

SW23P

T R A N S C R I P T

Public Meeting on the Proposed Revisions
to EPA Grant Regulations for Implementation of
Resource Conservation and Recovery Act of 1976

June 30, 1977, Washington, D.C.

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2 ENVIRONMENTAL PROTECTION AGENCY
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5 PUBLIC MEETING

6 Proposed Revisions to EPA Grant Regulations for Implementation
7 of Resource Conservation and Recovery Act of 1976.
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13 Thursday,
14 June 30, 1977

15 9:00 a.m.

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17 EPA
18 Waterside Mall Building
19 Room 3906-08
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1 MR. GREY: Good morning everybody and welcome to
2 EPA's public meeting, one of many we are holding in connection
3 with the Resource Conservation and Recovery Act of 1976. We
4 will be referring to that as RCRA.

5 I am Val Grey. I work for the Office of Solid Waste
6 within EPA and I am chairing the working group that is putting
7 together the proposed grant regulations or amendments to the
8 EPA grant regulations which deal with those grant programs
9 that are authorized in RCRA.

10 The purpose of this meeting is to discuss the par-
11 ticular proposed grant regulations in the current draft stage.
12 Most of you should have a copy of it; if you do not, we do have
13 copies outside. I hope that most of you have had a chance
14 to review these earlier so that you understand the content of
15 them. If you have not, see if you can just bear along with
16 us and catch on as we go along.

17 We are presently in the A-85 review process and
18 the comment period ends on the 5th of July. If you have any
19 comments, you have until then to get them in to us.

20 Copies of RCRA are also available to you in case you
21 don't have a copy. RCRA maximizes public participation in its
22 implementation.

23 These regulations we are going to be discussing today
24 are administrative in nature. Normally we would not have a
25 public meeting for this type of regulation, however, there is

1 a great deal of policy and procedure that has been changed
2 into those grant regulations which we consider to be of public
3 interest. Therefore, we are holding this meeting here today
4 to exchange a dialogue between us. Mostly we are here to
5 listen to you to find out⁺ what you feel about the policies
6 and procedures that have been set up in administering these
7 grants authorized under RCRA.

8 The draft that you have is not a perfect draft yet.
9 We already see several changes that have to be made. We hope
10 that after today we will be able to more clearly define the
11 changes that are needed.

12 I would like to remind everyone at this time before
13 we go into the regulations themselves that we are asking
14 you to register. Anyone who has not registered, please do so.
15 Transcripts of this public meeting will be available in, I
16 understand, two or three days. We intend to mail out to you
17 a copy of these transcripts, that is to everyone who is here
18 and who has left a card. Transcripts will also be available
19 in each of our 10 regional offices and several copies will
20 be available here in headquarters should you desire extra
21 copies or should you desire to review the transcript without
22 receiving a copy.

23 Tomorrow is another public meeting on the subject
24 of public participation. We have written guidelines under
25 public participation under RCRA that are the subject of tomorrow's

1 meeting. Copies of the guidelines for the public participa-
2 tion meeting are also available today for those of you who
3 want to pick up a copy.~~today.~~

4 I would like to introduce some of the members of
5 the Working Group that have put these grant regulations to-
6 gether. On my far right is Mr. Scott McMoran from the Office
7 of Grants Administration Division. That is the division that
8 is responsible generally for the EPA regulations and he has
9 worked very diligently on this Working Group to make sure the
10 grant regulations are in conformance with the Agency's regu-
11 lations.

12 Next we have Burnell Vincent who works in the Sys-
13 tems Management Division of the Office of Solid Waste. He
14 is primarily responsible for the state program which is the
15 essence of these regulations that we have today.

16 Next we have John Settle ~~also~~ from the Office of Gen-
17 eral Counsel. He is perhaps the Agency's best expert on the
18 legal implications of the EPA grant regulations and is per-
19 haps the most active member of the Working Group and has per-
20 haps been the most prolific writer of the regulations that
21 we have today.

22 On my left is Mr. Lanier Hickman. He is my boss
23 and the Director of ^{the} Management and Information Staff in the
24 Office of Solid Waste. His purpose here today is to discuss
25 a little bit the policy decisions and the policy thinking

1 that has gone into the programs behind the grant regulations.
2 I thought it would be essential that we understand this in
3 order to understand why the regulations are the way they are.

4 MR. HICKMAN: Someone had asked the girls out front
5 where you registered "How do I get a Title 40?" It is referenced
6 in the front part of the draft grant regs that you need to
7 have a Title 40 in order to fully compare what is in the
8 document with what is in the old document. This is what it
9 looks like (indicating). You can buy it from GPO for \$3.50.
10 We don't have it available here but it is Title 40 Code of
11 Federal Regulations and it is for sale ^{at} in the GPO. That takes
12 care of a housekeeping chore for those of you who don't know
13 how to get a CFR.

14 How many of you have read the provisions of RCRA?

15 (Show of hands)

16 How many of you have read the law?

17 (Show of hands)

18 How many of you have reviewed and read the proposed
19 draft grant regs?

20 (Show of hands)

21 Then we should have a sound basis for discussion
22 today. I am pleased by the turnout. I am somewhat surprised
23 by the number here for what many may feel are mundane or are an
24 administrative set of regulations, but they are not totally
25 an administrative set of regulations. They have a great deal

1 of policy implications in them.

2 This is probably one of the first views you have
3 had of some of the directions that the Agency is considering
4 as it pursues the implementation of RCRA. The implementation
5 of RCRA is well under way although most of the authorizations
6 for funding are not there until Fiscal 1978 which begins in
7 October.

8 The Agency and the Office of Solid Waste, particu-
9 larly with strong support from Enforcement and Research and Devel-
10 opment as well as all the other parts of the Agency, went through
11 a massive replanning and reprogramming exercise through the
12 period of November and December and took the resources that
13 had been made available to us under the old Solid Waste Dis-
14 posal Act and redirected them toward implementing the man-
15 dated requirements of RCRA.

16 So the implementation is well under way. These
17 grant regs have to be ready to be utilized by October 1 be-
18 cause October 1 begins Fiscal Year 78 and those states out
19 there that are now under support of EPA through the solid
20 waste planning provisions of the old law, Section 207, Section
21 204 or Section 210 -- and some have three grants under the
22 old law -- will have to have financial assistance from RCRA
23 beginning October 1. So it is essential that these regula-
24 tions be completed and promulgated prior to that date.

25 Supportive of that document, the grant regulation

1 document is a separate document the Agency is developing as
2 a guidance to the Regional Offices in the states to give
3 them the foundation that they need with the grant regs to
4 begin their function in implementing RCRA.

5 Implementation of RCRA at the state level has already
6 begun. Every state out there is now analyzing its current
7 situation and its current activities and programs and the re-
8 lationship to what RCRA requests of state government to see
9 what changes will have to occur in their state government and
10 subsequently local governments in order for them to meet
11 the requirements or the wishes of the Congress as it relates
12 to RCRA.

13 I think we should understand how this law is dif-
14 ferent than many other laws that the Congress passes. The
15 Congress made it very clear in the passage of RCRA that they
16 did not want a big federal regulatory program; that they be-
17 lieved as they did in the original act of 1965 and the amend-
18 ments of 1970 that the principal responsibility for solid waste
19 management rests with state and local government and that
20 local government's function was to operate the systems within
21 standards and criteria established by state government with
22 support from financial and technical aspects of the federal
23 government. One of those laws is founded on that concept: Sub-
24 title D.

25 Congress also recognized there was a need to see that

1 particularly hazardous wastes were controlled in a much more
2 controlled and managed way so they provided limited regula-
3 tory responsibilities to the federal government in Subtitle C.

4 But both of those sections and all the supportive
5 sections of the law are designed principally to create the
6 atmosphere and necessary attitude that state and local govern-
7 ment need to assume the responsibilities of RCRA.

8 The federal government leverage is principally its
9 financial assistance program, its technical assistance pro-
10 gram and its research and development function. That is the
11 way our program is structured now and our plan for FY 78 and
12 that is the way these grant regs are written.

13 There are a couple of key policy aspects in those
14 grant regs that you should certainly be aware of. Most of the
15 sections of the grant regs are strictly bookkeeping amendments
16 to prior legislation from the old law, but the sections re-
17 lated to implementing the financial assistance authority, Sub-
18 title C and D, are totally new and do reflect the attempt on
19 the part of the Agency to fulfill what we believe the Congres-
20 sional wish is: to bring the mechanism about that can stimu-
21 late maximum state and local assumption of what RCRA requires,
22 what it asks state and local government to do.

23 We have tried to structure that section of the
24 grant regs to show an integrated approach. The Congress in
25 their wisdom redefined solid waste to cover many things other

1 than solid, and hazardous waste is a subset of that just as
2 many other waste materials are. And they define disposal in
3 such a way that they fully indicate to state and local govern-
4 ment that land disposal as we currently know it now and the
5 term "sanitary land fill" no longer applies in the new scope
6 of RCRA.

7 What Congress is saying is that sanitary land fill
8 in the future will be an accepted way of disposing of solid
9 waste in the new definition. It is from liquid to solid and
10 everything in between. Therefore, you have to stop thinking
11 of sanitary land fills as municipal operations that take it,
12 pack it. Subtitle D and in the financial assistance provision
13 and in the requirements of the Agency to issue criteria on what
14 is acceptable land disposal practice must be structured in a
15 certain way to give state and local governments to meet the
16 requirements of that particular section of Subtitle D.

17 The grant regulations are structured to provide that
18 kind of stimulation, that kind of stimulus.

19 We have tried to be uniform in percent matching as
20 far as state and local government participation. Subtitle D
21 makes it easy to pass out money. Subtitle C does not. Grant
22 regs propose a basis for distributing money under Subtitle C.
23 We would like to know very much what you think about that.
24 We would like to know if you believe that the percent matching
25 we now show for Subtitle C and D is what you think it ought

1 to be.

2 We made provisions for a special case for conducting
3 inventory of land disposal facilities to provide 100 percent
4 as stimulus to the state government to do the inventory. We
5 feel it is essential that state governments conduct the in-
6 ventory because they are the ones that are going to be regu-
7 lating and protecting and converting those sites under the
8 provisions of Subtitle D. It makes sense because they know
9 where the sites are.

10 They haven't just started in the land disposal busi-
11 ness at the state level. They had been in it many years, long
12 before we got into it in 1966 and they will be in it when we
13 are no longer around. We have tried to encourage state parti-
14 cipation in the conduct of the inventory. The inventory is
15 going to be phased. It can't all be done in one year. We are
16 prioritizing what we think should be done first and that is
17 the policy issue that relates to the funding of state programs.

18 Much of the financial assistance flows through state
19 government and RCRA requires state and local government to
20 get their act together as to how they are going to provide
21 this money to carry out certain functions of the law. We are
22 interested in knowing your reaction to those provisions of the
23 grant regulations.

24 All in all it is going to be an interesting next
25 two years. RCRA is different, I think, in its structure and

1 I think it offers an opportunity in solid waste management for
2 the various levels of government and industry to move from
3 where we are to where we want to be. It provides an opportunity
4 for public participation to get everybody together to make a
5 judgment on the best way to proceed. That's why we are having
6 this meeting and that's why we are delighted to have as large
7 a group as we have here today. And the fact that all of
8 you have read the law and the grant regs and understand them
9 should make it much easier for us to understand these grant
10 regs in the next 60 to 90 days.

11 We are very happy to have you here and I hope you
12 are not reluctant to stand up and tell us what you think.
13 I think it is deadly to have a public meeting and have all
14 these people who I know have something to say and are reluc-
15 tant to say it. It is like going to a dance and after the
16 first couple gets on the floor, everybody follows them. So
17 somebody has to start. I hope that opens up the floodgates
18 and we get a lot of comments. We welcome you here and please
19 be vocal in your comments.

20 MR. GREY: Thank you.

21 I would like to briefly give you the background of
22 the work done on these regulations and some of the highlights
23 that are contained in the regulations for the benefit of
24 those who haven't had an opportunity to study those in any
25 detail.

1 The Work Group was formed about late February or
2 early March of this year. It consisted of members of each of
3 our divisions in the Office of Solid Waste and members from
4 other offices of EPA like the Research and Development Office,
5 the General Counsel Office, the Grants Administrative Divi-
6 sion and a representative from one of our Regional Offices-in
7 this case it was Region No. 2 -- and two or three representa-
8 tives from states. Since the emphasis is on state programs,
9 that was the primary thrust of these changes. The complete
10 list of the full Working Group is contained on the back of your
11 agenda sheet.

12 The first draft was put together about April 20th
13 and we distributed it to our Regional Offices, to all the states
14 and to a few interested groups. This was not the public
15 review period; it was merely to try on for size, if you will,
16 the draft that we had at that time. It was a very rough
17 draft. It was not even a homogenized draft. It was then
18 sized up by a lot of offices putting their materials together
19 in one document with no effort at screening or editing. We
20 wanted to get a general reaction from the main actors in the
21 implementation of this grant program. We wanted their re-
22 action to the first draft.

23 Those comments came in and we redrafted into the
24 current draft which we think is a much improved draft and
25 does reflect most of the concerns that the states and regions

1 had in the first draft.

2 The current status is what is called A-85 review.
3 That is an OMB circular which requires a pre-publication re-
4 view of all proposed regulations and guidelines by selected
5 interest groups. We are in that process. We scheduled this
6 meeting today during the review period.

7 As I told you earlier today, the comment period
8 ends on July 5th. So we will have your comments and the
9 comments set forth during this review process to examine and
10 influence us or direct us in rewriting the current draft.

11 The present plan is to have these regulations by
12 1 August as an interim regulation. Our purpose in doing this
13 is to set up a set of regulations which are not final yet
14 usable for both the states in their planning for Fiscal 78
15 and by our Regional Offices in implementing prior to the publi-
16 cation of the final regulation. So an interim regulation is
17 a usable regulation for both planning and implementation by
18 the actors involved, and that is our purpose at the moment.

19 Let me first cover what the package, this grant
20 package, that you have covers. Four parts of the EPA grant
21 regulations are amended by the draft that you have. The most
22 important part is Part 35 which has the most substantive changes
23 in it.

24 Part 30 deals with the EPA general regulations and
25 merely amends those sections of the general regulations which

1 relate to RCRA and which require adjustments or changes be-
2 cause of wording in RCRA.

3 Part 40 deals with research and demonstration grants.
4 There are only minor changes in that set of regulations which
5 would reflect also the requirements and wording of RCRA.

6 Part 45 deals with training grants and even fewer
7 changes yet are made, again to conform with wording and re-
8 quirements in RCRA.

9 So we will be concentrating now, at least in my
10 summary, on Part 35. Here we have substantially a new pro-
11 gram which has a new title. We previously in this part had
12 planning grants under the old Solid Waste Disposal Act, Section
13 207. We now have what we call ~~Solid~~ and hazardous waste manage-
14 ment program support grants. This covers a wider spectrum
15 of financial support in state and in entities below the state
16 level. It includes all the programs under Subtitles C and D
17 except special communities which are covered in our RCRA
18 Section 4008(e). This will be covered later and we left space
19 in the draft for later introduction of the regulations ~~on~~
20 governing the special communities.

21 Also excluded ~~from those grants~~ are the grants for
22 tire shredders which ~~ch~~ come under Section 2004 of RCRA. These
23 grants provide support for an annual program to be carried
24 out in each state and states and territories are divided in
25 such a way that we have 56 entities that we will be dealing

1 with. Funds for those state agencies as well as for regional
2 and local agencies are provided and funds for solid as well
3 as for hazardous wastes are provided.
4

5 Before grant monies can be transferred or made
6 available to a state, a number of events must take place.
7 We have tried to summarize these events in Section 35.432 of
8 your draft. This is kind of a unique inclusion in a grant
9 regulation because it summarizes a program rather than directing
10 how things are to be done. We felt that with the many provi-
11 sions in Part 35 it would be a little hard to understand
12 exactly how the total process took place, therefore, we pro-
13 duced a summary in Part 35 describing that process.

14 Basically it involves the following -- and this
15 process, by the way, is not a firm process and it will probably
16 come up in the interim regulations because it relates to another
17 set of guidelines being developed by the Office of Solid
18 Waste -- they basically provide for a draft program by states
19 in cooperation with the Regional Administrators to ensure that
20 the programs get early approval. So we really start sort of
21 a year in advance in order to get ready for the year in which
22 the funds are to be dispersed.

23 The program covers both planning and implementation
24 of state plans. We have already started that process, as
25 Mr. Hickman has pointed out, in Fiscal 77 and we are going to
utilize the monies that were spent in prior years since the

1 implementation of the old Solid Waste Disposal Act to utilize
2 the produce from the old plan to work into the new require-
3 ments of RCRA so things that have been done in the past are
4 not toally obsolete.

5 We feel there is a considerable flexibility in
6 these regulations and considerable discretionary authority
7 that has been assigned to the Regional Administrator. How
8 much of the allocated funds made available to the region are
9 not to be considered as absolute entitlements to those allo-
10 cations by each state. They merely represent the maximum
11 amount of funds that can flow to that state provided a great
12 many requirements are met and steps taken.

13 One firm requirement we will have before any monies
14 flow to any state is that a state conducts an inventory of
15 open dumps. This is our highest priority program and every
16 state that receives funds will be required to perform an open
17 dump inventory.

18 Generally the grants will support the following types
19 of activities within that state: first, open dump inventory
20 which is required by Section 4005 of RCRA and we are furnishing
21 that under 4008(a)(1); and second, solid waste planning imple-
22 mentation activities funded under 4008(~~a~~)(1) of RCRA also.

23 We will be funding hazardous planning (waste) and imple-
24 mentation which normally would be funded under Section 3011.
25 Rural communities assistance funded under 4009 of RCRA.

1 Sub-state implementation grants which deal with those special
2 types of programs under 4008(a)(2) -- basically they are
3 implementation programs.

4 Future amendments will cover special communities.
5 Those are the programs that will be funded by these grant
6 regulations.

7 Allotments for the first two which is the inventory
8 and the solid waste planning implementation will be based on
9 a population formula except no state will receive less than
10 one-half of one percent. This is the way it is spelled out
11 in the law. For hazardous waste planning implementation,
12 the allocations would be made on the basis of a formula based
13 on three things: on population, on the quantity of waste
14 generated and on land area. But again, no state will receive
15 less than one-half of one percent.

16 However, in Fiscal 78, although the regs indicate
17 that we are going to use this formula, a decision has been made
18 to disperse all funds in '78 on the basis of population.

19 Grants to rural communities will be based on a
20 three-part population formula, and to sub-state entities,
21 without any formula at all.

22 All grants will be matched -- grants up to 75 percent
23 federal, 25 percent state, except for the inventory which we
24 intend to fund up to 100 percent and probably in nearly all
25 cases it would be at 100 percent..

1 Funds that are not granted to any state from their allo-
2 cation for whatever reason -- for being penalized, for not
3 meeting the requirements deadlines, for not participating or
4 for whatever reason -- funds will be made available to another
5 state within the EPA region. Within six months, if those
6 funds cannot be dispersed within a region, they will be made
7 available to other states in other regions.

8 The grant regulations also carry a penalty provi-
9 sion should a state fail to submit final annual programs.
10 For example, the grant amount may be reduced by up to one
11 percent for each day's delay. We don't anticipate this will
12 be imposed frequently but it is there in case we have a
13 need to use it.

14 The details of what a state program is like and
15 what the submission is like is still under development but they
16 are basically spelled out in the draft you now have and are
17 covered in 35.446 and 448. Briefly they initiate a process of
18 submitting initially a combination package which includes an
19 old plan, one presumably made up under the old Solid Waste
20 Disposal Act, or an equivalent plan made by the state, updated
21 to meet certain RCRA requirements and to include a strategy
22 for implementation of that plan through the next period of
23 years.

24 Annually prior to receipt of any funds, a state
25 program submission will include a summary of the current year's

1 program for that state and a description by program elements
2 which are also spelled out in the regulations of the state's
3 proposed program for the coming year. These are made early
4 in the year. They start on May 1st and the final plan is to
5 be completed by about August 1st so that approval can be ob-
6 tained in time for the new fiscal year. Each year's approval
7 of these federal funds are contingent on the Regional Ad-
8 ministrator's approval of this program. You must work with
9 him in order to satisfy all the requirements, and he has con-
10 siderable discretion in modifying or substituting his require-
11 ments for whatever guidelines or requirements may be set
12 from here.

13 His decision must be made to you within a 30-day
14 period either for the original draft plan or for the final
15 plan which becomes part of the state submission for an appli-
16 cation for funds. He has three options: He can either approve,
17 conditionally approve, or disapprove the programs that the
18 states propose.

19 Grants to sub-state entities which were to be issued
20 under 4008(a)(2) may be made directly but only for activities
21 which are certified by the state as being consistent with the
22 state plan. So we are not trying to set up a separate pro-
23 gram which is not in consonance with the state program. These
24 types of grants may be administered either by the headquarters
25 here or by the Regional Administrator depending on the purposes

1 and objectives of the programs we may set up in the future..

2
3 There are some limitations on the awards. The
4 primary one is spelled out in the law in RCRA which is that
5 in addition to meeting all requirements for program submis-
6 sion, no state will be eligible to receive a grant during any
7 fiscal year when its expenditures of non-federal funds for
8 other than non-recurring funds activities are less than Fiscal
9 75. This establishes a minimum threshold.

10 There is an exception to this: If a state legis-
11 lature or governor has ~~a~~ across-the-board general reduction of
12 expenditures which occurred. We have tried to define what
13 "non-recurring expenditures" means in the draft that you have.

14 Finally there are provisions in these regs for pro-
15 gram review by the Regional Administrator. We basically con-
16 sider that it is the state's responsibility to review its own
17 program and to monitor it but in order that the EPA, the
18 federal government, can ensure that the monies are going to
19 meet national goals and accomplish what we intended the funds
20 to accomplish, we set up a system of two reviews a year. There
21 is a mid-year review around May 1st, and one at the end of
22 the year which would be conducted with the appropriate state,
23 sub-state and interstate officials.

24 We are not going down individually and looking at
25 this but doing it in a combined cooperative manner.

Mr. Hickman has given you some of the thoughts he

1 wanted to evoke in your minds. I might go into a few more:
2 The grant regs specify various roles and we have tried to
3 explain to you the various roles that the state, the federal
4 and the local level have. We would like to have your feeling
5 on how you view these roles in the state program development
6 process and are these roles adequately described in the draft
7 regulations that you have. If not, how can we change it to
8 make your roles evident?

9 Secondly, the program development process described
10 in these regs we think is fairly well structured. We would
11 like to know if you consider it well structured. Is it flex-
12 ible enough? Comprehensive enough? And most important, is
13 it likely to be an effective program? Are the federal re-
14 quirements for the grant applications really equitable and
15 reasonable or are they too stringent?

16 Put all of those together plus the earlier ones
17 and we have perhaps the basis for a discussion here this
18 morning.

19 I would like to clarify or reclarify one thing for
20 you so that we don't start discussing the ~~same~~ ^{WRONG} subject. We
21 are basically here to discuss these administrative-type of
22 regulations. We are not prepared here to discuss how much
23 money is going into which program and how can you be eligible
24 to receive it. I know that must be in the back of many people's
25 minds -- how can we get out of the grant program some dollars

1 to help our local problem. That is another area of discussion

2 Let's assume there will be some amounts of funds
3 available for various programs in subsequent years and we
4 are discussing how best to administer the program as described
5 in these grant regulations. I would like to confine the dis-
6 cussion to that particular area.

7 We have the first comment from Dr. Joseph MacDougal,
8 Deputy Director of Laboratories, Niagara Falls.

9 MR. MacDOUGAL: I am with the City of Niagara Falls.
10 The main reason that I want to address this group is that I
11 have some concern over the speed with which this program may
12 be implemented.

13 The City of Niagara Falls has a severe health and
14 economic problem which stems from an existing chemical land
15 fill site. The New York State Department of Environmental
16 Conservation has notified the city that there are pollutants
17 emanating from this land fill site that eventually work their
18 way into Lake Ontario.

19 The city has now already contracted a local contractor
20 to help investigate this problem. The health hazards that
21 we are faced with are really not clearly defined but we know
22 that there is a health risk. There is actually a school
23 building right on top of this land fill site. Chemical drums
24 have come up to the surface and some gas has escaped from these
25 drums. This pollution has caused a moratorium on commercial

1 fishing on Lake Ontario. It has stopped the state hatchery
2 program and it has limited commercial fishing in Canada as
3 well.

4 We have a real problem. We feel it is described in
5 the RCRA Act and we need federal assistance as soon as pos-
6 sible. The main point that I want to make is that we have
7 already been led to believe that it may be several years
8 before funds are implemented to us if the grant is approved.

9 I feel that the City of Niagara Falls is a "special
10 community" which is described in 35.432 and what I am imploring
11 and asking is that we have a mechanism to expedite this fund-
12 ing as quickly as possible.

13 Thank you, gentlemen.

14 MR. GREY: I have a comment. You said you were con-
15 cerned with the speed of implementing the law or these regu-
16 lations.

17 MR. MacDOUGAL: Ultimately the funding.

18 MR. GREY: The funding, regardless of how fast or
19 how slow we implement the regulations, will be available only
20 in '78. We are talking about funding in '78 regardless of
21 what speed anything else happens.

22 MR. MacDOUGAL: I understand that.

23 MR. GREY: Has anyone a comment on this gentleman's
24 comment?

25 (No response)

1 MR. GREY: We have another member of the Working
2 Group with us, Ms. Evelyn Thornton, who is largely responsi-
3 ble for getting this out. She is in the Grants Administra-
4 tion Division.

5 MR. CARHART: Bart Carhart from the New Jersey
6 Department of Environmental Protection. I have three questions.
7 The first one, perhaps Mr. Grey, you will not answer. Do
8 you have any ideas on where the status of an appropriation is
9 at this time?

10 MR. GREY: A very rough idea. I think the entire
11 financial assistance program will be supported by about \$12
12 million which we intend to distribute as I said earlier, by
13 population formula to 56 state entities to do inventory, hazard-
14 our waste planning and implementation and solid waste planning
15 and implementation.

16 MR. CARHART: What would the FY 78 schedule be for
17 receipt of applications?

18 MR. GREY: In effect the work should be going on
19 now. We have seeded the states with some funds in '77, not
20 very much -- \$2.6 million roughly -- to get some of the old
21 plan updated and get the strategy working and start working
22 on next year's programs so we would be ready for submission.

23 That is why I want this regulation interim period so they
24 can -- these states can get ready for receiving funds and be
25 ready for work in October. That is a little optimistic but

1 we would be working in that direction.

2 MR. SETTLE: The regulations don't have a deadline
3 date for applications for '78. We will have a date we will
4 relate to the publication, something on the order of 30 or
5 60 days, whatever is reasonable for submission, after the date
6 of publication.

7 MR. HICKMAN: Are you from the Solid Waste Depart-
8 ment?

9 MR. CARHART: Yes.

10 MR. HICKMAN: Have you now begun the preparation of
11 your plan and everything to get yourself ready for October 1,
12 1977?

13 MR. CARHART: We are in the early stages. We have
14 submitted an application for supplemental funding to the re-
15 gion.

16 MR. HICKMAN: I had the feeling that you weren't
17 participating already. You are.

18 MR. CARHART: A couple of comments on proposed
19 guidelines: You indicated that for Fiscal 78 grant funding
20 will be allocated on a population basis. I am speaking es-
21 pecially about hazardous waste. The act requires under Section
22 3011(b) that the allocations to the state would depend on
23 the amount of waste treated, stored and disposed of, and yet
24 the guidelines only address the amount of hazardous waste
25 that is generated. I think that should be addressed.

1
2 On the requirements of state programs, I thought
3 there were at least two things that were missing: First, that
4 the program should include a mechanism for distribution of
5 funds to sub-state agencies and some type of coordination
6 and oversight by this state to ensure that the sub-state
7 agencies are in conformance with the state plan.

8 Finally, in the open dump survey, I think the first
9 two priorities are municipal and sludge disposal sites. How
10 do you define municipal land disposal sites? Are they oper-
11 ated by a municipality? Are they facilities that accept
12 municipal waste?

13 MR. GREY: I will let Mr. Burnell Vincent address
14 that.

15 MR. VINCENT: It is the type of disposal handled
16 at the facility and not that it is privately owned or muni-
17 cipally owned. The answer to the second question, Bart, is
18 that the definition is specific to the waste. It is mixed
19 municipal waste, common, ordinary garbage and waste and trash
20 that we consider in defining that term, not the ownership
21 of the site.

22 MR. CARHART: Otherwise, we in New Jersey feel that
23 the proposed regulations were very clear and we thank you
24 for them.

25 MR. SETTLE: Just briefly on your first two ques-
tions: Taking the second one, the distribution of funds on

1 the state level, it was our intention to let the state have
2 considerable flexibility on how they do that. The require-
3 ment is that they report to us as part of their annual sub-
4 mission and the RA is going to do that. There are no criteria
5 for it. Presumably the criteria are implicit, that is, how
6 does the program work most effectively, which we have decided
7 to leave up to the state.

8 In terms of hazardous waste, you are quite correct.
9 If we had a separate program for hazardous waste, then we would
10 have to take into account all of the statutorily required
11 bases for distribution, but the legal theory, at least here,
12 is that we have technical only the Subtitle D program under-
13 neath which is funding a hazardous waste program and therefore,
14 we are not strictly within the legal parameters of the Subtitle
15 C requirements.

16 MR. GREY: I would like to clarify the term "sub-
17 state entity." In our draft regulations, sub-state entities
18 relate to those entities which we would deal with under Section
19 4008(a)(2). Under 4008(a)(1) there is a state program in which
20 monies passed through to below state level could be considered
21 as sub-state entities. We are calling it below state level to
22 distinguish from the (a)(2) entities.

23 MR. WENTWORTH: I am from the Environmental Action
24 Foundation. We will briefly summarize our remarks and submit
25 a formal statement. We would like to ask that future regulations

1 drafted by the Working Group be a little clearer. We found it
2 difficult to wade through a lot of the jargon and bureaucratese
3 in the version. We think some of that could be a little
4 clearer for the layman.

5 MR. GREY: Any parts in particular? We thought
6 the summary in the beginning would help clarify that jargon.

7 MR. WENTWORTH: We have in our written statement
8 brought out a few examples where we feel there should be more
9 clarification.

10 This set of grant regulations transfers an enormous
11 amount of power to the Regional Administrator. This is sort
12 of a shift in policy in the Agency. We just would like to
13 make the point that it is necessary that resources and dollars
14 goes with this shift. So often you transfer power and don't
15 transfer money. We would like to make that point.

16 Getting back to your point about the sub-state en-
17 tities, the present grant regulations call for the criteria
18 for these draft regulations to be created at the time of re-
19 quest for proposal. We feel this is too late. We would like
20 to see criteria for the sub-state entities to be created as
21 soon as possible. They need a chance to get an idea of what
22 they are aiming for, what's out there. We feel they should
23 be created as soon as possible.

24 Also, we would call for more flexibility in the
25 grant regulations. There is a question about, again, a lot

1 of the cities going to the state agency. We would like to stress
2 the importance of including the local and regional agencies
3 in this whole program. Too often, I think, the act is struc-
4 tured so that most of the monies are designed to pass through
5 the state agencies to the people who are actually going to
6 do the job and many portions of this grant regulation doesn't
7 do this. It may tend to hold up resources in the state agency.
8 We would like to have state agencies solicit more information
9 from the state and regional agencies to help this process
10 along and get them more aware of what is actually going on
11 out there.

12 Finally, in regard to the power of the Regional
13 Administrator, we would like to see that the states have a
14 power of petition or an appeal process to be able to really
15 look at the decisions that the Regional Administrator is
16 making.

17 We do support the provision for the 100 percent
18 funding on the dump inventory. We feel this is a very firm
19 part of the act and there should be no question about the fact
20 that this 100 percent provision should be fully funded when at
21 all possible to help the states get along with the process.

22 Thank you.

23 MR. GREY: Let me respond to some of your comments.
24 Your first one indicates a shift of responsibility in EPA
25 from headquarters to the Regional Office. I don't think it is

1 true for the whole Agency. It is probably true for the Solid
2 Waste Office where we have been the main managers and dis-
3 pensers of funds from headquarters, but now we have a dif-
4 ferent type of program and I think it cannot be administered
5 from the headquarters as well as it can from the region. We
6 all recognize that and we are shifting to the Agency way of
7 doing things within the solid waste media.

8 Your second point to create a sub-state entity as
9 soon as possible, I think you may be confusing sub-state
10 entity for the requirement for designating a region within
11 a state. Are you aware that there is another set of activi-
12 ties taking place?

13 MR. WENTWORTH: That is true.

14 MR. GREY: These sub-state entities are not neces-
15 sarily those regions. They could be a sub-unit of the region.
16 So we are talking about two different things here perhaps.

17 MR. WENTWORTH: I am talking about even non-govern
18 ment professional organizations and even citizens groups that
19 may have expertise in the area and we feel it is vital that
20 these be incorporated in the act and that these people be
21 incorporated in planning on the state level. One way to ensure
22 that that is done is to make sure they know what the criteria
23 are for getting money out of the system as soon as possible.

24 MR. GREY: I think you are now in your third point
25 to get more flexibility and to include more local agencies in

1 the process. I think they should be to a large extent. One
2 of our program elements is public participation. We intend
3 that the public get involved. We also require in the case of
4 rural communities to have an interagency agreement between
5 the state and local community on the passage of funds to that
6 local community. Our state plan itself will carry a plan
7 for passing money to the community for what purpose which the
8 Regional Administrator will review and judge.

9 In our review process, we will work with state and
10 local people, get them involved in reviewing the program. We
11 expect that, in other words, in the total process, the local
12 representative, elected officials and other representatives
13 of the local or below state level entities would also be
14 represented in the planning and implementation process.
15 Nothing in these regs that I know of preclude a greater partner-
16 ship or a lower level organization from exerting its influence
17 one way or the other on the plan and on the implementation of
18 the plan.

19 MR. WENTWORTH: We are happy to hear that.

20 MR. GREY: We will look through that again to make
21 sure that trend is carried through.

22 MR. WENTWORTH: We wanted to make sure that as it
23 flowed down that that didn't get lost in the shuffle.

24 MR. GREY: That should partly answer your point
25 on the appeal process. There is no formal appeal in the regs.

1 MR. SETTLE: There is a formal appeal process set
2 forth in our Part 30 regs. It is difficult to read any pro-
3 gram without referencing back to the umbrella provisions.
4 There is a formal adjudicatory appeal process for anything that
5 has been taken to task by a Regional Administrator. Further-
6 more, there has been put forth by others that these regula-
7 tions ought to reflect an administrative review process and
8 we are taking that into account.

9 MR. KOERBER: My name is Art Koerber from Suffolk
10 County, New York. I would like to congratulate you for get-
11 ting regs that were readable.

12 First of all, I have a question regarding open dumps
13 inventory that is going to be conducted under 455 of the regs.
14 In the law, Section 404 about minimum criteria to determine
15 whether or not a sanitary land fill exists is that if a sani-
16 tary land fill does exist, if there is no probability of ad-
17 verse effects. In Suffolk County we are blessed with a dam.
18 Most land fills are not. The USGS has done many studies which
19 indicate that this flows in the direction of the ground water
20 flow. We have identified it for two land fills. There are ap-
21 proximately 35 land fills in Suffolk County. We have located
22 the land fills, both abandoned and existing land fills.

23 Does this mean all land fills in Suffolk County are
24 not going to be declared as open dumps and eligible for this
25 kind of funding? We call them sanitary land fills because

1 they are covered on the top but not on the bottom.

2 MR. GREY: Open dumps are not the ones eligible for
3 funds. We are talking about sanitary land fills.

4 MR. KOERBER: That has effectively been done.

5 MR. GREY: Then you are that much ahead of the pro-
6 gram and presumably you don't need the 100 percent.

7 MR. KOERBER: Am I right in my interpretation of the
8 law that if these land fills exist and allow waste to flow
9 into our ground water system that they would be classified
10 as a dump?

11 MR. HICKMAN: You are asking us to make a judgment
12 under the criteria for open dumps and sanitary land fills.
13 Those criteria haven't been issued yet. They will be on the
14 streets in September. Drafts have already been circulated
15 for review and comment. Whether or not your sites would be
16 classified as sanitary land fills or open dumps will depend
17 on what those criteria say and that issue is not closed yet.

18 MR. KOERBER: Is it still open for discussion?

19 MR. GREY: We are trying to let the state have as
20 much flexibility as possible within the requirements of that
21 section as to the judgmental factors that have to be built
22 into the criteria for an open land dump and sanitary land fill.

23 MR. KOERBER: My interpretation is that we would
24 be considered open dumps.

25 MR. HICKMAN: I don't know how you measure that or

1 qualify that.

2 MR. KOERBER: If I did, I would be in a different
3 line of work.

4 I would like to say something about Section 45.4462
5 about the intent of the law in Section 4006(b) included such
6 that the local and sub-state entities, whatever they may be,
7 be included in the current year's program and in the future
8 year's program such that the state must consult with the local
9 and sub-state entities before developing. I would like that
10 part of the regs discussed.

11 MR. SETTLE: Do you think the A-95 review is ade-
12 quate? Do you think it is adequate to achieve that review?

13 MR. KOERBER: Yes.

14 MR. GREY: Did you say A-85?

15 MR. SETTLE: A-95.

16 MR. KOERBER: A comment on that: It sets up an
17 adversary proceeding immediately which does not benefit anyone.
18 If we could have mutual discussion beforehand, that would be
19 more beneficial. Regarding the status of state and county studies,
20 they can be used as a portion of the state plan that must
21 be submitted.

22 MR. GREY: Status of studies?

23 MR. KOERBER: Status of studies that were done and
24 adopted by these be used as part of the submission of a state
25 plan.

1 MR. GREY: If the study is germane to the plan and
2 the implementation of the plan, they may be used.

3 MR. HICKMAN: The reg is clear. It says that for
4 the beginning of '78, a state has to put together a plan and
5 how that plan affects RCRA and how that plan has to be modi-
6 fied. We are not going to create a plan.

7 MR. KOERBER: We do not have to redo plans?

8 MR. GREY: Not necessarily. You need an acceptable
9 plan as determined by the Regional Administrator. There is
10 a lot of flexibility there as long as the objectives of RCRA
11 are met.

12 MR. VINCENT: In your case, I think the Buffer Reports
13 (ph.) were funded by 207.

14 MR. KOERBER: Yes, they were, thank you.

15 MR. MILES: Charles Miles, New York State Environmental
16 Facilities Corporation. In Section 35444 it indicates grants
17 are not to be made as a 75 percent grant for all the programs
18 other than the open dump inventory. Is the open dump inventory
19 part of, I think it is, Section D which is the state plan?
20 So part of the state plan grant will be 100 percent and part
21 of it to be 75 percent; is that correct?

22 MR. GREY: That is correct. In determining the state
23 allocation we are going to look at the cost for that state for
24 inventory for the solid waste plans and hazardous waste. Pre-
25 sumably in another year, each one would have a different formula.

1 The total allocation for the whole country would be in the
2 appropriation. We are going to have to make a division as to
3 how much of the total appropriation would be for inventory,
4 how much for solid waste, how much for special communities and
5 so on.
6

7 In '78 we are not doing that. We are combining
8 and distributing strictly on a population formula.

9 MR. KOERBER: Twenty-five percent of the total pro-
10 gram cost -- will that 25 percent of the cost -- can states or
11 sub-units use their existing staff personnel as that 25 per-
12 cent or is it inverted that the state would have to increase
13 their staff to 25 percent to be added to the 75 percent to come
14 up with the total program?

15 MR. SETTLE: Existing.

16 MR. KOERBER: They can use whatever part of their
17 existing for the improved program.

18 MR. GREY: Right.

19 MR. KOERBER: These regs seem to indicate something
20 different than the Water Act on reallocation. The realloca-
21 tion will be made within the region rather than it all coming
22 back to Washington to be redistributed back to the region
23 to be distributed to the states.

24 MR. GREY: We will give Regional Administrators
25 first crack at getting at his problem areas first and then
if he doesn't do it within a six-month period, then it will

1 come back to headquarters and we will know what the needs are
2 and we will redistribute them.

3 MR. SETTLE: We have had some adverse comments on
4 that. Do you have any comments?

5 MR. KOERBER: We are Region 2. I haven't done a
6 comparison among the regions.

7 MR. GREY: Next speaker?

8 MR. FULLER: Bill Fuller from Parrish, Louisiana.
9 I think there should be strong encouragement of the state
10 to fund below state agencies. In Louisiana we have had a major
11 problem obtaining federal funding that did go through the
12 state. The state needs an awful lot of money and they feel they
13 need it more than the agencies below them. Either a require-
14 ment or strong encouragement would probably help there.

15 If Parrish County initiated a study by a consultant
16 prior to any approval of an agency and later obtained approval,
17 would any of that study be eligible for funding?

18 MR. GREY: Let me comment on your first statement
19 about encouraging the state to fund these below state entities.
20 That is not the first time we have heard that. There is con-
21 siderable concern by NACO and below state interest groups to
22 make sure that groups who might be slow in getting things
23 done are not prevented from getting money. Our emphasis is
24 on forcing the states into the game. However, it doesn't pre-
25 clude a certain flow through the state into the lower level

1 because we have other vehicles other than the state program
2 to get the money down there such as implementation grants.

3 I want to express to you that that has been expressed
4 before and we are mindful of that and we will try to address
5 that somehow in the revised grant regulations.

6 MR. HICKMAN: Let me amplify one thing that is very
7 important to you: the fact that state government has got to
8 comply under this law and under Subtitle D and begin in the
9 planning process, because the minute the criteria for an open
10 dump and sanitary land fill are issued, any state that meets
11 the criteria for an open dump is in violation of federal law.
12 You don't have to inventory it for it to be in violation.
13 Then when we publish the list which the law requires of all
14 the open dumps, that becomes a national hit list for anyone
15 who wants to go through the citizens suit provisions, through
16 the federal court system, to put the heat on that site to
17 get in line with the requirements of the law.

18 The only way you as a local government entity are
19 protected in a timely way for you to convert your unaccept-
20 able sites to acceptable sites is for the state to have that
21 planning umbrella over your head. It is essential that the
22 local government stimulate state government into play. Our
23 desire is to bring in every emphasis we can to get state
24 government to play, to put that umbrella over local government
25 to strive to meet the requirement that all local open dumps

1 cease to exist after 1983.

2 MR. FULLER: I hope you are correct. In previous
3 programs, the only money that ever was available to Parrish
4 in Louisiana was money that was required to be passed through
5 them, not that was allowed to be passed to them.

6 MR. HICKMAN: Our priorities are, if we only have so
7 much money, number one, funding state programs to protect
8 state and local government through the orderly process of
9 developing comprehensive solid waste management programs and
10 bringing land disposal systems into compliance under state
11 law and the same for hazardous waste management programs.
12 I don't want you to misunderstand where the money is going to
13 go first if we have just a little amount because it is more
14 to your benefit at that point to have the state doing some
15 planning than to have a little money to convert to those sites.

16 MR. GREY: I think you are referring to consultant
17 studies.

18 MR. FULLER: This would be for an area-wide study.

19 MS. THORNTON: I think your question was whether or
20 not there would be reimbursement.

21 MR. FULLER: Reimbursement or funding of that portion
22 that could be done after approval.

23 MS. THORNTON: There are some Agency requirements
24 as far as contracting is concerned but yes, those types of
25 studies are allowable costs.

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MR. FULLER: Reimbursement.

MS. THORNTON: The grant regulations state that costs would not be incurred prior to the grant award so it is of a prospective nature.

MR. FULLER: If we go ahead and start, we could possibly have one approved and be funded for the remaining portion of the study that would be conducted.

MR. THORNTON: As it relates to contracting, of course, there are certain other requirements.

MR. GREY: You are aware that no funding is made -- or not grant is made available or awarded directly to a private profit-making organization such as contractors or consultants. They do get the funds that flow as part of the state or local programs.

MR. FULLER: It would come through the state to Parrish in this case.

MR. GREY: Yes.

MR. WENTWORTH: In 32.456.2 in the section Resource Recovery System Implementation Grants, there is an allowance for financial assistance for sub-state entities that proposes resource recovery system implementation projects. We would ask that resource conversion source separation also be included under this section.

MR. GREY: That is a good point. I don't think it is intended to exclude it.

1 MR. JORDON: C.L. Jordon, North Central Texas Council
2 of Governments. Related to a point made earlier concerning
3 the inventory of illegal or dump sites, in Texas they do a
4 pretty good job of keeping up with these things. As it ap-
5 pears that considerable funding is supposed to be directed to
6 the effort of identifying these sites, I would not like to
7 see Texas penalized for having already done a job that other
8 states have not.

9 Is it possible in allocating these funds if a state
10 already has a fair inventory and they can meet your standards
11 that these funds could be perhaps directed to some other
12 aspect of their planning?

13 MR. GREY: Very definitely. This total state allo-
14 cation uses X amount for inventory. If that X amount is very,
15 very small for your particular state, obviously the remaining
16 amount goes to the hazardous and solid waste program. That
17 allocation is yours to use within a number of programs for which
18 they are intended. So if you need less for one, you would
19 have more for the other.

20 MR. JORDON: Thank you.

21 MR. ATKINS: George Atkins, representing the National
22 Society of Professional Engineers Solid Waste Committee. We
23 have two or three questions or comments. I would like to
24 also compliment you on the fact we are less alarmed with those
25 regulations than we were with the first effort on 92-500. We

1 are only looking at the preamble we know.

2 The sub-state unit agencies that will be grant
3 eligible, we have a question as to whether those agencies will
4 be limited to the same agencies that are currently being design-
5 nated under the regulations for that section.

6 MR. GREY: No, it could be any. That's why we
7 used that generic term "entity."

8 MR. ATKINS: The second question is: What does
9 state certification involve? Is it going to be similar to the
10 water programs?

11 MR. GREY: For solid waste?

12 MR. ATKINS: Yes. If the sub-state eligibility
13 depends on state certification but it is very broadly written
14 that it does not interfere or does not, I guess, be outside
15 the state plan. The reason we ask is that we are all pretty
16 familiar in all the states with the certification process for
17 the water programs which involve review, financial feasibility--
18 a lot of things besides merely a rather bland compliance with
19 a plan. We wondered if there was going to be an expansion
20 on this or if that is going to be developed at the state
21 level.

22 MR. SETTLE: I think what we had in mind is that the
23 lead agency will take a look at it to give us a written certifi-
24 cation of the fact that the things conformed to the state
25 plan and they will not go below that in the plan and spec

1 review.

2 In any event, I am not sure what level of detail
3 we wanted to get into in the regs. If it is a problem, we
4 can address it more fully in guidelines. At the time our
5 certification is intended to be directed pretty exclusively
6 as to whether the state's effort is consistent with the state's
7 plan.

8 MR. VINCENT: You will notice in the definition of
9 the word "implementation" construction and site acquisition
10 are excluded. Those are not requiring that specific review
11 by the state.

12 MR. ATKINS: One further comment: The administrative
13 relationship on grants to sub-state agencies will be strictly
14 between EPA and the agencies once the state certification has
15 been concluded?

16 MR. HICKMAN: What section are you talking about
17 of the law?

18 MR. ATKINS: 45456.

19 MR. SETTLE: 456 describes what is essentially an
20 exceptional process. There are a number of indications where
21 I think it will be necessary to go below state level, like
22 to Indian tribes, for example, because many times they have a
23 poor relationship with the state and the state doesn't want
24 to get involved. In a circumstance like that, there probably
25 would be a direct relationship between EPA headquarters and/or

1 the region and the grantee. Clearly to ensure an ongoing process,
2 we will probably require a grant agreement that the materials
3 pass through the state for some sort of review. We can't
4 have a process that is running independently blind without
5 some vehicle for determining consistency by the state.

6 MR. GREY: You would still be subject to the A-5
7 review too.

8 MR. ATKINS: I suppose it varies between states
9 but leaves a lot to be desired in some states as far as re-
10 sponsiveness.

11 MR. GREY: I think that is true, yes.

12 MR. ATKINS: On the 35.460, a clarification or at
13 least an expression of some dangers we foresee in that sec-
14 tion is that there has been a vast difference in the level of
15 effort between states during the past 10 years. I think you
16 might say it would almost appear that states who have car-
17 ried a pretty heavy program and may be fairly far along the
18 road could to some degree be penalized as compared to some
19 states who have not done anything.

20 MR. GREY: Not at all. It is planning and imple-
21 mentation; not just planning. Implementation can take an
22 infinite number of years. If the state has done its work
23 in its planning, they can go on to implementation and most
24 of the money allocated to that state would be applied to the
25 implementation of that plan. Our feeling is we don't want to

1 get involved too long or indefinitely with planning. We
2 want monies to flow toward implementation. The states that
3 are ahead have the advantage of having their funds directed
4 toward implementation.
5

6 MR. ATKINS: We think it will affect the differen-
7 tial in progress between the states. The guy who comes in
8 with a 75 figure but still qualifies for his full share will
9 not be necessarily running as hard as a guy who has to main-
10 tain a higher figure. As a result, the current problems we
11 have, particularly in areas between border states, are going
12 to be accentuated. In other words, some states are going to
13 move further ahead of others.

14 MR. GREY: You mean one will have a very clean county
15 and one --

16 MR. ATKINS: That it is influencing solid waste pat-
17 terns.

18 MR. SETTLE: The provision you are dealing with in-
19 volves limitation of award. We believe the maintenance effort
20 provision is statutory. We have had difficulties as the ones
21 you have described in other programs, notably the **clean** air
22 program, and it is an administrative difficulty we don't
23 know quite what to do with. If you have a suggestion, I would
24 like to hear it. It is something that is statutory. We have
25 tried to get maintenance of effort provisions.

1 This one at least has a large loophole in terms of
2 a state that has a very heavy appropriation of funds and doesn't
3 get it the next year. But beyond that, the differentiation
4 problem is one that does continue to exist here and I don't
5 know quite how to deal with it.

6 MR. ATKINS: I just thought I would tell you about
7 it.

8 On the implementation, I have raised this question
9 before, but from our observation of the previous efforts in
10 the demonstration grants program, we have a concern with the
11 amount of publicity that RCRA may give to non-viable recovery
12 activities and we again stress the need somehow in evaluating
13 these grants for somebody taking a look at the continued
14 financial feasibility of a program after the federal aid is
15 withdrawn.

16 MR. GREY: Are you talking about demonstration grants?

17 MR. ATKINS: But even on those programs when you
18 capital fund a program which may look good to other people and
19 they decide to undertake it possibly without federal assis-
20 tance because of the fact there is not going to be that much
21 to go around. There should be a pretty clear-cut explana-
22 tion on just what the operation costs are.

23 There has been a big problem of people getting in
24 over their heads in this recovery business particular people
25 who don't have many resources in their small areas. Somehow

1 I think there has to be a responsibility in passing out of
2 these dollars of recognizing that some people can get in trouble
3 with it. Under the demonstration grants it wasn't too bad
4 because everybody just walked away from it when the floor
5 fell out. But I don't think you can continue doing that.

6 MR. GREY: Demonstration grants is a different section.
7 Under 35 we have implementation grants for the resource re-
8 covery system. They are really beyond demonstration. We are
9 trying to implement successfully demonstrated systems and the
10 idea being whether there is a strong pretension for success
11 within a community and from all other aspects is the right
12 thing to do which would fund such an implementation of a
13 system.

14 MR. ATKINS: Except there is still going to be a
15 demonstration grant because there is still not going to be
16 enough to go around.

17 MR. VINCENT: Is your suggestion that we have a
18 clear auditing system to determine at the end of some pro-
19 ject for which planning began under grants and early imple-
20 mentation and engineering began under the grant, that absent
21 that support a similar system could be less fundable? Are
22 you asking for an accountability system?

23 MR. ATKINS: I am asking for a program similar to
24 the water program. If the cost per unit exceeds a projection
25 of a certain amount, it is not a financially viable system.

1 I hope that there is going to be some type of control similar
2 to that for this program.

3 MR. HICKMAN: If you are talking about the 4008(a)(2)
4 implementation program --

5 MR. ATKINS: We are.

6 MR. HICKMAN: -- the concept behind that program
7 is bridging the gap between the planning process and the
8 actual going out for bid for construction of a facility. That
9 is the theory behind it and it would fulfill many of the
10 requirements you are addressing yourself to, making a judgment
11 on whether or not a system is viable in that community. It
12 could also be providing funds for making assessments of tech-
13 nologies to see whether or not these unit costs would be appli-
14 cable to that community's program. There is no provision --
15 as a matter of fact, it is specifically excluded under that
16 section -- for construction. I think that the intent of that
17 section is to fulfill the sort of concerns that you are voicing
18 here.

19 MR. ATKINS: Fine.

20 MR. HICKMAN: At least that is the way I read it,
21 trying to bail them out before they get too deep in.

22 MR. ATKINS: We have had big problems.

23 MR. HICKMAN: Demonstrations, just because they don't
24 work, doesn't mean they are a failure necessarily.

25 MR. ATKINS: But if the other people adopted them

1 because they thought they worked, they would get real close
2 to it.

3 MR. HICKMAN: We can't stop them from doing that.
4 If they ask us, we will tell them if it is a bummer or not.

5 MR. GREY: We don't intend to implement through
6 4008(a)(2) those types of projects which have been demonstrated
7 not successful.

8 (Brief recess)

9 MR. GREY: I would like to comment on something
10 that was passed to me that may be confusing to some of you.
11 As I mentioned earlier, we are going to publish this draft
12 as interim regulations. However, that does not mean that all
13 public comment will end with the publication of the interim
14 regulations. You are still entitled to comment and we are
15 still obligated to consider those comments and to revise the
16 draft before final regulations are issued. So don't feel
17 that the public comment period ends technically July 5th and
18 after that, forever hold your peace, you will still have time
19 to comment after these regulations are published as interim
20 regulations.

21 MR. ANDERSON: My name is William Anderson representing
22 American Consulting Engineering Council. I would like to raise
23 a question regarding the monies that are going to be flowing
24 through in varying degrees to those sub-state entities for
25 implementation purposes. I would presume some of those situations

1 might be to the benefit of some contracts. I was wondering
2 with respect to these contracts and scopes of work, our ex-
3 perience has been under the 208 program and other programs
4 that the Regional Administrator retains an overall -- or
5 EPA retains an overall approval of the activities of the grantee
6 recipient. Will this procedure be followed with respect to
7 those implementation grants as well, for example?

8 MR. SETTLE: Correct me if I am wrong, but you are
9 thinking in terms of the Part 33 procurement practices.

10 MR. ANDERSON: Not so much about procurement at the
11 moment because we know the sides in that issue. What I am
12 concerned with is the accountability that exists between a
13 client and his consultant. If you can tell me what your posi-
14 tion is, I can share with you a story which I think would raise
15 some problems.

16 MR. SETTLE: Let's hear the story first.

17 MR. ANDERSON: The contracts that are awarded under
18 the 208 program provide for nothing to proceed unless there
19 are program outlines by the designated area which are certi-
20 fied by the state and approved by EPA. In turn, contracts
21 are developed with various groups, either local municipalities
22 or private enterprises. Those contracts in turn are subject
23 to approval of the Regional Administrator before any work
24 can proceed.

25 If there is a dispute occurring later on as to who

1 does what when and whether or not there was proper performance
2 or not, a serious legal issue is raised regarding accountability
3 as to who is the client in these particular issues. Is it the
4 designated agency whose name is on the contract with a con-
5 sultant? Is it the state agency that certified the plan was
6 okay and has been exercising reviews and approval authority
7 as the work has gone on? Or is it EPA?
8

9 This raises some very serious problems to the ex-
10 tent that in our experience in dealing with the designated
11 agency, the grantee recipient, their preference would almost
12 rather be if there was a service to be provided in that area
13 by a private consultant, that the consultant would deal directly
14 with EPA. And based on my own experience, I would just as
15 soon do it the same way because it eliminated three or four
16 parties to the contract who say they are not a party to the
17 contract.

18 We have had contract experience with EPA that has
19 been totally satisfactory. The same thing with local muni-
20 cipalities, regional planning agencies, et cetera. But when
21 you try to introduce three or four parties to the contract
22 though the law states that EPA is not a party to this contract,
23 it is not quite that simple. If these regulations could
24 address that issue --

25 MR. SETTLE: The issue you raise goes well beyond
these regulations. I am counsel to the 208 program. I think

1 they are best addressed in our Part 33 regulations. For those
2 of you who are not familiar with that jargon, the Agency is
3 presently in the process of developing agency-wide regula-
4 tions regarding procurement of consulting services by muni-
5 cipal and state grantees. This is referred to as Part 33 regu-
6 lations and they are presently applicable to some extent
7 and this is precisely the sort of issue that comes up here.

8 From EPA's point of view, what we are interested in
9 doing is holding a public entity responsible for public deeds
10 we are funding underneath this statute and we are less con-
11 cerned about trying to maintain a relationship with the con-
12 sultant of that grantee.

13 MR. ANDERSON: I think if the Agency would treat
14 that grantee recipient as saying, "Here is the money and do
15 with it what you will and if you mess up someplace along the
16 line, you are going to have to pay in the way that EDA has
17 handled local public works programs." A lot of responsibility
18 has been delegated to the responsible municipal official. He
19 is subject to penalties under some code if he doesn't follow
20 his certification, et cetera. There is no interim hand-holding,
21 back checks, so there is accountability transferred completely.
22 If we could have that kind of thing transferred in this pro-
23 gram --

24 MR. SETTLE: This program doesn't have that many
25 bucks in it. And I believe under Part 33 our only review is

1 of contracts in excess of \$100,000. There is an error in
2 here where we use a \$10,000 figure, but our review will be
3 only of those consulting contracts in excess of \$100,000.
4 Otherwise it is between the grantee and the consultant. We
5 won't be in the business of second-guessing.

6 MR. VINCENT: The people reviewing the programs are
7 in no position to get into the specifics of what agreements
8 are wrought between the contractor and the grantee.

9 MR. ANDERSON: I think somehow everybody who I talk
10 to appreciates that particular problem. It seems that as a
11 reg gets involved, they never get involved in transferring
12 accountability to some of these grant recipients and let them
13 do their own thing and recognize you might lose some of it
14 by improper accounting.

15 MR. VINCENT: I didn't mean to say there would be
16 no cost analysis-type review but I did mean more substantive
17 review of a contract between one of your constituents. The
18 general nature would be looked at in part of the work plan
19 proposal but the specific wording of the contract would be
20 part of the program.

21 MR. ANDERSON: I really don't think you should do
22 that. If you agree to do business with a local municipality
23 or a region, it is going to do a particular thing, you strike
24 your bargain with them and then that group goes off and does
25 its own thing to accomplish those objectives. You shouldn't

1 be overlooking their shoulders necessarily. Okay. That's
2 the point I am trying to make about separating accountability.

3 Thank you.

4 MR. FENTON: My name is Richard Fenton. I am from
5 the New York City Environmental Protection Administration,
6 one of the smaller sub-units in local government. I have
7 a few questions.

8 I didn't have an opportunity to see the draft regu-
9 lations before this morning. They were not channeled to us
10 by the state. My first question relates to interfacing with
11 92-500 where the sludge will be disposed of in a solid waste
12 recovery facility: Will we have consistent regulations pro-
13 viding for the funding?

14 Connected with that one, would we have similar inter-
15 facing with the energy recovery systems which might tie in
16 with ERDA? I know you have a committee arrangement with ERDA
17 but I have seen no regulations on it.

18 MR. GREY: I am not sure I fully understand your
19 question.

20 MR. FENTON: There may be funding possibilities and
21 these are funding grant regulations we are concerned with under
22 92-500 or perhaps jointly under the solid waste law under RCRA
23 and also under the 92-500. There may be, for example, a facility
24 which would dispose of solid waste and sludge and a burning
25 thermal insulation.

1 MR. HICKMAN: The only way they would have funding
2 under RCRA would be as a demonstration project. There is no
3 construction plan authorization in RCRA. It would be only
4 from a planning aspect that RCRA and 92-500 would be inter-
5 facing, and regional identification guidelines provide the
6 opportunity for making a judgment of what local regional
7 areas would be responsible for planning within the provisions
8 of 208 or within the provisions of Subtitle D of RCRA. There
9 is no construction grant authority in this law.

10 MR. FENTON: Apart from direct construction, you do
11 have implementation.

12 MR. HICKMAN: That would be in the planning aspects,
13 yes.

14 MR. FENTON: And also under R&D.

15 MR. VINCENT: Is your concern that there may be competi-
16 tive projects funded?

17 MR. FENTON: There might be some ping-ponging where
18 we would be told to go to the RCRA people or the RCRA people
19 say to go to the water pollution people. I am more concerned
20 with ERDA than I am with the programs that run under EPA.
21 But what do you do about an energy recovery system where you
22 could go, for example, on R&D money to EPA or ERDA?

23 MR. HICKMAN: I think that is nice to have two options.

24 MR. FENTON: It is nice to have two options but it
25 isn't pleasant to be ping-ponged.

1 MR. HICKMAN: I don't think we are trying to ping-
2 pong anybody at the local level. One thing we can do is to
3 have a state agency involved in the process of making sure
4 that the facility is consistent with the state plan. This
5 should eliminate some of that ping-ponging.

6 Again, dealing with your Regional Office will give
7 you the access of whatever funds might be available for plan-
8 ning or implementation, 4008(a)(2) money. R&D -- I can't
9 quite see where local government except as demonstration activity
10 would be participating in that portion of the authority. We
11 competitively solicit our demonstration grant work and that
12 eliminates ping-ponging because we specify what we want to
13 buy and offer communities to participate on a non-profit basis.

14 We do have an interagency agreement with ERDA and
15 one of the things that is supposed to achieve is consistency
16 between the two programs and not overlapping. But all agree-
17 ments are what they are and it is not always going to work.
18 You might get ping-ponged sometimes.

19 MR. VINCENT: Did you have a suggestion?

20 MR. FENTON: I thought that perhaps there might be
21 some reference in the regulations to say that where there was
22 a possibility of more than one source of funding that there
23 would be a formal interagency committee to review and it
24 would be channeled through them.

25 MR. GREY: I think I have been the man with the paddle

1 a number of times here. Frequently the Agency gets calls
2 that are honest seeking of funds and they are not quite sure
3 what agency it is that can provide them with the kind of
4 assistance they are looking for. They usually describe their
5 project and the only judgment I can make is it doesn't fit
6 any of our grant requirements or programs and I say, "No,
7 we do not fund such a project." I sometimes suggest that HUD
8 or ERDA or some other source or state program might be able
9 to provide them with the funding they need.

10 If you, as a seeker of funds, have a program which
11 doesn't fit any program, you are going to be ping-ponged.
12 If you do have a program that fits somewhere, you will finally
13 wind up somewhere and find a home and perhaps become eligible
14 for funding. But there is no way that one agency can tell
15 you whether or not you are going to be successful with another
16 agency or within another program of the same agency. It is a
17 natural phenomenon of you seeking and my telling you "No,
18 not here, maybe next door."

19 MR. FENTON: That approach has been very helpful
20 where we are seeking guidance as to where to go but there are
21 some programs, for example sludge disposal, that fairly fit
22 in both programs.

23 MR. GREY: By definition sludge is a responsibility
24 that is perhaps spread around. (Laughter) I didn't intend
25 that pun. But when you ask for something specific in connection

1 with sludge such as a construction grant or support grant of
2 some sort, then it has got to fit in with the definition of some-
3 body's program and if it doesn't, you get the negative answer.

4 MR. FENTON: My concern is it can fit into one or
5 more than one program.

6 MR. HICKMAN: If you are seeking financial assistance
7 to build a **sludge** treatment facility, you are going to fit
8 under 92-500 not RCRA. That is the bottom line on that.

9 MR. FENTON: The use of sludge as an energy source.

10 MR. HICKMAN: You are not going to get money from us
11 on that either.

12 MR. FENTON: It might fit under ERDA and with --

13 MR. HICKMAN: On a soliciting basis, you would not
14 be ping-ponged. If you are just seeking funds on an unsolicited
15 basis, you probably will get ping-ponged around.

16 MR. FENTON: I was hoping there would be some monies
17 that affect this.

18 MR. HICKMAN: If you seek money to construct a facility
19 and you send your request into EPA's office and it is something
20 that we are not interested in and we think ERDA might be in-
21 terested, we will send it to ERDA.

22 MR. GREY: You might submit your request to the A-85
23 agency as a source of funds.

24 MR. FENTON: It would come right back to us.

25 MR. KOERBER: In 92-500 your step one drafts allow

1 75 percent funding for a facility planning area that must
2 consider disposing of sludge and residual waste. If we get
3 federal funding under 92-500, would the remaining state share
4 be funded under RCRA?

5 MR. SETTLE: No, there is a specific provision against
6 using federal funds to match federal funds.

7 MR. MENDIETA: Hector Mendieta, Texas Water Quality
8 Board, Texas Department of Health Resources. Under 35.436-2,
9 hazardous waste management planning and implementation, there
10 is a statement there will be FY 78 funds for planning under
11 3011 of the act and I had understood before that there would
12 be no funds specifically designated for Subtitle C.

13 MR. GREY: For '78, that is incorrect in the draft
14 that you have. We have indicated we will use the formula under
15 '78 under Subtitle C. We will have to change that.

16 MR. MENDIETA: Any funds allocated in '78 may be
17 used for work under Section 3011?

18 MR. GREY: Yes. The work will be applied toward
19 implementing Subtitle C as well as D but the allocation of the
20 funds is going to be done under a simple formula and distributed
21 under 4008(a)(1).

22 MR. MENDIETA: Thank you.

23 MR. GREY: Anyone else, please?

24 (No response)

25 MR. GREY: I would also like to point out we seem

1 to be concentrating heavily on Part 35 and, of course, this
2 is probably the most interesting and maybe controversial part
3 of our grant regs, but there are other parts and if you wish
4 to comment on Parts 30 or 40 or 45, this is the opportunity
5 for you to do it today.

6 MS. THORNTON: I just wanted to be sure I didn't
7 give a wrong impression in my earlier statement. The Agency
8 does not consider as an allowable cost work that has been
9 previously performed. I think in the phase, for example, of
10 the contract that has been entered into and work completed
11 prior to grant participation, that would not be considered an
12 allowable cost.

13 Under certain circumstances, if the work is directly
14 related, there can be a deviation for the particular instance
15 so that credit can be given for matching purposes.

16 MR. GREY: I guess the public comment period in-
17 cludes the members of my Working Group and members of EPA.
18 Does any other member of EPA wish to make a comment?

19 (No response)

20 MR. GREY: In that case, I will draw this meeting
21 to an end. I want to express my appreciation for the Agency
22 and for the Office of Solid Waste for you coming down and helping
23 us out. We thank you for your comments and compliments. We will
24 consider your criticisms and will try to grind out a product which
25 is usable and acceptable in the states.

(The meeting was concluded at 11:10 a.m.)

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