

SW24P

T R A N S C R I P T

Public Meeting
on the Public Participation Guidelines,
Section 7004(b) of the
Resource Conservation and Recovery Act of 1976
July 1, 1977, Washington, D.C.

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U.S. ENVIRONMENTAL PROTECTION AGENCY

1977

1 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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3 PUBLIC PARTICIPATION GUIDELINES

4 OF THE

5 RESOURCE CONSERVATION AND RECOVERY ACT OF 1976

6
7 Room 2409
8 Environmental Protection Agency
9 401 M Street, S.W.
Washington, D. C.

10 The public hearing was convened at 9:15 a.m.,
11 pursuant to notice, Mr. Thomas F. Williams, Moderator.

12 APPEARANCES:

13 Mr. Thomas F. Williams
14 Office of Solid Waste
EPA

15 Mrs. Gerri Wyer
16 Office of Solid Waste
EPA

17 Mr. Lanier Hickman
18 Office of Solid Waste
EPA

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Mr. David MaDeena
Environmental Defense Fund

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Mr. Stephen Birch
Director, Solid Waste Project
For the National League of Cities
and U.S. Conference of Mayors

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Mr. Donald Ray
Executive Director
Municipal Association of South Carolina

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Mr. John Yeagley
EPA Region 8

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Mr. Paul Keough
Public Affairs Director, Region 1

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Mr. C.L. Jordan
North Central Texas Council of Governments

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Miss Adela Awner
National Wildlife Federation

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National Wildlife Federation

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1 P R O C E E D I N G S

2 Mr. Williams. This is the first public
3 participation meeting on the Public Participation Guidelines
4 that are being developed to help implement the Resource
5 Conservation and Recovery Act of 1976.

6 I am Tom Williams, the co-chairperson of the
7 working group that is developing the guidelines, and I am
8 accompanied by Mrs. Gerri Wyer, who is my co-chairperson,
9 and by Lanny Hickman, who is the Director of the Management
10 and Information Staff of the Office of Solid Waste, which
11 has the responsibility for developing these guidelines and
12 a number of other things.

13 We will be hearing from Mr. Hickman later on.

14 First, since the Administrator is too busy to be
15 here this morning, which seems to be the case with many
16 other people, I'm sorry to say, I thought I'd bring him here
17 in spirit by quoting from some recent remarks he made that
18 are very pertinent to why we're holding this public meeting
19 and why we're developing guidelines. And I will be quoting.

20 Mr. Costle said "Public attitudes and practices
21 must be changed. Our historical view of what is waste and
22 what is not waste must be altered.

23 "It's no accident, therefore, that the Resource
24 Conservation and Recovery Act contains an unusually complete
25 array of provisions which make public participation an

1 integral part of the process of planning and implementation
2 rather than after the thought add on.

3 "Genuine public awareness and participation are
4 essential for a number of reasons, two of which are of
5 salient importance.

6 "First, while the public has had first-hand
7 experience with air and water pollution in their daily
8 lives, the thousands of hazardous and somewhat less
9 hazardous open dumps, pits, ponds and lagoons which exist
10 throughout our country leeching their witches' brew into
11 the ground water and often contributing to surface water
12 and air pollution problems are hardly popular tourist
13 attractions. And we must make a conscious effort to become
14 aware of them.

15 "Unless the public has a reasonable opportunity
16 to learn about them, the timely implementation of the Resource
17 Conservation and Recovery Act will suffer.

18 "Second, the Act is the utter opposite of an
19 add-on. Government at all levels, industry, and the
20 citizen and consumer must embrace the true significance of
21 its varied provisions and alter their perceptions and their
22 practices accordingly."

23 Thank you, Mr. Costle.

24 Now I'd like you to know that within EPA when a
25 guideline or almost anything else finally gets out of the

1 stockade, a lot of people representing a lot of different
2 interests within EPA as well as without EPA have had their
3 say in developing these guidelines which we're here to
4 discuss. We've had a working group made up of members of
5 various different components of EPA and we've also had help
6 through representatives of the divisions of the Office of
7 Solid Waste who are concerned with implementing the Act.

8 And I would like for Gerri Wyer to introduce those
9 members of the working group and of our divisions who are
10 here today.

11 Mrs. Wyer. Thank you, Tom.

12 As Tom mentioned, some people were not able to be
13 with us here today and some of our working group members
14 also could not come.

15 We had on the working group from Region 5 Lee
16 Botts, who is in the Public Affairs Office there. She
17 couldn't come.

18 Marsha Caplin is on the working group. She's from
19 EPA's Office of Water Program.

20 Mr. Terrell Hunt from the Office of Enforcement.
21 And I believe he's also on leave this week because of the
22 holiday weekend.

23 From Region 1 the Public Affairs Director there,
24 Mr. Paul Keough. Paul is here. Would you stand, Paul?

25 Thank you.

1 From EPA's Office of Regional and Intergovernmental
2 Affairs, Claire Matassoni.

3 From the Office of Public Affairs here in
4 Headquarters, Mr. Leighton Price.

5 And Miss Ellen Robinson has been a consultant
6 with Mr. Price, ~~to us~~ from EPA's Planning and Evaluation
7 Office,

8 ~~Mr.~~ Tim Stanceu, he's coming in a little late, ~~he told~~
9 ~~me.~~

10 And from our Region 8 office in Denver, ~~John~~ ^{SON}
11 Yeagley, who is the Solid Waste representative.

12 We also--since these guidelines in Section 7004
13 are to be published and developed by EPA in cooperation
14 with the states, we had Mr. William Bucciarelli, who is
15 the Director of the Division of Solid Waste for the State
16 of Pennsylvania--and I don't believe is able to be here
17 either, I'm sorry to say, ~~have~~ ^{we} the three division
18 representatives ~~here that were working with us.~~

19 We have Nancy Dunn from Systems Management
20 Division.

21 Hugh Kaufman from Hazardous Waste Management.

22 And we have two from Resource Recovery, Larry
23 McEwen and Susan Mann.

24 Mr. Williams. Thank you, Gerri.

25 Let me say a word or two about the fact that

1 we are videotaping this meeting. I hope it doesn't bother
2 anyone. This is not NBC or CBS or ABC. It's EPA, courtesy
3 of Bill ^{Gallo}~~Globli~~. It is a common practice in EPA to
4 videotape a press conference and such matters as that here.
5 We are videotaping this in the hope that if an abbreviated
6 version of this meeting can be edited that appears really
7 interesting and shows strong public interest and public
8 participation, we would make it available to all of our
9 regions who have videotape facilities and perhaps later to
10 the states to encourage interest in the public participation
11 portions of this Act.

12 I don't need to tell most of you, I hope, that
13 public participation is something that unfortunately neither
14 bureaucrats nor the public seem to be much accustomed to
15 in this city. So we're going to do what we can to
16 encourage it.

17 If anyone has any real objection to having his
18 picture within the videotape that we're making, we'll be
19 unhappy but we will take you out.

20 I think now before I give you just the final word
21 on the guidelines for the meeting we ought to hear a few
22 remarks from Lanier Hickman who, as the Director of the
23 Management and Information staff of the Office of Solid
24 Waste, is very much involved in all aspects of all the
25 various complex processes that are going on within EPA to

1 implement all the varied provisions of the legislation.

2 I would like for Lanny to tell us a little bit
3 about how the rest of the war is going, and that is
4 important because these guidelines, as we agree they ought
5 to be at the end, will be affecting how everything else is
6 done under the Act.

7 ^a
Lenny?

8 Mr. Hickman. Thank you, Tom.

9 RCRA is somewhat unique in some of its
10 characteristics and provisions. I say unique from a
11 standpoint of comparing it against other legislation that
12 EPA is responsible for the implementation of, FWPCA, the
13 Clean Air Act, TOSCA and other new pieces of environmental
14 legislation, the Pesticides Act, referred to, from the
15 Safe Drinking Water Act.

16 It's different and unique from the standpoint that
17 unlike the Clean Air Act, FWPCA--the Water Pollution Control
18 Act, the stick aspects of the law is very, very limited.
19 It's different from those two Acts, from the Water Pollution
20 Control Act, from the care standpoint because the financial
21 caret^{or} portion is also somewhat limited.

22 A good deal of consideration was given by the
23 Congress over a period of, oh, four years, enough hearings
24 and reports probably to fill this room, on what makes sense
25 for a Federal piece of legislation. Given both the Agency's

1 viewpoint and the Congress' viewpoint that the real
2 responsibility for solid waste management is, first, with
3 local government, in guidance and support of safe
4 government, and not a Federal responsibility. Yet both the
5 Agency and the Congress recognize that there is a need for
6 certain Federal involvement because there are conditions
7 that override local territorial bounds and state
8 territorial bounds. And there are demands at the state and
9 local level that state and local government are not
10 capable or able to produce within their own resources.

11 So RCRA is structured somewhat strangely because
12 of that, in my view. It's structured differently because
13 it doesn't include strong regulatory functions by the
14 Federal Government, and it doesn't include strong financial
15 assistance from the Federal Government.

16 This is why the public participation parts of the
17 Act are so important because it allows us as a solid waste
18 management community--and I mean the people who are picking
19 it up and making it go away; the people who are generating
20 it; and the people who try to figure out a better way to do
21 it, all that community--to have to develop a high level of
22 awareness and commitment to wanting to do a better job
23 because we're being asked to do it ourselves without the
24 Federal stick or the Federal carrot.

25 So RCRA is structured along that basic

1 philosophy. It has principally three objectives: One is
2 to see that the improper land disposal practices that all
3 of our country follows is eliminated over a period of some
4 five years.

5 The law makes it very clear that by the end of
6 1983 the practice of open dumping as we now know it is to
7 disappear. And yet the law in its uniqueness does not
8 require a large Federal regulatory program to make that
9 occur.

10 It asks the public to become aware of the
11 problem, and the state government to assume a major
12 responsibility in helping local government and industry
13 change their disposal practices.

14 The law also recognizes that there is a unique
15 amount of our waste stream which offer particular hazards
16 to the quality of our lives and the quality of our
17 environment, and does place on EPA the burden of assuming
18 a regulatory program if state government cannot take on that
19 responsibility. But here again, the law is structured in
20 such a way as to give the state government every
21 opportunity that they can have to assume the regulatory
22 function of hazardous waste management, and provides some
23 very specific financial assistance for that.

24 And the last objective of them all relates to that
25 nebulous bird called resource conservation.

1 A goal that all of us believe makes sense, but a
2 goal that none of us know how to achieve because of the
3 complexities of our institutional arrangements in this
4 country which make it very difficult to change the
5 affluent-effluent attitude of America to a saving attitude
6 that we had, maybe our forefathers, three or four
7 generations had.

8 But the long-term purpose of the law is to provide
9 a mechanism for resource conservation to be equal--eager and
10 willing partner--in the total solid waste management
11 picture of our country.

12 And it appreciates the fact that that is a long-
13 term goal because of the institutional problems we have.

14 So where are we now in implementing this law
15 which was passed in October of 1976?

16 Most of the financial promises of the law don't
17 begin until fiscal year 78, which is October 1 of 1977.
18 But EPA, because of the fact that there are some very, very
19 stringent calendar demands in the law, began immediately
20 after that law was signed by the President to start to
21 implement most of the functions of record.

22 We went through a major replanning and
23 reprogramming exercise within EPA to redirect our resources,
24 those resources that we had. They're limited, but every
25 bureaucrat never has enough budget. So when I say

1 "limited" that's perhaps from a bureaucratic standpoint
2 but probably from a realistic standpoint also, ^{an} inadequate
3 budget to do the job right now.

4 But we took what we had--the Agency gave us more--
5 and we redirected our efforts to start implementing RCRA.

6 Now if you've read the law or if you've read a
7 synopsis of the law you know that there are certain
8 requirements in the hazardous waste provisions of the law,
9 and in the land disposal and state program development
10 provisions of the law that say by a certain date things have
11 got to be done, and that's the issuance of regulations
12 and guidelines.

13 There are some eight to ten regulations under the
14 Hazardous Waste subtitle that have to be promulgated and
15 out by 18 months after the Act passed. That's April, '78.

16 There's a requirement that we must issue
17 criteria of what is an open dump and a sanitary landfill,
18 and that has to be out by October of this year.

19 And there's a requirement for other things that
20 had to be out.

21 Public participation guidelines do not have a
22 mandated time when they ^{have} ~~had~~ to be issued. But we think that
23 if indeed there is going to be the sort of local public
24 involvement in implementing this law that's necessary, these
25 guidelines have to be on the street at the same time we

1 first start to flow money to state and local government
2 under the new authorities, so that the public can
3 participate and support the decisions--the hard decisions--
4 that state and local government will have to make in order
5 to find the resources, both manpower-wise and dollar-wise,
6 to implement this law.

7 So we are proceeding; we are underway. You've
8 seen the first fruits of Section 7004. The first two
9 six-months requirements: the guidelines for regional
10 identification of solid waste management regions; and the
11 first report to the Congress from the Resource Conservation
12 Committee. Both are due in six months and they have been
13 issued.

14 If you don't have copies and you want copies,
15 you can get them from us.

16 The land disposal criteria, the open dump sanitary
17 landfill criteria is in draft and have been circulated
18 widely in the country for review and is under development.
19 We are optimistic that we will make that 12-month deadline,
20 at least in an interim if not a final form.

21 All the hazardous waste regulations are under
22 the belt. We are underway.

23 In the midst of all that we've done our planning
24 for '78 and we're anxiously awaiting whatever money comes
25 to us in '78 then ^{for} ~~from that~~ RCRA. It won't be as much as

1 was authorized, but that's not uncommon. Very seldom do you
2 see appropriations that ~~never~~ reach the level of the
3 authorization on a piece of legislation.

4 We asked for full, but we do have to keep in mind
5 that you're not the only people asking for part of the
6 Federal dollar. And so we're not going to get all that we
7 want. No one else does either, even the people who make
8 B-1 bombers.

9 So you have to look at this thing in a realistic
10 viewpoint that solid waste management, while it's important
11 to us, may not be the most pressing interest to somebody
12 else. I can't understand why, but it isn't. But it is a
13 recognized problem and it is a recognized problem that's
14 getting, hopefully, now the right type of attention.

15 We anticipate that the states under the authority
16 of subtitle C and D will be fully underway with their part
17 of the responsibilities by the end of fiscal year 78.

18 Our intent is to provide everything we can to
19 state and local governments and allow them to assume the
20 responsibilities of RCRA because that's the way RCRA is
21 built. It's built to try to get maximum participation by
22 state and local governments. And our guidelines are designed
23 ~~that~~ ^{so} the public has a right to participate in that state
24 and local assumption of RCRA. These guidelines are unique.
25 They're tied together with the grant regs which we had a

1 public meeting on yesterday, and they will be tied in with
2 our state planning guidelines, both for the hazardous and
3 the nonhazardous portions of the law.

4 So we're very optimistic where we are right now,
5 but we're really through only the easy part. The real tough
6 part is the next fiscal year.

7 How well we are honestly achieving implementing
8 RCRA will be how well we are and where we are by the end of
9 fiscal year 78.

10 We are going to continue to have a variety of
11 public participation activities. This year alone we have
12 over a hundred meetings scheduled to talk to the public
13 about RCRA, to talk to the public about what we're doing and
14 where we are in our work.

15 We appreciate ^{your} ~~everyone who is here for~~ coming.
16 I hope that you're vocal in your comments on the public
17 participation guidelines, and critical where you think we're
18 wrong and laudatory where you know we are right.

19 Tom Williams has a thick skin. He's an old
20 bureaucrat that's made it. And a hard head. And we'll be
21 very happy to receive all comments. We welcome them, and
22 we encourage them. And don't be shy. Get right up to the
23 mikes, and we're ready for it, and give us whatever it is
24 that you think we need to know. Because your participation
25 in developing this guideline is important and it's sort of

1 a foundation for the whole public participation effort that
2 RCRA intends to have occur and we intend to see it does
3 occur.

4 And thank you for coming.

5 Mr. Williams. Thank you, Lanny.

6 I'm sure you've all read the guidelines. But just
7 to refresh your minds about them and what we have done, I
8 will make a few very, very brief comments on the
9 guidelines.

10 First, we will incorporate whatever we learn
11 today with the information we receive from 300 copies
12 that we have sent out for informal review. The working
13 group will examine all that material and produce a new
14 draft which we hope to have in the Federal Register by
15 midAugust, maybe by the end of July if some have their way.

16 At any rate, all of this is even preparatory to
17 putting the guidelines in the Federal Register. So I
18 emphasize that because it really means that there's a lot
19 of opportunity for anybody to participate who wants to.

20 Now the main points of the guidelines, or the
21 ones that make them somewhat unique, I hope, are, one thing,
22 not only EPA but ^{and} ~~states or any~~ local governments receiving
23 financial assistance of any kind under this Act will be
24 required to carry out a public participation program modeled
25 along what is called for in these guidelines if they

1 prevail in their current format more or less.

2 They also would call in for, not only public
3 meetings, conferences and workshop to be held as the Act
4 unfolds, but they would also include the formation of
5 review groups, adhoc committees to review program plans,
6 and so forth.

7 And we've also defined in the guidelines, as you've
8 noticed, what we consider a relatively full spectrum of
9 public interest groups who want to avoid the kind of public
10 participation that sometimes occurs under other types of
11 legislation or under this type of legislation. But only one
12 segment of the public, usually from the full rights
13 spectrum, has any input into what the Federal agency is
14 doing.

15 It also would include--and this is an important
16 element--the development of basic public educational
17 programs for the public.

18 It is not uncommon, as you know, for only certain
19 experts or certain strongly motivated and well-heeled
20 interest groups to really understand what a given regulation
21 says. And while computer print-outs may be fine for those,
22 we feel that information has to be boiled down, that the
23 technical data base has to be understood by everyone--by all
24 voters--if we're going to implement and act in a truly
25 democratic fashion.

1 Also all other established mechanisms are laid
2 out in the guidelines, the Federal Register for the Federal
3 level and similar provisions wherever they occur--and they
4 do--in most states. In other words, whatever mechanism
5 states have to ^einsure public involvement would have to be
6 applied.

7 And also--and this is the important thing that
8 Lanny alluded to awhile ago, one of the things he alluded
9 to--every other regulation or guideline issued by EPA under
10 this Act would contain a specific subpart which would
11 require them to implement the requirements of this
12 particular guideline.

13 Okay. Enough on the guidelines.

14 Now just a couple of final words.

15 We're really hoping--the way we've laid the room
16 out this way--to have a discussion rather than a pure
17 question and answer session. We will attempt to in some
18 instances, if we can, get persons' questions answered by
19 other people in the room. As I said earlier, nobody seems
20 to be very much accustomed to public participation in this
21 Republic of ours but we'll try it.

22 If you have a prepared statement and it's long,
23 if you give it to the court reporter it will be included
24 in the official transcript of this meeting.

25 All of you will receive a copy of the official

1 transcript.

2 If you want to give a verbal or an oral
3 presentation of it, please give me a five-minute summary or
4 something of that sort.

5 Be sure to speak into a microphone when you talk.
6 Be sure to give your name and organization for the official
7 record.

8 We plan to be at it until 10:30, and we'll break
9 for ten minutes and then continue until everybody has had
10 his or her say.

11 I've had two requests from people who cannot
12 stay very long who want to make official statements for the
13 record. And the first one--we'll start the meeting with
14 that, if you don't mind--is Mr. David ^{Medine}~~MaDeena~~ from the
15 Environmental Defense Fund.

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1 STATEMENT OF MR. DAVID ~~MA DEENA~~ ^{Medine}

2 Mr. ~~McDeena~~ ^{Medine}. I am David ~~MaDeena~~ ^{Medine}. I'm

3 representing the Environmental Defense Fund.

4 The Environmental Defense Fund is a non-profit,
5 nationwide organization of scientists, lawyers and
6 economists working to protect the public interest.

7 EDF has supported the concept of full public
8 participation in administrative proceedings in a variety of
9 contexts and, in principle, supports the proposed guidelines
10 mandated under Section 7004(b) of the Resource Conservation
11 and Recovery Act of 1976.

12 EDF would like to comment primarily on the
13 omission of any provision for the reimbursement of some or
14 all of the costs of participation by individuals and
15 groups.

16 The value of creating an administrative record with
17 the widest range of views expressed is clearly recognized
18 in Section 7004(b) of the Act. But full participation in
19 the administrative proceedings carries with it a heavy
20 financial burden.

21 Without some form of reimbursement many individuals
22 and organizations will be effectively barred from
23 participation.

24 EDF believes these guidelines do not fully
25 implement the requirements of Section 7004(b).

1 If that section were merely precatory with respect
2 to encouraging public participation, the notice and other
3 provisions of the guidelines would be adequate. But
4 Congress also has required the Administrator and the States
5 to assist as well as to encourage public participation.

6 The best way of providing this assistance would
7 be to include a reimbursement provision in the guidelines.
8 Merely providing technical assistance and information does
9 not go far enough.

10 It is true that no appropriations have been made
11 under this section of the Act. However, the Comptroller
12 General in a May 10, 1976 letter to Congressman John E. Moss
13 stated his conclusion that EPA needs no additional
14 authority to provide funds for public participation.

15 There can be no doubt that a wide range of views
16 presented before an administrative proceeding will provide
17 the opportunity for better decision-making and will be
18 helpful in restoring public confidence in the decision-making
19 process.

20 EDF, therefore, urges that a reimbursement
21 provision for public participation be included in these
22 guidelines.

23 EDF is also concerned that in some areas the
24 guidelines are so vague or imprecise that states already
25 reluctant to encourage public participation may not act at

1 all.

2 Examples of this include an absence of standards
3 as to what constitutes adequate public participation in
4 terms of funding or other assistance provided, too much
5 discretion given in approving actions taken without
6 adequate public participation, and the lack of a general
7 presumption in favor of holding hearings.

8 Without stronger guidelines the requirements of
9 Section 7004(b) cannot be met.

10 Thank you for giving us an opportunity to present
11 our views.

12 Mr. Williams. Thank you, Mr. ^{Medine}~~MaDeena~~.

13 All right. Do you have to leave early, too, sir?

14 Are you the gentleman from the Conference of

15 Mayors? Steve ^{Burks}~~Birch~~. Do you have to leave early, Steve?

16 Mr. ^{Burks}~~Birch~~. Yes, I'm afraid I do.

17 Mr. Williams. Okay. Mr. Steve ^{Burks}~~Birch~~ of the League
18 of Cities.

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1 STATEMENT OF MR. STEPHEN ^{Burks}~~BIRCH~~

2 ^{Burks}Mr. ~~Birch~~. Thank you, Mr. Williams.

3 My name is Steve ^{Burks}~~Birch~~ and I'm Director of the
4 Solid Waste Project for the National League of Cities and
5 U.S. Conference of Mayors.

6 I would like to read a short prepared statement
7 that we have put together.

8 The statement reflects, in part, a discussion
9 that we had last week with a task force of nationally
10 recognized solid waste public officials at the municipal
11 level as well as our own reaction based on contacts with
12 other officials around the country.

13 The National League of Cities and U.S. Conference
14 of Mayors appreciates this opportunity to comment on the
15 Public Participation Guidelines of the Resource Conservation
16 and Recovery Act of 1976 (RCRA).

17 In general, we commend the EPA Office of Solid
18 Waste for its emphasis on, and commitment to, the public
19 participation provisions of the new Act.

20 To date, we feel that EPA has been open and
21 forthright in seeking out and incorporating comments from
22 different groups and interests in developing the RCRA
23 guidelines.

24 However, several aspects of the proposed
25 participation guidelines require clarification and/or change

1 if the law is to be smoothly and effectively implemented.

2 The following comments are, in part, drawn from a
3 discussion of the public participation guidelines at a meet-
4 ing of the NLC/USCM Solid Waste Task Force held last
5 Thursday in Washington.

6 First, the guidelines are both ambitious in their
7 objectives and vague in their criteria and standards. This
8 leaves state and local governments without a clear sense of
9 what constitutes a minimum program of public participation.

10 A state or community may make a good faith effort
11 to comply with the guidelines, yet still be subject to
12 citizen suits.

13 Although we recognize that there is no easy
14 solution to this problem, we recommend ~~hat~~ more explicit
15 attention be given to the reasonable capabilities of
16 governmental bodies to perform these tasks.

17 Account should be taken of the administrative and
18 financial burden these guidelines will impose on states and
19 localities.

20 Accordingly, the League and Conference recommend
21 that more attention be given in the guidelines to the role
22 of existing institutions and procedures in involving the
23 public.

24 State municipal leagues are a good example of an
25 underused linkage mechanism for facilitating state and local

1 government communication and cooperation.

2 Other types of coalition and clearinghouse
3 organizations can be also brought into the participation
4 process without placing undue strain on the system.

5 The general point to be made is that the concept
6 of public participation can quickly get out of hand, and
7 can subject state and local governments to endless
8 litigation, if reasonable minimum levels of participation in
9 the program are not made more explicit.

10 Second, for all the openness of the proposed
11 process, and for all the records that are to be kept, there
12 is no provision for assuring that the comments received are
13 incorporated into the decisions and policies that are
14 adopted.

15 The role of public participation, in implementing
16 RCRA, if it is to be given this much emphasis, should be
17 more than an exercise in testimony gathering. It should also
18 have a direct and demonstratable impact on the policies that
19 are chosen.

20 Some type of mechanism should therefore be
21 included in the guidelines to assure that the information
22 received through the participation process is synthesized
23 into policy recommendations which are given serious
24 attention by state and local decision makers.

25 Third, and finally, several specific sections of

1 the guidelines could usefully be clarified.

2 For example, in Section 249.6, local governments
3 have no role in reviewing and evaluating the summary of
4 public participation.

5 What recourse do local governments have if they
6 question the regional or state administrator's decision on
7 the adequacy of participation?

8 A review committee composed of federal, state,
9 local and private sector representatives might be more
10 appropriate for this purpose.

11 In Section 249.7(b), how are "significant,
12 controversial, or complex matters" to be defined, and who
13 defines them?

14 Again, a clarification of the definition and the
15 process would be helpful and might avoid later delays and
16 prolonged litigation.

17 In sum, the League of Cities and Conference of
18 Mayors supports the objectives of the public participation
19 guidelines, but recommends that greater attention be given
20 to:

- 21 (1) Established procedures and mechanisms at the
22 state and local level that will keep the
23 administrative costs of the program within
24 reason;
25 (2) The way in which the information received from

1 such participation is going to be used; and,
2 (3) A more explicit and well defined role for
3 local governments in the evaluation of the
4 participation process.

5 Thank you very much.

6 Mr. Williams. Thank you, Mr. ^{Burks}~~Birch~~.

7 Okay, it's wide open. Does anybody have anything
8 to say?

9 Yes, sir.

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1 STATEMENT OF MR. DONALD RAY

2 Mr. Ray. Mr. Chairman, I'm Don Ray and I'm
3 Executive Director of the Municipal Association of South
4 Carolina.

5 I would like, first of all, to associate myself
6 with the remarks made by Mr. ^{Burks}~~Birch~~ in his statement with
7 respect to the National League of Cities.

8 The Municipal Association of South Carolina is a
9 very active member of the National League of Cities. I
10 would like to strongly underscore and urge EPA to develop
11 a one on one working relationship with the various state
12 leagues throughout the United States. I believe there are
13 47 or 48 state leagues.

14 And just to give you an example in South
15 Carolina, we represent 263 municipalities. We estimate that
16 200 of those municipalities are engaged daily in the
17 collection and disposal of solid waste.

18 They have some serious concerns about these. And
19 we've got one heck of an educational problem or process on
20 our hands as state leagues to make sure that they understand
21 what their responsibilities are with respect to implementing
22 the provisions of this Act.

23 And I think it's a very natural linkage that you
24 develop. Send the information out through the state
25 leagues.

1 I believe the National Association of Counties --
2 and in each state you'd find that there are county
3 organizations similar to ours. And these are the people
4 that have daily working relationships and contact with
5 municipal officials. And I think it would be very helpful
6 to us.

7 We, as an association, accept the responsibility
8 that we have to educate our people on what the provisions
9 of the Act are, what the impact of the Act is, because they
10 are the final implementors of this Act in terms of what it
11 would mean.

12 And we would urge strongly that you--with copies
13 of the guidelines; sometime we don't get them on time--
14 develop a working relationship through the state leagues.

15 Thank you very much.

16 Mr. Williams. Thank you, sir.

17 Mr. Ray. I would also like to offer this one
18 other comment for what it's worth of what we're trying to do
19 in South Carolina.

20 Earlier when this Act came out a number of local
21 officials, both city and county, got together and met with
22 the Governor. The Governor of South Carolina has created
23 an ad hoc committee composed of county officials,
24 municipal officials, Health Department officials, and we're
25 going to add some business officials who would probably be

1 in terms of being involved in the hazardous waste area. And
2 we're trying to, as best we can, understand this Act, and
3 have been given the mission of trying to give some viable
4 options to the Governor with respect to his decisions. I
5 hope it works.

6 Mr. Williams. Thank you. We do, too.

7 Mr. Yeagley. Tom, while someone else is coming
8 to the mike I'd like to just reinforce what he said.

9 Mr. Williams. Identify yourself, please.

10 Mr. Yeagley. Okay.

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Mr. Yeagley. ^{SON} John Yeagley, with the EPA Region 8.

And I just bring that up as support for what you said there.

Does anyone have anything to say about what has been said or about what has not been said?

Would you want to comment with respect to that?

Mr. Ray. My question was would you want to

1 comment from the standpoint of it, what was just said?

2 Mr. Williams. Would I want to comment, me?

3 Mr. Ray. Yes.

4 Mr. Williams. And comment on the allegation?

5 Mr. Ray. That's not an allegation. I think a
6 comment and observation may be a better term.

7 Mr. Williams. On the assertion that the
8 guidelines are vague? Is that what you mean?

9 Mr. Ray. Yes, sir, his statement.

10 Mr. Williams. I would agree that they're vague.

11 And where the working group, of which I'm a member, will
12 attempt to try to see if we can make them less vague.

13 But I think part of what we wrestled with in
14 putting these together is that it's very difficult to be
15 too specific or really specific about what you mean
16 precisely by public participation when you don't have any
17 good idea of what the resources are.

18 What we're saying is that -- we're saying, in
19 effect, I think that there's no way to set up a watchdog,
20 no way to set up a perfect system whereby everything can be
21 perfectly evaluated. But we're talking about an
22 institutionalization of the idea of public participation.
23 We're talking about what we mean by that.

24 Let me say in that regard that most public
25 participation is an empty exercise in ~~vainality~~ ^{banality} and it's not

1 part of anything. The public participation under this Act
2 so far in EPA has been for real. We put out a preliminary
3 plan before we develop guidelines. And our technocrats
4 and our bureaucrats are running **about** the country doing
5 their work and going to a lot more trouble to hold meetings
6 and let others know what they're doing than they might have
7 otherwise. And then most people do who work for any level
8 of government.

9 But what we've done is to say unless -- what
10 we've attempted to do is to say all right, if states or
11 local governments are going to get financial assistance
12 under this Act for other things, they have a right to
13 request it for public participation. And we have a right to
14 say yes, if you do so and so to bring about public
15 participation, that's a fundable part of your application.

16 I think that's a far step forward.

17 But you're wanting to know how someone in EPA is
18 going to precisely evaluate that is a good question.

19 We'll have to work it out. I don't know. But
20 it's not going to be something that can necessarily be
21 spelled out totally in this guideline. It will have to be
22 perhaps in other guidelines. When the people who are
23 evaluating whether or not a given application, a given
24 state program, or regional program promulgated by a state,
25 by a government, is acceptable for financial assistance, the

1 people who are evaluting that will have to be evaluating
2 whether or not they have the proper element to public
3 participation.

4 But I dare say I don't personally know how to
5 quantify some of those things.

STATEMENT OF MR. PAUL KEOUGH

Mr. Keough. My name is Paul Keough. I am Public Affairs Director for Region 1, the six New England states.

And we did wrestle with the problem that the League did raise.

One of the things that the New England states expressed to me--and ^{JON}~~John~~ Yeagley can probably speak for some of the states in his region--is that many of the states' solid waste offices that are to carry out these regulations are only one- or two-man operations at best, and they're very understaffed and underfunded.

And one of the things that the cry that came to us from the states was try not to be too specific, try not to be set up rigid requirements that everyone would have to meet, because each state program is different. Each state has devoted a different amount of resources to the solid waste area.

Mr. Bucciarelli, who is from, New Jersey?

Mr. Williams. No, Pennsylvania.

Mr. Keough. Pennsylvania.

He also asked us to try and give as much flexibility to the regulations as possible instead of making rigid requirements for each state that would have to be met. And I think that was one of the primary reasons that we

1 tried to keep them -- tried to give an idea of what public
2 participation was, and lay down some what we thought were
3 minimal requirements, although not specifying that every
4 state had to carry out every option in there.

5 So that was I think the primary motivating
6 factor as to why we did not lay down each state shall do
7 A, B, C, D, which would be better from our point of view,
8 because then we could just review the programs and say, well,
9 you didn't do such and such, and therefore we're not going
10 to be able to fund your program.

11 But because each state's capability was
12 different, that's why we purposely did not make them rigid.

13 And that was the message that we got from the
14 states. Now apparently we're getting a different message
15 from some of the other representatives, but the states did
16 give us that message, instead of spelling out. They did not
17 want it spelled out that every step that they would have to
18 do. They insisted on a little bit of flexibility.

19 Mr. Williams. Thank you.

20 Yes, sir.

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1 STATEMENT OF MR. C. L. JORDAN

2 Mr. Jordan. My name is C.L. Jordan. I'm with the
3 North Central Texas Council of Governments.

4 Very briefly, a little background.

5 We've been in the solid waste planning business
6 since '71. We have literally done handsprings, I think, in
7 trying to get public participation. We do real well as far
8 as getting a state as well as local officials that are
9 involved in solid waste. We do relatively well in getting
10 what I would classify perhaps as environmental groups
11 involved. But getting positive participation, you know,
12 from the lay public is a very, very difficult thing.

13 With the assistance of EPA we completed a very
14 detailed solid waste study in 1974 assisting our local
15 governments and attempting to implement using the plan as it
16 were as a tool. And I have been personally involved in two
17 major efforts. In fact, I'm into a third right now, of
18 trying to assist the local governments and just requiring a
19 good old simple answer, but there's not anything simple
20 about landfill.

21 The participation you get is never positive. You
22 know, you can get people out of the woodworks when you finally
23 say this is the spot we wanted. But you never get any
24 positive thing.

25 You don't get anyone to come out and say, well, you

1 guys are trying real hard. You're doing the best job you
2 can for the money. I don't know what that process is.

3 As I say, we've tried to do everything possible.
4 We get newspapers, we get TV coverage.

5 Recently I was on a program, radio program, for
6 the League of Women Voters, which we're active with. But
7 getting positive public participation just has evaded us.

8 I would ask though the gentleman from Denver's
9 comment, I don't think that we want the specific same
10 criteria that we have to meet as far as obtaining public
11 participation.

12 Give us some suggestions.

13 I generally feel that the people in the solid
14 waste industry--and I can only speak for those in the
15 North Texas Council of Government area, including cities
16 like the City of Dallas, and Mr. John ^{Teipel}~~Taplin~~, who many of you
17 may know; Jack Graham, from Fort Worth--we're all interested
18 in doing, I believe, the correct thing as far as waste
19 disposal is concerned.

20 How we go about it, I don't think anyone--I don't
21 think the Federal Government, state or local--can really
22 say because we just have not yet accomplished that.

23 So give us some leeway, perhaps some suggestions
24 of things we've tried, that others have tried, so you can make
25 us aware of it. And let us see if we can apply that to our

1 own situation, because, as pointed out, even from one side
2 to the next, you have different problems. Certainly you're
3 going to have different problems from one state to the
4 next, so make them as flexible as possible with valid
5 suggestions for us to consider and try to implement.

6 Thanks for your time, sir.

7 Mr. Williams. Thank you.

8 Yes, ma'am.

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STATEMENT OF MISS ADELA AWNER

Miss Awner. I'm Adela Awner from the National Wildlife Federation.

Our solid waste project--we have an EPA grant-- just held some workshops in Montana, and I'm sorry that Mr. ^{Medine} ~~Madeena~~ isn't here. One of the things I would have liked to have asked him is where some of this money is going to come from to fund this participation.

We did help offset the travel expenses of people who attended our two workshops, and we also provided a lunch at each workshop. And in Montana you can imagine that helping people offset their driving expenses did come to quite a bit of expense.

We did have a very good turnout at our two workshops. It took a lot of effort. One of the conclusions that I have slowly been coming to is it takes a very great deal of effort to get people to meetings. People -- most people, other than citizen group leaders and environmental group leaders, just are not used to coming to meetings.

I think if we really want citizens to participate, we're going to have to start going to these people. It seems to me it might be more effective in the long run to have a special person on a solid waste staff, a state solid waste staff, someone who is not an enforcer.

The people, especially in rural areas, that have

1 a contact with the solid waste office seems to have a
2 contact with an enforcer, someone that comes to criticize
3 their landfill or to criticize what they're doing or to
4 threaten them if they don't do something differently.

5 It seems that there could be someone who is not
6 an enforcer but just someone to talk to people, to talk
7 about what their problems, who would go to the people, not
8 expecting people to go to him. This might at least start
9 the process moving.

10 I think if people know that someone in the capital
11 cares this would be at least a step in the direction. Maybe
12 once this report is begun then they would start coming to
13 meetings. But I think this would be a way to start
14 involving some of these people that should be involved and
15 don't come to meetings.

16 I think that when you do get to them you find
17 that they are interested and concerned. Most people just
18 don't go to meetings, you have to go to them. I think
19 that's where we have to start.

20 Mr. Williams. Thank you.

21 The working group I believe --

22 Mrs. Wyer. There's another speaker coming up.

23 Mr. Williams. All right. Go ahead.
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1 STATEMENT OF MR. MARK SULLIVAN

2 Mr. Sullivan. I'm Mark Sullivan with the
3 National Wildlife Federation, and I work with Adela, and
4 I attended her Montana workshops. And I'd like to add
5 that we also conducted workshops in the State of
6 Mississippi, so Montana isn't in any way exclusive because
7 of the participation that we got there because we got the
8 same identical kind of participation with the same
9 procedure in the State of Mississippi.

10 Tom made a couple of remarks earlier about how
11 do you get public participation? The public is not used to
12 it.

13 I'd have to echo what Adela just said, that
14 public participation is there if you go about and ask for
15 it.

16 When Lanny was making his remarks he said that
17 we should laud EPA where they need it and give them a
18 nudge where they need it.

19 As I looked over these guidelines I had a very
20 difficult time trying to find anything to give EPA a nudge
21 about. And if I want on and on about the things in here
22 that I like it might turn into a love feast.

23 So I don't want to go into any great detail on
24 that. We will submit a formal statement, Tom.

25 I would like to point out a couple of what I think

1 are very positive things in these guidelines.

2 So, for example, just making the statement as they
3 do under policy for the guidelines, conferring with the
4 public after a final Agency decision has been made will not
5 meet the requirements.

6 I think that that right there is the basis of
7 what public participation has been to far too many people
8 in the past: make the decision, and then go out and have
9 the public say yes to it. I think EPA is really biting
10 the bullet when they say this.

11 I would, however, echo what was said earlier,
12 repeat--and Adela made the point also--that getting people
13 to the meetings is the important thing. And if you have to
14 do things like EDF mentioned with reimbursing people, you
15 find they do come.

16 We had in our workshops in two states over 300
17 people. I had John Dickenson from the Atlanta office of
18 EPA just come back from holding public participation
19 meetings of RCRA. He came up to me after our Biloxi
20 workshop in Mississippi and said "I can't believe this. We
21 held a public participation meeting in Atlanta for the
22 entire region"--we have eight states, I think it is--"and
23 we had 11 people show up. And I come to Biloxi, Mississippi
24 and you have 65 people here. And we went to Jackson the
25 next day and had 80."

I think it has to do with the way you go out and

1 seek that participation. I think these guidelines get to
2 the heart of that matter, that you make it accessible to the
3 people and you remove the obstacles wherever you can.

4 One other point about if there is something
5 negative in the guidelines or something missing, I would
6 also add that you talk about putting together fact sheets,
7 for example. I think it's essential that in everything that
8 is done as far as regulations, guidelines under this Act,
9 that I'd like to almost see it in print here in the
10 guidelines fewest words with the fewest syllables. Make it
11 as easy for people to understand as possible, not have to
12 rewrite it so that people understand it. When it's written
13 in the first place it doesn't have to be so bureaucratic.
14 And I think this is something we've heard in a lot of these
15 public meetings on RCRA.

16 But aside from that I really can't see -- there
17 will be some points in the guidelines that we'll point out,
18 but I think this is a marvelous commitment on the part of
19 the Agency.

20 Of course, the second element of this is getting
21 the funding to do it. That's going to be an administrative
22 decision I imagine within the Agency, within the office, but
23 we certainly would support that.

24 The National Wildlife Federation is the nation's
25 largest conservation education organization, and we

1 sincerely believe in and find it not only important but
2 absolutely essential that the public be involved in these
3 processes. And if it requires a monetary commitment on the
4 part of the Agency then we think the Agency should do that.

5 So thank you for the opportunity to speak today.

6 Mr. Williams. Thank you.

7 I think the working group was very much aware of
8 the fact that to get the public participation in a nation
9 of over 200 million people who are encouraged in many ways,
10 particularly through television, to be passive, to not get
11 involved--the day of the town meetings in New England has
12 long passed, and so on--it's a difficult thing to do.

13 Just as we have official representative government,
14 in a sense, we have unofficial representative government.
15 The Wildlife Federation, the Sierra Club, Conference of
16 Mayors, all kinds of trade associations, speak for millions
17 of people.

18 And so insofar as getting public participation as
19 the state level of government, as the federal level of
20 government is concerned, if you get -- really go through the
21 trouble and really try to make sure that all of the kinds of
22 interest groups and lobbying organizations are represented,
23 you are, in effect, involving the public. But later on
24 under this Act it's going to be a different matter. You're
25 going to have to really go out and get to the, directly to

1 the public who are going to be opposing the way things
2 look every attempt to establish a new landfill site at any
3 place you try to establish one.

4 This Act could actually be completely stopped
5 or or inhibited in implementation by the automatic
6 opposition to the establishment of landfill sites.

7 So what is the answer to this?

8 Well these guidelines we think contain at least
9 a part of the solution to this, and that is you have to have
10 public information. Let's face it, the public has been
11 bamboozled for a long time about the sanitary landfill.
12 They haven't ever been very sanitary; they've been
13 reaching into the ground water since they first began them.
14 A little more aesthetic pleasing in an open dump. But as
15 far as real environmental or potential public health
16 damage is concerned, not much better than an open dump.

17 So it's easy then if you're going to establish a
18 landfill site, even if you mean it for the public to assume
19 you don't mean it, it's easy, too, for any environmentally
20 concerned consumer organization in the town locality or
21 county to come automatically on their side because it's
22 always been true in the past. Why isn't it true now?
23 Tremendous emphasis or the tremendous need in the emphasis
24 of the guideline for public information.

25 People don't know what you mean. Moreover, people

1 are not convinced. And after we have defined the sanitary
2 landfill and the open dump--I hope they're different from
3 the way they've been defined in the past--after we have
4 defined what hazardous wastes are and put out various
5 regulations, it will be up to EPA, I think, first, to put
6 out information that people can understand--we hope to
7 provide enough of it for states to use, for local governments
8 to use--at least that everybody can understand; hopefully,
9 written more or less the way Martha's asked for it, that
10 will spread the information around.

11 I don't think there's going to be any simple way
12 to do these things. And there are just many, many reasons
13 why the public is distrustful of all of us at almost all
14 levels of government. They're distrustful of industry,
15 et cetera. We all know some of the hardened experiences of
16 the past eight years which have underscored that sort of
17 feeling in our country.

18 And we have a terribly difficult uphill fight to
19 make to attempt to implement this Act in full awareness.
20 And unless there is public awareness, forget it, it will
21 not be implemented.

22 End of editorial, I hope.

23 I would like for somebody else to follow up on
24 this.

25 Yes, ma'am.

1 STATEMENT OF MISS KAY PILCHER

2 Miss Pilcher. My name is Kay Pilcher with
3 Environmental Action Foundation Solid Waste Project.

4 Basically, I would just like to commend the
5 EPA's Office of Solid Waste for the guidelines on public
6 participation that we've seen so far.

7 People have spoken here about the vagueness.
8 From our perspective, they're pretty specific as far as
9 anything I've ever seen regarding public participation and
10 yet it was a topic we've all decided today.

11 But if you look at some of the minor points, I
12 think there are some very innovative statements made in
13 these guidelines. One, of course, is having to do with
14 location of sites for public hearings and meetings, that
15 accessibility to public transportation would be a factor
16 to consider in locating your meeting place, and that might,
17 of course, encourage places in more urban areas, you know,
18 encourage people to come.

19 If you have problems of being out in a more
20 rural area, then, of course, I would have to support EDF's
21 proposal that some sort of reimbursement situation might
22 be helpful there.

23 The section I particularly take great joy in
24 reading is 249.4, the Guidelines for Agency Programs.

25 They're pretty much spelled out, A, B, C, D, E.

1 The last section, "I. Other Measures," is of particular
2 interest because basically what EPA is saying is that we
3 have listed here what we see it to be necessary avenues
4 to encourage public participation: hearings, meetings,
5 and notification.

6 But don't limit yourself to these. There are
7 other ways you can get public participation. You know your
8 people, you know your area. So don't limit yourself to
9 these ways. And I think that's important for them to say
10 that because so often people try to follow the letter of
11 the law and say, well, we only have A through D to follow
12 so we're very limited. We can't do more. But they're
13 saying you can do more. Do as much as you can and we can
14 help you.

15 And we'd just like to give our support to that.

16 Thank you.

17 Mr. Williams. Thank you, Mrs. Pilcher.

18 Any dissenting view?

19 Well, we're going to break before the official
20 break unless somebody has something to say.

21 Very good. I congratulate the working group for
22 having produced guidelines that is about perfect.

23 Yes, sir.

24 Mr. Mendiata. Did you say you² are going to have
25 a break now or terminate?

1 Mr. Williams. Well if I don't get any more
2 comments we're going to terminate.

3 Mr. Mendiata. I'd like to make a little comment.

4 Mr. Williams. All right.

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1 STATEMENT OF MR. HECTOR MENDIAT

2 Mr. Mendiata. I'm Hector Mendiata from the
3 Department of Health Resources in Texas. And we've had
4 quite a bit of experience in public participation over the
5 last couple of years in our solid waste permitting
6 procedures.

7 We do get quite a bit of public participation.
8 In fact, every public hearing that we have we get more and
9 more participation, and mostly is in opposition to solid
10 waste landfills as you mentioned before.

11 But we have a procedure in Texas established by
12 the Administrative Procedure and Texas Register Act,
13 whereby all proposed rule-making activities, public hearings
14 are publicized at least 30 days ahead of time in the
15 Texas Register which comes out twice a week and receives
16 wide dissemination.

17 And one of the problems we have is the distances
18 in Texas. We have approximately 5,000 incorporated cities,
19 254 counties, 26 councils of governments, and various
20 quasi-governmental authorities, that all of them are
21 involved in these solid waste procedures.

22 So the best means of passing out the word is
23 through the Texas Register. And everyone is given an
24 opportunity to participate in the hearings, submit written
25 comments. After the hearings we develop a summary of the

1 hearings, available to anyone.

2 And, as I said before, we get more and more
3 participation.

4 In the rule-making procedures, we have a problem
5 in trying to establish where we're going to establish the
6 public hearing sites because of the number of people
7 involved, the number of communities. We try to get as much
8 of a cross section as possible and distribute the hearings
9 across the state.

10 We're limited by our funds and the time
11 available, in most cases, as to how many hearings we can
12 have or how far we can have them from the head office.
13 We generally try to get as much of a cross section as we
14 can. And we've been fortunate in getting fairly good
15 participation. Not as much as you would expect in a city
16 such as Dallas where you can have a public hearing, and
17 you might end up with 50 or 60 people.

18 Other times, depending, of course, on the matter
19 involved -- other times, we can go to a much smaller city
20 and we have 250 people, depending on what's being discussed.

21 But we feel that the response has been rather
22 satisfactory because we get both opposing and positive
23 views to the action involved.

24 But what I'm trying to bring forth is that we
25 should allow a little flexibility as I think is contained in

1 the present draft. And I don't want to see too much more
2 specific criteria because in our situation it would really
3 impose a hardship where we have to follow specific
4 guidelines. We'd like to leave the flexibility to conduct
5 hearings as we feel are necessary and where they're
6 necessary.

7 And I think reimbursements in our particular
8 case, which would be out of the question because of the
9 distances involved, the number of people involved, and so
10 on.

11 So, in short, I would just like to support the
12 present draft without any further modification.

13 Mr. Williams. Thank you very much.

14 I think something you said just now about getting
15 a few people to come to a meeting in Dallas, and the
16 good numbers to come to a smaller setting, you ascribe it
17 to a topic to be discussed which I guess is a very major
18 item. But also, as we all know, there's some connection
19 between how many people come and how much trouble you go
20 to to get them to come, which the Wildlife Federation
21 representatives were talking about awhile ago.

22 A long time ago when I worked in HEW in the Air
23 Pollution Program I had a man on my staff whom I would send
24 out to get people to come to meetings. And I would tell him
25 how many people I wanted, and what kind, and where and when,

1 and, by and large, he produced. It's just a matter of
2 effort. There was nothing illegitimate about it. It was
3 all legitimate.

4 But, you know, normally a state or the Federal
5 agency will put a notice in the Register or put one ad in
6 the newspaper somewhere, and then say the public doesn't
7 care. Nobody showed up.

8 But if we're doing something important, like
9 introducing a new brand of cigarettes or a new beer or a
10 new aluminum container for the beer, my God, we spend in
11 our culture millions of dollars to insure that everybody
12 knows about it. Here it is. Here, it's important. And so
13 on.

14 So it's a matter of what the culture thinks is
15 important.

16 And I know I talked with one of the representatives
17 of one of the major news media in Washington, D.C. about
18 this particular meeting today, and I said "Why don't you
19 come over here? The public participation is so rare in
20 Washington, D.C., you might even write a story about it
21 because if for no other reasons, there's been a meeting in
22 Washington, D.C."

23 And the person said, "Well, my readers wouldn't
24 care about it. Well, they might, but my editors wouldn't
25 let me print it anyway," and so on.

1 At the same day that I made this call the paper
2 was full of delicious tidbits about whether Amy Carter went
3 to school that day or not and won the essay prize; every
4 gorry detail of a Hanaifi murder trial, about which we all
5 know enough; we want to know the outcome, and on and on.

6 So I think we who are serious about public
7 participation and who work in or out of governments really
8 have to go to some trouble to make certain that what we
9 believe in is being sought.

10 Someone mentioned earlier about that the people
11 will come out for something negative, but not to come out
12 and be positive about something. They're hardly accustomed
13 to coming out at all, I think. And they come out when they
14 feel threatened.

15 And our public information efforts in this area--
16 the general media attention to many important matters--are
17 so minimal. And if it's minimal in Washington, I mean it's
18 double minimal in Iowa City or wherever. Excuse me, Iowa.
19 Then we shouldn't be surprised. They come out when they feel
20 threatened. So it's a terribly difficult challenge.

21 And I'd like some more comments.

22 Mrs. Wyer. Tom, I have one comment.

23 Mr. Williams. Good.

24 Mrs. Wyer. When Mr. ^{Buck}~~Burch~~ from the League of
25 Cities -- I think he gave two or three different points

1 that they were concerned with, and one was that ~~he said~~ they
2 were concerned that there ~~was~~ no provision in the guidelines
3 assuring that the comments received were incorporated into
4 the decisions and policies that are adopted.

5 Well in the guidelines, in Section 249.5(c), there
6 is a mechanism for that provision.

7 It talks about the documentation of the public
8 participation measures shall be maintained, et cetera. The
9 documentations will also reflect the measures taken by the
10 Agency regarding substantive public response and comments
11 on the regulations, standards or guidelines.

12 We may have to clarify that somewhat to mean that,
13 but I'm sorry he's gone, but that is provided in these
14 guidelines. But it may need a little clarification.

15 Mr. Ray. Mr. Chairman, one comment.

16 I think it would be helpful at these kinds of
17 meetings--and I understand your physical construction of
18 it--these kinds of hearings I think would be helpful if
19 they could be moved out occasionally into the regions.

20 I know it's easier to come to Washington. Most
21 everyone is representing someone who is here, and I think
22 it would be very helpful--and maybe this is our fault that
23 we didn't have some mayors or some people here who are
24 really going to be the final implementors of this, and we
25 would accept that--but I think it might be helpful to see

1 if some of these kinds of meetings may be moved out into
2 the regions, that kind of an attempt made to the regions.

3 Mr. Williams. Yes, sir, that's true.

4 We did have an opportunity. Miss Wyer had an
5 opportunity last week or the week before to talk about
6 public participation guidelines to a group of mayors and
7 city managers.

8 Mrs. Wyer. That was at the League of Cities
9 meeting.

10 Mr. Williams. League of Cities meeting.

11 And I guess of the 120 public meetings, hearings
12 and workshops that will have been held under this Act by
13 the end of this calendar year, probably 80 percent of them
14 at least would have been held outside of Washington, D.C.
15 But I agree with you, absolutely.

16 Anybody else have anything to say?

17 Any working group members or division representa-
18 tives have anything to say?

19 Going, going, gone.

20 Thank you very much. We will take seriously
21 everything you have said.

22 (Whereupon, at 10:28 a.m. the hearing was
23 concluded.)
24
25

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July 1, 1977

Comments of the Environmental Defense Fund on Draft Guidelines
on Public Participation in Administrative Proceedings
under Section 7004(b) of the Resource Conservation and Recovery
Act of 1976

The Environmental Defense Fund is a non-profit, nationwide organization of scientists, lawyers and economists working to protect the public interest. EDF has supported the concept of full public participation in administrative proceedings in a variety of contexts and in principle supports the proposed guidelines mandated under section 7004(b) of the Resource Conservation and Recovery Act of 1976.

EDF would like to comment primarily on the omission of any provision for the reimbursement of some or all of the costs of participation by individuals and groups. The value of creating an administrative record with the widest range of views expressed is clearly recognized in section 7004(b) of the Act. But full public participation in administrative proceedings carries with it a heavy financial burden. Without some form of reimbursement many individuals and organizations will be effectively barred from participation.

EDF believes these guidelines do not fully implement the requirements of section 7004(b). If that section were merely precatory with respect to encouraging public participation, the notice and other provisions of the guidelines would be adequate. But Congress also has required the Administrator and the States to assist as well as to encourage public participation. The best

Statement by the
National League of Cities
and the
U.S. Conference of Mayors

II-59

July 1, 1977

The National League of Cities and U.S. Conference of Mayors appreciates this opportunity to comment on the Public Participation Guidelines of the Resource Conservation and Recovery Act of 1976 (RCRA). In general we commend the EPA Office of Solid Waste for its emphasis on and commitment to the public participation provisions of the new Act. To date, we feel that EPA has been open and forthright in seeking out and incorporating comments from different groups and interests in developing the RCRA guidelines. However, several aspects of the proposed participation guidelines require clarification and/or change if the law is to be smoothly and effectively implemented.

The following comments are in part drawn from a discussion of the public participation guidelines at a meeting of the NLC/USCM Solid Waste Task Force held last Thursday in Washington. A list of Task Force members is attached for your information.

First, the guidelines are both ambitious in their objectives and vague in their criteria and standards. This leaves state and local governments without a clear sense of what constitutes a "minimum" program of public participation. A state or community may make a good faith effort to comply with the guidelines, yet still be subject to citizen suits. Although we recognize that there is no easy solution to this problem, we recommend that more explicit attention be given to the reasonable capabilities of governmental bodies to perform these tasks. Account should be taken of the administrative and financial burden these guidelines will impose on states and localities. Accordingly, the League and Conference

recommend that more attention be given in the guidelines to the role of existing institutions and procedures in involving the public. State municipal leagues are a good example of an underused linkage mechanism for facilitating state and local government communication and cooperation. Other types of "coalition" and "clearinghouse" organizations can be also brought into the participation process without placing undue strain on the system. The general point to be made is that the concept of public participation can quickly get out of hand, and can subject state and local governments to endless litigation, if reasonable minimum levels of participation in the program are not made more explicit.

Second, for all the openness of the proposed process, and for all the records that are to be kept, there is no provision for assuring that the comments received are incorporated into the decisions and policies that are adopted. The role of public participation in implementing RCRA, if it is to be given this much emphasis, should be more than an exercise in testimony gathering. It should also have a direct and demonstratable impact on the policies that are chosen. Some type of mechanism should therefore be included in the guidelines to assure that the information received through the participation process is synthesized into policy recommendations which are given serious attention by state and local decision-makers.

Third, and finally, several specific sections of the guidelines could usefully be clarified. For example, in Section 249.6, local governments have no role in reviewing and evaluating the summary of public participation. What recourse do local governments have if they question the Regional or state administrator's decision on the adequacy of participation? A review committee composed of federal,

state, local and private sector representatives might be more appropriate for this purpose. In Section 249.7 (b) (on page 11), how are "significant, controversial, or complex matters" to be defined, and who defines them? Again, a clarification of the definition and the process would be helpful and might avoid later delays and prolonged litigation.

In sum, the League of Cities and Conference of Mayors supports the objectives of the public participation guidelines, but recommends that greater attention be given to (1) Established procedures and mechanisms at the state and local level that will keep the administrative costs of the program within reason, (2) The way in which the information received from such participation is going to be used, and (3) A more explicit and well defined role for local governments in the evaluation of the participation process.

Thank you very much.



NATIONAL LEAGUE OF CITIES



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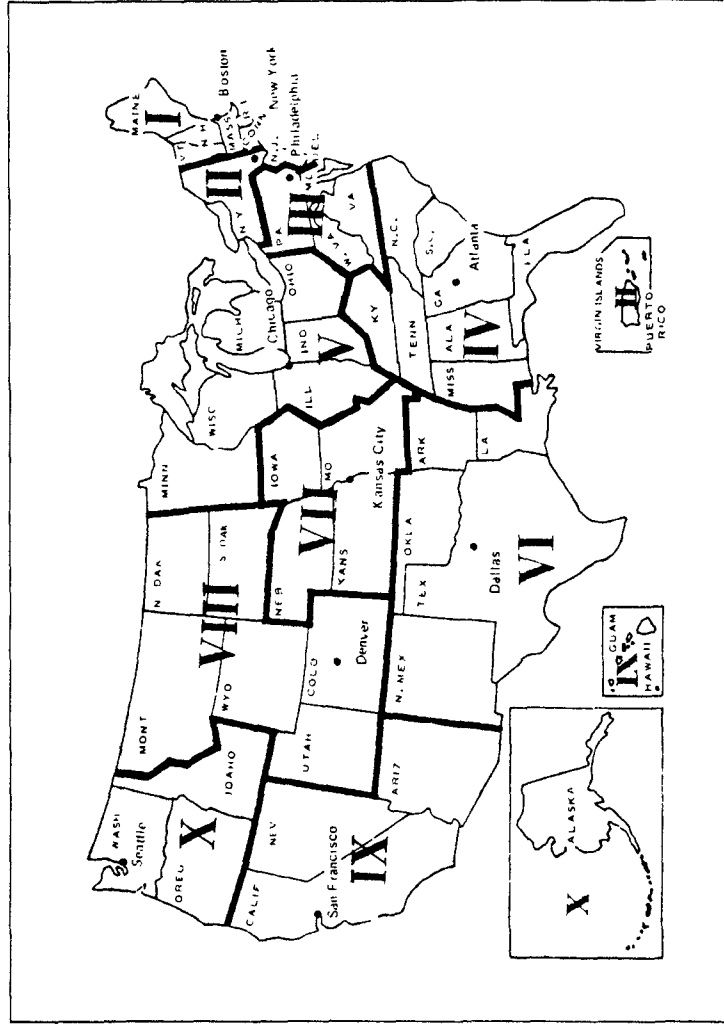
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