 'Underground Storage Tank Compliance Act'."

Section 1 of Pub. L. 94-580 provided that: "This Act (enacting this chapter and provisions set out as notes under this section and section 6981 of this title) may be cited as the 'Resource Conservation and Recovery Act of 1976'."

Section 1001 of Pub. L. 89-272, as added Pub. L. 94-580, Sec. 2, Oct. 21, 1976, 90 Stat. 2795, provided in part that title II of Pub. L. 89-272 (enacting this chapter) may be cited as the "Solid Waste Disposal Act".

Federal Compliance With Pollution Control Standards

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

National Commission on Materials Policy

Pub. L. 91-512, title II, Sec. 201-206, Oct. 26, 1970, 84 Stat. 1234, known as the "National Materials Policy Act of 1970", provided for the establishment of the National Commission on Materials Policy to make a full investigation and study for the purpose of developing a national materials policy to utilize present resources and technology more efficiently and to anticipate the future materials requirements of the Nation and the world, the Commission to submit to the President and Congress a report on its findings and recommendations no later than June 30, 1973, ninety days after the submission of which it should cease to exist.

§6901a. [RCRA §1002]

Congressional findings: used oil recycling

The Congress finds and declares that—

(1) used oil is a valuable source of increasingly scarce energy and materials;

(2) technology exists to re-refine, reprocess, reclaim, and otherwise recycle used oil;

(3) used oil constitutes a threat to public health and the environment when reused or disposed of improperly; and that, therefore, it is in the national interest to recycle used oil in a manner which does not constitute a threat to public health and the environment and which conserves energy and materials.

(Pub. L. 96-463, §2, Oct. 15, 1980, 94 Stat. 2055.)

Codification

Section was enacted as part of the Used Oil Recycling Act of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6902. [RCRA §1003]

Objectives and national policy

(a) Objectives

The objectives of this chapter are to promote the protection of health and the environment and to conserve valuable material and energy resources by—

(1) providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including resource recovery and resource conservation systems) which will promote improved solid waste management techniques (including more effective organizational arrangements), new and improved methods of collection, separation, and recovery of solid waste, and the environmentally safe disposal of nonrecoverable residues;

(2) providing training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems;

(3) prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health;

(4) assuring that hazardous waste management practices are conducted in a manner which protects human health and the environment;

(5) requiring that hazardous waste be properly managed in the first instance thereby reducing the need for corrective action at a future date;

(6) minimizing the generation of hazardous waste and the land disposal of hazardous waste by encouraging process substitution, materials recovery, properly conducted recycling and reuse, and treatment;

(7) establishing a viable Federal-State partnership to carry out the purposes of this chapter and insuring that the Administrator will, in carrying out the provisions of subchapter III of this chapter, give a high priority to assisting and cooperating with States in obtaining full authorization of State programs under subchapter III of this chapter;

(8) providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal practices and systems;

(9) promoting a national research and development program for improved solid waste management and resource conservation techniques, more effective organizational arrangements, and new and improved methods of collection, separation, and recovery, and recycling of solid wastes and environmentally safe disposal of nonrecoverable residues;

(10) promoting the demonstration, construction, and application of solid waste management, resource recovery, and resource conservation systems which preserve and enhance the quality of air, water, and land resources; and

(11) establishing a cooperative effort among the Federal, State, and local governments and private enterprise in order to recover valuable materials and energy from solid waste.

(b) National policy

The Congress hereby declares it to be the national policy of the United States that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize the present and future threat to human health and the environment.

(Pub. L. 89-272, title II, §1003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2798, and amended Pub. L. 98-616, title I, §101(b), Nov. 8, 1984, 98 Stat. 3224.)

Prior Provisions

Provisions similar to those comprising this section were contained in section 3251 of this title, prior to the complete revision of the Solid Waste Disposal Act by Pub. L. 94-580.

§6903. [RCRA §1004]

Definitions

As used in this chapter:

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

(2) The term "construction," with respect to any project of construction under this chapter, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project; and includes preliminary planning to determine the economic and engineering feasibility and the public health and safety aspects of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, and any surveys, designs, plans, working drawings, specifications, and other action necessary for the carrying out of the project, and (C) the inspection and supervision of the process of carrying out the project to completion.

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

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

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

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

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

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

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

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

(8) For purposes of Federal financial assistance (other than rural communities assistance), the term "implementation" does not include the acquisition, leasing, construction, or modification of facilities or equipment or the acquisition, leasing, or improvement of land.

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

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

(11) The term "long-term contract" means, when used in relation to solid waste supply, a contract of sufficient duration to assure the viability of a resource recovery facility (to the extent that such viability depends upon solid waste supply).

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

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

(14) The term "open dump" means any facility or site where solid waste is disposed of which is not a sanitary landfill which meets the criteria promulgated under section 6944 of this title and which is not a facility for disposal of hazardous waste.

(15) The term "person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body and shall include each department, agency, and instrumentality of the United States.

(16) The term "procurement item" means any device, good, substance, material, product, or other item whether real or personal

property which is the subject of any purchase, barter, or other exchange made to procure such item.

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

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

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

(20) The term "recovered resources" means material or energy recovered from solid waste.

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

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

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

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

(25) The term "regional authority" means the authority established or designated under section 6946 of this title.

(26) The term "sanitary landfill" means a facility for the disposal of solid waste which meets the criteria published under section 6944 of this title.

(26A) The term "sludge" means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

(27) The term "solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 1342 of title 33, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923) (42 U.S.C. 2011 et seq.).

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

(29) The term "solid waste management facility" includes—

(A) any resource recovery system or component thereof,
(B) any system, program, or facility for resource conservation, and

(C) any facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.

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

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

(32) The term "State authority" means the agency established or designated under section 6947 of this title.

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

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

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

(36) The term "used oil" means any oil which has been—

- (A) refined from crude oil,
- (B) used, and
- (C) as a result of such use, contaminated by physical or chemical impurities.

(37) The term "recycled oil" means any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes oil which is re-refined, reclaimed, burned, or reprocessed.

(38) The term "lubricating oil" means the fraction of crude oil which is sold for purposes of reducing friction in any industrial or mechanical device. Such term includes re-refined oil.

(39) The term "re-refined oil" means used oil from which the physical and chemical contaminants acquired through previous use have been removed through a refining process.

(40) Except as otherwise provided in this paragraph, the term "medical waste" means any solid waste which is generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals. Such term does not include any hazardous waste identified or listed under subchapter III of this chapter or any household waste as defined in regulations under subchapter III of this chapter.

(41) The term "mixed waste" means waste that contains both hazardous waste and source, special nuclear, or by-product material subject to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(Pub. L. 89-272, title II, §1004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2798, and amended Pub. L. 95-609, §7(b), Nov. 8, 1978, 92 Stat. 3081; Pub. L. 96-463, §3, Oct. 15, 1980, 94 Stat. 2055; Pub. L. 96-482, §2, Oct. 21, 1980, 94 Stat. 2334; Pub. L. 100-582, §3, Nov. 1, 1988, 102 Stat. 2958; Pub. L. 102-386, §§103, 105(b), Oct. 6, 1992, 106 Stat. 1507, 1512)

References In Text

The Atomic Energy Act of 1954, referred to in pars. (27) and (41), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, Sec. 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (Sec. 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

Prior Provisions

Provisions similar to those comprising this section were contained in section 3252 of this title, prior to the complete revision of the Solid Waste Disposal Act by Pub. L. 94-580.

Transfer Of Functions

Enforcement functions of Administrator or other official of Environmental Protection Agency related to compliance with resource conservation and recovery permits used under this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, Secs. 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102-486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade.

§6904. [RCRA §1005]

Governmental cooperation

(a) Interstate cooperation

The provisions of this chapter to be carried out by States may be carried out by interstate agencies and provisions applicable to States may apply to interstate regions where such agencies and regions have been established by the respective States and approved by the Administrator. In any such case, action required to be taken by the Governor of a State, respecting regional designation shall be required to be taken by the Governor of each of the respective States with respect to so much of the interstate region as is within the jurisdiction of that State.

(b) Consent of Congress to compacts

The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for—

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

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

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

(Pub. L. 89-272, title II, §1005, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2801.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6905. [RCRA §1006]

Application of chapter and integration with other Acts

(a) Application of chapter

Nothing in this chapter shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.

(b) Integration with other Acts

(1) The Administrator shall integrate all provisions of this chapter for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), the Safe Drinking Water Act (42 U.S.C. 300f et seq.), the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.), and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this chapter and in the other acts referred to in this subsection.

(2)(A) As promptly as practicable after November 8, 1984, the Administrator shall submit a report describing—

(i) the current data and information available on emissions of polychlorinated dibenz-p-dioxins from resource recovery facilities burning municipal solid waste;

(ii) any significant risks to human health posed by these emissions; and

(iii) operating practices appropriate for controlling these emissions.

(B) Based on the report under subparagraph (A) and on any future information on such emissions, the Administrator may publish advisories or guidelines regarding the control of dioxin emis-

sions from such facilities. Nothing in this paragraph shall be construed to preempt or otherwise affect the authority of the Administrator to promulgate any regulations under the Clean Air Act (42 U.S.C. 7401 et seq.) regarding emissions of polychlorinated dibenzo-p-dioxins.

(3) Notwithstanding any other provisions of law, in developing solid waste plans, it is the intention of this chapter that in determining the size of a waste-to-energy facility, adequate provisions shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interests within the area encompassed by the solid waste plan.

(c) Integration with the Surface Mining Control and Reclamation Act of 1977

(1) No later than 90 days after October 21, 1980, the Administrator shall review any regulations applicable to the treatment, storage, or disposal of any coal mining wastes or overburden promulgated by the Secretary of the Interior under the Surface Mining and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.). If the Administrator determines that any requirement of final regulations promulgated under any section of subchapter III of this chapter relating to mining wastes or overburden is not adequately addressed in such regulations promulgated by the Secretary, the Administrator shall promptly transmit such determination, together with suggested revisions and supporting documentation, to the Secretary.

(2) The Secretary of the Interior shall have exclusive responsibility for carrying out any requirement of subchapter III of this chapter with respect to coal mining wastes or overburden for which a surface coal mining and reclamation permit is issued or approved under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.). The Secretary shall, with the concurrence of the Administrator, promulgate such regulations as may be necessary to carry out the purposes of this subsection and shall integrate such regulations with regulations promulgated under the Surface Mining Control and Reclamation Act of 1977.

(Pub. L. 89-272, title II, §1006, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2802, and amended Pub. L. 96-482, §3, Oct. 21, 1980, 94 Stat. 2334; Pub. L. 98-616, title I, §102, title V, §501(f)(2), Nov. 8, 1984, 98 Stat. 3225, 3276.)

References In Text

The Federal Water Pollution Control Act, referred to in subsecs. (a) and (b), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, Sec. 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (Sec. 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Atomic Energy Act of 1954, as amended, referred to in subsec. (a), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, Sec. 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (Sec. 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Marine Protection, Research and Sanctuaries Act of 1972, referred to in subsecs. (a) and (b), is Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended, which enacted chapters 32 (Sec. 1431 et seq.) and 32A (Sec. 1447 et seq.) of Title 16, Conservation, and chapters 27 (Sec. 1401 et seq.) and 41 (Sec. 2801 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in subsecs. (a) and (b), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, Sec. 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (Sec. 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Clean Air Act, referred to in subsec. (b)(1), (2)(B), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (Sec. 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Insecticide, Fungicide, and Rodenticide Act, referred to in subsec. (b), is act June 25, 1947, ch. 125, as amended generally by Pub. L. 92-516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (Sec. 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (c), is Pub. L. 95-87, Aug. 3, 1977, 91 Stat. 445, as amended, which is classified generally to chapter 25 (Sec. 1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

Prior Provisions

Provisions similar to those comprising this section were contained in section 3257

of this title, prior to the complete revision of the Solid Waste Disposal Act by Pub. L. 94-580.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

Uranium Mill Tailings

Section 703 of Pub. L. 98-616 provided that: "Nothing in the Hazardous and Solid Waste Amendments of 1984 (see Short Title of 1984 Amendment note set out under section 6901 of this title) shall be construed to affect, modify, or amend the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 et seq.)."

§6906. [RCRA §1007]

Financial disclosure

(a) Statement

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

(b) Action by Administrator

The Administrator shall—

(1) act within ninety days after October 21, 1976—
(A) to define the term "known financial interest" for purposes of subsection (a) of this section; and
(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and
(2) report to the Congress on June 1, 1978, and of each succeeding calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) Exemption

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

(d) Penalty

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

(Pub. L. 89-272, title II, §1007, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2802.)

Termination Of Reporting Requirements

For termination, effective May 15, 2000, of reporting provisions in subsec. (b)(2) of this section, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 14th item on page 164 of House Document No. 103-7.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6907. [RCRA §1008]

Solid waste management information and guidelines

(a) Guidelines

Within one year of October 21, 1976, and from time to time thereafter, the Administrator shall, in cooperation with appropriate Federal, State, municipal, and intermunicipal agencies, and in consultation with other interested persons, and after public hearings, develop and publish suggested guidelines for solid waste management. Such suggested guidelines shall—

(1) provide a technical and economic description of the level of performance that can be attained by various available solid waste

management practices (including operating practices) which provide for the protection of public health and the environment;

(2) not later than two years after October 21, 1976, describe levels of performance, including appropriate methods and degrees of control, that provide at a minimum for (A) protection of public health and welfare; (B) protection of the quality of ground waters and surface waters from leachates; (C) protection of the quality of surface waters from runoff through compliance with effluent limitations under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.); (D) protection of ambient air quality through compliance with new source performance standards or requirements of air quality implementation plans under the Clean Air Act, as amended (42 U.S.C. 7401 et seq.); (E) disease and vector control; (F) safety; and (G) esthetics; and

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

Where appropriate, such suggested guidelines also shall include minimum information for use in deciding the adequate location, design, and construction of facilities associated with solid waste management practices, including the consideration of regional, geographic, demographic, and climatic factors.

(b) Notice

The Administrator shall notify the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a reasonable time before publishing any suggested guidelines or proposed regulations under this chapter of the content of such proposed suggested guidelines or proposed regulations under this chapter.

(Pub. L. 89-272, title II, §1008, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2803, and amended S. Res. 4, Feb. 4, 1977; Pub. L. 95-609, §7(c), (d), Nov. 8, 1978, 92 Stat. 3081; H. Res. 549, Mar. 25, 1980; Pub. L. 103-437, §15(r), Nov. 2, 1994, 108 Stat. 4594.)

References In Text

The Federal Water Pollution Control Act, referred to in subsec. (a)(2), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, Sec. 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (Sec. 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Clean Air Act, as amended, referred to in subsec. (a)(2), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (Sec. 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

Prior Provisions

Provisions similar to this section were contained in section 3254c of this title, prior to the complete revision of the Solid Waste Disposal Act by Pub. L. 94-580.

Change Of Name

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6908.

Small town environmental planning

(a) Establishment

The Administrator of the Environmental Protection Agency (hereafter referred to as the "Administrator") shall establish a program to assist small communities in planning and financing environmental facilities. The program shall be known as the "Small Town Environmental Planning Program".

(b) Small town environmental planning task force

(1) The Administrator shall establish a Small Town Environmental Planning Task Force which shall be composed of representatives

of small towns from different areas of the United States, Federal and State governmental agencies, and public interest groups. The Administrator shall terminate the Task Force not later than 2 years after the establishment of the Task Force.

(2) The Task Force shall—

(A) identify regulations developed pursuant to Federal environmental laws which pose significant compliance problems for small towns;

(B) identify means to improve the working relationship between the Environmental Protection Agency (hereafter referred to as the Agency) and small towns;

(C) review proposed regulations for the protection of the environmental and public health and suggest revisions that could improve the ability of small towns to comply with such regulations;

(D) identify means to promote regionalization of environmental treatment systems and infrastructure serving small towns to improve the economic condition of such systems and infrastructure; and

(E) provide such other assistance to the Administrator as the Administrator deems appropriate.

(c) Identification of environmental requirements

(1) Not later than 6 months after October 6, 1992, the Administrator shall publish a list of requirements under Federal environmental and public health statutes (and the regulations developed pursuant to such statutes) applicable to small towns. Not less than annually, the Administrator shall make such additions and deletions to and from the list as the Administrator deems appropriate.

(2) The Administrator shall, as part of the Small Town Environmental Planning Program under this section, implement a program to notify small communities of the regulations identified under paragraph (1) and of future regulations and requirements through methods that the Administrator determines to be effective to provide information to the greatest number of small communities, including any of the following:

(A) Newspapers and other periodicals.

(B) Other news media.

(C) Trade, municipal, and other associations that the Administrator determines to be appropriate.

(D) Direct mail.

(d) Small town ombudsman

The Administrator shall establish and staff an Office of the Small Town Ombudsman. The Office shall provide assistance to small towns in connection with the Small Town Environmental Planning Program and other business with the Agency. Each regional office shall identify a small town contact. The Small Town Ombudsman and the regional contacts also may assist larger communities, but only if first priority is given to providing assistance to small towns.

(e) Multi-media permits

(1) The Administrator shall conduct a study of establishing a multi-media permitting program for small towns. Such evaluation shall include an analysis of—

(A) environmental benefits and liabilities of a multimedia permitting program;

(B) the potential of using such a program to coordinate a small town's environmental and public health activities; and

(C) the legal barriers, if any, to the establishment of such a program.

(2) Within 3 years after the date of enactment of this Act, the Administrator shall report to Congress on the results of the evaluation performed in accordance with paragraph (1). Included in this report shall be a description of the activities conducted pursuant to subsections (a) through (d).

(f) Definition

For purposes of this section, the term "small town" means an incorporated or unincorporated community (as defined by the Administrator) with a population of less than 2,500 individuals.

(g) Authorization

There is authorized to be appropriated the sum of \$500,000 to implement this section.

(Pub. L. 102-386, §109, Oct. 6, 1992, 106 Stat. 1515.)

Codification

Section was enacted as part of the Federal Facility Compliance Act of 1992, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6908a.

Agreements with Indian tribes

On and after October 21, 1998, the Administrator is authorized to enter into assistance agreements with Federally¹ recognized Indian

tribes on such terms and conditions as the Administrator deems appropriate for the development and implementation of programs to manage hazardous waste, and underground storage tanks.

(Pub. L. 105-276, title III, Oct. 21, 1998, 112 Stat. 2499.)

Codification

Section was enacted as part of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, and not as part of the Solid Waste Disposal Act which comprises this chapter.

1. So in original. Probably should not be capitalized.

Subchapter II—Office of Solid Waste; Authorities of the Administrator

§6911. [RCRA §2001]

Office of Solid Waste and Interagency Coordinating Committee

(a) Office of Solid Waste

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

(b) Interagency Coordinating Committee

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

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

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

(B) the May 30, 1978, Interagency Agreement between the Department of Commerce and the Environmental Protection Agency on the Implementation of the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); and

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

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

(Pub. L. 89-272, title II, §2001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2804, and amended Pub. L. 96-482, §4(c), Oct. 21, 1980, 94 Stat. 2335; Pub. L. 96-510, title III, §307(a), Dec. 11, 1980, 94 Stat. 2810.)

References In Text

The Resource Conservation and Recovery Act, referred to in subsec. (b)(2)(B), is Pub. L. 94-580, Oct. 21, 1976, 90 Stat. 2796, which is classified generally to this chapter (Sec. 6901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Codification

Subsection (b)(3) of this section, which required the Interagency Coordinating Committee to submit to Congress on March 1 of each year, a five-year action plan for Federal resource conservation or recovery activities, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104-66, as amended, set out as a note under

section 1113 of Title 31, Money and Finance. See, also, the 2nd item on page 175 of House Document No. 103-7.

Effective Date of 1980 Amendment

Section 307(c) of Pub. L. 96-510 provided that: "The amendment made by subsection (a) [amending this section] shall become effective ninety days after the date of the enactment of this Act [Dec. 11, 1980]."

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6911a.

Assistant Administrator of Environmental Protection Agency; appointment, etc.

The Assistant Administrator of the Environmental Protection Agency appointed to head the Office of Solid Waste shall be in addition to the five Assistant Administrators of the Environmental Protection Agency provided for in section 1(d) of Reorganization Plan Numbered 3 of 1970 and the additional Assistant Administrator provided by the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), shall be appointed by the President by and with the advice and consent of the Senate.

(Pub. L. 96-510, title III, §307(b), Dec. 11, 1980, 94 Stat. 2810; Pub. L. 98-80, §2(c)(2)(B), Aug. 23, 1983, 97 Stat. 485.)

References In Text

Reorganization Plan Numbered 3 of 1970, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

The Toxic Substances Control Act, referred to in text, is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, as amended, which is classified generally to chapter 53 (Sec. 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

Codification

Section was enacted as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

Effective Date

Section effective Dec. 11, 1980, see section 9652 of this title.

§6912. [RCRA §2002]

Authorities of Administrator

(a) Authorities

In carrying out this chapter, the Administrator is authorized to—

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

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

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

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

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

(6) to delegate to the Secretary of Transportation the performance of any inspection or enforcement function under this chapter relating to the transportation of hazardous waste where such delegation would avoid unnecessary duplication of activity and would carry out the objectives of this chapter and of chapter 51 of title 49.

(b) Revision of regulations

Each regulation promulgated under this chapter shall be reviewed and, where necessary, revised not less frequently than every three years.

(c) Criminal investigations

In carrying out the provisions of this chapter, the Administrator, and duly-designated agents and employees of the Environmental Protection Agency, are authorized to initiate and conduct investigations under the criminal provisions of this chapter, and to refer the results of these investigations to the Attorney General for prosecution in appropriate cases.

(Pub. L. 89-272, title II, §2002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2804, and amended Pub. L. 96-482, §5, Oct. 21, 1980, 94 Stat. 2335; Pub. L. 98-616, title IV, §403(d)(4), Nov. 8, 1984, 98 Stat. 3272; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

Codification

In subsec. (a)(6), "chapter 51 of title 49" substituted for "the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.]" on authority of Pub. L. 103-272, Sec. 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6913. [RCRA §2003]**Resource Recovery and Conservation Panels**

The Administrator shall provide teams of personnel, including Federal, State, and local employees or contractors (hereinafter referred to as "Resource Conservation and Recovery Panels") to provide Federal agencies, States and local governments upon request with technical assistance on solid waste management, resource recovery, and resource conservation. Such teams shall include technical, marketing, financial, and institutional specialists, and the services of such teams shall be provided without charge to States or local governments.

(Pub. L. 89-272, title II, §2003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2804, and amended Pub. L. 95-609, §7(e), Nov. 8, 1978, 92 Stat. 3081.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6914. [RCRA §2004]**Grants for discarded tire disposal****(a) Grants**

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

(b) Authorization of appropriations

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

(Pub. L. 89-272, title II, §2004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2805.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6914a. [RCRA §2005]**Labeling of lubricating oil**

For purposes of any provision of law which requires the labeling of commodities, lubricating oil shall be treated as lawfully labeled only if it bears the following statement, prominently displayed:

"DON'T POLLUTE—CONSERVE RESOURCES; RETURN USED OIL TO COLLECTION CENTERS".

(Pub. L. 89-272, title II, §2005, as added Pub. L. 96-463, §4(a), Oct. 15, 1980, 94 Stat. 2056.)

Prior Provisions

A prior section 2005 of Pub. L. 89-272 was renumbered section 2006 and is classified to section 6915 of this title.

§6914b.**Degradable plastic ring carriers; definitions**

As used in this title—

(1) the term "regulated item" means any plastic ring carrier device that contains at least one hole greater than $\frac{1}{8}$ inches in diameter which is made, used, or designed for the purpose of packaging, transporting, or carrying multipackaged cans or bottles, and which is of a size, shape, design, or type capable, when discarded, of becoming entangled with fish or wildlife; and

(2) the term "naturally degradable material" means a material which, when discarded, will be reduced to environmentally benign subunits under the action of normal environmental forces, such as, among others, biological decomposition, photodegradation, or hydrolysis.

(Pub. L. 100-556, title I, §102, Oct. 28, 1988, 102 Stat. 2779.)

References in Text

This title, referred to in text, is title I of Pub. L. 100-556, Oct. 28, 1988, 102 Stat. 2779, which enacted sections 6914b and 6914b-1 of this title, and provisions set out as a note under section 6914b of this title. For complete classification of this title to the Code, see Tables.

Codification

Section was not enacted as part of the Solid Waste Disposal Act which comprises this chapter.

Congressional Findings

Section 101 of Pub. L. 100-556 provided that: "The Congress finds that—

"(1) plastic ring carrier devices have been found in large quantities in the marine environment;

"(2) fish and wildlife have been known to have become entangled in plastic ring carriers;

"(3) nondegradable plastic ring carrier devices can remain intact in the marine environment for decades, posing a threat to fish and wildlife; and

"(4) 16 States have enacted laws requiring that plastic ring carrier devices be made from degradable material in order to reduce litter and to protect fish and wildlife."

§6914b-1.**Regulation of plastic ring carriers**

Not later than 24 months after October 28, 1988 (unless the Administrator of the Environmental Protection Agency determines that it is not feasible or that the byproducts of degradable regulated items present a greater threat to the environment than nondegradable regulated items), the Administrator of the Environmental Protection Agency shall require, by regulation, that any regulated item intended for use in the United States shall be made of naturally degradable material which, when discarded, decomposes within a period established by such regulation. The period within which decomposition must occur after being discarded shall be the shortest period of time consistent with the intended use of the item and the physical integrity required for such use. Such regulation shall allow a reasonable time for affected parties to come into compliance, including the use of existing inventories.

(Pub. L. 100-556, title I, §103, Oct. 28, 1988, 102 Stat. 2779.)

Codification

Section was not enacted as part of the Solid Waste Disposal Act which comprises this chapter.

References In Text

§6915. [RCRA §2006]**Annual report**

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

(1) a statement of specific and detailed objectives for the activities and programs conducted and assisted under this chapter;

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

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

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

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

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

(Pub. L. 89-272, title II, §2006, formerly §2005, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2805, and renumbered Pub. L. 96-463, §4(a), Oct. 15, 1980, 94 Stat. 2056; Pub. L. 98-616, title V, §502(b), Nov. 8, 1984, 98 Stat. 3276.)

Prior Provisions

A prior section 2006 of Pub. L. 89-272 was renumbered section 2007 and is classified to section 6916 of this title.

Termination Of Reporting Requirements

For termination, effective May 15, 2000, of provisions of this section relating to transmittal of annual report to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 19th item on page 164 of House Document No. 103-7.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6916. [RCRA §2007]**General authorization****(a) General administration**

There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of this chapter, \$35,000,000 for the fiscal year ending September 30, 1977, \$38,000,000 for the fiscal year ending September 30, 1978, \$42,000,000 for the fiscal year ending September 30, 1979, \$70,000,000 for the fiscal year ending September 30, 1980, \$80,000,000 for the fiscal year ending September 30, 1981, \$80,000,000 for the fiscal year ending September 30, 1982, \$70,000,000 for the fiscal year ending September 30, 1985, \$80,000,000 for the fiscal year ending September 30, 1986, \$80,000,000 for the fiscal year ending September 30, 1987, and \$80,000,000 for the fiscal year 1988.

(b) Resource Recovery and Conservation Panels

Not less than 20 percent of the amount appropriated under subsection (a) of this section, or \$5,000,000 per fiscal year, whichever is less, shall be used only for purposes of Resource Recovery and Conservation Panels established under section 6913 of this title (including travel expenses incurred by such panels in carrying out their functions under this chapter).

(c) Hazardous waste

Not less than 30 percent of the amount appropriated under subsection (a) of this section shall be used only for purposes of carrying out

subchapter III of this chapter (relating to hazardous waste) other than section 6931 of this title.

(d) State and local support

Not less than 25 per centum of the total amount appropriated under this chapter, up to the amount authorized in section 6948(a)(1) of this title, shall be used only for purposes of support to State, regional, local, and interstate agencies in accordance with subchapter IV of this chapter other than section 6948(a)(2) or 6949 of this title.

(e) Criminal investigators

There is authorized to be appropriated to the Administrator \$3,246,000 for the fiscal year 1985, \$2,408,300 for the fiscal year 1986, \$2,529,000 for the fiscal year 1987, and \$2,529,000 for the fiscal year 1988 to be used—

(1) for additional officers or employees of the Environmental Protection Agency authorized by the Administrator to conduct criminal investigations (to investigate, or supervise the investigation of, any activity for which a criminal penalty is provided) under this chapter; and

(2) for support costs for such additional officers or employees.

(f) Underground storage tanks

(1) There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of subchapter IX of this chapter (relating to regulation of underground storage tanks), \$10,000,000 for each of the fiscal years 1985 through 1988.

(2) There is authorized to be appropriated \$25,000,000 for each of the fiscal years 1985 through 1988 to be used to make grants to the States for purposes of assisting the States in the development and implementation of approved State underground storage tank release detection, prevention, and correction programs under subchapter IX of this chapter.

(Pub. L. 89-272, title II, §2007, formerly §2006, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2805, renumbered Pub. L. 96-463, §4(a), Oct. 15, 1980, 94 Stat. 2055, and amended Pub. L. 96-482, §§6, 31(a), Oct. 21, 1980, 94 Stat. 2336, 2352; Pub. L. 98-616, §2(a), (i), Nov. 8, 1984, 98 Stat. 3222, 3223.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6917. [RCRA §2008]**Office of Ombudsman****(a) Establishment; functions**

The Administrator shall establish an Office of Ombudsman, to be directed by an Ombudsman. It shall be the function of the Office of Ombudsman to receive individual complaints, grievances, requests for information submitted by any person with respect to any program or requirement under this chapter.

(b) Authority to render assistance

The Ombudsman shall render assistance with respect to the complaints, grievances, and requests submitted to the Office of Ombudsman, and shall make appropriate recommendations to the Administrator.

(c) Effect on procedures for grievances, appeals, or administrative matters

The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of this chapter, any other provision of law, or any Federal regulation.

(d) Termination

The Office of the Ombudsman shall cease to exist 4 years after November 8, 1984.

(Pub. L. 89-272, title II, §2008, as added Pub. L. 98-616, title I, §103(a), Nov. 8, 1984, 98 Stat. 3225.)

Subchapter III—Hazardous Waste Management

§6921. [RCRA §3001]

Identification and listing of hazardous waste

(a) Criteria for identification or listing

Not later than eighteen months after October 21, 1976, the Administrator shall, after notice and opportunity for public hearing, and after consultation with appropriate Federal and State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate.

(b) Identification and listing

(1) Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 6903(5) of this title), which shall be subject to the provisions of this subchapter. Such regulations shall be based on the criteria promulgated under subsection (a) of this section and shall be revised from time to time thereafter as may be appropriate. The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to the provisions of this subchapter solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratagens)² at levels in excess of levels which endanger human health.

(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy shall be subject only to existing State or Federal regulatory programs in lieu of this subchapter until at least 24 months after October 21, 1980, and after promulgation of the regulations in accordance with subparagraphs (B) and (C) of this paragraph. It is the sense of the Congress that such State or Federal programs should include, for waste disposal sites which are to be closed, provisions requiring at least the following:

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

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

(B) Not later than six months after completion and submission of the study required by section 6982(m) of this title, the Administrator shall, after public hearings and opportunity for comment, determine either to promulgate regulations under this subchapter for drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy or that such regulations are unwarranted. The Administrator shall publish his decision in the Federal Register accompanied by an explanation and justification of the reasons for it. In making the decision under this paragraph, the Administrator shall utilize the information developed or accumulated pursuant to the study required under section 6982(m) of this title.

(C) The Administrator shall transmit his decision, along with any

regulations, if necessary, to both Houses of Congress. Such regulations shall take effect only when authorized by Act of Congress.

(3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, each waste listed below shall, except as provided in subparagraph (B) of this paragraph, be subject only to regulation under other applicable provisions of Federal or State law in lieu of this subchapter until at least six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p) of section 6982 of this title and after promulgation of regulations in accordance with subparagraph (C) of this paragraph:

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

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

(iii) Cement kiln dust waste.

(B)(i) Owners and operators of disposal sites for wastes listed in subparagraph (A) may be required by the Administrator, through regulations prescribed under authority of section 6912 of this title—

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

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

(ii)(I) In conducting any study under subsection (f), (n), (o), or (p), of section 6982 of this title, any officer, employee, or authorized representative of the Environmental Protection Agency, duly designated by the Administrator, is authorized, at reasonable times and as reasonably necessary for the purposes of such study, to enter any establishment where any waste subject to such study is generated, stored, treated, disposed of, or transported from; to inspect, take samples, and conduct monitoring and testing; and to have access to and copy records relating to such waste. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or authorized representative obtains any samples prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, or monitoring and testing performed, a copy of the results shall be furnished promptly to the owner, operator, or agent in charge.

(II) Any records, reports, or information obtained from any person under subclause (I) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, to which the Administrator has access under this subparagraph is made public, would divulge information entitled to protection under section 1905 of title 18, the Administrator shall consider such information or particular portion thereof confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter. Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subparagraph shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

(iii) The Administrator may prescribe regulations, under the

2. So in original. Probably should be “teratogens”.

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

(iv) Whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subparagraph, the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification, the Administrator may issue an order requiring compliance within a specified time period or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(C) Not later than six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p), of section 6982 of this title, the Administrator shall, after public hearings and opportunity for comment, either determine to promulgate regulations under this subchapter for each waste listed in subparagraph (A) of this paragraph or determine that such regulations are unwarranted. The Administrator shall publish his determination, which shall be based on information developed or accumulated pursuant to such study, public hearings, and comment, in the Federal Register accompanied by an explanation and justification of the reasons for it.

(c) Petition by State Governor

At any time after the date eighteen months after October 21, 1976, the Governor of any State may petition the Administrator to identify or list a material as a hazardous waste. The Administrator shall act upon such petition within ninety days following his receipt thereof and shall notify the Governor of such action. If the Administrator denies such petition because of financial considerations, in providing such notice to the Governor he shall include a statement concerning such considerations.

(d) Small quantity generator waste

(1) By March 31, 1986, the Administrator shall promulgate standards under sections 6922, 6923, and 6924 of this title for hazardous waste generated by a generator in a total quantity of hazardous waste greater than one hundred kilograms but less than one thousand kilograms during a calendar month.

(2) The standards referred to in paragraph (1), including standards applicable to the legitimate use, reuse, recycling, and reclamation of such wastes, may vary from the standards applicable to hazardous waste generated by larger quantity generators, but such standards shall be sufficient to protect human health and the environment.

(3) Not later than two hundred and seventy days after November 8, 1984, any hazardous waste which is part of a total quantity generated by a generator generating greater than one hundred kilograms but less than one thousand kilograms during one calendar month and which is shipped off the premises on which such waste is generated shall be accompanied by a copy of the Environmental Protection Agency Uniform Hazardous Waste Manifest form signed by the generator. This form shall contain the following information:

- (A) the name and address of the generator of the waste;
- (B) the United States Department of Transportation description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA), if applicable;
- (C) the number and type of containers;
- (D) the quantity of waste being transported; and
- (E) the name and address of the facility designated to receive the waste.

If subparagraph (B) is not applicable, in lieu of the description referred to in such subparagraph (B), the form shall contain the Environmental Protection Agency identification number, or a generic description of the waste, or a description of the waste by hazardous waste characteristic. Additional requirements related to the manifest form shall apply only if determined necessary by the Administrator to protect human health and the environment.

- (4) The Administrator's responsibility under this subchapter to pro-

tect human health and the environment may require the promulgation of standards under this subchapter for hazardous wastes which are generated by any generator who does not generate more than one hundred kilograms of hazardous waste in a calendar month.

(5) Until the effective date of standards required to be promulgated under paragraph (1), any hazardous waste identified or listed under this section generated by any generator during any calendar month in a total quantity greater than one hundred kilograms but less than one thousand kilograms, which is not treated, stored, or disposed of at a hazardous waste treatment, storage, or disposal facility with a permit under section 6925 of this title, shall be disposed of only in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) Standards promulgated as provided in paragraph (1) shall, at a minimum, require that all treatment, storage, or disposal of hazardous wastes generated by generators referred to in paragraph (1) shall occur at a facility with interim status or a permit under this subchapter, except that onsite storage of hazardous waste generated by a generator generating a total quantity of hazardous waste greater than one hundred kilograms, but less than one thousand kilograms during a calendar month, may occur without the requirement of a permit for up to one hundred and eighty days. Such onsite storage may occur without the requirement of a permit for not more than six thousand kilograms for up to two hundred and seventy days if such generator must ship or haul such waste over two hundred miles.

(7)(A) Nothing in this subsection shall be construed to affect or impair the validity of regulations promulgated by the Secretary of Transportation pursuant to the Hazardous Materials Transportation Act (49 App. U.S.C. 1801 et seq.).

(B) Nothing in this subsection shall be construed to affect, modify, or render invalid any requirements in regulations promulgated prior to January 1, 1983 applicable to any acutely hazardous waste identified or listed under this section which is generated by any generator during any calendar month in a total quantity less than one thousand kilograms.

(8) Effective March 31, 1986, unless the Administrator promulgates standards as provided in paragraph (1) of this subsection prior to such date, hazardous waste generated by any generator in a total quantity greater than one hundred kilograms but less than one thousand kilograms during a calendar month shall be subject to the following requirements until the standards referred to in paragraph (1) of this subsection have become effective:

(A) the notice requirements of paragraph (3) of this subsection shall apply and in addition, the information provided in the form shall include the name of the waste transporters and the name and address of the facility designated to receive the waste;

(B) except in the case of the onsite storage referred to in paragraph (6) of this subsection, the treatment, storage, or disposal of such waste shall occur at a facility with interim status or a permit under this subchapter;

(C) generators of such waste shall file manifest exception reports as required of generators producing greater amounts of hazardous waste per month except that such reports shall be filed by January 31, for any waste shipment occurring in the last half of the preceding calendar year, and by July 31, for any waste shipment occurring in the first half of the calendar year; and

(D) generators of such waste shall retain for three years a copy of the manifest signed by the designated facility that has received the waste. Nothing in this paragraph shall be construed as a determination of the standards appropriate under paragraph (1).

(9) The last sentence of section 6930(b) of this title shall not apply to regulations promulgated under this subsection.

(e) Specified wastes

(1) Not later than 6 months after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)(1) of this section, additional wastes containing chlorinated dioxins or chlorinated-dibenzofurans. Not later than one year after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)(1) of this section wastes containing remaining halogenated dioxins and halogenated-dibenzofurans.

(2) Not later than fifteen months after November 8, 1984, the Ad-

ministrator shall make a determination of whether or not to list under subsection (b)(1) of this section the following wastes: Chlorinated Aliphatics, Dioxin, Dimethyl Hydrazine, TDI (toluene diisocyanate), Carbamates, Bromacil, Linuron, Organo-bromines, solvents, refining wastes, chlorinated aromatics, dyes and pigments, inorganic chemical industry wastes, lithium batteries, coke byproducts, paint production wastes, and coal slurry pipeline effluent.

(f) Delisting procedures

(1) When evaluating a petition to exclude a waste generated at a particular facility from listing under this section, the Administrator shall consider factors (including additional constituents) other than those for which the waste was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. The Administrator shall provide notice and opportunity for comment on these additional factors before granting or denying such petition.

(2)(A) To the maximum extent practicable the Administrator shall publish in the Federal Register a proposal to grant or deny a petition referred to in paragraph (1) within twelve months after receiving a complete application to exclude a waste generated at a particular facility from being regulated as a hazardous waste and shall grant or deny such a petition within twenty-four months after receiving a complete application.

(B) The temporary granting of such a petition prior to November 8, 1984, without the opportunity for public comment and the full consideration of such comments shall not continue for more than twenty-four months after November 8, 1984. If a final decision to grant or deny such a petition has not been promulgated after notice and opportunity for public comment within the time limit prescribed by the preceding sentence, any such temporary granting of such petition shall cease to be in effect.

(g) EP toxicity

Not later than twenty-eight months after November 8, 1984, the Administrator shall examine the deficiencies of the extraction procedure toxicity characteristic as a predictor of the leaching potential of wastes and make changes in the extraction procedure toxicity characteristic, including changes in the leaching media, as are necessary to insure that it accurately predicts the leaching potential of wastes which pose a threat to human health and the environment when mismanaged.

(h) Additional characteristics

Not later than two years after November 8, 1984, the Administrator shall promulgate regulations under this section identifying additional characteristics of hazardous waste, including measures or indicators of toxicity.

(i) Clarification of household waste exclusion

A resource recovery facility recovering energy from the mass burning of municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subchapter, if—

(1) such facility—

(A) receives and burns only—

(i) household waste (from single and multiple dwellings, hotels, motels, and other residential sources), and

(ii) solid waste from commercial or industrial sources that does not contain hazardous waste identified or listed under this section, and

(B) does not accept hazardous wastes identified or listed under this section, and

(2) the owner or operator of such facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

(j) Methamphetamine production

Not later than every 24 months, the Administrator shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report setting forth information collected by the Administrator from law enforcement agencies, States, and other relevant stakeholders that identifies the byproducts of the methamphetamine production process and whether the Administrator considers each of the byproducts to be a hazardous waste pursuant to this section and relevant regulations.

(Pub. L. 89-272, title II, §3001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2806, and amended Pub. L. 96-482, §7, Oct. 21, 1980, 94 Stat. 2336; Pub. L. 98-616, title II, §§221(a), 222, 223(a), Nov. 8, 1984, 98 Stat. 3248, 3251, 3252; Pub. L. 104-119, §4(1), Mar. 26, 1996, 110 Stat. 833; Pub. L. 109-177, title VII, §742, Mar. 9, 2006, 120 Stat. 272.)

Codification

In subsec. (d)(7)(A), "chapter 51 of title 49" substituted for "the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.]" on authority of Pub. L. 103-272, Sec. 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Regulation

Pub. L. 99-499, title I, Sec. 124(b), Oct. 17, 1986, 100 Stat. 1689, provided that: "Unless the Administrator of the Environmental Protection Agency promulgates regulations under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) addressing the extraction of wastes from landfills as part of the process of recovering methane from such landfills, the owner and operator of equipment used to recover methane from a landfill shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or liquid wastes within the meaning of that subtitle. If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from the gas recovered from the landfill meets any of the characteristics identified under section 3001 of subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921), the preceding sentence shall not apply and such condensate phase or other waste material shall be deemed a hazardous waste under that subtitle, and shall be regulated accordingly."

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

Ash Management and Disposal

Pub. L. 101-549, title III, Sec. 306, Nov. 15, 1990, 104 Stat. 2584, provided that: "For a period of 2 years after the date of enactment of the Clean Air Act Amendments of 1990 (Nov. 15, 1990), ash from solid waste incineration units burning municipal waste shall not be regulated by the Administrator of the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act (42 U.S.C. 6921). Such reference and limitation shall not be construed to prejudice, endorse or otherwise affect any activity by the Administrator following the 2-year period from the date of enactment of the Clean Air Act Amendments of 1990."

Small Quantity Generator Waste; Inform and Educate; Waste Generators

Section 221(b) of Pub. L. 98-616 directed Administrator of Environmental Protection Agency to undertake activities to inform and educate waste generators of their responsibilities under subsec. (d) of this section during the period within thirty months after Nov. 8, 1984, to help assure compliance.

Study of Existing Manifest System for Hazardous Wastes As Applicable to Small Quantity Generators; Submittal to Congress

Section 221(d) of Pub. L. 98-616 directed Administrator of Environmental Protection Agency to cause to be studied the existing manifest system for hazardous wastes as it applies to small quantity generators and recommend whether the current system should be retained or whether a new system should be introduced, such study to include an analysis of the cost versus the benefits of the system studied as well as an analysis of the ease of retrieving and collating information and identifying a given substance, with any new proposal to include a list of those standards that are necessary to protect human health and the environment, and with such study to be submitted to Congress not later than Apr. 1, 1987.

Administrative Burdens; Small Quantity Generators; Retention of Current System; Report to Congress

Section 221(e) of Pub. L. 98-616 directed Administrator of Environmental Protection Agency, in conjunction with Secretary of Transportation, to prepare and submit to Congress, not later than Apr. 1, 1987, a report on the feasibility of easing the administrative burden on small quantity generators, increasing compliance with statutory and regulatory requirements, and simplifying enforcement efforts through a program of licensing hazardous waste transporters to assume the responsibilities of small quantity generators relating to preparation of manifests and associated recordkeeping and reporting requirements, such report to examine the appropriate licensing requirements under such a program including the need for financial assurances by licensed transporters and to make recommendations on provisions and requirements for such a program including the appropriate division of responsibilities between Department of Transportation and Environmental Protection Administration.

Educational Institutions; Accumulation, Storage and Disposal of Hazardous Wastes; Study

Section 221(f) of Pub. L. 98-616, as amended by Pub. L. 107-110, title X, Sec. 1076(aa), Jan. 8, 2002, 115 Stat. 2093, directed Administrator of Environmental Protection Agency, in consultation with Secretary of Education, the States, and appropriate educational associations, to conduct a comprehensive study of problems associated with accumulation, storage, and disposal of hazardous wastes from educational institutions, such study to include an investigation of feasibility and availability of environmentally sound methods for treatment, storage, or disposal of hazardous waste from such institutions, taking into account the types and quantities of such waste which are generated by these institutions, and the nonprofit nature of

these institutions, and directed Administrator to submit a report to Congress containing the findings of the study not later than Apr. 1, 1987.

§6922. [RCRA §3002]

Standards applicable to generators of hazardous waste

(a) In general

Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting—

(1) recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such wastes;

(2) labeling practices for any containers used for the storage, transport, or disposal of such hazardous waste such as will identify accurately such waste;

(3) use of appropriate containers for such hazardous waste;

(4) furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;

(5) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in, and arrives at, treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued as provided in this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) (33 U.S.C. 1411 et seq.); and

(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out a permit program pursuant to this subchapter) at least once every two years, setting out—

(A) the quantities and nature of hazardous waste identified or listed under this subchapter that he has generated during the year;

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

(C) the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(D) the changes in volume and toxicity of waste actually achieved during the year in question in comparison with previous years, to the extent such information is available for years prior to November 8, 1984.

(b) Waste minimization

Effective September 1, 1985, the manifest required by subsection (a)(5) of this section shall contain a certification by the generator that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(Pub. L. 89-272, title II, §3002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2806, and amended Pub. L. 95-609, §7(f), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, §8, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98-616, title II, §224(a), Nov. 8, 1984, 98 Stat. 3252.)

References In Text

The Marine Protection, Research, and Sanctuaries Act, referred to in subsection (a)(5), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (Sec. 1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

3. See References in Text note below.

Transfer Of Functions

The Marine Protection, Research, and Sanctuaries Act, referred to in subsection (a)(5), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (Sec. 1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

§6923. [RCRA §3003]

Standards applicable to transporters of hazardous waste

(a) Standards

Not later than eighteen months after October 21, 1976, and after opportunity for public hearings, the Administrator, after consultation with the Secretary of Transportation and the States, shall promulgate regulations establishing such standards, applicable to transporters of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting—

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

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

(3) compliance with the manifest system referred to in section 6922(5)³ of this title; and

(4) transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) (33 U.S.C. 1411 et seq.).

(b) Coordination with regulations of Secretary of Transportation

In case of any hazardous waste identified or listed under this subchapter which is subject to chapter 51 of title 49, the regulations promulgated by the Administrator under this section shall be consistent with the requirements of such Act and the regulations thereunder. The Administrator is authorized to make recommendations to the Secretary of Transportation respecting the regulations of such hazardous waste under the Hazardous Materials Transportation Act and for addition of materials to be covered by such Act.

(c) Fuel from hazardous waste

Not later than two years after November 8, 1984, and after opportunity for public hearing, the Administrator shall promulgate regulations establishing standards, applicable to transporters of fuel produced (1) from any hazardous waste identified or listed under section 6921 of this title, or (2) from any hazardous waste identified or listed under section 6921 of this title and any other material, as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (4) of subsection (a) of this section as may be appropriate. (Pub. L. 89-272, title II, §3003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2807, and amended Pub. L. 95-609, §7(g), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 98-616, title II, §204(b)(2), Nov. 8, 1984, 98 Stat. 3238.)

References in Text

Section 6922(5) of this title, referred to in subsection (a)(3), was redesignated section 6922(a)(5) of this title, by Pub. L. 98-616, title II, Sec. 224(a)(1), Nov. 8, 1984, 98 Stat. 3253.

The Marine Protection, Research, and Sanctuaries Act, referred to in subsection (a)(4), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (Sec. 1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

Codification

In subsection (b), "chapter 51 of title 49" substituted for "the Hazardous Materials Transportation Act (88 Stat. 2156) [49 App. U.S.C. 1801 et seq.]" on authority of Pub. L. 103-272, Sec. 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of

Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6924. [RCRA §3004]

Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities

(a) In general

Not later than eighteen months after October 21, 1976, and after opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. In establishing such standards the Administrator shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such regulations. Such standards shall include, but need not be limited to, requirements respecting—

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

(2) satisfactory reporting, monitoring, and inspection and compliance with the manifest system referred to in section 6922(5)⁴ of this title;

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

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

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

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

(7) compliance with the requirements of section 6925 of this title respecting permits for treatment, storage, or disposal.

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

(b) Salt dome formations, salt bed formations, underground mines and caves

(1) Effective on November 8, 1984, the placement of any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as—

(A) the Administrator has determined, after notice and opportunity for hearings on the record in the affected areas, that such placement is protective of human health and the environment;

(B) the Administrator has promulgated performance and permitting standards for such facilities under this subchapter, and;

(C) a permit has been issued under section 6925(c) of this title for the facility concerned.

(2) Effective on November 8, 1984, the placement of any hazardous waste other than a hazardous waste referred to in paragraph (1) in a salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as a permit has been issued under section 6925(c) of this title for the facility concerned.

(3) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) of this section applies shall af-

fect the prohibition contained in paragraph (1) or (2) of this subsection.

(4) Nothing in this subsection shall apply to the Department of Energy Waste Isolation Pilot Project in New Mexico.

(c) Liquids in landfills

(1) Effective 6 months after November 8, 1984, the placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not absorbents have been added) in any landfill is prohibited. Prior to such date the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator regarding liquid hazardous waste shall remain in force and effect to the extent such requirements are applicable to the placement of bulk or noncontainerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.

(2) Not later than fifteen months after November 8, 1984, the Administrator shall promulgate final regulations which—

(A) minimize the disposal of containerized liquid hazardous waste in landfills, and

(B) minimize the presence of free liquids in containerized hazardous waste to be disposed of in landfills.

Such regulations shall also prohibit the disposal in landfills of liquids that have been absorbed in materials that biodegrade or that release liquids when compressed as might occur during routine landfill operations. Prior to the date on which such final regulations take effect, the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator shall remain in force and effect to the extent such requirements are applicable to the disposal of containerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.

(3) Effective twelve months after November 8, 1984, the placement of any liquid which is not a hazardous waste in a landfill for which a permit is required under section 6925(c) of this title or which is operating pursuant to interim status granted under section 6925(e) of this title is prohibited unless the owner or operator of such landfill demonstrates to the Administrator, or the Administrator determines, that—

(A) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted under section 6925(c) of this title or operating pursuant to interim status under section 6925(e) of this title, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(B) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water.

As used in subparagraph (B), the term "underground source of drinking water" has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act) (42 U.S.C. 300f et seq.).

(4) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) of this section applies shall affect the prohibition contained in paragraph (1) of this subsection.

(d) Prohibitions on land disposal of specified wastes

(1) Effective 32 months after November 8, 1984 (except as provided in subsection (f) of this section with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition on one or more methods of land disposal of such waste is not required in order to protect human health and the environment for as long as the waste remains hazardous, taking into account—

(A) the long-term uncertainties associated with land disposal,

(B) the goal of managing hazardous waste in an appropriate manner in the first instance, and

(C) the persistence, toxicity, mobility, and propensity to bio-accumulate of such hazardous wastes and their hazardous constituents.

For the purposes of this paragraph, a method of land disposal may

4. See References in Text note below.

not be determined to be protective of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section), unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) Paragraph (1) applies to the following hazardous wastes listed or identified under section 6921 of this title:

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

- (i) arsenic and/or compounds (as As) 500 mg/l;
- (ii) cadmium and/or compounds (as Cd) 100 mg/l;
- (iii) chromium (VI) and/or compounds (as Cr VI) 500 mg/l;
- (iv) lead and/or compounds (as Pb) 500 mg/l;
- (v) mercury and/or compounds (as Hg) 20 mg/l;
- (vi) nickel and/or compounds (as Ni) 134 mg/l;
- (vii) selenium and/or compounds (as Se) 100 mg/l; and
- (viii) thallium and/or compounds (as Th) 130 mg/l.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg.

When necessary to protect human health and the environment, the Administrator shall substitute more stringent concentration levels than the levels specified in subparagraphs (A) through (E).

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated soil or debris resulting from a response action taken under section 9604 or 9606 of this title or a corrective action required under this subchapter.

(e) Solvents and dioxins

(1) Effective twenty-four months after November 8, 1984 (except as provided in subsection (f) of this section with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition of one or more methods of land disposal of such waste is not required in order to protect human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraph (A) through (C) of subsection (d)(1) of this section. For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section), unless upon application by an interested person it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) The hazardous wastes to which the prohibition under paragraph (1) applies are as follows—

(A) dioxin-containing hazardous wastes numbered F020, F021, F022, and F023 (as referred to in the proposed rule published by the Administrator in the Federal Register for April 4, 1983), and

(B) those hazardous wastes numbered F001, F002, F003, F004, and F005 in regulations promulgated by the Administrator under section 6921 of this title (40 C.F.R. 261.31 (July 1, 1983)), as those regulations are in effect on July 1, 1983.

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated soil or debris resulting from a response action taken under section 9604 or 9606 of this title or a corrective action required under this subchapter.

(f) Disposal into deep injection wells; specified subsection (d) wastes; solvents and dioxins

(1) Not later than forty-five months after November 8, 1984, the Administrator shall complete a review of the disposal of all hazardous wastes referred to in paragraph (2) of subsection (d) of this section and in paragraph (2) of subsection (e) of this section by underground injection into deep injection wells.

(2) Within forty-five months after November 8, 1984, the Administrator shall make a determination regarding the disposal by underground injection into deep injection wells of the hazardous wastes referred to in paragraph (2) of subsection (d) of this section and the hazardous wastes referred to in paragraph (2) of subsection (e) of this section. The Administrator shall promulgate final regulations prohibiting the disposal of such wastes into such wells if it may reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1) of this section. In promulgating such regulations, the Administrator shall consider each hazardous waste referred to in paragraph (2) of subsection (d) of this section or in paragraph (2) of subsection (e) of this section which is prohibited from disposal into such wells by any State.

(3) If the Administrator fails to make a determination under paragraph (2) for any hazardous waste referred to in paragraph (2) of subsection (d) of this section or in paragraph (2) of subsection (e) of this section within forty-five months after November 8, 1984, such hazardous waste shall be prohibited from disposal into any deep injection well.

(4) As used in this subsection, the term "deep injection well" means a well used for the underground injection of hazardous waste other than a well to which section 6979a(a)⁵ of this title applies.

(g) Additional land disposal prohibition determinations

(1) Not later than twenty-four months after November 8, 1984, the Administrator shall submit a schedule to Congress for—

(A) reviewing all hazardous wastes listed (as of November 8, 1984) under section 6921 of this title other than those wastes which are referred to in subsection (d) or (e) of this section; and

(B) taking action under paragraph (5) of this subsection with respect to each such hazardous waste.

(2) The Administrator shall base the schedule on a ranking of such listed wastes considering their intrinsic hazard and their volume such that decisions regarding the land disposal of high volume hazardous wastes with high intrinsic hazard shall, to the maximum extent possible, be made by the date forty-five months after November 8, 1984. Decisions regarding low volume hazardous wastes with lower intrinsic hazard shall be made by the date sixty-six months after November 8, 1984.

(3) The preparation and submission of the schedule under this subsection shall not be subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). No hearing on the record shall be required for purposes of preparation or submission of the schedule. The schedule shall not be subject to judicial review.

(4) The schedule under this subsection shall require that the Administrator shall promulgate regulations in accordance with paragraph (5) or make a determination under paragraph (5)—

(A) for at least one-third of all hazardous wastes referred to in paragraph (1) by the date forty-five months after November 8, 1984;

(B) for at least two-thirds of all such listed wastes by the date fifty-five months after November 8, 1984; and

(C) for all such listed wastes and for all hazardous wastes iden-

5. See References in Text note below.

tified under section 6921 of this title by the date sixty-six months after November 8, 1984.

In the case of any hazardous waste identified or listed under section 6921 of this title after November 8, 1984, the Administrator shall determine whether such waste shall be prohibited from one or more methods of land disposal in accordance with paragraph (5) within six months after the date of such identification or listing.

(5) Not later than the date specified in the schedule published under this subsection, the Administrator shall promulgate final regulations prohibiting one or more methods of land disposal of the hazardous wastes listed on such schedule except for methods of land disposal which the Administrator determines will be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1) of this section. For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment (except with respect to a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section) unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(6)(A) If the Administrator fails (by the date forty-five months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first one-third of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (o) of this section which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(B) If the Administrator fails (by the date 55 months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first two-thirds of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (o) of this section which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(C) If the Administrator fails to promulgate regulations, or make a determination under paragraph (5) for any hazardous waste referred to in paragraph (1) within 66 months after November 8, 1984, such hazardous waste shall be prohibited from land disposal.

(7) Solid waste identified as hazardous based solely on one or more characteristics shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f), or any requirement promulgated under subsection (m) (other than any applicable specific methods of treatment, as provided in paragraph (8)) if the waste—

(A) is treated in a treatment system that subsequently discharges to waters of the United States pursuant to a permit issued under section 402 of the Federal Water Pollution Control Act (commonly known as the "Clean Water Act") (33 U.S.C. 1342), treated for the purposes of the pretreatment requirements of section 307 of the Clean Water Act (33 U.S.C. 1317), or treated in a zero discharge system that, prior to any permanent land disposal, engages in treatment that is equivalent to treatment required under section 402 of the Clean Water Act (33 U.S.C. 1342) for discharges to waters of the United States, as determined by the Administrator; and

(B) no longer exhibits a hazardous characteristic prior to management in any land-based solid waste management unit.

(8) Solid waste that otherwise qualifies under paragraph (7) shall nevertheless be required to meet any applicable specific methods of treatment specified for such waste by the Administrator under subsection (m), including those specified in the rule promulgated by the Administrator June 1, 1990, prior to management in a land-based unit as part of a treatment system specified in paragraph (7)(A). No solid waste may qualify under paragraph (7) that would generate toxic gases, vapors, or fumes due to the presence of cyanide when exposed to pH conditions between 2.0 and 12.5.

(9) Solid waste identified as hazardous based on one or more characteristics alone shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f), or any requirement promulgated under subsection (m) if the waste no longer exhibits a hazardous characteristic at the point of injection in any Class I injection well permitted under section 1422 of title XIV of the Public Health Service Act (42 U.S.C. 300h-1).

(10) Not later than five years after the date of enactment of this paragraph, the Administrator shall complete a study of hazardous waste managed pursuant to paragraph (7) or (9) to characterize the risks to human health or the environment associated with such management. In conducting this study, the Administrator shall evaluate the extent to which risks are adequately addressed under existing State or Federal programs and whether unaddressed risks could be better addressed under such laws or programs. Upon receipt of additional information or upon completion of such study and as necessary to protect human health and the environment, the Administrator may impose additional requirements under existing Federal laws, including subsection (m)(1), or rely on other State or Federal programs or authorities to address such risks. In promulgating any treatment standards pursuant to subsection (m)(1) under the previous sentence, the Administrator shall take into account the extent to which treatment is occurring in land-based units as part of a treatment system specified in paragraph (7)(A).

(11) Nothing in paragraph (7) or (9) shall be interpreted or applied to restrict any inspection or enforcement authority under the provisions of this Act.

(h) Variance from land disposal prohibitions

(1) A prohibition in regulations under subsection (d), (e), (f), or (g) of this section shall be effective immediately upon promulgation.

(2) The Administrator may establish an effective date different from the effective date which would otherwise apply under subsection (d), (e), (f), or (g) of this section with respect to a specific hazardous waste which is subject to a prohibition under subsection (d), (e), (f), or (g) of this section or under regulations under subsection (d), (e), (f), or (g) of this section. Any such other effective date shall be established on the basis of the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available. Any such other effective date shall in no event be later than 2 years after the effective date of the prohibition which would otherwise apply under subsection (d), (e), (f), or (g) of this section.

(3) The Administrator, after notice and opportunity for comment and after consultation with appropriate State agencies in all affected States, may on a case-by-case basis grant an extension of the effective date which would otherwise apply under subsection (d), (e), (f), or (g) of this section or under paragraph (2) for up to one year, where

the applicant demonstrates that there is a binding contractual commitment to construct or otherwise provide such alternative capacity but due to circumstances beyond the control of such applicant such alternative capacity cannot reasonably be made available by such effective date. Such extension shall be renewable once for no more than one additional year.

(4) Whenever another effective date (hereinafter referred to as a "variance") is established under paragraph (2), or an extension is granted under paragraph (3), with respect to any hazardous waste, during the period for which such variance or extension is in effect, such hazardous waste may be disposed of in a landfill or surface impoundment only if such facility is in compliance with the requirements of subsection (o) of this section.

(i) Publication of determination

If the Administrator determines that a method of land disposal will be protective of human health and the environment, he shall promptly publish in the Federal Register notice of such determination, together with an explanation of the basis for such determination.

(j) Storage of hazardous waste prohibited from land disposal

In the case of any hazardous waste which is prohibited from one or more methods of land disposal under this section (or under regulations promulgated by the Administrator under any provision of this section) the storage of such hazardous waste is prohibited unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal.

(k) "Land disposal" defined

For the purposes of this section, the term "land disposal", when used with respect to a specified hazardous waste, shall be deemed to include, but not be limited to, any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

(l) Ban on dust suppression

The use of waste or used oil or other material, which is contaminated or mixed with dioxin or any other hazardous waste identified or listed under section 6921 of this title (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

(m) Treatment standards for wastes subject to land disposal prohibition

(1) Simultaneously with the promulgation of regulations under subsection (d), (e), (f), or (g) of this section prohibiting one or more methods of land disposal of a particular hazardous waste, and as appropriate thereafter, the Administrator shall, after notice and an opportunity for hearings and after consultation with appropriate Federal and State agencies, promulgate regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.

(2) If such hazardous waste has been treated to the level or by a method specified in regulations promulgated under this subsection, such waste or residue thereof shall not be subject to any prohibition promulgated under subsection (d), (e), (f), or (g) of this section and may be disposed of in a land disposal facility which meets the requirements of this subchapter. Any regulation promulgated under this subsection for a particular hazardous waste shall become effective on the same date as any applicable prohibition promulgated under subsection (d), (e), (f), or (g) of this section.

(n) Air emissions

Not later than thirty months after November 8, 1984, the Administrator shall promulgate such regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment.

(o) Minimum technological requirements

(1) The regulations under subsection (a) of this section shall be revised from time to time to take into account improvements in the technology of control and measurement. At a minimum, such regulations shall require, and a permit issued pursuant to section 6925(c) of this title after November 8, 1984, by the Administrator or a State shall require—

(A) for each new landfill or surface impoundment, each new landfill or surface impoundment unit at an existing facility, each replacement of an existing landfill or surface impoundment unit, and each lateral expansion of an existing landfill or surface impoundment unit, for which an application for a final determination regarding issuance of a permit under section 6925(c) of this title is received after November 8, 1984—

(i) the installation of two or more liners and a leachate collection system above (in the case of a landfill) and between such liners; and

(ii) ground water monitoring; and

(B) for each incinerator which receives a permit under section 6925(c) of this title after November 8, 1984, the attainment of the minimum destruction and removal efficiency required by regulations in effect on June 24, 1982.

The requirements of this paragraph shall apply with respect to all waste received after the issuance of the permit.

(2) Paragraph (1)(A)(i) shall not apply if the owner or operator demonstrates to the Administrator, and the Administrator finds for such landfill or surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(3) The double-liner requirement set forth in paragraph (1)(A)(i) may be waived by the Administrator for any monofill, if—

(A) such monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand,

(B) such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Extraction Procedure ("EP") toxicity characteristics set forth in regulations under this subchapter, and

(C) such monofill meets the same requirements as are applicable in the case of a waiver under section 6925(j)(2) or (4) of this title.

(4)(A) Not later than thirty months after November 8, 1984, the Administrator shall promulgate standards requiring that new landfill units, surface impoundment units, waste piles, underground tanks and land treatment units for the storage, treatment, or disposal of hazardous waste identified or listed under section 6921 of this title shall be required to utilize approved leak detection systems.

(B) For the purposes of subparagraph (A)—

(i) the term "approved leak detection system" means a system or technology which the Administrator determines to be capable of detecting leaks of hazardous constituents at the earliest practicable time; and

(ii) the term "new units" means units on which construction commences after the date of promulgation of regulations under this paragraph.

(5)(A) The Administrator shall promulgate regulations or issue guidance documents implementing the requirements of paragraph (1)(A) within two years after November 8, 1984.

(B) Until the effective date of such regulations or guidance documents, the requirement for the installation of two or more liners may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated⁶ and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a

6. So in original. Probably should be followed by a comma.

lower liner shall be deemed to satisfy such requirement if it is constructed of at least a 3-foot thick layer of recompacted clay or other natural material with a permeability of no more than 1×10^{-7} centimeter per second.

(6) Any permit under section 6925 of this title which is issued for a landfill located within the State of Alabama shall require the installation of two or more liners and a leachate collection system above and between such liners, notwithstanding any other provision of this chapter.

(7) In addition to the requirements set forth in this subsection, the regulations referred to in paragraph (1) shall specify criteria for the acceptable location of new and existing treatment, storage, or disposal facilities as necessary to protect human health and the environment. Within 18 months after November 8, 1984, the Administrator shall publish guidance criteria identifying areas of vulnerable hydrogeology.

(p) Ground water monitoring

The standards under this section concerning ground water monitoring which are applicable to surface impoundments, waste piles, land treatment units, and landfills shall apply to such a facility whether or not—

- (1) the facility is located above the seasonal high water table;
- (2) two liners and a leachate collection system have been installed at the facility; or
- (3) the owner or operator inspects the liner (or liners) which has been installed at the facility.

This subsection shall not be construed to affect other exemptions or waivers from such standards provided in regulations in effect on November 8, 1984, or as may be provided in revisions to those regulations, to the extent consistent with this subsection. The Administrator is authorized on a case-by-case basis to exempt from ground water monitoring requirements under this section (including subsection (o) of this section) any engineered structure which the Administrator finds does not receive or contain liquid waste (nor waste containing free liquids), is designed and operated to exclude liquid from precipitation or other runoff, utilizes multiple leak detection systems within the outer layer of containment, and provides for continuing operation and maintenance of these leak detection systems during the operating period, closure, and the period required for post-closure monitoring and for which the Administrator concludes on the basis of such findings that there is a reasonable certainty hazardous constituents will not migrate beyond the outer layer of containment prior to the end of the period required for post-closure monitoring.

(q) Hazardous waste used as fuel

(1) Not later than two years after November 8, 1984, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing such—

(A) standards applicable to the owners and operators of facilities which produce a fuel—

(i) from any hazardous waste identified or listed under section 6921 of this title, or

(ii) from any hazardous waste identified or listed under section 6921 of this title and any other material;

(B) standards applicable to the owners and operators of facilities which burn, for purposes of energy recovery, any fuel produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title; and

(C) standards applicable to any person who distributes or markets any fuel which is produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title;

as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (7) of subsection (a) of this section as may be appropriate. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. For purposes of this subsection, the term "hazardous waste listed under section 6921 of this title" includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu

of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel.

(2)(A) This subsection, subsection (r) of this section, and subsection (s) of this section shall not apply to petroleum refinery wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more characteristics by which a substance would be identified as a hazardous waste under section 6921 of this title.

(B) The Administrator may exempt from the requirements of this subsection, subsection (r) of this section, or subsection (s) of this section facilities which burn de minimis quantities of hazardous waste as fuel, as defined by the Administrator, if the wastes are burned at the same facility at which such wastes are generated; the waste is burned to recover useful energy, as determined by the Administrator on the basis of the design and operating characteristics of the facility and the heating value and other characteristics of the waste; and the waste is burned in a type of device determined by the Administrator to be designed and operated at a destruction and removal efficiency sufficient such that protection of human health and environment is assured.

(C)(i) After November 8, 1984, and until standards are promulgated and in effect under paragraph (2) of this subsection, no fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than five hundred thousand (based on the most recent census statistics) unless such kiln fully complies with regulations (as in effect on November 8, 1984) under this subchapter which are applicable to incinerators.

(ii) Any person who knowingly violates the prohibition contained in clause (i) shall be deemed to have violated section 6928(d)(2) of this title.

(r) Labeling

(1) Notwithstanding any other provision of law, until such time as the Administrator promulgates standards under subsection (q) of this section specifically superseding this requirement, it shall be unlawful for any person who is required to file a notification in accordance with paragraph (1) or (3) of section 6930 of this title to distribute or market any fuel which is produced from any hazardous waste identified or listed under section 6921 of this title, or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title if the invoice or the bill of sale fails—

(A) to bear the following statement: "WARNING: THIS FUEL CONTAINS HAZARDOUS WASTES", and

(B) to list the hazardous wastes contained therein.

Beginning ninety days after November 8, 1984, such statement shall be located in a conspicuous place on every such invoice or bill of sale and shall appear in conspicuous and legible type in contrast by typography, layouts, or color with other printed matter on the invoice or bill of sale.

(2) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from petroleum refining waste containing oil if—

(A) such materials are generated and reinserted onsite into the refining process;

(B) contaminants are removed; and

(C) such refining waste containing oil is converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(3) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from oily materials, resulting from normal petroleum refining, production and transportation practices, if (A) contaminants are removed; and (B) such oily materials are converted along with normal process streams into

petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

(s) Recordkeeping

Not later than fifteen months after November 8, 1984, the Administrator shall promulgate regulations requiring that any person who is required to file a notification in accordance with subparagraph (1), (2), or (3), of section 6930(a) of this title shall maintain such records regarding fuel blending, distribution, or use as may be necessary to protect human health and the environment.

(t) Financial responsibility provisions

(1) Financial responsibility required by subsection (a) of this section may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this chapter.

(2) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where (with reasonable diligence) jurisdiction in any State court or any Federal Court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(4) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.

(u) Continuing releases at permitted facilities

Standards promulgated under this section shall require, and a permit issued after November 8, 1984, by the Administrator or a State shall require, corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under this subchapter, regardless of the time at which waste was placed in such unit. Permits issued under section 6925 of this title shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

(v) Corrective action beyond facility boundary

As promptly as practicable after November 8, 1984, the Administrator shall amend the standards under this section regarding corrective action required at facilities for the treatment, storage, or disposal, of hazardous waste listed or identified under section 6921 of this title to require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the Administrator that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such regulations shall take effect

immediately upon promulgation, notwithstanding section 6930(b) of this title, and shall apply to—

- (1) all facilities operating under permits issued under subsection (c) of this section, and

- (2) all landfills, surface impoundments, and waste pile units (including any new units, replacements of existing units, or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

Pending promulgation of such regulations, the Administrator shall issue corrective action orders for facilities referred to in paragraphs (1) and (2), on a case-by-case basis, consistent with the purposes of this subsection.

(w) Underground tanks

Not later than March 1, 1985, the Administrator shall promulgate final permitting standards under this section for underground tanks that cannot be entered for inspection. Within forty-eight months after November 8, 1984, such standards shall be modified, if necessary, to cover at a minimum all requirements and standards described in section 6991b of this title.

(x) Mining and other special wastes

If (1) solid waste from the extraction, beneficiation or processing of ores and minerals, including phosphate rock and overburden from the mining of uranium, (2) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, or (3) cement kiln dust waste, is subject to regulation under this subchapter, the Administrator is authorized to modify the requirements of subsections (c), (d), (e), (f), (g), (o), and (u) of this section and section 6925(j) of this title, in the case of landfills or surface impoundments receiving such solid waste, to take into account the special characteristics of such wastes, the practical difficulties associated with implementation of such requirements, and site-specific characteristics, including but not limited to the climate, geology, hydrology and soil chemistry at the site, so long as such modified requirements assure protection of human health and the environment.

(y) Munitions

(1) Not later than 6 months after October 6, 1992, the Administrator shall propose, after consulting with the Secretary of Defense and appropriate State officials, regulations identifying when military munitions become hazardous waste for purposes of this subtitle and providing for the safe transportation and storage of such waste. Not later than 24 months after such date, and after notice and opportunity for comment, the Administrator shall promulgate such regulations. Any such regulations shall assure protection of human health and the environment.

(2) For purposes of this subsection, the term "military munitions" includes chemical and conventional munitions.

(Pub. L. 89-272, title II, §3004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2807, and amended Pub. L. 96-482, §9, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98-616, title II, §§201(a), 202(a), 203, 204(b)(1), 205-209, Nov. 8, 1984, 98 Stat. 3226, 3233, 3234, 3236, 3238-3240; Pub. L. 102-386, §107, Oct. 6, 1992, 106 Stat. 1513; Pub. L. 104-119, §§2, 4(2), Mar. 26, 1996, 110 Stat. 830, 833.)

References in Text

Section 6922(5) of this title, referred to in subsec. (a)(2), was redesignated section 6922(a)(5) of this title, by Pub. L. 98-616, title II, Sec. 224(a)(1), Nov. 8, 1984, 98 Stat. 3253.

The Safe Drinking Water Act, referred to in subsec. (c)(3), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, Sec. 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (Sec. 300ff et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title note set out under section 201 of this title and Tables.

Section 6979a of this title, referred to in subsec. (f)(4), was in the original a reference to section 7010 of Pub. L. 89-272, which was renumbered section 3020 of Pub. L. 89-272 by Pub. L. 99-339, title II, Sec. 201(c), June 19, 1986, 100 Stat. 654, and transferred to section 6939b of this title.

The Paperwork Reduction Act of 1980, referred to in subsec. (g)(3), is Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (Sec. 3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104-13, Sec. 2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

The Federal Bankruptcy Code, referred to in subsec. (t)(2), probably means a reference to Title 11, Bankruptcy.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6925. [RCRA §3005]**Permits for treatment, storage, or disposal of hazardous waste****(a) Permit requirements**

Not later than eighteen months after October 21, 1976, the Administrator shall promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 6930 of this title and upon and after such date the treatment, storage, or disposal of any such hazardous waste and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit. No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polychlorinated biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter.

(b) Requirements of permit application

Each application for a permit under this section shall contain such information as may be required under regulations promulgated by the Administrator, including information respecting—

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

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

(c) Permit issuance

(1) Upon a determination by the Administrator (or a State, if applicable), of compliance by a facility for which a permit is applied for under this section with the requirements of this section and section 6924 of this title, the Administrator (or the State) shall issue a permit for such facilities. In the event permit applicants propose modification of their facilities, or in the event the Administrator (or the State) determines that modifications are necessary to conform to the requirements under this section and section 6924 of this title, the permit shall specify the time allowed to complete the modifications.

(2)(A)(i) Not later than the date four years after November 8, 1984, in the case of each application under this subsection for a permit for a land disposal facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(ii) Not later than the date five years after November 8, 1984, in the case of each application for a permit under this subsection for an incinerator facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(B) Not later than the date eight years after November 8, 1984, in the case of each application for a permit under this subsection for any facility (other than a facility referred to in subparagraph (A)) which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(C) The time periods specified in this paragraph shall also apply in the case of any State which is administering an authorized hazardous waste program under section 6926 of this title. Interim status under subsection (e) of this section shall terminate for each

facility referred to in subparagraph (A)(ii) or (B) on the expiration of the five- or eight-year period referred to in subparagraph (A) or (B), whichever is applicable, unless the owner or operator of the facility applies for a final determination regarding the issuance of a permit under this subsection within—

- (i) two years after November 8, 1984 (in the case of a facility referred to in subparagraph (A)(ii)), or
- (ii) four years after November 8, 1984 (in the case of a facility referred to in subparagraph (B)).

(3) Any permit under this section shall be for a fixed term, not to exceed 10 years in the case of any land disposal facility, storage facility, or incinerator or other treatment facility. Each permit for a land disposal facility shall be reviewed five years after date of issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable requirements of this section and section 6924 of this title. Nothing in this subsection shall preclude the Administrator from reviewing and modifying a permit at any time during its term. Review of any application for a permit renewal shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations. Each permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.

(d) Permit revocation

Upon a determination by the Administrator (or by a State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) of noncompliance by a facility having a permit under this chapter with the requirements of this section or section 6924 of this title, the Administrator (or State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) shall revoke such permit.

(e) Interim status

- (1) Any person who—

(A) owns or operates a facility required to have a permit under this section which facility—

- (i) was in existence on November 19, 1980, or
- (ii) is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section,

(B) has complied with the requirements of section 6930(a) of this title, and

(C) has made an application for a permit under this section, shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated.

(2) In the case of each land disposal facility which has been granted interim status under this subsection before November 8, 1984, interim status shall terminate on the date twelve months after November 8, 1984, unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility before the date twelve months after November 8, 1984; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(3) In the case of each land disposal facility which is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section and which is granted interim status under this subsection, interim status shall terminate on the date twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility be-

fore the date twelve months after the date on which the facility first becomes subject to such permit requirement; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(f) Coal mining wastes and reclamation permits

Notwithstanding subsection (a) through (e) of this section, any surface coal mining and reclamation permit covering any coal mining wastes or overburden which has been issued or approved under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.) shall be deemed to be a permit issued pursuant to this section with respect to the treatment, storage, or disposal of such wastes or overburden. Regulations promulgated by the Administrator under this subchapter shall not be applicable to treatment, storage, or disposal of coal mining wastes and overburden which are covered by such a permit.

(g) Research, development, and demonstration permits

(1) The Administrator may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under this subchapter. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits—

(A) shall provide for the construction of such facilities, as necessary, and for operation of the facility for not longer than one year (unless renewed as provided in paragraph (4)), and

(B) shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Administrator deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(C) shall include such requirements as the Administrator deems necessary to protect human health and the environment (including, but not limited to, requirements regarding monitoring, operation, insurance or bonding, financial responsibility,⁷ closure, and remedial action), and such requirements as the Administrator deems necessary regarding testing and providing of information to the Administrator with respect to the operation of the facility.

The Administrator may apply the criteria set forth in this paragraph in establishing the conditions of each permit without separate establishment of regulations implementing such criteria.

(2) For the purpose of expediting review and issuance of permits under this subsection, the Administrator may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements established in the Administrator's general permit regulations except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures established under section 6974(b)(2) of this title regarding public participation.

(3) The Administrator may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

(4) Any permit issued under this subsection may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

(h) Waste minimization

Effective September 1, 1985, it shall be a condition of any permit issued under this section for the treatment, storage, or disposal of hazardous waste on the premises where such waste was generated that the permittee certify, no less often than annually, that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(i) Interim status facilities receiving wastes after July 26, 1982

The standards concerning ground water monitoring, unsaturated zone monitoring, and corrective action, which are applicable under section 6924 of this title to new landfills, surface impoundments, land treatment units, and waste-pile units required to be permitted under subsection (c) of this section shall also apply to any landfill, surface impoundment, land treatment unit, or waste-pile unit qualifying for the authorization to operate under subsection (e) of this section which receives hazardous waste after July 26, 1982.

(j) Interim status surface impoundments

(1) Except as provided in paragraph (2), (3), or (4), each surface impoundment in existence on November 8, 1984, and qualifying for the authorization to operate under subsection (e) of this section shall not receive, store, or treat hazardous waste after the date four years after November 8, 1984, unless such surface impoundment is in compliance with the requirements of section 6924(o)(1)(A) of this title which would apply to such impoundment if it were new.

(2) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) has at least one liner, for which there is no evidence that such liner is leaking; (B) is located more than one-quarter mile from an underground source of drinking water; and (C) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section.

(3) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) contains treated waste water during the secondary or subsequent phases of an aggressive biological treatment facility subject to a permit issued under section 1342 of title 33 (or which holds such treated waste water after treatment and prior to discharge); (B) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section; and (C)(i) is part of a facility in compliance with section 1311(b)(2) of title 33, or (ii) in the case of a facility for which no effluent guidelines required under section 1314(b)(2) of title 33 are in effect and no permit under section 1342(a)(1) of title 33 implementing section 1311(b)(2) of title 33 has been issued, is part of a facility in compliance with a permit under section 1342 of title 33, which is achieving significant degradation of toxic pollutants and hazardous constituents contained in the untreated waste stream and which has identified those toxic pollutants and hazardous constituents in the untreated waste stream to the appropriate permitting authority.

(4) The Administrator (or the State, in the case of a State with an authorized program), after notice and opportunity for comment, may modify the requirements of paragraph (1) for any surface impoundment if the owner or operator demonstrates that such surface impoundment is located, designed and operated so as to assure that there will be no migration of any hazardous constituent⁸ into ground water or surface water at any future time. The Administrator or the State shall take into account locational criteria established under section 6924(o)(7) of this title.

(5) The owner or operator of any surface impoundment potentially subject to paragraph (1) who has reason to believe that on the basis of paragraph (2), (3), or (4) such surface impoundment is not required to comply with the requirements of paragraph (1), shall apply to the Administrator (or the State, in the case of a State with an authorized program) not later than twenty-four months after November 8, 1984, for a determination of the applicability of paragraph (1) (in the case of paragraph (2) or (3)) or for a modification of the requirements of paragraph (1) (in the case of paragraph (4)), with respect to such surface impoundment. Such owner or operator shall provide, with such application, evidence pertinent to such decision, including:

7. So in original. Probably should be "responsibility".

8. So in original. Probably should be "constituent".

(A) an application for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility, if not previously submitted;

(B) evidence as to compliance with all applicable ground water monitoring requirements and the information and analysis from such monitoring;

(C) all reasonably ascertainable evidence as to whether such surface impoundment is leaking; and

(D) in the case of applications under paragraph (2) or (3), a certification by a registered professional engineer with academic training and experience in ground water hydrology that—

(i) under paragraph (2), the liner of such surface impoundment is designed, constructed, and operated in accordance with applicable requirements, such surface impoundment is more than one-quarter mile from an underground source of drinking water and there is no evidence such liner is leaking; or

(ii) under paragraph (3), based on analysis of those toxic pollutants and hazardous constituents that are likely to be present in the untreated waste stream, such impoundment satisfies the conditions of paragraph (3).

In the case of any surface impoundment for which the owner or operator fails to apply under this paragraph within the time provided by this paragraph or paragraph (6), such surface impoundment shall comply with paragraph (1) notwithstanding paragraph (2), (3), or (4). Within twelve months after receipt of such application and evidence and not later than thirty-six months after November 8, 1984, and after notice and opportunity to comment, the Administrator (or, if appropriate, the State) shall advise such owner or operator on the applicability of paragraph (1) to such surface impoundment or as to whether and how the requirements of paragraph (1) shall be modified and applied to such surface impoundment.

(6)(A) In any case in which a surface impoundment becomes subject to paragraph (1) after November 8, 1984, due to the promulgation of additional listings or characteristics for the identification of hazardous waste under section 6921 of this title, the period for compliance in paragraph (1) shall be four years after the date of such promulgation, the period for demonstrations under paragraph (4) and for submission of evidence under paragraph (5) shall be not later than twenty-four months after the date of such promulgation, and the period for the Administrator (or if appropriate, the State) to advise such owners or operators under paragraph (5) shall be not later than thirty-six months after the date of promulgation.

(B) In any case in which a surface impoundment is initially determined to be excluded from the requirements of paragraph (1) but due to a change in condition (including the existence of a leak) no longer satisfies the provisions of paragraph (2), (3), or (4) and therefore becomes subject to paragraph (1), the period for compliance in paragraph (1) shall be two years after the date of discovery of such change of condition, or in the case of a surface impoundment excluded under paragraph (3) three years after such date of discovery.

(7)(A) The Administrator shall study and report to the Congress on the number, range of size, construction, likelihood of hazardous constituents migrating into ground water, and potential threat to human health and the environment of existing surface impoundments excluded by paragraph (3) from the requirements of paragraph (1). Such report shall address the need, feasibility, and estimated costs of subjecting such existing surface impoundments to the requirements of paragraph (1).

(B) In the case of any existing surface impoundment or class of surface impoundments from which the Administrator (or the State, in the case of a State with an authorized program) determines hazardous constituents are likely to migrate into ground water, the Administrator (or if appropriate, the State) is authorized to impose such requirements as may be necessary to protect human health and the environment, including the requirements of section 6924(o) of this title which would apply to such impoundments if they were new.

(C) In the case of any surface impoundment excluded by paragraph (3) from the requirements of paragraph (1) which is subsequently determined to be leaking, the Administrator (or, if appro-

priate, the State) shall require compliance with paragraph (1), unless the Administrator (or, if appropriate, the State) determines that such compliance is not necessary to protect human health and the environment.

(8) In the case of any surface impoundment in which the liners and leak detection system have been installed pursuant to the requirements of paragraph (1) and in good faith compliance with section 6924(o) of this title and the Administrator's regulations and guidance documents governing liners and leak detection systems, no liner or leak detection system which is different from that which was so installed pursuant to paragraph (1) shall be required for such unit by the Administrator when issuing the first permit under this section to such facility. Nothing in this paragraph shall preclude the Administrator from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this subsection is leaking.

(9) In the case of any surface impoundment which has been excluded by paragraph (2) on the basis of a liner meeting the definition under paragraph (12)(A)(ii), at the closure of such impoundment the Administrator shall require the owner or operator of such impoundment to remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment shall be required to comply with appropriate post-closure requirements, including but not limited to ground water monitoring and corrective action.

(10) Any incremental cost attributable to the requirements of this subsection or section 6924(o) of this title shall not be considered by the Administrator (or the State, in the case of a State with an authorized program under section 1342 of title 33)—

(A) in establishing effluent limitations and standards under section 1311, 1314, 1316, 1317, or 1342 of title 33 based on effluent limitations guidelines and standards promulgated any time before twelve months after November 8, 1984; or

(B) in establishing any other effluent limitations to carry out the provisions of section 1311, 1317, or 1342 of title 33 on or before October 1, 1986.

(11)(A) If the Administrator allows a hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsections) to be placed in a surface impoundment (which is operating pursuant to interim status) for storage or treatment, such impoundment shall meet the requirements that are applicable to new surface impoundments under section 6924(o)(1) of this title, unless such impoundment meets the requirements of paragraph (2) or (4).

(B) In the case of any hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsection) the placement or maintenance of such hazardous waste in a surface impoundment for treatment is prohibited as of the effective date of such prohibition unless the treatment residues which are hazardous are, at a minimum, removed for subsequent management within one year of the entry of the waste into the surface impoundment.

(12)(A) For the purposes of paragraph (2)(A) of this subsection, the term "liner" means—

(i) a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility; or

(ii) a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent subsurface soil, ground water, or surface water at any time during the active life of the facility.

(B) For the purposes of this subsection, the term "aggressive biological treatment facility" means a system of surface impoundments in which the initial impoundment of the secondary treatment segment of the facility utilizes intense mechanical

aeration to enhance biological activity to degrade waste water pollutants and

(i) the hydraulic retention time in such initial impoundment is no longer than 5 days under normal operating conditions, on an annual average basis;

(ii) the hydraulic retention time in such initial impoundment is no longer than thirty days under normal operating conditions, on an annual average basis: Provided, That the sludge in such impoundment does not constitute a hazardous waste as identified by the extraction procedure toxicity characteristic in effect on November 8, 1984; or

(iii) such system utilizes activated sludge treatment in the first portion of secondary treatment.

(C) For the purposes of this subsection, the term "underground source or⁹ drinking water" has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act (42 U.S.C. 300f et seq.)).

(13) The Administrator may modify the requirements of paragraph (1) in the case of a surface impoundment for which the owner or operator, prior to October 1, 1984, has entered into, and is in compliance with, a consent order, decree, or agreement with the Administrator or a State with an authorized program mandating corrective action with respect to such surface impoundment that provides a degree of protection of human health and the environment which is at a minimum equivalent to that provided by paragraph (1).

(Pub. L. 89-272, title II, §3005, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2808, and amended Pub. L. 95-609, §7(h), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, §§10, 11, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98-616, title II, §§211-213(a), (c), 214(a), 215, 224(b), 243(c), Nov. 8, 1984, 98 Stat. 3240-3243, 3253, 3261; Pub. L. 104-119, §4(6), (7), Mar. 26, 1996, 110 Stat. 833.)

References In Text

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (f), is Pub. L. 95-87, Aug. 3, 1977, 91 Stat. 445, as amended, which is classified generally to chapter 25 (Sec. 1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

The Safe Drinking Water Act, referred to in subsec. (j)(12)(C), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, Sec. 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (Sec. 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title note set out under section 201 of this title and Tables.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6926. [RCRA §3006]

Authorized State hazardous waste programs

(a) Federal guidelines

Not later than eighteen months after October 21, 1976, the Administrator, after consultation with State authorities, shall promulgate guidelines to assist States in the Development of State hazardous waste programs.

(b) Authorization of State program

Any State which seeks to administer and enforce a hazardous waste program pursuant to this subchapter may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his findings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this subchapter in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste (and to enforce

permits deemed to have been issued under section 6935(d)(1)¹⁰ of this title) unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this subchapter, (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such program does not provide adequate enforcement of compliance with the requirements of this subchapter. In authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State's application or in effect on January 26, 1983, whichever is later.

(c) Interim authorization

(1) Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date of promulgation of regulations under sections 6922, 6923, 6924, and 6925 of this title, may submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subchapter. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subchapter, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subchapter for a period ending no later than January 31, 1986.

(2) The Administrator shall, by rule, establish a date for the expiration of interim authorization under this subsection.

(3) Pending interim or final authorization of a State program for any State which reflects the amendments made by the Hazardous and Solid Waste Amendments of 1984, the State may enter into an agreement with the Administrator under which the State may assist in the administration of the requirements and prohibitions which take effect pursuant to such Amendments.

(4) In the case of a State permit program for any State which is authorized under subsection (b) of this section or under this subsection, until such program is amended to reflect the amendments made by the Hazardous and Solid Waste Amendments of 1984 and such program amendments receive interim or final authorization, the Administrator shall have the authority in such State to issue or deny permits or those portions of permits affected by the requirements and prohibitions established by the Hazardous and Solid Waste Amendments of 1984. The Administrator shall coordinate with States the procedures for issuing such permits.

(d) Effect of State permit

Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subchapter.

(e) Withdrawal of authorization

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

(f) Availability of information

No State program may be authorized by the Administrator under this section unless—

(1) such program provides for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste; and

(2) such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the

9. So in original. Probably should be "of".

10. See References in Text note below.

Administrator was carrying out the provisions of this subchapter in such State.

(g) Amendments made by 1984 act

(1) Any requirement or prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed under this subchapter pursuant to the amendments made by the Hazardous and Solid Waste Amendments of 1984 shall take effect in each State having an interim or finally authorized State program on the same date as such requirement takes effect in other States. The Administrator shall carry out such requirement directly in each such State unless the State program is finally authorized (or is granted interim authorization as provided in paragraph (2)) with respect to such requirement.

(2) Any State which, before November 8, 1984, has an existing hazardous waste program which has been granted interim or final authorization under this section may submit to the Administrator evidence that such existing program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement referred to in paragraph (1) and may request interim authorization to carry out that requirement under this subchapter. The Administrator shall, if the evidence submitted shows the State requirement to be substantially equivalent to the requirement referred to in paragraph (1), grant an interim authorization to the State to carry out such requirement in lieu of direct administration in the State by the Administrator of such requirement.

(h) State programs for used oil

In the case of used oil which is not listed or identified under this subchapter as a hazardous waste but which is regulated under section 6935 of this title, the provisions of this section regarding State programs shall apply in the same manner and to the same extent as such provisions apply to hazardous waste identified or listed under this subchapter.

(Pub. L. 89-272, title II, §3006, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2809, and amended Pub. L. 95-609, §7(i), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 98-616, title II, §§225, 226(a), 227, 228, 241(b)(2), Nov. 8, 1984, 98 Stat. 3254, 3255, 3260; Pub. L. 99-499, title II, §205(j), Oct. 17, 1986, 100 Stat. 1703.)

References in Text

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89-272, which was renumbered section 3014(d)(1) of Pub. L. 89-272 by Pub. L. 98-616 and is classified to section 6935(d)(1) of this title.

The Hazardous and Solid Waste Amendments of 1984, referred to in subsecs. (c)(3), (4), and (g), is Pub. L. 98-616, Nov. 8, 1984, 98 Stat. 3221, which amended this chapter. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 6901 of this title and Tables.

Effective Date of 1984 Amendment

Section 226(b) of Pub. L. 98-616 provided that: "The amendment made by subsection (a) (enacting subsec. (f) of this section) shall apply with respect to State programs authorized under section 3006 (this section) before, on, or after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 (Nov. 8, 1984)."

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6927. [RCRA §3007]

Inspections

(a) Access entry

For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the development of any regulation

or enforcing the provisions of this chapter, such officers, employees or representatives are authorized—

(1) to enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from;

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

(b) Availability to public

(1) Any records, reports, or information (including records, reports, or information obtained by representatives of the Environmental Protection Agency) obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof, to which the Administrator (or the State, as the case may be) or any officer, employee or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

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

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

(A) designate the data which such person believes is entitled to protection under this subsection, and

(B) submit such designated data separately from other data submitted under this chapter.

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

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

(c) Federal facility inspections

The Administrator shall undertake on an annual basis a thorough inspection of each facility for the treatment, storage, or disposal of hazardous waste which is owned or operated by a department, agency, or instrumentality of the United States to enforce its compliance with this subchapter and the regulations promulgated thereunder. Any State with an authorized hazardous waste program also may conduct an inspection of any such facility for purposes of enforcing the facility's compliance with the State hazardous waste program. The records of such inspections shall be available to the public as provided in subsection (b) of this section. The department, agency, or instrumentality owning or operating each such facility shall reimburse the Environmental Protection Agency for the costs of the inspection of the facility. With respect to the first inspection of each such facility occurring after the date of the enactment of the Federal Facility Compliance Act of 1992, the Administrator shall conduct a comprehensive ground water monitoring evaluation at the facility, unless such an evaluation was conducted during the 12-month period preceding such date of enactment.

(d) State-operated facilities

The Administrator shall annually undertake a thorough inspection of every facility for the treatment, storage, or disposal of hazardous waste which is operated by a State or local government for which a permit is required under section 6925 of this title. The records of such inspection shall be available to the public as provided in subsection (b) of this section.

(e) Mandatory inspections

(1) The Administrator (or the State in the case of a State having an authorized hazardous waste program under this subchapter) shall commence a program to thoroughly inspect every facility for the treatment, storage, or disposal of hazardous waste for which a permit is required under section 6925 of this title no less often than every two years as to its compliance with this subchapter (and the regulations promulgated under this subchapter). Such inspections shall commence not later than twelve months after November 8, 1984. The Administrator shall, after notice and opportunity for public comment, promulgate regulations governing the minimum frequency and manner of such inspections, including the manner in which records of such inspections shall be maintained and the manner in which reports of such inspections shall be filed. The Administrator may distinguish between classes and categories of facilities commensurate with the risks posed by each class or category.

(2) Not later than six months after November 8, 1984, the Administrator shall submit to the Congress a report on the potential for inspections of hazardous waste treatment, storage, or disposal facilities by nongovernmental inspectors as a supplement to inspections conducted by officers, employees, or representatives of the Environmental Protection Agency or States having authorized hazardous waste programs or operating under a cooperative agreement with the Administrator. Such report shall be prepared in cooperation with the States, insurance companies offering environmental impairment insurance, independent companies providing inspection services, and other such groups as appropriate. Such report shall contain recommendations on provisions and requirements for a program of private inspections to supplement governmental inspections.

(Pub. L. 89-272, title II, §3007, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2810, and amended Pub. L. 95-609, §7(j), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, §12, Oct. 21, 1980, 94 Stat. 2339; Pub. L. 98-616, title II, §§229-231, title V, §502(a), Nov. 8, 1984, 98 Stat. 3255, 3256, 3276; Pub. L. 102-386, title I, §104, Oct. 6, 1992, 106 Stat. 1507.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6928. [RCRA §3008]**Federal enforcement****(a) Compliance orders**

(1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person has violated or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both, or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State which is authorized to carry out a hazardous waste program under section 6926 of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

(3) Any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation. Any penalty assessed in the

order shall not exceed \$25,000 per day of noncompliance for each violation of a requirement of this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(b) Public hearing

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

(c) Violation of compliance orders

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

(d) Criminal penalties

Any person who—

(1) knowingly transports or causes to be transported any hazardous waste identified or listed under this subchapter to a facility which does not have a permit under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) (33 U.S.C. 1411 et seq.),

(2) knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter—

(A) without a permit under this subchapter or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) (33 U.S.C. 1411 et seq.); or

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

(C) in knowing violation of any material condition or requirement of any applicable interim status regulations or standards;

(3) knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(4) knowingly generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter (whether such activity took place before or takes place after November 8, 1984) and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(5) knowingly transports without a manifest, or causes to be transported without a manifest, any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter required by regulations promulgated under this subchapter (or by a State in the case of a State program authorized under this subchapter) to be accompanied by a manifest;

(6) knowingly exports a hazardous waste identified or listed under this subchapter (A) without the consent of the receiving country or, (B) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, in a manner which is not in conformance with such agreement; or

(7) knowingly stores, treats, transports, or causes to be transported, disposes of, or otherwise handles any used oil not identified or listed as a hazardous waste under this subchapter—

(A) in knowing violation of any material condition or requirement of a permit under this subchapter; or

(B) in knowing violation of any material condition or requirement of any applicable regulations or standards under this chapter;

shall, upon conviction, be subject to a fine of not more than \$50,000 for each day of violation, or imprisonment not to exceed two years (five years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(e) Knowing endangerment

Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste identified or listed under this subchapter or used oil not identified or listed as a hazardous waste under this subchapter in violation of paragraph (1), (2), (3), (4), (5), (6), or (7) of subsection (d) of this section who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment for not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than \$1,000,000.

(f) Special rules

For the purposes of subsection (e) of this section—

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

(A) his conduct, if he is aware of the nature of his conduct; (B) an existing circumstance, if he is aware or believes that the circumstance exists; or

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) extreme physical pain;

(D) protracted and obvious disfigurement; or

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

(g) Civil penalty

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

(h) Interim status corrective action orders

(1) Whenever on the basis of any information the Administrator determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under section 6925(e) of this title, the Administrator may issue an order requiring corrective action or such other response measure as he deems necessary to protect human health or the environment or the Administrator may commence a civil action in the United States district court in the district in which the facility is located for appropriate relief, including a temporary or permanent injunction.

(2) Any order issued under this subsection may include a suspension or revocation of authorization to operate under section 6925(e) of this title, shall state with reasonable specificity the nature of the required corrective action or other response measure, and shall specify a time for compliance. If any person named in an order fails to comply with the order, the Administrator may assess, and such person shall be liable to the United States for, a civil penalty in an amount not to exceed \$25,000 for each day of noncompliance with the order.

(Pub. L. 89-272, title II, §3008, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2811, and amended Pub. L. 95-609, §7(k), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, §13, Oct. 21, 1980, 94 Stat. 2339; Pub. L. 98-616, title II, §§232, 233, 245(c), title IV, §403(d)(1)-(3), Nov. 8, 1984, 98 Stat. 3256, 3257, 3264, 3272; Pub. L. 99-499, title II, §205(i), Oct. 17, 1986, 100 Stat. 1703.)

References In Text

The Marine Protection, Research, and Sanctuaries Act, referred to in subsection (d)(1), (2)(A), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (Sec. 1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6929. [RCRA §3009]

Retention of State authority

Upon the effective date of regulations under this subchapter no State or political subdivision may impose any requirements less stringent than those authorized under this subchapter respecting the same matter as governed by such regulations, except that if application of a regulation with respect to any matter under this subchapter is postponed or enjoined by the action of any court, no State or political subdivision shall be prohibited from acting with respect to the same aspect of such matter until such time as such regulation takes effect. Nothing in this chapter shall be construed to prohibit any State or political subdivision thereof from imposing any requirements, including those for site selection, which are more stringent than those imposed by such regulations. Nothing in this chapter (or in any regulation adopted under this chapter) shall be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility within that State.

(Pub. L. 89-272, title II, §3009, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2812, and amended Pub. L. 96-482, §14, Oct. 21, 1980, 94 Stat. 2342; Pub. L. 98-616, title II, §213(b), Nov. 8, 1984, 98 Stat. 3242.)

§6930. [RCRA §3010]

Effective date

(a) Preliminary notification

Not later than ninety days after promulgation of regulations under section 6921 of this title identifying by its characteristics or listing any substance as hazardous waste subject to this subchapter, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. Not later than fifteen months after November 8, 1984—

(1) the owner or operator of any facility which produces a fuel (A) from any hazardous waste identified or listed under section 6921 of this title, (B) from such hazardous waste identified or listed under section 6921 of this title and any other material, (C) from used oil, or (D) from used oil and any other material;

(2) the owner or operator of any facility (other than a single- or two-family residence) which burns for purposes of energy recovery any fuel produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title; and

(3) any person who distributes or markets any fuel which is produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title¹¹

shall file with the Administrator (and with the State in the case of a State with an authorized hazardous waste program) a notification stating the location and general description of the facility, together with a description of the identified or listed hazardous waste involved and, in the case of a facility referred to in paragraph (1) or (2), a description of the production or energy recovery activity carried out at the facility and such other information as the Administrator deems necessary. For purposes of the preceding provisions, the term "hazardous waste listed under section 6921 of this title" also includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel. Notification shall not be required under the second sentence of this subsection in the case of facilities (such as residential boilers) where the Administrator determines that such notification is not necessary in order for the Administrator to obtain sufficient information respecting current practices of facilities using hazardous waste for energy recovery. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. Nothing in this subsection shall affect regulatory determinations under section 6935 of this title. In revising any regulation under section 6921 of this title identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste subject to this subchapter, the Administrator may require any person referred to in the preceding provisions to file with the Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) the notification described in the preceding provisions. Not more than one such notification shall be required to be filed with respect to the same substance. No identified or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required under this subsection.

(b) Effective date of regulation

The regulations under this subchapter respecting requirements applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste (including requirements respecting permits for such treatment, storage, or disposal) shall take effect on the date six months after the date of promulgation thereof (or six months after the date of revision in the case of any regulation which is revised after the date required for promulgation thereof). At the time a

regulation is promulgated, the Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for:

- (1) a regulation with which the Administrator finds the regulated community does not need six months to come into compliance;
- (2) a regulation which responds to an emergency situation; or
- (3) other good cause found and published with the regulation.

(Pub. L. 89-272, title II, §3010, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2812, and amended Pub. L. 96-482, §15, Oct. 21, 1980, 94 Stat. 2342; Pub. L. 98-616, title II, §§204(a), 234, Nov. 8, 1984, 98 Stat. 3235, 3258.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6931. [RCRA §3011]

Authorization of assistance to States

(a) Authorization of appropriations

There is authorized to be appropriated \$25,000,000 for each of the fiscal years 1978 and 1979¹² \$20,000,000 for fiscal year 1980, \$35,000,000 for fiscal year 1981, \$40,000,000 for the fiscal year 1982, \$55,000,000 for the fiscal year 1985, \$60,000,000 for the fiscal year 1986, \$60,000,000 for the fiscal year 1987, and \$60,000,000 for the fiscal year 1988 to be used to make grants to the States for purposes of assisting the States in the development and implementation of authorized State hazardous waste programs.

(b) Allocation

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

(c) Activities included

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

(Pub. L. 89-272, title II, §3011, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2812, and amended Pub. L. 96-482, §§16, 31(b), Oct. 21, 1980, 94 Stat. 2342, 2352; Pub. L. 98-616, §2(b), Nov. 8, 1984, 98 Stat. 3222.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6932.

Transferred

Codification

Section 6932, Pub. L. 89-272, title II, Sec. 3012, as added Pub. L. 96-463, Sec. 7(a), Oct. 15, 1980, 94 Stat. 2057, was redesignated section 3014 of Pub. L. 89-272 by Pub. L. 98-616, title V, Sec. 502(g)(1), Nov. 8, 1984, 98 Stat. 3277, and was transferred to section 6935 of this title.

§6933. [RCRA §3012]

Hazardous waste site inventory

(a) State inventory programs

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

11. So in original. Probably should be followed by a semicolon.

12. So in original. Probably should be followed by a comma.

(1) a description of the location of the sites at which any such storage or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage or disposal;

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

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

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

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

For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such information as is available to him concerning the items specified in paragraphs (1) through (5) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 6927 of this title for purposes of this section in the same manner and to the same extent as provided in such section in the case of States having an authorized hazardous waste program, and any State may by order require any person to submit such information as may be necessary to compile the data referred to in paragraphs (1) through (5).

(b) Environmental Protection Agency program

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

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

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

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

(c) Grants

(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator may make grants to the States for purposes of carrying out such a program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator may make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before October 21, 1980, to reimburse such State for all, or any portion of, the costs incurred by such State in conducting such program.

(2) There are authorized to be appropriated to carry out this section \$25,000,000 for each of the fiscal years 1985 through 1988.

(d) No impediment to immediate remedial action

Nothing in this section shall be construed to provide that the Administrator or any State should, pending completion of the inventory required under this section, postpone undertaking any enforcement or remedial action with respect to any site at which hazardous waste has been treated, stored, or disposed of.

(Pub. L. 89-272, title II, §3012, as added Pub. L. 96-482, §17(a), Oct. 21, 1980, 94 Stat. 2342, and amended Pub. L. 98-616, §2(c), Nov. 8, 1984, 98 Stat. 3222.)

Codification

Another section 3012 of Pub. L. 89-272 as added by Pub. L. 96-463, Sec. 7(a), Oct. 15, 1980, 94 Stat. 2057, was redesignated section 3014 of Pub. L. 89-272, and is classified to section 6935 of this title.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6934. [RCRA §3013]

Monitoring, analysis, and testing

(a) Authority of Administrator

If the Administrator determines, upon receipt of any information, that—

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

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

(b) Previous owners and operators

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

(c) Proposal

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

(d) Monitoring, etc., carried out by Administrator

(1) If the Administrator determines that no owner or operator referred to in subsection (a) or (b) of this section is able to conduct monitoring, testing, analysis, or reporting satisfactory to the Administrator, if the Administrator deems any such action carried out by an owner or operator to be unsatisfactory, or if the Administrator cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) of this section who is able to conduct such monitoring, testing, analysis, or reporting, he may—

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

(B) authorize a State or local authority or other person to carry out any such action, and require, by order, the owner or operator referred to in subsection (a) or (b) of this section to reimburse the Administrator or other authority or person for the costs of such activity.

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

(3) For purposes of carrying out this subsection, the Administrator or any authority or other person authorized under paragraph (1), may exercise the authorities set forth in section 6927 of this title.

(e) Enforcement

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

(Pub. L. 89-272, title II, §3013, as added Pub. L. 96-482, §17(a), Oct. 21, 1980, 94 Stat. 2344.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6935. [RCRA §3014]**Restrictions on recycled oil****(a) In general**

Not later than one year after October 15, 1980, the Administrator shall promulgate regulations establishing such performance standards and other requirements as may be necessary to protect the public health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil, consistent with the protection of human health and the environment.

(b) Identification or listing of used oil as hazardous waste

Not later than twelve months after November 8, 1984, the Administrator shall propose whether to list or identify used automobile and truck crankcase oil as hazardous waste under section 6921 of this title. Not later than twenty-four months after November 8, 1984, the Administrator shall make a final determination whether to list or identify used automobile and truck crankcase oil and other used oil as hazardous wastes under section 6921 of this title.

(c) Used oil which is recycled

(1) With respect to generators and transporters of used oil identified or listed as a hazardous waste under section 6921 of this title, the standards promulgated under section¹³ 6921(d), 6922, and 6923 of this title shall not apply to such used oil if such used oil is recycled.

(2)(A) In the case of used oil which is exempt under paragraph (1), not later than twenty-four months after November 8, 1984, the Administrator shall promulgate such standards under this subsection regarding the generation and transportation of used oil which is recycled as may be necessary to protect human health and the environment. In promulgating such regulations with respect to generators, the Administrator shall take into account the effect of such regulations on environmentally acceptable types of used oil recycling and the effect of such regulations on small quantity generators and generators which are small businesses (as defined by the Administrator).

(B) The regulations promulgated under this subsection shall provide that no generator of used oil which is exempt under paragraph (1) from the standards promulgated under section¹⁴ 6921(d), 6922, and 6923 of this title shall be subject to any manifest requirement or any associated recordkeeping and reporting requirement with respect to such used oil if such generator—

(i) either—

(I) enters into an agreement or other arrangement (including an agreement or arrangement with an independent transporter or with an agent of the recycler) for delivery of such used oil to a recycling facility which has a permit under section 6925(c) of this title (or for which a valid permit is

deemed to be in effect under subsection (d) of this section), or

(II) recycles such used oil at one or more facilities of the generator which has such a permit under section 6925 of this title (or for which a valid permit is deemed to have been issued under subsection (d) of this section);

(ii) such used oil is not mixed by the generator with other types of hazardous wastes; and

(iii) the generator maintains such records relating to such used oil, including records of agreements or other arrangements for delivery of such used oil to any recycling facility referred to in clause (i)(I), as the Administrator deems necessary to protect human health and the environment.

(3) The regulations under this subsection regarding the transportation of used oil which is exempt from the standards promulgated under section¹⁵ 6921(d), 6922, and 6923 of this title under paragraph (1) shall require the transporters of such used oil to deliver such used oil to a facility which has a valid permit under section 6925 of this title or which is deemed to have a valid permit under subsection (d) of this section. The Administrator shall also establish other standards for such transporters as may be necessary to protect human health and the environment.

(d) Permits

(1) The owner or operator of a facility which recycles used oil which is exempt under subsection (c)(1) of this section, shall be deemed to have a permit under this subsection for all such treatment or recycling (and any associated tank or container storage) if such owner and operator comply with standards promulgated by the Administrator under section 6924 of this title; except that the Administrator may require such owners and operators to obtain an individual permit under section 6925(c) of this title if he determines that an individual permit is necessary to protect human health and the environment.

(2) Notwithstanding any other provision of law, any generator who recycles used oil which is exempt under subsection (c)(1) of this section shall not be required to obtain a permit under section 6925(c) of this title with respect to such used oil until the Administrator has promulgated standards under section 6924 of this title regarding the recycling of such used oil.

(Pub. L. 89-272, title II, §3014, formerly §3012, as added Pub. L. 96-463, §7(a), Oct. 15, 1980, 94 Stat. 2057, and renumbered and amended Pub. L. 98-616, title II, §§241(a), 242, title V, §502(g)(1), Nov. 8, 1984, 98 Stat. 3258, 3260, 3277.)

Codification

Section was formerly classified to section 6932 of this title.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6936. [RCRA §3015]**Expansion during interim status****(a) Waste piles**

The owner or operator of a waste pile qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the same requirements for liners and leachate collection systems or equivalent protection provided in regulations promulgated by the Administrator under section 6924 of this title before October 1, 1982, or revised under section 6924(o) of this title (relating to minimum technological requirements), for new facilities receiving individual permits under subsection (c) of section 6925 of this title, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under section 6925 of this title, and with respect to waste received beginning six months after November 8, 1984.

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(b) Landfills and surface impoundments

(1) The owner or operator of a landfill or surface impoundment qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the requirements of section 6924(o) of this title (relating to minimum technological requirements), with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under this section, and with respect to waste received beginning 6 months after November 8, 1984.

(2) The owner or operator of each unit referred to in paragraph (1) shall notify the Administrator (or the State, if appropriate) at least sixty days prior to receiving waste. The Administrator (or the State) shall require the filing, within six months of receipt of such notice, of an application for a final determination regarding the issuance of a permit for each facility submitting such notice.

(3) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of this section and in good faith compliance with the Administrator's regulations and guidance documents governing liners and leachate collection systems, no liner or leachate collection system which is different from that which was so installed pursuant to this section shall be required for such unit by the Administrator when issuing the first permit under section 6925 of this title to such facility, except that the Administrator shall not be precluded from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this section is leaking. The Administrator may, under section 6924 of this title, amend the requirements for liners and leachate collection systems required under this section as may be necessary to provide additional protection for human health and the environment.

(Pub. L. 89-272, title II, §3015, as added Pub. L. 98-616, title II, §243(a), Nov. 8, 1984, 98 Stat. 3260.)

§6937. [RCRA §3016]**Inventory of Federal agency hazardous waste facilities****(a) Program requirement; submission; availability; contents**

Each Federal agency shall undertake a continuing program to compile, publish, and submit to the Administrator (and to the State in the case of sites in States having an authorized hazardous waste program) an inventory of each site which the Federal agency owns or operates or has owned or operated at which hazardous waste is stored, treated, or disposed of or has been disposed of at any time. The inventory shall be submitted every two years beginning January 31, 1986. Such inventory shall be available to the public as provided in section 6927(b) of this title. Information previously submitted by a Federal agency under section 9603 of this title, or under section 6925 or 6930 of this title, or under this section need not be resubmitted except that the agency shall update any previous submission to reflect the latest available data and information. The inventory shall include each of the following:

(1) A description of the location of each site at which any such treatment, storage, or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage, treatment, or disposal, and where hazardous waste has been disposed, a description of hydrogeology of the site and the location of withdrawal wells and surface water within one mile of the site.

(2) Such information relating to the amount, nature, and toxicity of the hazardous waste in each site as may be necessary to determine the extent of any health hazard which may be associated with any site.

(3) Information on the known nature and extent of environmental contamination at each site, including a description of the monitoring data obtained.

(4) Information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated, stored, or disposed of at such site (and if not,

the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

(5) A list of sites at which hazardous waste has been disposed and environmental monitoring data has not been obtained, and the reasons for the lack of monitoring data at each site.

(6) A description of response actions undertaken or contemplated at contaminated sites.

(7) An identification of the types of techniques of waste treatment, storage, or disposal which have been used at each site.

(8) The name and address and responsible Federal agency for each site, determined as of the date of preparation of the inventory.

(b) Environmental Protection Agency program

If the Administrator determines that any Federal agency under subsection (a) of this section is not adequately providing information respecting the sites referred to in subsection (a) of this section, the Administrator shall notify the chief official of such agency. If within ninety days following such notification, the Federal agency has not undertaken a program to adequately provide such information, the Administrator shall carry out the inventory program for such agency.

(Pub. L. 89-272, title II, §3016, as added Pub. L. 98-616, title II, §244, Nov. 8, 1984, 98 Stat. 3261.)

§6938. [RCRA §3017]**Export of hazardous wastes****(a) In general**

Beginning twenty-four months after November 8, 1984, no person shall export any hazardous waste identified or listed under this subchapter unless¹⁶

(1)(A) such person has provided the notification required in subsection (c) of this section,

(B) the government of the receiving country has consented to accept such hazardous waste,

(C) a copy of the receiving country's written consent is attached to the manifest accompanying each waste shipment, and

(D) the shipment conforms with the terms of the consent of the government of the receiving country required pursuant to subsection (e) of this section, or

(2) the United States and the government of the receiving country have entered into an agreement as provided for in subsection (f) of this section and the shipment conforms with the terms of such agreement.

(b) Regulations

Not later than twelve months after November 8, 1984, the Administrator shall promulgate the regulations necessary to implement this section. Such regulations shall become effective one hundred and eighty days after promulgation.

(c) Notification

Any person who intends to export a hazardous waste identified or listed under this subchapter beginning twelve months after November 8, 1984, shall, before such hazardous waste is scheduled to leave the United States, provide notification to the Administrator. Such notification shall contain the following information:

(1) the name and address of the exporter;

(2) the types and estimated quantities of hazardous waste to be exported;

(3) the estimated frequency or rate at which such waste is to be exported; and the period of time over which such waste is to be exported;

(4) the ports of entry;

(5) a description of the manner in which such hazardous waste will be transported to and treated, stored, or disposed in the receiving country; and

(6) the name and address of the ultimate treatment, storage, or disposal facility.

(d) Procedures for requesting consent of receiving country

Within thirty days of the Administrator's receipt of a complete notification under this section, the Secretary of State, acting on behalf of the Administrator, shall—

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(1) forward a copy of the notification to the government of the receiving country;

(2) advise the government that United States law prohibits the export of hazardous waste unless the receiving country consents to accept the hazardous waste;

(3) request the government to provide the Secretary with a written consent or objection to the terms of the notification; and

(4) forward to the government of the receiving country a description of the Federal regulations which would apply to the treatment, storage, and disposal of the hazardous waste in the United States.

(e) Conveyance of written consent to exporter

Within thirty days of receipt by the Secretary of State of the receiving country's written consent or objection (or any subsequent communication withdrawing a prior consent or objection), the Administrator shall forward such a consent, objection, or other communication to the exporter.

(f) International agreements

Where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, only the requirements of subsections (a)(2) and (g) of this section shall apply.

(g) Reports

After November 8, 1984, any person who exports any hazardous waste identified or listed under section 6921 of this title shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

(h) Other standards

Nothing in this section shall preclude the Administrator from establishing other standards for the export of hazardous wastes under section 6922 of this title or section 6923 of this title.

(Pub. L. 89-272, title II, §3017, as added Pub. L. 98-616, title II, §245(a), Nov. 8, 1984, 98 Stat. 3262.)

§6939. [RCRA §3018]

Domestic sewage

(a) Report

The Administrator shall, not later than 15 months after November 8, 1984, submit a report to the Congress concerning those substances identified or listed under section 6921 of this title which are not regulated under this subchapter by reason of the exclusion for mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works. Such report shall include the types, size and number of generators which dispose of such substances in this manner, the types and quantities disposed of in this manner, and the identification of significant generators, wastes, and waste constituents not regulated under existing Federal law or regulated in a manner sufficient to protect human health and the environment.

(b) Revisions of regulations

Within eighteen months after submitting the report specified in subsection (a) of this section, the Administrator shall revise existing regulations and promulgate such additional regulations pursuant to this subchapter (or any other authority of the Administrator, including section 1317 of title 33) as are necessary to assure that substances identified or listed under section 6921 of this title which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment.

(c) Report on wastewater lagoons

The Administrator shall, within thirty-six months after November 8, 1984, submit a report to Congress concerning wastewater lagoons at publicly owned treatment works and their effect on groundwater quality. Such report shall include—

(1) the number and size of such lagoons;

(2) the types and quantities of waste contained in such lagoons;

(3) the extent to which such waste has been or may be released from such lagoons and contaminate ground water; and

(4) available alternatives for preventing or controlling such releases.

The Administrator may utilize the authority of sections 6927 and 6934 of this title for the purpose of completing such report.

(d) Application of sections 6927 and 6930

The provisions of sections 6927 and 6930 of this title shall apply to solid or dissolved materials in domestic sewage to the same extent and in the same manner as such provisions apply to hazardous waste.

(Pub. L. 89-272, title II, §3018, as added Pub. L. 98-616, title II, §246(a), Nov. 8, 1984, 98 Stat. 3264.)

§6939a. [RCRA §3019]

Exposure information and health assessments

(a) Exposure information

Beginning on the date nine months after November 8, 1984, each application for a final determination regarding a permit under section 6925(c) of this title for a landfill or surface impoundment shall be accompanied by information reasonably ascertainable by the owner or operator on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

(1) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;

(2) the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (1); and

(3) the potential magnitude and nature of the human exposure resulting from such releases.

The owner or operator of a landfill or surface impoundment for which an application for such a final determination under section 6925(c) of this title has been submitted prior to November 8, 1984, shall submit the information required by this subsection to the Administrator (or the State, in the case of a State with an authorized program) no later than the date nine months after November 8, 1984.

(b) Health assessments

(1) The Administrator (or the State, in the case of a State with an authorized program) shall make the information required by subsection (a) of this section, together with other relevant information, available to the Agency for Toxic Substances and Disease Registry established by section 9604(i) of this title.

(2) Whenever in the judgment of the Administrator, or the State (in the case of a State with an authorized program), a landfill or a surface impoundment poses a substantial potential risk to human health, due to the existence of releases of hazardous constituents, the magnitude of contamination with hazardous constituents which may be the result of a release, or the magnitude of the population exposed to such release or contamination, the Administrator or the State (with the concurrence of the Administrator) may request the Administrator of the Agency for Toxic Substances and Disease Registry to conduct a health assessment in connection with such facility and take other appropriate action with respect to such risks as authorized by section 9604(b) and (i) of this title. If funds are provided in connection with such request the Administrator of such Agency shall conduct such health assessment.

(c) Members of the public

Any member of the public may submit evidence of releases of or exposure to hazardous constituents from such a facility, or as to the risks or health effects associated with such releases or exposure, to the Administrator of the Agency for Toxic Substances and Disease Registry, the Administrator, or the State (in the case of a State with an authorized program).

(d) Priority

In determining the order in which to conduct health assessments under this subsection, the Administrator of the Agency for Toxic Substances and Disease Registry shall give priority to those facilities or sites at which there is documented evidence of release of hazardous constituents, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of such Agency existing health assessment data is inadequate to assess the potential risk to human health as provided in subsection (f) of this section.

(e) Periodic reports

The Administrator of such Agency shall issue periodic reports which include the results of all the assessments carried out under this section. Such assessments or other activities shall be reported after appropriate peer review.

(f) "Health assessments" defined

For the purposes of this section, the term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities subject to this section, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or non-point sources other than the site or facility in question. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.

(g) Cost recovery

In any case in which a health assessment performed under this section discloses the exposure of a population to the release of a hazardous substance, the costs of such health assessment may be recovered as a cost of response under section 9607 of this title from persons causing or contributing to such release of such hazardous substance or, in the case of multiple releases contributing to such exposure, to all such release.

(Pub. L. 89-272, title II, §3019, as added Pub. L. 98-616, title II, §247(a), Nov. 8, 1984, 98 Stat. 3265.)

§6939b. [RCRA §3020]**Interim control of hazardous waste injection****(a) Underground source of drinking water**

No hazardous waste may be disposed of by underground injection—

- (1) into a formation which contains (within one-quarter mile of the well used for such underground injection) an underground source of drinking water; or
- (2) above such a formation.

The prohibitions established under this section shall take effect 6 months after November 8, 1984, except in the case of any State in which identical or more stringent prohibitions are in effect before such date under the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(b) Actions under Comprehensive Environmental Response, Compensation, and Liability Act

Subsection (a) of this section shall not apply to the injection of contaminated ground water into the aquifer from which it was withdrawn, if—

- (1) such injection is—
 - (A) a response action taken under section 9604 or 9606 of this title, or
 - (B) part of corrective action required under this chapter¹⁷ intended to clean up such contamination;
 - (2) such contaminated ground water is treated to substantially reduce hazardous constituents prior to such injection; and
 - (3) such response action or corrective action will, upon completion, be sufficient to protect human health and the environment.

(c) Enforcement

In addition to enforcement under the provisions of this chapter, the prohibitions established under paragraphs (1) and (2) of subsection (a) of this section shall be enforceable under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) in any State—

(1) which has adopted identical or more stringent prohibitions under part C of the Safe Drinking Water Act (42 U.S.C. 300h et seq.) and which has assumed primary enforcement responsibility under that Act for enforcement of such prohibitions; or

(2) in which the Administrator has adopted identical or more stringent prohibitions under the Safe Drinking Water Act (42 U.S.C. 300f et seq.) and is exercising primary enforcement responsibility under that Act for enforcement of such prohibitions.

(d) Definitions

The terms "primary enforcement responsibility", "underground source of drinking water", "formation" and "well" have the same meanings as provided in regulations of the Administrator under the Safe Drinking Water Act (42 U.S.C. 300f et seq.). The term "Safe Drinking Water Act" means title XIV of the Public Health Service Act.

(Pub. L. 89-272, title II, §3020, formerly §7010, as added Pub. L. 98-616, title IV, §405(a), Nov. 8, 1984, 98 Stat. 3273; renumbered §3020, and amended Pub. L. 99-339, title II, §201(c), June 19, 1986, 100 Stat. 654.)

References In Text

Title XIV of the Public Health Service Act, referred to in subsec. (d), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, Sec. 2(a), 88 Stat. 1660, as amended, known as the Safe Drinking Water Act, which is classified generally to subchapter XII (Sec. 300f et seq.) of chapter 6A of this title. Part C of the Act is classified generally to part C (Sec. 300h et seq.) of subchapter XII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

Codification

Section was formerly classified to section 6979a of this title, prior to renumbering by Pub. L. 99-339.

§6939c. [RCRA §3021]**Mixed waste inventory reports and plan****(a) Mixed waste inventory reports****(1) Requirement**

Not later than 180 days after October 6, 1992, the Secretary of Energy shall submit to the Administrator and to the Governor of each State in which the Department of Energy stores or generates mixed wastes the following reports:

(A) A report containing a national inventory of all such mixed wastes, regardless of the time they were generated, on a State-by-State basis.

(B) A report containing a national inventory of mixed waste treatment capacities and technologies.

(2) Inventory of wastes

The report required by paragraph (1)(A) shall include the following:

(A) A description of each type of mixed waste at each Department of Energy facility in each State, including, at a minimum, the name of the waste stream.

(B) The amount of each type of mixed waste currently stored at each Department of Energy facility in each State, set forth separately by mixed waste that is subject to the land disposal prohibition requirements of section 6924 of this title and mixed waste that is not subject to such prohibition requirements.

(C) An estimate of the amount of each type of mixed waste the Department expects to generate in the next 5 years at each Department of Energy facility in each State.

(D) A description of any waste minimization actions the Department has implemented at each Department of Energy facility in each State for each mixed waste stream.

(E) The EPA hazardous waste code for each type of mixed waste containing waste that has been characterized at each Department of Energy facility in each State.

(F) An inventory of each type of waste that has not been characterized by sampling and analysis at each Department of Energy facility in each State.

(G) The basis for the Department's determination of the applicable hazardous waste code for each type of mixed waste at each Department of Energy facility and a description of whether the

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determination is based on sampling and analysis conducted on the waste or on the basis of process knowledge.

(H) A description of the source of each type of mixed waste at each Department of Energy facility in each State.

(I) The land disposal prohibition treatment technology or technologies specified for the hazardous waste component of each type of mixed waste at each Department of Energy facility in each State.

(J) A statement of whether and how the radionuclide content of the waste alters or affects use of the technologies described in subparagraph (I).

(3) Inventory of treatment capacities and technologies

The report required by paragraph (1)(B) shall include the following:

(A) An estimate of the available treatment capacity for each waste described in the report required by paragraph (1)(A) for which treatment technologies exist.

(B) A description, including the capacity, number and location, of each treatment unit considered in calculating the estimate under subparagraph (A).

(C) A description, including the capacity, number and location, of any existing treatment unit that was not considered in calculating the estimate under subparagraph (A) but that could, alone or in conjunction with other treatment units, be used to treat any of the wastes described in the report required by paragraph (1)(A) to meet the requirements of regulations promulgated pursuant to section 6924(m) of this title.

(D) For each unit listed in subparagraph (C), a statement of the reasons why the unit was not included in calculating the estimate under subparagraph (A).

(E) A description, including the capacity, number, location, and estimated date of availability, of each treatment unit currently proposed to increase the treatment capacities estimated under subparagraph (A).

(F) For each waste described in the report required by paragraph (1)(A) for which the Department has determined no treatment technology exists, information sufficient to support such determination and a description of the technological approaches the Department anticipates will need to be developed to treat the waste.

(4) Comments and revisions

Not later than 90 days after the date of the submission of the reports by the Secretary of Energy under paragraph (1), the Administrator and each State which received the reports shall submit any comments they may have concerning the reports to the Department of Energy. The Secretary of Energy shall consider and publish the comments prior to publication of the final report.

(5) Requests for additional information

Nothing in this subsection limits or restricts the authority of States or the Administrator to request additional information from the Secretary of Energy.

(b) Plan for development of treatment capacities and technologies

(1) Plan requirement

(A)(i) For each facility at which the Department of Energy generates or stores mixed wastes, except any facility subject to a permit, agreement, or order described in clause (ii), the Secretary of Energy shall develop and submit, as provided in paragraph (2), a plan for developing treatment capacities and technologies to treat all of the facility's mixed wastes, regardless of the time they were generated, to the standards promulgated pursuant to section 3004(m).

(ii) Clause (i) shall not apply with respect to any facility subject to any permit establishing a schedule for treatment of such wastes, or any existing agreement or administrative or judicial order governing the treatment of such wastes, to which the State is a party.

(B) Each plan shall contain the following:

(i) For mixed wastes for which treatment technologies exist, a schedule for submitting all applicable permit applica-

tions, entering into contracts, initiating construction, conducting systems testing, commencing operations, and processing backlogged and currently generated mixed wastes.

(ii) For mixed wastes for which no treatment technologies exist, a schedule for identifying and developing such technologies, identifying the funding requirements for the identification and development of such technologies, submitting treatability study exemptions, and submitting research and development permit applications.

(iii) For all cases where the Department proposes radionuclide separation of mixed wastes, or materials derived from mixed wastes, it shall provide an estimate of the volume of waste generated by each case of radionuclide separation, the volume of waste that would exist or be generated without radionuclide separation, the estimated costs of waste treatment and disposal if radionuclide separation is used compared to the estimated costs if it is not used, and the assumptions underlying such waste volume and cost estimates.

(C) A plan required under this subsection may provide for centralized, regional, or on-site treatment of mixed wastes, or any combination thereof.

(2) Review and approval of plan

(A) For each facility that is located in a State (i) with authority under State law to prohibit land disposal of mixed waste until the waste has been treated and (ii) with both authority under State law to regulate the hazardous components of mixed waste and authorization from the Environmental Protection Agency under section 6926 of this title to regulate the hazardous components of mixed waste, the Secretary of Energy shall submit the plan required under paragraph (1) to the appropriate State regulatory officials for their review and approval, modification, or disapproval. In reviewing the plan, the State shall consider the need for regional treatment facilities. The State shall consult with the Administrator and any other State in which a facility affected by the plan is located and consider public comments in making its determination on the plan. The State shall approve, approve with modifications, or disapprove the plan within 6 months after receipt of the plan.

(B) For each facility located in a State that does not have the authority described in subparagraph (A), the Secretary shall submit the plan required under paragraph (1) to the Administrator of the Environmental Protection Agency for review and approval, modification, or disapproval. A copy of the plan also shall be provided by the Secretary to the State in which such facility is located. In reviewing the plan, the Administrator shall consider the need for regional treatment facilities. The Administrator shall consult with the State or States in which any facility affected by the plan is located and consider public comments in making a determination on the plan. The Administrator shall approve, approve with modifications, or disapprove the plan within 6 months after receipt of the plan.

(C) Upon the approval of a plan under this paragraph by the Administrator or a State, the Administrator shall issue an order under section 6928(a) of this title, or the State shall issue an order under appropriate State authority, requiring compliance with the approved plan.

(3) Public participation

Upon submission of a plan by the Secretary of Energy to the Administrator or a State, and before approval of the plan by the Administrator or a State, the Administrator or State shall publish a notice of the availability of the submitted plan and make such submitted plan available to the public on request.

(4) Revisions of plan

If any revisions of an approved plan are proposed by the Secretary of Energy or required by the Administrator or a State, the provisions of paragraphs (2) and (3) shall apply to the revisions in the same manner as they apply to the original plan.

(5) Waiver of plan requirement

(A) A State may waive the requirement for the Secretary of Energy to develop and submit a plan under this subsection for a facility located in the State if the State (i) enters into an agree-

ment with the Secretary of Energy that addresses compliance at that facility with section 3004(j) with respect to mixed waste, and (ii) issues an order requiring compliance with such agreement and which is in effect.

(B) Any violation of an agreement or order referred to in subparagraph (A) is subject to the waiver of sovereign immunity contained in section 6001(a).

(c) Schedule and progress reports

(1) Schedule

Not later than 6 months after October 6, 1992, the Secretary of Energy shall publish in the Federal Register a schedule for submitting the plans required under subsection (b).

(2) Progress reports

(A) Not later than the deadlines specified in subparagraph (B), the Secretary of Energy shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a progress report containing the following:

(i) An identification, by facility, of the plans that have been submitted to States or the Administrator of the Environmental Protection Agency pursuant to subsection (b).

(ii) The status of State and Environmental Protection Agency review and approval of each such plan.

(iii) The number of orders requiring compliance with such plans that are in effect.

(iv) For the first 2 reports required under this paragraph, an identification of the plans required under such subsection (b) that the Secretary expects to submit in the 12-month period following submission of the report.

(B) The Secretary of Energy shall submit a report under subparagraph (A) not later than 12 months after October 6, 1992, 24 months after such date, and 36 months after such date.

(Pub. L. 89-272, title II, §3021, as added Pub. L. 102-386, §105(a)(1), Oct. 6, 1992, 106 Stat. 1508)

Change Of Name

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

GAO Report

Pub. L. 102-386, Sec. 106(c), Oct. 6, 1992, 106 Stat. 1512, provided that:

“(1) Requirement.—Not later than 18 months after the date of the enactment of this Act [Oct. 6, 1992], the Comptroller General shall submit to Congress a report on the Department of Energy’s progress in complying with section 3021(b) of the Solid Waste Disposal Act [subsection (b) of this section].

“(2) Matters to be included.—The report required under paragraph (1) shall contain, at a minimum, the following:

“(A) The Department of Energy’s progress in submitting to the States or the Administrator of the Environmental Protection Agency a plan for each facility for which a plan is required under section 3021(b) of the Solid Waste Disposal Act [subsection (b) of this title] and the status of State or Environmental Protection Agency review and approval of each such plan.

“(B) The Department of Energy’s progress in entering into orders requiring compliance with any such plans that have been approved.

“(C) An evaluation of the completeness and adequacy of each such plan as of the date of submission of the report required under paragraph (1).

“(D) An identification of any recurring problems among the Department of Energy’s submitted plans.

“(E) A description of treatment technologies and capacity that have been developed by the Department of Energy since the date of the enactment of this Act [Oct. 6, 1992] and a list of the wastes that are expected to be treated by such technologies and the facilities at which the wastes are generated or stored.

“(F) The progress made by the Department of Energy in characterizing its mixed waste streams at each such facility by sampling and analysis.

“(G) An identification and analysis of additional actions that the Department of Energy must take to—

“(i) complete submission of all plans required under such section 3021(b) for all such facilities;

“(ii) obtain the adoption of orders requiring compliance with all such plans; and

“(iii) develop mixed waste treatment capacity and technologies.”

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§6939d. [RCRA §3022]

Public vessels

(a) Waste generated on public vessels

Any hazardous waste generated on a public vessel shall not be subject to the storage, manifest, inspection, or recordkeeping requirements of this chapter until such waste is transferred to a shore facility, unless—

(1) the waste is stored on the public vessel for more than 90 days after the public vessel is placed in reserve or is otherwise no longer in service; or

(2) the waste is transferred to another public vessel within the territorial waters of the United States and is stored on such vessel or another public vessel for more than 90 days after the date of transfer.

(b) Computation of storage period

For purposes of subsection (a), the 90-day period begins on the earlier of—

(1) the date on which the public vessel on which the waste was generated is placed in reserve or is otherwise no longer in service; or

(2) the date on which the waste is transferred from the public vessel on which the waste was generated to another public vessel within the territorial waters of the United States; and continues, without interruption, as long as the waste is stored on the original public vessel (if in reserve or not in service) or another public vessel.

(c) Definitions

For purposes of this section:

(1) The term “public vessel” means a vessel owned or bareboat chartered and operated by the United States, or by a foreign nation, except when the vessel is engaged in commerce.

(2) The terms “in reserve” and “in service” have the meanings applicable to those terms under section 7293 and sections 7304 through 7308 of title 10, United States Code, and regulations prescribed under those sections.

(d) Relationship to other law

Nothing in this section shall be construed as altering or otherwise affecting the provisions of section 7311 of title 10, United States Code.

(Pub. L. 89-272, title II, §3022, as added Pub. L. 102-386, §106(a), Oct. 6, 1992, 106 Stat. 1513)

§6939e. [RCRA §3023]

Federally owned treatment works

(a) In general

For purposes of section 6904(27) of this title, the phrase “but does not include solid or dissolved material in domestic sewage” shall apply to any solid or dissolved material introduced by a source into a federally owned treatment works if—

(1) such solid or dissolved material is subject to a pretreatment standard under section 307 of the Federal Water Pollution Control Act (33 U.S.C. 1317), and the source is in compliance with such standard;

(2) for a solid or dissolved material for which a pretreatment standard has not been promulgated pursuant to section 307 of the Federal Water Pollution Control Act (33 U.S.C. 1317), the Administrator has promulgated a schedule for establishing such a pretreatment standard which would be applicable to such solid or dissolved material not later than 7 years after October 6, 1992, such standard is promulgated on or before the date established in the schedule, and after the effective date of such standard the source is in compliance with such standard;

(3) such solid or dissolved material is not covered by paragraph (1) or (2) and is not prohibited from land disposal under subsections (d), (e), (f), or (g) of section 6924 of this title because such material has been treated in accordance with section 6924(m) of this title; or

(4) notwithstanding paragraphs¹⁸ (1), (2), or (3), such solid or dissolved material is generated by a household or person which generates less than 100 kilograms of hazardous waste per month

unless such solid or dissolved material would otherwise be an acutely hazardous waste and subject to standards, regulations, or other requirements under this chapter notwithstanding the quantity generated.

(b) Prohibition

It is unlawful to introduce into a federally owned treatment works any pollutant that is a hazardous waste.

(c) Enforcement

(1) Actions taken to enforce this section shall not require closure of a treatment works if the hazardous waste is removed or decontaminated and such removal or decontamination is adequate, in the discretion of the Administrator or, in the case of an authorized State, of the State, to protect human health and the environment.

(2) Nothing in this subsection shall be construed to prevent the Administrator or an authorized State from ordering the closure of a treatment works if the Administrator or State determines such closure is necessary for protection of human health and the environment.

(3) Nothing in this subsection shall be construed to affect any

other enforcement authorities available to the Administrator or a State under this subtitle.

(d) Definition

For purposes of this section, the term “federally owned treatment works” means a facility that is owned and operated by a department, agency, or instrumentality of the Federal Government treating wastewater, a majority of which is domestic sewage, prior to discharge in accordance with a permit issued under section 402 of the Federal Water Pollution Control Act.

(e) Savings clause

Nothing in this section shall be construed as affecting any agreement, permit, or administrative or judicial order, or any condition or requirement contained in such an agreement, permit, or order, that is in existence on October 6, 1992 and that requires corrective action or closure at a federally owned treatment works or solid waste management unit or facility related to such a treatment works.

(Pub. L. 89-272, title II, §3023, as added Pub. L. 102-386, §108(a), Oct. 6, 1992, 106 Stat. 1514)

Subchapter IV—State or Regional Solid Waste Plans

§6941. [RCRA §4001]

Objectives of subchapter

The objectives of this subchapter are to assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources including energy and materials which are recoverable from solid waste and to encourage resource conservation. Such objectives are to be accomplished through Federal technical and financial assistance to States or regional authorities for comprehensive planning pursuant to Federal guidelines designed to foster cooperation among Federal, State, and local governments and private industry. In developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interest within the area encompassed by the planning process.

(Pub. L. 89-272, title II, §4001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2813, and amended Pub. L. 96-482, §32(b), Oct. 21, 1980, 94 Stat. 2353; Pub. L. 98-616, title III, §301(a), title V, §501(f)(1), Nov. 8, 1984, 98 Stat. 3267, 3276.)

Prior Provisions

Provisions similar to those comprising this section were contained in section 3254 of this title, prior to the complete revision of the Solid Waste Disposal Act by Pub. L. 94-580.

§6941a.

Energy and materials conservation and recovery; Congressional findings

The Congress finds that—

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

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

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

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

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

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

(Pub. L. 96-482, §32(a), Oct. 21, 1980, 94 Stat. 2353.)

Codification

Section was enacted as part of the Solid Waste Disposal Act Amendments of 1980, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6942. [RCRA §4002]

Federal guidelines for plans

(a) Guidelines for identification of regions

For purposes of encouraging and facilitating the development of regional planning for solid waste management, the Administrator, within one hundred and eighty days after October 21, 1976, and after consultation with appropriate Federal, State, and local authorities, shall by regulation publish guidelines for the identification of those areas which have common solid waste management problems and are appropriate units for planning regional solid waste management services. Such guidelines shall consider—

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

(b) Guidelines for State plans

Not later than eighteen months after October 21, 1976, and after notice and hearing, the Administrator shall, after consultation with appropriate Federal, State, and local authorities, promulgate regulations containing guidelines to assist in the development and implementation of State solid waste management plans (hereinafter in this chapter referred to as "State plans"). The guidelines shall contain methods for achieving the objectives specified in section 6941 of this title. Such guidelines shall be reviewed from time to time, but not less frequently than every three years, and revised as may be appropriate.

(c) Considerations for State plan guidelines

The guidelines promulgated under subsection (b) of this section shall consider—

- (1) the varying regional, geologic, hydrologic, climatic, and other circumstances under which different solid waste practices are required in order to insure the reasonable protection of the quality of the ground and surface waters from leachate contamination, the reasonable protection of the quality of the surface waters from surface runoff contamination, and the reasonable protection of ambient air quality;
- (2) characteristics and conditions of collection, storage, processing, and disposal operating methods, techniques and practices, and location of facilities where such operating methods, techniques, and practices are conducted, taking into account the nature of the material to be disposed;
- (3) methods for closing or upgrading open dumps for purposes of eliminating potential health hazards;
- (4) population density, distribution, and projected growth;
- (5) geographic, geologic, climatic, and hydrologic characteristics;
- (6) the type and location of transportation;
- (7) the profile of industries;
- (8) the constituents and generation rates of waste;
- (9) the political, economic, organizational, financial, and management problems affecting comprehensive solid waste management;
- (10) types of resource recovery facilities and resource conservation systems which are appropriate; and
- (11) available new and additional markets for recovered material and energy and energy resources recovered from solid waste as well as methods for conserving such materials and energy.

(Pub. L. 89-272, title II, §4002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2813, and amended Pub. L. 96-482, §32(c), Oct. 21, 1980, 94 Stat. 2353.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6943. [RCRA §4003]

Requirements for approval of plans

(a) Minimum requirements

In order to be approved under section 6947 of this title, each State plan must comply with the following minimum requirements—

- (1) The plan shall identify (in accordance with section 6946(b) of this title) (A) the responsibilities of State, local, and regional authorities in the implementation of the State plan, (B) the distribution of Federal funds to the authorities responsible for development and implementation of the State plan, and (C) the means for coordinating regional planning and implementation under the State plan.

- (2) The plan shall, in accordance with sections 6944(b) and 6945(a) of this title, prohibit the establishment of new open dumps within the State, and contain requirements that all solid waste (including solid waste originating in other States, but not including

hazardous waste) shall be (A) utilized for resource recovery or (B) disposed of in sanitary landfills (within the meaning of section 6944(a) of this title) or otherwise disposed of in an environmentally sound manner.

(3) The plan shall provide for the closing or upgrading of all existing open dumps within the State pursuant to the requirements of section 6945 of this title.

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

(5) The plan shall provide that no State or local government within the State shall be prohibited under State or local law from negotiating and entering into long-term contracts for the supply of solid waste to resource recovery facilities, from entering into long-term contracts for the operation of such facilities, or from securing long-term markets for material and energy recovered from such facilities or for conserving materials or energy by reducing the volume of waste.

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

(b) Discretionary plan provisions relating to recycled oil

Any State plan submitted under this subchapter may include, at the option of the State, provisions to carry out each of the following:

(1) Encouragement, to the maximum extent feasible and consistent with the protection of the public health and the environment, of the use of recycled oil in all appropriate areas of State and local government.

(2) Encouragement of persons contracting with the State to use recycled oil to the maximum extent feasible, consistent with protection of the public health and the environment.

(3) Informing the public of the uses of recycled oil.

(4) Establishment and implementation of a program (including any necessary licensing of persons and including the use, where appropriate, of manifests) to assure that used oil is collected, transported, treated, stored, reused, and disposed of, in a manner which does not present a hazard to the public health or the environment.

Any plan submitted under this chapter before October 15, 1980, may be amended, at the option of the State, at any time after such date to include any provision referred to in this subsection.

(c) Energy and materials conservation and recovery feasibility planning and assistance

(1) A State which has a plan approved under this subchapter or which has submitted a plan for such approval shall be eligible for assistance under section 6948(a)(3) of this title if the Administrator determines that under such plan the State will—

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

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

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

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

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

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

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

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

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

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

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

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

(d) Size of waste-to-energy facilities

Notwithstanding any of the above requirements, it is the intention of this chapter and the planning process developed pursuant to this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process.

(Pub. L. 89-272, title II, §4003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2814, and amended Pub. L. 96-463, §5(b), Oct. 15, 1980, 94 Stat. 2056; Pub. L. 96-482, §§18, 32(d), Oct. 21, 1980, 94 Stat. 2345, 2353; Pub. L. 98-616, title III, §301(b), title V, §502(h), Nov. 8, 1984, 98 Stat. 3267, 3277.)

Codification

Another section 5(b) of Pub. L. 96-463 amended section 6948 of this title.

§6944. [RCRA §4004]

Criteria for sanitary landfills; sanitary landfills required for all disposal

(a) Criteria for sanitary landfills

Not later than one year after October 21, 1976, after consultation with the States, and after notice and public hearings, the Administrator shall promulgate regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps within the meaning of this chapter. At a minimum, such criteria shall provide that a facility may be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on health or the environment from disposal of solid waste at such facility. Such regulations may provide for the classification of the types of sanitary landfills.

(b) Disposal required to be in sanitary landfills, etc.

For purposes of complying with section 6943(2)¹⁹ of this title each State plan shall prohibit the establishment of open dumps and contain a requirement that disposal of all solid waste within the State shall be in compliance with such section 6943(2)²⁰ of this title.

(c) Effective date

The prohibition contained in subsection (b) of this section shall take effect on the date six months after the date of promulgation of regulations under subsection (a) of this section.

(Pub. L. 89-272, title II, §4004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2815, and amended Pub. L. 98-616, title III, §302(b), Nov. 8, 1984, 98 Stat. 3268.)

References in Text

Section 6943(2) of this title, referred to in subsec. (b), was redesignated section 6943(a)(2) of this title by Pub. L. 96-463, Sec. 5(b), Oct. 15, 1980, 94 Stat. 2056, and Pub. L. 96-482, Sec. 32(d)(2), Oct. 21, 1980, 94 Stat. 2353.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

19. See References in Text note below.

20. See References in Text note below.

§6945. [RCRA §4005]

Upgrading of open dumps

(a) Closing or upgrading of existing open dumps

Upon promulgation of criteria under section 6907(a)(3) of this title, any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the open dumping of solid waste or hazardous waste is prohibited, except in the case of any practice or disposal of solid waste under a timetable or schedule for compliance established under this section. The prohibition contained in the preceding sentence shall be enforceable under section 6972 of this title against persons engaged in the act of open dumping. For purposes of complying with section 6943(a)(2) and 6943(a)(3) of this title, each State plan shall contain a requirement that all existing disposal facilities or sites for solid waste in such State which are open dumps listed in the inventory under subsection (b) of this section shall comply with such measures as may be promulgated by the Administrator to eliminate health hazards and minimize potential health hazards. Each such plan shall establish, for any entity which demonstrates that it has considered other public or private alternatives for solid waste management to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, a timetable or schedule for compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed 5 years from the date of publication of criteria under section 6907(a)(3) of this title).

(b) Inventory

To assist the States in complying with section 6943(a)(3) of this title, not later than one year after promulgation of regulations under section 6944 of this title, the Administrator, with the cooperation of the Bureau of the Census shall publish an inventory of all disposal facilities or sites in the United States which are open dumps within the meaning of this chapter.

(c) Control of hazardous disposal

(1)(A) Not later than 36 months after November 8, 1984, each State shall adopt and implement a permit program or other system of prior approval and conditions to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the applicable criteria promulgated under section 6944(a) and 6907(a)(3) of this title.

(B) Not later than eighteen months after the promulgation of revised criteria under subsection²¹ 6944(a) of this title (as required by section 6949a(c) of this title), each State shall adopt and implement a permit program or other system or²² prior approval and conditions, to assure that each solid waste management facility within such State which may receive hazardous household waste or hazardous waste due to the provision of section 6921(d) of this title for small quantity generators (otherwise not subject to the requirement for a permit under section 6925 of this title) will comply with the criteria revised under section 6944(a) of this title.

(C) The Administrator shall determine whether each State has developed an adequate program under this paragraph. The Administrator may make such a determination in conjunction with approval, disapproval or partial approval of a State plan under section 6947 of this title.

(2)(A) In any State that the Administrator determines has not adopted an adequate program for such facilities under paragraph (1)(B) by the date provided in such paragraph, the Administrator may use the authorities available under sections 6927 and 6928 of this title to enforce the prohibition contained in subsection (a) of this section with respect to such facilities.

(B) For purposes of this paragraph, the term "requirement of this subchapter" in section 6928 of this title shall be deemed to include

criteria promulgated by the Administrator under sections 6907(a)(3) and 6944(a) of this title, and the term "hazardous wastes" in section 6927 of this title shall be deemed to include solid waste at facilities that may handle hazardous household wastes or hazardous wastes from small quantity generators.

(Pub. L. 89-272, title II, §4005, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2815, and amended Pub. L. 96-482, §19(a), (b), Oct. 21, 1980, 94 Stat. 2345; Pub. L. 98-616, title III, §302(c), title IV, §403(c), title V, §502(c), Nov. 8, 1984, 98 Stat. 3268, 3272, 3276.)

Codification

Another section 19(b) of Pub. L. 96-482 amended section 6946 of this title.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6946. [RCRA §4006]

Procedure for development and implementation of State plan

(a) Identification of regions

Within one hundred and eighty days after publication of guidelines under section 6942(a) of this title (relating to identification of regions), the Governor of each State, after consultation with local elected officials, shall promulgate regulations based on such guidelines identifying the boundaries of each area within the State which, as a result of urban concentrations, geographic conditions, markets, and other factors, is appropriate for carrying out regional solid waste management. Such regulations may be modified from time to time (identifying additional or different regions) pursuant to such guidelines.

(b) Identification of State and local agencies and responsibilities

(1) Within one hundred and eighty days after the Governor promulgates regulations under subsection (a) of this section, for purposes of facilitating the development and implementation of a State plan which will meet the minimum requirements of section 6943 of this title, the State, together with appropriate elected officials of general purpose units of local government, shall jointly (A) identify an agency to develop the State plan and identify one or more agencies to implement such plan, and (B) identify which solid waste management activities will, under such State plan, be planned for and carried out by the State and which such management activities will, under such State plan, be planned for and carried out by a regional or local authority or a combination of regional or local and State authorities. If a multi-functional regional agency authorized by State law to conduct solid waste planning and management (the members of which are appointed by the Governor) is in existence on October 21, 1976, the Governor shall identify such authority for purposes of carrying out within such region clause (A) of this paragraph. Where feasible, designation of the agency for the affected area designated under section 1288 of title 33 shall be considered. A State agency identified under this paragraph shall be established or designated by the Governor of such State. Local or regional agencies identified under this paragraph shall be composed of individuals at least a majority of whom are elected local officials.

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

(c) Interstate regions

(1) In the case of any region which, pursuant to the guidelines published by the Administrator under section 6942(a) of this title (relating to identification of regions), would be located in two or more States, the Governors of the respective States, after consultation with local elected officials, shall consult, cooperate, and enter into agreements identifying the boundaries of such region pursuant to subsection (a) of this section.

21. So in original. Probably should be "section".

22. So in original. Probably should be "of".

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

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

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

(Pub. L. 89-272, title II, §4006, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2817, and amended Pub. L. 96-482, §19(b), Oct. 21, 1980, 94 Stat. 2345.)

Codification

Another section 19(b) of Pub. L. 96-482 amended section 6945 of this title.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6947. [RCRA §4007]

Approval of State plan; Federal assistance

(a) Plan approval

The Administrator shall, within six months after a State plan has been submitted for approval, approve or disapprove the plan. The Administrator shall approve a plan if he determines that—

(1) it meets the requirements of paragraphs (1), (2), (3), and (5) of section 6943(a) of this title; and

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

(A) that revised regulations respecting minimum requirements have been promulgated under paragraphs (1), (2), (3), and (5) of section 6943(a) of this title with which the State plan is not in compliance;

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

(C) that such revision is otherwise necessary.

The Administrator shall review approved plans from time to time and if he determines that revision or corrections are necessary to bring such plan into compliance with the minimum requirements promulgated under section 6943 of this title (including new or revised requirements), he shall, after notice and opportunity for public hearing, withdraw his approval of such plan. Such withdrawal of approval shall cease to be effective upon the Administrator's determination that such complies with such minimum requirements.

(b) Eligibility of States for Federal financial assistance

(1) The Administrator shall approve a State application for financial assistance under this subchapter, and make grants to such State, if such State and local and regional authorities within such State have complied with the requirements of section 6946 of this title within the period required under such section and if such State has a State plan which has been approved by the Administrator under this subchapter.

(2) The Administrator shall approve a State application for financial assistance under this subchapter, and make grants to such State, for fiscal years 1978 and 1979 if the Administrator determines that

the State plan continues to be eligible for approval under subsection (a) of this section and is being implemented by the State.

(3) Upon withdrawal of approval of a State plan under subsection (a) of this section, the Administrator shall withhold Federal financial and technical assistance under this subchapter (other than such technical assistance as may be necessary to assist in obtaining the reinstatement of approval) until such time as such approval is reinstated.

(c) Existing activities

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

(Pub. L. 89-272, title II, §4007, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2817, and amended Pub. L. 95-609, §7(l), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 104-119, §4(8), Mar. 26, 1996, 110 Stat. 833.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6948. [RCRA §4008]

Federal assistance

(a) Authorization of Federal financial assistance

(1) There are authorized to be appropriated \$30,000,000 for fiscal year 1978, \$40,000,000 for fiscal year 1979, \$20,000,000 for fiscal year 1980, \$15,000,000 for fiscal year 1981, \$20,000,000 for the fiscal year 1982, and \$10,000,000 for each of the fiscal years 1985 through 1988 for purposes of financial assistance to States and local, regional, and interstate authorities for the development and implementation of plans approved by the Administrator under this subchapter (other than the provisions of such plans referred to in section 6943(b)²³ of this title, relating to feasibility planning for municipal waste energy and materials conservation and recovery).

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

(B) An applicant for financial assistance under this paragraph must agree to comply with respect to the project or program assisted with the applicable requirements of section 6945 of this title and subchapter III of this chapter and apply applicable solid waste management practices, methods, and levels of control consistent with any guidelines published pursuant to section 6907 of this title. Assistance under this paragraph shall be available only for programs certified by the State to be consistent with any applicable State or areawide solid waste management plan or program. Applicants for technical and financial assistance under this section shall not preclude or foreclose consideration of programs for the recovery of recyclable materials through source separation or other resource recovery techniques.

(C) There are authorized to be appropriated \$15,000,000 for each of the fiscal years 1978 and 1979 for purposes of this section. There are authorized to be appropriated \$10,000,000 for fiscal year 1980, \$10,000,000 for fiscal year 1981, \$10,000,000 for fiscal year 1982,

23. See References in Text note below.

and \$10,000,000 for each of the fiscal years 1985 through 1988 for purposes of this paragraph.

(D) There are authorized—

- (i) to be made available \$15,000,000 out of funds appropriated for fiscal year 1985, and
- (ii) to be appropriated for each of the fiscal years 1986 though²⁴ 1988, \$20,000,000²⁵

for grants to States (and where appropriate to regional, local, and interstate agencies) to implement programs requiring compliance by solid waste management facilities with the criteria promulgated under section 6944(a) of this title and section 6907(a)(3) of this title and with the provisions of section 6945 of this title. To the extent practicable, such programs shall require such compliance not later than thirty-six months after November 8, 1984.

(3)(A) There is authorized to be appropriated for the fiscal year beginning October 1, 1981, and for each fiscal year thereafter before October 1, 1986, \$4,000,000 for purposes of making grants to States to carry out section 6943(b)²⁶ of this title. No amount may be appropriated for such purposes for the fiscal year beginning on October 1, 1986, or for any fiscal year thereafter.

(B) Assistance provided by the Administrator under this paragraph shall be used only for the purposes specified in section 6943(b)²⁷ of this title. Such assistance may not be used for purposes of land acquisition, final facility design, equipment purchase, construction, startup or operation activities.

(C) Where appropriate, any State receiving assistance under this paragraph may make all or any part of such assistance available to municipalities within the State to carry out the activities specified in section 6943(b)(1)(A) and (B)²⁸ of this title.

(b) State allotment

The sums appropriated in any fiscal year under subsection (a)(1) of this section shall be allotted by the Administrator among all States, in the ratio that the population in each State bears to the population in all of the States, except that no State shall receive less than one-half of 1 per centum of the sums so allotted in any fiscal year. No State shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than non-recurrent expenditures for solid waste management control programs will be less than its expenditures were for such programs during fiscal year 1975, except that such funds may be reduced by an amount equal to their proportionate share of any general reduction of State spending ordered by the Governor or legislature of such State. No State shall receive any grant for solid waste management programs unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, regional, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such programs.

(c) Distribution of Federal financial assistance within the State

The Federal assistance allotted to the States under subsection (b) of this section shall be allocated by the State receiving such funds to State, local, regional, and interstate authorities carrying out planning and implementation of the State plan. Such allocation shall be based upon the responsibilities of the respective parties as determined pursuant to section 6946(b) of this title.

(d) Technical assistance

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

(2) In carrying out this subsection, the Administrator may, upon request, provide technical assistance to States to assist in the removal or modification of legal, institutional, economic, and other impediments to the recycling of used oil. Such impediments may include laws, regulations, and policies, including State procurement policies, which are not favorable to the recycling of used oil.

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

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

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

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

(e) Special communities

(1) The Administrator, in cooperation with State and local officials, shall identify local governments within the United States (A) having a solid waste disposal facility (i) which is owned by the unit of local government, (ii) for which an order has been issued by the State to cease receiving solid waste for treatment, storage, or disposal, and (iii) which is subject to a State-approved end-use recreation plan, and (B) which are located over an aquifer which is the source of drinking water for any person or public water system and which has serious environmental problems resulting from the disposal of such solid waste, including possible methane migration.

(2) There is authorized to be appropriated to the Administrator \$2,500,000 for the fiscal year 1980 and \$1,500,000 for each of the fiscal years 1981 and 1982 to make grants to be used for containment and stabilization of solid waste located at the disposal sites referred to in paragraph (1). Not more than one community in any State shall be eligible for grants under this paragraph and not more than one project in any State shall be eligible for such grants. No unit of local government shall be eligible for grants under this paragraph with respect to any site which exceeds 65 acres in size.

(f) Assistance to States for discretionary program for recycled oil

(1) The Administrator may make grants to States, which have a State plan approved under section 6947 of this title, or which have submitted a State plan for approval under such section, if such plan includes the discretionary provisions described in section 6943(b) of this title. Grants under this subsection shall be for purposes of assisting the State in carrying out such discretionary provisions. No grant under this subsection may be used for construction or for the acquisition of land or equipment.

(2) Grants under this subsection shall be allotted among the States in the same manner as provided in the first sentence of subsection (b) of this section.

(3) No grant may be made under this subsection unless an application therefor is submitted to, and approved by, the Administrator. The application shall be in such form, be submitted in such

24. So in original. Probably should be "through".

25. So in original. Probably should be followed by a comma.

26. See References in Text note below.

27. See References in Text note below.

28. See References in Text note below.

manner, and contain such information as the Administrator may require.

(4) For purposes of making grants under this subsection, there are authorized to be appropriated \$5,000,000 for fiscal year 1982, \$5,000,000 for fiscal year 1983, and \$5,000,000 for each of the fiscal years 1985 through 1988.

(g) Assistance to municipalities for energy and materials conservation and recovery planning activities

(1) The Administrator is authorized to make grants to municipalities, regional authorities, and intermunicipal agencies to carry out activities described in subparagraphs (A) and (B) of section 6943(b)(1)²⁹ of this title. Such grants may be made only pursuant to an application submitted to the Administrator by the municipality which application has been approved by the State and determined by the State to be consistent with any State plan approved or submitted under this subchapter or any other appropriate planning carried out by the State.

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

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

(Pub. L. 89-272, title II, §4008, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2818, and amended Pub. L. 96-463, §§5(b), 6, Oct. 15, 1980, 94 Stat. 2057; Pub. L. 96-482, §§20, 31(c), (d), 32(e), (f), Oct. 21, 1980, 94 Stat. 2345, 2352, 2354, 2355; Pub. L. 98-616, §2(d)-(g), (k), title V, §502(d), (e), Nov. 8, 1984, 98 Stat. 3222, 3223, 3276.)

References in Text

Section 6943(b) of this title, referred to in subsecs. (a)(1), (3) and (g)(1), was redesignated section 6943(c) of this title by Pub. L. 98-616, title V, Sec. 502(h), Nov. 8, 1984, 98 Stat. 3277.

Codification

Section 2(d)-(g) of Pub. L. 98-616, cited as a credit to this section, appears to contain typographical error in that the text of subsec. (f)(1) of section 2007 of the Solid Waste Disposal Act (as added by section 2(i) of Pub. L. 98-616) is also shown as the text of subsec. '(f)(1)' of such section 2. Subsec. (f) of section 2, as set out in the Conference Report (H. Rept. 98-1133) to accompany H.R. 2867 (which became Pub. L. 98-616) read:

"(f) Section 4008(e)(2) of the Solid Waste Disposal Act (relating to special communities) is amended by striking out 'and \$1,500,000 for each of the fiscal years 1981 and 1982' and substituting ', \$1,500,000 for each of the fiscal years 1981 and 1982, and \$500,000 for each of the fiscal years 1985 through 1988'."

Another section 5(b) of Pub. L. 96-463 amended section 6943 of this title.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6949. [RCRA §4009]

Rural communities assistance

(a) In general

The Administrator shall make grants to States to provide assistance to municipalities with a population of five thousand or less, or counties with a population of ten thousand or less or less than twenty persons per square mile and not within a metropolitan area, for solid waste management facilities (including equipment) necessary to meet the requirements of section 6945 of this title or restrictions on open burning or other requirements arising under the Clean Air Act (42 U.S.C. 7401 et seq.) or the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.). Such assistance shall only be available—

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

29. See References in Text note below.

(2) where existing or planned solid waste management services or facilities are unavailable or insufficient to comply with the requirements of section 6945 of this title; and

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

(b) Allotment

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

(c) Limit

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

(d) Authorization of appropriations

There are authorized to be appropriated \$25,000,000 for each of the fiscal years 1978 and 1979 to carry out this section. There are authorized to be appropriated \$10,000,000 for the fiscal year 1980 and \$15,000,000 for each of the fiscal years 1981 and 1982 to carry out this section.

(Pub. L. 89-272, title II, §4009, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2819, and amended Pub. L. 96-482, §31(e), Oct. 21, 1980, 94 Stat. 2353.)

References In Text

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, 69 Stat. 322, as amended, which is classified generally to chapter 85 (Sec. 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, Sec. 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (Sec. 1251 et seq.) of title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short title note set out under section 1251 of title 33 and Tables.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6949a. [RCRA §4010]

Adequacy of certain guidelines and criteria

(a) Study

The Administrator shall conduct a study of the extent to which the guidelines and criteria under this chapter (other than guidelines and criteria for facilities to which subchapter III of this chapter applies) which are applicable to solid waste management and disposal facilities, including, but not limited to landfills and surface impoundments, are adequate to protect human health and the environment from ground water contamination. Such study shall include a detailed assessment of the degree to which the criteria under section 6907(a) of this title and the criteria under section 6944 of this title regarding monitoring, prevention of contamination, and remedial action are adequate to protect ground water and shall also include recommendation with respect to any additional enforcement authorities which the Administrator, in consultation with the Attorney General, deems necessary for such purposes.

(b) Report

Not later than thirty-six months after November 8, 1984, the Administrator shall submit a report to the Congress setting forth the results of the study required under this section, together with any recommendations made by the Administrator on the basis of such study.

(c) Revisions of guidelines and criteria**(1) In general**

Not later than March 31, 1988, the Administrator shall promulgate revisions of the criteria promulgated under paragraph (1) of section 6944(a) of this title and under section 6907(a)(3) of this title for facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators under section 6921(d) of this title. The criteria shall be those necessary to protect human health and the environment and may take into account the practicable capability of such facilities. At a minimum such revisions for facilities potentially receiving such wastes should require ground water monitoring as necessary to detect contamination, establish criteria for the acceptable location of new or existing facilities, and provide for corrective action as appropriate.

(2) Additional revisions

Subject to paragraph (3), the requirements of the criteria described in paragraph (1) relating to ground water monitoring shall not apply to an owner or operator of a new municipal solid waste landfill unit, an existing municipal solid waste landfill unit, or a lateral expansion of a municipal solid waste landfill unit, that disposes of less than 20 tons of municipal solid waste daily, based on an annual average, if—

(A) there is no evidence of ground water contamination from the municipal solid waste landfill unit or expansion; and

(B) the municipal solid waste landfill unit or expansion serves—

(i) a community that experiences an annual interruption of at least 3 consecutive months of surface transportation that prevents access to a regional waste management facility; or

(ii) a community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

(3) Protection of ground water resources**(A) Monitoring requirement**

A State may require ground water monitoring of a solid waste landfill unit that would otherwise be exempt under paragraph (2) if necessary to protect ground water resources and ensure compliance with a State ground water protection plan, where applicable.

(B) Methods

If a State requires ground water monitoring of a solid waste landfill unit under subparagraph (A), the State may allow the use of a method other than the use of ground water monitoring wells to detect a release of contamination from the unit.

(C) Corrective action

If a State finds a release from a solid waste landfill unit, the State shall require corrective action as appropriate.

(4) No-migration exemption**(A) In general**

Ground water monitoring requirements may be suspended by the Director of an approved State for a landfill operator if the operator demonstrates that there is no potential for migration of hazardous constituents from the unit to the uppermost aquifer during the active life of the unit and the post-closure care period.

(B) Certification

A demonstration under subparagraph (A) shall be certified by a qualified ground-water scientist and approved by the Director of an approved State.

(C) Guidance

Not later than 6 months after the date of enactment of this paragraph, the Administrator shall issue a guidance document to facilitate small community use of the no migration³⁰ exemption under this paragraph.

(5) Alaska native villages

Upon certification by the Governor of the State of Alaska that application of the requirements described in paragraph (1) to a solid waste landfill unit of a Native village (as defined in section 3 of the Alaska Native Claims Settlement Act (16 U.S.C. 1602)) or unit that is located in or near a small, remote Alaska village would be infeasible, or would not be cost-effective, or is otherwise inappropriate because of the remote location of the unit, the State may exempt the unit from some or all of those requirements. This paragraph shall apply only to solid waste landfill units that dispose of less than 20 tons of municipal solid waste daily, based on an annual average.

(6) Further revisions of guidelines and criteria

Recognizing the unique circumstances of small communities, the Administrator shall, not later than two years after enactment of this provision promulgate revisions to the guidelines and criteria promulgated under this subtitle to provide additional flexibility to approved States to allow landfills that receive 20 tons or less of municipal solid waste per day, based on an annual average, to use alternative frequencies of daily cover application, frequencies of methane gas monitoring, infiltration layers for final cover, and means for demonstrating financial assurance: Provided, That such alternative requirements take into account climatic and hydrogeologic conditions and are protective of human health and environment.

(Pub. L. 89-272, title II, §4010, as added Pub. L. 98-616, title III, §302(a)(1), Nov. 8, 1984, 98 Stat. 3267; Pub. L. 104-119, §3(a), Mar. 26, 1996, 110 Stat. 831.)

Reinstatement of Regulatory Exemption

Pub. L. 104-119, Sec. 3(b), Mar. 26, 1996, 110 Stat. 833, provided that:

“It is the intent of section 4010(c)(2) of the Solid Waste Disposal Act, as amended by subsection (a), to immediately reinstate subpart E of part 258 of title 40, Code of Federal Regulations, as added by the final rule published at 56 Federal Register 50798 on October 9, 1991.”

30. So in original. Probably should be “no-migration”.

Subchapter V—Duties of Secretary of Commerce in Resource and Recovery

§6951. [RCRA §5001]

Functions

The Secretary of Commerce shall encourage greater commercialization of proven resource recovery technology by providing—

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

(Pub. L. 89-272, title II, §5001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2820.)

§6952. [RCRA §5002]

Development of specifications for secondary materials

The Secretary of Commerce, acting through the National Institute of Standards and Technology, and in conjunction with national standards-setting organizations in resource recovery, shall, after public hearings, and not later than two years after September 1, 1979, publish guidelines for the development of specifications for the classification of materials recovered from waste which were destined for disposal. The specifications shall pertain to the physical and chemical properties and characteristics of such materials with regard to their use in replacing virgin materials in various industrial, commercial, and governmental uses. In establishing such guidelines the Secretary shall also, to the extent feasible, provide such information as may be necessary to assist Federal agencies with procurement of items containing recovered materials. The Secretary shall continue to cooperate with national standards-setting organizations, as may be necessary, to encourage the publication, promulgation and updating of standards for recovered materials and for the use of recovered materials in various industrial, commercial, and governmental uses.

(Pub. L. 89-272, title II, §5002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2820, and amended Pub. L. 96-482, §21(a), Oct. 21, 1980, 94 Stat. 2346; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

§6953. [RCRA §5003]

Development of markets for recovered materials

The Secretary of Commerce shall within two years after September 1, 1979, take such actions as may be necessary to—

(1) identify the geographical location of existing or potential markets for recovered materials;

(2) identify the economic and technical barriers to the use of recovered materials; and

(3) encourage the development of new uses for recovered materials.

(Pub. L. 89-272, title II, §5003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2821, and amended Pub. L. 96-482, §21(b), Oct. 21, 1980, 94 Stat. 2346.)

§6954. [RCRA §5004]

Technology promotion

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

(Pub. L. 89-272, title II, §5004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2821.)

§6955. [RCRA §5005]

Marketing policies, establishment; nondiscrimination requirement

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

(Pub. L. 89-272, title II, §5005, as added Pub. L. 96-482, §21(c)(1), Oct. 21, 1980, 94 Stat. 2346.)

§6956. [RCRA §5006]

Authorization of appropriations

There are authorized to be appropriated to the Secretary of Commerce \$5,000,000 for each of fiscal years 1980, 1981, and 1982 and \$1,500,000 for each of the fiscal years 1985 through 1988 to carry out the purposes of this subchapter.

(Pub. L. 89-272, title II, §5006, as added Pub. L. 96-482, §31(f)(1), Oct. 21, 1980, 94 Stat. 2353, and amended Pub. L. 98-616, §2(h), Nov. 8, 1984, 98 Stat. 3223.)

Subchapter VI—Federal Responsibilities

§6961. [RCRA §6001]

Application of Federal, State, and local law to Federal facilities

(a) In General

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local solid waste or hazardous waste regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local solid or hazardous waste law with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State solid or hazardous waste law, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Administrative enforcement actions

(1) The Administrator may commence an administrative enforcement action against any department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government pursuant to the enforcement authorities contained in this Act. The Administrator shall initiate an administrative enforcement action against such a department, agency, or instrumentality in the same manner and under the same circumstances as an action

would be initiated against another person. Any voluntary resolution or settlement of such an action shall be set forth in a consent order.

(2) No administrative order issued to such a department, agency, or instrumentality shall become final until such department, agency, or instrumentality has had the opportunity to confer with the Administrator.

(c) Limitation on State use of funds collected from Federal government

Unless a State law in effect on the date of the enactment of the Federal Facility Compliance Act of 1992 or a State constitution requires the funds to be used in a different manner, all funds collected by a State from the Federal Government from penalties and fines imposed for violation of any substantive or procedural requirement referred to in subsection (a) shall be used by the State only for projects designed to improve or protect the environment or to defray the costs of environmental protection or enforcement.

(Pub. L. 89-272, title II, §6001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2821, and amended Pub. L. 95-609, §7(m), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 102-386, §102(a), (b), Oct. 6, 1992, 106 Stat. 1505, 1506.)

Effective Dates of 1992 Amendment

Pub. L. 102-386, Sec. 102(c), Oct. 6, 1992, 106 Stat. 1506, provided that:

(1) In general.—Except as otherwise provided in paragraphs (2) and (3), the amendments made by subsection (a) shall take effect upon the date of the enactment of this Act [Oct. 6, 1992].

(2) Delayed effective date for certain mixed waste.—Until the date that is 3 years after the date of the enactment of this Act [Oct. 6, 1992], the waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act [subsection (a) of this section] with respect to civil, criminal, and administrative penalties and fines (as added by the amendments made by subsection (a)) shall not apply to departments, agencies, and instrumentalities of the executive branch of the Federal Government for violations of section 3004(j) of the Solid Waste Disposal Act [section 6924(j) of this title] involving storage of mixed waste that is not subject to an existing agreement, permit, or administrative or judicial order, so long as such waste is managed in compliance with all other applicable requirements.

(3) Effective date for certain mixed waste.—(A) Except as provided in subparagraph (B), after the date that is 3 years after the date of the enactment of this Act [Oct. 6, 1992], the waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act [subsection (a) of this section] with respect to civil, criminal, and administrative penalties and fines (as added by the amendments made by subsection (a)) shall apply to departments, agencies, and instrumentalities of the executive branch of the Federal Government for violations of section 3004(j) of the Solid Waste Disposal Act [section 6924(j) of this title] involving storage of mixed waste.

“(B) With respect to the Department of Energy, the waiver of sovereign immunity referred to in subparagraph (A) shall not apply after the date that is 3 years after the date of the enactment of this Act [Oct. 6, 1992] for violations of section 3004(j) of such Act [section 6924(j) of this title] involving storage of mixed waste, so long as the Department of Energy is in compliance with both—

“(i) a plan that has been submitted and approved pursuant to section 3021(b) of the Solid Waste Disposal Act and which is in effect; and

“(ii) an order requiring compliance with such plan which has been issued pursuant to such section 3021(b) and which is in effect.

(4) Application of waiver to agreements and orders.—The waiver of sovereign immunity contained in section 6001(a) of the Solid Waste Disposal Act [subsection (a) of this section] (as added by the amendments made by subsection (a)) shall take effect on the date of the enactment of this Act with respect to any agreement, permit, or administrative or judicial order existing on such date of enactment (and any subsequent modifications to such an agreement, permit, or order), including, without limitation, any provision of an agreement, permit, or order that addresses compliance with section 3004(j) of such Act [section 6924(j) of this title] with respect to mixed waste.

(5) Agreement or order.—Except as provided in paragraph (4), nothing in this Act shall be construed to alter, modify, or change in any manner any agreement, permit, or administrative or judicial order, including, without limitation, any provision of an agreement, permit, or order—

“(i) that addresses compliance with section 3004(j) of the Solid Waste Disposal Act [section 6924(j) of this title] with respect to mixed waste;

“(ii) that is in effect on the date of enactment of this Act [Oct. 6, 1992]; and

“(iii) to which a department, agency, or instrumentality of the executive branch of the Federal Government is a party.”

Termination Of Reporting Requirements

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 8th item on page 20 of House Document No. 103-7.

Executive Order No. 12780

Ex. Ord. No. 12780, Oct. 31, 1991, 56 F.R. 56289, which required Federal agencies to promote cost-effective waste reduction and recycling of reusable materials and established a Council on Federal Recycling and Procurement Policy, was re-

voked by Ex. Ord. No. 12873, Sec. 901, Oct. 20, 1993, 58 F.R. 54911, formerly set out below.

Executive Order No. 12873

Ex. Ord. No. 12873, Oct. 20, 1993, 58 F.R. 54911, as amended by Ex. Ord. No. 12995, Mar. 25, 1996, 61 F.R. 13645, which directed Executive agencies to incorporate waste prevention and recycling in daily operations and work and to acquire and use environmentally preferable products and services and which created a Federal Environmental Executive and established high-level Environmental Executive positions within each agency, was revoked by Ex. Ord. No. 13101, Sec. 901, Sept. 14, 1998, 63 F.R. 49651, set out below.

Executive Order No. 13101. Greening The Government Through Waste Prevention, Recycling, And Federal Acquisition

Ex. Ord. No. 13101, Sept. 14, 1998, 63 F.R. 49643, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Solid Waste Disposal Act, Public Law 89-272, 79 Stat. 997, as amended by the Resource Conservation and Recovery Act (RCRA), Public Law 94-580, 90 Stat. 2795, as amended (42 U.S.C. 6901-6907), section 301 of title 3, United States Code, and in order to improve the Federal Government's use of recycled products and environmentally preferable products and services, it is hereby ordered as follows:

PART 1 - PREAMBLE

Section 101. Consistent with the demands of efficiency and cost effectiveness, the head of each executive agency shall incorporate waste prevention and recycling in the agency's daily operations and work to increase and expand markets for recovered materials through greater Federal Government preference and demand for such products. It is the national policy to prefer pollution prevention, whenever feasible. Pollution that cannot be prevented should be recycled; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner. Disposal should be employed only as a last resort.

Sec. 102. Consistent with policies established by the Office of Federal Procurement Policy (OFPP) Policy Letter 92-4, agencies shall comply with executive branch policies for the acquisition and use of environmentally preferable products and services and implement cost-effective procurement preference programs favoring the purchase of these products and services.

Sec. 103. This order creates a Steering Committee, a Federal Environmental Executive (FEE), and a Task Force, and establishes Agency Environmental Executive Executive (AEE) positions within each agency, to be responsible for ensuring the implementation of this order. The FEE, AEEs, and members of the Steering Committee and Task Force shall be full-time Federal Government employees.

PART 2 - DEFINITIONS

For purposes of this order:

Sec. 201. "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

Sec. 202. "Executive agency" or "agency" means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

Sec. 203. "Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. "Postconsumer material" is a part of the broader category of "recovered material."

Sec. 204. "Acquisition" means the acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Sec. 205. "Recovered materials" means waste materials and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903(19)).

Sec. 206. "Recyclability" means the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling.

Sec. 207. "Recycling" means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion.

Sec. 208. "Waste prevention" means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

Sec. 209. "Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

Sec. 210. "Life cycle cost" means the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product.

Sec. 211. "Life cycle assessment" means the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its

lifetime, including raw material extraction, transportation, manufacturing, use, and disposal.

Sec. 212. "Pollution prevention" means "source reduction" as defined in the Pollution Prevention Act of 1990 (42 U.S.C. 13102), and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

Sec. 213. "Biobased product" means a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials.

Sec. 214. "Major procuring agencies" shall include any executive agency that procures over \$50 million per year of goods and services.

PART 3 - THE ROLES AND DUTIES OF THE STEERING COMMITTEE, FEDERAL ENVIRONMENTAL EXECUTIVE, TASK FORCE, AND AGENCY ENVIRONMENTAL EXECUTIVES

Sec. 301. Committees, Executives, and Task Force. (a) Steering Committee. There is hereby established a Steering Committee on Greening the Government through Waste Prevention and Recycling ("Steering Committee"). The Steering Committee shall be composed of the Chair of the Council on Environmental Quality (CEQ), the Federal Environmental Executive (FEE), and the Administrator for Federal Procurement Policy (OFPP). The Steering Committee, which shall be chaired by the Chair of the CEQ, is directed to charter a Task Force to facilitate implementation of this order, and shall provide the Task Force with policy direction in such implementation.

(b) Federal Environmental Executive. A Federal Environmental Executive, Environmental Protection Agency, shall be designated by the President. The FEE shall chair the Task Force described in subsection (c), take all actions necessary to ensure that the agencies comply with the requirements of this order, and generate a biennial report to the President.

(c) Task Force. The Steering Committee shall charter a Task Force on Greening the Government through Waste Prevention and Recycling ("Task Force"), which shall be chaired by the FEE and composed of staff from the major procuring agencies. The Steering Committee, in consultation with the agencies, shall determine the necessary staffing and resources for the Task Force. The major procuring agencies shall provide, to the extent practicable and permitted by law, resources and support to the Task Force and the FEE, upon request from the Steering Committee. The Task Force shall have the duty of assisting the FEE and the agencies in implementing this order, subject to policy direction provided by the Steering Committee. The Task Force shall report through the FEE to the Chair of the Steering Committee.

(d) Agency Environmental Executives (AEEs). Within 90 days after the date of this order, the head of each major procuring agency shall designate an AEE from among his or her staff, who serves at a level no lower than the Assistant Secretary level or equivalent, and shall notify the Chair of CEQ and the FEE of such designation.

Sec. 302. Duties. (a) The Federal Environmental Executive. The FEE, working through the Task Force, and in consultation with the AEEs, shall:

(1) Develop a Government-wide Waste Prevention and Recycling Strategic Plan ("Strategic Plan") to further implement this order. The Strategic Plan should be initially developed within 180 days of the date of this order and revised as necessary thereafter. The Strategic Plan should include, but is not limited to, the following elements:

- (a) direction and initiatives for acquisition of recycled and recyclable products and environmentally preferable products and services;
- (b) development of affirmative procurement programs;
- (c) review and revision of standards and product specifications;
- (d) assessment and evaluation of compliance;
- (e) reporting requirements;
- (f) outreach programs to promote adoption of practices endorsed in this order; and
- (g) development and implementation of new technologies that are of environmental significance.

(2) Prepare a biennial report to the President on the actions taken by the agencies to comply with this order. The report also may incorporate information from existing agency reports regarding Government-wide progress in implementing the following Executive Orders: 12843, Procurement Requirements and Policies for Federal Agencies for Ozone Depleting Substances [former 42 U.S.C. 76711 note]; 13031, Federal Alternative Fueled Vehicle Leadership [former 42 U.S.C. 13212 note]; 12845, Requiring Agencies to Purchase Energy Efficient Computer Equipment [42 U.S.C. 8262g note]; 12856, Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements [former 42 U.S.C. 11001 note]; 12902, Energy Efficiency and Water Conservation at Federal Facilities [42 U.S.C. 6201 note]; and 12969, Federal Acquisition and Community Right-to-Know [former 41 U.S.C. 401 note].

(3) In coordination with the Office of Federal Procurement Policy, the Environmental Protection Agency (EPA), the General Services Administration (GSA), and the Department of Agriculture (USDA), convene a group of acquisition/procurement managers and environmental State, and local government managers to work with State and local governments to improve the Federal, State, and local governments' use of recycled products and environmentally preferable products and services.

(4) Coordinate appropriate Government-wide education and training programs for agencies.

(5) Establish committees and work groups, as needed, to identify, assess, and recommend actions to be taken to fulfill the goals, responsibilities, and initiatives of the FEE. As these committees and work groups are created, agencies are requested to designate appropriate personnel in the areas of procurement and acquisition, standards and specifications, electronic commerce, facilities management, pollution prevention, waste prevention, recycling, and others as needed to staff and work on

these initiatives. An initial group shall be established to develop recommendations for tracking and reporting requirements, taking into account the costs and benefits of such tracking and reporting. The Steering Committee shall consult with the AEEs before approving these recommendations.

(b) Agency Environmental Executives. The AEEs shall:

(1) translate the Government-wide Strategic Plan into specific agency and service plans;

(2) implement the specific agency and service plans;

(3) report to the FEE on the progress of plan implementation;

(4) work with the FEE and the Task Force in furthering implementation of this order; and

(5) track agencies' purchases of EPA-designated guideline items and report agencies' purchases of such guideline items to the FEE per the recommendations developed in subsection 302(a)(5) of this order. Agency acquisition and procurement personnel shall justify in writing to the file and to the AEE the rationale for not purchasing such items, above the micropurchase threshold (as set out in the Office of Federal Procurement Policy Act at 41 U.S.C. 428), and submit a plan and timetable for increasing agency purchases of the designated item(s).

(6) one year after a product is placed on the USDA Biobased Products List, estimate agencies' purchases of products on the list and report agencies' estimated purchases of such products to the Secretary of Agriculture.

PART 4 - ACQUISITION PLANNING, AFFIRMATIVE PROCUREMENT PROGRAMS, AND FEDERAL FACILITY COMPLIANCE

Sec. 401. Acquisition Planning. In developing plans, drawings, work statements, specifications, or other product descriptions, agencies shall consider, as appropriate, a broad range of factors including: elimination of virgin material requirements; use of biobased products; use of recovered materials; reuse of product; life cycle cost; recyclability; use of environmentally preferable products; waste prevention (including toxicity reduction or elimination); and ultimate disposal. These factors should be considered in acquisition planning for all procurement and in the evaluation and award of contracts, as appropriate. Program and acquisition managers should take an active role in these activities.

Sec. 402. Affirmative Procurement Programs. (a) The head of each executive agency shall develop and implement affirmative procurement programs in accordance with section 6002 of RCRA (42 U.S.C. 6962) and this order and consider use of the procurement tools and methods described in [former] 7 U.S.C. 5909. Agencies shall ensure that responsibilities for preparation, implementation, and monitoring of affirmative procurement programs are shared between the program personnel and acquisition and procurement personnel. For the purposes of all purchases made pursuant to this order, EPA, in consultation with such other executive agencies as appropriate, shall endeavor to maximize environmental benefits, consistent with price, performance, and availability considerations, and constraints imposed by law, and shall adjust solicitation guidelines as necessary in order to accomplish this goal.

(b) Agencies shall establish affirmative procurement programs for all EPA-designated guideline items purchased by their agency. For newly designated items, agencies shall revise their internal programs within 1 year from the date the EPA designated the new items.

(c) Exclusive of the biobased products described in section 504, for the EPA-designated guideline items, which are contained in 40 CFR part 247, and for all future designated guideline items, agencies shall ensure that their affirmative procurement programs require 100 percent of their purchases of products to meet or exceed the EPA guideline unless written justification is provided that a product is not available competitively within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price. Written justification is not required for purchases below the micropurchase threshold. For micropurchases, agencies shall provide guidance regarding purchase of EPA-designated guideline items. This guidance should encourage consideration of aggregating purchases when this method would promote economy and efficiency.

(d) Within 90 days after the date of this order, the head of each executive agency that has not implemented an affirmative procurement program shall ensure that the affirmative procurement program has been established and is being implemented to the maximum extent practicable.

Sec. 403. Federal Facility Compliance. (a) Within 6 months of the date of this order, the Administrator of the EPA shall, in consultation with the Federal Environmental Executive, prepare guidance for use in determining Federal facility compliance with section 6002 of RCRA [42 U.S.C. 6962] and the related requirements of this order.

(b) EPA inspections of Federal facilities conducted pursuant to RCRA and the Federal Facility Compliance Act [of 1992] [see Short Title of 1992 Amendment note set out under section 6901 of this title] and EPA "multi-media" inspections carried out at Federal facilities will include, where appropriate, evaluation of facility compliance with section 6002 of RCRA and any implementing guidance.

(c) Where inspections of Federal facilities are carried out by authorized States pursuant to RCRA and the Federal Facility Compliance Act, the Administrator of the EPA will encourage those States to include evaluation of facility compliance with section 6002 of RCRA in light of EPA guidance prepared pursuant to subsection (a), where appropriate, similar to inspections performed by the EPA. The EPA may provide information and technical assistance to the States to enable them to include such considerations in their inspection.

(d) The EPA shall report annually to the Federal Environmental Executive on the results of inspections performed by the EPA to determine Federal facility compliance with section 6002 of RCRA not later than February 1st for those inspections conducted during the previous fiscal year.

PART 5 - STANDARDS, SPECIFICATIONS, AND DESIGNATION OF ITEMS

Sec. 501. Specifications, Product Descriptions, and Standards. When developing, reviewing, or revising Federal and military specifications, product descriptions (in-

cluding commercial item descriptions), and standards, executive agencies shall consider recovered materials and any environmentally preferable purchasing criteria developed by the EPA, and ensure the criteria are complied with in developing or revising standards. Agencies shall report annually to the FEE on their compliance with this section for incorporation into the biennial report to the President referred to in section 302(a)(2) of this order. (a) If an inconsistency with section 6002 of RCRA [42 U.S.C. 6962] or this order is identified in a specification, standard, or product description, the FEE shall request that the Environmental Executive of the pertinent agency advise the FEE as to why the specification cannot be revised or submit a plan for revising it within 60 days.

(b) If an agency is able to revise an inconsistent specification but cannot do so within 60 days, it is the responsibility of that AEE to monitor and implement the plan for revising it.

Sec. 502. Designation of Items that Contain Recovered Materials. In order to expedite the process of designating items that are or can be made with recovered materials, the EPA shall use the following process for designating these items in accordance with section 6002(e) of RCRA. (a) The EPA shall designate items that are or can be made with recovered material, by promulgating amendments to the Comprehensive Procurement Guideline (CPG). The CPG shall be updated every 2 years or as appropriate after an opportunity for public comment.

(b) Concurrent with the issuance of the CPG, the EPA shall publish for comment in the Federal Register Recovered Materials Advisory Notices that present the range of recovered materials content levels within which the designated items are currently available. These levels shall be updated periodically, after opportunity for public comment, to reflect changes in market conditions.

(c) Once items containing recovered materials have been designated by the EPA in the CPG, agencies shall modify their affirmative procurement programs to require that, to the maximum extent practicable, their purchases of products meet or exceed the EPA guidelines unless written justification is provided that a product is not available competitively, not available within a reasonable time frame, does not meet appropriate performance standards, or is only available at an unreasonable price.

Sec. 503. Guidance on Acquisition of Environmentally Preferable Products and Services. (a) The EPA shall develop guidance within 90 days from the date of this order to address environmentally preferable purchasing. The guidance may be based on the EPA's September 1995 Proposed Guidance on the Acquisition of Environmentally Preferable Products and Services and comments received thereon. The guidance should be designed for Government-wide use and targeted towards products and services that have the most effect. The guidance may also address the issues of use of the technical expertise of nongovernmental entities and tools such as life cycle assessment in decisions on environmentally preferable purchasing. The EPA shall update this guidance every 2 years, or as appropriate.

(b) Agencies are encouraged to immediately test and evaluate the principles and concepts contained in the EPA's Guidance on the Acquisition of Environmentally Preferable Products and Services through pilot projects to provide practical information to the EPA for further updating of the guidance. Specifically:

(1) These pilot projects shall be focused around those product and service categories, including printing, that have wide use within the Federal Government. Priorities regarding which product and service categories to pilot shall be developed by the individual agencies and the EPA, in consultation with the OFPP, the FEE, and the appropriate agency procurement executives. Any policy disagreements shall be resolved by the Steering Committee.

(2) Agencies are encouraged to use all of the options available to them to determine the environmentally preferable attributes of products and services in their pilot and demonstration projects, including the use of technical expertise of nongovernmental entities such as labeling, certification, or standards-developing organizations, as well as using the expertise of the National Institute of Standards and Technology.

(3) Upon request and to the extent practicable, the EPA shall assist executive agencies in designing, implementing, and documenting the results of these pilot and demonstration projects.

(4) The EPA, in coordination with other executive agencies, shall develop a database of information about these projects, including, but not limited to, the number and status of pilot projects, examples of agencies' policy directives, revisions to specifications, solicitation procedures, and grant/contract policies that facilitate adoption of environmentally preferable purchasing practices, to be integrated on a commonly available electronic medium (e.g., Internet Web site). These data are to be reported to the FEE.

(c) Executive agencies shall use the principles and concepts in the EPA Guidance on Acquisition of Environmentally Preferable Products and Services, in addition to the lessons from the pilot and demonstration projects, to the maximum extent practicable, in identifying and purchasing environmentally preferable products and services and shall modify their procurement programs as appropriate.

Sec. 504. Designation of Biobased Items by the USDA. The USDA Biobased Products Coordination Council shall, in consultation with the FEE, issue a Biobased Products List. (a) The Biobased Products List shall be published in the Federal Register by the USDA within 180 days after the date of this order and shall be updated bi-annually after publication to include additional items.

(b) Once the Biobased Products List has been published, agencies are encouraged to modify their affirmative procurement program to give consideration to those products.

Sec. 505. Minimum Content Standard for Printing and Writing Paper. Executive agency heads shall ensure that their agencies meet or exceed the following minimum materials content standards when purchasing or causing the purchase of printing and writing paper:

(a) For high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard shall

be no less than 30 percent postconsumer materials beginning December 31, 1998. If paper containing 30 percent postconsumer material is not reasonably available, does not meet reasonable performance requirements, or is only available at an unreasonable price, then the agency shall purchase paper containing no less than 20 percent postconsumer material. The Steering Committee, in consultation with the AEEs, may revise these levels if necessary.

(b) As an alternative to meeting the standards in sections [sic] 505(a), for all printing and writing papers, the minimum content standard shall be no less than 50 percent recovered materials that are a waste material byproduct of a finished product other than a paper or textile product that would otherwise be disposed of in a landfill, as determined by the State in which the facility is located.

(c) Effective January 1, 1999, no executive branch agency shall purchase, sell, or arrange for the purchase of, printing and writing paper that fails to meet the minimum requirements of this section.

Sec. 506. Revision of Brightness Specifications and Standards. The GSA and other executive agencies are directed to identify, evaluate, and revise or eliminate any standards or specifications unrelated to performance that present barriers to the purchase of paper or paper products made by production processes that minimize emissions of harmful byproducts. This evaluation shall include a review of unnecessary brightness and stock clause provisions, such as lignin content and chemical pulp requirements. The GSA shall complete the review and revision of such specifications within 6 months after the date of this order, and shall consult closely with the Joint Committee on Printing during such process. The GSA shall also compile any information or market studies that may be necessary to accomplish the objectives of this provision.

Sec. 507. Procurement of Re-refined Lubricating Oil and Retread Tires. (a) Agencies shall implement the EPA procurement guidelines for re-refined lubricating oil and retread tires. Fleet and commodity managers shall take immediate steps, as appropriate, to procure these items in accordance with section 6002 of RCRA [42 U.S.C. 6962]. This provision does not preclude the acquisition of biobased (e.g., vegetable) oils.

(b) The FEE shall work to educate executive agencies about the new Department of Defense Cooperative Tire Qualification Program, including the Cooperative Approval Tire List and Cooperative Plant Qualification Program, as they apply to retread tires.

PART 6 - AGENCY GOALS AND REPORTING REQUIREMENTS

Sec. 601. Agency Goals. (a)(1) Each agency shall establish either a goal for solid waste prevention and a goal for recycling or a goal for solid waste diversion to be achieved by January 1, 2000. Each agency shall further ensure that the established goals include long-range goals to be achieved by the years 2005 and 2010. These goals shall be submitted to the FEE within 180 days after the date of this order. (2) In addition to white paper, mixed paper/cardboard, aluminum, plastic, and glass, agencies should incorporate into their recycling programs efforts to recycle, reuse, or refurbish pallets and collect toner cartridges for remanufacturing. Agencies should also include programs to reduce or recycle, as appropriate, batteries, scrap metal, and fluorescent lamps and ballasts.

(b) Agencies shall set goals to increase the procurement of products that are made with recovered materials, in order to maximize the number of recycled products purchased, relative to non-recycled alternatives.

(c) Each agency shall set a goal for increasing the use of environmentally preferable products and services for those products and services for which the agency has completed a pilot program.

(d) Agencies are encouraged to incorporate into their Government Performance [and] Results Act [of 1993] [see Short Title of 1993 Amendment note set out under section 1101 of Title 31, Money and Finance] annual performance plans the goals listed in subsections (a), (b), and (c) above, starting with the submittal to the Office of Management and Budget of the plan accompanying the FY 2001 budget.

(e) Progress on attaining these goals should be reported by the agencies to the FEE for the biennial report specified in section 302(a)(2) of this order.

PART 7 - APPLICABILITY AND OTHER REQUIREMENTS

Sec. 701. Contractor Applicability. Contracts that provide for contractor operation of a Government-owned or -leased facility and/or contracts that provide for contractor or other support services at Government-owned or -operated facilities awarded by executive agencies after the date of this order, shall include provisions that obligate the contractor to comply with the requirements of this order within the scope of its operations.

Sec. 702. Real Property Acquisition and Management. Within 90 days after the date of this order, and to the extent permitted by law and where economically feasible, executive agencies shall ensure compliance with the provisions of this order in the acquisition and management of Federally owned and leased space. The GSA and other executive agencies shall also include environmental and recycling provisions in the acquisition and management of all leased space and in the construction of new Federal buildings.

Sec. 703. Retention of Funds. (a) The Administrator of General Services shall continue with the program that retains for the agencies the proceeds from the sale of materials recovered through recycling or waste prevention programs and specifying the eligibility requirements for the materials being recycled.

(b) Agencies in non-GSA managed facilities, to the extent permitted by law, should develop a plan to retain the proceeds from the sale of materials recovered through recycling or waste prevention programs.

Sec. 704. Model Facility Programs. Each executive agency shall establish a model demonstration program incorporating some or all of the following elements as appropriate. Agencies are encouraged to demonstrate and test new and innovative approaches such as incorporating environmentally preferable and bio-based products; increasing the quantity and types of products containing recovered materials; expanding collection programs; implementing source reduction programs; com-

posting organic materials when feasible; and exploring public/private partnerships to develop markets for recovered materials.

Sec. 705. Recycling Programs. (a)(1) Each executive agency that has not already done so shall initiate a program to promote cost-effective waste prevention and recycling of reusable materials in all of its facilities. The recycling programs implemented pursuant to this section must be compatible with applicable State and local recycling requirements.

(2) Agencies shall designate a recycling coordinator for each facility or installation. The recycling coordinator shall implement or maintain waste prevention and recycling programs in the agencies' action plans.

(b) Executive agencies shall also consider cooperative ventures with State and local governments to promote recycling and waste reduction in the community.

Sec. 706. Review of Implementation. The President's Council on Integrity and Efficiency shall request that the Inspectors General periodically review agencies' implementation of this order.

PART 8 - AWARENESS

Sec. 801. Training. (a) Within 180 days of the date of this order, the FEE and OFPP should evaluate the training courses provided by the Federal Acquisition Institute and the Defense Acquisition University and recommend any appropriate curriculum changes to ensure that procurement officials are aware of the requirements of this order.

(b) Executive agencies shall provide training to program management and requesting activities as needed to ensure awareness of the requirements of this order.

Sec. 802. Internal Agency Awards Programs. Each agency shall develop an internal agency-wide awards program, as appropriate, to reward its most innovative environmental programs. Among others, winners of agency-wide awards will be eligible for the White House Awards Program.

Sec. 803. White House Awards Program. A Government-wide award will be presented annually by the White House to the best, most innovative programs implementing the objectives of this order to give greater visibility to these efforts so that they can be incorporated Government-wide. The White House Awards Program will be administered jointly by the FEE and the CEQ.

PART 9 - REVOCATION, LIMITATION, AND IMPLEMENTATION

Sec. 901. Executive Order 12873 of October 20, 1993, is hereby revoked.

Sec. 902. This order is intended only to improve the internal management of the executive branch and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person.

Sec. 903. The policies and directions expressed in the EPA guidance to be developed pursuant to section 503 of this order shall be implemented and incorporated in the Federal Acquisition Regulation within 180 days after issuance of the guidance.

§6962. [RCRA §6002]

Federal procurement

(a) Application of section

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

(b) Procurement subject to other law

Any procurement, by any procuring agency, which is subject to regulations of the Administrator under section 6964 of this title (as promulgated before October 21, 1976, under comparable provisions of prior law) shall not be subject to the requirements of this section to the extent that such requirements are inconsistent with such regulations.

(c) Requirements

(1) After the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any items designated in such guidelines shall procure such items composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the postconsumer recovered materials referred to in subsection (h)(1) of this section practicable), consistent with maintaining a satisfactory level of competition, considering such guidelines. The decision not to procure such items shall be based on a determination that such procurement items—

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

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

(C) are only available at an unreasonable price. Any determination under subparagraph (B) shall be made on the basis of the

guidelines of the National Institute of Standards and Technology in any case in which such material is covered by such guidelines.

(2) Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using energy or fuels derived from solid waste as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

(3)(A) After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting officers shall require that vendors:

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

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

(B) Clause (ii) of subparagraph (A) applies only to a contract in an amount greater than \$100,000.

(d) Specifications

All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by Federal agencies shall—

(1) as expeditiously as possible but in any event no later than eighteen months after November 8, 1984, eliminate from such specifications—

(A) any exclusion of recovered materials and

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

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

(e) Guidelines

The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the National Institute of Standards and Technology), and the Public Printer, shall prepare, and from time to time revise, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall—

(1) designate those items which are or can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of this section, and in the case of paper, provide for maximizing the use of post consumer recovered materials referred to in subsection (h)(1) of this section; and

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

and shall provide information as to the availability, relative price, and performance of such materials and items and where appropriate shall recommend the level of recovered material to be contained in the procured product. The Administrator shall prepare final guidelines for paper within one hundred and eighty days after November 8, 1984, and for three additional product categories (including tires) by October 1, 1985. In making the designation under paragraph (1), the Administrator shall consider, but is not limited in his considerations, to—

(A) the availability of such items;

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

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

(D) other uses for such recovered materials.

(f) Procurement of services

A procuring agency shall, to the maximum extent practicable, manage or arrange for the procurement of solid waste management services in a manner which maximizes energy and resource recovery.

(g) Executive Office

The Office of Procurement Policy in the Executive Office of the President, in cooperation with the Administrator, shall implement the

requirements of this section. It shall be the responsibility of the Office of Procurement Policy to coordinate this policy with other policies for Federal procurement, in such a way as to maximize the use of recovered resources, and to, every two years beginning in 1984, report to the Congress on actions taken by Federal agencies and the progress made in the implementation of this section, including agency compliance with subsection (d) of this section.

(h) "Recovered materials" defined

As used in this section, in the case of paper products, the term "recovered materials" includes—

(1) postconsumer materials such as—

(A) paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and

(B) all paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and

(2) manufacturing, forest residues, and other wastes such as—

(A) dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(B) finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(C) fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

(D) wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and

(E) fibers recovered from waste water which otherwise would enter the waste stream.

(i) Procurement program

(1) Within one year after the date of publication of applicable guidelines under subsection (e) of this section, each procuring agency shall develop an affirmative procurement program which will assure that items composed of recovered materials will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law.

(2) Each affirmative procurement program required under this subsection shall, at a minimum, contain—

(A) a recovered materials preference program;

(B) an agency promotion program to promote the preference program adopted under subparagraph (A);

(C) a program for requiring estimates of the total percentage of recovered material utilized in the performance of a contract; certification of minimum recovered material content actually utilized, where appropriate; and reasonable verification procedures for estimates and certifications; and

(D) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

In the case of paper, the recovered materials preference program required under subparagraph (A) shall provide for the maximum use of the post consumer recovered materials referred to in subsection (h)(1) of this section.

(3) In developing the preference program, the following options shall be considered for adoption:

(A) Case-by-Case Policy Development: Subject to the limitations of subsection (c)(1)(A) through (C) of this section, a policy of awarding contracts to the vendor offering an item composed of the highest percentage of recovered materials practicable (and in the case of paper, the highest percentage of the post consumer recovered materials referred to in subsection (h)(1) of this section). Subject to

such limitations, agencies may make an award to a vendor offering items with less than the maximum recovered materials content.

(B) Minimum Content Standards: Minimum recovered materials content specifications which are set in such a way as to assure that the recovered materials content (and in the case of paper, the content of post consumer materials referred to in subsection (h)(1) of this section) required is the maximum available without jeopardizing the intended end use of the item, or violating the limitations of subsection (c)(1)(A) through (C) of this section. Procuring agencies shall adopt one of the options set forth in subparagraphs (A) and (B) or a substantially equivalent alternative, for inclusion in the affirmative procurement program.

(Pub. L. 89-272, title II, §6002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2822, and amended Pub. L. 95-609, §7(n), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, §22, Oct. 21, 1980, 94 Stat. 2346; Pub. L. 97-375, title I, §102, Dec. 21, 1982, 96 Stat. 1819; Pub. L. 98-616, title V, §501(a)-(e), Nov. 8, 1984, 98 Stat. 3274-3276; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433; Pub. L. 102-393, §630, Oct. 6, 1992, 106 Stat. 1773, 1774; Pub. L. 103-355, §§1554, 4104(e), Oct. 13, 1994, 108 Stat. 3300, 3342.)

Codification

Pub. L. 102-393, title VI, Sec. 630, Oct. 6, 1990, 106 Stat. 1773, which directed that this title be amended by adding a new section 6962j, relating to a preference for recycled toner cartridges, and which had been executed by adding the provisions of purported new section as subsec. (j) of this section, to reflect the probable intent of Congress, was repealed by Pub. L. 103-355, title I, Sec. 1554(1), Oct. 13, 1994, 108 Stat. 3300. Similar provisions were contained in Pub. L. 103-123, title IV, Sec. 401, Oct. 28, 1993, 107 Stat. 1238, prior to repeal by Pub. L. 103-355, title I, Sec. 1554(2), Oct. 13, 1994, 108 Stat. 3300.

Effective Date Of 1994 Amendment

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of Title 41, Public Contracts.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

Greening The Government Through Waste Prevention

Executive agency heads to develop and implement affirmative procurement programs in accordance with this section and Ex. Ord. No. 13101, and specifications standards, and product descriptions inconsistent with this section or Ex. Ord. No. 13101 to be revised, and guidance for use in determining Federal facility compliance with this section and Ex. Ord. No. 13101 to be prepared with evaluations to be based on this implementing guidance, see Ex. Ord. No. 13101, Secs. 402, 403, 501(a), Sept. 14, 1998, 63 F.R. 49646, 49647, set out as a note under section 6961 of this title.

§6963. [RCRA §6003]

Cooperation with Environmental Protection Agency

(a) General rule

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

(b) Information relating to energy and materials conservation and recovery

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

(Pub. L. 89-272, title II, §6003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2823, and amended Pub. L. 96-482, §32(g), Oct. 21, 1980, 94 Stat. 2355.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6964. [RCRA §6004]

Applicability of solid waste disposal guidelines to Executive agencies

(a) Compliance

(1) If—

(A) an Executive agency (as defined in section 105 of title 5) or any unit of the legislative branch of the Federal Government has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste management activities, or

(B) such an agency enters into a contract with any person for the operation by such person of any Federal property or facility, and the performance of such contract involves such person in solid waste management activities,

then such agency shall insure compliance with the guidelines recommended under section 6907 of this title and the purposes of this chapter in the operation or administration of such property or facility, or the performance of such contract, as the case may be.

(2) Each Executive agency or any unit of the legislative branch of the Federal Government which conducts any activity—

(A) which generates solid waste, and

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

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

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

(4) The President or the Committee on House Oversight of the House of Representatives and the Committee on Rules and Administration of the Senate with regard to any unit of the legislative branch of the Federal Government shall prescribe regulations to carry out this subsection.

(b) Licenses and permits

Each Executive agency which issues any license or permit for disposal of solid waste shall, prior to the issuance of such license or permit, consult with the Administrator to insure compliance with guidelines recommended under section 6907 of this title and the purposes of this chapter.

(Pub. L. 89-272, title II, §6004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2823, and amended Pub. L. 95-609, §7(o), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 96-482, §23, Oct. 21, 1980, 94 Stat. 2347; Pub. L. 104-186, title II, §222(2), Aug. 20, 1996, 110 Stat. 1751.)

Prior Provisions

Provisions similar to those comprising this section were contained in section 3254e of this title, prior to the complete revision of the Solid Waste Disposal Act by Pub. L. 94-580.

Change Of Name

Committee on House Oversight of House of Representatives changed to Committee on House Administration of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6965.

Chief Financial Officer report

The Chief Financial Officer of each affected agency shall submit to Congress an annual report containing, to the extent practicable, a detailed description of the compliance activities undertaken by the agency for mixed waste streams, and an accounting of the fines and penalties imposed on the agency for violations involving mixed waste.

(Pub. L. 102-386, §110, Oct. 6, 1992, 106 Stat. 1516.)

Codification

Section was enacted as part of the Federal Facility Compliance Act of 1992, and not as part of the Solid Waste Disposal Act which comprises this chapter.

§6966.**Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete****(a) Definitions**

In this section:

(1) Agency head

The term "agency head" means—

- (A) the Secretary of Transportation; and
- (B) the head of any other Federal agency that, on a regular basis, procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) Cement or concrete project

The term "cement or concrete project" means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

- (A) involves the procurement of cement or concrete; and
- (B) is carried out, in whole or in part, using Federal funds.

(3) Recovered mineral component

The term "recovered mineral component" means—

- (A) ground granulated blast furnace slag, excluding lead slag;
- (B) coal combustion fly ash; and
- (C) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) Implementation of requirements**(1) In general**

Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

(2) Priority

In carrying out paragraph (1), an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) Federal procurement requirements

The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

(c) Full implementation study**(1) In general**

The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

(2) Matters to be addressed

The study shall—

(A) quantify—

- (i) the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of procurement requirements; and

- (ii) the energy savings and environmental benefits associated with the substitution;

- (B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from the law; and

(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

(3) Report

Not later than 30 months after the date of enactment of this section, the Administrator shall submit to Congress a report on the study.

(d) Additional procurement requirements

Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the date on which the report under subsection (c)(3) is submitted, take additional actions under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of recovered mineral component in the construction and maintenance of cement or concrete projects—

- (1) to realize more fully the energy savings and environmental benefits associated with increased substitution; and
- (2) to eliminate barriers identified under subsection (c)(2)(B).

(e) Effect of section

Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).

(Pub. L. 89-272, title II, §6005, as added Pub. L. 109-58, title I, §108(a), Aug. 8, 2005, 119 Stat. 612).

References In Text

August 8, 2005, referred to in subsecs. (b)(1) and (c)(3), originally read "the date of enactment of this section", meaning the date of enactment of Pub. L. 109-58, Aug. 8, 2005, 119 Stat. 594, which enacted this section on Aug. 8, 2005.

Codification

Another section 6005 of Pub. L. 89-272 was enacted by Pub. L. 109-59, §6017(a), as is classified to 42 U.S.C. 6966a.

§6966a.**Increased use of recovered mineral component in federally funded projects involving procurement of cement or concrete****(a) Definitions**

In this section:

(1) Agency head

The term "agency head" means—

- (A) the Secretary of Transportation; and
- (B) the head of each other Federal agency that on a regular basis procures, or provides Federal funds to pay or assist in paying the cost of procuring, material for cement or concrete projects.

(2) Cement or concrete project

The term "cement or concrete project" means a project for the construction or maintenance of a highway or other transportation facility or a Federal, State, or local government building or other public facility that—

- (A) involves the procurement of cement or concrete; and
- (B) is carried out in whole or in part using Federal funds.

(3) Recovered mineral component

The term "recovered mineral component" means—

- (A) ground granulated blast furnace slag, excluding lead slag;
- (B) coal combustion fly ash;
- (C) blast furnace slag aggregate other than lead slag aggregate;
- (D) silica fume; and
- (E) any other waste material or byproduct recovered or diverted from solid waste that the Administrator, in consultation with an agency head, determines should be treated as recovered

mineral component under this section for use in cement or concrete projects paid for, in whole or in part, by the agency head.

(b) Implementation of requirements

(1) In general

Not later than 1 year after the date of enactment of this section, the Administrator and each agency head shall take such actions as are necessary to implement fully all procurement requirements and incentives in effect as of the date of enactment of this section (including guidelines under section 6002) that provide for the use of cement and concrete incorporating recovered mineral component in cement or concrete projects.

(2) Priority

In carrying out paragraph (1) an agency head shall give priority to achieving greater use of recovered mineral component in cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally.

(3) Conformance

The Administrator and each agency head shall carry out this subsection in accordance with section 6002.

(c) Full implementation study

(1) In general

The Administrator, in cooperation with the Secretary of Transportation and the Secretary of Energy, shall conduct a study to determine the extent to which procurement requirements, when fully implemented in accordance with subsection (b), may realize energy savings and environmental benefits attainable with substitution of recovered mineral component in cement used in cement or concrete projects.

(2) Matters to be addressed

The study shall—

(A) quantify the extent to which recovered mineral components are being substituted for Portland cement, particularly as a result of current procurement requirements, and the energy savings and environmental benefits associated with that substitution;

(B) identify all barriers in procurement requirements to greater realization of energy savings and environmental benefits, including barriers resulting from exceptions from current law; and

(C)(i) identify potential mechanisms to achieve greater substitution of recovered mineral component in types of cement or concrete projects for which recovered mineral components historically have not been used or have been used only minimally;

(ii) evaluate the feasibility of establishing guidelines or standards for optimized substitution rates of recovered mineral component in those cement or concrete projects; and

(iii) identify any potential environmental or economic effects that may result from greater substitution of recovered mineral component in those cement or concrete projects.

(3) Report

Not later than 30 months after the date of enactment of this section, the Administrator shall submit to Congress a report on the study.

(d) Additional procurement requirements

Unless the study conducted under subsection (c) identifies any effects or other problems described in subsection (c)(2)(C)(iii) that warrant further review or delay, the Administrator and each agency head shall, not later than 1 year after the release of the report in accordance with subsection (c)(3), take additional actions authorized under this Act to establish procurement requirements and incentives that provide for the use of cement and concrete with increased substitution of re-

covered mineral component in the construction and maintenance of cement or concrete projects, so as to—

- (1) realize more fully the energy savings and environmental benefits associated with increased substitution; and
- (2) eliminate barriers identified under subsection (c).

(e) Effect of section

Nothing in this section affects the requirements of section 6002 (including the guidelines and specifications for implementing those requirements).

(Pub. L. 89-272, title II, §6005, as added Pub. L. 109-59, title VI, §6017(a), Aug. 10, 2005, 119 Stat. 1888.)

Codification

Another section 6005 of Pub. L. 89-272 was enacted by Pub. L. 109-58, §108(a), and is classified to 42 U.S.C. 6966.

§6966b.

Use of granular mine tailings

(a) Mine tailings

(1) In general

Not later than 180 days after the date of enactment of this section, the Administrator, in consultation with the Secretary of Transportation and heads of other Federal agencies, shall establish criteria (including an evaluation of whether to establish a numerical standard for concentration of lead and other hazardous substances) for the safe and environmentally protective use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as “chat”, for—

- (A) cement or concrete projects; and
- (B) transportation construction projects (including transportation construction projects involving the use of asphalt) that are carried out, in whole or in part, using Federal funds.

(2) Requirements

In establishing criteria under paragraph (1), the Administrator shall consider—

- (A) the current and previous uses of granular mine tailings as an aggregate for asphalt; and
- (B) any environmental and public health risks and benefits derived from the removal, transportation, and use in transportation projects of granular mine tailings.

(3) Public participation

In establishing the criteria under paragraph (1), the Administrator shall solicit and consider comments from the public.

(4) Applicability of criteria

On the establishment of the criteria under paragraph (1), any use of the granular mine tailings described in paragraph (1) in a transportation project that is carried out, in whole or in part, using Federal funds, shall meet the criteria established under paragraph (1).

(b) Effect of sections

Nothing in this section or section 6005 affects any requirement of any law (including a regulation) in effect on the date of enactment of this section.

(Pub. L. 89-272, title II, §6006, as added, Pub. L. 109-59, title VI, §6018(a), Aug. 10, 2005, 119 Stat. 1890.)

References In Text

Section 6966a of this title, referred to in subsec. (b), and which originally read “section 6005”, meaning Pub. L. 89-272, title I, §6005, was translated as meaning the section 6005 of Pub. L. 89-272 as added by Pub. L. 108-59, §6017(a) and not the section 6005 of Pub. L. 89-272 as added by Pub. L. 109-58, §108(a), which is classified to 42 U.S.C. 6966, because of the proximity of the reference to the section 6005 as added by Pub. L. 109-59.

Subchapter VII—Miscellaneous Provisions

§6971. [RCRA §7001]

Employee protection

(a) General

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

(b) Remedy

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

(c) Costs

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

(d) Exception

This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any requirement of this chapter.

(e) Employment shifts and loss

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provisions of this chapter and applicable implementation plans, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and on any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any

such hearing shall be of record and shall be subject to section 554 of title 5. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator or any State to modify or withdraw any standard, limitation, or any other requirement of this chapter or any applicable implementation plan.

(f) Occupational safety and health

In order to assist the Secretary of Labor and the Director of the National Institute for Occupational Safety and Health in carrying out their duties under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Administrator shall—

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

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

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

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

(2) notify the Secretary and the Director of the Administrator's receipt of notifications under section 6930 or reports under sections 6922, 6923, and 6924 of this title and make such notifications and reports available to the Secretary and the Director.

(Pub. L. 89-272, title II, §7001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2824, and amended Pub. L. 96-482, §24, Oct. 21, 1980, 94 Stat. 2347.)

References In Text

The Occupational Safety and Health Act of 1970, referred to in subsec. (f), is Pub. L. 91-596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (Sec. 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6972. [RCRA §7002]

Citizen suits

(a) In general

Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

(1)(A) against any person (including (a) the United States, and

(b) any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter; or

(B) against any person, including the United States and any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution, and including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment; or

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

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation oc-

curred or the alleged endangerment may occur. Any action brought under paragraph (a)(2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the permit, standard, regulation, condition, requirement, prohibition, or order, referred to in paragraph (1)(A), to restrain any person who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in paragraph (1)(B), to order such person to take such other action as may be necessary, or both, or to order the Administrator to perform the act or duty referred to in paragraph (2), as the case may be, and to apply any appropriate civil penalties under section 6928(a) and (g) of this title.

(b) Actions prohibited

(1) No action may be commenced under subsection (a)(1)(A) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation to—

(i) the Administrator;

(ii) the State in which the alleged violation occurs; and

(iii) to any alleged violator of such permit, standard, regulation, condition, requirement, prohibition, or order, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter; or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, prohibition, or order.

In any action under subsection (a)(1)(A) of this section in a court of the United States, any person may intervene as a matter of right.

(2)(A) No action may be commenced under subsection (a)(1)(B) of this section prior to ninety days after the plaintiff has given notice of the endangerment to—

(i) the Administrator;

(ii) the State in which the alleged endangerment may occur;

(iii) any person alleged to have contributed or to be contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste referred to in subsection (a)(1)(B) of this section,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter.

(B) No action may be commenced under subsection (a)(1)(B) of this section if the Administrator, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment—

(i) has commenced and is diligently prosecuting an action under section 6973 of this title or under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606),³¹

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604);

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604) and is diligently proceeding with a remedial action under that Act (42 U.S.C. 9601 et seq.); or

(iv) has obtained a court order (including a consent decree) or issued an administrative order under section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 980³² (42 U.S.C. 9606) or section 6973 of this title pursuant to which a responsible party is diligently

conducting a removal action, Remedial Investigation and Feasibility Study (RIFS), or proceeding with a remedial action.

In the case of an administrative order referred to in clause (iv), actions under subsection (a)(1)(B) of this section are prohibited only as to the scope and duration of the administrative order referred to in clause (iv).

(C) No action may be commenced under subsection (a)(1)(B) of this section if the State, in order to restrain or abate acts or conditions which may have contributed or are contributing to the activities which may present the alleged endangerment—

(i) has commenced and is diligently prosecuting an action under subsection (a)(1)(B) of this section;

(ii) is actually engaging in a removal action under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604); or

(iii) has incurred costs to initiate a Remedial Investigation and Feasibility Study under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604) and is diligently proceeding with a remedial action under that Act (42 U.S.C. 9601 et seq.).

(D) No action may be commenced under subsection (a)(1)(B) of this section by any person (other than a State or local government) with respect to the siting of a hazardous waste treatment, storage, or a disposal facility, nor to restrain or enjoin the issuance of a permit for such facility.

(E) In any action under subsection (a)(1)(B) of this section in a court of the United States, any person may intervene as a matter of right when the applicant claims an interest relating to the subject of the action and he is so situated that the disposition of the action may, as a practical matter, impair or impede his ability to protect that interest, unless the Administrator or the State shows that the applicant's interest is adequately represented by existing parties.

(F) Whenever any action is brought under subsection (a)(1)(B) of this section in a court of the United States, the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and with the Administrator.

(c) Notice

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

(d) Intervention

In any action under this section the Administrator, if not a party, may intervene as a matter of right.

(e) Costs

The court, in issuing any final order in any action brought pursuant to this section or section 6976 of this title, may award costs of litigation (including reasonable attorney and expert witness fees) to the prevailing or substantially prevailing party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(f) Other rights preserved

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

31. So in original. The comma probably should be a semicolon.

32. So in original. Probably should be "1980".

(g) Transporters

A transporter shall not be deemed to have contributed or to be contributing to the handling, storage, treatment, or disposal, referred to in subsection (a)(1)(B) of this section taking place after such solid waste or hazardous waste has left the possession or control of such transporter, if the transportation of such waste was under a sole contractual arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation and disposal of such waste.

(Pub. L. 89-272, title II, §7002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2825, and amended Pub. L. 95-609, §7(p), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 98-616, title IV, §401, Nov. 8, 1984, 98 Stat. 3268.)

References in Text

That Act, referred to in subsec. (b)(2)(B)(iii), (C)(iii), means Pub. L. 96-510, Dec. 11, 1980, 94 Stat. 2767, as amended, known as the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified principally to chapter 103 (Sec. 9601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 9601 of this title and Tables.

The Federal Rules of Civil Procedure, referred to in subsec. (e), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6973. [RCRA §7003]**Imminent hazard****(a) Authority of Administrator**

Notwithstanding any other provision of this chapter, upon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or who is contributing to such handling, storage, treatment, transportation or disposal to restrain such person from such handling, storage, treatment, transportation, or disposal, to order such person to take such other action as may be necessary, or both. A transporter shall not be deemed to have contributed or to be contributing to such handling, storage, treatment, or disposal taking place after such solid waste or hazardous waste has left the possession or control of such transporter if the transportation of such waste was under a sole contractual¹³³ arrangement arising from a published tariff and acceptance for carriage by common carrier by rail and such transporter has exercised due care in the past or present handling, storage, treatment, transportation, and disposal of such waste. The Administrator shall provide notice to the affected State of any such suit. The Administrator may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

(b) Violations

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

(c) Immediate notice

Upon receipt of information that there is hazardous waste at any site which has presented an imminent and substantial endangerment to human health or the environment, the Administrator shall provide immediate notice to the appropriate local government agencies. In addition, the Administrator shall require notice of such endangerment to be promptly posted at the site where the waste is located.

(d) Public participation in settlements

Whenever the United States or the Administrator proposes to covenant not to sue or to forbear from suit or to settle any claim arising under this section, notice, and opportunity for a public meeting in the affected area, and a reasonable opportunity to comment on the proposed settlement prior to its final entry shall be afforded to the public. The decision of the United States or the Administrator to enter into or not to enter into such Consent Decree, covenant or agreement shall not constitute a final agency action subject to judicial review under this chapter or chapter 7 of title 5.

(Pub. L. 89-272, title II, §7003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2826, and amended Pub. L. 95-609, §7(q), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 96-482, §25, Oct. 21, 1980, 94 Stat. 2348; Pub. L. 98-616, title IV, §§402, 403(a), 404, Nov. 8, 1984, 98 Stat. 3271, 3273.)

Codification

In subsec. (d), “chapter 7 of title 5” substituted for “the Administrative Procedure Act” on authority of Pub. L. 89-554, Sec. 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6974. [RCRA §7004]**Petition for regulations; public participation****(a) Petition**

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

(b) Public participation

(1) Public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under this chapter shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish minimum guidelines for public participation in such processes.

(2) Before the issuing of a permit to any person with any respect to any facility for the treatment, storage, or disposal of hazardous wastes under section 6925 of this title, the Administrator shall—

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

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

If within 45 days the Administrator receives written notice of opposition to the agency's intention to issue such permit and a request for a hearing, or if the Administrator determines on his own initiative, he shall hold an informal public hearing (including an opportunity for presentation of written and oral views) on whether he should issue a permit for the proposed facility. Whenever possible the Administrator shall schedule such hearing at a location convenient to the nearest population center to such proposed facility and give notice in the aforementioned manner of the date, time, and subject matter of such hearing. No State program which provides for the issuance of permits referred to in this paragraph may be authorized by the Administrator under section 6926 of this title unless such program provides for the notice and hearing required by the paragraph.

(Pub. L. 89-272, title II, §7004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2826, and amended Pub. L. 96-482, §26, Oct. 21, 1980, 94 Stat. 2348.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of

33. So in original. Probably should be “contractual”.

Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6975. [RCRA §7005]

Separability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter, shall not be affected thereby.

(Pub. L. 89-272, title II, §7005, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2827.)

§6976. [RCRA §7006]

Judicial review

(a) Review of final regulations and certain petitions

Any judicial review of final regulations promulgated pursuant to this chapter and the Administrator's denial of any petition for the promulgation, amendment, or repeal of any regulation under this chapter shall be in accordance with sections 701 through 706 of title 5, except that—

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

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

(b) Review of certain actions under sections 6925 and 6926 of this title

Review of the Administrator's action (1) in issuing, denying, modifying, or revoking any permit under section 6925 of this title (or in modifying or revoking any permit which is deemed to have been issued under section 6935(d)(1)³⁴ of this title), or (2) in granting, denying, or withdrawing authorization or interim authorization under section 6926 of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts such business upon application by such person. Any such application shall be made within ninety days from the date of such issuance, denial, modification, revocation, grant, or withdrawal, or after such date only if such application is based solely on grounds which arose after such ninetieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement. Such review shall be in accordance with sections 701 through 706 of title 5.

(Pub. L. 89-272, title II, §7006, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2827, and amended Pub. L. 96-482, §27, Oct. 21, 1980, 94 Stat. 2349;

34. See References in Text note below.

35. See References in Text note below.

Pub. L. 98-616, title II, §241(b)(1), title IV, §403(d)(5), Nov. 8, 1984, 98 Stat. 3259, 3273.)

References in Text

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89-272, which was renumbered section 3014(d)(1) of Pub. L. 89-272 by Pub. L. 98-616 and is classified to section 6935(d)(1) of this title.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6977. [RCRA §7007]

Grants or contracts for training projects

(a) General authority

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

(b) Purposes

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

(A) to develop, expand, or carry out a program (which may combine training, education, and employment) for training persons for occupations involving the management, supervision, design, operation, or maintenance of solid waste management and resource recovery equipment and facilities; or

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

(2) A grant or contract authorized by paragraph (1) of this subsection may be made only upon application to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it provides for the same procedures and reports (and access to such reports and to other records) as required by section 3254a(b)(4) and (5)³⁵ of this title (as in effect before October 21, 1976) with respect to applications made under such section (as in effect before October 21, 1976).

(Pub. L. 89-272, title II, §7007, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2827, and amended Pub. L. 95-609, §7(r), Nov. 8, 1978, 92 Stat. 3083; Pub. L. 105-362, title V, §501(f), Nov. 10, 1998, 112 Stat. 3284.)

References in Text

Section 3254a(b)(4) and (5) of this title, referred to in subsec. (b)(2), was in the original "section 207(b)(4) and (5)", meaning section 207(b)(4) and (5) of the Solid Waste Disposal Act, which was omitted in the general revision of the Solid Waste Disposal Act by Pub. L. 94-580 on Oct. 21, 1976.

Prior Provisions

Provisions similar to those comprising this section were contained in section 3254d of this title, prior to the complete revision of the Solid Waste Disposal Act by Pub. L. 94-580.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6978. [RCRA §7008]

Payments

(a) General rule

Payments of grants under this chapter may be made (after necessary adjustment on account of previously made underpayments or over-

payments) in advance or by way of reimbursement, and in such installations and on such conditions as the Administrator may determine.

(b) Prohibition

No grant may be made under this chapter to any private profitmaking organization.

(Pub. L. 89-272, title II, §7008, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2828.)

Prior Provisions

Provisions similar to those comprising this section were contained in section 3258 of this title, prior to the complete revision of the Solid Waste Disposal Act by Pub. L. 94-580.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6979. [RCRA §7009]

Labor standards

No grant for a project of construction under this chapter shall be made unless the Administrator finds that the application contains or is supported by reasonable assurance that all laborers and mechanics employed by contractors or subcontractors on projects of the type covered by sections 3141-3144, 3146, and 3147 of title 40, will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with those sections; and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176) and section 3145 of title 40.

(Pub. L. 89-272, title II, §7009, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2828, and amended Pub. L. 96-482, §28, Oct. 21, 1980, 94 Stat. 2349.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

References In Text

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

Codification

In text, “sections 3141-3144, 3146, and 3147 of title 40” substituted for “the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5)”, “those sections” substituted for “that Act”, and “section 3145 of title 40” substituted for “section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c)”, on authority of Pub. L. 107-217, Sec. 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Prior Provisions

Provisions similar to those comprising this section were contained in section 3256 of this title, prior to the complete revision of the Solid Waste Disposal Act by Pub. L. 94-580.

§6979a.

Transferred

Codification

Section, Pub. L. 89-272, title II, Sec. 7010, as added Pub. L. 98-616, title IV, Sec. 405(a), Nov. 8, 1984, 98 Stat. 3273, Pub. L. 99-339, title II, Sec. 201(c)(1), June 19, 1986, 100 Stat. 654, relating to interim control of hazardous waste injection, was renumbered section 3020 of Pub. L. 89-272 by Pub. L. 99-339, title II, Sec. 201(c)(2), June 19, 1986, 100 Stat. 654, and transferred to section 6939b of this title.

§6979b. [RCRA §7012]

Law enforcement authority

The Attorney General of the United States shall, at the request of the Administrator and on the basis of a showing of need, deputize qualified employees of the Environmental Protection Agency to serve as special deputy United States marshals in criminal investigations with respect to violations of the criminal provisions of this chapter.

(Pub. L. 89-272, title II, §7010, formerly §7012, as added Pub. L. 98-616, title IV, §403(b)(1), Nov. 8, 1984, 98 Stat. 3272; renumbered §7010, Pub. L. 99-339, title II, §201(c)(2), June 19, 1986, 100 Stat. 654.)

Prior Provisions

A prior section 7010 of Pub. L. 89-272, which was classified to section 6979a of this title, was renumbered section 3020 of Pub. L. 89-272 by Pub. L. 99-339, and transferred to section 6939b of this title.

Subchapter VIII—Research, Development, Demonstration, and Information

§6981. [RCRA §8001]

Research, demonstration, training, and other activities

(a) General authority

The Administrator, alone or after consultation with the Secretary of Energy, shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to—

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

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

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

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

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

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

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

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

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

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

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

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

(13) any adverse effects on air quality (particularly with regard to the emission of heavy metals) which result from solid waste which is burned (either alone or in conjunction with other substances) for purposes of treatment, disposal or energy recovery.

(b) Management program

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

(B) The Administrator shall (i) assist, on the basis of any research projects which are developed with assistance under this chapter or without Federal assistance, the construction of pilot plant facilities for the purpose of investigating or testing the technological feasibility of any promising new fuel, energy, or resource recovery or re-

source conservation method or technology; and (ii) demonstrate each such method and technology that appears justified by an evaluation at such pilot plant stage or at a pilot plant stage developed without Federal assistance. Each such demonstration shall incorporate new or innovative technical advances or shall apply such advances to different circumstances and conditions, for the purpose of evaluating design concepts or to test the performance, efficiency, and economic feasibility of a particular method or technology under actual operating conditions. Each such demonstration shall be so planned and designed that, if successful, it can be expanded or utilized directly as a full-scale operational fuel, energy, or resource recovery or resource conservation facility.

(2) Any energy-related research, development, or demonstration project for the conversion including bioconversion, of solid waste carried out by the Environmental Protection Agency or by the Secretary of Energy pursuant to this chapter or any other Act shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy from Solid Wastes and specifically, that in accordance with this agreement, (A) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Secretary of Energy, following which project responsibility will be assigned to one agency; (B) energy-related portions of projects for recovery of synthetic fuels or other forms of energy from solid waste shall be the responsibility of the Secretary of Energy; (C) the Environmental Protection Agency shall retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines published pursuant to section 6907 of this title, and any applicable State or regional solid waste management plan; and (D) any activities undertaken under provisions of sections 6982 and 6983 of this title as related to energy; as related to energy or synthetic fuels recovery from waste; or as related to energy conservation shall be accomplished through coordination and consultation with the Secretary of Energy.

(c) Authorities

(1) In carrying out subsection (a) of this section respecting solid waste research, studies, development, and demonstration, except as otherwise specifically provided in section 6984(d) of this title, the Administrator may make grants to or enter into contracts (including contracts for construction) with, public agencies and authorities or private persons.

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

(3) Any invention made or conceived in the course of, or under, any contract under this chapter shall be subject to section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908) to the same extent and in the same manner as inventions made or conceived in the course of contracts under such Act (42 U.S.C. 5901 et seq.), except that in applying such section, the Environmental Protection Agency shall be substituted for the Secretary of Energy and the words "solid waste" shall be substituted for the word "energy" where appropriate.

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

(Pub. L. 89-272, title II, §8001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2829, and amended Pub. L. 95-91, title III, §301, title VII, §§703, 707, Aug. 4, 1977, 91 Stat. 577, 606, 607; Pub. L. 95-609, §7(s), Nov. 8, 1978, 92 Stat. 3083.)

References in Text

Such Act, referred to in subsec. (c)(3), means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1878,

as amended, which is classified generally to chapter 74 (Sec. 5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

Transfer Of Functions

“Secretary of Energy” was substituted for “Administrator of the Federal Energy Administration, the Administrator of the Energy Research and Development Administration, or the Chairman of the Federal Power Commission” in subsec. (a), and for “Energy Research and Development Administration” in subsecs. (b)(2) and (c)(3), in view of the termination of the Federal Energy Administration, the Energy Research and Development Administration, and the Federal Power Commission and the transfer of their functions and the functions of the Administrators and Chairman thereof (with certain exceptions) to the Secretary of Energy pursuant to sections 301, 703, and 707 of Pub. L. 95-91, which are classified to sections 7151, 7293, and 7297 of this title.

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

Prior Provisions

Provisions similar to those comprising this section were contained in section 3253 of this title, prior to the complete revision of the Solid Waste Disposal Act by Pub. L. 94-580.

EPA Study of Methods to Reduce Plastic Pollution

Pub. L. 100-220, title II, Sec. 2202, Dec. 29, 1987, 101 Stat. 1465, directed Administrator of Environmental Protection Agency, in consultation with Secretary of Commerce, to conduct a study of the adverse effects of improper disposal of plastic articles on environment and on waste disposal, and various methods to reduce or eliminate such adverse effects, and directed Administrator, within 18 months after Dec. 29, 1987, to report results of this study to Congress.

National Advisory Commission on Resource Conservation and Recovery

Pub. L. 96-482, Sec. 33, Oct. 21, 1980, 94 Stat. 2356, as amended by Pub. L. 105-362, title V, Sec. 501(g), Nov. 10, 1998, 112 Stat. 3284, provided for establishment, membership, functions, etc., of a National Advisory Commission on Resource Conservation and Recovery, directed Commission, upon expiration of the two-year period beginning on the date when all initial members of the Commission have been appointed or the date initial funds become available, whichever is later, to transmit a final report to President and Congress containing a detailed statement of the findings and conclusions of the Commission, and terminated the Commission 30 days after submission of its final report.

Solid Waste Cleanup on Federal Lands in Alaska; Study and Report to Congressional Committees

Section 3 of Pub. L. 94-580, which provided for a study of procedures for removal of solid waste from Federal lands in Alaska and submission of a Presidential Report to the Senate Committee on Public Lands and House Committee on Interstate and Foreign Commerce no later than one year after Oct. 21, 1976, and implementing recommendations to such committees within six months thereafter, was repealed by Pub. L. 96-482, Sec. 30, Oct. 21, 1980, 94 Stat. 2352.

Leachate Control Research Program In Delaware

Section 4 of Pub. L. 94-580 directed Administrator of Environmental Protection Agency, in order to demonstrate effective means of dealing with contamination of public water supplies by leachate from abandoned or other landfills, to provide technical and financial assistance for a research program, designed by New Castle County areawide waste treatment management program, to control leachate from Llangollen Landfill in New Castle County, Delaware, and provided up to \$250,000 in each of the fiscal years 1978 and 1979 for the operating costs of a counter-pumping program to contain the leachate from the Llangollen Landfill during the period of this study.

§6982. [RCRA §8002]

Special studies; plans for research, development, and demonstrations

(a) Glass and plastic

The Administrator shall undertake a study and publish a report on resource recovery from glass and plastic waste, including a scientific, technological, and economic investigation of potential solutions to implement such recovery.

(b) Composition of waste stream

The Administrator shall undertake a systematic study of the composition of the solid waste stream and of anticipated future changes in the composition of such stream and shall publish a report containing the results of such study and quantitatively evaluating the potential utility of such components.

(c) Priorities study

For purposes of determining priorities for research on recovery of materials and energy from solid waste and developing materials and energy recovery research, development, and demonstration strategies, the Administrator shall review, and make a study of, the various existing and promising techniques of energy recovery from solid waste (in-

cluding, but not limited to, waterwall furnace incinerators, dry shredded fuel systems, pyrolysis, densified refuse-derived fuel systems, anaerobic digestion, and fuel and feedstock preparation systems). In carrying out such study the Administrator shall investigate with respect to each such technique—

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

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

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

(d) Small-scale and low technology study

The Administrator shall undertake a comprehensive study and analysis of, and publish a report on, systems of small-scale and low technology solid waste management, including household resource recovery and resource recovery systems which have special application to multiple dwelling units and high density housing and office complexes. Such study and analysis shall include an investigation of the degree to which such systems could contribute to energy conservation.

(e) Front-end source separation

The Administrator shall undertake research and studies concerning the compatibility of front-end source separation systems with high technology resource recovery systems and shall publish a report containing the results of such research and studies.

(f) Mining waste

The Administrator, in consultation with the Secretary of the Interior, shall conduct a detailed and comprehensive study on the adverse effects of solid wastes from active and abandoned surface and underground mines on the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources, and on the adequacy of means and measures currently employed by the mining industry, Government agencies, and others to dispose of and utilize such solid wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

(1) the sources and volume of discarded material generated per year from mining;

(2) present disposal practices;

(3) potential dangers to human health and the environment from surface runoff of leachate and air pollution by dust;

(4) alternatives to current disposal methods;

(5) the cost of those alternatives in terms of the impact on mine product costs; and

(6) potential for use of discarded material as a secondary source of the mine product.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. Not later than thirty-six months after October 21, 1980, the Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(g) Sludge

The Administrator shall undertake a comprehensive study and publish a report on sludge. Such study shall include an analysis of—

(1) what types of solid waste (including but not limited to sewage and pollution treatment residues and other residues from industrial operations such as extraction of oil from shale, liquefaction and gasification of coal and coal slurry pipeline operations) shall be classified as sludge;

(2) the effects of air and water pollution legislation on the creation of large volumes of sludge;

(3) the amounts of sludge originating in each State and in each industry producing sludge;

(4) methods of disposal of such sludge, including the cost, efficiency, and effectiveness of such methods;

(5) alternative methods for the use of sludge, including agricultural applications of sludge and energy recovery from sludge; and

(6) methods to reclaim areas which have been used for the disposal of sludge or which have been damaged by sludge.

(h) Tires

The Administrator shall undertake a study and publish a report respecting discarded motor vehicle tires which shall include an analysis of the problems involved in the collection, recovery of resources including energy, and use of such tires.

(i) Resource recovery facilities

The Administrator shall conduct research and report on the economics of, and impediments, to the effective functioning of resource recovery facilities.

(j) Resource Conservation Committee

(1) The Administrator shall serve as Chairman of a Committee composed of himself, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Council on Environmental Quality, the Secretary of Treasury, the Secretary of the Interior, the Secretary of Energy, the Chairman of the Council of Economic Advisors, and a representative of the Office of Management and Budget, which shall conduct a full and complete investigation and study of all aspects of the economic, social, and environmental consequences of resource conservation with respect to—

(A) the appropriateness of recommended incentives and disincentives to foster resource conservation;

(B) the effect of existing public policies (including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives) upon resource conservation, and the likely effect of the modification or elimination of such incentives and disincentives upon resource conservation;

(C) the appropriateness and feasibility of restricting the manufacture or use of categories of consumer products as a resource conservation strategy;

(D) the appropriateness and feasibility of employing as a resource conservation strategy the imposition of solid waste management charges on consumer products, which charges would reflect the costs of solid waste management services, litter pickup, the value of recoverable components of such product, final disposal, and any social value associated with the nonrecycling or uncontrolled disposal of such product; and

(E) the need for further research, development, and demonstration in the area of resource conservation.

(2) The study required in paragraph (1)(D) may include pilot scale projects, and shall consider and evaluate alternative strategies with respect to—

(A) the product categories on which such charges would be imposed;

(B) the appropriate rate in the production of such consumer product at which to levy such charge;

(C) appropriate criteria for establishing such charges for each consumer product category;

(D) methods for the adjustment of such charges to reflect actions such as recycling which would reduce the overall quantities of solid waste requiring disposal; and

(E) procedures for amending, modifying, or revising such charges to reflect changing conditions.

(3) The design for the study required in paragraph (1) of this subsection shall include timetables for the completion of the study. A preliminary report putting forth the study design shall be sent to the President and the Congress within six months following October 21, 1976, and followup reports shall be sent six months thereafter. Each recommendation resulting from the study shall include at least two alternatives to the proposed recommendation.

(4) The results of such investigation and study, including recommendations, shall be reported to the President and the Congress not later than two years after October 21, 1976.

(5) There are authorized to be appropriated not to exceed \$2,000,000 to carry out this subsection.

(k) Airport landfills

The Administrator shall undertake a comprehensive study and analysis of and publish a report on systems to alleviate the hazards to aviation from birds congregating and feeding on landfills in the vicinity of airports.

(l) Completion of research and studies

The Administrator shall complete the research and studies, and submit the reports, required under subsections (b), (c), (d), (e), (f), (g), and (k) of this section not later than October 1, 1978. The Administrator shall complete the research and studies, and submit the reports, required under subsections (a), (h), and (i) of this section not later than October 1, 1979. Upon completion, each study specified in subsections (a) through (k) of this section, the Administrator shall prepare a plan for research, development, and demonstration respecting the findings of the study and shall submit any legislative recommendations resulting from such study to appropriate committees of Congress.

(m) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy

(1) The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects, if any, of drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy on human health and the environment, including, but not limited to, the effects of such wastes on humans, water, air, health, welfare, and natural resources and on the adequacy of means and measures currently employed by the oil and gas and geothermal drilling and production industry, Government agencies, and others to dispose of and utilize such wastes and to prevent or substantially mitigate such adverse effects. Such study shall include an analysis of—

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

(B) present disposal practices;

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

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

(E) alternatives to current disposal methods;

(F) the cost of such alternatives; and

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

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal agencies concerning such wastes with a view toward avoiding duplication of effort and the need to expedite such study. The Administrator shall publish a report of such study and shall include appropriate findings and recommendations for Federal and non-Federal actions concerning such effects.

(2) The Administrator shall complete the research and study and submit the report required under paragraph (1) not later than twenty-four months from October 21, 1980. Upon completion of the study, the Administrator shall prepare a summary of the findings of the study, a plan for research, development, and demonstration respecting the findings of the study, and shall submit the findings and the study, along with any recommendations resulting from such study, to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

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

(n) Materials generated from the combustion of coal and other fossil fuels

The Administrator shall conduct a detailed and comprehensive study and submit a report on the adverse effects on human health and the environment, if any, of the disposal and utilization of fly ash waste, bottom ash waste, slag waste, flue gas emission control waste, and

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

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

- (8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such material and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report on such study, which shall include appropriate findings, not later than twenty-four months after October 21, 1980. Such study and findings shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(o) Cement kiln dust waste

The Administrator shall conduct a detailed and comprehensive study of the adverse effects on human health and the environment, if any, of the disposal of cement kiln dust waste. Such study shall include an analysis of—

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

- (8) the current and potential utilization of such materials.

In furtherance of this study, the Administrator shall, as he deems appropriate, review studies and other actions of other Federal and State agencies concerning such waste or materials and invite participation by other concerned parties, including industry and other Federal and State agencies, with a view toward avoiding duplication of effort. The Administrator shall publish a report of such study, which shall include appropriate findings, not later than thirty-six months after October 21, 1980. Such report shall be submitted to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives.

(p) Materials generated from extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from uranium mining

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

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

- (8) the current and potential utilization of such materials.

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

(q) Authorization of appropriations

There are authorized to be appropriated not to exceed \$8,000,000 for the fiscal years 1978 and 1979 to carry out this section other than subsection (j) of this section.

(r) Minimization of hazardous waste

The Administrator shall compile, and not later than October 1, 1986, submit to the Congress, a report on the feasibility and desirability of establishing standards of performance or of taking other additional actions under this chapter to require the generators of hazardous waste to reduce the volume or quantity and toxicity of the hazardous waste they generate, and of establishing with respect to hazardous wastes required management practices or other requirements to assure such wastes are managed in ways that minimize present and future risks to human health and the environment. Such report shall include any recommendations for legislative changes which the Administrator determines are feasible and desirable to implement the national policy established by section 6902 of this title.

(s) Extending landfill life and reusing landfilled areas

The Administrator shall conduct detailed, comprehensive studies of methods to extend the useful life of sanitary landfills and to better use sites in which filled or closed landfills are located. Such studies shall address—

- (1) methods to reduce the volume of materials before placement in landfills;
- (2) more efficient systems for depositing waste in landfills;
- (3) methods to enhance the rate of decomposition of solid waste in landfills, in a safe and environmentally acceptable manner;
- (4) methane production from closed landfill units;
- (5) innovative uses of closed landfill sites, including use for energy production such as solar or wind energy and use for metals recovery;
- (6) potential for use of sewage treatment sludge in reclaiming landfilled areas; and
- (7) methods to coordinate use of a landfill owned by one municipality by nearby municipalities, and to establish equitable rates for such use, taking into account the need to provide future landfill capacity to replace that so used.

The Administrator is authorized to conduct demonstrations in the areas of study provided in this subsection. The Administrator shall periodically report on the results of such studies, with the first such report not later than October 1, 1986. In carrying out this subsection, the Administrator need not duplicate other studies which have been completed and may rely upon information which has previously been compiled.

(Pub. L. 89-272, title II, §8002, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2831, and amended Pub. L. 95-609, §7(t), Nov. 8, 1978, 92 Stat. 3083; H. Res. 549, Mar. 25, 1980; Pub. L. 96-482, §29, Oct. 21, 1980, 94 Stat. 2349; Pub. L. 98-616, title II, §224(c), title VII, §702, Nov. 8, 1984, 98 Stat. 3253, 3289.)

Change Of Name

Committee on Interstate and Foreign Commerce of the House of Representatives changed to Committee on Energy and Commerce immediately prior to noon on Jan. 3, 1981, by House Resolution No. 549, Ninety-sixth Congress, Mar. 25, 1980. Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Finan-

cial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6983. [RCRA §8003]

Coordination, collection, and dissemination of information

(a) Information

The Administrator shall develop, collect, evaluate, and coordinate information on—

(1) methods and costs of the collection of solid waste; (2) solid waste management practices, including data on the different management methods and the cost, operation, and maintenance of such methods;

(3) the amounts and percentages of resources (including energy) that can be recovered from solid waste by use of various solid waste management practices and various technologies;

(4) methods available to reduce the amount of solid waste that is generated;

(5) existing and developing technologies for the recovery of energy or materials from solid waste and the costs, reliability, and risks associated with such technologies;

(6) hazardous solid waste, including incidents of damage resulting from the disposal of hazardous solid wastes; inherently and potentially hazardous solid wastes; methods of neutralizing or properly disposing of hazardous solid wastes; facilities that properly dispose of hazardous wastes;

(7) methods of financing resource recovery facilities or, sanitary landfills, or hazardous solid waste treatment facilities, whichever is appropriate for the entity developing such facility or landfill (taking into account the amount of solid waste reasonably expected to be available to such entity);

(8) the availability of markets for the purchase of resources, either materials or energy, recovered from solid waste; and

(9) research and development projects respecting solid waste management.

(b) Library

(1) The Administrator shall establish and maintain a central reference library for (A) the materials collected pursuant to subsection (a) of this section and (B) the actual performance and cost effectiveness records and other data and information with respect to—

(i) the various methods of energy and resource recovery from solid waste,

(ii) the various systems and means of resource conservation, (iii) the various systems and technologies for collection, transport, storage, treatment, and final disposition of solid waste, and

(iv) other aspects of solid waste and hazardous solid waste management.

Such central reference library shall also contain, but not be limited to, the model codes and model accounting systems developed under this section, the information collected under subsection (d) of this section, and, subject to any applicable requirements of confidentiality, information respecting any aspect of solid waste provided by officers and employees of the Environmental Protection Agency which has been acquired by them in the conduct of their functions under this chapter and which may be of value to Federal, State, and local authorities and other persons.

(2) Information in the central reference library shall, to the extent practicable, be collated, analyzed, verified, and published and shall be made available to State and local governments and other persons at reasonable times and subject to such reasonable charges as may be necessary to defray expenses of making such information available.

(c) Model accounting system

In order to assist State and local governments in determining the cost and revenues associated with the collection and disposal of solid waste and with resource recovery operations, the Administrator shall develop and publish a recommended model cost and revenue account-

ing system applicable to the solid waste management functions of State and local governments. Such system shall be in accordance with generally accepted accounting principles. The Administrator shall periodically, but not less frequently than once every five years, review such accounting system and revise it as necessary.

(d) Model codes

The Administrator is authorized, in cooperation with appropriate State and local agencies, to recommend model codes, ordinances, and statutes, providing for sound solid waste management.

(e) Information programs

(1) The Administrator shall implement a program for the rapid dissemination of information on solid waste management, hazardous waste management, resource conservation, and methods of resource recovery from solid waste, including the results of any relevant research, investigations, experiments, surveys, studies, or other information which may be useful in the implementation of new or improved solid waste management practices and methods and information on any other technical, managerial, financial, or market aspect of resource conservation and recovery facilities.

(2) The Administrator shall develop and implement educational programs to promote citizen understanding of the need for environmentally sound solid waste management practices.

(f) Coordination

In collecting and disseminating information under this section, the Administrator shall coordinate his actions and cooperate to the maximum extent possible with State and local authorities.

(g) Special restriction

Upon request, the full range of alternative technologies, programs or processes deemed feasible to meet the resource recovery or resource conservation needs of a jurisdiction shall be described in such a manner as to provide a sufficient evaluative basis from which the jurisdiction can make its decisions, but no officer or employee of the Environmental Protection Agency shall, in an official capacity, lobby for or otherwise represent an agency position in favor of resource recovery or resource conservation, as a policy alternative for adoption into ordinances, codes, regulations, or law by any State or political subdivision thereof.

(Pub. L. 89-272, title II, §8003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2834, and amended Pub. L. 95-609, §7(u), Nov. 8, 1978, 92 Stat. 3083.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6984. [RCRA §8004]

Full-scale demonstration facilities

(a) Authority

The Administrator may enter into contracts with public agencies or authorities or private persons for the construction and operation of a full-scale demonstration facility under this chapter, or provide financial assistance in the form of grants to a full-scale demonstration facility under this chapter only if the Administrator finds that—

(1) such facility or proposed facility will demonstrate at full scale a new or significantly improved technology or process, a practical and significant improvement in solid waste management practice, or the technological feasibility and cost effectiveness of an existing, but unproven technology, process, or practice, and will not duplicate any other Federal, State, local, or commercial facility which has been constructed or with respect to which construction has begun (determined as of the date action is taken by the Administrator under this chapter),

(2) such contract or assistance meets the requirements of section 6981 of this title and meets other applicable requirements of this chapter,

(3) such facility will be able to comply with the guidelines published under section 6907 of this title and with other laws and regulations for the protection of health and the environment,

(4) in the case of a contract for construction or operation, such fa-

cility is not likely to be constructed or operated by State, local, or private persons or in the case of an application for financial assistance, such facility is not likely to receive adequate financial assistance from other sources, and

(5) any Federal interest in, or assistance to, such facility will be disposed of or terminated, with appropriate compensation, within such period of time as may be necessary to carry out the basic objectives of this chapter.

(b) Time limitation

No obligation may be made by the Administrator for financial assistance under this subchapter for any full-scale demonstration facility after the date ten years after October 21, 1976. No expenditure of funds for any such full-scale demonstration facility under this subchapter may be made by the Administrator after the date fourteen years after October 21, 1976.

(c) Cost sharing

(1) Wherever practicable, in constructing, operating, or providing financial assistance under this subchapter to a full-scale demonstration facility, the Administrator shall endeavor to enter into agreements and make other arrangements for maximum practicable cost sharing with other Federal, State, and local agencies, private persons, or any combination thereof.

(2) The Administrator shall enter into arrangements, wherever practicable and desirable, to provide monitoring of full-scale solid waste facilities (whether or not constructed or operated under this chapter) for purposes of obtaining information concerning the performance, and other aspects, of such facilities. Where the Administrator provides only monitoring and evaluation instruments or personnel (or both) or funds for such instruments or personnel and provides no other financial assistance to a facility, notwithstanding section 6981(c)(3) of this title, title to any invention made or conceived of in the course of developing, constructing, or operating such facility shall not be required to vest in the United States and patents respecting such invention shall not be required to be issued to the United States.

(d) Prohibition

After October 21, 1976, the Administrator shall not construct or operate any full-scale facility (except by contract with public agencies or authorities or private persons).

(Pub. L. 89-272, title II, §8004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2836, and amended Pub. L. 95-609, §7(v), Nov. 8, 1978, 92 Stat. 3084; Pub. L. 98-616, title V, §502(f), Nov. 8, 1984, 98 Stat. 3276.)

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6985. [RCRA §8005]

Special study and demonstration projects on recovery of useful energy and materials

(a) Studies

The Administrator shall conduct studies and develop recommendations for administrative or legislative action on—

(1) means of recovering materials and energy from solid waste, recommended uses of such materials and energy for national or international welfare, including identification of potential markets for such recovered resources, the impact of distribution of such resources on existing markets, and potentials for energy conservation through resource conservation and resource recovery;

(2) actions to reduce waste generation which have been taken voluntarily or in response to governmental action, and those which practically could be taken in the future, and the economic, social, and environmental consequences of such actions;

(3) methods of collection, separation, and containerization which will encourage efficient utilization of facilities and contribute to more effective programs of reduction, reuse, or disposal of wastes;

(4) the use of Federal procurement to develop market demand for recovered resources;

(5) recommended incentives (including Federal grants, loans, and other assistance) and disincentives to accelerate the reclama-

tion or recycling of materials from solid wastes, with special emphasis on motor vehicle hulks;

(6) the effect of existing public policies, including subsidies and economic incentives and disincentives, percentage depletion allowances, capital gains treatment and other tax incentives and disincentives, upon the recycling and reuse of materials, and the likely effect of the modification or elimination of such incentives and disincentives upon the reuse, recycling and conservation of such materials;

(7) the necessity and method of imposing disposal or other charges on packaging, containers, vehicles, and other manufactured goods, which charges would reflect the cost of final disposal, the value of recoverable components of the item, and any social costs associated with nonrecycling or uncontrolled disposal of such items; and

(8) the legal constraints and institutional barriers to the acquisition of land needed for solid waste management, including land for facilities and disposal sites;

(9) in consultation with the Secretary of Agriculture, agricultural waste management problems and practices, the extent of reuse and recovery of resources in such wastes, the prospects for improvement, Federal, State, and local regulations governing such practices, and the economic, social, and environmental consequences of such practices; and

(10) in consultation with the Secretary of the Interior, mining waste management problems, and practices, including an assessment of existing authorities, technologies, and economics, and the environmental and public health consequences of such practices.

(b) Demonstration

The Administrator is also authorized to carry out demonstration projects to test and demonstrate methods and techniques developed pursuant to subsection (a) of this section.

(c) Application of other sections

Section 6981(b) and (c) of this title shall be applicable to investigations, studies, and projects carried out under this section.

(Pub. L. 89-272, title II, §8005, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2837.)

Prior Provisions

Provisions similar to those comprising this section were contained in section 3253a of this title, prior to the complete revision of the Solid Waste Disposal Act by Pub. L. 94-580.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6986. [RCRA §8006]

Grants for resource recovery systems and improved solid waste disposal facilities

(a) Authority

The Administrator is authorized to make grants pursuant to this section to any State, municipal, or interstate or intermunicipal agency for the demonstration of resource recovery systems or for the construction of new or improved solid waste disposal facilities.

(b) Conditions

(1) Any grant under this section for the demonstration of a resource recovery system may be made only if it (A) is consistent with any plans which meet the requirements of subchapter IV of this chapter; (B) is consistent with the guidelines recommended pursuant to section 6907 of this title; (C) is designed to provide area-wide resource recovery systems consistent with the purposes of this chapter, as determined by the Administrator, pursuant to regulations promulgated under subsection (d) of this section; and (D) provides an equitable system for distributing the costs associated with construction, operation, and maintenance of any resource recovery system among the users of such system.

(2) The Federal share for any project to which paragraph (1) applies shall not be more than 75 percent.

(c) Limitations

(1) A grant under this section for the construction of a new or improved solid waste disposal facility may be made only if—

(A) a State or interstate plan for solid waste disposal has been adopted which applies to the area involved, and the facility to be constructed (i) is consistent with such plan, (ii) is included in a comprehensive plan for the area involved which is satisfactory to the Administrator for the purposes of this chapter, and (iii) is consistent with the guidelines recommended under section 6907 of this title, and

(B) the project advances the state of the art by applying new and improved techniques in reducing the environmental impact of solid waste disposal, in achieving recovery of energy or resources, or in recycling useful materials.

(2) The Federal share for any project to which paragraph (1) applies shall be not more than 50 percent in the case of a project serving an area which includes only one municipality, and not more than 75 percent in any other case.

(d) Regulations

(1) The Administrator shall promulgate regulations establishing a procedure for awarding grants under this section which—

(A) provides that projects will be carried out in communities of varying sizes, under such conditions as will assist in solving the community waste problems of urban-industrial centers, metropolitan regions, and rural areas, under representative geographic and environmental conditions; and

(B) provides deadlines for submission of, and action on, grant requests.

(2) In taking action on applications for grants under this section, consideration shall be given by the Administrator (A) to the public benefits to be derived by the construction and the propriety of Federal aid in making such grant; (B) to the extent applicable, to the economic and commercial viability of the project (including contractual arrangements with the private sector to market any resources recovered); (C) to the potential of such project for general application to community solid waste disposal problems; and (D) to the use by the applicant of comprehensive regional or metropolitan area planning.

(e) Additional limitations

A grant under this section—

(1) may be made only in the amount of the Federal share of (A) the estimated total design and construction costs, plus (B) in the case of a grant to which subsection (b)(1) of this section applies, the first-year operation and maintenance costs;

(2) may not be provided for land acquisition or (except as otherwise provided in paragraph (1)(B)) for operating or maintenance costs;

(3) may not be made until the applicant has made provision satisfactory to the Administrator for proper and efficient operation and maintenance of the project (subject to paragraph (1)(B)); and

(4) may be made subject to such conditions and requirements, in addition to those provided in this section, as the Administrator may require to properly carry out his functions pursuant to this chapter.

For purposes of paragraph (1), the non-Federal share may be in any form, including, but not limited to, lands or interests therein needed for the project or personal property or services, the value of which shall be determined by the Administrator.

(f) Single State

(1) Not more than 15 percent of the total of funds authorized to be appropriated for any fiscal year to carry out this section shall be granted under this section for projects in any one State.

(2) The Administrator shall prescribe by regulation the manner in which this subsection shall apply to a grant under this section for a project in an area which includes all or part of more than one State.

(Pub. L. 89-272, title II, §8006, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2838.)

Prior Provisions

Provisions similar to those comprising this section were contained in section 3254b of this title, prior to the complete revision of the Solid Waste Disposal Act by Pub. L. 94-580.

Transfer Of Functions

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, see note set out under section 6903 of this title.

§6987. [RCRA §8007]**Authorization of appropriations**

There are authorized to be appropriated not to exceed \$35,000,000 for the fiscal year 1978 to carry out the purposes of this subchapter (except for section 6982 of this title).

(Pub. L. 89-272, title II, §8007, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2839.)

Prior Provisions

Provisions similar to those comprising this section were contained in section 3259 of this title, prior to the complete revision of the Solid Waste Disposal Act by Pub. L. 94-580.

Subchapter IX—Regulation of Underground Storage Tanks

§6991. [RCRA §9001]

Definitions and exemptions

In this subtitle:

(1) Indian tribe

(A) In general

The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community that is recognized as being eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(B) Inclusions

The term “Indian tribe” includes an Alaska Native village, as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.); and³⁶

(2) The term “nonoperational storage tank” means any underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after November 8, 1984.

(3) The term “operator” means any person in control of, or having responsibility for, the daily operation of the underground storage tank.

(4) The term “owner” means—

(A) in the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances, and

(B) in the case of any underground storage tank in use before November 8, 1984, but no longer in use on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use.

(5) The term “person” has the same meaning as provided in section 6903(15) of this title, except that such term includes a consortium, a joint venture, and a commercial entity, and the United States Government.

(6) The term “petroleum” means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(7) The term “regulated substance” means—

(A) any substance defined in section 9601(14) of this title (but not including any substance regulated as a hazardous waste under subchapter III of this chapter), and

(B) petroleum.

(8) The term “release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water or subsurface soils.

(9) Trust fund

The term “Trust Fund” means the Leaking Underground Storage Tank Trust Fund established by section 9508 of the Internal Revenue Code of 1986.

(10) The term “underground storage tank” means any one or combination of tanks (including underground pipes connected thereto) which is used to contain an accumulation of regulated substances, and the volume of which (including the volume of the underground pipes connected thereto) is 10 per centum or more beneath the surface of the ground. Such term does not include any—

(A) farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes,

(B) tank used for storing heating oil for consumptive use on the premises where stored,

(C) septic tank,

(D) pipeline facility (including gathering lines)—

(i) which is regulated under chapter 601 of title 49, United States Code, or

(ii) which is an intrastate pipeline facility regulated under State laws as provided in chapter 601 of title 49, United States Code,

and which is determined by the Secretary to be connected to a pipeline or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline.

(E) surface impoundment, pit, pond, or lagoon,

(F) storm water or waste water collection system,

(G) flow-through process tank,

(H) liquid trap or associated gathering lines directly related to oil or gas production and gathering operations, or

(I) storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term “underground storage tank” shall not include any pipes connected to any tank which is described in subparagraphs (A) through (I).

(Pub. L. 89-272, title II, §9001, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3277, and amended Pub. L. 99-499, title II, §205(a), Oct. 17, 1986, 100 Stat. 1696; Pub. L. 102-508, §302, Oct. 24, 1992, 106 Stat. 3307; Pub. L. 103-429, §7(d), Oct. 31, 1994, 108 Stat. 4389; Pub. L. 109-58, title XV, §1532(a), 1533(1), Aug. 8, 2005, 119 Stat. 1104, 1105.)

References In Text

This subchapter, referred to in text, originally read “this subtitle”, meaning subtitle I of the Solid Waste Disposal Act, Pub. L. 89-272, title II, sec. 9001 et seq., as added Pub. L. 98-616, title VI, Sec. 601(a), Nov. 8, 1994, 98 Stat. 3277, and amended, which is classified principally to this subchapter.

The Alaska Native Claims Settlement Act, referred to in par. (1)(B), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified principally to chapter 3, 43 U.S.C. 1601 et seq. For complete classification, see Short Title note set out under 43 U.S.C. 1601 and Tables.

Aboveground Storage Tank Grant Program

Pub. L. 106-554, Sec. 1(a)(4) [div. B, title XII, Sec. 1201], Dec. 21, 2000, 114 Stat. 2763, 2763A-313, provided that:

“(a) Definitions. - In this provision:

“(1) Aboveground storage tank.—The term ‘aboveground storage tank’ means any tank or combination of tanks (including any connected pipe)—

“(A) that is used to contain an accumulation of regulated substances; and

“(B) the volume of which (including the volume of any connected pipe) is located wholly above the surface of the ground.

“(2) Administrator.—The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.

“(3) Denali Commission.—The term ‘Denali Commission’ means the commission established by section 303(a) of the Denali Commission Act of 1998 [Pub. L. 105-277, div. C, title III] (42 U.S.C. 3121 note).

“(4) Federal environmental law.—The term ‘Federal environmental law’ means—

“(A) the Oil Pollution Control Act of 1990 (33 U.S.C. 2701 et seq.);

“(B) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

“(C) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

“(D) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); or

“(E) any other Federal law that is applicable to the release into the environment of a regulated substance, as determined by the Administrator.

“(5) Native village.—The term ‘Native village’ has the meaning given the term in section 11(b) in Public Law 92-203 (85 Stat. 688) [43 U.S.C. 1610(b)].

“(6) Program.—The term ‘program’ means the Aboveground Storage Tank Grant Program established by subsection (b)(1).

“(7) Regulated substance.—The term ‘regulated substance’ has the meaning given the term in section 9001 of the Solid Waste Disposal Act (42 U.S.C. 6991).

“(8) State.—The term ‘State’ means the State of Alaska.

“(b) Establishment.—

“(1) In general.—There is established a grant program to be known as the ‘Aboveground Storage Tank Grant Program’.

“(2) Grants.—Under the program, the Administrator shall award a grant to—

“(A) the State, on behalf of a Native village; or

“(B) the Denali Commission.

“(c) Use of Grants.—The State or the Denali Commission shall use the funds of a grant under subsection (b) to repair, upgrade, or replace one or more aboveground storage tanks that—

“(1) leaks or poses an imminent threat of leaking, as certified by the Administrator, the Commandant of the Coast Guard, or any other appropriate Federal or State agency (as determined by the Administrator); and

“(2) is located in a Native village—

“(A) the median household income of which is less than 80 percent of the median household income in the State;

“(B) that is located—

“(i) within the boundaries of—

36. So in original. The semicolon and “and” should probably be a period.

- “(I) a unit of the National Park System;
- “(II) a unit of the National Wildlife Refuge System; or
- “(III) a National Forest; or
- “(ii) on public land under the administrative jurisdiction of the Bureau of Land Management; or
- “(C) that receives payments from the Federal Government under chapter 69 of title 31, United States Code (commonly known as ‘payments in lieu of taxes’).

(d) Reports.—Not later than 1 year after the date on which the State or the Denali Commission receives a grant under subsection (c), and annually thereafter, the State or the Denali Commission, as the case may be, shall submit a report describing each project completed with grant funds and any projects planned for the following year, to—

- “(1) the Administrator;
- “(2) the Committee on Resources of the House of Representatives;
- “(3) the Committee on Environment and Public Works of the Senate;
- “(4) the Committee on Appropriations of the House of Representatives; and
- “(5) the Committee on Appropriations of the Senate.

(e) Authorization of Appropriations.—There are authorized to be appropriated to carry out this Act [probably means this section], to remain available until expended—

- “(1) \$20,000,000 for fiscal year 2001; and
- “(2) such sums as are necessary for each fiscal year thereafter.”

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

§6991a. [RCRA §9002]

Notification

(a) Underground storage tanks

(1) Within 18 months after November 8, 1984, each owner of an underground storage tank shall notify the State or local agency or department designated pursuant to subsection (b)(1) of this section of the existence of such tank, specifying the age, size, type, location, and uses of such tank.

(2)(A) For each underground storage tank taken out of operation after January 1, 1974, the owner of such tank shall, within eighteen months after November 8, 1984, notify the State or local agency, or department designated pursuant to subsection (b)(1) of this section of the existence of such tanks (unless the owner knows the tank subsequently was removed from the ground). The owner of a tank taken out of operation on or before January 1, 1974, shall not be required to notify the State or local agency under this subsection.

(B) Notice under subparagraph (A) shall specify, to the extent known to the owner—

- (i) the date the tank was taken out of operation,
- (ii) the age of the tank on the date taken out of operation,
- (iii) the size, type and location of the tank, and
- (iv) the type and quantity of substances left stored in such tank on the date taken out of operation.

(3) Any owner which brings into use an underground storage tank after the initial notification period specified under paragraph (1), shall notify the designated State or local agency or department within thirty days of the existence of such tank, specifying the age, size, type, location and uses of such tank.

(4) Paragraphs (1) through (3) of this subsection shall not apply to tanks for which notice was given pursuant to section 9603(c) of this title.

(5) Beginning thirty days after the Administrator prescribes the form of notice pursuant to subsection (b)(2) of this section and for eighteen months thereafter, any person who deposits regulated substances in an underground storage tank shall reasonably notify the owner or operator of such tank of the owner’s notification requirements pursuant to this subsection.

(6) Beginning thirty days after the Administrator issues new tank performance standards pursuant to section 6991b(c) of this title, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner’s notification requirements pursuant to this subsection.

(b) Agency designation

(1) Within one hundred and eighty days after November 8, 1984, the Governors of each State shall designate the appropriate State

agency or department or local agencies or departments to receive the notifications under subsection (a)(1), (2), or (3) of this section.

(2) Within twelve months after November 8, 1984, the Administrator, in consultation with State and local officials designated pursuant to subsection (b)(1) of this section, and after notice and opportunity for public comment, shall prescribe the form of the notice and the information to be included in the notifications under subsection (a)(1), (2), or (3) of this section. In prescribing the form of such notice, the Administrator shall take into account the effect on small businesses and other owners and operators.

(c) State inventories

Each State shall make 2 separate inventories of all underground storage tanks in such State containing regulated substances. One inventory shall be made with respect to petroleum and one with respect to other regulated substances. In making such inventories, the State shall utilize and aggregate the data in the notification forms submitted pursuant to subsections (a) and (b) of this section. Each State shall submit such aggregated data to the Administrator not later than 270 days after October 17, 1986.

(d) Public record

(1) In general

The Administrator shall require each State that received Federal funds to carry out this subtitle to maintain, update at least annually, and make available to the Public, in such manner and form as the Administrator shall prescribe (after consultation with States), a record of underground storage tanks regulated under this subtitle.

(2) Considerations

To the maximum extent practicable, the public record of a State, respectively, shall include, for each year—

- (A) the number, sources, and causes of underground storage tank releases in the State;
- (B) the record of compliance by underground storage tanks in the State with—
 - (i) this subtitle; or
 - (ii) an applicable State program approved under section 9004; and
- (C) data on the number of underground storage tank equipment failures in the State.

(Pub. L. 89-272, title II, §9002, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3278, and amended Pub. L. 99-499, title II, §205(b), Oct. 17, 1986, 100 Stat. 1696; Pub. L. 109-58, title XV, §1526(c), Aug. 8, 2005, 115 Stat. 1098.)

References In Text

This subchapter, referred to in subsec. (d), originally read “this subtitle”, meaning subtitle I of the Solid Waste Disposal Act, Pub. L. 89-272, title II, sec. 9001 et seq., as added Pub. L. 98-616, title VI, sec. 601(a), Nov. 8, 1984, 98 Stat. 3277, and amended, which is classified principally to this subchapter.

§6991b. [RCRA §9003]

Release detection, prevention, and correction regulations

(a) Regulations

The Administrator, after notice and opportunity for public comment, and at least three months before the effective dates specified in subsection (f) of this section, shall promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment.

(b) Distinctions in regulations

In promulgating regulations under this section, the Administrator may distinguish between types, classes, and ages of underground storage tanks. In making such distinctions, the Administrator may take into consideration factors, including, but not limited to: location of the tanks, soil and climate conditions, uses of the tanks, history of maintenance, age of the tanks, current industry recommended practices, national consensus codes, hydrogeology, water table, size of the tanks, quantity of regulated substances periodically deposited in or dispensed from the tank, the technical capability of the owners and operators, and the compatibility of the regulated substance and the materials of which the tank is fabricated.

(c) Requirements

The regulations promulgated pursuant to this section shall include, but need not be limited to, the following requirements respecting all underground storage tanks—

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing or comparable system;

(3) requirements for reporting of releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground storage tank;

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment; and

(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

(d) Financial responsibility

(1) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(2) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(4) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(5)(A) The Administrator, in promulgating financial responsibility regulations under this section, may establish an amount of coverage for particular classes or categories of underground storage tanks containing petroleum which shall satisfy such regulations and which shall not be less than \$1,000,000 for each occurrence with an appropriate aggregate requirement.

(B) The Administrator may set amounts lower than the amounts required by subparagraph (A) of this paragraph for underground storage tanks containing petroleum which are at facilities not en-

gaged in petroleum production, refining, or marketing and which are not used to handle substantial quantities of petroleum.

(C) In establishing classes and categories for purposes of this paragraph, the Administrator may consider the following factors:

(i) The size, type, location, storage, and handling capacity of underground storage tanks in the class or category and the volume of petroleum handled by such tanks.

(ii) The likelihood of release and the potential extent of damage from any release from underground storage tanks in the class or category.

(iii) The economic impact of the limits on the owners and operators of each such class or category, particularly relating to the small business segment of the petroleum marketing industry.

(iv) The availability of methods of financial responsibility in amounts greater than the amount established by this paragraph.

(v) Such other factors as the Administrator deems pertinent.

(D) The Administrator may suspend enforcement of the financial responsibility requirements for a particular class or category of underground storage tanks or in a particular State, if the Administrator makes a determination that methods of financial responsibility satisfying the requirements of this subsection are not generally available for underground storage tanks in that class or category, and—

(i) steps are being taken to form a risk retention group for such class of tanks; or

(ii) such State is taking steps to establish a fund pursuant to section 6991c(c)(1) of this title to be submitted as evidence of financial responsibility.

A suspension by the Administrator pursuant to this paragraph shall extend for a period not to exceed 180 days. A determination to suspend may be made with respect to the same class or category or for the same State at the end of such period, but only if substantial progress has been made in establishing a risk retention group, or the owners or operators in the class or category demonstrate, and the Administrator finds, that the formation of such a group is not possible and that the State is unable or unwilling to establish such a fund pursuant to clause (ii).

(e) New tank performance standards

The Administrator shall, not later than three months prior to the effective date specified in subsection (f) of this section, issue performance standards for underground storage tanks brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but need not be limited to, design, construction, installation, release detection, and compatibility standards.

(f) Effective dates

(1) Regulations issued pursuant to subsections (c) and (d) of this section, and standards issued pursuant to subsection (e) of this section, for underground storage tanks containing regulated substances defined in section 9001(7)(B) of this title (petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure) shall be effective not later than thirty months after November 8, 1984.

(2) Standards issued pursuant to subsection (e) of this section (entitled "New Tank Performance Standards") for underground storage tanks containing regulated substances defined in section 9001(7)(A) of this title shall be effective not later than thirty-six months after November 8, 1984.

(3) Regulations issued pursuant to subsection (c) of this section (entitled "Requirements") and standards issued pursuant to subsection (d) of this section (entitled "Financial Responsibility") for underground storage tanks containing regulated substances defined in section 9001(7)(A) of this title shall be effective not later than forty-eight months after November 8, 1984.

(g) Interim prohibition

(1) Until the effective date of the standards promulgated by the Administrator under subsection (e) of this section and after one hundred and eighty days after November 8, 1984, no person may install an underground storage tank for the purpose of storing regulated substances unless such tank (whether of single or double wall construction)—

(A) will prevent releases due to corrosion or structural failure for the operational life of the tank;

(B) is cathodically protected against corrosion, constructed of noncorrosive material, steel clad with a noncorrosive material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(C) the material used in the construction or lining of the tank is compatible with the substance to be stored.

(2) Notwithstanding paragraph (1), if soil tests conducted in accordance with ASTM Standard G57-78, or another standard approved by the Administrator, show that soil resistivity in an installation location is 12,000 ohm/cm or more (unless a more stringent standard is prescribed by the Administrator by rule), a storage tank without corrosion protection may be installed in that location during the period referred to in paragraph (1).

(h) EPA response program for petroleum

(1) Before regulations

Before the effective date of regulations under subsection (c) of this section, the Administrator (or a State pursuant to paragraph (7)) is authorized to—

(A) require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of petroleum when the Administrator (or the State) determines that such corrective action will be done properly and promptly by the owner or operator of the underground storage tank from which the release occurs; or

(B) undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment.

The corrective action undertaken or required under this paragraph shall be such as may be necessary to protect human health and the environment. The Administrator shall use funds in the Trust Fund for payment of costs incurred for corrective action under subparagraph (B), enforcement action under subparagraph (A), and cost recovery under paragraph (6) of this subsection. Subject to the priority requirements of paragraph (3), the Administrator (or the State) shall give priority in undertaking such actions under subparagraph (B) to cases where the Administrator (or the State) cannot identify a solvent owner or operator of the tank who will undertake action properly.

(2) After regulations

Following the effective date of regulations under subsection (c) of this section, all actions or orders of the Administrator (or a State pursuant to paragraph (7)) described in paragraph (1) of this subsection shall be in conformity with such regulations. Following such effective date, the Administrator (or the State) may undertake corrective action with respect to any release of petroleum into the environment from an underground storage tank only if such action is necessary, in the judgment of the Administrator (or the State), to protect human health and the environment and one or more of the following situations exists:

(A) No person can be found, within 90 days or such shorter period as may be necessary to protect human health and the environment, who is—

- (i) an owner or operator of the tank concerned,
- (ii) subject to such corrective action regulations, and
- (iii) capable of carrying out such corrective action properly.

(B) A situation exists which requires prompt action by the Administrator (or the State) under this paragraph to protect human health and the environment.

(C) Corrective action costs at a facility exceed the amount of coverage required by the Administrator pursuant to the provisions of subsections (c) and (d)(5) of this section and, considering the class or category of underground storage tank from which the release occurred, expenditures from the Trust Fund are necessary to assure an effective corrective action.

(D) The owner or operator of the tank has failed or refused to comply with an order of the Administrator under this subsection or section 6991e of this title or with the order of a State under this subsection to comply with the corrective action regulations.

(3) Priority of corrective actions

The Administrator (or a State pursuant to paragraph (7)) shall give priority in undertaking corrective actions under this subsection, and in issuing orders requiring owners or operators to undertake such actions, to releases of petroleum from underground storage tanks which pose the greatest threat to human health and the environment.

(4) Corrective action orders

The Administrator is authorized to issue orders to the owner or operator of an underground storage tank to carry out subparagraph (A) of paragraph (1) or to carry out regulations issued under subsection (c)(4) of this section. A State acting pursuant to paragraph (7) of this subsection is authorized to carry out subparagraph (A) of paragraph (1) only until the State's program is approved by the Administrator under section 6991c of this title. Such orders shall be issued and enforced in the same manner and subject to the same requirements as orders under section 6991e of this title.

(5) Allowable corrective actions

The corrective actions undertaken by the Administrator (or a State pursuant to paragraph (7)) under paragraph (1) or (2) may include temporary or permanent relocation of residents and alternative household water supplies. In connection with the performance of any corrective action under paragraph (1) or (2), the Administrator may undertake an exposure assessment as defined in paragraph (10) of this subsection or provide for such an assessment in a cooperative agreement with a State pursuant to paragraph (7) of this subsection. The costs of any such assessment may be treated as corrective action for purposes of paragraph (6), relating to cost recovery.

(6) Recovery of costs

(A) In general

Whenever costs have been incurred by the Administrator, or by a State pursuant to paragraph (7), for undertaking corrective action or enforcement action with respect to the release of petroleum from an underground storage tank, the owner or operator of such tank shall be liable to the Administrator or the State for such costs. The liability under this paragraph shall be construed to be the standard of liability which obtains under section 1321 of title 33.

(B) Recovery

In determining the equities for seeking the recovery of costs under subparagraph (A), the Administrator (or a State pursuant to paragraph (7) of this subsection) may consider the amount of financial responsibility required to be maintained under subsections (c) and (d)(5) of this section and the factors considered in establishing such amount under subsection (d)(5) of this section.

(C) Effect on liability

(i) No transfers of liability

No indemnification, hold harmless, or similar agreement or conveyance shall be effective to transfer from the owner or operator of any underground storage tank or from any person who may be liable for a release or threat of release under this subsection, to any other person the liability imposed under this subsection. Nothing in this subsection shall bar any agreement to insure, hold harmless, or indemnify a party to such agreement for any liability under this section.

(ii) No bar to cause of action

Nothing in this subsection, including the provisions of clause (i) of this subparagraph, shall bar a cause of action that an owner or operator or any other person subject to liability under this section, or a guarantor, has or would have, by reason of subrogation or otherwise against any person.

(D) Facility

For purposes of this paragraph, the term "facility" means, with respect to any owner or operator, all underground storage tanks used for the storage of petroleum which are owned or operated by such owner or operator and located on a single parcel of property (or on any contiguous or adjacent property).

(E) Inability or limited ability to pay**(i) In general**

In determining the level of recovery effort, or amount that should be recovered, the Administrator (or the State pursuant to paragraph (7)) shall consider the owner or operator's ability to pay. An inability or limited ability to pay corrective action costs must be demonstrated to the Administrator (or the State pursuant to paragraph (7)) by the owner or operator.

(ii) Considerations

In determining whether or not a demonstration is made under clause (i), the Administrator (or the State pursuant to paragraph (7)) shall taken into consideration the ability of the owner or operator to pay corrective action costs and still maintain its basic business operations, including consideration of the overall financial condition of the owner or operator and demonstrable constraints on the ability of the owner or operator to raise revenues.

(iii) Information

An owner or operator requesting consideration under this subparagraph shall promptly provide the Administrator (or the State pursuant to paragraph (7)) with all relevant information needed to determine the ability of the owner or operator to pay corrective action costs.

(iv) Alternative payment methods

The Administrator (or the State pursuant to paragraph (7)) shall consider alternative payment methods as may be necessary or appropriate if the Administrator (or the State pursuant to paragraph (7)) determines that an owner or operator cannot pay all or a portion of the costs in a lump sum payment.

(v) Misrepresentation

If an owner or operator provides false information or otherwise misrepresents their financial situation under clause (ii), the Administrator (or the State pursuant to paragraph (7)) shall seek full recovery of the costs of all such actions pursuant to the provisions of subparagraph (A) without consideration of the factors in subparagraph (B).

(7) State authorities**(A) General**

A State may exercise the authorities in paragraphs (1), (2), and (12) of this subsection, subject to the terms and conditions of paragraphs (3), (5), (9), (10), and (11), and the authority under sections 9011 and 9012 and paragraphs (4), (6), and (8), if—

(i) the Administrator determines that the State has the capabilities to carry out effective corrective actions and enforcement activities; and

(ii) the Administrator enters into a cooperative agreement with the State setting out the actions to be undertaken by the State.

The Administrator may provide funds from the Trust Fund for the reasonable costs of the State's actions under the cooperative agreement.

(B) Cost share

Following the effective date of the regulations under subsection (c) of this section, the State shall pay 10 per centum of the cost of corrective actions undertaken either by the Administrator or by the State under a cooperative agreement, except that the Administrator may take corrective action at a facility where immediate action is necessary to respond to an imminent and substantial endangerment to human health or the environment if the State fails to pay the cost share.

(8) Emergency procurement powers

Notwithstanding any other provision of law, the Administrator may authorize the use of such emergency procurement powers as he deems necessary.

(9) Definition of owner or operator**(A) In general**

As used in this subchapter, the terms "owner" and "operator" do not include a person that, without participating in the management of an underground storage tank and otherwise not engaged

in petroleum production, refining, or marketing, holds indicia of ownership primarily to protect the person's security interest.

(B) Security interest holders

The provisions regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title and the provisions regarding fiduciaries at section 9607(n) of this title shall apply in determining a person's liability as an owner or operator of an underground storage tank for the purposes of this subchapter.

(C) Effect on rule

Nothing in subparagraph (B) shall be construed as modifying or affecting the final rule issued by the Administrator on September 7, 1995 (60 Fed. Reg. 46,692), or as limiting the authority of the Administrator to amend the final rule, in accordance with applicable law. The final rule in effect on September 30, 1996, shall prevail over any inconsistent provision regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title or any inconsistent provision regarding fiduciaries in section 9607(n) of this title. Any amendment to the final rule shall be consistent with the provisions regarding holders of security interests in subparagraphs (E) through (G) of section 9601(20) of this title and the provisions regarding fiduciaries in section 9607(n) of this title. This subparagraph does not preclude judicial review of any amendment of the final rule made after September 30, 1996.

(10) Definition of exposure assessment

As used in this subsection, the term "exposure assessment" means an assessment to determine the extent of exposure of, or potential for exposure of, individuals to petroleum from a release from an underground storage tank based on such factors as the nature and extent of contamination and the existence of or potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants. Such assessment shall not delay corrective action to abate immediate hazards or reduce exposure.

(11) Facilities without financial responsibility

At any facility where the owner or operator has failed to maintain evidence of financial responsibility in amounts at least equal to the amounts established by subsection (d)(5)(A) of this section (or a lesser amount if such amount is applicable to such facility as a result of subsection (d)(5)(B) of this section) for whatever reason the Administrator shall expend no monies from the Trust Fund to clean up releases at such facility pursuant to the provisions of paragraph (1) or (2) of this subsection. At such facilities the Administrator shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection and section 6991e of this title to order corrective action to clean up such releases. States acting pursuant to paragraph (7) of this subsection shall use the authorities provided in subparagraph (A) of paragraph (1) and paragraph (4) of this subsection to order corrective action to clean up such releases. Notwithstanding the provisions of this paragraph, the Administrator may use monies from the fund to take the corrective actions authorized by paragraph (5) of this subsection to protect human health at such facilities and shall seek full recovery of the costs of all such actions pursuant to the provisions of paragraph (6)(A) of this subsection and without consideration of the factors in paragraph (6)(B) of this subsection. Nothing in this paragraph shall prevent the Administrator (or a State pursuant to paragraph (7) of this subsection) from taking corrective action at a facility where there is no solvent owner or operator or where immediate action is necessary to respond to an imminent and substantial endangerment of human health or the environment.

(12) Remediation of oxygenated fuel contamination**(A) In general**

The Administrator and the States may use funds made available under section 9014(2)(B) to carry out corrective actions with respect to a release of a fuel containing an oxygenated fuel

additive that presents a threat to human health or welfare to the environment.

(B) Applicable authority

The Administrator or a State shall carry out subparagraph (A) in accordance with paragraph (2), and in the case of a State, in accordance with a cooperative agreement entered into by the Administrator and the State under paragraph (7).

(i) Additional measures to protect groundwater from contamination

The Administrator shall require each State that receives funding under this subtitle to require one of the following:

(1) Tank and piping secondary containment

(A) Each new underground storage tank, or piping connected to any such new tank, installed after the effective date of this subsection, or any existing underground storage tank, or existing piping connected to such existing tank, that is replaced after the effective date of this subsection, shall be secondarily contained and monitored for leaks if the new or replaced underground storage tank or piping is within 1,000 feet of any existing community water system or any existing potable drinking water well.

(B) In the case of a new underground storage tank system consisting of one or more underground storage tanks and connected by piping, subparagraph (A) shall apply to all underground storage tanks and connected pipes comprising such system.

(C) In the case of a replacement of an existing underground storage tank or existing piping connected to the underground storage tank, subparagraph (A) shall apply only to the specific underground storage tank or piping being replaced, not to other underground storage tanks and connected pipes comprising such system.

(D) Each installation of a new motor fuel dispenser system, after the effective date of this subsection, shall include under-dispenser spill containment if the new dispenser is within 1,000 feet of any existing community water system or any existing potable drinking water well.

(E) This paragraph shall not apply to repairs to an underground storage tank, piping, or dispenser that are meant to restore a tank, pipe, or dispenser to operating condition.

(F) As used in this subsection:

(i) The term 'secondarily contained' means a release detection and prevention system that meets the requirements of 40 CFR 280.43(g), but shall not include under-dispenser spill containment or control systems.

(ii) The term 'underground storage tank' has the meaning given to it in section 9001, except that such term does not include tank combinations or more than a single underground pipe connected to a tank.

(iii) The term 'installation of a new motor fuel dispenser system' means the installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the underground storage tank system, but does not mean the installation of a motor fuel dispenser installed separately from the equipment need to connect the dispenser to the underground storage tank system.

(2) Evidence of financial responsibility and certification

(A) Manufacturer and installer financial responsibility

A person that manufactures an underground storage tank or piping for an underground storage tank system or that installs an underground storage tank system is required to maintain evidence of financial responsibility under section 9003(d) in order to provide for the costs of corrective actions directly related to releases caused by improper manufacture or installation unless the person can demonstrate themselves to be already covered as an owner or operator of an underground storage tank under section 9003.

(B) Installer certification

The Administrator and each State that receives funding under this subtitle, as appropriate, shall require that a person that installs an underground storage tank system is—

- (i) certified or licensed by the tank and piping manufacturer;
- (ii) certified or licensed by the Administrator or a State, as appropriate;

(iii) has their underground storage tank system installation certified by a registered professional engineer with education and experience in underground storage tank system installation;

(iv) has had their installation of the underground storage tank inspected and approved by the Administrator or the State, as appropriate;

(v) compliant with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions; or

(vi) compliant with another method that is determined by the Administrator or a State, as appropriate, to be no less protective of human health and the environment.

(C) Savings clause

Nothing in subparagraph (A) alters or affects the liability of any owner or operator of an underground storage tank.

(j) Government-owned tanks

(1) State compliance report

(A) Not later than 2 years after the date of enactment of this subsection, each State that received funding under this subtitle shall submit to the Administrator a State compliance report that—

(i) lists the location and owner of each underground storage tank described in subparagraph (B) in the State that, as of the date of submission of the report, is not in compliance with section 9003; and

(ii) specifies the date of the last inspection and describes the actions that have been and will be taken to ensure compliance of the underground storage tank listed under clause (i) with this subtitle.

(B) An underground storage tank described in this subparagraph is an underground storage tank that is—

(i) regulated under this subtitle; and

(ii) owned or operated by the Federal, State, or local government.

(C) The Administrator shall make each report, received under subparagraph (A), available to the public through an appropriate media.

(2) Financial incentive

The Administrator may award to a State that develops a report described in paragraph (1), in addition to any other funds that the State is entitled to receive under this subtitle, not more than \$50,000, to be used to carry out the report.

(3) Not a safe harbor

This subsection does not relieve any person from any obligation or requirement under this subchapter.

(Pub. L. 89-272, title II, §9003, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3279, and amended Pub. L. 99-499, title II, §205(c), (d), Oct. 17, 1986, 100 Stat. 1697, 1698; Pub. L. 104-208, Div. A, title II, §2503, Sept. 30, 1996, 110 Stat. 3009-468; Pub. L. 109-58, title XV, §1522(c), 1525, 1536(b), 1523(b)(1), (2), 1533(2), Aug. 8, 2005, 119 Stat. 1093, 1096, 1097, 1105; Pub. L. 109-168, §1(a)(2), Jan. 10, 2006, 119 Stat. 3580.)

Effective Date

This subsection shall take effect 18 months after the date of enactment of this subsection.

References in Text

The Federal Bankruptcy Code, referred to in subsec. (d)(2), probably means a reference to Title 11, Bankruptcy.

August 8, 2005, referred to in subsec. (j), originally read "the date of enactment of this subsection", meaning Aug. 8, 2005, the date of enactment of the Underground Storage Tank Compliance Act, Pub. L. 109-58, title XV, secs. 1521 to 1533, 119 Stat. 1092, which enacted subsec. (j) of this section.

This subchapter, referred to in text, originally read "this subtitle", meaning subtitle I of the Solid Waste Disposal Act, Pub. L. 89-272, title II, sec. 9001 et seq., as added Pub. L. 98-616, title VI, sec. 601(a), Nov. 8, 1984, 98 Stat. 3277, and amended, which is classified principally to this subchapter.

The effective date of this subsection, referred to in subsec. (i)(1)(A), (D), probably means 18 months after Aug. 8, 2005; see Pub. L. 109-58, sec. 1530(b), set out as a note under this section.

Promulgation Of Regulations Or Guidelines

The Administrator shall issue regulations or guidelines implementing the requirements of this subsection, including guidance to differentiate between the terms "repair" and "replace" for the purposes of section 9003(i)(1) of the Solid Waste Disposal Act.

Leaking Underground Storage Tank Program

Pub. L. 105-276, title III, Oct. 21, 1998, 112 Stat. 2497, provided in part: "that hereafter, the Administrator is authorized to enter into assistance agreements with Federally recognized Indian tribes on such terms and conditions as the Administrator deems appropriate for the same purposes as are set forth in section 9003(h)(7) of the Resources Conservation and Recovery Act [subsec. (h)(7) of this section]."

Effective And Applicability Provisions

Pub. L. 109-58, title XV, sec. 1530(b), Aug. 8, 2005, 119 Stat. 1104, provided that: "This subsection [probably means 'this section', which enacted subsec. (i) of this section (as added by Pub. L. 109-58, sec. 1530(a)) and amended 42 U.S.C. 6991e] shall take effect 18 months after the date of enactment of this subsection [Aug. 8, 2005]."

Pub. L. 104-208, Div. A, Title II, §2505, Sept. 30, 1996, 110 Stat. 3009-469, provided that: "The amendments made by this subtitle [Pub. L. 104-208, Div. A, Title II, Subtitle E, §2501 et seq., Sept. 30, 1996, 110 Stat. 3009-462, amending this section and sections 9601 and 9607 of this title] shall be applicable with respect to any claim that has not been finally adjudicated as of the date of enactment of this Act [Sept. 30, 1996]."

Amendment by Pub. L. 99-499 effective Oct. 17, 1986, see section 4 of Pub. L. 99-499, set out as a note under section 9601 of this title.

Pollution Liability Insurance

Section 205(h) of Pub. L. 99-499 provided that:

"(1) Study.—The Comptroller General shall conduct a study of the availability of pollution liability insurance, leak insurance, and contamination insurance for owners and operators of petroleum storage and distribution facilities. The study shall assess the current and projected extent to which private insurance can contribute to the financial responsibility of owners and operators of underground storage tanks and the ability of owners and operators of underground storage tanks to maintain financial responsibility through other methods. The study shall consider the experience of owners and operators of marine vessels in getting insurance for their liabilities under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and the operation of the Water Quality Insurance Syndicate.

"(2) Report.—The Comptroller General shall report the findings under this subsection to the Congress within 15 months after the enactment of this subsection (Oct. 17, 1986). Such report shall include recommendations for legislative or administrative changes that will enable owners and operators of underground storage tanks to maintain financial responsibility sufficient to provide all clean-up costs and damages that may result from reasonably foreseeable releases and events."

§6991c. [RCRA §9004]

Approval of State programs

(a) Elements of State program

Beginning 30 months after November 8, 1984, any State may, submit an underground storage tank release detection, prevention, and correction program for review and approval by the Administrator. The program may cover tanks used to store regulated substances referred to in subparagraph (A) or (B) of section 9001(7) of this title. A State program may be approved by the Administrator under this section only if the State demonstrates that the State program includes the following requirements and standards and provides for adequate enforcement of compliance with such requirements and standards—

(1) requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(3) requirements for reporting of any releases and corrective action taken in response to a release from an underground storage tank;

(4) requirements for taking corrective action in response to a release from an underground storage tank;

(5) requirements for the closure of tanks to prevent future releases of regulated substances into the environment;

(6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank;

(7) standards of performance for new underground storage tanks;

(8) requirements—

(A) for notifying the appropriate State agency or department (or local agency or department) designated according to section 6991a(b)(1) of this title of the existence of any operational or non-operational underground storage tank; and

(B) for providing the information required on the form issued pursuant to section 6991a(b)(2) of this title; and

(9) State-specific training requirements as required by section 9010.

(b) Federal standards

(1) A State program submitted under this section may be approved only if the requirements under paragraphs (1) through (7) of subsection (a) of this section are no less stringent than the corresponding requirements standards promulgated by the Administrator pursuant to section 6991b(a) of this title.

(2)(A) A State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) of this section are less stringent than the corresponding standards under section 6991b(a) of this title during the one-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title if State regulatory action but no State legislative action is required in order to adopt a State program.

(B) If such State legislative action is required, the State program may be approved without regard to whether or not the requirements referred to in paragraphs (1), (2), (3), and (5) of subsection (a) of this section are less stringent than the corresponding standards under section 6991b(a) of this title during the two-year period commencing on the date of promulgation of regulations under section 6991b(a) of this title (and during an additional one-year period after such legislative action if regulations are required to be promulgated by the State pursuant to such legislative action).

(c) Financial responsibility

(1) Corrective action and compensation programs administered by State or local agencies or departments may be submitted for approval under subsection (a)(6) of this section as evidence of financial responsibility.

(2) Financial responsibility required by this subsection may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer or any other method satisfactory to the Administrator. In promulgating requirements under this subsection, the Administrator is authorized to specify policy or other contractual terms including the amount of coverage required for various classes and categories of underground storage tanks pursuant to section 6991b(d)(5) of this title, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this subchapter.

(3) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where with reasonable diligence jurisdiction in any State court of the Federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this subsection may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this paragraph such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(4) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this section. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(5) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this subsection.

(6) Withdrawal of approval

After an opportunity for good faith, collaborative efforts to correct financial deficiencies with a State fund, the Administrator may withdraw approval of any State fund or State assurance program to be used as a financial responsibility mechanism without withdrawing approval of a State underground storage tank program under section 9004(a).

(d) EPA determination

(1) Within one hundred and eighty days of the date of receipt of a proposed State program, the Administrator shall, after notice and opportunity for public comment, make a determination whether the State's program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section.

(2) If the Administrator determines that a State program complies with the provisions of this section and provides for adequate enforcement of compliance with the requirements and standards adopted pursuant to this section, he shall approve the State program in lieu of the Federal program and the State shall have primary enforcement responsibility with respect to requirements of its program.

(e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this subchapter in accordance with the provisions of this section, he shall so notify the State. If appropriate action is not taken within a reasonable time, not to exceed one hundred and twenty days after such notification, the Administrator shall withdraw approval of such program and reestablish the Federal program pursuant to this subchapter.

(f) Trust Fund distribution**(1) In general****(A) Amount and permitted uses of distribution**

The Administrator shall distribute to States not less than 80 percent of the funds from the Trust Fund that are made available to the Administrator under section 9014(2)(A) for each fiscal year for use in paying the reasonable costs, incurred under a cooperative agreement with any State for—

- (i) corrective actions taken by the State under section 9003(h)(7)(A);
- (ii) necessary administrative expenses, as determined by the Administrator, that are directly related to State fund or State assurance programs under subsection (c)(1); or
- (iii) enforcement, by a State or a local government, of State or local regulations pertaining to underground storage tanks regulated under this subtitle.

(B) Use of funds for enforcement

In addition to the uses of funds authorized under subparagraph (A), the Administrator may use funds from the Trust Fund that are not distributed to States under subparagraph (A) for enforcement of any regulation promulgated by the Administrator under this subtitle.

(C) Prohibited uses

Funds provided to a State by the Administrator under subparagraph (A) shall not be used by the State to provide financial assistance to an owner or operator to meet any requirement relating to underground storage tanks under subparts B, C, D, H, and G of part 280 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subsection).

(2) Allocation**(A) Process**

Subject to subparagraphs (B) and (C), in the case of a State with which the Administrator has entered into a cooperative agreement under section 9003(h)(7)(A), the Administrator shall distribute funds from the Trust Fund to the State using an allocation process developed by the Administrator.

(B) Diversion of state funds

The Administrator shall not distribute funds under subparagraph (A)(iii) of subsection (f)(1) to any State that has diverted funds from a State fund or State assurance program for purposes other than those related to the regulation of underground storage

tanks governed by this subtitle, with the exception of those transfers that had been completed earlier than the date of enactment of this section.

(C) Revisions to process

The Administrator may revise the allocation process referred to in subparagraph (A) after—

- (i) consulting with State agencies responsible for overseeing corrective action for releases from underground storage tanks; and

- (ii) taking into consideration, at a minimum, each of the following:

(I) The number of confirmed releases from federally regulated leaking underground storage tanks in the States.

(II) The number of federally regulated underground storage tanks in the States.

(III) The performance of the States in implementing and enforcing the program.

(IV) The financial needs of the States.

(V) The ability of the States to use the funds referred to in subparagraph (A) in any year.

(3) Distributions to state agencies

Distributions from the Trust Fund under this subsection shall be made directly to a State agency that—

- (A) enters into a cooperative agreement referred to in paragraph (2)(A); or

- (B) is enforcing a State program approved under this section.

(Pub. L. 89-272, title II, §9004, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3282, and amended Pub. L. 99-499, title II, §205(e), Oct. 17, 1986, 100 Stat. 1702; Pub. L. 109-58, title XV, §§1522(a), (b), 1524(b), 1533(3), Aug. 8, 2005, 119 Stat. 1092, 1096, 1105.)

References in Text

The Federal Bankruptcy Code, referred to in subsec. (c)(3), probably means a reference to Title 11, Bankruptcy.

This subchapter, referred to in text, originally read "this subtitle", meaning subtitle I of the Solid Waste Disposal Act, Pub. L. 89-272, title II, sec. 9001 et. Seq., as added Pub. L. 98-616, title VI, sec. 601(a), Nov. 8, 1994, 98 Stat. 3277, and amended, which is classified principally to this subchapter.

August 8, 2005, referred to in subsec. (f)(1)(C), originally read "the date of enactment of this subsection", meaning Aug. 8, 2005, the date of enactment of the Underground Storage Tank Compliance Act, Pub. L. 109-58, title XV, secs. 1521 to 1533, 119 Stat. 1092, which enacted subsec. (f) of this section.

§6991d. [RCRA §9005]**Inspections, monitoring, testing, and corrective action****(a) Furnishing information**

For the purposes of developing or assisting in the development of any regulation, conducting any study, taking any corrective action, or enforcing the provisions of this subchapter, any owner or operator of an underground storage tank (or any tank subject to study under section 6991h of this title that is used for storing regulated substances) shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee, or representative of a State acting pursuant to subsection (h)(7) of section 6991b of this title or with an approved program, furnish information relating to such tanks, their associated equipment, their contents, conduct monitoring or testing, permit such officer at all reasonable times to have access to, and to copy all records relating to such tanks and permit such officer to have access for corrective action. For the purposes of developing or assisting in the development of any regulation, conducting any study, taking corrective action, or enforcing the provisions of this subchapter, such officers, employees, or representatives are authorized—

- (1) to enter at reasonable times any establishment or other place where an underground storage tank is located;

- (2) to inspect and obtain samples from any person of any regulated substances contained in such tank;

- (3) to conduct monitoring or testing of the tanks, associated equipment, contents, or surrounding soils, air, surface water or ground water; and

- (4) to take corrective action.

Each such inspection shall be commenced and completed with reasonable promptness.

(b) Confidentiality

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

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

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

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

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

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained, by the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee (including records, reports, or information obtained by representatives of the Environmental Protection Agency).

(c) Inspection requirements

(1) Uninspected tanks

In the case of underground storage tanks regulated under this subtitle that have not undergone an inspection since December 22, 1998, not later than 2 years after the date of enactment of this subsection, the Administrator or a State that receives funding under this subtitle, as appropriate, shall conduct on-site inspections of all such tanks to determine compliance with this subtitle and the regulations under this subtitle (40 CFR 280) or a requirement or standard of a State program developed under section 9004.

(2) Periodic inspections

After completion of all inspections required under paragraph (1), the Administrator or a State that receives funding under this subtitle, as appropriate, shall conduct on-site inspections of each underground storage tank regulated under this subtitle at least once every 3 years to determine compliance with this subtitle and the regulations under this subtitle (40 CFR 280) or a requirement or standard of a State program developed under section 9004. The Administrator may extend for up to one additional year the first 3-year inspection interval under this paragraph if the State demonstrates that it has insufficient resources to complete all such inspections within the first 3-year period.

(3) Inspection authority

Nothing in this section shall be construed to diminish the Administrator's or a State's authorities under section 9005(a).

(Pub. L. 89-272, title II, §9005, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3284, and amended Pub. L. 99-499, title II, §205(f), Oct. 17, 1986, 100 Stat. 1702; Pub. L. 109-58, title XV, §1523(a), 1533(4), Aug. 8, 2005, 119 Stat. 1094, 1105.)

References In Text

This subchapter, referred to in text, originally read "this subtitle", meaning subtitle I of the Solid Waste Disposal Act, Pub. L. 89-272, title II, sec. 9001 et seq., as added Pub. L. 98-616, title VI, sec. 601(a), Nov. 8, 1984, 98 Stat. 3277, and amended, which is classified principally to this subchapter.

Study of Alternative Inspection Programs

The Administrator of the Environmental Protection Agency, in coordination with a State, shall gather information on compliance assurance programs that could serve as an alternative to the inspection programs under section 9005(c) of the Solid Waste Disposal Act (42 U.S.C. 6991d(c)) and shall, within 4 years after the date of enactment of this Act, submit a report to the Congress containing the results of such study.

§6991e. [RCRA §9006]

Federal enforcement

(a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information, the Administrator determines that any person is in violation of any requirement of this subchapter, the Administrator may issue an order requiring compliance within a reasonable specified time period or the Administrator may commence a civil action in the United States district court in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State with a program approved under section 6991c of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

(3) If a violator fails to comply with an order under this subsection within the time specified in the order, he shall be liable for a civil penalty of not more than \$25,000 for each day of continued noncompliance.

(b) Procedure

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

(c) Contents of order

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

(d) Civil penalties

(1) Any owner who knowingly fails to notify or submits false information pursuant to section 6991a(a) of this title shall be subject to a civil penalty not to exceed \$10,000 for each tank for which notification is not given or false information is submitted.

(2) Any owner or operator of an underground storage tank who fails to comply with—

(A) any requirement or standard promulgated by the Administrator under section 6991b of this title;

(B) any requirement or standard of a State program approved pursuant to section 6991c of this title;

(C) the provisions of section 6991b(g) of this title (entitled "Interim Prohibition");

(D) the training requirements established by States pursuant to section 9010 (relating to operator training); or

(E) the delivery prohibition requirement established by section 9012,

shall be subject to a civil penalty not to exceed \$10,000 for each tank for each day of violation. Any person making or accepting a delivery or deposit of a regulated substance to an underground storage tank at an ineligible facility in violation of section 9012 shall also be subject to the same civil penalty for each day of such violation.

(e) Incentive for performance

Both of the following may be taken into account in determining the terms of a civil penalty under subsection (d):

(1) The compliance history of an owner or operator in accordance with this subtitle or a program approved under section 9004.

(2) Any other factor the Administrator considers appropriate.

(Pub. L. 89-272, title II, §9006, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3285, and amended Pub. L. 109-58, title XV, §§1524(c), 1526(d), 1527(b), 1530(d), Aug. 8, 2005, 119 Stat. 1096, 1098, 1099.)

Effective Date Of 2005 Amendments

Amendments made by Pub. L. 109-58, sec. 1530, effective 18 months after Aug. 8, 2005, see Pub. L. 109-58, sec. 1530(b), set out as a note under 42 U.S.C. 6991b.

§6991f. [RCRA §9007]

Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any underground storage tank system, or (2) engaged in any activity resulting, or which may result, in the installation, operation, management, or closure of any underground storage tank, release response activities related thereto, or in the delivery, acceptance, or deposit of any regulated substance to an underground storage tank or underground storage tank system shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting underground storage tanks in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders and all civil and administrative penalties and fines, regardless of whether such penalties or fines are punitive or coercive in nature or are imposed for isolated, intermittent, or continuing violations. The United States hereby expressly waives any immunity otherwise applicable to the United States with respect to any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order or civil or administrative penalty or fine referred to in the preceding sentence, or reasonable service charge). The reasonable service charges referred to in this subsection include, but are not limited to, fees or charges assessed in connection with the processing and issuance of permits, renewal of permits, amendments to permits, review of plans, studies, and other documents, and inspection and monitoring of facilities, as well as any other nondiscriminatory charges that are assessed in connection with a Federal, State, interstate, or local underground storage tank regulatory program. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. No agent, employee, or officer of the United States shall be personally liable for any civil penalty under any Federal, State, interstate, or local law concerning underground storage tanks with respect to any act or omission within the scope of the official duties of the agent, employee, or officer. An agent, employee, or officer of the United States shall be subject to any criminal sanction (including, but not limited to, any fine or imprisonment) under any Federal or State law concerning underground storage tanks, but no department, agency, or instrumentality of the executive, legislative, or judicial branch of the Federal Government shall be subject to any such sanction. The President may exempt any underground storage tank of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of 1 year, but additional exemptions may be granted for periods not to exceed 1 year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) Review of and report on Federal underground storage tanks

(1) Review

Not later than 12 months after the date of enactment of the Underground Storage Tank Compliance Act, each Federal agency that owns or operates one or more underground storage tanks, or that manages land on which one or more underground storage tanks are located, shall submit to the Administrator, the Committee on Energy and Commerce of the United States House of Representatives, and the Committee on the Environment and Public Works of the Senate a compliance strategy report that—

(A) lists the location and owner of each underground storage tank described in this paragraph;

(B) lists all tanks that are not in compliance with this subtitle that are owned or operated by the Federal agency;

(C) specifies the date of the last inspection by a State or Federal inspector of each underground storage tank owned or operated by the agency;

(D) lists each violation of this subtitle respective any underground storage tank owned or operated by the agency;

(E) describes the operator training that has been provided to the operator and other persons having primary daily on-site management responsibility for the operation and maintenance of underground storage tanks owned or operated by the agency; and

(F) describes the actions that have been and will be taken to ensure compliance for each underground storage tank identified under subparagraph (B).

(2) Not a safe harbor

This subsection does not relieve any person from any obligation or requirement under this subtitle.

(Pub. L. 89-272, title II, §9007, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3286, and amended Pub. L. 109-58, title XV, §1528, Aug. 8, 2005, 119 Stat. 1100.)

References In Text

August 8, 2005, referred to in subsec. (b)(1), originally read "the date of enactment of this Underground Storage Tank Compliance Act", meaning Aug. 8, 2005, the date of enactment of this Underground Storage Tank Compliance Act, Pub. L. 109-58, title XV, secs. 1521 to 1533, 119 Stat. 1092, which enacted this section.

This subchapter, referred to in subsec. (b)(1)(D), (2), originally read "this subtitle", meaning subtitle I of the Solid Waste Disposal Act, Pub. L. 89-272, title II, sec. 9001 et. Seq., as added Pub. L. 98-616, title VI, sec. 601(a), Nov. 8, 1984, 98 Stat. 3277, and amended, which is classified principally to this subchapter.

Termination Of Reporting Requirements

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 9th item on page 20 of House Document No. 103-7.

§6991g. [RCRA §9008]

State authority

Nothing in this subchapter shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, or standard of performance respecting underground storage tanks that is more stringent than a regulation, requirement, or standard of performance in effect under this subchapter or to impose any additional liability with respect to the release of regulated substances within such State or political subdivision.

(Pub. L. 89-272, title II, §9008, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3286, and amended Pub. L. 99-499, title II, §205(g), Oct. 17, 1986, 100 Stat. 1702.)

§6991h. [RCRA §9009]

Study of underground storage tanks

(a) Petroleum tanks

Not later than twelve months after November 8, 1984, the Administrator shall complete a study of underground storage tanks used for the storage of regulated substances defined in section 9001(7)(B) of this title.

(b) Other tanks

Not later than thirty-six months after November 8, 1984, the Ad-

ministrator shall complete a study of all other underground storage tanks.

(c) Elements of studies

The studies under subsections (a) and (b) of this section shall include an assessment of the ages, types (including methods of manufacture, coatings, protection systems, the compatibility of the construction materials and the installation methods) and locations (including the climate of the locations) of such tanks; soil conditions, water tables, and the hydrogeology of tank locations; the relationship between the foregoing factors and the likelihood of releases from underground storage tanks; the effectiveness and costs of inventory systems, tank testing, and leak detection systems; and such other factors as the Administrator deems appropriate.

(d) Farm and heating oil tanks

Not later than thirty-six months after November 8, 1984, the Administrator shall conduct a study regarding the tanks referred to in subparagraphs (A) and (B) of section 9001(10) of this title. Such study shall include estimates of the number and location of such tanks and an analysis of the extent to which there may be releases or threatened releases from such tanks into the environment.

(e) Reports

Upon completion of the studies authorized by this section, the Administrator shall submit reports to the President and to the Congress containing the results of the studies and recommendations respecting whether or not such tanks should be subject to the preceding provisions of this subchapter.

(f) Reimbursement

(1) If any owner or operator (excepting an agency, department, or instrumentality of the United States Government, a State or a political subdivision thereof) shall incur costs, including the loss of business opportunity, due to the closure or interruption of operation of an underground storage tank solely for the purpose of conducting studies authorized by this section, the Administrator shall provide such person fair and equitable reimbursement for such costs.

(2) All claims for reimbursement shall be filed with the Administrator not later than ninety days after the closure or interruption which gives rise to the claim.

(3) Reimbursements made under this section shall be from funds appropriated by the Congress pursuant to the authorization contained in section 6916(g)³⁷ of this title.

(4) For purposes of judicial review, a determination by the Administrator under this subsection shall be considered final agency action.

(Pub. L. 89-272, title II, §9009, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3287, and amended Pub. L. 109-58, title XV, §1532(b)(3), Aug. 8, 2005, 119 Stat. 1105.)

References in Text

Section 6916(g) of this title, referred to in subsec. (f)(3), probably means section 6916(f) of this title which authorizes appropriations for this subchapter. There is no subsec. (g) of section 6916.

§6991i. [RCRA §9010]

Operator training

(a) Guidelines

(1) In general

Not later than 2 years after the date of enactment of the Underground Storage Tank Compliance Act, in consultation and cooperation with States and after public notice and opportunity for comment, the Administrator shall publish guidelines that specify training requirements for—

(A) persons having primary responsibility for on-site operation and maintenance of underground storage tanks systems

(B) persons having daily on-site responsibility for the operation and maintenance of underground storage tank systems; and

(C) daily, on-site employees having primary responsibility for addressing emergencies presented by a spill or release from an underground storage tank system.

(2) Considerations

The guidelines described in paragraph (1) shall take into account—

(A) State training programs in existence as of the date of publication of the guidelines;

(B) training programs that are being employed by tank owners and tank operators as of the date of enactment of the Underground Storage Tank Compliance Act;

(C) the high turnover rate of tank operators and other personnel;

(D) the frequency of improvement in underground storage tank equipment technology;

(E) the nature of the businesses in which the tank operators are engaged;

(F) the substantial differences in the scope and length of training needed for the different classes of persons described in subparagraphs (A), (B), and (C) of paragraph (1); and

(G) such other factors as the Administrator determines to be necessary to carry out this section.

(b) State programs

(1) In general

Not later than 2 years after the date on which the Administrator publishes the guidelines under subsection (a)(1), each State that receives funding under this subtitle shall develop State-specific training requirements that are consistent with the guidelines developed under subsection (a)(1).

(2) Requirements

State requirements described in paragraph (1) shall—

(A) be consistent with subsection (a);

(B) be developed in cooperation with tank owners and tank operators;

(C) take into consideration training programs implemented by tank owners and tank operators as of the date of enactment of this section; and

(D) be appropriately communicated to tank owners and operators.

(3) Financial incentive

The Administrator may award to a State that develops and implements requirements described in paragraph (1), in addition to any funds that the State is entitled to receive under this subtitle, not more than \$200,000, to be used to carry out the requirements.

(c) Training

All persons that are subject to the operator training requirements of subsection (a) shall—

(1) meet the training requirements developed under subsection (b); and

(2) repeat the applicable requirements developed under subsection (b), if the tank for which they have primary daily on-site management responsibilities is determined to be out of compliance with—

(A) a requirement or standard promulgated by the Administrator under section 9003; or

(B) a requirement or standard of a State program approved under section 9004.

(Pub. L. 89-272, title II, §9010, as added Pub. L. 98-616, title VI, §601(a), Nov. 8, 1984, 98 Stat. 3287, and amended, Pub. L. 109-58, title XV, §1524(a), Aug. 8, 2005, 119 Stat. 1095.)

References in Text

August 8, 2005, referred to in subsec. (a)(1), (2)(B), originally read “the date of enactment of this Underground Storage Tank Compliance Act”, meaning Aug. 8, 2005, the date of enactment of this Underground Storage Tank Compliance Act, Pub. L. 109-58, title XV, secs. 1521 to 1533, 119 Stat. 1092, which rewrote this section.

This subchapter, referred to in subsec. (b)(1), originally read “this subtitle”, meaning subtitle I of the Solid Waste Disposal Act, Pub. L. 89-272, title II, sec. 9001 et seq., as added Pub. L. 98-616, title VI, sec. 601(a), Nov. 8, 1984, 98 Stat. 3277, and amended, which is classified principally to this subchapter.

August 8, 2005, referred to in subsec. (b)(2)(C), originally read “the date of enactment of this section”, meaning Aug. 8, 2005, the date of enactment of the Under-

37. See References in Text note below.

ground Storage Tank Compliance Act, Pub. L. 109-58, title XV, secs. 1521 to 1533, 119 Stat. 1092, which rewrote this section.

§6991j.

Use of funds for release prevention and compliance

Funds made available under section 9014(2)(D) from the Trust Fund may be used to conduct inspections, issue orders, or bring actions under this subtitle—

(1) by a State, in accordance with a grant or cooperative agreement with the Administrator, of State regulations pertaining to underground storage tanks regulated under this subtitle; and

(2) by the Administrator, for tanks regulated under this subtitle (including under a State program approved under section 9004).

(Pub. L. 89-272, title II, §9011, as added Pub. L. 109-58, title XV, §1526(a), Aug. 8, 2005, 119 Stat. 1097.)

References In Text

This subchapter, referred to in text, originally read “this subtitle”, meaning subtitle I of the Solid Waste Disposal Act, Pub. L. 89-272, title II, sec. 9001 et seq., as added Pub. L. 98-616, title VI, sec. 601(a), Nov. 8, 1984, 98 Stat. 3277, and amended, which is classified principally to this subchapter.

§6991k.

Delivery prohibition

(a) Requirements

(1) Prohibition of delivery or deposit

Beginning 2 years after the date of enactment of this section, it shall be unlawful to deliver to, deposit into, or accept a regulated substance into an underground storage tank at a facility which has been identified by the Administrator or a State implementing agency to be ineligible for such delivery, deposit, or acceptance.

(2) Guidance

Within 1 year after the date of enactment of this section, the Administrator shall, in consultation with the States, underground storage tank owners, and product delivery industries, publish guidelines detailing the specific processes and procedures they will use to implement the provisions of this section. The processes and procedures include, at a minimum—

(A) the criteria for determining which underground storage tank facilities are ineligible for delivery, deposit, or acceptance of a regulated substance;

(B) the mechanisms for identifying which facilities are ineligible for delivery, deposit, or acceptance of a regulated substance to the underground storage tank owning and fuel delivery industries;

(C) the process for reclassifying ineligible facilities as eligible for delivery, deposit, or acceptance of a regulated substance;

(D) one or more processes for providing adequate notice to underground storage tank owners and operators and supplier industries that an underground storage tank has been determined to be ineligible for delivery, deposit, or acceptance of a regulated substance; and

(E) a delineation of, or a process for determining, the specified geographic areas subject to paragraph (4).

(3) Compliance

States that receive funding under this subtitle shall, at a minimum, comply with the processes and procedures published under paragraph (2).

(4) Consideration

(A) Rural and remote areas

Subject to subparagraph (B), the Administrator or a State may consider not treating an underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated substance if such treatment would jeopardize the availability of, or access to, fuel in any rural and remote areas unless an urgent threat to public health, as determined by the Administrator, exists.

(B) Applicability

Subparagraph (A) shall apply only during the 180-day period following the date of a determination by the Administrator or the appropriate State under subparagraph (A).

(b) Effect on State authority

Nothing in this section shall affect or preempt the authority of a State to prohibit the delivery, deposit, or acceptance of a regulated substance to an underground storage tank.

(c) Defense of violation

A person shall not be in violation of subsection (a)(1) if the person has not been provided with notice pursuant to subsection (a)(2)(D) of the ineligibility of a facility for delivery, deposit, or acceptance of a regulated substance as determined by the Administrator or a State, as appropriate, under this section.

(Pub. L. 89-272, title II, §9012, as added Pub. L. 109-58, title XV, §1527(a), Aug. 8, 2005, 119 Stat. 1098, and amended Pub. L. 109-168, §1(a)(1), Jan. 10, 2006, 119 Stat. 3580.)

References In Text

August 8, 2005, referred to in subsec. (a)(1), (2), originally read “the date of enactment of this section”, meaning Aug. 8, 2005, the date of enactment of the Underground Storage Tank Compliance Act, Pub. L. 109-58, title XV, secs. 1521 to 1533, 119 Stat. 1092, which enacted this section.

This subchapter, referred to in subsec. (a)(3), originally read “this subtitle”, meaning subtitle I of the Solid Waste Disposal Act, Pub. L. 89-272, title II, sec. 9001 et seq., as added Pub. L. 98-616, title VI, sec. 601(a), Nov. 8, 1984, 98 Stat. 3277, and amended, which is classified principally to this subchapter.

§6991l.

Tanks on Tribal lands

(a) Strategy

Administrator, in coordination with Indian tribes, shall, not later than 1 year after the date of enactment of this section, develop and implement a strategy—

(1) giving priority to releases that present the greatest threat to human health or the environment, to take necessary corrective action in response to releases from leaking underground storage tanks located wholly within the boundaries of—

(A) an Indian reservation; or

(B) any other area under the jurisdiction of an Indian tribe; and

(2) to implement and enforce requirements concerning underground storage tanks located wholly within the boundaries of—

(A) an Indian reservation; or

(B) any other area under the jurisdiction of an Indian tribe.

(b) Report

Not later than 2 years after the date of enactment of this section, the Administrator shall submit to Congress a report that summarizes the status of implementation and enforcement of this subtitle in areas located wholly withinNot later than 2 years after the date of enactment of this section, the Administrator shall submit to Congress a report that summarizes the status of implementation and enforcement of this subtitle in areas located wholly within—

(1) the boundaries of Indian reservations; and

(2) any other areas under the jurisdiction of an Indian tribe.

The Administrator shall make the report under this subsection available to the public.

(c) Not a safe harbor

This section does not relieve any person from any obligation or requirement under this subtitle.

(d) State authority

Nothing in this section applies to any underground storage tank that is located in an area under the jurisdiction of a State, or that is subject to regulation by a State, as of the date of enactment of this section.

(Pub. L. 89-272, title II, §9013, as added Pub. L. 109-58, title XV, §1529(a), Aug. 8, 2005, 119 Stat. 1101.)

References In Text

August 8, 2005, referred to in subsecs. (a), (b), and (d), originally read “the date of enactment of this section”, meaning Aug. 8, 2005, the date of enactment of the Underground Storage Tank Compliance Act, Pub. L. 109-58, title XV, secs. 1521 to 1533, 119 Stat. 1092, which enacted this section.

This subchapter, referred to in subsecs. (b) and (c), originally read “this subtitle”, meaning subtitle I of the Solid Waste Disposal Act, Pub. L. 89-272, Title II, sec. 9001 et seq., as added Pub. L. 98-616, title VI, sec. 601(a), Nov. 8, 1984, 98 Stat. 3277, and amended, which is classified principally to this subchapter.

§6991m.**Authorization of appropriations****(a) In general**

There are authorized to be appropriated to the Administrator the following amounts:

(1) To carry out subtitle I (except sections 9003(h), 9005(c), 9011, and 9012) \$50,000,000 for each of fiscal years 2006 through 2011.

(2) From the Trust Fund, notwithstanding section 9508(c)(1) of the Internal Revenue Code of 1986—

(A) to carry out section 9003(h) (except section 9003(h)(12)) \$200,000,000 for each of fiscal years 2006 through 2011;

(B) to carry out sections 9003(h)(12) of this title, \$200,000,000 for each of fiscal years 2006 through 2011;

(C) to carry out sections 9003(i), 9004(f), and 9005(c) \$55,000,000 for each of fiscal years 2006 through 2011.

(Pub. L. 89-272, title II, §9014, as added Pub. L. 109-58, title XV, §1531(a), Aug. 8, 2005, 119 Stat. 1104, and amended Pub. L. 109-168, §1(a)(3), Jan. 10, 2006, 119 Stat. 3580.)

References In Text

Subchapter I, referred to in par. (1), originally read “subtitle I”, meaning subtitle I of the Solid Waste Disposal Act, Pub. L. 89-272, title II, sec. 9001 et. seq., as added Pub. L. 98-616, title VI, sec. 601(a), Nov. 8, 1984, 98 Stat. 3277, and amended, which is classified principally to this subchapter.

Subchapter X—Demonstration Medical Waste Tracking Program

§6992. [RCRA §11001]

Scope of demonstration program for medical waste

(a) Covered States

The States within the demonstration program established under this subchapter for tracking medical wastes shall be New York, New Jersey, Connecticut, the States contiguous to the Great Lakes and any State included in the program through the petition procedure described in subsection (c) of this section, except for any of such States in which the Governor notifies the Administrator under subsection (b) of this section that such State shall not be covered by the program.

(b) Opt out

(1) If the Governor of any State covered under subsection (a) of this section which is not contiguous to the Atlantic Ocean notifies the Administrator that such State elects not to participate in the demonstration program, the Administrator shall remove such State from the program.

(2) If the Governor of any other State covered under subsection (a) of this section notifies the Administrator that such State has implemented a medical waste tracking program that is no less stringent than the demonstration program under this subchapter and that such State elects not to participate in the demonstration program, the Administrator shall, if the Administrator determines that such State program is no less stringent than the demonstration program under this subchapter, remove such State from the demonstration program.

(3) Notifications under paragraphs (1) or (2) shall be submitted to the Administrator no later than 30 days after the promulgation of regulations implementing the demonstration program under this subchapter.

(c) Petition in

The Governor of any State may petition the Administrator to be included in the demonstration program and the Administrator may, in his discretion, include any such State. Such petition may not be made later than 30 days after promulgation of regulations establishing the demonstration program under this subchapter, and the Administrator shall determine whether to include the State within 30 days after receipt of the State's petition.

(d) Expiration of demonstration program

The demonstration program shall expire on the date 24 months after the effective date of the regulations under this subchapter.

(Pub. L. 89-272, title II, §11001, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2950.)

§6992a. [RCRA §11002]

Listing of medical wastes

(a) List

Not later than 6 months after November 1, 1988, the Administrator shall promulgate regulations listing the types of medical waste to be tracked under the demonstration program. Except as provided in subsection (b) of this section, such list shall include, but need not be limited to, each of the following types of solid waste:

(1) Cultures and stocks of infectious agents and associated biologicals, including cultures from medical and pathological laboratories, cultures and stocks of infectious agents from research and industrial laboratories, wastes from the production of biologicals, discarded live and attenuated vaccines, and culture dishes and devices used to transfer, inoculate, and mix cultures.

(2) Pathological wastes, including tissues, organs, and body parts that are removed during surgery or autopsy.

(3) Waste human blood and products of blood, including serum, plasma, and other blood components.

(4) Sharps that have been used in patient care or in medical, research, or industrial laboratories, including hypodermic needles, syringes, pasteur pipettes, broken glass, and scalpel blades.

(5) Contaminated animal carcasses, body parts, and bedding of

animals that were exposed to infectious agents during research, production of biologicals, or testing of pharmaceuticals.

(6) Wastes from surgery or autopsy that were in contact with infectious agents, including soiled dressings, sponges, drapes, lavage tubes, drainage sets, underpads, and surgical gloves.

(7) Laboratory wastes from medical, pathological, pharmaceutical, or other research, commercial, or industrial laboratories that were in contact with infectious agents, including slides and cover slips, disposable gloves, laboratory coats, and aprons.

(8) Dialysis wastes that were in contact with the blood of patients undergoing hemodialysis, including contaminated disposable equipment and supplies such as tubing, filters, disposable sheets, towels, gloves, aprons, and laboratory coats.

(9) Discarded medical equipment and parts that were in contact with infectious agents.

(10) Biological waste and discarded materials contaminated with blood, excretion, exudates³⁸ or secretion from human beings or animals who are isolated to protect others from communicable diseases.

(11) Such other waste material that results from the administration of medical care to a patient by a health care provider and is found by the Administrator to pose a threat to human health or the environment.

(b) Exclusions from list

The Administrator may exclude from the list under this section any categories or items described in paragraphs (6) through (10) of subsection (a) of this section which he determines do not pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(Pub. L. 89-272, title II, §11002, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2951.)

§6992b. [RCRA §11003]

Tracking of medical waste

(a) Demonstration program

Not later than 6 months after November 1, 1988, the Administrator shall promulgate regulations establishing a program for the tracking of the medical waste listed in section 6992a of this title which is generated in a State subject to the demonstration program. The program shall (1) provide for tracking of the transportation of the waste from the generator to the disposal facility, except that waste that is incinerated need not be tracked after incineration, (2) include a system for providing the generator of the waste with assurance that the waste is received by the disposal facility, (3) use a uniform form for tracking in each of the demonstration States, and (4) include the following requirements:

(A) A requirement for segregation of the waste at the point of generation where practicable.

(B) A requirement for placement of the waste in containers that will protect waste handlers and the public from exposure.

(C) A requirement for appropriate labeling of containers of the waste.

(b) Small quantities

In the program under subsection (a) of this section, the Administrator may establish an exemption for generators of small quantities of medical waste listed under section 6992a of this title, except that the Administrator may not exempt from the program any person who, or facility that, generates 50 pounds or more of such waste in any calendar month.

(c) On-site incinerators

Concurrently with the promulgation of regulations under subsection (a) of this section, the Administrator shall promulgate a record-keeping and reporting requirement for any generator in a demonstration State of medical waste listed in section 6992a of this title that (1) incinerates medical waste listed in section 6992a of this title on site

38. So in original. Probably should be "exudates".

and (2) does not track such waste under the regulations promulgated under subsection (a) of this section. Such requirement shall require the generator to report to the Administrator on the volume and types of medical waste listed in section 6992a of this title that the generator incinerated on site during the 6 months following the effective date of the requirements of this subsection.

(d) Type of medical waste and types of generators

For each of the requirements of this section, the regulations may vary for different types of medical waste and for different types of medical waste generators.

(Pub. L. 89-272, title II, §11003, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2952.)

§6992c. [RCRA §11004]

Inspections

(a) Requirements for access

For purposes of developing or assisting in the development of any regulation or report under this subchapter or enforcing any provision of this subchapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled medical waste shall, upon request of any officer, employee, or representative of the Environmental Protection Agency duly designated by the Administrator, furnish information relating to such waste, including any tracking forms required to be maintained under section 6992b of this title, conduct monitoring or testing, and permit such person at all reasonable times to have access to, and to copy, all records relating to such waste. For such purposes, such officers, employees, or representatives are authorized to—

(1) enter at reasonable times any establishment or other place where medical wastes are or have been generated, stored, treated, disposed of, or transported from;

(2) conduct monitoring or testing; and

(3) inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

(b) Procedures

Each inspection under this section shall be commenced and completed with reasonable promptness. If the officer, employee, or representative obtains any samples, prior to leaving the premises he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained if giving such an equal portion is feasible. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge of the premises concerned.

(c) Availability to public

The provisions of section 6927(b) of this title shall apply to records, reports, and information obtained under this section in the same manner and to the same extent as such provisions apply to records, reports, and information obtained under section 6927 of this title.

(Pub. L. 89-272, title II, §11004, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2952.)

§6992d. [RCRA §11005]

Enforcement

(a) Compliance orders

(1) Violations

Whenever on the basis of any information the Administrator determines that any person has violated, or is in violation of, any requirement or prohibition in effect under this subchapter (including any requirement or prohibition in effect under regulations under this subchapter) (A) the Administrator may issue an order (i) assessing a civil penalty for any past or current violation, (ii) requiring compliance immediately or within a specified time period, or (iii) both, or (B) the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction. Any order issued pursuant to this subsection shall state with reasonable specificity the nature of the violation.

(2) Orders assessing penalties

Any penalty assessed in an order under this subsection shall not

exceed \$25,000 per day of noncompliance for each violation of a requirement or prohibition in effect under this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(3) Public hearing

Any order issued under this subsection shall become final unless, not later than 30 days after issuance of the order, the persons named therein request a public hearing. Upon such request, the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section, the Administrator may issue subpoenas for the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

(4) Violation of compliance orders

In the case of an order under this subsection requiring compliance with any requirement of or regulation under this subchapter, if a violator fails to take corrective action within the time specified in an order, the Administrator may assess a civil penalty of not more than \$25,000 for each day of continued noncompliance with the order.

(b) Criminal penalties

Any person who—

(1) knowingly violates the requirements of or regulations under this subchapter;

(2) knowingly omits material information or makes any false material statement or representation in any label, record, report, or other document filed, maintained, or used for purposes of compliance with this subchapter or regulations thereunder; or

(3) knowingly generates, stores, treats, transports, disposes of, or otherwise handles any medical waste (whether such activity took place before or takes place after November 1, 1988) and who knowingly destroys, alters, conceals, or fails to file any record, report, or other document required to be maintained or filed for purposes of compliance with this subchapter or regulations thereunder shall, upon conviction, be subject to a fine of not more than \$50,000 for each day of violation, or imprisonment not to exceed 2 years (5 years in the case of a violation of paragraph (1)). If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

(c) Knowing endangerment

Any person who knowingly violates any provision of subsection (b) of this section who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall upon conviction be subject to a fine of not more than \$250,000 or imprisonment for not more than 15 years, or both. A defendant that is an organization shall, upon conviction under this subsection, be subject to a fine of not more than \$1,000,000. The terms of this paragraph shall be interpreted in accordance with the rules provided under section 6928(f) of this title.

(d) Civil penalties

Any person who violates any requirement of or regulation under this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this section, constitute a separate violation.

(e) Civil penalty policy

Civil penalties assessed by the United States or by the States under this subchapter shall be assessed in accordance with the Administrator's "RCRA Civil Penalty Policy", as such policy may be amended from time to time.

(Pub. L. 89-272, title II, §11005, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2953.)

§6992e. [RCRA §11006]

Federal facilities

(a) In general

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government in a

demonstration State (1) having jurisdiction over any solid waste management facility or disposal site at which medical waste is disposed of or otherwise handled, or (2) engaged in any activity resulting, or which may result, in the disposal, management, or handling of medical waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of medical waste disposal and management in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. The Federal, State, interstate, and local substantive and procedural requirements referred to in this subsection include, but are not limited to, all administrative orders, civil, criminal, and administrative penalties, and other sanctions, including injunctive relief, fines, and imprisonment. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal court with respect to the enforcement of any such order, penalty, or other sanction. For purposes of enforcing any such substantive or procedural requirement (including, but not limited to, any injunctive relief, administrative order, or civil, criminal, administrative penalty, or other sanction), against any such department, agency, or instrumentality, the United States hereby expressly waives any immunity otherwise applicable to the United States. The President may exempt any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(b) "Person" defined

For purposes of this chapter, the term "person" shall be treated as including each department, agency, and instrumentality of the United States. (Pub. L. 89-272, title II, §11006, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2954.)

Termination Of Reporting Requirements

For termination, effective May 15, 2000, of provisions in subsec. (a) of this section requiring the President to report annually to Congress, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 20 of House Document No. 103-7.

§6992f. [RCRA §11007]

Relationship to State law

(a) State inspections and enforcement

A State may conduct inspections under³⁹ 6992c of this title and take enforcement actions under section 6992d of this title against any person, including any person who has imported medical waste into a State in violation of the requirements of, or regulations under, this subchapter, to the same extent as the Administrator. At the time a State initiates an enforcement action under section 6992d of this title against any person, the State shall notify the Administrator in writing.

(b) Retention of State authority

Nothing in this subchapter shall—

- (1) preempt any State or local law; or
- (2) except as provided in subsection (c) of this section, otherwise affect any State or local law or the authority of any State or local government to adopt or enforce any State or local law.

(c) State forms

Any State or local law which requires submission of a tracking form from any person subject to this subchapter shall require that the form

be identical in content and format to the form required under section 6992b of this title, except that a State may require the submission of other tracking information which is supplemental to the information required on the form required under section 6992b of this title through additional sheets or such other means as the State deems appropriate. (Pub. L. 89-272, title II, §11007, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2955.)

§6992g. [RCRA §11008]

Repealed. Pub. L. 105-362, title V, §501(h)(A), Nov. 10, 1998, 112 Stat. 3284

Section, Pub. L. 89-272, title II, Sec. 11008, as added Pub. L. 100-582, Sec. 2(a), Nov. 1, 1988, 102 Stat. 2956, related to Administrator's report to Congress concerning demonstration medical waste tracking program.

§6992h. [RCRA §11008]

Health impacts report

Within 24 months after November 1, 1988, the Administrator of the Agency for Toxic Substances and Disease Registry shall prepare for Congress a report on the health effects of medical waste, including each of the following—

- (1) A description of the potential for infection or injury from the segregation, handling, storage, treatment, or disposal of medical wastes.
- (2) An estimate of the number of people injured or infected annually by sharps, and the nature and seriousness of those injuries or infections.
- (3) An estimate of the number of people infected annually by other means related to waste segregation, handling, storage, treatment, or disposal, and the nature and seriousness of those infections.
- (4) For diseases possibly spread by medical waste, including Acquired Immune Deficiency Syndrome and hepatitis B, an estimate of what percentage of the total number of cases nationally may be traceable to medical wastes.

(Pub. L. 89-272, title II, §11009, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2957; Pub. L. 105-362, §501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

Prior Provisions

A prior section 11008 of Pub. L. 89-272 was classified to section 6992g of this title prior to repeal by Pub. L. 105-362, Sec. 501(h)(1)(A).

§6992i. [RCRA §11009]

General provisions

(a) Consultation

(1) In promulgating regulations under this subchapter, the Administrator shall consult with the affected States and may consult with other interested parties.

(2) The Administrator shall also consult with the International Joint Commission to determine how to monitor the disposal of medical waste emanating from Canada.

(b) Public comment

In the case of the regulations required by this subchapter to be promulgated within 9 months after November 1, 1988, the Administrator may promulgate such regulations in interim final form without prior opportunity for public comment, but the Administrator shall provide an opportunity for public comment on the interim final rule. The promulgation of such regulations shall not be subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).⁴⁰

(c) Relationship to subchapter III

Nothing in this subchapter shall affect the authority of the Administrator to regulate medical waste, including medical waste listed under section 6992a of this title, under subchapter III of this chapter.

(Pub. L. 89-272, title II, §11010, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2957; Pub. L. 105-362, §501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

References In Text

The Paperwork Reduction Act of 1980, referred to in subsec. (b), is Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (Sec. 3501 et seq.) of Title 44, Public Printing and Documents, prior to

39. So in original. Probably should be "under section".

40. See References in Text note below.

the general amendment of that chapter by Pub. L. 104-13, Sec. 2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

Prior Provisions

A prior section 11009 of Pub. L. 89-272 was renumbered section 11008 and is classified to section 6992h of this title.

§6992j. [RCRA §11010]**Effective date**

The regulations promulgated under this subchapter shall take effect within 90 days after promulgation, except that, at the time of promulgation, the Administrator may provide for a shorter period prior to the effective date if he finds the regulated community does not need 90 days to come into compliance.

(Pub. L. 89-272, title II, §11011, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2958; Pub. L. 105-362, §501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

Prior Provisions

A prior section 11010 of Pub. L. 89-272 was renumbered section 11009 and is classified to section 6992i of this title.

§6992k. [RCRA §11011]**Authorization of appropriations**

There are authorized to be appropriated to the Administrator such sums as may be necessary for each of the fiscal years 1989 through 1991 for purposes of carrying out activities under this subchapter.

(Pub. L. 89-272, title II, §11012, as added Pub. L. 100-582, §2(a), Nov. 1, 1988, 102 Stat. 2958; Pub. L. 105-362, §501(h)(1)(B), Nov. 10, 1998, 112 Stat. 3284.)

Prior Provisions

A prior section 11011 of Pub. L. 89-272 was renumbered section 11010 and is classified to section 6992j of this title.