TRANSCRIPT

Public Meeting
on the Resource Conservation and Recovery Act of 1976;
Subtitle C, Hazardous Waste Management
October 13 and 14, 1977, St. Louis, Missouri

These meetings were sponsored by EPA, Office of Solid Waste and the proceedings (SW-26p) are reproduced entirely as transcribed by the official reporter, with handwritten corrections.

U.S. ENVIRONMENTAL PROTECTION AGENCY

T R A N S C R I P T

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U.S. ENVIRONMENTAL PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF SOLID WASTE

PUBLIC MEETING

ON

HAZARDOUS WASTE MANAGEMENT GUIDELINES/REGULATIONS

PURSUANT TO SUBTITLE C

RESOURCE CONSERVATION AND RECOVERY ACT of 1976

(PUBLIC LAW 94-580)

October 13, 1977

Khorasson Room
Chase Park Plaza Hotel
212 North Kings Highway
St. Louis, Missouri 63108

PANEL MEMBERS

JOHN P. LEHMAN, Director,
Hazardous Waste Management Division (HWMD)
Office of Solid Waste, EPA

WALTER W. KOVALICK, JR., Chief
Guidelines Branch, HWMD
Office of Solid Waste, EPA

WILLIAM SANJOUR, Chief
Assessment and Technology Branch, HWMD
Office of Solid Waste, EPA

ALFRED W. LINDSEY, Chief
Implementation Branch, HWMD
Office of Solid Waste, EPA

I N D E X

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

2 CHAIRMAN LEHMAN: Good afternoon, ladies and
3 gentlemen.

4 Before we begin, you probably notice already
5 but let me suggest that we set up the room so that smokers can
6 sit on your right and nonsmokers on the left.

7 We welcome you to this public meeting to
8 discuss the hazardous waste regulations under Subtitle C of
9 the Resource Conservation and Recovery Act. I am very glad
10 that you could attend and hope that this meeting will be
11 productive for all of us.

12 My name is Jack Lehman. I'm the Director
13 of the Hazardous Waste Management Division, Office of Solid
14 Waste, in EPA in Washington, D.C.

15 Let me introduce the gentlemen on my right
16 who will be sharing the meeting with me on a rotating basis
17 and also will constitute a panel to answer your questions.

18 First on my right is Walt Kovalick, Chief
19 of the Guidelines Branch and Division; Fred Lindsey, Chief of
20 the Implementation Branch and Bill Sanjour, Chief of the
21 Assessment and Technology Branch.

22 I would like to briefly discuss the history
23 of the regulations and guidelines and then describe the pro-
24 cedure for this meeting.

25 There has been extensive public participa-

tion in the development of these regulations since RCRA became law on October 21, 1976. Initially 11 public meetings were held in each EPA Region and in Washington to discuss the provisions of RCRA generally. Throughout the spring and summer, over 80 invitational public meetings were held around the country with potentially affected parties, including industry, environmental groups, state and local governments and others, to discuss various possible regulatory options.

Additionally, public comments were requested regarding regulatory options in the "advance notice of proposed rule making" published in the Federal Register on May 2, 1977. Recently, some early drafts of proposed regulations were sent out by the Agency for review and comment.

The external reviewers included affected industry, state and federal agencies, environmental and other public interest groups.

This series of three identical meetings is a continuation of that process of public involvement in the development of the regulations. The main purpose of these meetings is to describe the probable content on a section by section basis of the regulations as we see them at this time and to gather an initial set of reactions and comments.

It is important to emphasize to you that the regulations as described can change substantially both as a result of your thoughts as well as due to further deliberations

among the various program offices within the Agency.

A second purpose of the meeting is to outline for you our plan to develop environmental and economic impact information on these regulations. The meeting will also include a case study discussion where we can thread through the various regulatory requirements using several example kinds of affected companies.

The regulations that are being discussed will be published as proposed in the Federal Register for formal, public comment over the next several months. After this comment period and public hearing--there will be public hearings after the proposed rule making in the Federal Register--they will become final regulations next summer and go into effect six months after that, or near the end of 1978.

Before summarizing the regulations for you, let me remind you of their overall purpose. We are discussing today the development of national standards for hazardous waste management that would be federally enforced. However, Subtitle C contemplates state programs to regulate hazardous waste wherever possible. If a state applies and is authorized to conduct a program under the guidelines under Section No. 3006, that state's regulations would apply as long as they were no less stringent and equivalent to the federal standards. Thus states are not assuming the federal standards when they are authorized, but rather they are creating equivalent

programs in lieu of the federal program. This is an important point.

Therefore, our discussion today revolves around national standards that will apply in cases in which states are not authorized. Where states are authorized, their regulations are primarily applicable.

Let me begin by giving you an overview of the interrelationship of the sections of the Act and then briefly discuss the procedure for these meetings before beginning individual considerations of the regulations.

Subtitle C of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, creates a regulatory framework to control hazardous waste. Congress has found that such wastes present special dangers to health and require a greater degree of regulation than does nonhazardous solid waste. Because of the seriousness of this waste problem, Congress intended that the states develop programs to control it. In the event that the states do not chose to operate those programs, EPA is mandated to do so.

There are six regulations and one guideline being developed and proposed under Subtitle C to implement the Hazardous Waste National Program. And they are the ones to be discussed at this meeting.

It is important to note the definition of

solid waste in the law encompasses garbage, refuse, sludges, including liquid, semi-solids and contained gases, with a few exceptions, from both municipal and industrial sources.

Hazardous wastes, which are a subset of all solid wastes which will be defined by regulations under Section No. 3001, are those which have particularly significant impact on public health and environment.

So as defined by the new RCRA, solid wastes are not necessarily solid anymore. They include liquids and sludges as well.

Subtitle C creates a management control system which for those wastes defined as hazardous requires cradle to grave cognizants including appropriate monitoring, record keeping and reporting throughout the system.

Section No. 3001 requires EPA to define criteria and methods for identifying listing hazardous wastes. Those wastes which are identified as hazardous by these means are included in the management control system constructed under Sections No. 3002 through 3006 and Section No. 3010. Those that are excluded will be subject to the requirements for non-hazardous solid waste being carried out by states under Subtitle B of RCRA under which open dumping is prohibited and environmentally acceptable practices are required.

Section No. 3002 addresses standards applicable to generators. EPA's regulations under this section

describe the class of generators for whom some requirements may vary.

For example, the Agency does not interpret the intent of Congress to include regulation of individual homeowners due to the small quantites of hazardous waste they may generate.

Section No. 3002 also requires the creation of a manifest system which will track waste from the point of generation to their ultimate disposition.

Section 3003 addresses standards affecting transporters of hazardous waste to assure that wastes are carefully managed during the transport phase. The Agency is exploring opportunities for meshing closely with proposed and current DOT regulations to avoid duplication in this area.

To this end, I want to call your attention to the joint public meeting with DOT planned for October 26 in Suburban Chicago. Copies of the "Federal Register Notice" relating to this meeting are on the registration table ~~up~~ OUT front.

Section No. 3004 addresses standards affecting owners and operators of hazardous waste treatment, storage and disposal facilities. These standards define the levels of environmental protection to be achieved by these facilities and provide the criteria against which EPA or the

state officials will measure applications or permits. Facilities on a generator's property, as well as off-site facilities, are covered by these regulations and do require permits. Generators and transporters do not otherwise need permits. Let me say that again because this is widely misunderstood. Generators and transporters do not need permits, only people who operate storage, treatment or disposal facilities need permits.

Section No. 3005 regulations describe the scope and coverage of the actual permitting process for facility owners and operators. Requirements for the permit application, as well as for the issuance and revocation process, are to be defined by these regulations.

Section No. 3005(c) provides for interim permits during the time period that the Agency or the state are reviewing any permit applications. Here again, this is an important point that under certain circumstances, which are easily achieved, facilities automatically have interim permits and can continue to operate while a more formal permit application is being reviewed.

Section No. 3006 requires EPA to issue guidelines for state programs and procedures by which states may seek both full and interim authorization to carry out the hazardous waste management program in lieu of the EPA administered program.

Section No. 3010 regulations define procedures by which any person generating, transporting, owning or operating a facility for storage treatment and disposal of hazardous waste must notify EPA of this activity within 90 days of the promulgation of regulations which defines hazardous waste under Section No. 3001.

EPA intends to make provisions in these regulations for states to be delegated this function upon application to the Administrator.

It is significant to note that no hazardous waste subject to Subtitle C regulations may be easily transported, treated or disposed of unless this timely notification is given to EPA or a designated state.

The Agency intends to promulgate final regulations by mid-1978 under all sections of Subtitle C. However, it is important for the regulated communities to understand that the regulations in Sections No. 3001 through No. 3005 do not take effect until six months after promulgation, as I mentioned in late 1978.

There will be a time period after final promulgation during which public understanding of the regulations can be increased. During this same period, notifications required under Section No. 3010 are to be submitted and facility permit applications required under Section No. 3005 will be distributed for completion by applicant.

1 Let me now discuss the procedural aspects
2 of our meeting. This afternoon's session will run until
3 about 5:15 with a break at about 2:15, about a 15 minute
4 break. And then we will continue after dinner with the dis-
5 cussion of Section No. 3004 which is a very important section.
6 Each section of the regulations will be
7 discussed for about an hour and a quarter, including a 20
8 minute introduction with about an hour for questions and
9 comments from the floor.
10 Due to the time limitations, the chairman
11 reserves the right to limit lengthy discussion or statements.
12 After each presentation on each section, we
13 will take prepared statements on the section under discussion
14 first. During this time, blank cards will be available and
15 passed out. Please list your questions on these cards and
16 the panel will respond.
17 Following that, if sufficient time remains,
18 questions will be taken directly from the floor.
19 Statements relating to all the regulations,
20 as opposed to one individual section, will be taken at the end
21 of each day.
22 The court reporter is present today. The
23 questions and comments will become part of the public record.
24 This record will be available for public inspection by
25 November 18, 1977 in the Docket Section, Room 2111 of the

1 Hazardous Waste Management Division, Office of Solid Waste,
2 at the EPA in Washington, D.C.
3 Now let me introduce first Mr. Alan Corson.
4 Alan is the Program Manager for Hazardous Guidelines in our
5 Division and he will discuss the first set of regulations
6 under Section No. 3001.
7 Alan?
8 MR. CORSON: Thank you, Jack.
9 In reviewing our work on Section No. 3001,
10 I will in general follow the handout material which you either
11 received in the mail or you may have picked up at the desk
12 outside. That is this section called Summary Materials.
13 First, I will briefly review the authority
14 of the Act, the mandate under which we are developing these
15 regulations. Then I will go to short discussion of our present
16 thinking and the definition of hazardous waste, that is, the
17 content of the draft regulations. And finally, we will briefly
18 cover the key unresolved issues.
19 By unresolved issues, we are referring to
20 some of those that although we may have a position we are
21 following at the moment it is not firm because there is still
22 some discussion within the Agency as to which way we should be
23 going.
24 With regard to the authority, Section No.
25 3001 of RCRA, the first two paragraphs (a) and (b), which

1 mandate the initiation of some action by the Agency, they call
2 for us to develop and promulgate criteria for identifying and
3 listing hazardous waste and regulations identifying the
4 characteristics of hazardous waste and listing particular
5 wastes which are to be covered by Sections No. 3002 through
6 No. 3005 and No. 3010 and does deal with the permit require-
7 ments and state requirements under No. 3006 in terms of
8 comparability.

9 In short, we must establish the criteria
10 for and provide lists of hazardous waste. We will go into the
11 issue itself specifically a little bit later.

12 The third paragraph of RCRA, Section No.
13 3001, Paragraph (c), allows a governor to petition the EPA
14 to identify or list a particular material as a hazardous
15 waste and to list that waste. The Administrator then has 90
16 days within which to act.

17 Going from the authority to the content,
18 the first item I would like to review, the word we have in our
19 outline is the word exceptions, and to amplify that a little
20 bit.

21 By exceptions here, we mean some characteris-
22 tics or traits or whatever, some classes that will be handled
23 a little differently than things we are categorizing generally
24 as hazardous waste. These materials, although they may meet
25 our criteria, will be handled in a different matter and we

1 will go into that in a moment.

2 At the outset, I should point out that our
3 approach has been to minimize the number of things, the number
4 of categories that are being treated out of the ordinary.
5 Basically, RCRA provides for only two types of management of
6 wastes. Wastes which are not hazardous must meet the character-
7 istics of Subtitle B of the Act in their disposal. Wastes
8 which meet the criteria of Subtitle C, Section No. 3001, those
9 wastes which are hazardous, they require the special management
10 requiring the regulations and standards we have promulgated
11 in the sections of this Act.

12 Those areas which we are treating in a little
13 bit different manner: First, we intend to exclude from our
14 definition all household waste. By just the nature of the
15 problem, we feel it is unmanageable to consider regulating
16 70 million households.

17 Second, there is a category of what we are
18 calling small waste generators. These will be defined and
19 discussed under Section No. 3002--these will be discussed
20 under Section No. 3002. The definitions cause some problems.
21 For these people, we will be proposing a certain minimum set
22 of requirements, things which will give them a little bit of
23 a break and we feel will be less burdensome than those that
24 are treated on the not small quantity generators.

25 The third category deals with the applicabil-

ity of the regulations to mining and milling wastes. In this case, we propose, since there is a study to be performed under Section No. 8002 of the Act, that the application of these regs to such wastes will be delayed for six months after completion of that study or until we promulgate different regulations for those particular wastes, whichever comes sooner.

That puts the burden on EPA to take some positive action within six months after the study is completed or these regulations will become effective. Now one of the things that will happen in that study--we hope, we are planning as a result of that study to develope a better handle in our minds on the mineral mining industry. As a result of industry studies done for our office in the past, we do have a fairly good grasp of metals mining.

And particular attention will be paid in this study to regulatory options. When you look at the vast quantities of waste that are involved in the mining industry, it may cause some different method of regulatory control. This will be provided, the option will be discussed in the study and we will then be able to make our decisions.

So for the moment, these are the only areas that are being treated differently, one exception, one delay and one with not so quite stringent requirements.

On to the definitions, there is a key

1 definition that we tried to develop in the regulatory program
2 so far. This is a definition of when is a waste, waste? We
3 have gone through all the categories in our own mind in terms
4 of trying to foster and sponsor resource recovery, use of
5 materials as a by-product. The approach we have taken so far
6 is that any abandoned or discarded material is a waste. Any
7 other material where the generator can justify to us that he
8 is using the material as--rather immediately as a by-product
9 or is going to a resource recovery facility for materials
10 recovery within 90 days will be excluded from our definition
11 of a waste.
12 One more time. All abandoned or discarded
13 materials are waste. Any other material when the generator
14 can substantiate that it is going through a resource recovery
15 facility for material recovery or has immediate use as a by-
16 product will not be considered as a waste.
17 With those exceptions, that definition we
18 are considering as our--based on damage incidents which we
19 have on file in the office the legislation itself and other
20 studies which we have conducted that the following criteria
21 will be included in our definition of hazardous waste:
22 flammability, corrosiveness, infectious waste, reactive waste,
23 radioactive waste, toxic waste. Within the category of toxic
24 wastes, we include those which have the defined characteristics of
25 bioaccumulation or potential for genetic harm.

For each of the criteria which we have listed, we expect to have a definition and a test method. There may be some however for which a test method is not readily available, for example, carcinogens. In those cases, we will include a list of those substances with the concentration which will make the waste a hazardous waste.

We intend for our test method, wherever possible, to use standard methods such as those listed by the American Society of Testing Materials, ASTM.

Let me briefly go through each of the criteria and terms. Flammability, for flammability, we are proposing that for a liquid the flash point will be the measure. And our definition of flammable liquid will be a flash point of 140 degrees F. For nonfluid wastes, we currently are working with a prose definition, but are hoping within the next three weeks, with an acceptable standard test method, to give us the same sort of yes/no test we can get with flammable liquids.

For corrosive wastes, two measures, a ~~PH~~ pH of the liquid or a saturated solution of the nonfluid waste, a ~~PH~~ pH less than 2 or greater than 12. We are also proposing a corrosion rate measurement as an alternative measure using a quarter of an inch per year on ~~SE~~ Se 1020. This is the same test being used by the Department of Transportation.

Infectious wastes, infectious wastes present

1 a problem in that we do not have a measurable quality that is
2 unambiguous such as we feel we have some of these other
3 criteria. Because one of the problems with bacteria is if you
4 wait long enough it will probably multiply the level of con-
5 cern. Therefore, we looked and studied what were the potential
6 sources of problem for infectious wastes which led us to the
7 development of sources which we would identify unless they
8 did not have certain characteristics. In some cases, we are
9 going to sources within sources. For example, our regulation
10 will propose that infectious waste will cover certain sources
11 within health care facilities and laboratories and sewage
12 treatment plants' sludges which have not been stabilized
13 unless it can be shown that they do not have the organisms
14 of concern.
15 Reactive wastes, reactive wastes also pre-
16 sent a problem for us in trying to come up with a set of
17 yes/no tests. But for the moment, we are again here working
18 with a set of prose definitions and attempting to develop a
19 series of test protocols. The definitions we are using cover
20 oxidizing agents, explosives and materials which autochlorinize.
21 Radioactive wastes, the Resource Conservation
22 and Recovery Act excludes source special nuclear by-product
23 material covered under the Atomic Energy Act of 1954. Con-
24 versely it therefore includes things which are not excluded
25 or included within RCRA. We are proposing at this time,

1 recognizing the exclusions to regulate wastes with a radiant
2 226 concentration of 3 picocuries per gram or greater.
3 I should point out at this time that the EPA's
4 radiation program is providing the major input into this part
5 of the definition. And with them, we are interfacing with
6 the appropriate offices within the Department of Energy.
7 Toxicity, I should have pointed out at the
8 very beginning of this talk that our concerns with the
9 definitions do relate to the waste itself. The carcinogens
10 we discussed previously will be measured on the waste as
11 disposed, not on the feed stock that went into the production
12 process. For toxicity, however, we do have a problem because
13 our concerns again are only with the means by which the
14 contaminants or fluids within the waste can be relieved to
15 enter the environment. Thus, our interests lie in the portions
16 of the waste which may volatilize and enter the are or those
17 which may leak or run off and enter the ground or surface
18 water. So that for the toxicity measurements, we will be
19 proposing that either the liquid waste be measured, if it is
20 pure liquid, or a standard leachate test be conducted on the
21 waste to determine that which will leak out of the waste and
22 have the potential to harm the environment. The toxicity
23 evaluation will be done on a liquid in either case, waste
24 itself or the leachate from that waste.
25 We are proposing that there will be alterna-

1 tive methods for assessing toxicity. One will be an analytic
2 method. The second will be one that goes into a bioassay.
3 In either case, prior to doing the final tests, that liquid
4 or leachate will be tested for--will be tested first for
5 genetic change potential using a named assay or something
6 like that which we will prescribe and a proficient-coefficient
7 test to assess its tendencies to bioaccumulate. So in either
8 case, we go through the genetic change and bioaccumulation
9 problem before we go into the analysis or the bioassay method.
10 We are suggesting that the analysis
11 approach leads itself most readily to those cases where the
12 waste is rather simple and the generator feels he has a
13 good handle on what is in his waste, where there are only
14 several substances present.
15 And just as a clue to the things we will
16 be looking for, for those states in which a drinking water
17 standard exists, we have gone through a process of looking
18 at the locational ground levels, dilution of leachate before
19 it gets to the well, the intake of human water that could
20 come from the well and from this, we end up with where there
21 is a drinking water standard that exists we are recommending
22 a limit of ten times that standard in the leachate or the
23 liquid.
24 For those where a standard does not exist,
25 we propose that we go to standard references such as the

1 NIOSH Registry of Chemical Substances--I think that's the
2 name for it--and we set a tixicity concentration relationship,
3 such as if there is a given amount of a waste or a concen-
4 tration of a waste, a given toxicity level which would make
5 that full waste load hazardous.
6 You go through this whole logical proces-
7 sion and the number comes out to be .35 times--and we are
8 using in this case the ~~Oralmarian~~ oral mammalian Rat Test--so that, for
9 example, if there is a waste whose Oral LD-50 is 500 milli-
10 grams per no space kilogram of body weight, then the concentration
11 of that substance in a waste at 175 milligrams per liter
12 would make the waste hazardous.
13 For the moment, we have not set an upper
14 limit in terms of Oral LD-50's with which we are concerned.
15 So that as an example, if there was something with an Oral
16 LD-50 of 2,000 milligrams per kilogram, in the presence of
17 that substance in the waste at a concentration of 750 milli-
18 grams per liter would make the waste hazardous. However, we
19 are considering the limits should be included.
20 We will establish similar relationships
21 for phidotoxicity and aquatic toxicity.
22 For the bioassay method, these are methods
23 again which will be used with the leachate or the liquid. We
24 will be providing a set of test no space protocols probably with
25 fathead minnow, Oral Rat LD-50 tests, daphnia magna, phido-

1 toxicity using soybeans.

2 Threshold levels and dilutions remain to be

3 defined. But our objective will be to make the equivalent

4 bioassay test equivalent to that procedure.

5 This is a very brief overview of the

6 criteria. I would like to know get into some of the key

7 unresolved issues.

8 One is on our definition of a waste. I

9 did indicate at the outset in that definition we had two

10 time elements involved,immediate use as a by-product and

11 three months for storage. Meeting either of these criteria

12 would get it out of the category of a waste.

13 Our concern with time is that we are very

14 much concerned about control measures if we went much longer

15 than three months for storage.

16 Also it turns out--not turned out, it was

17 planned that way--that in Section No. 3004 they are taking

18 the position that storage of three months or less does not

19 require a permit and No. 3005 gets it out of the storage

20 category.

21 This is to allow people to accumulate in

22 economic quantities for shipment. So the time element is still

23 not totally and finally resolved in the office.

24 The other problem is we did indicate that

25 those materials are uncovered going to resource recovery if

1 it is a permanent resource recovery facility. The question
2 does come about the authority to permanent resource recovery
3 facilities, whether or not we don't have to call them a sub
4 set of treatment facilities or to accept those standards on
5 them.
6 The second issue that was listed is one of
7 implementation strategy. Although we are developing regulation
8 criteria today so we will promulgate all criteria at one time
9 and all effective at one time, there is an issue as to whether
10 we should phase the criteria--that is, put out some of them
11 today or when the regulation comes out, namely all but
12 toxicity, for example, and phase in the toxicity definition
13 at sometime in the future--or whether we should promulgate at
14 a given level when we propose and make that level more strict
15 with time such as the water people have done with their
16 guidelines.
17 In the bioassay test program, we have some
18 problems in terms of standards set and the applicability of
19 using standard species or a restricted list of species to
20 represent the toxicity of a waste sample and what threshold
21 level should we set, what in particular we should be looking
22 at in our aquatic toxicity method, how relevant is the
23 soybean test to the toxicity of the waste? These sorts of
24 questions are in there.
25 The last issue that we will discuss and

1 certainly not the least of those has to do with our use of
2 hazardous waste lists. How should the waste be listed? Or
3 how should the lists be used?
4 We are required by the Act to publish and
5 promulgate those criteria and lists and we will do so. They
6 key is how should the lists be used?
7 On one end, we have the thought of using
8 criteria and an advisory or better word for it might be
9 red flag lists. These would be lists of substances or
10 processes which we have pretty good information that would
11 lead us to believe that if you've got that process or that
12 substance you should be examining your waste because there
13 is a fair likelihood that it might be hazardous by our
14 definition. That's the one end.
15 The other end we have the thought of again
16 using the criteria, but this time using lists which are what
17 we call definitive or maybe a better analogy would be that
18 these are similar to the bold presumption approach, picking
19 it from the pesticide program. If your substance or process
20 is listed, we are saying that it is hazardous unless you can,
21 as a generator, use our criteria and our test methods to show
22 us that the waste should not be considered hazardous.
23 So in the one case, we have the burden--
24 again, this is with the bold presumption approach--the burden
25 is on industry;if they are listed, you show us they should not

1 be.

2 On the other hand, if we use the red flat

3 list or advisory list as we are calling it, then the burden

4 kind of falls on EPA to show industry in a specific case that

5 they do need our criteria.

6 We think, however, that with the advisory

7 list and the processes there should be enough information

8 between that and reports we have done to give us a fair clue

9 as to whether or not they really belong in the control group

10 or not. We just think that that makes our job a little bit

11 tougher, but that is not necessarily bad.

12 This has given you a very brief overview of

13 the draft regulations, contents we are proposing, some of

14 our thoughts on the unresolved issues. We are now open for

15 your comments and questions.

16 CHAIRMAN LEHMAN: As I mentioned in the

17 beginning, at this time, we will accept statements concerning

18 Section No. 3001.

19 Does anyone have a statement they would like

20 to make concerning Section No. 3001?

21 (No response.)

22 CHAIRMAN LEHMAN: Evidently not.

23 So we will go on to the second step of our

24 work.

25 We have someone who wants to make a state-

ment on No. 3001.

Would you please give us your name and affliation for the record?

MR. MILLER: My name is Scott Miller. I am with the Illinois Environmental Protection Agency. I am part of the Hazardous Waste Unit.

We have a number of problems with Section No. 3001. The first one starts with the definitions.

Flammability, any liquid which has a flash point less than 140 degrees Fahrenheit, 60 degrees Centigrade, determined by the method cited in Section No. 250.13(a) of this Chapter. We can't understand why the quantity 140 degrees is used especially in light, farther along in Section No. 3004 2.21, they say materials with a flash point less than 65 degrees Centigrade will not be allowed to be landfill. So why do we have a contradication of terms?

On most landfill sites, municipal refuse decomposes at temperatures in excess of 160 degrees Fahrenheit. So why use 140? It doesn't leave any margin of safety. Why not pick something on the order maybe of 180 degrees Fahrenheit?

The next definition, corrosive wastes, any liquid waste or saturated solution or nonfluid waste having a ~~PH~~ pH less than 2 or greater than 12 is the method cited in No. 250.13(b) again of this Chapter. A more accurate test

may be the percent ~~alkalenity~~ alkalizity or the percent acidity.

Coca Cola has a ~~PH~~ pH of 2.5 when you open up a can. You are getting very close to the limit. White vinegar has a ~~PH~~ pH less than 2. So why are we using the number 2 when we are really not doing anything definitive with it?

And why, in the next section, do they request that the corrosion rate can be no greater than .25 inches a year on an ~~SB~~ Se grade 1020 steel at temperatures in excess of 130 degrees?

The majority of the vault tanks that our transporters are using have steel of a much lower thickness than this.

Reactive waste, something that has been entirely deleted was waste that would in combination with one or more heterogeneous or homogeneous waste streams undergo violent chemical change, free potentially toxic gases, detonates or has flame as an end product to that reaction. They have deleted this. They have deleted any substances that react violently with other substances. They are talking about substances that only react in themselves.

On radioactive wastes, they picked a number, three picocuries per gram. And all they have done is extrapolate this from the water quality standards.

In our state, a number of the water treatment sludges that come through will not be able to pass this

1 because of the so-called radium belt that we are working in.
2 We propose a level maybe on the order of
3 30 picocuries per liter.
4 Also, the definition of hazardous waste is
5 completely unuseful. We propose that any waste--that all
6 wastes are hazardous unless you can prove them otherwise.
7 They have taken a bunch of numbers and they have made--they
8 started with a gas and built on another gas, another gas and
9 another gas and they came out with what they call logical
10 progression. In mathematics, I have never used that as a
11 logical progression.
12 They come up with a number .35 times the
13 LD-50 value. Well, the last time I looked through NIOSH,
14 there was approximately 2,000 LD-50 values in NIOSH as opposed
15 to more than four million chemicals.
16 Now the majority of the chemicals that we
17 receive, that we request permits for, are intermediate. They
18 are not a true chemical. They are usually radicals or
19 isomers of the particular chemicals that they are trying to
20 process too. Now what are we going to do? There is not going
21 to be an LD-50 value for these. They run the entire gamut of
22 the organic chemical universe or the inorganic chamical
23 universe.
24 We cannot use this definition at all. How
25 about ten times the water quality standard? What are they

1 maybe 20 metals or some cyclic hydrocarbons that are in the
2 water quality standards? Nothing there is unusable.
3 LD-50 values for flathead minnow. Well,
4 what happens when we get inland water?
5 We have waters in one particular site that
6 are at levels that will meet the LD-50 value, but they bio-
7 accumulate. This particular chemical I am talking about is
8 endren. It bioaccumulates in the algae and we have killed over
9 400 fish in that lake. The level here again is unusable.
10 We think that they should completely re-
11 define hazardous waste. We cannot use this definition. We
12 will not use this definition. It would allow too many chem-
13 icals that are both toxic to humans and to the environment to
14 escape and not go where we can contain them and we can keep
15 a complete tab on what is going on.
16 Also, what they want to use, they want to
17 use a leach test. I don't know how many other states here
18 have a leach test. We have two of them. The definition of
19 leachate predisposes that your site is going to leak. We are
20 going to get some chemicals leaching out. When we design a
21 site, we don't intend that to happen. If it does, then
22 we have made some kind of engineering error.
23 What we have found so far going with the
24 leach test is that it is also unusable. And using a leach
25 test on one particular chemical, we ran it through the lab

in the quantity that we were receiving at one of our sites could kill two times 78 people if the reaction reversed itself. And it takes nothing more than a PH 3 to reverse the reaction.

But on leach tests, this particular chemical would be classified not hazardous under their definition of hazardous waste.

So again, I say we can't use the leach test. You are better off using totals. If you want to use the leach test, fine, maybe that is what will leach out if you spill it in transport. But it is not what is going to happen on a site. A site is clay. It should have a minimum thickness to insure integrity per minimum of 600 years. So why are we worrying about a leach? Why don't we go with total and work with numbers from there?

Thank you.

CHAIRMAN LEHMAN: O.K., thank you for your remarks.

We are interested in receiving these comments. That is why we are here.

I think it is fair to say that the gentleman was referring to some figures that many of you may not have. I mentioned earlier in my remarks that certain early drafts of materials have been circulated to various groups including state governments for them to have an early look at

what we were up against here. I believe the gentleman from Illinois was referring to those early draft documents and they might not be available to all of you.

Also, I don't intend to respond to each and every point that was made here. We will take under advisement what was stated.

There is one point though that I think perhaps the gentleman from Illinois has misrepresented here, or misunderstood, and that gets back to the leaching test. The fundamental philosophy behind the leaching test is to determine what would happen to a waste if it does not reach a hazardous waste facility. He was referring to the fact that they intended to design and permit only hazardous waste facilities that don't leak so why do you need a leach test? Well, one could logically ask that.

But what we are concerned about is only those wastes that are designated as hazardous that are under the transportation control scheme. Nonhazardous wastes are not under any transportation control and, therefore, are not necessarily going to arrive at the appropriate facility. So what we are concerned about is leaching of waste so that they might cause a problem if they did not come under this transportation control. I hope that makes sense to you.

Somebody is shaking their head no back there.

1 In other words--let me try it again: If we
2 could be assured that every hazardous waste was going to
3 arrive at a permitted hazardous waste facility that was
4 appropriately designed, then we probably would not be worrying
5 about a leach test. But since the way the law is structured
6 that you only have transportation control over hazardous
7 waste, there exists that possibility then that a number of
8 wastes will not arrive at any permitted facility, whether it
9 is a hazardous waste facility or not.
10 It could end up in a farm yard. It could
11 end up alongside a road in a ditch and so on. And if the
12 leach is there, then that is the point we are concerned as
13 to whether it causes a hazard to the public health and the
14 environment.
15 I think also a word is in order here about
16 the timing of these regulations. We made some general
17 reference to it. But I think it might be interesting to you
18 to have an understanding of our intent here in the timing.
19 We are pushing on Section No. 3006 guide-
20 lines first. Theyare at the head of the list. And the reason
21 they are at the head of the list is that since they deal with
22 state program authorizations many state legislatures only
23 meet during the spring months of each year and there is a
24 provision for states to seek authority under the law. And
25 to be in at the beginning of the system, they would have to

1 have their program off and running by about this time next year.
2 Some of the state that may want to do that don't have the
3 necessary legislative authority to do it.
4 So what we are trying to do under Section
5 No. 3006 is to promulgate these in proposed form very quickly,
6 in a few weeks, and try to finalize those guidelines early
7 next year so that they would be out and available for
8 guidance to state legislatures at that legislative window.
9 The next group of regulations that would be
10 coming out of the pipeline is Section No. 3010. And again,
11 there is a reason why that is second.
12 Section No. 3010 refers to the notification
13 system that has to take place 90 days, within 90 days,after
14 promulgation of the hazardous waste definition, Section No.
15 3001.
16 As you will learn later on in the discussion,
17 we are anticipating promulgating a sample format, and form,
18 for this notification and consequently, there are a lot of
19 forms to print and distribute and have in the people's hands
20 that need them at the time the other regulations go final.
21 So that Section No. 3010 then has to be
22 underway sooner than the rest of the regulations do.
23 Next out of the pipeline would probably
24 come Section No. 3003 on transportation requirements. These
25 are under discussion now with the Department of Transportation.

There is another meeting in two weeks in Illinois in the Chicago Area. We are further along with those than the others and we will probably propose those as the third item that comes out.

The next would be probably--we are anticipating things in our scheduling at this point--be Sections No. 3001 and No. 3002 that deal with definition and generator standards.

I am talking now about proposed regulations.

And last would be Section No. 3004 and Section No. 3005 that deal with facility standards and permits. These are so closely interrelated that they go as a set.

So what we are talking about then is to have all these in the Federal Register in proposed form between now and February. We elected to propose them in a staggered fashion as I just described rather than wait and put them all out as a group. Because we feel that it would just overwhelm the public's ability to give adequate time to each one. We want to propose them in a staggered way.

After the final promulgation of all the regulations, as I mentioned, we will publish No. 3006 final and No. 3010 final under separate publications. But our thinking at this time is that we will probably hold the remaining regulations, the final promulgations of the remaining regulations, and publish them all as a set because they are

1 all very closely interrelated.

2 O.K., that's rather a long-winded discussion

3 there.

4 We are still on the written questions, sir,

5 if you would like to--

6 SPEAKER: I just have a question on your

7 last statement there.

8 This No. 3001 precedes No. 3010 in your

9 schedule?

10 CHAIRMAN LEHMAN: No, sir.

11 No. 3001 does not. No. 3010 deals with

12 procedural regulations. We will get into that and discuss

13 that in depth then you will see that.

14 Does anyone else have a statement to make

15 about No. 3001?

16 (No response.)

17 CHAIRMAN LEHMAN: O.K., at this time, we

18 would like to move on to the written questions. A number of

19 questions have been passed up.

20 Alan, you had some you wanted to start on?

21 MR. CORSON: O.K.

22 One point was brought out and I am glad the

23 question was asked. Does the waste have to be completely

24 analyzed for every criteria if one of its physical properties

25 already classifies the waste as hazardous?

1 The answer to that is a resounding no. The
2 whole purpose of this test is that if you fail any one of them
3 your waste is hazardous from a definitional point of view.
4 This gets you into the system and you now must comply with the
5 rest of the regulations also under the other sections of the
6 Act. What testing or what other information you may need will
7 come out later on.
8 What type of tests must be used for 140
9 flash point?
10 We are recommending the Bensky-Martin
11 closed cup tester using D93-73.
12 Incidentally, one other little piece I
13 should have added was you use a method which we are recommend-
14 ing to include or will include in our regulations. We accept
15 the results of that test as being reasonably representative
16 of that particular characteristic.
17 If a generator proposes to use some other
18 test for that characteristic, then we will ask for data to
19 substantiate the validity of that proposed test for that
20 characteristic and that it does meet the same standard that
21 we have recommended.
22 The test for bioaccumulation, we haven't
23 defined it yet, but we will.
24 Someone mentioned a question here that talks
25 about the fact 1,000 part salt solution has a use in agricul-

tural stock water. That kind of puts the same sort of comment or answer I would give there that I would give the comment made by the teacher in talking to the acidity or alkalinity of vinegar or Coca-Cola and that is that there are materials which are being used which, if they were a waste, would be a hazardous waste. But our Act does not, nor do our regulations regulate substances.

I guess that vinegar has a ~~PH~~ pH greater than 12. If we had 3,000 gallons of vinegar going into a landfill, we ought to consider it hazardous and be very concerned about where it goes. Or the other end, I am sorry, less than 2.

The ~~PH~~ pH greater than 12 is not indicative of material that would corrode. I am not arguing. That is why there is the second method which is really there for when you talk about No. 3002 that is really why it was put in because No. 3002 does relate or does set standards which says we must use proper containers--generators must use proper containers for his waste. That is the only reason we have have the corrosion of steel criteria in there.

CHAIRMAN LEHMAN: I have a couple of questions here. One is the follow-up that I just ran through, it asks for a little bit more detail. Will you present the proposed dates of publication of these various regulations in the Federal Register?

1 O.K., bear in mind now these are the pro-
2 posed regulations for public comment, not the final regula-
3 tions.
4 I'll give them to you by month because that
5 is the closest we can estimate at this point.
6 No. 3006 guidelines in November.
7 No. 3010 also in November.
8 No. 3003 in December.
9 No. 3001 and No. 3002 in January.
10 No. 3004, No. 3005 in February.
11 Those are our plans.
12 Another question, will the Toxic Substances
13 Control Act's List of toxic substances now being developed
14 under No. 94460 be used for the preparation of the Hazardous
15 Waste List under Section No. 3001? And if not, why not?
16 O.K., this calls into issue a very--the very
17 basic difference between TSCA, the Toxic Substances Control
18 Act, and RCRA, Resource Conservation and Recovery Act. And
19 perhaps, it is useful to take up a moment here and try to
20 discuss what those differences are and where the overlaps are.
21 From our view, the Toxic Substances Control
22 Act is first of all a substance by substance oriented law that
23 is primarily aimed at the front end of the manufacturing and
24 distribution system.
25 The hazardous waste positionsunder RCRA, in

1 contrast, are aimed at wastes which should be mixtures of
2 many, many different substances, possibly not even the sub-
3 stances that are part of the--that are the products of the
4 manufacturer. It is the by-product waste which contains
5 substances that are not related to or even--they are not the
6 same as the basic product that is being manufactured.
7 Furthermore, the RCRA attempts to define
8 disposal requirements for all hazardous waste. Toxic
9 properties is one aspect. But there are others as Alan Corson
10 just went through. It is very possible to have a hazardous
11 waste without it being a toxic waste.
12 Now these are some of the differences.
13 Some of the overlaps occur where in Section
14 No. 6(e) of TSCA the Administrator of EPA is required to
15 publish regulations concerning the disposal of PCB's. And
16 those regulations have been proposed last April. They have
17 caused some confusion because the two laws were passed within
18 ten days of one another last fall as to who is doing what to
19 whom.
20 The PCB disposal regulations under TSCA
21 are being developed because the Administrator is required to
22 do it. The question remains as to whether the hazardous
23 waste regulations, when they are published, will in some way
24 supercede PCB regulations or complement them. It is con-
25 ceivable in our minds to have both sets of regulations

1 operable at the same time. And that may be the case in the
2 future. Where there is a good and substantial reason to
3 explicitly specify special disposal requirements for a parti-
4 cular chemical, that can be done under TSCA. It can also be
5 done under RCRA. So we have a number of arrows in the quiver,
6 if you will. It's a matter of integration and coordination
7 within EPA as to which authority to use for these various
8 provisions.

9 Now the list then of toxic substances
10 being developed under TSCA--and I assume the questioner is
11 referring to the list of 300, or the list of 50, or whatever,
12 I am not that familiar with TSCA. I am not that familiar
13 with TSCA. But I understand they are developing these lists.
14 These lists are being developed from the standpoint, as I
15 mentioned, of those wastes which require control of their
16 manufacture and distribution, toxic substances. And it is
17 not necessarily the disposal phase of those that is causing
18 them to be on the list. It could be.

19 So we don't intend necessarily to list
20 those substances on the list of hazardous waste.

21 Another reason is that when you are--I
22 think Alan alluded to this--that when you list a substance
23 you also have to list an amount or a concentration or both
24 in a waste to make any sense out of it. It doesn't make to
25 us to just list a substance, if your waste contains any

1 amount of that substance. Now there are exceptions to that.

2 There are certain chemicals which are carcino-

3 gens or extremely toxic material which we may choose to take

4 that route where we will just say that any amount of--I mean,

5 if a waste contains any amount of this substance, it can be

6 considered a hazardous substance.

7 Most other chemicals to make sense you have

8 to define a quantity and a concentration along with the meaning

9 of that chemical.

10 So there are--these are the differences

11 between the two laws and I hope that rather lengthy explana-

12 tion satisfies the question.

13 Do you have something?

14 MR. KOVALICK: I have several questions.

15 Number one, if the burden of proof for the

16 hazardous waste list is placed on the generator, is the intent

17 to processes/products or specific by-products or waste streams?

18 The basic answer is yes. It is possible to

19 do any of those things. If the option that Alan described of

20 listing waste for which we have a rebuttal presumption, if you

21 will, that they are hazardous wastes, one could choose a waste

22 stream--and I will risk using the example I used in Rosslyn

23 yesterday, Tuesday--we put on the list waste from the asbestos

24 brake manufacturing industry. There would be a rebuttal

25 presumption that those are hazardous wastes unless the

generator in that category used the criteria to demonstrate that they are not.

Another kind of rebuttal presumption list would be to put PCB's in such and such concentration and any holder of a waste of that substance in that concentration is assumed to be a hazardous waste generator unless he demonstrates otherwise.

So those are the rebuttal presumption kinds of lists. So one could have processes; one could have waste stream names and one could have substances if that option were chosen.

Did I understand that all waste will be subjected to genetic affects tests and partition testing before going on to other testing?

If you did, that was our error because that is not correct. Our intent is to offer, for the generator's use, a logic protocol for which test to use first. That would mean if you knew nothing about the waste you would probably the test that costs the least and the easiest to perform. So you might logically do ~~PH~~ pH first or flammability and moving on to corrosiveness or radioactivity.

Now the point that Alan was making is that when you reach the toxicity level and you still have doubts about the waste the logical thing to do first would be to test the waste against what will probably be a short list of

1 carcinogens for their presence or presence in a certain
2 amount. That would save you running the whole gamut of tests
3 to determine the waste was possibly carcinogenic or mutogenic.
4 You would have a direct test on the waste at a much lower cost.
5 So again, you would perform the test that
6 you believe your waste would flunk first. And if you knew
7 nothing about your waste, then you would go through a series
8 that were probably of increasing cost.
9 The follow-on question logically then is
10 are there sufficient labs available to do these tests for all
11 possible hazardous wastes in the country within the 90 days
12 for notifying EPA or the six months before the regulations
13 are effective?
14 This is one good point which we did not make
15 which is you do not have to test your waste at all. If your
16 view of testing the waste is that it would cost you much more
17 to make a final determination about that waste than would the
18 increased disposal costs, whatever that increment is, you can
19 declare your waste a hazardous waste. There is nothing that
20 says you must test the waste.
21 But even so, to go on to this question, if
22 you did choose to test your waste--in the session tomorrow
23 we will go into some more detail--but there is an option for
24 you to indicate that you do not know the answer to the toxic-
25 ity question. Whereas the other tests can be performed rather

1 rapidly. So you would not be in jeopardy during the time
2 during a finite amount of time that we would specify that
3 you were trying to find out about toxicity. So I hope that
4 clarifies that.
5 The content of solid waste varies more than
6 that of liquid. You envision testing each load of waste going
7 to the landfill. It could be well be necessary to do this to
8 comply with No. 3001.
9 Well, again, going back to my point a moment
10 ago, first of all, you don't have to test your waste. If your
11 process on the average or even more than that, if it is on the
12 whole, turns out a waste that you believe to be hazardous,
13 it would probably behove you to go ahead and treat the entire
14 the series of shipments as hazardous.
15 If, on the other hand, you think that only
16 an occasional load or an occasional bad batch of your waste
17 would be in the hazardous category, then it behoves you to
18 test more frequently in order to get those wastes out of the
19 Subtitle C system.
20 So it really is a function of the disposal
21 cost facing you versus the confidence level you have in the
22 production process of those wastes.
23 And we don't believe it would be necessary
24 to test each load of waste. Nor do we believe that producers
25 of large quantities of waste make disposal contract arrange-

1 ments on a load by load basis. We believe what is, in fact
2 commercial practice that they make contract arrangements for
3 waste disposal and unless they carefully separate their waste--
4 which is something else one might be motivated to do in this
5 system--they handle all their waste for all of a certain kind
6 of waste in the same disposal contract. So we really don't
7 believe that is a significant problem.
8 Why the use of 140 degrees Fahrenheit as
9 flammability?
10 DOT regs call for 100 degrees F. for their
11 flammability. Different flash points can lead to confusion
12 between EPA and DOT regulations.
13 Well, we are going to get into this in some
14 detail in our public meeting with DOT, but the basic reason
15 goes back to the difference in our mission. In the Hazardous
16 Transportation Act, DOT is charged to protect the health and
17 public safety which means they are charged to protect the
18 driver and the immediate populace, the truck and others from
19 its immediate transport effects.
20 EPA's mission under RCRA is to protect
21 public health and the environment. So if we are able--and we
22 have been able to try and investigate situations where wastes
23 which are flammable end up in, for example, landfill environ-
24 ments where they are exposed to more than 100 degrees Fahren-
25 heit.

1 The gentleman from Illinois was arguing he
2 feels that 140 is too low. But 140 also happens to be the
3 National Fire Protection Association's choice for one of their
4 cutoffs and to the extent possible, we have tried to recognize
5 existing industry practices in selecting levels.
6 So the reason the difference is based on
7 environment versus DOT's focus on safety in the vehicle. We
8 are assuming they have the data for that particular number.
9 And also, as to the point where there is any confusion, this--
10 you should recognize that just because you have decided that
11 a waste is hazardous does not cause you to flow into a
12 different set of requirements with regard to the DOT regula-
13 tions. We are trying, as we will show here later this after-
14 noon, to interface totally with DOT. So, in fact, 140 degree
15 F. waste would fall into their combustible category and you
16 would placard it as combustible and you would fill out the
17 shipping paper as a combustible and you would ship it as
18 combustible.
19 And that would not negate the fact that
20 in terms of EPA it was a flammable waste. Nor would it put
21 you in jeopardy with DOT.
22 So I guess at worst this would mean if the
23 traffic--if you are in a large enough firm to have a traffic
24 department, they would have to learn that there's a second
25 number chat relates to shipping of wastes versus the shipping

1 of virgin material.

2 Another statement in question, household

3 wastes are accepted.

4 Are such wastes, for example, cafeteria,

5 office paper, restroom trash, etc., from an industrial site

6 automatically excluded or will the burden of proof, by testing,

7 be on the generator?

8 Well, it is not likely, first of all, that

9 those--some of those wastes anyway would be--would fail the

10 criteria for hazardous wastes. So unless they were listed on

11 a rebuttable presumption list, it is not likely that they

12 would be considered hazardous.

13 However, we have recognized the fact that

14 there are a variety of categories of generators who either

15 have small enough quantities or who have basically small

16 enough quantities that deserve special consideration. And

17 that was our reference to small generators which we are going

18 to get into in some detail at the next session. But it

19 suffices to say that we are facing several options for small

20 generators or these kinds of wastes including picking such

21 things as SIT Codes like retail and commercial establishments,

22 doing nothing and recognizing some quantity limits. So I hope

23 that answers that question.

24 MR. LINDSEY: I have a couple here. The

25 first one has to do with--the question has to do with an

estimate of the percent of the total industrial waste that would be classified hazardous using the tentative criteria for No. 3001.

We have a study going on now which will address that specifically. It is going to do essentially with sensitivity analysis of relative levels of different levels of criteria and the effect that would have on various kinds of waste.

So the answer to that, I don't have at this point.

On the other hand, as a general statement, I think we can say that as a result of some studies that we have done over the past several years on some 15 industrial waste classifications which looked at the waste streams coming from those industries and tried to identify whether or not there was a potential, at least, for those materials being hazardous.

Based on those studies, we think that somewhere between 10 and 14 percent of the total industrial waste quantity will fall in that category. This is somewhere in the neighborhood of 35 million tons.

I have two questions here which have to do with the definition of hazardous waste. On this particular one, under the definition of hazardous waste, is it possible for a substance--and I presume you mean waste--to be classified

1 as hazardous in one sense and not in another depending on the
2 facility which receives it? That is, will the definition of
3 a substance as a hazardous waste depend on the facility which
4 receives it?
5 O.K., it is the criteria and the tests and
6 possibly, as we talked about a little earlier, the lists which
7 will determine whether a waste is or is not hazardous.
8 Now whether a material is or is not a waste
9 under the definition and for purposes of this Act is the other
10 part of this question. If a material is the prime produce of
11 a manufacturing operation, it is not a waste. It is a by-
12 product of that operation. And nationwide, industrywide, no
13 significant percentage of that material is disposed. That is,
14 this particular material is always recycled, always reclaimed
15 into some kind of a product. Then that will not be a waste
16 either.
17 As I think Mr. Corson touched on, and we
18 will touch on it quite a bit later--quite a bit more in the
19 next section under generator standards and then later on under
20 permitting standards, materials which are destined for a
21 resource recovery facility, if it can be substantiated that
22 they are being sent there, then there is a whole lot less
23 activity that needs to be done by the generator in those cases.
24 Homeowners are always exempted.
25 So the answer to your question is that a

1 waste is a waste--I mean, that a hazardous--the answer to
2 your question is that it is basically not so much whether it
3 is a hazardous waste but whether it is a waste and where it is
4 not a waste for purposes of regulation under this Act.
5 CHAIRMAN LEHMAN: Let me just add a little
6 bit to that. This question is one that is often raised and I
7 think merits a little more discussion.
8 The determination of whether a waste is
9 hazardous or not--besides the excpetions that Fred mentioned--
10 is generally speaking an independent act. Once you have
11 determined that, yes, it is a hazardous waste and it falls
12 in the control system toxicity, the next question you want
13 to ask is what is the best way to manage that waste?
14 It is at that point that you start to
15 determine what is the best facility to send it to. Should it
16 go to a recycling facility? Should it go to a treatment
17 facility? An incinerator? Or to a landfill? Or some other
18 option?
19 So do not confuse the determination of
20 whether or not a waste falls within the regulatory control
21 system with the subsequent determination of what is the best
22 way to manage that.
23 MR. SANJOUR: The question here is could an
24 NPDES discharge be regulated as a hazardous waste if it fits
25 into the criteria?

1 In a word, no, the law explicitly exempts
2 NPDES discharges from the definition of a hazardous waste,
3 the definition of a waste at all.
4 Next question, will hazardous waste going
5 into NPDES permitted water treatment plants need to be
6 analyzed? If so, all affluent streams?
7 Well, that question is a little bit more
8 complicated. The waste waters that come out of a production
9 facility, if they are part of the production process, in that
10 the waste waters are always kept within pipes, go right
11 to a sewage treatment plant, there is never an outfall of
12 some sort and there is never a waste. Regardless of how
13 hazardous the affluent stream may be, it is not considered--
14 it will not be considered under these regulations as a waste
15 until there is an outfall.
16 So the answer to the question is in general
17 the affluent stream treatment plants will not be considered
18 as hazardous waste unless they have first gone through some
19 kind of outfall in which they could be considered a waste.
20 We will get into more detail of this in
21 discussions of Section No. 3004.
22 And the next question is a 90-day stockpile
23 is suggested as exempt from the waste definition.Since the
24 volume generated in 90 days will vary greatly between sources,
25 would a weight or volume limit to the stockpile have more

environmental significance?

I guess before I answer the question I ought to address the hypothesis which is incorrect and that is that a 90-day stockpile is exempt from the waste definition. It is not. It is exempt from the requirements for a permit for storage. It is not exempt from the requirement for storage.

In other words, there are certain regulations set forth about what constitutes environmentally adequate storage. And the waste storage is--for 90 days is not exempted. They are exempt from the paperwork that goes with it. They can still be shut down if they violate the environmental regulations for 90-day storage.

So I think, therefore, it is not necessary to answer the second half of the question, I hope.

MR. CORSON: I have a three part question.

What is the process for determining what substances are either genetically active or persistent bioacumulative not subject for inclusion as a hazardous waste due to toxicity?

There are two approaches we are following. One is the list substances with concentration both for genetically active and for ~~persisten~~ persistently bioacumulative.

The other approach we are investigating is to define the test procedure for each of those two characteristics.

We have suggested that possibly Aims Test and one other to pick up those areas that the Aims Test misses, those are the metals, would be satisfactory for a tendency to be mutogenic, carcinogenic.

And proefficient-coefficient test may be satisfactory for bioaccumulation. We we have this group of in-house people from EPA who are also working--for your information this is part of the four Agency Testing Committee. Fust to put that in perspective, CPSC, the Food and Drug Administration, OSHA and EPA have formed a major Inter-Agency Committee looking at several common areas. One of the major pieces of that group is working on areas of testing. So the four Agencies will be looking at the same sort of test procedures, same sort of test methods.

So in one case where you have a list or a test method, if we can, primarily because we think the test method covers those yet to come whereas lists only put out those things that you know to be today.

That is part of the answer.

Also, the second question is how will the TLV, the threshold limit value, to the substances be allied. From that, we go to how you relate the value for the TLV to accident cases or damage cases to try to cope with numbers which represent those areas where we have damage resulting already or relate those values to carcinogens concentration

and the same concentrations for the bioaccumulative.

Will the substances be specifically defined and/or limited with respect to asbestos, nickel and compounds.

There may be some people here who are on our outside reviewers list which means as part of our participation process they have had the advantage of having seen for about two weeks now a copy of our draft regulations. If you are providing written comments back to us, recognizing that this is in a formative part of the process, not a firm issue. So included in that thing there was, for example, a list of, say, things like asbestos and nickel and compounds. And we recognize that not necessarily all nickel compounds or all mercury compounds belong on the list.

So if you go to a list, try to be definitive to the point that they only include those which we are concerned about.

MR. LINDSEY: I have one more. A question, municipal sludge, regardless of analysis, if applied, is not included and the question is is that correct?

And the answer to that is, no, that is not correct. First of all, it would depend on whether it was a hazardous waste. And second of all, the whole issue of resource recovery facility which has been mentioned so far will be addressed in more detail under Section No. 3002, No. 3004 and No. 3005 later on. And I think it will become clear at

that point how that works. If it isn't at that point, then please feel free to ask a question.

MR. CORSON: I have another question. This relates to standard leaching tests and talks to specific characteristics. Rather than read the whole question, let me define where we are with the results of the standard leaching test.

About a year and a half ago--and for those of you who may be familiar, we do have the University of Wisconsin under contract and they have developed leaching tests which consisted of three basic processes.

One was a synthetic garbage juice which was--which tended to--the thing of that was its application to solid waste or something other than pure liquid was to mimic the effect of that waste when disposed to a municipal landfill.

The second part of the program was to develop a contract procedure, a means by which that synthetic garbage juice was interacted with the solid waste--again, the legislative definition of solid waste.

The third was an extraction procedure which--in which we separated the liquid resulting from the interaction, saying that that was the part that represented the leachate from the waste.

We further--that takes care of the development test.

1 We further had a study conducted for us and
2 we have selected two other leaching tests, one which uses
3 distilled water and one of which uses a different synthetic
4 leachate. A set of ten weights was leached using these three
5 procedures as well as with some municipal landfill leachate.
6 Those four resulting liquids then are in the
7 process or have already been analyzed. We will shortly be
8 meeting to review the results of that analysis and select a
9 standard leaching test.
10 We can't tell you today whether that
11 standard leaching test will use distilled water or some other
12 synthetic we had to start with. Our attempt here though as
13 Jack indicated earlier is to describe a national standard. In
14 our case, the use of the leaching test is for definitional
15 purposes as to whether it is a national standard a waste would
16 leach.
17 To cite specific characteristics of that
18 leach when exposed with specific substances will be accomodated
19 to the permit process. And that's when we'll pick up the
20 specific problems.
21 And incidentally, that is also where we will
22 pick up the problems of the--of materials which react one
23 with another because it is only at that point we can make
24 sure that we keep things apart.
25 CHAIRMAN LEHMAN: That's all the written

questions we have. There is certainly time for more.

If not, I'd like to call for any questions that anyone may have, oral questions, from the floor.

If you have them, please come to the microphone and identify yourself and we will attempt to answer them.

MR. ~~TOBICHAUX.~~ Robichaux I am T. J. Robichaux with the Petrolite Corporation. I am still a bit concerned about this 90-day storage period that was addressed in which they mentioned by-product storage for over 90 days might be subject to permit requirement.

We store by-products for considerable periods of time because we quite frequently find these to be raw materials in later processes.

Now how does that come under the permitting of storage or waste disposal?

MR. CORSON: Let me take a try at it.

Did everyone hear the question?

All right, let me repeat. I think the gentleman was asking a question of the 90-day restriction on the storage of some material which they have later used as a by-product, suggesting that--suggesting, at least in their case, they frequently have the occasion to store for longer than 90 days.

I guess there are several ways of trying to

1 handle it. One is the case where you know it is an input
2 material, some other process you have already found and used
3 for it and you are now storing it someplace else as an input
4 material for some other process. I guess in that case I
5 probably see it as a by-product and not a waste.
6 The other problem though is what happens if
7 you have something which you are storing because maybe you are
8 going to have some use for it as a by-product. Our concern--
9 and this is really why we said there is an immediate time
10 period for the by-product and recognizing that time is up for
11 grabs at the moment. But if you don't know whether it is a
12 by-product, you are waiting to see if there's a lot of it and
13 then you find some process for which there's a use, our feeling
14 was 90 days, which has been indicated earlier, gets you out of
15 the need for a storage permit, but not out of compliance for
16 storage requirements.
17 We felt for the moment--and again, the 90-
18 day period is subject to discussion--we felt that was the
19 turning point where we felt we should have a permit because
20 unless you know it is a by-product, we felt it should be
21 considered as a waste and, therefore, be concerned about it,
22 the storage and have some knowledge about it.
23 MR. SANJOUR: I think I can elaborate on that
24 just a little bit. It is an obvious loophole if we allow
25 indefinite storage of by-product material. Anyone could just

fill up anything he wants with anything and just say he is waiting for a market for this glop. And if there's no time limit attached to it, there is an obvious loophole you can drive a Mack truck through.

CHAIRMAN LEHMAN: Do you have any further questions concerning Section No. 3001?

MR. ROBICHAUX: Let me just respond to that last statement.

Certainly, that would be a loophole to back out of, but RCRA is dedicated to resource conservation and recovery and there are a lot of cases in which we, and my firm in particular, find markets for materials which we had on the shelf for a long period of time. We are not looking for loopholes to back out of. We are looking for a way to recover materials, to recover resources and to reduce the cost of doing business.

CHAIRMAN LEHMAN: That is a fair comment.

We also are familiar with the law and perhaps that is a lead into wax philosophical for a moment if I might.

We mentioned various regulatory options that are under consideration. One regulatory option is the-- is to structure the entire set of regulations in such a way as to maximize the incentive for resource conservation and recovery. And we are attempting to do that subject to limitations in the law.

1 If you read the act carefully, EPA cannot
2 dictate resource conservation and recovery. But by various
3 ways in which we write the regulations, we can certainly
4 influence the degree of resource conservation and recovery
5 that does take place and we are attempting to do that.
6 I think the point that Bill is trying to
7 raise is that the reason we put a 90-day restriction--a 90
8 day exemption on the storage permit requirement was along
9 those lines. It could be zero.
10 So you make it 90 days to give people a
11 chance to find a use for their by-product.
12 We can argue whether 90 days is correct,
13 180 days, a year, two years, whatever it may be. But it was
14 an intent for a middle ground, to reach a middle ground,
15 where there was some incentive, namely not requiring a permit
16 for a 90-day period, to try to find a resource recovery
17 solution. And yet not an open-ended situation which is
18 subject to abuse.
19 So if you would like to comment formally
20 if you consider some other date to be appropriate, we would
21 be glad to take that.
22 Yes, sir, we have another question.
23 MR. JOHNSON: I am Chuch Johnson,
24 McDonald-Douglas Corporation.
25 I have a concern on the criteria for

1 establishing flammable solid materials.

2 On flammable liquid, it is pretty well

3 defined, but in a lot of large factories, you may have the

4 accumulation of oil rags, of fuel-soaked absorbent material

5 for spills of various kinds of fuels, miscellaneous, partly

6 filled paint cans, items that would normally go into a trash

7 container and may wind up in a compacter, you know, a trash

8 compacter truck. Will there be some criteria or some defini-

9 tions for flammable solids so you will know whether or not you

10 can move this material in a disposal truck, trash compacter

11 truck?

12 MR. CORSON: We do--what we do expect to

13 happen--let me read to you what we have so far and you'll

14 understand why we are looking for a--

15 MR. JOHNSON: Let me make one statement?

16 MR. CORSON: Yeah.

17 MR. JOHNSON: My concern is with the Depart-

18 ment of Transportation regulations. That is my prime respon-

19 sibility to assure for a large corporation that we do satisfy

20 the criteria for transportation safety.

21 When you start, in a large factory, trying

22 to segregate all the materials that might be defined as

23 hazardous by more than one set of criteria, that involved

24 elaborate packaging requirements and the expenses can be great.

25 And unless these criteria are defined and defined within certain

1 parameters so that you can say flammable solid material, yes,
2 must go into spec packaging. This is the concern that I have.
3 MR. CORSON: I think the definition that we
4 are working with so far, if my memory is correct, is identical
5 to that which DOT uses for flammable solids.
6 One of our concerns though is that it be-
7 comes very hard from the enforcement point of view to work
8 against a closed definition.
9 Let me read it to you anyhow and you'll
10 understand why we are looking for a measurable test.
11 Any nonfluid waste that under conditions
12 incident to its management is liable to cause fires by
13 friction, absorption of moisture, spontaneous chemical
14 changes, retain heat from manufacture or processing, and
15 ignited burns so vigorously and persistently as to create a
16 hazard during management.
17 It is hard to say what one of those is. So
18 I believe that may be similar, if not identical to the DOT.
19 We are trying to work to get a compatable
20 definition to theirs for solids or one that can be measured
21 rather than this type of subjective evaluation.
22 MR. JOHNSON: One of the points I want to
23 make is that I am sure that in any large industry these
24 materials that may be defined as flammable solids, if they
25 do require segregation and packaging in accordance with DOT

1 regulations, the cost is going to be greatly increased.

2 O.K., that means you have controls, you have

3 separate containers. We have oily rags in one container,

4 aerosols in another. And when you go into a big factory, you

5 will find that probalby 9/10 of the factories will accumulate

6 this material, put it into a dumpster, often that dumpster will

7 be a trash compacter, and off it goes.

8 If you get into spec packaging of various

9 type items, the expenses--I don't know how to explain it, but

10 it could be quite costly for a large corporation.

11 And if the criteria that you are establishing

12 and you do specify this falls within the definition of a

13 flammable solid and we can test it, then that packaging will

14 be required under the regulations.

15 Am I right in assuming this?

16 MR. CORSON: It will only be required by

17 DOT if it meets DOT definitions. If it meets DOT's definitions,

18 it does today require that spec packaging.

19 There is nothing we are doing, I will state

20 and will be stated again this afternoon, that changes any of

21 your requirements or any of your obligations to the DOT

22 requirements. Any shipment which is defined as poison,

23 flammable, combustible, whatever by DOT standards must meet

24 their standards when you are shipping.

25 MR. JOHSNON: O.K., the point I was making

1 is that if you redefine flammable solids and set up a parameter
2 where you do not have testing requirements to determine if
3 this is a flammable solid, then some of those items that
4 before you had a choice--you could say, O.K., we don't feel
5 it burns persistently or we don't feel it meets this criteria.
6 Once you establish those criteria then you also establish
7 all of the packaging criteria and all the necessary logistics
8 support of that material which was before just trash.
9 When you get into definitions of actually
10 establishing a criteria for a given class of materials to have
11 these characteristics, then you impose not just in-house
12 controls, but you impose controls throughout the logistic
13 cycle.
14 MR. KOVALICK: One comment and maybe this
15 will help a little, if a waste were flammable by the EPA
16 criteria, we are not altering your responsibilities to DOT.
17 In other words, you are stating that because
18 we would have a spec for something being flammable, say, a
19 flammable solid, we are not going to have flammable solids,
20 we are going to have flammable. So it still may be a flammable
21 solid for DOT. And you are saying--your judgment now is that
22 it is not a flammable solid for DOT, O.K. That means you
23 would only have to meet EPA's container specs for that
24 substance, that particular thing, which we would have to
25 rationalize in the regulations as being necessary which means

other than for transportation.

So you are quite right. If something were such an environmental problem that it needed some additional specs for packaging, then we have it. But otherwise, you meet your current DOT specs for packaging.

And when Mr. Trask discusses the generator obligations, you'll get into that a little bit more. Again, we are talking about differences in mission here. And I am confident especially in the area of genetically active materials that we will be identifying some materials for which we will have to have--or choose among DOT packaging specs perhaps and, say, use those. As you know, DOT does not recognize--that is the subject of our meeting here later this month--many of the chronic health effects of carcinogens and other compounds. The subject of that meeting is how do we get at that problem? Does DOT add it to their regs and specs or do we do it in our regs with an extra module only for these wastes?

CHAIRMAN LEHMAN: Let me just point out on the other side of the coin, if I might--and I have had some personal experience with this--that one of the major causes of loss of solid waste management vehicles is indiscriminate disposal of flammable materials in supposedly trash. And in the way from one point to another, the material catches fire and it is quite a common occurrence.

And so we are trying to address partly that

problem, partly to be consistent with the DOT, but also to worry about that problem too, not to mention what happens when it gets to the landfill.

Another major problems in municipal landfills is flammable materials coming in with supposedly innocuous effects.

O.K., we have another question. Somone raised his hand?

MR. HANEY: I am Bud Haney, Clayton Chemical Company.

I think I would have to agree with the gentleman from the Illinois EPA in that your definition of waste is, in my estimation, shamefully poor and looks like a method of avoiding additional work for the EPA to control.

But waste can be defined very simply as a product generated in industry that is sold or disposed of for a value less than the raw materials that went into them making up the waste.

You can go into a company and prove that a material is a wast by using such a definition. Obviously no one is going to manufacture a product to sell for less than the materials that went into it.

By using a definition such as this for waste, you can prove, in fact, that it is waste. I believe one of the reasons for using a definition such as yours is to help

recycling companies or recycling systems. In fact, I think you are forming a very definite loophole for many hazardous wastes to pass through.

I know there are at least two companies represented here that recycle some waste oils.

If a company wants to, they can blend off many truely hazardous materials in the waste oil. But by your definition, waste oil would not be a hazardous material, it can go right on through the system.

A point, there was two in the State of Missouri in the last few years where "waste oil" was picked up, one containing a dioxin and the other case was high concentrations of PCB's.

In the solvent waste recovery area, again companies could generate large amounts of solvents that are very recyclable material. At the same time, they could add, say, PCB's to this material. The solvent would be recovered; the sill bottoms, in fact, would go to very possibly a landfill not equipped properly to handle PCB's and at no time, would this material be considered or called a hazardous waste under your definition.

CHAIRMAN LEHMAN: Could I respond to your comments, please?

MR. HANEY: Certainly.

CHAIRMAN LEHMAN: We anticipate--we have

anticipated this problem that you described. And I think perhaps you misunderstood what it was we are trying to do and the controls that do apply.

Let's take the case that you mentioned last of a solvent which is reclaimable which is, say, salted with some other material which is also hazardous. The solvent is reclaimed and according to your remarks, the residue would be disposed of indiscriminately. Now that is not the case.

We will get into this later on when we discuss facility standards and permits. But in that case, first of all, the facility which recovers solvents would still be required to meet the facility standards under Section No. 3004 for its operation. Any waste material that is a result--that results from the recycling operation, the residue from that recovery, if it is hazardous according to the criteria, then the solvent reclaimer becomes the generator. And the waste that he generates, if it is hazardous, is required to be reported on, have a manifest on it and it is illegal to send that waste to anything but a permitted hazardous waste disposal storage.

MR. HANEY: This is absolutely true. But taking the same example, the recycler may serve something in the order of, say, 80 industries. These materials come in on basically a good faith basis, say it is from a paint manufacturer, paint manufacturing company, and we know the

criteria for the background of paint waste, but at the same time, if a substance was added to it to dispose of it whether it be cyanide, PCB's or what, there is realistically no way that the recycler is going to know that it is there. The waste generated practically defies analysis other than in a general manner. Very innocently, this can pass all the way through the system.

There is no way for, say, an oil company to know that he has PCB's in "drain oil". There is no one testing for that.

CHAIRMAN LEHMAN: O.K.

Let me further comment, if I may. We are trying to make a distinction when we are talking about the recovery operations here between recovery of a material, like solvent recovery operations, and a use such as burning waste oil in a boiler or using waste oil as a road dust depressant, things of that nature.

In the latter two cases, the facilities that, say, burn waste oil which is classified as hazardous--were classified as hazardous--would require a treatment permit. Mainly, it is an incinerator for hazardous waste.

The same thing goes for road oil. If it is a hazardous waste, we require a permit for that use.

The whole issue of innocence in the sense that someone passes something off to someone and they don't

1 know what's in it, that is a serious problem. If the person
2 supplying this material is caught, let's say, then he can be
3 punished under the provisions of this law, mainly that he, in
4 fact, did have a hazardous waste, and he was pawning it off
5 as a nonhazardous waste. That is against this law.
6 So it is one of those things where we are
7 to a certain degree going to have to trust people that they
8 are going to follow this law persuming that they know what
9 its requirements are.
10 We have another question here.
11 MR. PALLANICH: I am Paul Pallanich.
12 You described the effect of trying to
13 develop a list of waste and the alternatives available. You
14 described it very well. But I don't get any feeling of what
15 you might actually propose to do. Could you please comment a
16 little bit and tell us at this point in time how you feel you
17 will go when you define this list on a substance basis? Will
18 you define products and processes? You say, if you make those
19 materials and you have a hazardous waste? Do you know which
20 way you are going to go? Do you know which way you are going
21 to place the burden of proof based on what you know now?
22 CHAIRMAN LEHMAN: Mr. Corson?
23 MR. CORSON: I'll start with it.
24 There will no doubt be a list which contains
25 processes which we have high confidence yields a hazardous

1 waste.

2 There will also be a list of substances, the
3 presence of which at a given concentration will make that
4 waste hazardous.

5 One of the problems that we are faced with
6 now is how extensive will most of those lists be? For example,
7 we are--we have a list of carcinogens and a list of some
8 processes that we have a very high confidence factor. The
9 question is how far down do we go with that?

10 I think there also may well be, regardless
11 of direction, a set of advisory lists. Just by definition,
12 if we go the analytic approach, for example, on toxicity--
13 forgetting for the moment whether or not the number of .35 is
14 a valid number or whether it should be .5--there will be some
15 number, some such number, some such derivation of a number,
16 and that automatically defines a concentration toxicity re-
17 lationship for everything for which there is an Oral LD-50,
18 for example.

19 So I don't know whether we gain much by
20 publishing that list of substances. We may do that also.

21 MR. KOVALICK: I would like to make a
22 process comment. I know that you--I appreciate that you
23 understand our options and I wish we could tell you the
24 answer. We have a lot of options in holding meeting like this.
25 One is to hold off holding the meeting until we have made all

the decisions and then have someone explain it to you and shoot holes in it.

Another option is the one we are doing today which is to tell you as far as we have gotten today--I tell you there is still controversy about a number of points, including the one that you'd love to know the answer to and so would I--and then see how it flies.

So we are operating under the latter at the moment. And all we can tell you is that there are a variety of actors in the scene today, including ourselves and the Office of Enforcement and the Office of General Counsel, who will deliberate on the results of this record, plus other data we gather in terms of letters and oral comments.

So we honestly don't know which way it will come out. But as towhich way it will tend--Alan pointed out there will be some basic lists--it will be another, at least, 45 days. That is just a comment on where we are.

CHAIRMAN LEHMAN: We are running a bit over. Is this on No. 3001? O.K., this will be the last question.

MR. MURRAY: I am Dave Murray, ~~Wrights and Jones~~ of Reitz + Jens.

The question--the comment was made from the head table, I believe, stating you do not have to test or analyze your waste to cover the--to declare the hazards. That could cause a problem. It could present hazards in the

1 disposal and it would become perhaps very hazardous to the
2 enviornment. To protect the environment, consideration should
3 be given for specifying the contents of the waste material
4 to be disposed, the names of the chemicals, the acids,
5 alkalies, oxidizing agents, approximate percents of each,
6 percents of solids and liquids in the material and the flash
7 point of the material.
8 Perhaps the waste material should be treated
9 prior to disposal in order to stabilize it because we realize
10 we don't want to precipitate any heavy metals in the process.
11 There may be some unknown oxidizing agents
12 in the material that could cause a health hazard in the future
13 and, in essence, could generate toxic gases. That is why we
14 recommend all information available should be given for the
15 material being disposed.
16 CHAIRMAN LEHMAN: O.K., a fair comment.
17 I think it is slightly premature.
18 If I may get back to my previous comment,
19 let us not confuse the definitional process for what is and
20 what is not a hazardous waste with what happens after that
21 distinction or that determination is made.
22 When we get into the next session, we will
23 talk about the methods we are going to ship that waste, the
24 certain requirements to identify what is in the waste for
25 purposes of shipping it, packaging, containerization.

1 There are requirements on the part of the
2 person accepting this waste to have some degree of knowledge
3 about the waste for the purposes of managing it properly and
4 in point of fact, in the real world, I think you'll find that
5 those who are reputable people in the business of managing
6 hazardous waste make damn sure they know what is in the waste
7 so they don't blow up their equipment.
8 Again, not to confuse that determination,
9 the first step is to say, yes, we know it is or is not a hazard-
10 ous waste. Then after that, there's a lot of things that come
11 after that and we will get into that in the next session
12 and subsequently.
13 We'll take our break now and be back in
14 15 minutes.
15 (Recess.)
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1 CHAIRMAN LEHMAN: While you're taking
2 your seats, I'd like to relate to you that during the break
3 I was approached and queried about the availability of the
4 draft regulations that I mentioned in my opening remarks
5 and we made reference to the fact that some of you may have
6 access to them and some may not.
7 We are following a sunshine philosophy
8 in the development of these regulations and while it is
9 somewhat unusual for EPA to circulate draft regulations,
10 we are doing that in this case. To this point, rather than
11 sending them out to the world, we have been sending to
12 those individuals who have indicated a desire to have them.
13 So we certainly will extend that offer to any of you here.
14 So if you do wish to receive copies of these drafts, would
15 you please leave your business card at the registration
16 table and we'll make sure that you get a copy.
17 Also, before we begin this session, I
18 would like to just make note of the fact that we have on
19 record here a number of requests to make short statements
20 at the meeting. And I just want to make sure that indi-
21 viduals know that we know that they want to do that.
22 As I mentioned earlier, we will take
23 statements on each individual section of the Act immediately
24 after the presentation. We also will take more general
25 statements that cover the entire Subtitle C, if that's the

nature of the comments, at the end of each day. So not knowing which of these cases is involved, let me just say that Mr. Robichaux of Petrolite Corporation; Betty Wilson, League of Women Voters, St. Louis; Mr. Miller, Illinois Environmental Protection Agency; Mr. Clark, Illinois EPA; Glen Gettenger, Midwest Oil Refining Company, St. Louis, have all indicated that they want to make a statement and we'll make that opportunity available to them.

In addition, a number have indicated they would like to submit prepared statements to become a part of the official transcript. And some of those that I just mentioned are in that category. But also, Mr. Robert Anderson of Baxwell Corporation, Kansas City, and Mr. C. L. Robertson of El Dorado, Arkansas Energy Systems Company, have indicated the desire to submit prepared statements.

In those cases, I'd like to request that you provide the statements to the official court reporter here on my right sometime today or tomorrow. If that is not possible, we will keep the record open for this meeting for approximately a week. But we are under pressure to publish these proceedings as soon as possible and that's about as far as we can go.

So for the purposes of submitting statements for these public meetings, either get them to the court reporter today or tomorrow or by mail to us in EPA

in Washington by the end of next week. After that, we'll have to cut it off and send it to the printer.

O.K. At this time, I'd like to move on and discussion 3002 concerning standards affecting hazardous waste generators. To make the presentation, I'd like to call on Harry Trask, Program Manager in our Guidelines Branch and is the desk officer for this regulation and mainly the man ultimately responsible for it.

Harry.

HARRY W. TRASK
Section 3002

Thank you, Jack. If this was a little bit higher, I could get down behind it.

In my presentation, I'll first discuss the legislative purpose and intent of each of the standards which relate to generators. Then discuss our approach to it as to what we have done so far. And finally, discuss some of the unresolved issues that we see and that we have not--I want to repeat--have not come down hard on any one side of the various options we're looking at.

Section 3002 of RCRA requires the administrator to establish regulations--to promulgate regulations establishing standards respecting recordkeeping, labeling, use of appropriate containers, furnishing of information, establishment of a manifest system, and a

reporting system for generators of hazardous wastes.

In our regulations and tied directly to a definition in the Act, we have defined a generator--I should say in our draft regulations--we have defined a generator as any person whose act or process produces solid waste composed in whole or in part of hazardous waste as identified under the criteria or listing in Section 3001. Therefore, everything we do under 3002 is keyed to the waste which are singled out as hazardous under Section 3001 standards.

For record keeping, the purpose of this standard is to identify those wastes which in quantity or in the hazardous constituent contained and what happens to them. In other words, the disposition of those wastes for later reference. The intent here is that the generator keep a record of what he actually generated and sent away from his property or disposed of on his property so that if something goes wrong later, then there is a mass of data or information which can be tracked back to find out exactly what was in that waste so that corrective action can be taken.

As we see it at the moment, the manifest will serve as the basic document for recordkeeping. In other words, a copy of the manifest, in most cases, would suffice as a record.

We believe that three years is a sufficient time for this record to be kept. It does not appear to impose any significant burden on generators since three years is approximately standard industry practice on records. It also gives the storage/treatment of disposal operator time to handle this material so that some sort of disposition would be taken care of. And in our view that should then be sufficient for recordkeeping.

The labeling standard purpose is to identify the containers that are used for storage transport or disposal. We intend here to use the DOT hazard labels, that is, the familiar triangular shaped labels with color coded and with insignia to indicate the different hazards that are involved, such as, flammability, et cetera. (underline)

We also propose that we add to this an additional label or an EPA identification label in those cases where a container is not adequately marked to show what the material is in the container. Therefore, we will have two parts to the labeling: One, identifying the hazard; the other, identifying what the waste is.

The names on the latter identification would be keyed to the manifest. In other words, the same nomenclature would be used on the container as is used on the manifest so that proper tracking of that waste can be managed through this system.

1 We intend to use the DOT nomenclature
2 insofar as it applies to hazardous wastes. That is, if the
3 waste--as Alan Corson described to you, if a waste meets
4 the criteria or is on the list that DOT has published, then
5 that name should be used. If it is not, if the name of the
6 waste is not on that list or if it's one of the DOT NOS
7 materials, that is, not otherwise specified, then we would
8 request that an EPA name be specified.
9 We do not have a list of those EPA names
10 yet, however, they would be something simple, such as,
11 waste or sludge or some name of that nature.
12 Our standards for containers, the pur-
13 pose of this is to use appropriate containers for the kind
14 of hazard that is involved. It's significant to note that
15 these containers--these standards are for containers to be
16 used for storage, transport or disposal--not just transport.
17 And, therefore, these standards may differ somewhat from the
18 DOT standards when we get into the areas of storage and dis-
19 posal. For transport, they cannot differ from the DOT
20 standards.
21 It's important for me to note here that
22 the approach I'm giving you now is somewhat flexible. We
23 do have a study under way by a consultant, and the results
24 are not in yet, on exactly what kind of container speci-
25 fications are appropriate. So we can only speculate at the

1 moment as to where we're headed here. And, therefore, we
2 have some questions as to what we should do in the area of
3 storage.
4 It has been suggested that we should
5 have more stringent standards than the DOT container specs
6 when we get into long-term storage. It's also been suggested
7 that we should have less stringent standards than DOT specs
8 when we get into the area of disposal.
9 If the purpose of this Act is truly the
10 Resource Conservation and Recovery Act, then it seems not
11 quite proper to dispose of reusable materials. For example,
12 the steel drums which could be reconditioned perhaps ought
13 not to be disposed of. So in the interest of conserving
14 resources, we are sort of favoring that approach, that per-
15 haps some lesser standard than the DOT standard would be
16 appropriate for disposal.
17 But I stress again that this is only a
18 very preliminary approach we're taking here and we expect
19 to come up with something here in about 30 to 45 days when
20 we get more information from our contractor.
21 One of the other standards here, and an
22 important one, is that the generator must furnish informa-
23 tion to those who handle, transport, store, treat or dis-
24 pose of the waste. The purpose is to alert these people to
25 the hazards that are involved and to the exact nature of

1 that material.

2 Generally speaking, the general chemical
3 composition plus the nature of the hazard will do this. We
4 propose to furnish this information by means of the manifest
5 plus the labels which I discussed earlier. However, the
6 records that the generator keeps would provide a backup for
7 this information and would provide greater detail in case
8 that became necessary at some point down the road.

9 We believe that in practice now and
10 probably will continue that a negotiation between the
11 generator and the disposer does elicit all of the informa-
12 tion that the disposer really needs. Most disposers tell
13 us that they will not take a waste unless they know a con-
14 siderable amount about it, either furnished by the generator
15 himself or as proven by tests which the disposer will run
16 before he will accept the waste.

17 This furnishing information may be an
18 important concept when we come to the small generator.

19 In the manifest system which we pro-
20 pose, the purpose is to assure that all of the waste is
21 delivered or is designated to a permitted facility. I
22 think that part of the Act is very clear, that it is for
23 nothing else than that, that all of the waste is designated
24 for a permitted facility.

25 And on-site disposal is exempt. And

1 those generators who dispose of wastes on their own property
2 will not be required to fill out a manifest.
3 And as an aside here, our current
4 definition of on-site is that it would be property that is
5 contiguous. It may, for example, be divided by a public
6 highway. But if it is contiguous with the property where
7 the waste is generated, then it would still be considered
8 on-site. We know of many situations where this exists. And
9 it seems somewhat ridiculous to make a man fill out a mani-
10 fest to delivery to his own property on the other side of
11 the road.
12 That does not relieve him of the DOT
13 shipping paper requirements, not at all.
14 The manifest system, as we see it,
15 would be a piece of paper looking very much like a bill of
16 lading or the DOT shipping papers. It would have a couple
17 of features that they do not have. And we are now in the
18 process of negotiating with DOT to add those features to
19 our manifest.
20 It would require a description of the
21 waste using the DOT nomenclature where that fits the waste
22 or the EPA nomenclature if the DOT does not fit.
23 It would have the name of the generator.
24 It would have the name of the--excuse me
25 --the name and the identification number of the generator;

1 the name and identification number of the transporter; the
2 name and identification number of the receiver.
3 The identification number system will
4 be explained to you tomorrow, I guess, in Section 3010, the
5 explanation of those standards.
6 The system, as we visualize it, is that
7 the generator would fill out the manifest. He would give
8 it to the transporter who would sign it indicating that he
9 had received the waste. The transporter then would take
10 the waste and the manifest to the receiver, that is, the
11 treatment storage or disposal site, who would sign it,
12 indicating that he had received that quantity of waste.
13 There is a place on the manifest form format as we see it
14 now which provides for any exceptions, that is, if all the
15 waste was not there, and any explanation.
16 The transporter or the disposer then
17 would see that a copy of the signed manifest, completely
18 signed manifest, was returned to the generator so that the
19 generator knows that all of the waste did reach the
20 designated permanent disposal site.
21 As you can see now, this system as we
22 see it, is going to use existing paper. That is, it will
23 not be necessary to have a separate manifest form. You
24 will use the same bill of lading or shipping papers that you
25 now use with the exception that there will be a couple more

1 places to fill in on there.

2 And you'll also note that this stays in

3 commercial channels. The federal or the national system

4 does not visualize that a copy of this would be sent to

5 EPA.

6 What will be sent to EPA, however, is

7 a report which will be based on the manifest. The report-

8 ing requirement of Section 3002 offers the real control

9 tool for EPA to find out what's happening to these wastes.

10 Using reports generated from the manifest, we can verify

11 what happened to waste, that is, with an independent report

12 from the generator compared to an independent report from

13 the disposer. The computer will send up a red flag when

14 those two don't match.

15 This report will have the quantity

16 generated. It will have--the generator's report will have

17 the quantity that he generated and shipped, the identi-

18 fication number of the transporter he shipped it with, and

19 the identification number of the facility which received it,

20 and the date, and I'm not sure what else.

21 The receiver's report will have

22 identical information excepting that it will have the

23 identity of the generator instead of the identity of the

24 receiver.

25 We believe that these reports should

1 be sent in quarterly, although that figure is still flexible.
2 We believe that this leads to less paper flowing in channels,
3 it spreads out the labor somewhat, and we do have some
4 statistics which show that we can cut the amount of paper
5 by about--what's that number, Mark--12 or 13 times doing a
6 quarterly versus handling the manifests individually.
7 Those then are the six standards required
8 by Section 3002.
9 Some of the unresolved issues though
10 are what to do about small generators. As Alan Corson told
11 you already, it's our intent to exempt householders
12 completely from these regulations. That is, we see no way
13 of effectively controlling 70 million households.
14 So what do we do with everyone else?
15 Do we say that the quantity which is exempt is zero and
16 bring it all into the system, even as much as a pound or an
17 ounce or a gallon, a quart? Where do we draw this kind of
18 a line?
19 One approach, as Walt Kovalick has
20 already mentioned to you, is to look at the SIC codes, look
21 at industries. Say that certain industries will be covered
22 and all those that are not listed would not be covered. Or
23 look at processes and say all those processes would be
24 covered, and, therefore, those that are not on the list
25 would not be covered. Is that the proper approach? We don't

1 know and we're wrestling with this problem.

2 One of the options that has been sug-
3 gested and seems to be gaining a good bit of favor is to
4 have some generation rate. That is, some quantity per
5 week, month, year, which would when considered by local
6 officials who have a good handle on what their disposal
7 facilities are, might be appropriate for disposal in the
8 so(hyphen)called plat of Subtitle D land fills or the regular
9 municipal waste land fills.

10 Some of the state people and the local
11 people who operate land fills have told us that if they
12 have small quantities of hazardous waste and they know it
13 and it is separated from the regular municipal waste
14 stream, then in some part of the land fill they can dispose
15 of that and do it safely. But they and we have not yet set
16 any number as to how much that is. And if you have any
17 suggestions there, we're willing to take them.

18 But it seems though that if we do go
19 the generation rate option, that the ~~states' local or~~ States' local or
20 regional offices would be definitely involved in perhaps
21 modifying that quantity to fit local conditions.

22 The other major unresolved issue in
23 this generator area is what to do about those generators
24 who send waste for resource recovery, and that has also
25 been mentioned here. Clearly, it's the purpose of RCRA

that we favor this to the extent that we can. It seems clear though that they ought not to be uncontrolled completely. That has already been mentioned here on some of the comments on Section 3001.

But what incentives can we use to promote resource recovery? We believe that among these, probably, are some options to reduce the burden on these generators, such as, relieving them of the necessity for a manifest. That's one possibility.

On the other hand, whatever we do here does not relieve any generator or transporter from the responsibility to have shipping papers according to DOT standards. I think that's an important thing to point out. That even if we say you don't need a manifest for waste going for resource recovery, it does not relieve you of any responsibilities you may have under DOT.

Speaking of which, Jack mentioned and I want to mention again and I'll mention it even again later, that there is a special session with DOT to be held at the Ramada O'Hare Inn, the 26th of October, about two weeks from now, discussing this in great detail with a panel made up of ourselves and DOT people to show how these two Acts fit together.

Let me stress again that--I don't want to run into the problem we ran into in Rosslyn the other day,

people thinking that these things are set in concrete. We have issued some draft standards which have been circulated to, I guess, a hundred, more or less, people so far and I think we got about a hundred requests in Rosslyn for additional copies. We are receiving comments back. We haven't really tabulated those comments yet but I'm willing to bet that half of them will say we're too stringent and half will say we aren't stringent enough. So maybe we're about right.

If you would like to have a copy of those, I think you can leave your name here with either us or the girls at the desk and we'll see that you get them.

CHAIRMAN LEHMAN: Thank you, Harry.

At this time, I'd like to call for any statements from the floor on Section 3002.

I guess I neglected to mention earlier that we would like to limit statements of this nature to five minutes.

Are there any statements from the floor on Section 3002?

T. J. ROBICHAUX
Petrolite Corporation

I'm T. J. Robichaux, Director of Safety, Health and Environmental Affairs for the Petrolite Corporation. Petrolite is a medium sized, multi-plant manufacturer of specialty organic chemicals for industrial markets.

1 In the process of manufacturing specialty
2 chemicals, certain waste products are generated which must be
3 disposed of properly. These wastes are first dulled for
4 reworkable or resaleable materials or materials useable
5 within our plant stocks. This process leaves a residue
6 which is true waste that we must get rid of in an economical
7 and environmentally safe manner.
8 The EPA is properly concerned with the
9 environmental safety aspects of waste disposal. I would
10 call your attention to the first portion of our concern--
11 the economics of waste disposal. Two factors loom large in
12 considering waste disposal regulations, characterization of
13 the waste material and recordkeeping by waste generators.
14 We are not atypical in our manufacturing
15 processes. Many of the raw materials which we use could be
16 considered waste products from other upstream manufacturers.
17 Our wastes are culled for materials of further use to us,
18 or other downstream manufacturers. Thus, the materials
19 which we ultimate discard, and their handling, represent
20 cost of products sold. In order to maintain a profitable
21 business, we must minimize such costs.
22 Much has been said about the chracteriza-
23 tion of waste products. And, certainly, it is necessary to
24 identify truly hazardous properties of materials to be
25 disposed of. However, full characterization of all wastes

1 would be an expensive, and in many cases, unnecessary
2 activity. To avoid adding to the undue burden of manu-
3 facturers by establishing regulations requiring full
4 characterization of all wastes, I strongly recommend that
5 EPA identify those properties which are important when full
6 consideration is given to waste containerization, method of
7 treatment, and final disposition.
8 The waste which we produce in our St.
9 Louis plant, like many, vary, depending on product mix,
10 plant upsets, research and pilot plant activities, and
11 other operations. To attempt to characterize each load of
12 waste in detail would be an inordinately expensive task.
13 Regulations regarding waste characteriza-
14 tion should take into account variability of wastes from a
15 source and characterization required should be held to a
16 minimum considering method of containment and ultimate dis-
17 position.
18 Turning to recordkeeping, the cost of
19 recording activities is increasing daily. Certainly, in
20 the event of an upset or an emergency, the need for
21 retrieval of pertinent data is important. The need for
22 multi-point recording of information and multi-point report-
23 ing to state and federal agencies is less obvious. The state
24 or federal regulating agency should require waste site
25 operators to accurately inventory hazardous wastes on

1 location and to report ultimate disposition of such wastes.
2 The agencies should not require reporting
3 of waste types and volumes by generator, hauler, site
4 operator and others unless a valid need for such redundancy
5 can be demonstrated. Recording and reporting data and
6 maintaining records over long periods of time by industry
7 adds unnecessarily to the cost of goods in the market place.
8 And receiving, manipulating and warehousing of data by
9 agencies adds to the burdensome cost of government without
10 reducing wastes or improving protection to the environment,
11 two specific goals of the Resource Conservation and Recovery
12 Act.
13 An added point, please. EPA should
14 reconsider the proposed 90 day limit for storage of by-
15 products without a permit. Such a limited time is
16 unrealistic to many manufacturing operations. A period of
17 365 days will accomplish the goal of EPA to cut off
18 indefinite storage. This time would give--this limit would
19 give industry time to seek a use of the material and to
20 arrange a process or a manufacturing schedule or a sale
21 of the product. Since RCRA is an Act dedicated to conserva-
22 tion, EPA should not write regulations which encourage dis-
23 posal to avoid entanglement with additional regulations.
24 Thank you.
25 CHAIRMAN LEHMAN: Thank you for your

comments.

Do we have any other statements on Section 3002?

CHARLES CLARK
Illinois Environmental Protection Agency

I'm Charles Clark, Illinois Environmental Protection Agency, speaking for the Agency regarding Subpart (b), Section 250.22, small generators. The classification of small generators should be eliminated completely from the subject guidelines. The original draft defines such a small generator as one who generated less than 27 pounds in hazardous waste per month.

This was grossly ill-informed in that it did not establish any levels of toxicity or concentrations. It is understood from various discussions that the inclusion of reduced requirements for small generators is intended to relieve some of the load on small businesses. However, it is our impression that the entire Act is aimed at reducing or eliminating the impact to the environment, and, consequently, the public, from the disposal of hazardous waste. This cannot be done by eliminating any generator of hazardous waste.

The small volvumes of highly concentrated and extremely toxic hazardous waste can have a tremendous impact on the environment and on the public when improperly

disposed.

Appendix B, the requirements for small generators, should be eliminated totally from the guidelines regardless of the disposition of small generator classifications.

Section 250.22(b), taken in context with Appendix B, presents the following scenario. A small generator may follow the requirements set down for other generators, or he may wrap his hazardous waste in newspaper and then send it to an unlicensed, illegal dump, provided that he notifies the hauler that the material wrapped in newspaper is hazardous waste.

A large part of Public Law 84580 is aimed at the elimination of open dumps, not the encouragement of their use for the disposal of hazardous wastes.

Section 250.23(a) and (b), it is again recommended that all reference to small generators be deleted.

Section 250.24, manifest system. In general, the following comments are provided regarding the proposed manifest system: Several states, including Illinois, has in effect or nearly in completion a manifest system. These systems are tailored to the needs of the states. And in the case of Illinois, will be keyed to our present permanent system in our data bank. It is strongly recommended that the

1 requirements contained herein be sufficiently flexible to
2 allow incorporation of certain facets of the existing state
3 manifest systems.
4 One important point from our viewpoint is
5 the number of copies of the manifest and the final disposi-
6 tion. We believe that the manifest system is almost totally
7 useless unless we receive a copy of the manifest as
8 originated by the generator and a copy as received by the
9 disposer. We have a list of 5,000 potential generators in
10 the State of Illinois, and it would be an impossible task to
11 have to contact everyone of those generators to look at their
12 manifest records.
13 I'd like to break in. It would also be
14 impossible to take those quarterly reports and compare 5,000
15 generators to 320 disposal sites also, without some electronic
16 data processing to help you out on it.
17 It would be even more difficult and
18 impractical to obtain information in this matter from out of
19 state generators who ship hazardous waste into Illinois. In
20 general, the sample manifest form would meet our needs. How-
21 ever, the distribution and final disposition of the copies
22 would not be compatable with the program which we have ready
23 to place in effect.
24 The following additional comments are
25 also presented: The type and number of containers could very

well be eliminated from the form as useless information. It is envisioned that the descriptions will be such as drums, barrels and boxes. The practical use of such information is not clear.

It is strongly recommended that all volume reporting be limited to the English system. The use of English or metric system will only create unnecessary complications in any future use of the information provided.

250.25, reporting system. It is strongly recommended that a copy of any and all reports required herein be forwarded to the state authority in which the generator is located, as well as the state to which the waste was designated for shipment. Even though a state may not elect to participate in this program, it is imperative that they receive this information. It is even more important that participating states receive the information on a direct basis from the generator rather than sometime two or three years later after it goes through the mill.

Thank you.

CHAIRMAN LEHMAN: Thank you for your comment.

MR. SANJOUR: Can I make a statement?

CHAIRMAN LEHMAN: No, we haven't been responding.

MR. SANJOUR: Well, the gentleman

1 mentioned something about damages caused by small generators.
2 I'd like to request if he has any data on the subject, could
3 he please provide that for us.
4 CHAIRMAN LEHMAN: Do we have any further
5 commentary on Section 3002, any statements?
6 (No response.)
7 CHAIRMAN LEHMAN: Apparently not.
8 Well, let's go on to the second page then
9 of written questions. We have a number here already. If
10 you have more, please feel free to write them down and
11 they'll be collected and brought up.
12 Harry, do you have some there? Why don't
13 you go ahead.
14 MR. TRASK: First, we have what I believe
15 really is a statement for the record. It was stated that
16 hazardous waste must have a DOT hazard label if it meets
17 DOT definition; if not, it must have an EPA label. We feel
18 the label should include precautions in case of fire, leak
19 or exposure and a method of cleanup.
20 We agree with that. The manifest, as we
21 see it, is still the key document as far as transportation
22 is concerned. And that precautions and either the informa-
23 tion itself for cleanup or a source of information for the
24 cleanup will be one of the features of the manifest.
25 But that's a good comment. I appreciate

1 that.

2 Another question is: Who developed the

3 EPA record, the generator, the transporter or the disposer?

4 My response to this is that all three

5 must keep records for EPA. That is written directly into

6 the Act. In other words, that's a legislative mandate that

7 all of those must keep records.

8 I think perhaps the questioner was also

9 referring to the EPA report. Now not everyone must report.

10 The generator must report and the disposer must report, but

11 not the transporter, unless he elects to in place of the

12 generator. But that is his decision. The law does not

13 require him to report.

14 Another question here says: How will

15 bulk sludges be handled relative to transportation/container-

16 ization requirements?

17 Again, the containerization requirements

18 of DOT take precedent. That is, the bulk sludge is now being

19 handled in a vacuum truck and then the DOT requirements for

20 that vacuum truck, provided that sludge meets the DOT

21 standards for hazardous material, then those would take

22 precedence. We have not at this time developed any further

23 standards on that.

24 Another question here relates to hazardous

25 waste fills. It says--I think the question here if I may

take some liberty with this question, it says: The hazardous waste fill which produces a waste, I think it meant a material, am I correct in that, a hazardous material fill which produces a waste. I'm going to take that assumption. At what point does this hazardous waste come under Subtitle C? And the second part of this question: Can there be a waiver of EPA for authorized state requirements?

Obviously, we can speak only for the EPA requirements. The authorized state requirements could be more stringent. So, therefore, we cannot speak to what those might be.

Let me speak to the first part of this. At what point does the hazardous waste come under Subtitle C? As we are writing under Section 3003, that is the transporter standards, when the emergency is over, that is, if there is a spill incident and there is an emergency, then when that emergency is over and so declared by the on-site, on-team coordinator, then the waste must be handled in accordance with Subtitle C requirements.

Now, if the emergency required that that waste be handled, be buried on-site, then sometime down the road the site would have to be inspected by either the state or the regional EPA group and it would need to meet the site requirements for a hazardous waste disposal site.

If it's cleaned up and put in containers

1 and hauled to a commercial disposal site or a municipal dis-
2 posal site, then it would need to be done in accordance with
3 Section 3002, 3003 and taken to a permanent site. And the
4 generator then would be whoever cleaned up that waste, as we
5 visualize it.
6 Now the second part of this question
7 says: Can there be a waiver of EPA or authorized state
8 requirements? The waiver is in effect while the emergency
9 is in effect. And we have specifically written that in
10 there, that there should be a waiver of the EPA requirements.
11 Now we cannot speak to the state requirements.
12 Your comments about containerization
13 differing from DOT requirements bring several acute problems
14 to hand. One, what danger is there in repouring from DOT
15 to EPA containers? And two, who pays for the EPA containers
16 and returning DOT containers?
17 I'd like to emphasize again that we have
18 not really looked beyond using the DOT standards. I hope
19 I emphasize that these were merely questions that we were
20 raising looking for some input.
21 The second part of this question--well,
22 the first part of this question, I think, will be handled
23 under the Section 3004 standards which relate to operations
24 and performance standards at disposal sites.
25 The second part says: Who pays for the

EPA containers and returning DOT containers? I submit that that probably is going to be a subject of discussion among the generator, the transporter and the disposer, as to if we go this route, then some arrangement will be worked out among those three groups.

Let me introduce to you now Mark ~~Morse~~ Morris, who actually has done much of the writing on these standards and Mark is assisting me in this presentation in answering these questions.

MR. ~~MORSE~~ Morris: I'm lucky, I got the short one.

Is it intended that quarterly generator reports will be sent to EPA in addition to the state if the state has an authorized program?

The answer is no.

CHAIRMAN LEHMAN: I have a couple of questions here. Are all hazardous wastes to be containerized? As an example, could a sludge be stored in an open, secured pit?

Yes, they could be. In other words, the containerization standards that we're discussing here are primarily oriented for the transportation phase although we are also considering certain requirements for storage and possibly for disposal. But the example given here is not as straight forward as it might appear.

When the question is asked: Could a sludge be stored in an open, secured pit, it gets down to the legislative definition of storage. And let me just comment on that because it's perhaps not well understood. We keep using the terms storage, treatment, disposal. Perhaps it would be a good opportunity here to discuss that.

The laws define disposal in terms of ultimate leakage to the environment in some way, the ground water, surface water or air. In other words, the term disposal as used in the Act anticipates some degree of leakage but controlled to the point where it does not present a hazard to public health or the environment.

The term treatment mentions incineration, physical chemical treatment, things of this nature are referred to when we're talking about treatment.

When the law defines storage it says everything that is not disposable, implying zero discharge or containment. Containment not only to the ground water and the surface water but also to the air, in our views. So storage in an open, secured pit may be a misnomer. It may be disposal in the sense that there could be air emissions from an open pit. Provided those air emissions meet the standards of disposal, then it could be done. And provided, when you say secure, it is secure from the standpoint of surface water and ground water contamination, as defined

1 under disposal, and we'll get to that in Section 3004.

2 Another question: What is the duty of

3 the transporter or disposer to safeguard proprietary informa-

4 tion?

5 This strikes me as being basically a

6 legal question between the transporter, disposer and the

7 generator. Presumably the generator is the one who makes

8 a determination that he has some proprietary information.

9 It is, I would suspect, probably a contractural requirement

10 when a generator deals with a transporter or a disposer for

11 this type of protection.

12 MR. KOVALICK: Let me follow that question

13 with an answer that I gave in Rosslyn which will hopefully

14 forestall another question: What about the data you're

15 sending to us on those reports or what about the data that

16 we have from generators and disposers? Is that in the

17 category or could it be in the category of confidential

18 business information?

19 The reason that's a problem, for those of

20 you who may not have considered it, is if a transporter

21 wished to come to an EPA regional office and peruse all the

22 generator reports in our files, it seems to me he could do

23 a day--in a day a marketing survey that would vastly improve

24 his opportunities for new business. So you should know that

25 EPA is in the process of revising its Freedom of Information

1 Act regulations. And the current regulations pertain to the
2 air and water statutes and others that we have. And those
3 regulations do describe the procedure that we go through in
4 order to make information available which the originator of
5 that information considers to be confidential. no space

6 This will be a proposed rule making
7 process to expand the same set of requirements that relate
8 to MPES permit data and other similar data, to expand it to
9 Toxic Substances Act data and to Resource Conservation and
10 Recovery Act data. So this is to alert you not to miss your
11 opportunity to influence that subject, that is, confidential
12 business information, in that arena which is the revisions
13 to those regulations.

14 In other words, they describe the fact
15 that whenever we have a form and all the forms we've been
16 discussing today will ultimately have a statement on there
17 that gives you, a generator, or you, the disposer, opportunity
18 to check off, if you will, that you believe that you have
19 confidential business information. And then these regula-
20 tions that I'm describing that would be subject for proposed
21 rule making describe the procedure we go through to verify
22 whether they are indeed confidential business information
23 or whether we can release it.

24 So I call that to your attention, that
25 these reports, if the system is structured the way we've

1 described it to come in quarterly, would potentially be
2 available, and you may want to impact that process.
3 I have one other question from the floor:
4 Do you envision a standard or a national format for a mani-
5 fest due to the nature of some interstate transport of
6 hazardous waste?
7 The answer is yes, we intend to use the
8 procedure that DOT uses which, if you're familiar with it,
9 they do not specify a form. There is not a requirement that
10 you use a form; there is a requirement that you supply
11 information on shipping papers in a certain order. That is,
12 that the name and address appear first, the hazard class
13 appears before the quantity, and so forth. It is a relation-
14 ship-type regulation.
15 So in the same way we are going to
16 follow suit and list the information that must be on the
17 manifest, much of which, as Harry mentioned, will be the same
18 as shipping paper information. And then also publish a lay-
19 out, if you will, a format for that information. Now it is
20 our understanding that normal business channels, many
21 transporters preprint what you all know as bills of lading
22 and which would ultimately be manifests, and so they have
23 the option to lay out this information with the boxes of
24 various sizes as they may wish.
25 But after the DOT example, all

1 the information must be there and it must all be there in
2 the order described in the regulations. That is our current
3 intent. But we're not in the business of providing out of
4 the Government Printing Office manifest forms. That will
5 be a private sector activity either as transporters offer
6 services or as generators originate wastes.
7 MR. LINDSEY: Under the proposed record-
8 keeping system, could a generator of wastes dispose of this
9 in any way he chooses on his own premises without being
10 required to complete a manifest or furnish information in
11 any other form?
12 First of all, if he meets the require-
13 ments, which, as Mr. Trask indicated, haven't been finalized
14 yet, if he meets the requirements of a small generator, all
15 he would have to do would be recordkeeping.
16 If he doesn't meet the requirements of
17 being a small generator, that is, if he generates a sub-
18 stantial amount, the answer is no. He would be subject to
19 the standards under Section 3004 for treatment, storage
20 and disposal facilities. And he would need a permit under
21 Section 3005. We haven't gotten to those yet and we will
22 be getting to the standards this evening and the permit
23 system tomorrow morning.
24 On-site disposal is exempt from the
25 manifest requirement. These disposal sites must, neverthe-

1 less, be permitted, mustn't they?

2 Again, the answer is yes. It's the same

3 kind of a question. We'll be getting into that under Section

4 3005.

5 Does the fact that the last sentence of

6 the first paragraph of Section 3002 reads, "Shall establish

7 requirements respecting," end of quote, and does not include

8 the phrase, "But need not be limited to," end of quote, mean

9 that EPA does not consider itself to have the authority to

10 go beyond Numbers 1 through 6 in promulgating guidelines for

11 generators?

12 The answer is basically yes. Most of

13 the sections of the Act other than Section 3002 list a

14 series of things in there that we must do and then say, for

15 example, must include but need not be limited to, meaning

16 that we can come up with whatever other standards we think

17 may be necessary to protect public health and environment.

18 But under Section 3002, that is not there.

19 And, therefore, we read ourselves as being limited then to

20 Numbers 1 through 6 of the requirements that are written

21 up in 3002 without recourse in making up whatever other

22 standards we think might be needed.

23 I also have several questions here which

24 relate to states assuming the program and what happens if

25 they do or do not.

1 These clearly don't relate to this section.
2 They relate to the section which we'll discuss tomorrow
3 morning, Section 3006, which is the guidelines under which
4 the EPA will find a state program to be equivalent to the
5 federal program and thus authorizes them.
6 Just let me say though in passing, and I
7 will get to these tomorrow. I'll answer them tomorrow
8 morning. Just let me say though that what we're discussing
9 today is the federal program. This is what's going to
10 happen if we, EPA, implements the program in a given state.
11 If the state takes over a program, their program will have
12 to be judged equivalent to the federal program and at least
13 as stringent, but not necessarily the same.
14 If we authorize a state program, we
15 authorize them to carry out their program in lieu of the
16 federal program. But we'll get to these specific questions
17 which came up tomorrow.
18 MR. SANJOUR: The question is: Regarding
19 the requirements that on-site disposal must be contiguous
20 property, how would pipeline disposal nearby but not con-
21 tiguous property, owned by generator be handled?
22 That would not be considered a waste and
23 would not meet the system.
24 So long as the effluent remains from the
25 manufactured process, remains in the pipe, we are not going

1 to consider it a waste. We are not going to consider it a
2 waste until it comes out of the pipe.
3 QUESTIONER: Supposing it comes out of
4 the pipe.
5 MR. SANJOUR: If it comes out of the
6 pipe, it depends on where it comes out of the pipe. If it
7 comes out of the pipe in a way that is regulated by an MPES
8 permit, then we're not interested in it. If it's coming out
9 of the pipe and going into a land fill, then at that point
10 it becomes a waste and would be regulated.
11 QUESTIONER: What if it's on site?
12 MR. SANJOUR: It means it would not
13 require a manifest. It would still require a permit but not
14 a manifest.
15 The next question is: In the case of
16 a bioassay testing exceeding 90 days; if so, do I have to
17 obtain a permit to store while I test?
18 I'm having difficulty in understanding
19 the question. Let me hypothesize what I think the question
20 means. On the day the regulation is passed, you have to
21 perform a bioassay. That bioassay takes more than 90 days
22 to run, in which case you need a permit to store while
23 you're testing.
24 Now I've rephrased your question in a
25 way that I know the answer. The answer is no because you

1 don't require any permits for the first, what is it, six
2 months, after the Act is passed. It takes six months before
3 the Act goes into effect from the date it's passed. So if
4 it's taking you more than 90 days to run an assay test,
5 that doesn't impinge on your need for permit. You can wait
6 six months before you get a permit.
7 However--here's the however--under Section
8 3010 of the Act, if you want a permit--if you want an
9 interim permit--3005, not 3010. If you require an interim--
10 if you would like to have an interim permit, you have to
11 notify EPA that you're storing within 90 days from promulga-
12 tion. Therefore, I would advise you that if it takes more
13 than 90 days to determine that your waste is hazardous,
14 and assume it is for the purpose of complying with Section
15 3010, notify EPA that you are storing or generating hazardous
16 waste so that you can comply with the interim permit require-
17 ments.
18 If you later find out that you do not
19 have a hazardous waste, you haven't lost anything. But if
20 you don't apply under Section 3010 in the first 90 days and
21 you later find out that you do have a hazardous waste,
22 you'll have lost the opportunity to have an interim permit.
23 Did I get that right?
24 The next one is: What reporting to
25 EPA will be required for on-site storage?

We'll discuss that when we discuss Section 3004.

CHAIRMAN LEHMAN: I have a couple of questions here. As a matter of fact, I have a question along with an answer, which is interesting. It says--this is the question: With ~~80~~ eighty (hyphen) 55-gallon drums on a truck of slightly different hazardous wastes, how, without a serial number cross-reference, are you going to know what really was spill in the event of spill? Answer: Require a label giving the manifest line number so a good cross-reference is provided and not a simple EPA name.

O.K. That's one possible way to get around the hypothetical problem. I should also point out that if we're talking about 80 different drums of different hazardous wastes, it is a requirement that each drum have a label on it which describes what's in it.

So we'll take that suggestion under advisement.

Here's another question, and this is one that is often asked and I think is a very interesting question: Does the responsibility for the hazardous waste handling move from the generator to the transporter to the disposer in a fashion similar to the manifest movement?

A simple answer: No. In our view, the generator of the waste is ultimately responsible to make

1 sure that his waste gets to a facility to which it is--to a
2 permitted hazardous waste facility. That is the reason, and
3 you'll see some of the details if you get our draft of the
4 3002 regulations.
5 One of the reasons we require a copy of
6 the manifest when it is received by the disposer to be sent
7 back to the generator, so the generator himself can be
8 assured that the waste actually got there. Now it is clear,
9 I believe, that the generator's liability is diminished in
10 the case where he follows the regulatory control system that
11 is being set up here, as opposed to operating outside of a
12 regulatory control system as is the general case at the
13 present time. There are some states that do have hazardous
14 waste management control systems; many states do not.
15 In those states that do not, at this
16 point in time, and if there is a damage, the judge decides
17 who's responsible. So it's a legal issue. And I'm not going
18 to presuppose what the judge is going to decide after these
19 regulations go into effect, but we assume and presume that
20 it is definitely to the generator's benefit to follow the
21 rules. And in many respects, we would think that if sub-
22 sequent damages do occur and he has followed all of the
23 rules, the generator has, then he would be in a pretty good
24 shape to argue against any liability damages being placed
25 upon him.

1 But nonetheless, we feel pretty strongly
2 that it is the generator's responsibility to make sure that
3 his wastes reach a permitted destination.
4 O.K. We have some more questions.
5 MR. TRASK: I have one here. It says:
6 Do generators have to use a reconditioned DOT inspected drum
7 to place the hazardous liquid waste in to be transported
8 within the state for disposal?
9 This is a very deep and very involved
10 question that gets into the coverage of the DOT regulations.
11 DOT does require that certain specification drums be used
12 for their hazardous materials. DOT requires that any
13 interstate transporter, even though he may be transporting
14 a waste only within a particular state, if he is an inter-
15 state transporter, if any part of his operation is inter-
16 state, then he comes under the DOT requirements. At least
17 that's our understanding of it.
18 In addition to that, 45 states, so we're
19 told, have adopted the DOT requirements. So that in 45
20 states the requirements--this requirement would be in
21 effect because these 45 are identical or very nearly
22 identical to the federal DOT requirements.
23 For private transporters, again it is
24 our understanding of the DOT system, the containers and
25 labels requirements of the DOT standards would have to be

met. However, the shipping papers requirements do not have to be met. Again, that is our understanding. I stand to be corrected if there is an expert on the DOT standards here.

I mention again that we are having this DOT liaison. We are actively conducting this and the public meeting is being held in Chicago on October 26th to discuss how these two standards--sets of standards and the requirements of the separate pieces of legislation will fit together so that some of these questions can't really be answered yet. You may or may not know that there are some forces for preemption of state standards by the federal DOT standards. In other words, there is some pressure that in some states where DOT standards would be different than the state standards that the DOT standards prevail. I don't know what the status of those actions are but there have been some actions in the past.

Mark has a couple.

MR. ~~MORSE~~ Morris: The question is: Will manifests be required for shipping samples of materials suspected to be hazardous wastes to be analyzed by an outside laboratory facility?

If you don't know that your waste is hazardous, I would suggest that you review your raw materials to determine what may be in the waste, then

1 package and use DOT shipping papers--package according to
2 DOT and use the DOT shipping papers. That's for samples of
3 wastes going to laboratories to be analyzed to determine
4 whether or not they're hazardous.
5 Another question was: What do you see
6 as a loophole in the manifest system?
7 I don't see any if they use it.
8 Will the EPA recognize the existing
9 exemptions or special permits granted by the DOT on pack-
10 aging of hazardous materials?
11 Yes, since they also require packaging
12 for hazardous wastes and in that sense, yes, for hazardous
13 materials. We don't regular the hazardous materials, just
14 the hazardous wastes.
15 What would be the status of municipal
16 trash pickup services accepting the industrial pick up of
17 hazardous wastes delivered to sanitary land fills? Would
18 this prevent an industry from co-mingling his domestic and
19 industrial hazardous wastes for pick up?
20 Yes, it would. We'd like to see them
21 segregated. If he mixes it with his municipal waste, then
22 it all becomes hazardous if it hits the 3001 criteria. So,
23 therefore, he would be subject to penalty.
24 MR. KOVALICK: I'd like to make one
25 addition. We're not usually trying to identify loopholes.

1 We have identified a difficulty we have which doesn't really
2 affect you in this region. But wastes do move across inter-
3 national borders. And specifically in this case Canada,
4 both on the eastern--in the eastern states in the United
5 States both to and from Canada and in the western states
6 both to and from Canada. So that's really a problem and an
7 issue that we're addressing actually the very weeks that
8 we're in right now. But it is a problem of making sure
9 that wastes shipped to Canada, or more importantly for us,
10 wastes sent from Canada, do actually arrive at facilities
11 in the U. S. and not as storm run-off drains in other
12 places. So that is an issue.
13 CHAIRMAN LEHMAN: I have another couple
14 of questions. Question: How many inspectors does DOT have
15 to enforce their regulations in the country?
16 (Laughter.)
17 CHAIRMAN LEHMAN: I suggest you go to
18 the Chicago meeting of DOT and ask them. I'm sorry, I
19 don't know the answer to that.
20 Question: If hauler and disposer are
21 the same, will a set of records have to be kept for both
22 hauling and disposing?
23 Well, no, not really, because the mani-
24 fest is the record. And when the hauler and the disposer
25 are the same person, he would be keeping that one manifest

for that shipment.

MR. TRASK: In responding to that, the records kept by the disposer would be a copy of the manifest which would identify the transporter as well. So only one would need to be kept.

CHAIRMAN LEHMAN: This is a comment. Well, let's get it on the record. It is the current practice to ship lab samples for analysis by U. S. Mail, a practice which is also used by the EPA. Do you propose to change this?

Perhaps this falls under the small generator requirement.

(Laughter.)

MR. ~~MORSE~~ Morris: I have a comment. When Harry was making his talk, he asked about manifest movement and some statistical numbers that I didn't have at my fingertips at that moment but I can give them to you now just for the record.

If a state were to choose to receive the manifest as opposed to a quarterly report, I have data that shows on the average that 100,000 manifest per quarter, per state would be received, as opposed to a quarterly report which would only be 5,000 per state. So in the case where EPA runs the program and in the event that we use a management information to do so, I think it's the feeling

1 right now--I don't know whether it's be a quarter or a
2 monthly report, but I think EPA would rather see something
3 more than the manifest, some type of summary report to cut
4 that number down. 100,000 manifests is a lot of material
5 to get into a computer every three month period.
6 And it works down to 2,000 manifests
7 per day. So if you received them on a daily basis, you
8 would still have a large volume of input into your computer.
9 So that's, you know, just for your
10 information for the record.
11 That assumes--now the data that I
12 developed that from assumes two things. It takes a study,
13 a contract study done by Harten Associates which they said
14 there were approximately 500,000 generators in the country.
15 And I took that and I split that and said, well, let's say
16 that 250 of them fall into our system. Then we're talking
17 to the Raw Powers and Browning-Ferris and those people.
18 I got a handle on how many pickups per
19 week on the average and they indicated there's probably
20 about two pickups. Also, from data from the State of Mary-
21 land on generation rates, it comes to about two pickups.
22 And using that data, I developed the information I just
23 gave you.
24 So with 250,000 generators and two
25 pickups per week.

1 Assuming waste with ordinary refuge causes
2 it all to be hazardous, what is the difference where five to
3 six paint and solvent cans, plus refuse, from the industrial
4 source are refused where equivalent load of similar materials
5 comes from private residents?
6 Do you want to comment?
7 MR. KOVALICK: I think that question
8 gets at the earlier statement, the problem we have with
9 recognizing that there are some hazardous wastes, as this
10 person does, in the household, that is, paint thinners and
11 pesticides and so forth. And also recognizing the realities
12 of not being able to or not even wanting to, perhaps, try
13 and regulate those small amounts.
14 So the analogy is probably correct, the
15 problem is that the one is more controllable than the other.
16 And so that's why we're trying to cope with small generators.
17 We don't disagree with that description of the dilemma we're
18 in. It's just how we choose to deal with it is the final
19 answer.
20 MR. ~~MORSE:~~ Morris My problem with that would be
21 getting a representative sample to determine whether the
22 whole waste was hazardous. I mean would you grind it all
23 up or I'm not sure that you could do that and adequately
24 say it was all hazardous. You'd need a considerable amount
25 of hazardous waste in your solid waste--nonhazardous solid

1 waste to get it to be hazardous, depending on the hazardous
2 waste itself.
3 The question is: How does the manifest
4 system apply to shipments by rail?
5 That would be probably covered better
6 in 3003. Right now, I think the rail shipments are going
7 to a computerized system and I think it's adequately
8 addressed in 3003 and I'll leave it 'til then.
9 MR. TRASK: This other comment also
10 refers to transportation. It says: For information, DOT
11 does require shipping papers on private carriers but does
12 not require certification on those shipping papers.
13 Thank you for that information.
14 MR. SANJOUR: The question is: If a
15 new source of hazardous waste begins operation after the
16 Section 3010 limit of 90 day notification ends, how does
17 the source comply with regulations regarding notification?
18 And we'll answer that question in
19 discussion of 3010, I guess, unless the guy is not going
20 to be here tomorrow. In which case, we can answer it today.
21 CHAIRMAN LEHMAN: As we experienced in
22 the Rosslyn meeting two days ago, you're anticipating us.
23 There's no good way I can think of that we can give you
24 the entire package all at once without you falling asleep.
25 And so many of the questions that you're asking will be

1 covered in the later sections of the meeting.

2 In view of the fact that we are running

3 a little behind schedule, I would like to pass on open

4 questions from the floor at this time and proceed on with

5 the presentation on Section 3003 on transportation. And,

6 time permitting, we will open it up for questions later

7 on.

8 To make the presentation, again, Harry

9 Trask. Harry.

10

11 HARRY W. TRASK
Section 3003

12 Some days you can't win, just get off

13 the firing line and back on again.

14 We'll follow the same procedure on 3003

15 that we did on 3002. We'll first discuss the legislative

16 mandate and then our approach to it, and, finally some

17 unresolved issues.

18 Section 3003 of the Act requires the

19 administrator to promulgate regulations establishing stand-

20 ards that include but are not limited to--let me repeat--

21 that include but are not limited to recordkeeping, acceptance

22 of only properly labeled containers, compliance with the

23 manifest system, and assurance that all of the waste is

24 delivered to the designated permitted facility.

25 Section 3003(b) further requires that

1 all regulations issued under Subtitle C be consistent with
2 the DOT regulations and the legislation under which they
3 are developed as the Hazardous Materials Transportation
4 Act.
5 And again, if you haven't done so
6 already, let me show you this copy of the Federal Register
7 announcement of a meeting to be held in Chicago on October
8 26th at which both EPA and DOT will appear on the same
9 platform at the same time and discuss how these regulations
10 are to be integrated.
11 The first standard under Section 3003
12 is that a general requirement and in essence it says that
13 a hazardous waste may be transported if there is a signed
14 manifest, if there are proper labels on proper containers.
15 I should have said--only if there is a signed manifest and
16 proper labels on proper containers.
17 In other words, there is a responsi-
18 bility of the transporter to be sure that the labels are
19 correct and that the container is correct. Now, obviously,
20 the transporter is not going to get involved in chemical
21 analysis to insure what's in there is right. His responsi-
22 bility is to see that there is a DOT hazard label on there
23 and that there is an EPA label on there or some other
24 marking which says what the nature of that waste is.
25 Under the general section of the standards

1 there are also some loading and stowage requirements in
2 essence emulating the DOT requirements which say that
3 incompatible wastes cannot be loaded and stowed together.
4 There is a reference to a list of incompatible wastes
5 which is being developed on Section 3004 standards. There
6 is a preliminary--some of you may have seen the draft stand-
7 ards for Section 3003, and we have a preliminary list there.
8 Again, I would stress that that list is not final and it is
9 subject to change.
10 Basically, what we're trying to do here
11 is separate the different kinds of hazardous materials when
12 they go on the truck. And that is very consistent with
13 what DOT's intent is.
14 In the section which deals with compli-
15 ance with the manifest system, we believe that we should
16 have this transporter certify that he has accepted the
17 waste, that he will obtain a receipt for the waste and he
18 will keep this copy of the manifest as his record.
19 In another section on delivery of all
20 of the waste, it shall be only to a permitted facility and
21 that is a facility which has a permit to accept that specific
22 hazardous waste.
23 And I would point out to you that under
24 Section 3008 of the Act that the first criminal penalty is
25 for one who knowingly transports a hazardous waste to a

1 nonpermitted facility. Did I get that exactly right? I
2 sometimes have trouble with that exact wording.
3 Another section of the Act deals with
4 one of the questions which came up under Section 3002 and
5 that is what happens in emergency situations.
6 In an emergency spill, where a true
7 emergency exists, where there is a need for quick action,
8 we have written in the Section 3003 draft standards that
9 these requirements would be waived for as long as the
10 emergency exists. When the emergency has been declared to
11 be over, then there would be a responsibility of the
12 transporter to notify either EPA or the Coast Guard or
13 some other local authority which has charge about the nature
14 of this incident and make a report on it.
15 Now the report can come later. I
16 believe that the DOT standard is that the report must be
17 submitted within 15 days. Whether or not that report would
18 be to EPA or to DOT is still up in the air. Currently, DOT
19 requires these reports if hazardous materials are involved
20 in a spill, any quantity. What that does to our small
21 generator standard, I don't know. And whether or not EPA
22 wants a copy of that, I don't know. We're still dealing
23 with some of those questions.
24 Another section of these standards would
25 deal with marking of vehicles. And I use the term marking

1 advisedly because we want to stay away from the term
2 placards. In DOT parlance placards have very specific
3 meaning. In fact, their meaning is so specific that there's
4 almost a knee-jerk reaction, that some emergency personnel
5 in towns, counties, states react in an almost automatic
6 fashion to an emergency involving a DOT placard. If it's
7 flammable, they do a certain set of things. If it's
8 corrosive, they do another set of things.
9 We do not want to interfere with that
10 system. And to that end, if, again the wastes which meet
11 the DOT criteria for hazardous materials will be required
12 to be placarded with the DOT placard.
13 Now those wastes which do not meet the
14 DOT standards, in other words, the EPA hazardous waste
15 list, if you will, we may--and we are toying with the idea
16 of some other kind of a placard, for example, toxics--let
17 me repeat, for example, toxics kind of label of marking
18 that's not a placard per se.
19 The unresolved issue here, one of them,
20 of course, is what we do about this marking, placard, what
21 you call it, for toxics. The size and the shape of this is
22 up for grabs. We do not want to go the diamond shape as
23 DOT is using. That would truly confuse the issue. We do
24 want some kind of marking on there to indicate that there
25 is some sort of a hazard involved in that.

1 As Jack mentioned earlier at the intro-
2 duction of this, we held a number of meetings around the
3 country back in the winter and spring to get some input
4 from the generator and transportation communities. At one
5 of these meetings, it was suggested that the term hazardous
6 waste be placed on all vehicles. That is, all vehicles
7 that transport hazardous wastes should be marked hazardous
8 wastes.
9 We nearly got blown out of the room by
10 that one suggestion because everyone felt that if that were
11 the case, then no one would ever be able to dispose of any-
12 thing.
13 And another suggestion though is an
14 environmental contaminent. And that term has been used a
15 number of times. We are considering that at the moment, I
16 guess is the best way to put it because it is not fixed at
17 all.
18 And the final unresolved issue here is
19 how to integrate with DOT as to which wastes are going to
20 be covered. Under Section 3003(b) we are authorized to
21 submit to the Secretary of the Department of Transportation
22 a list or information which could, for example, add certain
23 wastes to their lists of hazardous materials, thereby making
24 the DOT requirements broader. In other words, apply to
25 hazardous wastes. We may do that and we may not. We are

1 currently dealing with or considering some of these issues.
2 And we are interested in your input as
3 to how this might come about or whether or not it should.
4 CHAIRMAN LEHMAN: Thank you, Harry.
5 At this time, I'd like to call for
6 statements from the floor on Section 3003. Does anyone in
7 the audience want to make a statement on Section 3003?
8 (No response.)
9 CHAIRMAN LEHMAN: Evidently not.
10 At this time then, I'd like to go on to
11 questions, written questions, from the audience. If you
12 have any questions concerning Section 3003, please write
13 them on three by five cards and we'll pick them up.
14 O.K. We have a few questions left over
15 from last time, plus there are some others coming in.
16 Harry, would you like to go on?
17 MR. TRASK: O.K., here's an easy one.
18 Will Section 3003 apply to all modes of transportation?
19 The answer is yes, with the one exception
20 that Bill Sanjour has mentioned previously. And that is the
21 pipeline leading to a disposal facility as a solid pipeline
22 without any outfall.
23 MR. SANJOUR: A conveyor belt.
24 MR. TRASK: He said a conveyor belt would
25 do as well.

Another question is--and this one was submitted earlier: How does the manifest system apply to shipments by rail?

As currently envisioned, since the railroads use a computer management system and instead of shipping papers have ~~weigh bills~~ waybills, I believe they're called, and the basic manifest paper stays back at the railroad station where the shipment originated. The standard is written such that either the manifest or the information contained on the manifest must accompany this shipment at all times. And in the case of railroads, when the rail car containing the weights is delivered to the receiving facility and the manifest is not there so that the receiver can sign it, then the railroad or whoever may use a so-called delivery document and get that signed since that would have essentially the same information as the manifest. It would not, however, strictly speaking be the manifest.

Then that delivery document would be returned--would be attached to the original manifest and copies of that would be sent back to the generator to confirm that delivery had actually taken place. Now that's the way we currently visualize that system working.

A QUESTIONER: Where does the original manifest start?

MR. TRASK: The original manifest starts

1 with the generator.

2 A QUESTIONER: How would the receiver

3 have the original manifest then in the case of a rail ship-

4 ment?

5 MR. TRASK: He does not.

6 A QUESTIONER: How would he send it

7 back?

8 CHAIRMAN LEHMAN: Well, we'll get the

9 questions from the floor here in a second.

10 I have a couple of written questions

11 here.

12 MR. KOVALICK: If the generator tenders

13 a shipment of hazardous waste to a rail carrier at one point

14 for delivery to a point off the originating carrier's lines,

15 how is the originating carrier to know that the disposal

16 facility has a valid permit?

17 Now this has several things built into

18 it. First of all, the carrier is just that. He doesn't

19 have any responsibility to know whether the waste listed

20 on the manifest can be accepted by the disposal facility.

21 That's the generator's responsibility. So if a carrier--I

22 would presume that a carrier who took a waste from a

23 generator and it turned out that the receiving facility

24 didn't accept that kind of waste that carrier wouldn't be

25 doing business with that generator many times more in the

1 future because that would have to be hauled back to the
2 generator at presumably the generator's expense.
3 So this question if it relates specifi-
4 cally to the vehicle or the carrier's responsibilities, he
5 has the responsibility to take the waste to the facility
6 that the generator puts on the manifest. And as I say, if
7 he were so indiscreet as to put a facility that can't accept
8 that kind of waste, and that waste disposal facility will
9 not accept it for he would be jeopardizing his permit and
10 there would be many phone calls and possibly a shipment back
11 to the generator of that waste.
12 What is your definition of separate with
13 regard to incompatibles? For example, distance barriers,
14 contact.
15 We're talking about separation of
16 incompatible wastes and we'll get into that a little more
17 in detail in 3004. But basically, it has to do with not
18 being in contact with each other. The stowage and loading
19 requirements we're still evaluating under DOT. But
20 basically, if some of you are familiar with compatibility
21 lists that have been developed by the States of California
22 and Texas for wastes, those kind of incompatible wastes are
23 the kind we're talking about that cannot be mixed with each
24 other or combined with each other.
25 Does the transporter have to verify the

1 designated facility on the manifest is indeed a permit
2 facility or is it the generator's responsibility?
3 Again, that's the generator's responsi-
4 bility. And again, I believe that that generator is not
5 going to have much more business with that transporter if
6 that happens more than once.
7 CHAIRMAN LEHMAN: We seem to have a
8 spirited discussion going on behind us here.
9 (Laughter.)
10 CHAIRMAN LEHMAN: I hope that's not
11 getting on the record.
12 Question: If a transporter collects
13 hazardous wastes from several generators in bulk, using a
14 vacuum truck, how would responsibility be delegated if the
15 load was refused at the disposal facility and had to be
16 returned to the original generator?
17 Well, there's several points in that
18 question. First of all, as we envision our transportation
19 regulations, it is prohibited to pick up different kinds of
20 hazardous wastes from different generators in bulk in the
21 same truck load because otherwise the manifest system is
22 invalid. In other words, you have a different waste than
23 what the manifest said because there could very easily be
24 synergistic or antagonistic effects taking place when you
25 mix different wastes together. This is one of the things

that we're trying to avoid.

We have been made aware of several instances of truck ~~inclosions~~ inclusions (phonetic) as a result of this very thing, where incompatible wastes are sucked up in the same tank truck. And other instances where rapid deterioration of quarter inch steel wall talks place and so forth. So it would be illegal to pick up different kinds of hazardous wastes for starters.

If it was the same hazardous waste from different generators which would be, I guess, highly unlikely. But let's just hypothetically assume--well, O.K., waste oil. Same hazardous wastes from several generators that was refused by the disposal facility and had to be returned to the original generators. Where would the responsibility be delegated? I don't--that's a good posing question. I'd have to think about that more. Perhaps some of the others have a thought on that.

MR. KOVALICK: Well, again, this comes back to business arrangements. If this transporter is offering the service of collecting waste oils for a variety of generators, oftentimes he may provide the service and could provide the service under this system of filling out a manifest and allowing each generator to certify his share of that similar, say, if waste oil were an example of the hazardous waste.

Now in this case, I presume this would only happen once. In other words, if he's in this business of offering this service to a variety of small generators, he presumably is also in the business of checking out his destination.

My answer to the other question had to do with using the transporter as a common carrier. That's quite a different kind of business to be in. But suppose that he were misled by his generators. I presume in this particular case this waste would have to be analyzed. The transporter would become a generator for this one load and I presume he would not be doing business with those generators anymore.

Let me continue. Do you plan to have a reporting requirement by the generator who fails to receive back a signed manifest for the designated permitted facility?

A simple answer is yes. Quarterly reports will list all the manifests for all the wastes sent and there'll be a closing date. And, obviously, there'll be some manifests for which you have not received back the signed ticket. And those would be looked at on each successive report. But yes, all wastes shipped by manifest would be reported.

Morris

MR. ~~MORSF~~: I'd like to comment to what Walt said. There is also a place on the report for comments

in the case that you feel that the receiver of the waste has had adequate time to send you a copy of the manifest back and you haven't received. You could comment to that effect on the report.

A question is: When the residue of a hazardous material is transported by rail car to a cleaning facility, is this material a waste during transportation?

And in order to answer it, I have to change residue to a waste and cleaning facility to a disposal facility, in which case the answer is that it is a waste if it meets the 3001 definition. Hazardous waste, excuse me.

MR. TRASK: Well, I think also, though, the waste from that cleaning facility clearly would be the most hazardous waste. It may still be a material under DOT considerations. And as long as the container is closed, basically DOT is not concerned. If the container is open, that is, if the hatch on the tank car is open, then they would be concerned.

MR. ~~MORSE~~ Morris: Another question: Do you feel there is any DOT hazard class that is environmentally safe, that is, poison, flammable, et cetera? If not, why try to detract and confuse the placarding rules just instituted by Title 49, Part 171.78?

O.K. We only use a EPA placard where

1 the DOT lists and criteria don't apply. DOT does not
2 identify all hazardous wastes or hazardous materials. And
3 in those cases where they do not and they do fall under the
4 3001 definition, then we feel that there should be something
5 on that truck in the event there is nothing.
6 MR. TRASK: I have a question here
7 relating to labeling and it reads: What provisions are
8 being considered in labeling specifications to cover wastes
9 meeting multiple hazard criteria, i.e., a toxic, flammable,
10 carcinogenic, radioactive and corrosive waste?
11 I can't visualize what that waste would
12 be but it's bad, I guess. I should have mentioned during
13 my presentation that our consultant looking at the container
14 situation is also looking at labeling. And we have not at
15 the moment come down hard on any specific system of labeling
16 other than we believe that some name should be put on the
17 container to indicate what the waste is as well as what the
18 hazard is.
19 There are provisions in the DOT regula-
20 tions for multiple placarding, to have as many as two differ-
21 ent placards on the same container or truck. We certainly
22 are going to be following that to the extent that we can.
23 And how we will handle this multiple criteria, I really
24 don't know. We're interested in any further suggestions you
25 have in this area.

1 It doesn't seem quite right at the moment
2 --this is off the top of my head--it doesn't seem right to
3 have one, two, three, four, five separate labels on a con-
4 tainer because I'm sure someone would want to know which
5 one is the most important. DOT has been trying for about
6 seven years to order or give a priority order to hazards
7 and they have not succeeded. I wonder if we can in a very
8 short time. I don't see that we can.
9 MR. LINDSEY: Here's one that really has
10 to do with Section 3005, it's a transporter situation. If
11 transporter unloads a shipment at a terminal and holds it
12 prior to reloading it for shipment to a disposer, that is,
13 this particular facility is a transfer station, must a
14 transporter, presumably the owner of the transfer station,
15 have a storage permit?
16 This same question came up in Rosslyn
17 and there was quite a bit of confusion on the thing. Our
18 tentative position on this is that the 90 day exclusion,
19 which is, I think, what is being addressed here, the 90 day
20 exclusion relates only to generators of wastes to give them
21 the opportunity to accumulate sufficient quantities for
22 shipment without EPA having to--and the generators having
23 to apply for an EPA hazardous process permit application for
24 those kinds of facilities which historically have not
25 generated a great deal of difficulty.

1 So that's a tentative discussion. We're
2 going to rethink that some more to be sure that's the way
3 we're going to remain. But tentatively that's it. If any-
4 body has any comments on that, why, we'd be pleased to have
5 them.
6 Will EPA publish a list of permitted
7 waste management facilities?
8 The answer is yes. In a technical
9 assistance mode, we'll certainly be doing that. We do that
10 now, by the way. They're not permitted facilities but we
11 publish a list of facilities that we know about that are in
12 the business of receiving and disposing or treating of
13 industrial wastes. But we'll be changing that to a list of
14 permitted facilities after the Act is implemented.
15 Then I have one here, a two-part question,
16 one of which I'm going to answer now and one which I'm not.
17 It says, the first part, which I'm not going to answer: Will
18 bans on interstate transportion of wastes be allowed?
19 This gets to a very controversial issue,
20 the issue of state importation bans which we will address in
21 some detail tomorrow under Section 3006. And I don't really
22 want to get into that at this point.
23 The second part of the question: When a
24 disposal vehicle is cleaned out, is that residue then a
25 hazardous waste?

1 The answer is: It may be. That residue
2 would have to be analyzed or compared against the criteria
3 for hazardous wastes under Section 3001. And if it itself
4 is hazardous, then that material would be a hazardous waste.
5 The person who generates that hazardous waste would be the
6 person who cleans out the tank truck. And if he handled it
7 on site, he would in most cases need a permit. If he ships
8 it off site, then he's going to have to in some fashion
9 have a manifest there.
10 MR. SANJOUR: The question is: Will a
11 permitted facility who provides transportation--for a
12 permitted facility who provides transportation, when has
13 delivery taken place for the generator?
14 Well, I would guess transportation is
15 completed when that--I'm not sure I know.
16 CHAIRMAN LEHMAN: Perhaps I can add to
17 that. I think the intent, as I mentioned once before, is
18 that the generator should be considered responsible that
19 the waste arrives at the designated facility. So if the
20 transporter and the disposer are the same person, his
21 responsibility does not end at the loading dock on his
22 property, his responsibility continues until he is insured
23 that the waste actually arrives at the disposal site that he
24 has designated.
25 MR. SANJOUR: The point here is, the way

1 a lot of people do business today, they deal with a transporter
2 who's also simultaneously a disposer. He's the collector.
3 He has the truck. Makes the decision of where to bring it.
4 Now this Act essentially ends that practice. No longer can
5 a generator turn a waste over to a truck driver who will
6 make the decision of what facility to bring it to. That ends
7 with this Act and the generator will have to know where it's
8 going and make his own arrangement. And the truck driver,
9 he'll become a common carrier, unless he's also the disposer.
10 But he's still functioning as the carrier bringing it to the
11 facility.
12 CHAIRMAN LEHMAN: I have another question.
13 This relates to state relationships to EPA. If the states
14 are to be mandated under RCRA to carry out the program, why
15 will quarterly reports be necessary back to the U. S. EPA?
16 Shouldn't just those states wherein the material is generated
17 be concerned along with the states wherein the material will
18 be disposed?
19 O.K. Well, let me go back and say--maybe
20 we didn't make it clear at the beginning. What we're talking
21 about here are the regulations which will apply in those
22 states that do not take on the program. When we say quarterly
23 reports are required, et cetera, et cetera, we're talking
24 about operations taking place in states that do not have an
25 authorized program.

I also said that states that do take the program do not necessarily adopt in toto the federal program. They conduct their program in lieu of the federal program. So there may be variations from state to state for those states that do have an authorized program. Some states may not require a quarterly report. If we judge a state's total program to be able to accomplish the goals of the law and give them full authorization, then they're free to conduct their program, subject to oversight and we'll get into that, from EPA, in the way that they feel they can best do it.

So this question makes a presumption. If a state does have an authorized program and if the state does require quarterly reports the same as EPA, then those reports would go to the state and not to EPA.

I think that answers that.

MR. TRASK: I have another question here relating to the relationship of EPA and the states. And it says, with reference to Section 250.38, and this refers to the draft standards for transporters: Why is everyone notified of a spill except state authorities who are closest to the scene?

It's not our intent to overlook the states here in this particular instance or to exclude them from this kind of notification. I guess perhaps we may not have done our homework quite as well as we should have and we may have

1 missed something here and I'm glad you called this to our
2 attention. We are still working on this particular--well,
3 we're working on the whole thing. And clearly this is one
4 we'll need to work into our standards here.
5 Thank you for that comment and that ques-
6 tion.
7 MR. KOVALICK: This is a comment that
8 says--the writer says: I believe under current DOT regula-
9 tions that it's possible to have a total of 32 placards on
10 a truck carrying a hazardous material.
11 That's not my understanding. I under-
12 stand there may be that many placards but I understand that
13 DOT has an outside limit of I think it's two or three that
14 any one truck will carry. He may have to select from among
15 poison and flammable or corrosive placards. But I thought
16 there were limitations. So we'll look into that. It's not
17 our intention to add a 33rd placard to the 32 that may be on
18 that vehicle.
19 MR. ~~MORSE~~ Morris: The question is: In the case
20 of a high volume consistent waste, for example, 100 loads per
21 week, will it be possible to complete a weekly manifest?
22 The way the manifest system is set up
23 now, you need a manifest with every system. But that doesn't
24 mean that it cannot be a copy. What we do require is that
25 everybody in the chain receiving the manifest, I mean the

generator, the transporter and the disposer, all be aware of what's going on. And the reason we'd like to see a manifest with every shipment is with respect to spill incidents and things of that nature. We're trying to provide for some safe transport.

There's nothing to stop you from using--in this case, where you have a consistent waste and many loads, there's nothing to stop you from using a copy and initialing the copy for the certification and redating it. It's a fairly flexible system, I think, when you see it. It will work in many different cases. It's not rigid at all, in certain areas.

MR. LINDSEY: If a waste--and this is another transfer question: If a waste is taken to a transfer station and co-mingled, (mixed), does the transfer station then become the generator, assuming there is a variety of different wastes that are being mixed?

The answer would be yes. It's a new waste and if it's ~~transhipped~~ trans-shipped, then the transfer station would be the generator. More pointedly, it may require a permit. That process of mixing may be considered a treatment process under the Act thus requiring a permit.

CHAIRMAN LEHMAN: That's all of the written questions we have that are here anyway. We still have some time, I'd like to at this point--excuse me, one

more written question, we'll try to get that in. It looks like a long one.

Why don't we open the floor briefly for comments from the floor while we're addressing this question.

Yes, sir, right here.

MR. MIKOLAJ: Paul Mikolaj from Tosco Corporation.

Just a point of clarification. Do I understand that the generator is required to submit these quarterly reports and not the transporter and not the disposer?

CHAIRMAN LEHMAN: O.K. Let me clarify that. The generator is required to submit a quarterly report of all of the wastes that have been shipped by his facility. The disposer is required to also provide quarterly reports of the wastes that he has received. And as was indicated earlier, there is going to be a lot of data floating around there and it's going to require some type of data management, ADP system, probably, to match these up.

But that is the intent, is to match those two sources of information together using these identification numbers and throw up red flags when there are discrepancies between those two reports.

MR. MIKOLAJ: What kind of information will be required on these reports? All of the information

1 that's contained on the manifest?

2 CHAIRMAN LEHMAN: We're still developing

3 the reporting requirements. I would suspect that summaries

4 of that information would be required, yes. The required--

5 there are minimum requirements for what has to be on the

6 manifest that are spelled out in the law. A manifest is

7 actually defined by Congress in the law to contain certain

8 things.

9 I might read that. I'm reading directly

10 from RCRA: "The term manifest means the form used for

11 identifying the quantity, composition, origin, routing and

12 destination of hazardous wastes during its transportation

13 from the point of generation to the point of disposal, treat-

14 ment or storage." So that's an absolute minimum that is

15 required on a manifest.

16 And summaries of that type of information

17 would be required for the quarterly reports as we envision it

18 today.

19 Are you ready to answer that question?

20 Go ahead.

21 MR. KOVALICK: This is not only a ques-

22 tion, it tells me what I can't answer. In an instance where

23 a firm has disposed of the hazardous waste at a permitted

24 commercial site for a considerable period of time, it is

25 still possible for a driver of a transport firm to decide to

1 dump the material in a convenient ditch and go do his thing.
2 The generator will know nothing of this until he doesn't
3 receive a manifest copy from the disposal facility, assuming
4 that the dump hasn't been reported in the meantime. Who has
5 ultimate responsibility? Parenthesis--(don't cop out by
6 saying it will be decided in the court).
7 (Laughter.)
8 MR. KOVALICK: I'd like to repeat the
9 responsibility--repeat the criminal penalty provision of
10 Section 3008(d) which says: Any person who knowingly
11 transports a hazardous waste listed under this subtitle to
12 a facility which does not have a permit under Section 3005
13 shall, upon conviction, be subject to a fine of not more
14 than $25,000 for each day of violation or through imprison-
15 ment not to exceed one year.
16 This is one of three examples that are
17 listed in here where there is a criminal penalty for know-
18 ingly doing it. So in this case, you're right the generator
19 might not know. I presume after at least one quarter goes
20 by and he hasn't received the copy back, he would become
21 suspicious. But we would be--and he might not pay the bill
22 yet which I presume impacts the transporter even more than
23 the fact that he didn't get the manifest copy--that we would
24 be in concert with the generator in following that transporter
25 and trying to determine what he does with those wastes.

1 And I think the transporter is running a
2 very--I hope he realizes he's running a very large risk
3 because this is, again, one of the few, not civil, but
4 criminal portions of the Act. And, admittedly, judges set
5 penalties at different rates. But it seems to me--you're
6 saying it isn't going to be decided in the court, well the
7 amount of the fine is going to be decided in the court. And
8 I think it would be just a matter of time trying to hook
9 that trucker up with that dump place.
10 MR. SANJOUR: I think the answer is
11 simpler than you gave it. I think so far as the Resource
12 Conservation and Recovery Act is concerned, the generator has
13 no liability there.
14 However, so far as common law is con-
15 cerned, as far as the suit for damages from that waste, it's
16 got nothing to do with this law. If someone is damaged by
17 that waste, they could still sue the generator by the common
18 law.
19 Does that clarify it?
20 MR. SANJOUR: The upshot is this law does
21 nothing to affect tort at all. It does not increase or
22 decrease the liability under common law.
23 MR. LINDSEY: As you can gather, we're
24 not a bunch of lawyers up here. Otherwise, we might be more
25 authoritative.

1 CHAIRMAN LEHMAN: I can state for the
2 record that none of the people on the panel are lawyers.
3 We have time--I would like to open again
4 the floor for questions from the audience.
5 I have a gentlemen here, yes, sir.
6 MR. GOULIAS: My name is John Goulias.
7 I'm with Shell Engineering and Associates, Columbia, Missouri.
8 I've got three general questions. The
9 first one deals with emergency spills to air, water or land.
10 Does this Act in any way impose any requirements other than
11 what's being done now under any other Act regarding emergency
12 spills?
13 CHAIRMAN LEHMAN: I believe I can answer
14 that. The answer is yes, to the degree that we're talking
15 about hazardous wastes that are not controlled under the DOT
16 system or under the new EPA spill regs, Section 311 of the
17 Water Pollution Control Act. In other words, it is
18 theoretically possible that there can be wastes which are
19 deemed to be hazardous under the auspices of this law which
20 do not fall under DOT regs or under Section 311 spill regs.
21 And in those instances, yes, there are
22 additional requirements placed on reporting of emergency
23 spills.
24 MR. GOULIAS: All right. Then in terms
25 of handling the materials collected during those emergency

1 spills, does this impose any additional requirements on
2 handling of those materials?
3 CHAIRMAN LEHMAN: Well, let's say no more
4 than would be the case for any spill. In other words, I
5 think we covered this case. Let's say you were transporting
6 a hazardous commodity, not a hazardous waste, under DOT, and
7 that spilled. And then you would enter into an emergency
8 spill situation. And our first and foremost thought is to
9 contain that spill, prevent its movement into surface water
10 or ground water.
11 Once that containment is over and you
12 know basically have a hazardous waste. You've got to do some-
13 thing with that. Depending on the judgment of the spill
14 coordinator on the scene, he may do something short term with
15 that waste or that commodity that is now waste which would
16 not normally fit all of the requirements of going to permitted
17 facilities and so forth. We're allowing that flexibility of
18 judgment.
19 But once that emergency is over, we would
20 want to make sure that the material is, in fact, lodged in a
21 place that will not cause any further environmental problems.
22 MR. GOULIAS: I understand that. I guess
23 what I'm really wondering is: Does it impose any additional
24 requirement on the handling of the materials than are
25 currently imposed now in emergency spill collection. In

other words, the Coast Guard or U.S. EPA or others impose certain requirements now. Will this Act impose anything additional?

MR. TRASK: The answer is yes, it will impose the manifest--the requirement for a manifest for record-keeping, for reporting, and labeling. In other words, all the requirements for a generator.

MR. GOULIAS: The second general question I have is regarding criteria toxicity and testing which Alan discussed briefly earlier today. And it mentioned a four agency, four federal agencies, that are involved in developing uniform testing procedures and criteria insofar as possible. Is U.S. DOT and Graziano's group part of this four agency group?

CHAIRMAN LEHMAN: No, they are not.

MR. TRASK: Can I comment?

CHAIRMAN LEHMAN: Sure, go ahead.

MR. TRASK: Bob Graziano is not part of U.S. DOT.

MR. GOULIAS: No, I understand. But he apparently developed a criteria and a lot of the work that went into the development of the U.S. DOT regulations.

CHAIRMAN LEHMAN: Well, the answer is that DOT--neither DOT nor Mr. Graziano are part of this other group.

1 MR. KOVALICK: However, I was at a meet-
2 ing last Friday where it was discussed. This point that
3 you're making was brought out. That even though the four
4 agency heads--FDA, U.S. EPA, OSHA and the Consumer Products
5 Safety Commission, even though they had agreed the purpose
6 of the group is when we take joint action on a chemical,
7 like fluorocarbons and aerosols. When we all do the same
8 thing at the same time, shouldn't we bring DOT into that
9 picture.
10 And so the coordinator for our agency
11 who was present at the meeting said, yes, they ought to at
12 least be inviting DOT to be an auditor to these meetings
13 even though they may not want to enlarge it to five. So we
14 are aware of the need to involve DOT in this.
15 MR. GOULIAS: Third question related to
16 economic impact of these regulations. I know that this will
17 be covered in general later on tomorrow. But I'm wondering
18 if on tomorrow's program you'll be able to get into some of
19 this documentation of the spills, various kinds of spills
20 that you've looked at or incidents that you've looked at?
21 Several times today you've discussed trucks that have had
22 various kinds of incidents. And I'm wondering if in the dis-
23 cussion of economic impact you'll be getting into any bene-
24 fits associated with looking at prevention of any of these
25 problems?

1 CHAIRMAN LEHMAN: We do not intend to
2 get into that detail tomorrow. We'll be glad to discuss
3 that specific point with you if you would like.
4 MR. GOULIAS: All right, thank you.
5 CHAIRMAN LEHMAN: Still lots of time. Do
6 we have any further questions.
7 MR. KOVALICK: I wanted to get back to
8 the question from the floor which we cut off on, on the
9 shipment of a waste and the manifests and delivery document.
10 I caught the end of the question. But to try and clarify, we
11 were pointing out that railroads are different than trucking
12 lines and that there would be a way for--a provision for the
13 delivery of a rail car to a siding on a weekend when the
14 facility is not in operation for the railroad to execute a
15 delivery document which would be the certification of arrival,
16 which, when combined with the manifest which was back at the
17 terminal where the waste was originally received or head-
18 quarters where it was originally taken into the system, those
19 two pieces together would make a completed manifest for
20 recordkeeping purposes.
21 So this is a provision being designed to
22 accommodate the receipt of waste through rail car when
23 acknowledging the fact that railroads are different than
24 trucking lines. I hope that helps some.
25 CHAIRMAN LEHMAN: Yes, we have another

1 question.

2 MR. WALCHSHAUSER: Ron Walchshauser, ACF

3 Industries.

4 Assuming your discharge to a municipal

5 treatment facility would be considered hazardous, how would

6 you go about with a manifest system?

7 CHAIRMAN LEHMAN: You're referring to

8 the municipal waste water treatment system?

9 MR. WALCHSHAUSER: Yes. You have a pre-

10 treatment system and then you are discharging to a municipal

11 treatment system.

12 CHAIRMAN LEHMAN: O.K. You're not talk-

13 ing about the municipal waste system itself but rather back

14 upstream at the industrial site?

15 MR. WALCHSHAUSER: Right.

16 CHAIRMAN LEHMAN: Well, let's start at

17 the ultimate end of the pipe and we'll work backwards to

18 illustrate this point. At the municipal waste water treat-

19 ment point, they are required to have an MPES permit to

20 discharge their effluent into receiving waters. So that

21 would cover that. And any sludge resulting from the

22 muncipal waster water treatment process that meets the

23 criteria for a hazardous waste would have to be handled in

24 accordance with Subtitle C. In other words, the municipal

25 waste water treatment facility would be a generator of

1 hazarous sludge and have to go through the whole system, you
2 know, if it meets those criteria.
3 Now going back upstream, let's say you're
4 a generator who is doing some pretreatment on your waste
5 water and then into the sewage system. Any sludge resulting
6 from your pretreatment that meets the requirements for Sub-
7 title C as a hazardous waste would be, in fact, then a
8 hazardous waste and have to be treated, you know, records
9 kept. If you shipped it off-site, a manifest. If you dis-
10 posed of it on site, you'd have to get a disposal permit and
11 so on.
12 Does that answer your question?
13 MR. KOVALICK: And the discharge to the
14 municipal waste water treatment manhole would not.
15 MR. WALCHSHAUSER: That would not be
16 considered a hazardous waste?
17 MR. KOVALICK: Not for purposes of RCRA.
18 CHAIRMAN LEHMAN: O.K. We've got more,
19 go ahead.
20 MR. SANJOUR: First of all, if the waste
21 is not a hazardous waste, it's not covered at all under 3001.
22 If it's a hazardous waste, any discharge to a municipal plant
23 by pipe, there's never an outfall until you bring the outfall
24 directly into the sewer, and if that discharge is legal, then
25 you're out of this Act at all. We don't consider it a waste

1 under this Act.

2 If that discharge is illegal, in other

3 words, the sewage treatment doesn't know what's coming, then

4 you're violating the law. Then it is a hazardous waste and

5 you're violating the law by illegally disposing of hazardous

6 waste.

7 O.K. Now is you're discharging to that

8 plant by something other than a pipe, by a vacuum truck,

9 let's say, even though they know you're coming, it goes by a

10 vacuum truck, then you are a hazardous waste and you do have

11 to comply with this law. If you send it in by pipe and they

12 know you're coming, you're not a waste at all. But if you

13 send it in by vacuum truck and they know you're coming,

14 you're a hazardous waste.

15 Not only are you a hazardous waste but

16 the sewage treatment plant becomes a treatment facility under

17 this Act requiring a permit. So both you and the sewage

18 treatment plant would be affected if you bring it there by

19 truck. But if you send it by pipe, neither one of you is

20 affected by this Act. Got it?

21 CHAIRMAN LEHMAN: We have another ques-

22 tion. Go ahead.

23 MR. MURRAY: Your statement just raised

24 another question in my mind. If it goes by pipe to a treat-

25 ment plant, it is not a hazardous waste. Is this a direct

1 line pipe from one source or does it have to be mainly
2 through a sanitary sewer sytem?
3 CHAIRMAN LEHMAN: No. We consider a
4 sanitary sewage system to be a pipe.
5 MR. SANJOUR: If goes from your plant to
6 a manhole by pipe and the sewage plant knows it's coming,
7 it's legal. That is, it is not a waste at all under this
8 Act.
9 CHAIRMAN LEHMAN: Let me read directly
10 from the law and this may illuminate some points. And this
11 is the basic definition of solid wastes under RCRA. It says:
12 The term solid waste means any garbage, refuse, sludge from
13 a waste treatment plant, water supply treatment plant or air
14 pollution control facility and other discarded material,
15 including solid, liquid, semi-solid or contained gaseous
16 material resulting from industrial, commercial, mining and
17 agricultural operations, and from community activities, but
18 does not include--and this is the point--but does not include
19 solids or dissolved material in domestic sewage or solid or
20 dissolved materials in irrigation return flows or industrial
21 discharges which are point sources subject to permit under
22 Section 402 of the Federal Water Pollution Control Act as
23 amended.
24 So the point is that if you're in a
25 sewage treatment system that is controlled under Section 402

1 of the Water Act, it is by definition not a solid waste. And
2 since hazardous waste is a subset of solid waste, you're not
3 subject to Subtitle C. O.K.
4 Yes, sir, another question.
5 MR. O'CONNER: My name is Bill O'Conner,
6 Hennepin County in Minnesota.
7 It seems to me what you're saying is
8 you're providing a loophole for a generator in that if he
9 has a hazardous waste, all he has to do is simply dilute that
10 waste, put it down the sewer. For example, if he has heavy
11 metal in his waste which would make it hazardous under the
12 RCRA provisions, all he would simply have to do is dilute the
13 waste and send it down the sewer. The metals are not going
14 to be removed at the sewage treatment plant but are going
15 to pass directly into the river or surface water. And you
16 haven't made any provision for that waste.
17 CHAIRMAN LEHMAN: First of all, the waste
18 water--as I mentioned, the waste water treatment plant
19 itself has an MPES permit under 402, Water Pollution Control
20 Act. So if this disposal by an industrial discharger
21 upstream causes that plant to violate its permit, you can
22 be assured that they're going to be trying to find out where
23 it came from. That's point one.
24 Point two is that the law has, you know,
25 EPA is developing now pretreatment standards for hazardous

1 wastes or hazardous water discharges in the sewer system to
2 prevent this kind of thing, again under the Water Pollution
3 Control Act. So we're not unaware of the fact that it could
4 happen the way that you're talking about.
5 But under the pretreatment regs that are
6 under development, there would be some control of that
7 practice.
8 MR. O'CONNER: O.K. I was just getting
9 at that dilution would be the solution then to--
10 CHAIRMAN LEHMAN: To pollution, yes.
11 MR. SANJOUR: I guess we ought to get
12 behind the purpose of all of this and that is a very
13 legitimate and environmentally sound planning for treating
14 industrial wastes is for a centralized treatment facility
15 if it works. If it doesn't work, then we have the effluent
16 limitation laws to prevent that practice.
17 CHAIRMAN LEHMAN: One of the big issues
18 in EPA right now is the matter of sludge disposal and its
19 relationship to the pretreatment standards because it is
20 becoming pretty clear that the sewage sludge from many
21 municipal waste water treatment systems contain high amounts
22 of metal which limits its availability for land disposal in
23 terms of soil conditioners, crop nutrients and so on.
24 And since this is one of the major
25 thrusts of EPA policy is to encourage land disposal of

1 sludge at this point, the pretreatment regulations are being
2 keyed to that point such that the sludge from the municipal
3 systems will be safe to be used as a soil conditioner and so
4 forth. It's all tied together.
5 You know, one of the fascinating things
6 about it, not only as you'll see as we go through this, not
7 only are all of the regulations under Subtitle C very closely
8 interlocked, but also the entire RCRA is related to TOSCA,
9 it's related to the Water Pollution Control Act, it's related
10 to FIFRA, the pesticide law. There are a large number of
11 interfaces here and this is one of them, this interface with
12 the sewage treatment plant.
13 MR. SANJOUR: May I say one more thing?
14 The gentleman's comment was that it would pay a generator to
15 dilute his waste in order to get into a sewage treatment
16 plant. I think the experience is actually the opposite.
17 When a generator discharges into a sewer treatment plant, he
18 has to pay the treatment plant and he has to pay in propor-
19 tion to the volume of liquid he's discharging. So the
20 usual practice is, in fact, the generator to reduce the
21 volume rather than increase it. They don't pay by the amount
22 of hazardous materials, they pay by the volume.
23 A VOICE: Volume and concentration.
24 MR. LINDSEY: It depends on the sewer
25 treatment plant. Some are some way and some are the other.

1 CHAIRMAN LEHMAN: We have time for more
2 questions from the floor.
3 Yes, sir.
4 MR. MIKOLAJ: Paul Mikolaj, Tosco
5 Corporation.
6 I have a general question about how Sub-
7 title C relates to Subtitle D, with regard to this open
8 dump, pits, ponds and lagoons and things. Supposing you
9 have a generator who in the past or currently is using on-
10 site disposal, but after the law becomes implemented then
11 he chooses not to continue to dispose on his own property
12 but instead hauls the stuff away. What does he do with his
13 existing material that he's been accumulating for years and
14 years? How do these regulations under Subtitle C impact
15 or affect that?
16 CHAIRMAN LEHMAN: O.K. Good question.
17 If I can distill that question, you're asking whether there
18 is a grandfather clause in the Act or not. And we've asked
19 that question of our General Counsel and the answer is no.
20 In other words, our General Counsel has informed us, advised
21 us, that as far as they can determine in reading the Act
22 there is no limitation on how this Act applies. In other
23 words, if there is in existence, say, a storage lagoon that
24 has hazardous waste in it, then it is subject to the provi-
25 sions of Subtitle C.

1 Well, Section 3004, either the disposal
2 or storage permit requirement. Now you raised the issue of
3 the relationship to Subtitle D and perhaps a few more words
4 on that would be helpful. Subtitle D is in its own right a
5 pretty powerful instrument for improvement of the environ-
6 mental and public health protection. Basically what it does
7 is it is a correlary to to Subtitle C in the sense that it
8 sets up via Section 4004 for EPA to define criteria for what
9 constitutes an open dump, and by reference what constitutes
10 a sanitary land fill, an acceptable sanitary land fill.
11 Those criteria are currently in draft
12 stage and will be proposed very shortly. And then a
13 correlary to that is that it is against federal law, and
14 it's against RCRA, once these criteria are adopted, to
15 operate an open dump of any kind for any of these wastes
16 that I just mentioned.
17 There are provisions for a five year
18 closure or upgrading of open dumps if its part of a state
19 approved plan to do so. If a state does not have a plan to
20 do that, these open dumps are not part of that plan and then
21 they are subject to closure under federal law immediately.
22 And then furthermore there's D for an inventory of open
23 dumps to take place.
24 So Subtitle D in its own right is a
25 fairly powerful instrument, as I mentioned. Any waste that

1 does not come under the purview of Subtitle C, does come
2 under the purview of Subtitle D. One other major difference
3 is that all of the implementation of Subtitle D is to be
4 accomplished by the state as opposed to the feds. EPA does
5 not have any direct implementation of Subtitle D as they
6 might have under Subtitle C should states chose not to take
7 over the program.
8 QUESTIONER: I just want to make sure I
9 understand what you said in the first part of your question.
10 If an industrial facility has been disposing of hazardous
11 waste, of course, it's going to depend upon what's hazardous
12 after the definitions come out, but if they had a pit, pond
13 or lagoon or something, and they chose to simply have in the
14 future their waste hauled off, that they will be required to
15 get a permit for their existing disposal site? They would
16 be required to get a permit for this as a disposal site for
17 material that has accumulated in the past years?
18 MR. KOVALICK: The reason there are nods
19 yes and nods no is that when General Counsel gave us this
20 thought we made specific reference to piles of wastes that
21 might be out in the environment or lagoons. And we asked
22 whether or not the date of the passage of the Act had any-
23 thing to do with whether or not those were hazardous wastes.
24 And the direct answer was no. That is, if they're hazardous,
25 they're hazardous.

1 And so the place where we get into a
2 policy problem, of course, that you haven't asked about is
3 closed land fills, which cause a problem. That is, they're
4 all covered over and they seem to be operating just fine
5 and then they cause an environmental problem. Then does the
6 owner have some responsibility? So for that reason, there
7 isn't a final answer. But my understanding from that
8 opinion that we have so far is in the case of a lagoon or a
9 mound or pile of waste is, yes, you would have to get a
10 permit for that what we would call disposal in the case of
11 a lagoon.
12 QUESTIONER: Even though it's not going
13 to be used anymore?
14 MR. KOVALICK: Well, even though it's
15 not going to be used, it is a disposal of the wastes that
16 are in there. It may leak, it may evaporate, and so those
17 are the environmental effects that could happen from that
18 facility.
19 CHAIRMAN LEHMAN: You raise a very
20 interesting point. And as you can tell, we're trying to
21 interpret a legal opinion and that's not always easy. We'll
22 probably get another legal opinion. You've raised a good
23 point. We'll double check on that though.
24 Yes.
25 MR. WILSON: My Name is Charley Wilson.

1 I represent the greater Metropolitan Milwaukee area.

2 I'm a little bit fuzzy on this matter of

3 sludge after it hits the disposal plant. Is my understanding

4 correct that at the present time, since EPA is looking into

5 guidelines that will govern pretreatment to keep it from

6 being a hazardous waste, that you're not even now considering

7 it in that light? Or did I miss something along the line

8 there?

9 CHAIRMAN LEHMAN: Do you mean do we

10 intend to postpone any action against sludge until pretreat-

11 ment regulations come into being, is that what you're asking?

12 MR. WILSON: Yes.

13 CHAIRMAN LEHMAN: At the present time,

14 no. In other words, if the sludge from a municipal waste

15 treatment plant, at the time these regulations go into

16 effect, which is a year from now basically, meets the criteria

17 for a hazardous waste as defined here, then they would have

18 to be handled in accordance with the provisions of Subtitle

19 C.

20 MR. WILSON: Is there a list at present

21 on sludges that fall in the category where they would be

22 considered hazardous wastes?

23 CHAIRMAN LEHMAN: No, there is not

24 because we have not finalized the criteria yet. We've made

25 some studies of the chemical content, the heavy metal

1 content of sludges, typical sludges from around the country.
2 And some municipalities have high concentrations of various
3 metals and others have medium levels and others have low
4 levels. We are taking that into account when we set these
5 criteria. But there are equity problems here too in the
6 sense that if we say, well, an industrial pretreatment sludge
7 of a certain characteristic is a hazardous waste and a
8 municipal waste water treatment plant with the same character-
9 istics, shouldn't they be treated equally? And I think the
10 answer to that is yes, they should. You know, if we con-
11 sider one to be hazardous, then the other should be considered
12 hazardous as well.

13 MR. WILSON: Of course, if it becomes
14 hazardous, there'll never be any way you can apply it to
15 land, am I correct in that assumption?

16 CHAIRMAN LEHMAN: Not necessarily, not
17 necessarily. It may require more intensive management to
18 apply it to land. You may have certain restrictions as to
19 what you can grow on that land, for example, than you would
20 otherwise. But we're not eliminating land application as
21 a potential waste management practice under these regula-
22 tions.

23 We have, last August before this Act was
24 passed, published a hazardous waste management policy state-
25 ment in which we say that we encourage resource recovery

as a first option. And land application of sludges where there's some beneficial use of that sludge would fall into that category. So we would encourage that to the extent that we can be convinced that it is safe, environmentally safe, and safe for public health that that takes place.

So we're not precluding land application but you may have to be a lot more careful about how you do it if it's a hazardous waste than otherwise.

MR. WILSON: We have been in the business of disposing of sledge on land for going on 52 years now and selling byproducts that you're probably aware of. And I would hope that the EPA in their deliberations would take into consideration the rate of application and not just the presence of a given amount of heavy metal in the product.

CHAIRMAN LEHMAN: Well, that's a good point. But here again, let me reemphasize a statement I made earlier today that the distinction about whether a material is hazardous or not should be separated from the issue of how you manage it. O.K. In other words, we're attempting to define a hazardous waste in such a way that if that did not receive proper management would it affect in a significant way the public health and environment in this country.

MR. WILSON: I think you're arguing with yourself a little bit there, aren't you?

CHAIRMAN LEHMAN: No, not really. Not really.

MR. WILSON: Well, I mean you're admitting if it's handled properly, which involves application, right?

CHAIRMAN LEHMAN: Right.

MR. WILSON: It's O.K. And then you're saying but no, it's not O.K.

CHAIRMAN LEHMAN: No, I'm saying by including it in the regulatory system, you are insuring that it is handled properly. By getting a permit for that application rate, whatever. In other words, you work out the proper management techniques for that waste which can-- very definitely would include application rates, pH control, whatever else is required.

MR. SANJOUR: We'll be discussing that after dinner.

CHAIRMAN LEHMAN: Yeah, that's one of the things we'll discuss.

MR. WILSON: I'm sorry I'm out of order.

CHAIRMAN LEHMAN: No, you're not out of order. I'm just trying to make the point and perhaps I haven't made it well. But I'm just trying to say this: We are concerned about hazardousness for uncontrolled wastes, wastes that do not have proper management, wastes that do not receive a permit. If they in an uncontrolled way can end

1 up in the environment somewhere and cause a problem, those
2 are the conditions under which we would call waste hazardous.
3 Once you've decided that it could be
4 hazardous under those conditions, and that's the yes-no,
5 yes, it is in the system, no, it isn't in the system, once
6 you've decided that, then the next question is what is the
7 best way to manage that waste. And that might involve land
8 application. You still could do it but under controlled
9 conditions.
10 MR. WILSON: I'm going to stop. I'm
11 going to take you off the hook.
12 (Laughter.)
13 CHAIRMAN LEHMAN: Well, we've gone past
14 our time limits. It's an interesting discussion. I appre-
15 ciate your attention.
16 We will break now for dinner. In view
17 of the fact that we ran over about 15 minutes, let's recon-
18 vene at 7:00 o'clock.
19 Thank you.
20 (Whereupon, at 5:30 o'clock p.m., the
21 hearing in the above-entitled matter was recessed.)
22
23
24
25

EVENING SESSION

CHAIRMAN KOVALICK: Good evening, ladies and gentlemen. Let me reconvene the evening session of the public meeting on the Resource Conservation and Recovery Act.

My name is Walter Kovalick. And on my right is Fred Lindsey and William Sanjour, from the Hazardous Waste Division of the Office of Solid Waste, for those of you who weren't here this afternoon.

We spent the afternoon going through section by section the--several of the regulations and guidelines that we're working on under Subtitle C. And this evening we're going to cover one more section which is probably of paramount interest to some of you. So our plan of action is to discuss Section 3004 which are the national standards for storage treatment and disposal facilities. Then I'll call for the questions that would normally be affecting that section. And then any of the individuals who have indicated that they want to give a statement, we can give them an opportunity to make a statement on all the regulations if they choose to do that today.

So at this point, let me call on John Schaum who is a chemical engineer in our division and who is the desk officer or lead individual on the Section 3004 regulations.

John.

JOHN SCHAUM

Section 3004

Section 3004 authorizes EPA to promulgate standards applicable to owners and operators of hazardous waste treatment, storage and disposal facilities. The mandate further specifies that these regulations should include requirements for the following areas:

Records of the wastes received and the manner handled.

Reports to the permitting agency.

Monitoring at the facilities.

Inspections of the facilities conducted by the facilities.

Requirements as to where the facilities are located.

Requirements for the design, operation and construction of facilities.

Requirements for training of facility personnel.

And requirements for ownership, continuity of operations and financial responsibility, and requirements for contingency plans.

Additionally, the mandate also states that any other regulations necessary to protect the public health and the environment may also be promulgated.

Two important aspects of this mandate which I'd like to discuss further are that, one, it applies to all media, that is, the air, the ground water, surface water and the land; and, two, the mandate specifies that these be performance standards. Most people think of performance standards as being emission-type standards. But since the mandate specifies all the other areas, records, reports and so on, operating design type, we are interpreting the mandate to include these type of regulations also.

I'd like to discuss next the prospective content of these regulations. Please remember that what I am describing are the draft regulations. They're very preliminary; some areas have still not been completed. However, due to the extensive mandate, they are very lengthy regulations and I will only have time to highlight the major areas.

The structure used in the draft regs consist of a set of mandatory and a set of recommended standards. The mandatory standards must be followed by all facilities under all conditions. These include the environmental objectives for each medium.

The recommended procedures will specify how the mandatory standards can be achieved. They are mostly of the operating and design type.

A facility must follow the recommendations or prove that an alternative meets all the mandatory standards.

1 Facilities which follow the recommendations will be considered
2 in compliance initially but must always meet the mandatory
3 standards in order to stay in compliance.
4 In the area of ground water protection,
5 we intend to use the same approach as is used in the under-
6 ground injection regulations proposed under the Safe Drinking
7 Water Act. Under this philosophy, only usable ground water
8 is protected. Although our current draft regs do not protect
9 unusable ground water, we're open to suggestions as to how
10 that might be done.
11 Usable aquifers are defined as any
12 aquifer with less than 10,000 milligrams per liter of total
13 dissolved solids. Additionally, the permitting agency may
14 designate certain aquifers as unusable if they are not
15 potential drinking water sources and after public notice,
16 public hearings, and approval from the EPA Administrator.
17 The environmental objective for usable
18 ground water is that it cannot be degraded such that it
19 would be necessary to treat it more than would have otherwise
20 have been necessary.
21 The air objective, as written in the
22 handout, is very misleading and I'd like to request that you
23 please disregard it. What we were trying to say was that our
24 objective for protecting the air is that facilities should be
25 designed and operated in a manner which complies with

existing EPA air standards and which does not degrade the ambient air beyond one-tenth the level of OSHA standards for air contaminants.

I'd like to emphasize that we would only be adopting the OSHA standards on an interim basis for those air contaminants not yet regulated by EPA. Any new EPA air standards would automatically replace the OSHA standards.

Additionally, we intend to write this reg in a manner which will allow the Administrator to use a different divider than ten if future research shows a different number was needed.

(one word)

Air, ground water and leachate monitoring will be required at most sites. Some form of monitoring will be required at all. At sites where the potential for ground water pollution exists, we will require ground water monitoring. For example, land fills located over useful aquifers will have to have ground water monitoring. We'll probably recommend that they install lysimeters underneath the sites to detect any leachate which may be escaping and to install ground water wells adjacent to this site as a backup system.

Air monitoring will be required at facilities with the potential for air pollution. For example, we'll recommend that incinerators have stacked gas monitors for things like carbon monoxide, carbon dioxide, et cetera.

Storage operations must be conducted such that emissions to the environment do not occur. We feel that such a regulation is necessary in order for it to be consistent with the Act which defines storage as an operation during which the wastes cannot escape.

In the handout, we said all surface water from active areas must be collected and confined to a point source. Our thinking has changed somewhat on this issue and we are now recommending collection but not requiring it. Instead, we are requiring that point source discharges must comply with the regulations under the Federal Water Pollution Control Act and that nonpoint discharges, such as, surface run-off, must be controlled to prevent the discharge of pollutants to off-site surface water bodies.

The draft regs require that all facility personnel be trained on an annual basis. The subject areas much include contingency plans and we will recommend other subject areas, such as, environmental awareness, sampling and monitoring, waste handling and operating procedures. The exact type and duration of training must be approved by the permitting agency.

The draft regs have a number of requirements for recordkeeping and reporting, however, we are trying to keep these to a minimum to reduce the paper burden to both government and industry. In the draft regs, we are requiring

that facilities keep records of the types and quantities of wastes handled, the manner in which they're handled, the amount and location where they're disposed. The draft regs require that facilities make reports to the permitting agency on manifest violations, accidents, operating conditions, and results of their environmental monitoring.

The draft regs will require that facilities have contingency plans to cover accidents, such as, fires, explosions, spills, and leaks. These will be emergency procedures which describe what to do in the event of an accident. For example, they will describe who shall be contacted, what kinds of remedial actions to start, evacuation procedures, et cetera.

The draft regs will require that facilities demonstrate their financial capability to cover possible accidents, closure costs and other liabilities. The exact form of this regulation has not been drafted but we are considering requirements for such things as bonds, liability insurance, trust funds, and insurance pools.

Thus far I've been discussing the mandatory standards. As I mentioned earlier, we also have operating and design recommendations. I'd like to discuss a couple of those next.

(one word)

For landfills over usable aquifers, we will recommend that they have one of two designs. One, that

they are constructed or located in an area with ten feet of natural soil of at least ten to the minus eight centimeters per second. The second design will recommend that where natural conditions are not adequate, we will recommend leachate collection. Now I said ten to the minus eight instead of 500 year containment as stated in the handout because the 500 year containment has created a lot of confusion. A lot of people have interpreted this to mean that we would be allowing pollution to occur after 500 years. This is not our intention and so we have changed our wording.

The design recommendations for landfills will cover many more details, such as, site location, suitable wastes, daily cover and many more, but due to time restrains, I don't have time to cover those.

The design recommendations for incinerators is one--is that they be operated at 1,000 degrees Centigrade and two seconds residence time and that they achieve a combustion efficiency of 99 percent.

I'd like to discuss next the unresolved issues. The first issue, as listed in the handout, is how should the detailed recommended procedures be promulgated? We have taken a position on this issue and the way we are proceeding is that the recommendations will be promulgated with the regulations to the extent possible.

Other detailed operating and design

1 procedures, such as, ones for state of the art technologies
2 will be published as EPA reports after promulgation.
3 The next issue is what level of financial
4 responsibility should be required? As mentioned earlier,
5 this issue has still not been resolved. It's a very diffi-
6 cult issue because there is very little damage case data on
7 which liabilities can be estimated. Also, it is difficult
8 to know the costs associated with long-term care since that
9 extends into the distant future.
10 The next issue is: Is it legal to
11 require zero discharge? This issue is based on the fact that
12 disposal as defined in the Act allows discharge, allows
13 leaking. Therefore, it may not be legal to require zero
14 discharge at disposal operations. Our counsel tells us we
15 can promulgate any kind of regulations which we can prove are
16 necessary for the protection of human health and the environ-
17 ment. However, we do not think that a zero discharge approach
18 is needed and it is not the approach we have taken in the
19 draft regulations.
20 The next issue and the last one listed
21 in the handout is should the air standard of the Occupational
22 Safety and Health Administration be adopted? This is a very
23 controversial issue both inside and outside of EPA. The
24 criticism against this approach is that the OSHA regulations
25 were designed for workers and primarily for indoor environ-

1 ments, and, therefore, they may not apply to this situation.
2 The supporting argument for adopting the regulations--the
3 OSHA regulations, is that that would establish air limits
4 for many more compounds than previously existed and thus
5 improve human health and environmental protection.
6 I'd like to briefly discuss one other
7 issue that's not on the handout but which came up at Rosslyn
8 and perhaps a few opening statements about it would help
9 solve some of the questions. The issue is: How should
10 waste water treatment plants that have ponds and lagoons
11 as part of their treatment terrain and which receive hazard-
12 ous wastes be regulated?
13 If the hazardous waste is trucked to
14 such a site, it's very likely that it would not be suffi-
15 ciently regulated under the MPES system, and, therefore, we
16 would want to regulate it. However, this is an issue we
17 have not resolved yet and we'll be studying further.
18 CHAIRMAN KOVALICK: Thank you, John.
19 While he's making his way up here, I'll
20 remind those of you who weren't with us this morning that we
21 do three things after each speaker. One is to take any
22 individual statements that you may have to make on that
23 specific section. Second is to take your written cards and
24 questions and respond to them. And then finally, the oral
25 questions from the floor. So all these gentlemen who are

1 standing have blank cards and/or are willing to take your
2 cards with your questions and bring them up here.
3 So is there anyone who wishes to make a
4 statement of Section 3004 regulations or this subject of
5 standards for facilities?
6 (No response.)
7 CHAIRMAN KOVALICK: All right. Seeing
8 none, we'll look for further questions which I see are flow-
9 ing in. While they're coming, let me introduce Howard Beard
10 who is assisting John in the development of these regulations,
11 among other people, and will be responding to questions as
12 well as John Schaum.
13 MR. SCHAUM: The first question I have
14 is: Who is supposed to accomplish the operator training for
15 a hazardous waste disposal site?
16 We have taken the position that this would
17 not be EPA. That EPA will not sponsor the training. So a
18 facility would have to look to a state or a private community
19 to find this training. Additionally, it could be conducted
20 in-house.
21 The next part of this question is: Is
22 anyone drafting such training material now?
23 Currently, I don't--as far as I know,
24 they are not. We have a contract which will put together a
25 training manual but that's like a year away from completion.

1 There are some training courses available currently that we
2 think would suffice in the meanwhile.
3 Explain views of how EPA will approve
4 the training.
5 The facility will have to make a report
6 to the permitting agency outlining the kind of training he
7 envisions for each of the employees at that facility and
8 show how it's connected to the work he does and how it's
9 important to the facility. And the permitting agency would
10 have to make the judgment whether it was adequate or not.
11 As I said, the one subject area we will absolutely require
12 is contingency plan training. We'll also recommend some
13 other subject areas, such as, waste handling, monitoring,
14 sampling, things like that, but will not require those.
15 Here's another training question: I
16 operate one small land fill site for dry bulk materials from
17 car cleaning. What type of training is required?
18 O.K. I would think the minimum, which
19 would be the contingency plan training.
20 MR. LINDSEY: Could you review the
21 definitions of storage and disposal? What is the criteria
22 for determining what a site is doing?
23 First of all, let me make it clear that
24 one does not get a different permit for treatment for
25 storage or for disposal. One gets a permit for doing

whatever it is he does at the facility and this will be a site specific kind of a permit. It is true, however, that certain standards under Section 3004 will relate to treatment facilities and certain to disposal facilities and certain to storage facilities.

Let me read from the Act briefly and then discuss briefly the difference between storage and disposal. This is from the Act: Disposal means the discharge deposits, injections, dumping, spilling, leaking, or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water. O.K.

So the disposal then, first of all, relates to land, into or on land. And it also carries with it implicitly the idea that some constituent of that waste is being released into the environment. That's disposal.

Treatment, on the other hand--if I can find it--excuse me, storage. When used in connection with hazardous wastes means the containment of hazardous wastes either on a temporary basis or for a period of years in such a manner as not to constitute disposal. Meaning then in such a manner so that no constituent thereof is released to the environment, land, ground (one word) water, surface water or air. That's the difference between storage and disposal.

1 Basically, the regulation which relates
2 to storage relates to regulations on the container of the
3 waste, tanks and things of that nature. Whereas, disposal
4 relates to limits and ways of doing things so as to limit
5 the release of materials to the environment.
6 Hopefully, that's helpful.
7 MR. SANJOUR: The question is: Is an
8 individual water treatment plant which treats mostly
9 water from chemical process areas plus some spills of con-
10 centrated chemicals be considered a disposal facility and
11 require a permit?
12 Well, let's presume, first of all, all
13 the materials that you're talking about are hazardous under
14 the 3001 criteria. Then if these materials enter the plant
15 by pipe and the waste treatment plant has an MPES permit,
16 then the answer is probably not. And if any of these
17 materials come to the plant by truck or some other means
18 other than a pipe, then very likely that would be considered
19 a hazardous waste disposal facility.
20 The law specifically prohibits our
21 regulating discharges already regulated by MPES. The only
22 area of ambiguity which we've not yet resolved ourselves are
23 lagoons associated with such treatment facilities, whether
24 or not those lagoons would be considered hazardous waste
25 disposal facilities. And we're still studying that issue.

1 We don't have an answer for it.

2 The next question is: What position does

3 EPA air program take on the last unresolved issue?

4 They are adamantly opposed to our posi-

5 tion.

6 MR. BEARD: They're working with us.

7 CHAIRMAN KOVALICK: I think it's fair

8 to say that we do meet continuously on this issue with the

9 air program and we do have different points of view. And,

10 obviously, there will have to be a resolution where are two

11 organizations are to meet in the agency.

12 MR. SANJOUR: What position does OSHA

13 take?

14 OSHA doesn't take any position. I'm

15 not sure that we've talked to OSHA. Have we?

16 MR. BEARD: Yeah, we've talked to OSHA.

17 MR. SANJOUR: Do they have any position

18 on it?

19 MR. BEARD: They said they wouldn't be

20 opposed. Maybe I should answer this question. Can I take

21 this out of turn? It relates to the air standard of OSHA.

22 On what criteria has the air ambient

23 concentration of one over ten of OSHA air regulations? Did

24 we understand that this will be written so that it could be

25 changed at a later date to a factor of one over twenty, one

1 over thirty, et cetera?

2 The air branch, in part, takes the posi-
3 tion of using the best practical technology. We've asked
4 them how does one justify performance standards based on
5 best technology approach to protect public health and
6 environment alone, without any other ambience or the type
7 of standards that are directly related to protection of
8 public health as opposed to best technology which may not
9 actually have a biological connection, if you will.

10 We think that you have to have best
11 practical technology. We're certainly not opposed to it. As
12 a matter of fact, that's what we talking about in terms of
13 the recommendations. If you follow the recommended procedure,
14 then you will get a permit. We hope that this will control
15 air pollutants.

16 As far as the OSHA divided by ten, why
17 divided by ten, as you know the OSHA standards are for
18 workers. We feel that an order of magnitude from the OSHA
19 standards will be more protective on a 24-hour basis for
20 all humans as opposed to workers who do not cover the
21 extreme for those people who are more susceptible to the
22 effects of air pollutants, the young and very old.

23 We didn't feel that OSHA alone was
24 appropriate. We wanted, however, a stipulation that it be
25 one over twenty or one over thirty because--somebody asked--

the question here was: Do I understand it can be changed? We wanted that stipulation. Nothing is better than a pollutant by pollutant analysis. We would certainly favor that. In 18 months, one can't do that. We want to adopt those standards that we can that are appropriate. And one over ten is a beginning. And for those pollutants that require a different factor, especially those pollutants for which OSHA is more recently reviewing and will be bringing their particulars down, we would want a different factor.

MR. SANJOUR: I think Howard is being a little bit modest. That one over ten is actually an industry consensus standard.

MR. BEARD: Yes. I should also bring up the fact that there is a precedent. The ventilation for use in the standard ASHRAE ~~(phonetic)~~, Standard 6273, which is natural mechanical ventilation, defines that air for ventilation use is one over ten. Actually, it recommends that ACGIH TLV divided by ten. And, of course, these standards, the TLV, were what became the OSHA standards at a later time.

MR. SANJOUR: Let me answer the next question: Will the design and operational standards be rigid engineering standards or flexible performance standards? If rigid engineering standards are used and something goes wrong, who is going to bear responsibility for the air?

1 Well, this is a little bit of a beating
2 your wife question. I don't know why engineering standards
3 are rigid and performance standards are flexible. Let me
4 drop the words performance standards, drop the words rigid
5 and flexible, and substitute the words emission standards.
6 Now for the gentleman who asked the question, the way we're
7 writing these regulations, you will have your choice, you
8 will decide whether you want to follow an engineering stand-
9 ard that is a design or operating standard or an emission
10 standard. The choice is yours to make. And you will apply
11 for a permit to follow one of those two kinds of standards.
12 And we will give you a permit in either case. We have pro-
13 cedures set up for either, going either way.
14 If you choose to follow the design and
15 operating standard, there'd probably be much less work for
16 you in applying for a permit since we will provide the
17 engineering standards that have to be followed. So you don't
18 have to do the research to justify those standards. We will
19 justify them in advance if you like.
20 But on the other hand, if you're going to
21 follow the standard we recommend, you're going to have to
22 follow it and it's rigid in that sense. And if, in fact,
23 we provide a design and operating which you adopt and we
24 issue a permit based on that and it turns out to be in error
25 in that it does not protect the environment that we

anticipated it would, then we, EPA, is in error. But you, holding the permit, will have to have your permit revoked because the bottom line is that you have certain criteria to protect the environment and that's the bottom line. So although you'd be in no legal jeopardy so far as punishment goes, nevertheless, we would have to readjust the permit if it turned out to be in error.

The next question is: Who would test and license the operators on hazardous waste sites, that is, state or fed, if the states assume--are we talking about a permit? If we're talking about a permit, then the state or fed, whoever has the program. As for training--

CHAIRMAN KOVALICK: It's a training question.

MR. SANJOUR: If the question relates to training, then neither. However, when you apply for a permit you will have to demonstrate that full, adequate, unquote, training is being provided for. And that would be a judgmental question on the basis of the permit granting official, whether or not he felt that training for the facility was adequate.

CHAIRMAN KOVALICK: I might add, I think a state could have an approved program and could on its own side have a certification, but that would be up to them.

MR. SANJOUR: Next question: Aquifer

water does not meet interim safe drinking water standards, is this usable aquifer?

Yes, in the way that the regs are defined. The way that works is if one or more parameters exceeds the drinking water limits, then essentially you cannot degrade the ground (one word) water so far as the parameter is concerned at all because that would require additional treatment. You could, however, degrade both parameters which are below the drinking water standards, at least up to the drinking water standards. And what's that, 10,000?

CHAIRMAN KOVALICK: 10,000.

MR. SANJOUR: 10,000 parts per minute.

The next question is: Why not consider direction of groundwater flow at landfills as well as permeability?

I don't really understand the question. We are going to consider the direction of the groundwater flow. Perhaps during the period of oral questions, the gentleman who asked this can elaborate on it.

The next question, which also I don't understand: Under reports of manifest violations, et cetera, what is meant by operating conditions? Do you know that one?

CHAIRMAN KOVALICK: No.

MR. SANJOUR: The gentleman who asked that can perhaps elaborate on it later.

1 CHAIRMAN KOVALICK: I have several here,
2 not all related specifically to 3004. As a generator,
3 transporter and destruction site operator of company wastes
4 on company property, even though one site is 17 miles from
5 the destruction site, will all three sections be necessary
6 and apply to our operations?
7 If I may interpret this, I understand
8 that this company generates wastes, has their own trucks,
9 hauls some to contiguous sites and at least one case they
10 haul away 17 miles to their own site. And this questioner
11 wants to know, do all sections that pertain to generators,
12 transporters and disposers affect him? The basic answer is
13 yes.
14 Must all three of these areas within the
15 company keep records?
16 Well, areas--I presume he means the plant
17 itself, versus a separate transport section, versus an
18 operator of a centralized treatment facility. But the basic
19 registrant or the basic notifier is that company. So we're
20 talking about that company keeping a record of the waste it
21 generates. A company would not have to fill a report out on
22 the waste it generates because it's doing its own disposal.
23 And, therefore, there would be a disposal report from that
24 company.
25 So I guess the basic answer to your

1 question is yes. And I think you're trying to get at whether
2 you'd have to send an EPA report on the waste you ship and
3 an EPA report on the waste you accept. And since you're
4 sending them to yourself, we'll try and not have that happen.
5 If the owner or operator of a treatment,
6 storage, or disposal facility reports a manifest violation--
7 by that I presume he means something is haywire with the
8 waste he's accepted and he does something incorrect--or an
9 accident is reported, as John was suggesting, what enforce-
10 ment action is EPA required to take?
11 Well, for the bottom line from this, if
12 you look again at the enforcement section in 3008, the
13 criminal act--one of the criminal acts is to falsify a
14 report or falsify a record. So that is the highest penalty
15 and the worst thing--one of the worst things you can do.
16 Whereas, giving the report, as this question suggests, would
17 put you in one of two areas, it seems to me. One of which
18 you probably would be involved with the EPA spill regulations
19 under the Water Pollution and Control Act.
20 As you may know, they are soon going to
21 propose hazardous spill--repropose spill regulations as
22 opposed to the current oil spill regulations. So you would
23 have the basic responsibilities under that statute.
24 If there were other problems which you
25 reported on yourself, then the basic civil process in the

enforcement section takes effect. This is not thoroughly worked out, but basically it's cause for EPA to give you a compliance order to make appropriate changes. So unless--our policy is still evolving on this, of course. And there would be an evolution of civil penalties over time. But one would hope that as we develop the compliance order process for the civil violations, like an accident or a spill, that at least the first account of that could be remedied with a compliance order whereby you guarantee to provide some training or some additional protections. And it's only the second and subsequent violations where you get into a civil penalty schedule that goes up by the number of violations.

So I think the key here is that the worst thing you can do is not say anything because then you've created a criminal act, as opposed to saying something and you lessen your exposure.

From discussion earlier today, it would appear that any livestock operation, including a farmer, would have to report as a generator, as a transporter and as an operator of a disposal facility anytime he cleaned out the barn, the lagoon or household ceptic system. Assuming that such wastes meet the criteria and characteristics. Is this correct?

We've had the problem of the small farmer brought to our attention. We thought about it, of course,

1 plus it has been brought to our attention in Rosslyn. And
2 you have not heard much discussion of it because we're still
3 trying to analyze how to differentiate him from an agri-
4 business operation which uses hundreds of cans of pesticides
5 and other kinds of things that we would consider to be in
6 the hazardous waste potential category.
7 So one thing I can clarify is that
8 household septic tank pumpings are going to, we hope,
9 receive the same kind of exemption, if you will, that house-
10 hold trash and garbage is. So in that sense, the farmer is
11 not in the system at all.
12 We are open, I might add, for suggestions
13 on ways in which we can characterize the farmer, that is,
14 the individual farmer who has a seasonal use of pesticides
15 which probably would be his basic hazardous waste and the
16 containers. We do have some damage cases that demonstrate
17 that the irresponsible disposal of those containers is an
18 environmental problem and we don't want to let them completely
19 out of the system, especially in things like aerial appli-
20 cators of pesticides, for example.
21 Who will insure that truck drivers are
22 trained in proper actions during a spill incident because of
23 a wreck, malfunction of equipment, et cetera?
24 My understanding is that the Department
25 of Transportation has made an effort over time to inform

their constituents, which are the regulated transporters, about the incidents reporting requirements that are already in existence for hazardous materials. And likewise, I believe EPA will have, when the hazardous material spill regulations, which I mentioned under the Water Pollution Control Act, are finalized over the next six or eight months, we will also have some obligations to provide at least information materials.

But as far as the actual training at this moment, the only answer to that is that the trucking firms themselves or the transporters themselves are going to have to get information, which we have available and which the spill office in EPA has available on how to deal with spill materials. Some of you I know because you're involved in it, are familiar with the ~~HEMTRICK (phonetic)~~ Chemtrec system operated by the Manufacturing Chemists' Association. Similarly, the EPA operates a computerized system called ~~CHM, O H M, Tabs, T a b s,~~ OHMTADS, and that has information in it on how to deal with spills.

So at the moment, it's the obligation of the transporter himself.

Howard.

MR. BEARD: Some portions of municipal land (one word) fills have been designated as hazardous waste disposal locations. Will EPA permit this land fill for hazardous

waste disposal if it meets EPA requirements?

Yes, is the answer.

The second part is: And if the landfill doesn't meet requirements, will it be closed for future hazardous waste disposal?

The answer is yes also.

And if the landfill doesn't meet requirements, will it be closed for future hazardous waste disposal? I think it can be either upgraded or it could be closed to hazardous waste disposal.

MR. SCHAUM: Will disposal sites require monitoring or maintenance for certain number of years or will these services be ended after some criteria for environmental acceptability are met?

This brings up an issue that we haven't completely resolved yet. We know that we want facilities to be secured in a manner that does not constitute a threat to public health and environment after they're closed. And we know we want monitoring at sites where wastes will remain at the site after they're closed. Sites that can be cleaned up, such as, treatment facilities, incineration facilities, for example, would only have to remove all wastes and decontaminate the equipment and then would not need any future monitoring.

But sites that have land fills or any

1 site where a waste will remain will need some kind of monitor-
2 ing to check that it's not leaking at a harmful rate. Now
3 as to how many numbers of years this will be required or if
4 there's some criteria that we can identify after which
5 monitoring will not be needed, we don't know at this point.
6 If someone has suggestions--right now, we don't know how--
7 right now, it's open ended.
8 The only way we know to do it is to
9 require monitoring forever. And if someone knows of a way
10 that we can safely say you don't need monitoring after this
11 point. we'd love to have that suggestion.
12 What reporting to EPA will be required
13 for on-site storage?
14 O.K. The kinds of reports that would be
15 required would be the amount, the types of waste and the
16 manner in which they're handled, reports of their environ-
17 mental monitoring, and the reports of any accidents which
18 may occur.
19 I've got a number of questions about the
20 ten feet and ten to minus eight business. The first one is:
21 How did you, EPA, come up with ten to the minus eight centi-
22 meters as a standard? That's about five feet in 500 years.
23 Ten to the minus six to ten to the minus seven might be more
24 realistic.
25 O.K. We need to identify some kind of a

design standard for land fills. And we looked over damage cases and looked over the existing state regulations and we have found no site at which pollution has occurred at one with natural conditions of ten feet and ten to the minus eight centimeters per second. And we have found precedent in the State of Illinois recommending that those kinds of design requirements. So that is what we are now recommending.

However, remember that this is only a recommendation. And that any facility you can prove that an alternative to this is O.K., is protective of the human health and environment, would also be allowed. We tried to write this in a manner that would allow as much design flexibility as possible. So bear in mind, it is only a recommendation.

You said you dropped the term 500 year containment because it implies allowing pollution after 500 years. What terms do you now use?

O.K. Now, instead of 500 year containment, we are using the ten feet and ten to the minus eight. It's a wording thing. They're essentially equal.

Will ten feet of ten to the minus eight centimeters per second soil or leachate collection be required without any regard to other geological or ground (one word) water conditions?

No. There are other details in our

landfill
~~fill~~ design recommendations, as I said. There are a number on location. For example, they should not be located over active faults. They should be out of the 100 year flood plains. Not near wet lands, that kind of thing. So these regs in this area are not complete either. There will be more than just the ten feet and ten to the minus eight.

Are you differentiating between ground-water and aquifer or are the terms being used interchangeably?

Right now we are using them interchangeably. I'll read you the definition that we are using right now for ground water: Water beneath the land surface in a saturated zone that is under atmospheric or artisian pressure. Now the authors note: Ground water will not include unsaturated--the unsaturated zone--or would include the unsaturated zone. And the way we are defining it now, it would not.

If the storage tank is continuously being filled and emptied but partially filled most of the time, does it require a permit after 90 days of operation?

The answer will be yes.

CHAIRMAN KOVALICK: The answer is basically yes. And the way that we would know that the amounts moving in and out of the tank is by the manifest and the records of that particular generator. In other words, there would be generator records for the waste you produce

which would be inflow or some of the inflow to that tank. And then there would be the manifest, presuming they are shipped somewhere from that tank. And so basically it is a storage tank and would be used--and we would have cognizance over incoming and outgoing.

MR. SCHAUM: A couple more. In the summary, the following is on the second page of 3004: Reports of manifest violations, accidents, operating conditions and monitoring.

O.K. I'm sorry there's been some confusion about this. The question is: What were you referring to as far as the operating conditions go?

In the--well, the best example I can think of is: We are recommending that incinerators operate at 1,000 degrees in two seconds residence time. This would end up in the permit. And we would require that facility report that they are maintaining the operating conditions specified in the permit.

O.K., I hope that clears it up.

One more: Are explosives and explosive devices, as defined by CFR 49, considered hazardous wastes?

Yes. If they are a waste and they are explosive, they would be considered a hazardous waste.

If so, are they subject to Public Law 94580 criteria for disposal as well as other regulations

applicable to explosives?

Yes.

CHAIRMAN KOVALICK: Well, I speculate that the concern may be that one of the few technologies available for disposing of explosives is open burning and maybe this person wants to know whether you can open burn explosives under RCRA.

MR. SCHAUM: O.K. We are recommending that no waste be open burned. But as I explained our recommendations before, if you can prove that it can be done safely, you're allowed to do it. If you do want to open burn explosives and you can prove it can be done safely, you'd be allowed to do it. But we would recommend against it.

MR. BEARD: It comes down to a case-by-case basis.

MR. LINDSEY: I have several here, some rather quick and others rather extensive. Sewage, sludge and feed lot wastes are often used in reclamation of the mining lands. Will this require a permit and reporting, assuming the sludge or waste meet one or more of the criteria of hazardous waste?

I'm not real sure your assumption will hold, that is, that most or all of the sludges will meet the criteria. But if they do, the answer is yes.

Do you feel there will be an adequate

1 number of hazardous waste facilities operating in the U.S.A.
2 to handle the increased volume of hazardous wastes regulated
3 under RCRA?
4 This is a--we loose a lot of sleep over
5 this question. Studies which we have done show that there is
6 probably not enough capacity now, as of this time, that would
7 be permittable, that would meet all the criteria and so on
8 that we're going to come up with. At this point, probably
9 not enough of that capacity to handle all the hazardous
10 wastes that are probably going to be generated.
11 Those same studies, however, showed when
12 we made them that if--the basic problem is the profitability
13 of that particular industry, one of having to compete with
14 the substandard operations, things of that nature. Our
15 position on this has been tempered somewhat. The question
16 is, really, how quickly can this industry expand to handle
17 the increased added volume--burden, assuming then that we do
18 eliminate the unsatisfactory competition. In other words,
19 make it so that these kinds of facilities can make a reason-
20 able return on their investment.
21 There are really two problems here as we
22 see it. One is the availability of capital. In that par-
23 ticular situation, the regulations should improve that situa-
24 tion because, first of all, it will improve the profitability
25 of the existing facility. And as such, it should make

capital more readily available.

Secondly, the act of granting a permit by EPA will be and is viewed by the public as granting to that facility a certificate of health, if you will, a clean bill of health. The public will view this as being an evaluation by EPA of the potential health hazard associated with the facility and our finding that facility to be clean. That may help also.

The second problem, in addition to capital availability is the problem of citizen opposition and this is potentially more of a problem, I think, from those who have been involved with siting of waste management facilities. Even for perfectly acceptable facilities, it's a serious problem. The local people simply don't want these facilities anywhere near them.

Again, the fact of our granting a permit to these facilities will be viewed by the public as a certification by EPA of the ability of this facility to operate without a major problem.

I'm not sure, other than by way of granting the permit and trying to grant the permit in such a way as to protect public health and the environment, how we can impact the latter problem. If anybody has any ideas on that, we've been asking for those kinds of ideas for quite a while. What can EPA do to impact the problem. We're not even sure,

1 really, what the long-term extent of the problem will be.
2 How difficult is this going to be to overcome local opposi-
3 tion or to site these facilities in areas where local opposi-
4 tion is not a problem. We're not really sure of that.
5 There is within the Act a provision for
6 the granting of interim permits, and we'll cover all of this
7 tomorrow. And the provision was put in the Act primarily to
8 allow EPA time to address the 20,000 or so permit applica-
9 tions that we expect to get. Basically, to get an interim
10 permit--and I don't want to go into this in depth--but the
11 criteria is a simple one. All you have to do is notify EPA
12 that you're in the business, and, secondly, have made an
13 application for a permit. And having done both of those
14 things, you're deemed to have had a permit without EPA doing
15 anything further.
16 Well, in terms of proceeding to evaluate
17 these 20,000 or so applications that we will be getting or
18 maybe something less than that, we will be judiciously look-
19 ing at those in such a manner so that we'll be analyzing them
20 with cognizance of the availability of suitable alternative
21 capacities.
22 There's also another provision that's
23 now written in the Act where a temporary permit for facilities
24 which do not pose an imminent hazard but for some reason or
25 another cannot possibly meet all the standards. For example,

they may be located in an area where we would not recognize a fully permitted facility to be. And as such, if they happen to be in that kind of an area but they don't pose an imminent hazard, and on the other hand they're also in an area where there's no suitable alternative, we have a provision for granting a temporary permit for a specified period of time so that the facility owner and the people who use that facility will have a reasonable length of time to find a suitable alternative without having to resort to dumping materials in fields and so forth, which would be a catastrophe.

So I guess in summary--that's a long winded explanation of a rather complicated problem. And the answer is that we don't really know. We feel there will be a short fall of capacity in the beginning. But, however, the provisions for interim permits will likely allow us to continue operating as we have been for some period of time. The ability of the industry to respond and how long that's going to take, given the two basic problems of capital availability and public opposition, is not clear.

And we're studying that. And if anybody has any ideas on that, we'd be glad to have them.

Next question: Are there any plans to require a state to provide perpetual care for burial areas of a hazardous chemical disposal facility within their

1 border as has been done with nuclear sites?

2 The answer to that is no, in the sense

3 that we will not be requiring states to do that. A state

4 could do that, choose to do that, and still have their pro-

5 grams authorized if they chose to. There will, however, be

6 a requirance for perpetual care facilities--and I think John

7 touched on them and maybe he'd want to talk about them a

8 little more later--on the owners of such sites.

9 Please explain the type of regulation

10 and permits required of a rerefiner of used oil which pro-

11 duces no waste whatsoever in the rerefining process.

12 We'll be getting into this more tomorrow

13 under Section 3005.

14 MR. SANJOUR: That same process.

15 MR. LINDSEY: Yeah, sure, we'd like to

16 see more of that. Basically, such a facility would be a

17 treatment facility but it would be a product recovery

18 facility and as such would be eligible for a special kind of

19 permit which we'll be discussing in some more detail tomorrow.

20 This kind of permit will be very simple to obtain.

21 On the other hand, you say generates no

22 waste whatever. If he were to generate waste, the sludge or

23 whatever it is that he generated, if it were hazardous, he

24 would be treated like any other generator. In other words,

25 if he generated a sludge that is as a byproduct of this

1 refining operation, which in this case the person who
2 asked the question said it does not occur, but if it did, he
3 would be treated as a generator. And if he disposed of it
4 on-site, he wouldn't need a permit. If he shipped it off,
5 he'd have to start the manifest system and that kind of
6 thing.
7 We had a couple of other questions which
8 related to the liability issue and I'd like to introduce
9 Mike Shannon, who is the program manager within our office
10 for policy analysis and an economist who has been working
11 in this particular area. And while that particular area of
12 concern is less well developed. We haven't developed the
13 regulations to the extent that we have many of the others,
14 he may be able to give you some preliminary ideas in this
15 area.
16 Mike, why don't you take the next couple
17 of questions.
18 MR. SHANNON: I have two cards. The
19 first card there are two questions and it says: What options
20 are you considering regarding the financial responsibility?
21 The options that are available to us and
22 are likely to be considered are several. The first one would
23 be evidence of liability insurance by a facility. That is
24 evidence of liability insurance for both sudden and non-
25 sudden accidents.

1 The second alternative would be some kind
2 of mutual fund providing financial protection that would be
3 administered by a state or possibily an industrial associa-
4 tions, for example, completely, you know, unresolved at this
5 point.
6 Self-insurance by a facility, evidence of
7 self-insurance, would be another alternative or other evi-
8 dence of financial responsibility that a facility could prove,
9 such as, a surety bond, for example.
10 There's another question that goes a
11 step further regarding financial responsibility that asks:
12 Has EPA considered a suggested amount for financial
13 capability?
14 We have conducted research that would
15 indicate from other requirements of other media, environ-
16 mental media requirements, and areas of special risks to
17 product liability, that the requirement could be something
18 along the lines of requirements for insurance that would be
19 equal to twice the amount of revenue generated by a particu-
20 lar facility. Or up to a maximum of "X" amount of dollars,
21 let's say, 50 million dollars or 75 million dollars. Obvi-
22 ously, twice the amount of revenue generated by a facility
23 could be, you know, in the billions of dollars. So that's
24 why you have the alternative of a cut-off at a figure that
25 might reasonably reflect the amount of liability to be

1 incurred by a liability.

2 The next question is: Is the require-
3 ment of financial capability to cover possible accidents and
4 closure costs going to include a performance bond?

5 The law actually deals with a number of
6 requirements in the overall area of financial capability.
7 One is the financial responsibility. And that we've been
8 interpreting to include or to cover requirements for pro-
9 tecting the public or facility in the event of a liability
10 suit, for instance, in case of an accident.

11 But when it comes to closure costs, we're
12 really talking about the requirements that deal with the
13 continuity of operation of a facility, which is another
14 requirement, another area for which the standard is required
15 in 3004. You're dealing with a situation that liability
16 insurance does not cover. You're dealing with something
17 where a situation you know is likely to occur. It's not
18 an accidental situation. We know that there will be
19 facilities that will be abandoned, for instance.

20 In the things that we're thinking about
21 there, to provide for continuity of operation mainly. Closure
22 assurance would be the requirement for things like a per-
23 petual care fee where facilities would contribute on a bio-
24 metric basis based on the volume they received to a fund
25 maintained for that specific facility or maintained on a

statewide basis, for example.

Or another possibility would be the posting of a performance bond either through cash or surety.

But as to what kind of detail in depth we would go on the financial responsibility, continuity of operation and ownership requirements, we have done research but at this point the options haven't even been debated by our internal working group. We're probably further behind in that area than any other standards primarily because it is a complex area which we have not done a lot of research up to this point.

CHAIRMAN KOVALICK: Thank you, Mike.

Bill.

MR. SANJOUR: Would holding a hazardous sludge in MPES permitted waste water treatment facility to accumulate a truck load be considered storage under Section 3004?

Well, it would be either storage or disposal and that decision would be based on whether or not it's in a safe compartment. And let me remind you that in any event the generator of a hazardous waste is given a 90 day exemption from having to have a permit for storage. He still has to comply with the regulations. And that would apply to sludges.

The next question is: How difficult will

it be to obtain a permit for refinery sludges assuming they are determined to be hazardous?

Well, let me add two other assumings to that. Assuming it is biodegradable and assuming you don't intend to grow these things on the land, then I think it would be very easy to get a permit. If those other two assumings aren't there, then it becomes hard. It depends on the actual circumstances of the case.

I have one more question here that begins: I don't think the emptying storage tank is a simple yes or no answer, and then proceeds to go into some long calculations about why it isn't. And if the purpose of this question is to determine whether or not this facility would meet the 90 day exemption or not, then I think it's a much too detailed question to be answered at this forum.

MR. LINDSEY: A couple of questions or maybe they're really comments about public participation and public opinion and the effect it has on these kind of facilities that I think we're already sensitized to but we'll address them anyway.

One question says: Do you think a company is willing to invest over $100,000 on a proposed site and then run the risk of having to shut down because of opinion?

I submit that this happens occasionally

1 now, the way I understand it. I presume that the point of
2 making this statement would be that a company would not be
3 spending $100,000 or so that may be required to obtain
4 information on a given site for purposes of obtaining a
5 permit from EPA if they had not first determined whether or
6 not the local climate for siting of such a facility were
7 included. I would, of course, agree with that. I think if
8 I were planning to site such a facility, the first thing I
9 would do--one of the first things, in addition to finding
10 out whether the site were environmentally and technically
11 satisfactory as well as marketable, within a marketable area,
12 would be to find out whether the local opposition or the
13 local climate were of such a nature as to permit such a site
14 to be put in.
15 Another question, and I'm not sure I
16 understand this. Perhaps the person--I think I'll read into
17 it what it says and then perhaps the person--if I don't read
18 it correctly, perhaps that person can give us another ques-
19 tion. Do you think that any company is dumb enough to try
20 to get a permit in view of the last 20 pages of Section
21 3005?
22 My first situation is this, first of all,
23 the last 20 pages of what? Of that I'm not quite sure.
24 Section 3005 is not in draft form that has been distributed.
25 And so I don't know what you're referring to precisely.

1 We have some internal kinds of working documents. The last
2 20 pages of the last part of that would have to do, I think,
3 with the public participation aspect of the permit granting
4 process and which are placed on us by the regulations which
5 have already been proposed under Section 7003, I believe it
6 is, of the Act, which basically requires that there be a
7 public hearing.
8 If the person who wrote this is objecting
9 to the fact that a public hearing will in all probability
10 be required under Section 3005, all I can say is that the
11 public participation aspects of the Act require that, number
12 one. And number two, I don't think there's any way you're
13 going to site a hazardous waste facility without the public
14 being given a chance to address it. If you do, I think
15 you'd be in a great deal of difficulty.
16 But if that's not what the person is
17 referring to, then I'd be willing to take another question.
18 CHAIRMAN KOVALICK: John.
19 MR. SCHAUM: Another ten to a minus eight
20 question. There are low permeability clays ten to the minus
21 six to ten to minus eight. That's just a comment. Then he
22 asks: Have you checked nationwide distribution and avail-
23 ability of extreme ten to the minus eight centimeters per
24 second material?
25 We have a contract supporting us in this

area and they are working on that but it's not completed. I'd like to remind though, that whoever is asking that question that, remember, this regulation as written, it would allow someone to do--use different clays or leachate collection system if they can--a leachate collection system would almost always be considered adequate. But lower permeability clays may also be considered adequate if they can prove it meets our ground water objectives.

How firm is the flood plain and wet land limitation? What if this is the only available land for on-site disposal?

Again, the flood plain, the 100 year flood plain, and wet land recommendations are only recommendations. In other words, we're recommending that sites not be --be not located in these areas. But if they can be engineered against, then that would be allowed. Again, they would have to demonstrate the adequacy of that design.

If a disposal site is located such that the ten feet of soil--O.K. If a disposal site is located such that the ten feet of soil of ten to minus eight centimeters per second is not met, is leachate collection required for both vertical and horizontal seepage?

Yes, that would be required. Leachate collection must stop both vertical and horizontal leaking.

You gave us the definition of ground

water. How do you define aquifer?

They would be the same. We're using them as synonyms. I can't see offhand a reason to distinguish between them. Maybe you have further comments on that.

MR. BEARD: Are you recommending that all hazardous wastes be incinerated above a thousand degrees C or only certain hazardous wastes be burned at this temperatures?

No, I am not recommending that all hazardous wastes be burned at a thousand degrees in two seconds. Generally, only organics are amenable to incineration. We're certainly not going to tell owners and operators of facilities how to dispose, treat or store. But the recommendation that we have written that you've seen is in short form and we apologize. It just says a thousand degrees in two seconds.

The way we have it at present is that we recommend that you use a thousand degrees in two seconds or an equivalent. And that's been subject to controversy often because it -- people first react just to the thousand degrees in two seconds. The equivalent allows someone to come and show us, for one, that perhaps a better technology is appropriate and they can demonstrate that it is. For one, we have data that demonstrates that some incinerators at lower temperatures for certain wastes and different retention

1 times are going to do just fine. We have the data and you
2 might have the data.
3 So the equivalency will either be data
4 that we have on hand. Or it might be that we might have to
5 require a test burn. It depends on the particular technology
6 that you're proposing. Our familiarity, though, at the
7 moment is a thousand degrees in two seconds. We don't know
8 what temperature and retention time for fluidized bed, for
9 instance, would be appropriate. We don't think that they'll
10 burn all hazardous wastes.
11 This equivalency also would be appropriate
12 for those wastes that will--the equivalency in combustion
13 efficiency, I should say, to a thousand degrees in two
14 seconds, would apply to hazardous wastes that are going to
15 destruct at lower temperatures and retention times, so that
16 if you can destruct them at these lower temperatures and
17 retention times, you wouldn't have to waste fuel.
18 The second question or another question:
19 Are on-site thermal oxidizers permitted through air pollution
20 laws and whose scrubber waters are controlled by MPES permit
21 controlled by RCRA?
22 Yes, we have a requirement to coordinate
23 with the Clean Air Act. But there's nothing in the Clean
24 Air Act that will conflict with RCRA in this regard. Because,
25 firstly, limits under the Clean Air Act are first enforced.

1 And then the OSHA divided by ten.

2 I don't know if that answers that

3 person's particular question. Maybe you might want to--

4 you might want me to elaborate.

5 CHAIRMAN KOVALICK: I have one. Are you

6 considering phosphates and all commercial fertilizers con-

7 taining phosphores as potential hazardous wastes because

8 some contain as much as 256 parts per million of phosphores,

9 I presume.

10 Well, this is a question that could be

11 asked: Are we considering gasoline to be a hazardous waste

12 because it's flammable under 140 degrees F. The point is, is

13 it a waste? I would not call either of these things in

14 commercial channels; they are not wastes. They are shipped

15 and used as hazardous materials and we're talking about

16 things that become wastes. So the basic answer is no.

17 If you want more elaboration, all I can

18 say is if you had a bad batch of a fertilizer and you were

19 going to discard it, then it could be a waste.

20 Fred.

21 MR. LINDSEY: First of all, I should

22 mention that I've gotten one or two questions that deal with

23 Section 3006 guidelines on states and state guidelines for

24 authorization of state programs and we will deal with them

25 tomorrow.

1 If a company's entire feed stream is a
2 hazardous waste, but such company produces useful and usable
3 product without producing any other waste, will such company's
4 product be subject to regulation or have the stigma of being
5 a waste subject to regulation by the EPA?
6 We're still developing that. But I'll
7 give you our position as it stands now and we're subject to
8 comment on this. First of all, let me say that if you can
9 remember back in the discussion on Section 3001, if nationally
10 no major portion, that is, something more than five percent
11 of the waste--not more than five percent of the waste
12 material on a national basis is discarded, in other words,
13 essentially all of this kind of material nationwide is
14 recycled into some usable product, then it is not a waste.
15 O.K.
16 On the other hand, if that's not true
17 and it's simply normally a waste material or frequently a
18 waste material, which in this particular case, is being used
19 as a feedstock by some other company, then there'll be a
20 determination made. First of all, if that facility, the
21 company that's reprocessing the waste, recovers the original
22 product, it will be deemed a product recovery facility and
23 subject to obtaining a product recovery type of permit. This
24 is a special kind of permit that will be addressed tomorrow.
25 And that would be a much, much easier kind of permit to

obtain and keep.

If they're going to recover another product, our thinking is that we'll handle that on a case by case basis depending on what the use of that product is. If they're going to go out and dump it on somebody's horse arena someplace, and it represents a hazardous material or a hazardous waste in that sense, then our thinking is that we'll continue to regulate that and that that particular usage will require a permit.

In the case that it's going to be a product, either it's not hazardous, first of all, or you were to enter commerce as another type of a product so there's no particular kind of long-term disposal sort of hazard, like dumping it on a horse arena or a road, then we would not require that particular operation to have a permit.

That's our thinking as of this point. And we'd be interested in any suggestions or comments you might have on that.

CHAIRMAN KOVALICK: John.

MR. SCHAUM: I have a question that reads: After you collect the leachate, do you now re-enter the regulatory cycle as a generator?

Well, if this collected leachate is a hazardous waste, which is likely, and if the collected leachate is being discharged from the site in a manner not

1 permitted under the MPES system, then you would become a
2 generator.
3 CHAIRMAN KOVALICK: Bill.
4 MR. SANJOUR: This is the last one of the
5 night, this one. If a company has an old sludge or tar pit,
6 possibly covered over by dirt and vegetation and the material
7 is hazardous, what will the company be required to do? If
8 monitoring is required and if leaking of hazardous material
9 is discovered, what will then be required?
10 Well, this is, if you like, a logical
11 extension of the questions that were asked earlier on this
12 subject of old sites. I think it's best to put the whole
13 situation--just tell you exactly where we stand on the
14 situation. When this law was passed, we in EPA did not read
15 the law as applying to waste generated before the passage of
16 the Act but only wastes generated subsequent to the Act or
17 even subsequent to the writing of the regulations.
18 Very recently we got an oral opinion
19 from a representative of the General Counsel's office which
20 said that there's nothing in the Act that makes any refer-
21 ence one way or the other about when the wastes were
22 generated. So that there's no distinction made in the Act
23 between wastes generated before the passage or after the
24 passage. Now that was an oral opinion by a member of the
25 General Counsel's office, which means that it's still a very

1 unofficial status.

2 However, if that opinion stands, after
3 having been looked at hard, comes down in writing and holds
4 up, taken to its logical extension, the old sites would have
5 to be regulated the same way as any other site. Now we
6 recognize that the logical extension there is a radical,
7 far-reaching, has tremendous impact on American industry.
8 In fact, I think if it stands up, it's back to the old draw-
9 ing board. We have to throw the whole problem back into the
10 lap of Congress is my personal opinion because I don't think
11 we're equipped to handle that kind of problem.

12 But all I can tell you, that is where
13 matters stand right now. We're waiting for subsequent
14 clarification and edification of the whole subject. And I
15 would strongly urge you, if you have any opinions on the
16 subject, to send your letters in.

17 CHAIRMAN KOVALICK: We have used all of
18 our written questions. I'd like to give you a chance to ask
19 oral questions. Let me remind you, first of all though, if
20 you haven't registered today, we'd appreciate it if you
21 would. The benefit you get out of that is that we would put
22 you on our mailing list and you would at least be notified
23 when we do mass mailings of the Federal Register and other
24 proposed rules. So please do register if you have not
25 already.

1 Does anyone have questions now orally on
2 what you've heard so far today?
3 Yes, sir.
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MR. GOULIAS: I am John Goulias, Shell Engineering Associates. I've got a number of questions related to maintenance of the ambient air quality and ~~you're~~ your, I guess, conflicts with the Air Group at the present time and how you think this is all going to shape up.

John, this written statement here regarding the ambient air for workers exposed, you say to disregard that particular statement?

MR. SCHAUM: Yes.

MR. GOULIAS: So this was not meant to be the OSHA kind of standard applicable to workers exposed eight hours a day.

Now your application of the one-tenth of the OSHA standard was that an in-stack monitoring requirement was a fense line ambient air quality monitoring requirement? How would it be applied?

MR. BEARD: The one-tenth applies to facility. It is an ambient objection, a goal, if you will, our ambient goals. A precedent to this kind of thing is mercury, for instance, for which there are goals that eventually became an emission standard.

MR. GOULIAS: Right.

MR. BEARD: They would be translated into emissions standards for an entire facility, for instance, including an incinerator.

We will provide methodologies whether they be nomagraphs or ambient air models of the varieties that EPA uses now although we don't--we think that you could provide your own models if you can show us that they are going to simulate the atmosphere better.

It is the OSHA divided by ten, OSHA 1910.1000 for air contaminants.

MR. GOULIAS: Now with regard to fence line standards, are there any recommendations regarding the amount of land from, say, an incinerator facility required?

MR. BEARD: So as not to get--

MR. GOULIAS: Any kind of requirement, either maximum requirement on the amount of land from any disposal facility?

MR. BEARD: Well, what I envision one would want to do would be to show that the highest ground concentration of an incinerator would--the point for which the ground concentrations would be the highest, the model proposed, or the model used would not be above the ambient objectives.

I should point out though that you might immediately think that we've got OSHA Standard No. 600 divided by 10, what an impossible request. I think it is something akin to OSHA's regulation whereby we have the goal or the OSHA regulation, but they don't enforce every one. There are not 600 monitors in this room. And OSHA doesn't go out to

every facility to monitor or require that you prove each of these particular contaminants are not above the OSHA standard. This has to be selective and it has to be done intelligently by enforcement and it will be.

MR. GOULIAS: Will you require then no monitors around the facility? Can you just--

MR. BEARD: No, because this is an ambient objective and there will not be monitors around the facility.

MR. SANJOUR: Can I interrupt for a moment?

MR. GOULIAS: Sure, go ahead.

MR. SANJOUR: You will be applying for a permit. We will not tell you what kind of a permit to apply for. It is your choice.

You can apply for a permit that operates purely on a design and operating standard, period. It never gets into air quality or ambient emissions at all.

Only if you don't choose to do that, if you do something else, the whole subject of ambient air or emissions quality comes into play.

It is your choice. We won't tell you how to operate.

MR. GOULIAS: Let's see if I understand then. John had mentioned that there were sets of standards applicable here. One would be mandatory and the other would be recommended regulations.

MR. BEARD: Yes, you follow the recommended regulations.

MR. GOULIAS: Now under the mandatory would be the ambient air quality regulations?

MR. SANJOUR: That is mandatory. That is the bottom line of everything.

However, what would be controlling your operation is the conditions on your permit. Now if you select to be regulated by an operating--by a performance--by a design and operating standard that the conditions of that design and operating standard are to permit in your permit such as 1,000 degrees, two seconds weld at a time and certain other conditions of operating your equipment.

It is those operating conditions that will be on your permit that you will be required to live up to and as long as you are in compliance with the permit, the whole subject of ambient air monitoring becomes academic.

MR. BEARD: This 1,000 degrees and two seconds operating and design, that is practical technologies that we understand.

MR. GOULIAS: Now those are recommended?

MR. BEARD: Those are recommended.

MR. SANJOUR: They are not really recommended. That is a misnomer.

They are optional in the sense that you don't

1 have to use them if you don't want them.

2 You can, in fact, choose to be regulated

3 some other way. You can propose how you wish to be regulated.

4 If you don't want to take the techniques that we have tried,

5 we have evaluated, you don't have to.

6 MR. GOULIAS: No, no. I am not saying that

7 at all. What I am trying to do is understand the recommenda-

8 tions.

9 Suppose we do take, for example, this

10 1000 degrees in two seconds or an equivalent. The equivalent

11 could be, for example, 400 degrees in five seconds, that--I

12 mean, at the half a second, 2,400 degrees Fahrenheit in half

13 a second, 1,800 degrees in two seconds. It could be any

14 range assuming that we can substantiate that the affluent

15 coming out, that is, the air coming out through stack emissions

16 tests meets your requirements.

17 MR. SANJOUR: Yes.

18 MR. GOULIAS: Now what I am trying to

19 determine is what those requirements are?

20 MR. BEARD: My understanding at the moment

21 is it would be easier to--it would be easier for you to show

22 that the 2,200 degrees F, one half second is equivalent to

23 the 1,843 degrees F, two seconds rather than try to prove that

24 selected pollutants are going to be--

25 MR. GOULIAS: So if we took, say, 1,000

degrees Centigrade at two seconds, we would not be required to do any testing at all, but substantiate the fact that we are not--that we are fulfilling the requirements?

MR. SANJOUR: That is correct.

MR. BEARD: That is correct.

MR. SANJOUR: We have already predetermined that they are working.

MR. GOULIAS: All right.

Now would we, in turn, be required to do ambient air quality monitoring under those conditions? It would also fulfill that requirement?

MR. BEARD: No.

MR. SANJOUR: No. You would have to monitor your stack emissions to determine that you are, in fact, operating under those conditions.

MR. GOULIAS: All right.

Now let's get into the stack monitoring. The requirements for stack monitoring then John mentioned would be carbon monoxide, the six criteria pollutants, I assume, plus the seventh one that is coming along which is lead.

Now what else would be required in monitoring the stack?

MR. BEARD: That has yet to be resolved.

First of all, we would like the carbon monoxide and carbon dioxide monitored to determine combustion

efficiency. That is how we are defining combustion efficiency, the 99 percent.

MR. GOULIAS: All right.

MR. BEARD: As far as whether we are requiring monitoring of the pollutants for which there is a National Ambient Air Standard, that hasn't been resolved. Because I think some should be and some shouldn't be.

MR. GOULIAS: What you are really requiring is some kind of an efficiency test to demonstrate you are meeting 99 percent combustion efficiency?

MR. BEARD: That is right.

MR. GOULIAS: Now are there any requirements on the other pollutants such as lead, for example, by this particular Act?

MR. BEARD: That hasn't been resolved yet.

MR. SANJOUR: I would think if you could demonstrate that it is not in your stock then you are not going to be required to sample for it. If you don't have lead in the stuff you are putting in the incinerator, then nobody is going to require you to sample for lead.

MR. GOULIAS: The question of sludge incineration will definitely be monitored by the air group within EPA? For example, let's take the question of lead and sludge incineration. The OSHA standard now is approximately 150 and they have been talking about lowering it. At one time,

it was 200 micrograms per cubic meter. I think it is at 150 now. One-tenth of that would be 15.

MR. SANJOUR: No, no. Lead is already regulated by EPA, is that right?

MR. GOULIAS: It is in the process.

The air quality criteria document is in draft form now, but it has not been sent. O.K.?

MR. SANJOUR: Yes.

MR. GOULIAS: So one-tenth of it would be 15 micrograms per cubic meter.

MR. BEARD: I'd like to address that too.

MR.GOULIAS: Sure, go ahead.

MR. BEARD: That is one prime reason why we wanted the stipulation that one-tenth not be locked into law. What is different about OSHA than the American Conference of Governmental Industrial Hygienists is OSHA took over the American Conference of Governmental Industrial Hygienists and it was 1968. And they slowly evaluate each pollutant.

First NIOSH gives them criteria, then they develop the standards. As they look over the criteria carefully on a pollutant-by-pollutant basis, the standards seem to come down. And they start approaching something perhaps that we would have for human health environment.

Perhaps it would require something less than one-tenth. A good example is carbon monoxide, for instance.

Carbon monoxide for workers and carbon monoxide for human health and environment is getting very close. That wouldn't require one-tenth. So we do--we would want that stipulation.

So for lead, we would want not to have a one-tenth of value.

MR. GOULIAS: Right, because of the probable standard which will come out and probably be more on the order of, say, one-thirtieth, or one-one hundreth in terms of ambient air quality.

Now who will enforce that particular regulation on sludge incinerators? Would that be the air groups within EPA?

MR. BEARD: I hadn't carefully thought out the lead in stack question and that's why I said we hadn't evaluated it because the air group, for one, is going to have to describe who is going to have to monitor and who isn't.

MR. GOULIAS: O.K.

MR. BEARD: But--so that is why I was holding that in abeyance.

Ambient monitoring for lead again, we don't propose any ambient monitoring for air any more than our standards are ambient standards. They are ambient objectives for which one develops an emission standard.

MR. GOULIAS: O.K., so the air groups will still be responsible, say, for lead, mercury, the other

pollutants which they've already designated either under air quality criteria documents or under other documents of some sort?

MR. BEARD: That is correct.

MR. GOULIAS: Thanks. That clarifies it so that in terms of developing an incinerator on a hazardous waste disposal site,as far as you are concerned, there are no monitoring requirements necessary as long as the incinerator meets this--both the 99 percent combustion efficiency as determined by stack gas monitoring measuring both carbon dioxide and carbon monoxide as well as meeting the residence time requirements of 1,800 degrees Fahrenheit at two seconds?

MR. SANJOUR: If you've got heavy metals, for example, in the stuff you are burning, then it may be necessary to monitor for heavy metals because the combustion efficiency is not going to affect that. I can't give you a hard and fast answer.

MR. GOULIAS: No, I understand. But assuming that the heavy metal monitoring is required, how would that be done?

MR. SANJOUR: I would have to ask Howard that.

MR. BEARD: As you know, the No. 3004 regs are still in draft form and we are talking about the general even though the recommendations that represent our view of the best practical technology have not been given complete

exposure.

And we are hoping that a draft of the No. 3004 and No. 3005 regs will be out by the end of the month and they include some things other than 1000 degrees in two seconds. It's not fair for me to have to say that only the things that we discussed so far are part of the recommendations. Because these recommendations are a bit longer.

For one, they require treatment before incinerations.

MR. GOULIAS: No. I understand that it is still in draft form. I was trying to understand how far along you are in the procedure process.

MR. BEARD: It is still under development.

MR. GOULIAS: O.K.

Now with regard to the establishment of the 1,800 degrees Fahrenheit in two seconds, you mentioned a number of tests that were conducted in order to establish this. Now are these available in some kind of documentation or are they still in draft form?

MR. BEARD: The facility by facility tests are available. A final report is due very soon.

You might want to comment on that?

MR. SCHAUM: Yes. Most of those reports are available. If you want to give us your card afterward, we'll send them to you.

MR. GOULIAS: Fine.

MR. SCHAUM: Or anybody else that would like them.

MR. GOULIAS: Fine, I appreciate that very much.

CHAIRMAN KOVALICK: The reports we are discussing are we conducted over the last year and a half a program where we matched eight or so industrial incineration like process with 35 or so industrial wastes and the results of each process are being published as an individual document And all of our documents are available through the National Technical Information Service in Springfield, Virginia.

So if you get their summaries, or if you contact us, we'll direct you to them when they are available for purchase.

MR. GOULIAS: That would be very helpful.

With regard to the question of financial capability, I am just wondering if, in terms of the economic impact late statements later on, John, have you incorporated this information into the economic impact statements so it will be discussed tomorrow?

CHAIRMAN KOVALICK: I think the basic answer is yes and we should hold that out for tomorrow, but, yes.

MR. GOULIAS: O.K., fine. That's all I need to know in terms. well--and the other clarification was that in

terms of $50 million--and you mentioned twice the amount of revenue. When you were talking about revenue, you were not talking about yearly or annual revenue? You were talking about revenue over the lifetime of the facility?

MR. SHANNON: Annual revenue.

MR. GOULIAS: Annual revenue?

MR. SHANNON: Right.

MR. GOULIAS: O.K.

But that subject will come up tomorrow in greater detail?

MR. SHANNON: Not that particular subject regarding financial responsibility.

MR. GOULIAS: Well, in terms of financial responsibility then, have you determined that a facility such as this could achieve or could obtain the equivalent of product liability insurance through the bonding or these other things that you are requiring, or the options that you are suggesting be done?

MR. SHANNON: We are attempting to determine if they can. That is part of the difficulty deciding on an option to implement that.

MR. GOULIAS: But you are not certain at this time whether insurance companies will--or bonding companies will, in fact, underwrite such policies?

MR. SHANNON: We are not certain.

MR. GOULIAS: O.K.

CHAIRMAN KOVALICK: The studies that Mr. Shannon is referring to are the inquiries of the insurance industry to see if they can get into that.

MR. GOULIAS: I understand.

We tried to get product liability insurance before and up to certain amounts can no longer be written and above other amounts, the cost has risen as most everyone is aware of.

MR. LINDSEY: You experience on that might be helpful.

MR. GOULIAS: Now in terms of emergency response plants, you mentioned both ~~Chemtrack~~ Chemtrec and ~~Omtabs~~ OHMTADS.

I am not familiar with, what is it, Omtabs, the U.S. EPA system?

CHAIRMAN KOVALICK: Well, it's a computerized data system that is available to our on-scene coordinators at the moment. If my memory serves me correctly, it has 1,000 chemicals in it. And on each chemical, it maintains 26 data bits. And each data bit goes from things like chemical properties of that substance, how to dispose of it--that is, how to chemically or otherwise react with that substance.

The issue at hand, of course, is that we are talking about spilling wastes and the Omtabs and Chemtrack Systems which are data supplied by their manufacturer, usually

1 or for substances.

2 MR. GOULIAS: That's exactly right.

3 CHAIRMAN KOVALICK: So the problem, when you

4 spill an oil laced with PCB's on the soil, what do you have?

5 MR. GOULIAS: And if you happen to choose the

6 wrong chemical to bring up out of the computerized system for

7 a waste, you can end up--

8 CHAIRMAN KOVALICK: Doing more damage.

9 MR. GOULIAS: --undergoing the wrong emer-

10 gency response.

11 CHAIRMAN KOVALICK: You will be interested,

12 we have just let in the last 30 days, a contract to study

13 the various emergency response manuals and systems that are

14 available and to determine the gaps in terms of waste manage-

15 ment.

16 MR. GOULIAS: So you are surveying that now?

17 CHAIRMAN KOVALICK: We are surveying. We

18 know there are a jillion systems. The point is they don't

19 tell you what to do with the waste. They tell you how to run

20 a boom and clean up the spill and gather the material. And

21 the end of the book comes before you find out the rest of the

22 story.

23 MR. GOULIAS: I see.

24 Now in terms again of the governmental

25 coordinating committee which Alan mentioned before, the Coast

Guard is involved; DOT is not, but they could be as a fifth member; Food and Drug Administration is involved; yourselves and who is the other member?

CHAIRMAN KOVALICK: Consumer Products Safety.

MR. GOULIAS: Consumer Products Safety.

CHAIRMAN KOVALICK: The Cost Guard is part of DOT. They are not involved--I mean, they--

MR. GOULIAS: They are not involved. So in terms of their responsibilities in terms of oil spills and so on, they are still...

CHAIRMAN KOVALICK: They'd be a part of the DOT observation squad.

MR. GOULIAS: Now you mentioned that the 10 feet, 10 to the minus 8 centimeters per second was based on the State of Illinois information.

Could you give me the background on that, if I understood you correctly?

MR. SCHAUM: The State of Illinois recommends that landfills be designed to achieve 500 year containment. And by use of some formulas, 10 feet and 10 to minus 8 centimeters per second permeatability work out to 500 year containment. That is what I meant by that.

MR. GOULIAS: Now was this based on Illinois EPA regulations? Or was it based on U.S. EPA sponsored

research at Illinois State Geological Survey by their personnel?

MR. SCHAUM: One reason for picking that number is simply on the fact that there's precedent for it in the sense that Illinois already recommended it. That was one reason for using it.

Some of the other reasons--another reason for using it is in our studies, we have not found any landfills that have used a design like that and have contaminated ground.

MR. GOULIAS: No. I understand, but specifically, what was the State of Illinois recommendation? Was it the State Environmental Protection Agency?

MR. SCHAUM: Yes.

MR. GOULIAS: O.K., that's all I wanted to know. Because, in fact, U.S. EPA has sponsored numerous leachate studies as well as emergency response plans with the State Geological Survey with their ground water geologists going. And he has a little different idea in terms of the various--he has look at over 100 land pollution incidents which occurred in terms of problems. And he has a little different idea in terms of the amount of clays and so on required.

CHAIRMAN KOVALICK: Who is the he you are referring to?

MR. GOULIAS: Dr. Karras Cartwright, Ground

Water Geologist, Illinois State Geological Survey.

CHAIRMAN KOVALICK: I don't want to cut you off, but there was a gentleman waiting patiently behing you. Why don't we give him a chance and you can come back?

MR. GOULIAS: I apologize to everyone. But my questions are very real because we are trying to develop a permit for a hazardous disposal facility.

CHAIRMAN KOVALICK: I think everyone thinks they are very thoughtful. I just wanted to give this other man a chance here.

MR. PRICE: My name is Don Price. I am from the Chicago Area.

I have kept track and watched the development of the proposed regulations over the last year and as this thing kind of shapes out, you recognize the most difficult problem will be the siting of the facilities.

All I can say is a recommendation on the term hazardous we started with and it has continued to carry on. If somehow hacking back to those states will develop their own regulations, if they would be allowed to have the ability to really come up with terms like special wastes, really low-key the emotional impact of the word hazardous. This is a very real thing. People are shaking their heads in agreement. This is our recommendation.

MR. LINDSEY: Thanks for that comment.

I guess your question is will states be allowed to do that? And the answer is yes. They can call it what they want.

CHAIRMAN KOVALICK: Someone else?

MR. KIRKPATRICK: I am Forest Kirkpatrick from Black and Veatch Engineers.

It concerns me that ground water and aquifers are being considered synonomous and also that the definition of usable water is based only on periphyton contents which is very high and it wouldn't be very usable water.

It is true that aquifers contain groundwater, ~~water~~, but aquifers have another characteristic and that is that they are open enough that a well can be drilled in them and they will produce a usable quantity of water.

There are many sites where the soils are so tight and they also contain groundwater, in fact, the packing soils which make them desirable as disposal sites also make them contain water. But it would be impossible to develop a usable quantity of water from such sites.

I think if we ruled out sites just because they contained groundwater without any consideration for where--for how that water can be used will eliminate a lot of good disposal sites.

MR. SCHAUM: Agencies will be able to designate other aquifers as unusuable other than the ones that

over 10,000 milligrams per liter of total dissolved solids.

In order to do that, they would have to prove that they are not usable or potential drinking water sources and they would have to give public notice and hold public hearings and have the approval of the EPA Administrator.

So if a state or agency can make a good case for doing that, designating an aquifer as unusable, why, they it can be done.

MR. SANJOUR: Let me make two additional comments in that area and that is, there are lots of people who are drinking purged water, households. And also, the rate of flow that would be considered insignificant or inconsequential in the East is the very lifeblood of some people in the West. So I don't know of any rate of flow that is too small for practical use somewhere.

CHAIRMAN KOVALICK: Any other questions?

Yes, sir.

MR. PALLANICH: I am Paul Pallanich from Mobay Chemical Corporation.

The present levels of sludge and so forth seem to be one of the things that brings sludges and so forth into the categories of hazardous wastes.

I am wondering if the disposal of heavy metals, chromplated materials and copper containing materials,

1 if this is going to cause these materials to have to go to
2 the hazardous wastes landfill or whatever?
3 CHAIRMAN KOVALICK: If I understand your
4 question, and you can correct me, I think we are getting at
5 the nature of the kind of leaching tests we are going to use.
6 In other words, if you had a chromplated
7 bumper, for example, if the leaching test, that we ended up
8 to try and get such solids into a solution so we could test
9 them, were using distilled water, as we mentioned this morning,
10 then it is not likely that you'd get any chrom out when you
11 leached the bumper.
12 MR. PALLANICH: The analytical option of
13 analyzing the waste as a whole.
14 CHAIRMAN KOVALICK: O.K., but you--I think
15 the same logic applies. You have to get solids into a solu-
16 tion and the way you could do that would be you could use the
17 same leaching test.
18 So even if you went the analytic option--
19 MR. PALLANICH: You say that if it has been--
20 if it is an inside material, it is not going to be considered
21 from the standpoint?
22 CHAIRMAN KOVALICK: Yes, because we are try-
23 ing to recognize chemical fixation type processes which can
24 do just that, which can lock up in some kind of material, and
25 they are not available.

MR. PALLANICH: Thank you.

CHAIRMAN KOVALICK: Anyone else? Yes, sir.

MR. WILSON: I am Charley Wilson from Milwaukee.

You know those questions were kind of leading ones and I apologize and ask the indulgence of the audience. I was the one that asked the one on parts per million in phosphate and it wasn't phosphorous. I left out ~~tagnium~~ cadmium purposely because I can't write the word anymore.

Now there are as much as 256 parts per million of ~~tagnium~~ cadmium in phosphate rock. And all I am trying to get over here, I think, is, you know, what is kind of fair and right.

Earlier this afternoon or this evening, I think I got the impression that your guilty because it is there no matter what rate you apply it. So I would just like the EPA to know that we are not alone in having ~~tagnium~~ cadmium in a product, O.K.?

So maybe they should consider other sources If they are going to condemn ~~manganite~~ Milorganite as a hazardous waste because it has 70 parts per million of ~~tagnium~~ cadmium, what are they going to do to the 256 parts per million phosphate rock that grows all the lettuce we eat from now until next summer some time when we start growing our own back in this part of the country.

That was a statement, I guess.

CHAIRMAN KOVALICK: I know Bill would like to comment on that and maybe you would like to stay and...

MR. SANJOUR: The phosphate fertilizer is not a waste. Now perhaps it should be regulated, if in fact, the tagnium from phosphate fertilizer gets into our lettuce crop. But it cannot be regulated under this Act. There is no authority to do so.

MR. WILSON: Is milorganite ~~(phosphate~~) a waste?

MR. SANJOUR: Yes.

MR. WILSON: Why? What distinguishes one from the other.

MR. SANJOUR: The ~~sewt~~ sewage sludge, that is waste.

MR. WILSON: How about tailings from rock phosphate mines?

MR. SANJOUR: Those are wastes.

MR. WILSON: Those are wastes. They would be--

CHAIRMAN KOVALICK: But you missed--I hope you didn't miss this morning that mining and milling wastes are one of the ones that were selected for postponement, do you remember? And after we finish the study under Section No. 8002 which is due within one year of the Act, within six months after that, we have to take action either to regulate mining and milling wastes or not.

1 The reason had to do with the fact we know
2 very little about the mineral mining industry.
3 We know a lot about the metals mining
4 industry.
5 So it is possible that 18 months or two
6 years from now we would again address the mining and milling
7 wastes of the kind you are describing. Some of them are
8 radioactive, by the way.
9 MR. WILSON: Really, I am not trying to
10 make, you know, two wrongs to make a right. I don't think
11 there is any damage at all from the phosphate rock that is
12 used out in the West to grow lettuce, O.K.?
13 But I am saying again that we have got to
14 take into consideration, not just the percent that is in a
15 produce, but the rate it is being applied to the land.
16 And the way we feel that we have been abused
17 and misused is where the Department of Agriculture has
18 applied milorganite at 25 tons per acre in one application,
19 80 tons per acre in one application.
20 They can't even grow anything on the land
21 for two years after they do this. Are you aware of this?
22 Just because of the nitrogen content of the product.
23 You know, you could, well, an inch of water
24 a week will grow a good crop, three inches you are in trouble.
25 That is a factor of three. You double it again and you kill

1 everybody under the underpasses in Kansas City, right?

2 So anything could be misused is what we are

3 talking about. And I really think, really, that you should

4 always consider rate of application any time you are talking

5 about percent because it is meaningless. It only means part

6 of a hundred and it doesn't mean anything until you say how

7 much you are going to put on a given square inch, a given

8 acre or whatever of land.

9 MR. SANJOUR: Well, I guess our regulations

10 will be addressed not so much to rate of application as to

11 uptake. If there is no uptake there is no problem.

12 MR. WILSON: But you are going to get a big

13 uptake when you grossly misapply a product, right? This is

14 slugging it.

15 MR. SANJOUR: The regulations will be aimed

16 at uptake. In other words, if there is no uptake, then you

17 can apply as much as you want to, if there is no uptake.

18 MR. WILSON: I don't think you understand

19 my point on this.

20 In other words, if you misuse the product

21 you are going to get more uptake than if you apply it at the

22 rate, you know, the nitrogen level is needed to grow in the

23 crop, if you will. Then your uptake is negligble, whether is

24 is the phosphate rock, or...

25 CHAIRMAN KOVALICK: Well, I think we have all

that--

MR. WILSON: We are being condemned on these excessive rates is what I am saying. And all sludges are. They are being misused.

In other words, you know, you folks in EPA want to find ways to apply sludge to the land, right? And some of us have been in business for years doing this, we think, in a rather nice way.

But if we have got some people out here in the boonies someplace or other misusing it, you know, nobody is every going to buy it.

Now I don't know what the next step is, I guess it is flushless Tuesdays, that is all I can figure.

CHAIRMAN KOVALICK: Well, I think we have a sense--well, we have more than a sense. We know your concern. It is on the record. And please, don't consider the matter closed here. We would like to consider this opening up channels and you know what our phone numbers are if you didn't know us before.

Yes, sir?

MR.KUNKEL: I am George Kunkel, Jones and Henry Engineers.

I offered the question that dealt with direction of groundwater movement. I think that that should be one of the criteria as well as thickness of the barrier

as well as permeability of the barriers. In many cases, I have seen state regulations which deal with thickness and with permeability and which, in fact, the groundwater is moving into the landfill and not out of it. I think the direction of groundwater movement should be considered if you are trying to protect aquifers.

As an example, some of the hard problems that develop from landfills and groundwater comtamination--I have been involved personally in a case where we have documented at least to my satisfaction a change in groundwater qualities due to the movement of gases in which case the landfill became an ~~arobic~~ aerobic site ~~sibe~~ and actually sucked in oxygen from the groundwater and created a reducing environment in the aquifer beneath.

This changed a high sulfate water into a sulfate reducing condition that caused black water beneath the ~~ocifer~~ aquifer. There was no actual transfer of a contaminant but yet the quality of the water was changed and would require additional treatment for use.

You had mentioned that septage ~~(phenetic~~) probably would be exempted in the same manner that solid waste from households would be exemptage.

CHAIRMAN KOVALICK: Homeowners' septage.

MR. KUNKEL: Homeowners' septage.

CHAIRMAN KOVALICK: Homeowners', not

industrial.

MR. KUNKEL: All right.

The question is would the transportation of the septage and ultimate disposal of it be regulated? Homeowners as a generator are being exempted, but what about the transportation of homeowners' disposal?

CHAIRMAN KOVALICK: What we are trying to do, of course, is to prevent the "honey wagon" from going around and going to both homeowners and industrial septic lagoons, mixing the ~~mulage~~ septage together and delivering it somewhere.

And so, since we know the industrial sources would have to either certify a manifest provided to him by his hauler, in the same way, if the hauler would like to serve homeowners and yet rationalize to the receiving facility why he has this larger load, the homeowner could sign-off when he pays with his check that he is manifesting out a waste which the transporter is calling hazardous.

So that is not preventive. But we don't want the homeowner to be required to do that if the hauler only accepts homeowner type waste. But when he gets in the business of mixing them together, the homeowner would be able to get into that system. Or another way to say it, is the transporter would be able to provide that service.

MR. KUNKEL: Thank you.

CHAIRMAN KOVALICK: Are there any other comments from the floor? I would like to--oh, yes, sir?

While you are coming to the microphone, I would like to read the names of people who have said they would like to give oral statements and give them the opportunity to do that both tonight and also tomorrow. But let me read their names in case they would like to get ready this evening.

Betty Wilson of the League of Women Voters, Webster Groves, Missouri; Scott Miller of the Illinois EPA; Robert Alderson of Vaxhaul Corporation, Kansas City, Kansas; C. L. Robertson of Ensco, Eldorado, Arkansas and Glen Gettinger, Midwest Oil Refinery of St. Louis.

If any of you would like to make a statement tonight, we would like to have you do that after this gentleman.

Yes, sir.

MR. MORGAN: My name is Jim Morgan, an attorney from Madison, Wisconsin. I represent the Liquid Waste Carriers in Wisconsin and several solid waste industries in Wisconsin.

My first few comments, I would hope that we would not use the term, honey wagon and we would not use the term hazardous in the future. We are liquid waste carriers.

My second comment would be I have served on

1 the Wisconsin Legislative Council Hazardous and Toxic Waste
2 Committee. We did not change the name. I am sorry and we
3 should have.
4 I would comment to the comments that were
5 made to perpetual care, long-term care. It's got several
6 names. I have heard the terms bonds, insurance policies,
7 liability policies.
8 I attempted when we studied this in Wisconsin
9 to call one of the larger insurance companies in Wisconsin. I
10 said, we have a small problem and would like a bond, call it
11 what you like. And it is a small problem. We need it for
12 400 or 500 years. I haven't heard from him. The last I heard
13 he was still on the floor laughing at me.
14 Some of the things we are talking about in
15 terms of long-term care, they come down to what we in Wisconsin
16 felt would probably be a tipping fee of some sort and I believe
17 you are on that track now in your research. Well, I hope that
18 type of thing will continue because in our zeal to inact a
19 federal mandate here, I think we find ourselves in the
20 incongrous position of imposing civil standards on the industry,
21 which, by the same token, will pull a lot of them out. And
22 on the other side of the coin, we are saying we will need a lot
23 more. It is going to be a very difficult balance to keep.
24 I don't envy your job in wrestling with those
25 problems.

1 But I have one question as a result of all
2 of this and that is this I believe I heard April of '78 we
3 were going to see some rules. And I believe I heard a while ago that we were going to see some rules a year from now. And
5 my question is this are we prepared in this country, and
6 certainly is the EPA prepared, to bite the bullet and come up
7 with a bad set of rules based on that which we do not know?
8 Or has there been thought by the EPA in asking for some time
9 extensions to come up with some valid answers?
10 It appears to me from what I am hearing--and
11 I am not putting anybody down--but that there is more we don't
12 know than we do know at this point.
13 And has there been thought to some type of
14 interim policy before we get to the major rules so that we
15 don't have bad examples or in my opinion, create complete and
16 utter chaos a year from now?
17 CHAIRMAN KOVALICK: Well, the--first of all,
18 we recognize that 18 months is not very long also. Of course,
19 we don't set those rules as you know. And we do have an
20 opportunity and it turns out to be roughly every six months
21 when Congress calls us in, the committees of Congress and asks
22 for a report on how things are going. We had such a session in
23 April. Of course, we were just getting under way then. And
24 we expect very soon to be called back up to the Hill to report
25 on how we are doing.

1 In addition, the committees are--have
2 requested--as a matter of fact, the law says we must send them
3 drafts of everything that we send out for public scrutiny.
4 So they are getting more and more aware of the things that we
5 don't know--the ones you are citing--as well as the things
6 that we do.
7 So I think--I must say this evening we have
8 focused more on things we don't know. I happen to believe we
9 know a lot about transportation regulations, as a matter of
10 fact, most that we need to know. And we know a lot about
11 ways in which to get states to be involved in this program.
12 So I think our strategy at the moment is to--
13 first of all, let me straighten out the dates. The things
14 that we are going to hopefully finalize next April, May, June
15 then become effective six months later. So if everything was
16 finalized in June, the presumed effective date is December then
17 of '78.
18 But as you pointed out, everything isn't
19 going to click into action then because some subject may not
20 be finished. And so what we may have, as an example in this
21 set of regulations, is a fairly comprehensive look at the
22 environmental, the contigency plan, the emergency plan portions
23 of the regs and have to go with what you suggest, some kind of
24 interim measures to deal with long-term care where there is a
25 great deal of uncertainty.

1 I don't think we are planning to go to
2 Congress and say we can't do--since we can't do it all, we are
3 not going to do anything. As one of my colleagues said, the
4 best is the enemy of the good.
5 And so what we usually do in these cases--
6 and if you have followed some of EPA's problems in No. 3007(a)
7 toxic pollutant regs which have never come out, we have been
8 three years working on them--we do those things--the difficult
9 immediately and the impossible takes awhile, of course.
10 And I think that is the case here. We are
11 going to try and do what we do know in the April to June time
12 frame and as you suggest, probably have some interim measures
13 to get us out into the future.
14 MR. MORGAN: I am glad that is being
15 thought about. I feel a lot better knowing we will maybe have
16 something in the interim.
17 I was looking at the Act and seeing it
18 talked about some very specific type constraints. That is
19 why I asked the question how you proposed to overcome that if
20 you had to.
21 CHAIRMAN KOVALICK: Thank you.
22 Any other?
23 I think I will move to these persons who
24 indicated they might want to make a statement. I will give
25 them the same opportunity at the close of day tomorrow.

Is Betty Wilson from the League of Women Voters present and does she wish to give a statement now?

(No response.)

CHAIRMAN KOVALICK: I don't see her.

Mr. Scott Miller from the Illinois EPA, do you wish to give your statement now?

MR. MILLER: No.

CHAIRMAN KOVALICK: No.

Mr. Robert Alderson of Vaxhaul, Kansas City, Kansas?

MR. ALDERSON: When I registered, I requested the opportunity to submit data within a reasonable time.

What would you propose is a reasonable time?

CHAIRMAN KOVALICK: As Jack Lehman mentioned this morning, I think by the beginning of next week if you want it in the printed record of this meeting.

Obviously, anything you send us will be in the docket that the public could inspect. But anything by, say, Monday or Tuesday would then go to the printer and be in the printed version.

I am sorry, you did say only a submission, so excuse me.

That is also true for Mr. Robertson.

So the other person that wanted to possibly make a statement was Mr. Gettinger of Midwest Oil, did you

want--

MR. GETTINGER: That also qualifies for me. I want to submit a written statement after the meeting.

CHAIRMAN KOVALICK: Good, collect your thoughts?

MR. GETTINGER: Yes.

CHAIRMAN KOVALICK: Thank you very much.

I would like to adjourn the meeting for this evening and we will reconvene tomorrow morning at 8:00 o'clock for registration, 8:30 we will begin the Section No. 3005 which is the permit regulations.

(Whereupon, at 9:15 o'clock p.m., October 13, 1977, the hearing in the above-entitled matter was recessed until 8:30 o'clock a.m., October 14, 1977.)

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8 C E R T I F I C A T E
9
10 I, DAVID L. ARGIE, do certify that I appeared
11 at the time and place first hereinbefore set forth;
12 that I took down in stenomask the entire proceedings
13 had at said time and place; and that the foregoing
14 Pages 1 through 295 constitute a true, correct and
15 complete transcript of my said stenomask notes.
16
17
18
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20 REPORTER
21
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STATEMENT SUBMITTED TO ENVIRONMENTAL PROTECTION AGENCY
ON BEHALF OF VACSOL CORPORATION
(To Be Included In Record Of Proceedings Of The Public Meeting
Held In St. Louis, Missouri, October 13 and 14, 1977,
On Hazardous Waste Management Guidelines/Regulations, Pursuant To
Subtitle C Of Resource Conservation And Recovery Act Of 1976)

I am W. Robert Alderson, Vice President of Vacsol Corporation, which owns the rights to several pending patent applications and the supporting technology for a process of re-refining of used oil. This process is currently being utilized by Coral Refining Corporation, a used oil re-refinery in Kansas City, Kansas, and negotiations are in progress for the construction of several additional re-refineries using this process.

Vacsol's re-refining process (styled as the O'Blasny Process) is a continuous flow method of re-refining used oil which achieves significant environmental advantages over other existing re-refining methods. Because the O'Blasny Process depends upon the mechanical separation of contaminants from used oil and does not require the use of any solvent pretreatment of the used oil and, more importantly, does not require the use of acid to remove the contaminants, re-refineries using the O'Blasny Process do not generate any hazardous waste. In fact, the O'Blasny Process does not generate any significant amount of waste, whatsoever.

Because used oil constitutes the feedstream utilized by re-refin-

eries employing the O'Blasny Process of re-refining, Vacsol Corporation is concerned about the potential effect on the supply of used oil of regulations to be adopted by the Environmental Protection Agency to implement Subtitle C of P.L. 94-580 (Resource Conservation and Recovery Act of 1976), and I offer the following comments for your consideration in preparing these regulations.

1. The most important point that I want to make with respect to the regulations being drafted by the EPA to implement Subtitle C of the Resource Conservation and Recovery Act (RCRA) is that great care should be given in drafting these regulations not to subvert or dilute the other expressed purposes of Congress in enacting this legislation. Specifically, subsection (c) of Section 1002 of the RCRA expresses the congressional intent with respect to resource recovery and conservation. In that subsection, Congress has recognized that valuable, useable materials can be recovered from solid waste and that the recovery and conservation of such materials "can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments." In addition, Subtitle E of RCRA directs the Secretary of Commerce to stimulate broader resource recovery technologies and to encourage the development of markets for recovered materials.

Perhaps I am stating the obvious, but it is apparent that the recovery of high quality lubricating oils from used oil is pre-

cisely the type of resource recovery envisioned by Congress. In fact, under P.L. 94-163 (Energy Policy and Conservation Act) Congress specifically has encouraged (1) the recycling of used oil, (2) the use of recycled oil, (3) reducing consumption of new oil by promoting increased utilization of recycled oil and (4) reducing environmental hazards and wasteful practices associated with the disposal of used oil. Further, under the Energy Policy and Conservation Act, the Environmental Protection Agency is vested with certain duties and responsibilities with respect to achieving these objectives. Therefore, I strongly urge that the EPA insure that the regulations promulgated to implement Subtitle C of RCRA are consonant with the stated congressional objectives concerning resource recovery and, specifically, with respect to used oil.

2. I also want to express Vacsol Corporation's concern with respect to the identification of hazardous wastes pursuant to Section 3001 of the RCRA. In particular, I strongly urge classifying the acid-sludge produced in an acid/clay re-refining process as the hazardous waste that it is. Admittedly, if environmentally sound re-refining technology were not in existence, resource recovery considerations might compel a closer scrutiny of this environmental hazard. However, substantial progress has been made in the last few years in developing alternative re-refining processes which reduce the detrimental environmental effects of the acid-clay process.

Similarly, Vacsol Corporation does not view the identification of used oil as a hazardous waste as having any unfavorable effect directly upon the operation of a used oil re-refinery. In fact, Vacsol Corporation supports the identification of used oil as a hazardous waste in the regulations promulgated under Section 3001 of the RCRA, but I also want to urge the Environmental Protection Agency to weigh carefully the unique character of waste oil, as a particular class of hazardous waste, in the promulgation of regulations to implement subsequent sections of Subtitle C.

In drafting these regulations, it should be recognized that a vast quantity of used oil (an estimated one billion gallons annually) is collected from an equally sizeable number of relatively small businesses. Secondly, used oil is distinct from most other waste materials in that the generator of used oil is paid a reasonable price by used oil collectors for the acquisition of the used oil, whereas generators of most other types of waste materials must pay to have such waste material removed from their premises. Finally, used oil represents the source of valuable natural resources which can be recovered and reused, and in this connection I want to suggest the applicability of my previous comments regarding the statutorily expressed congressional policies regarding resource recovery and used oil recycling.

With these considerations in mind, I want to suggest specific

objectives for the regulations to be promulgated under Subtitle C. First, I support the proposal to create a separate classification of hazardous waste generators to include "small generators," and I urge that this particular class of generators be established on the basis of a volume of hazardous waste generated that will include service stations, garages, automobile dealers and other businessmen who comprise the vast majority of used oil generators. It is my understanding that the purpose of establishing such classification is to recognize the relatively small volume of hazardous waste generated by these businesses and to correspondingly lessen the burden of their regulation. If this is not accomplished on behalf of used oil generators, I am seriously concerned that these businessmen will be overwhelmed by the regulatory process.

In furtherance of this particular objective, I also want to urge that the regulatory burdens imposed on hazardous waste generators be substantially lessened for the generator of used oil who disposes of his "hazardous waste" by having it transported to a "materials recovery facility." Implicitly, therefore, I am in support of the proposal to create a subclassification of "resource recovery facilities" to be styled as "materials recovery facilities." As I understand this proposal, it, too, would alleviate the regulatory burden imposed on the generator of a hazardous waste which contains a recoverable resource, if such hazardous waste is transported to a facility which, in fact, recovers such resource. I think that this is essential if the

congressional mandates regarding resource recovery and used oil recycling are to be realized.

My underlying concern is that the relatively small businessmen who generate used oil in the course of their businesses will be discouraged from continuing to generate this recoverable resource if regulations become too burdensome. It is an established fact that the number of small businesses (e.g., service stations) which provide motor oil changes for automobiles is declining. If the regulations promulgated under the RCRA become too oppressive, I foresee a further decline, and the environmentally sound disposal of used oil will be thwarted as a result.

I do not believe that "dilution is the solution to pollution," particularly where the pollutant is a potentially recoverable natural resource. If fewer businesses provide motor oil changes for automobiles in a manner which can be reasonably controlled, it will encourage the disposal of used oil in a manner which is detrimental to the environment. That is, if an increasing number of people change the motor oil in their own automobiles, there will be no way to regulate effectively the disposal of the used oil generated thereby.

I understand that one of the provisions proposed for inclusion in these regulations is the exemption of wastes generated by households. Certainly, the used oil generated by an individual

who changes the motor oil in his own automobile would fall into this classification. Therefore, the disposal of this used oil would be uncontrolled, and it would find its way into sewer systems, landfills, backyards and waterways. Even though the dispersal of this pollutant would be "diluted," such disposal practices are, nonetheless, detrimental to the environment, and the loss of a potentially recoverable resource is even more significant.

3. Finally, Vacsol Corporation wants to be on record as supporting the opposition of the re-refining industry to the burning of used oil. When used oil is burned as fuel, the contaminants contained therein become pollutants of the ambient air, which also is the subject of congressional concern in the RCRA, as well as other federal acts administered by the EPA. Further, the burning of used oil as a fuel represents an unwarranted disposition of a potentially recoverable natural resource, which can be viewed as contrary to congressional policies regarding resource recovery. The irretrievable loss of lubricating oil resulting from such burning is magnified by the fact that not all crude oils can produce a significant percentage of high quality lubricating oil.

In addition, it is significant to note that the burning of used oil as fuel represents a tremendous loss of energy. This fact was substantiated in a report prepared for the Resource Recovery Division, Office of Solid Waste Management Programs, U. S. En-

vironmental Protection Agency, Washington, D. C., by the Energy and Environmental Engineering Division, Teknekron, Inc., Berkeley, California. (See A Technical and Economic Study of Waste Oil Recovery, Part IV: Energy Consumption in Waste Oil Recovery.) The conclusion of this report was that the total energy lost by burning used lubricating oils and the replacement of such lubricating oils by crude oil refining is greater than the amount of energy required to re-refine such used oils, thereby reducing the amount of virgin lubricating oil production. In terms of monetary savings, based on then current crude oil prices, this report also found that:

> "Re-refining the 221 million gallons per year of waste crankcase oils burned as fuel plus the 290 million gallons (1972 volumes) disposed of by methods not involving energy recovery would result in an annual savings of at least 1.5 million barrels of crude oil equivalent. This is equal to an annual savings of fuel oil expense and currency outflow for foreign crude of about $18 million." (Page 1)

Notwithstanding the detrimental environmental effects and negative conservation consequences of burning used lubricating oils, Vacsol Corporation recognizes that it would be impractical to prohibit immediately the burning of used oil. An immediate ban on the burning of used oil would create an enormous amount of waste oil to be disposed of as a hazardous waste; and at this point in time, the re-refining industry does not have sufficient capacity to re-refine all of the used oil being generated, which would promote environmentally detrimental methods of disposing of the used oil. Even though the burning of used oil as a fuel is an undesirable practice, it still represents a usage of used

oil that is far superior to the other alternative methods of disposal.

Nevertheless, despite the practical fact that the burning of used oil cannot be prohibited at this time, plus the questionable authority of the EPA to do so under RCRA, the regulations promulgated to implement Subtitle C of the RCRA certainly should not promote an increase of this practice. In recognition of this objective, I support the proposal to distinguish between "materials recovery" and "reuse of a hazardous waste" in the regulations drafted to control the disposal of hazardous wastes. Under this proposal, the disposition of a hazardous waste would be facilitated if such waste were accepted by a materials recovery facility, as opposed to a facility which merely accomplishes the reuse of a hazardous waste. Thus, the recycling of used oil into lubricating oil and other useful byproducts would be encouraged, while there would be no stimulus for increased burning of used oil.

I also suggest that, since the processing of used oil for subsequent sale as a fuel is merely the reuse of a hazardous waste, all purchasers of such fuel be required to obtain a permit as hazardous waste treatment facilities. The processing of used oil to be burned as a fuel does nothing to remove the hazardous contaminants contained in the used oil, and businesses which use it as a fuel should be regulated, so as to control the emission of such contaminants as hazardous pollutants of the

ambient air. It is reasonable to view this utilization of used oil as a means of disposing of a hazardous waste, and it should be regulated as such.

I appreciate very much the opportunity of presenting the foregoing comments. The other officers of Vacsol Corporation and I stand ready to provide any additional information or assistance that may be needed in the process of developing reasonable regulations to carry out the provisions of Subtitle C of the Resource Conservation and Recovery Act of 1976.

Respectfully submitted,

W. Robert Alderson
Vice President
Vacsol Corporation

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF SOLID WASTE

PUBLIC MEETING

ON

HAZARDOUS WASTE MANAGEMENT GUIDELINES/REGULATIONS

PURSUANT TO SUBTITLE C

RESOURCE CONSERVATION AND RECOVERY ACT of 1976

(PUBLIC LAW 94-580)

October 14, 1977

Khorasson Room
Chase Park Plaza Hotel
212 North Kings Highway
St. Louis, Missouri 63108

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I N D E X

P R O C E E D I N G S

CHAIRMAN SANJOUR: Good morning!

I'm glad to see some ~~you your~~ of you stayed around. If any of you haven't registered, just check in at the desk. We would like to have your name and your company.

Jack Lehman had to go home, back to Washington, last night. I'll be sharing the session this morning. My name is William Sanjour, the gentleman next to me is ~~Fran~~ Fred Lindsey and the next is Walt Kovalick.

As I recall, the procedure we are going to follow to have the agenda: We will first have a speaker from EPA speak on one section of the Act, starting with Section 3005, and then if there is anyone who wants to give a presentation, you will be allowed to do so, a five minute presentation, then we will ascertain written questions, and if time allows, we will have oral questions after that.

The first speaker this afternoon will be Mr. Sam Morekas, who will speak on Section 3005 of RCRA, which deals with the conditions for granting permits.

MR. MOREKAS: Thank you.

Good morning, everyone!

For those of you trying to spell my name it's M-o-r-e-k-a-s.

As Bill indicated my topic is Section 3005 of the Resource Conservation Recovery Act, whose title is "Permits for Treatment, Storage, or Disposal of Hazardous Waste."

I'll follow the same process that the speakers used yesterday. And covering briefly the requirements of the Act--and you do have that in your hand outs--and discuss the prospective contents of the regulation implementing that section of the Act. And then discuss some of the unresolved issues that are still facing us.

Briefly the section, Section 3005(a) certs that any person owning or operating a facility for treatment, storage, or disposal of hazardous waste is required to have a permit. And we are obviously writing the regulations to indicate how this is to be done.

The regulations again, as indicated yesterday, will take affect six months after they are published in final form.

Section 3005(b) outlines the information that is required to be submitted with each application and is to include: estimate of composition, quantities, and concentration of hazardous waste, the time, frequency, or rate of treatment, transport, storage,or disposal, and the site of which such hazardous waste will be disposed of, treated, transported to, or stored.

Section 3005(c) authorizes the administrator to issue or to modify permits in compliance with requirements of Section 3004 standard that were discussed yesterday evening. For any modifications to permits a time period shall be identified for how long these modifications are--or how long an applicant will need to perform the modifications.

Section 3005(d) authorizes the administrator to revoke a permit for noncompliance with any of the standards under Section 3004 or 3005.

Section 3005(e) authorizes the granting of interim status or interim permits for those facilities that existed prior to the passage of the Act in October of 1976, who have notified EPA in accordance with Section 3010 that will be discussed this afternoon, and who have applied for a permit under this section.

Now those facilities,that I just described, will be considered as having a permit until such time as final administrative action is completed on their pending applications.

I would like to get in now into the prospective contents of the regulations. One of the first things that we are attempting to do--and I must say that it is not totally worked out yet--is to develop those specific--a specific language, if you will, that will

integrate any requirements under this section of the Act with requirements that either exist now under other environmental laws, such : The Federal Water Pollution Control Act, The Clean Air Act, The Safe Drinking Water Act, Pesticides Act. And try to avoid the duplication that may occur because of the same facilities requiring one, two, or three permits.

So that work in ongoing. We are working as closely as we can with the other offices of EPA that have responsibility for those laws to make sure that we work out those arrangements that will avoid the duplication. And where possible to integrate any requirement that can be integrated.

Briefly, generally stated, all facilities--whether on-site or off-site ~~or off-site~~ of the point of generation--that either treat, store, or dispose hazardous waste will require a permit in accordance. And will be issued in accordance with the standards that will be published under Section 3004.

Now we do recognize that there are some cases or situations that exemptions to this general rule must be made in order to make the program function properly. And so far we have identified the following categories that will not require permits under Section 3005:

1 Sanitary landfills that do not accept
2 manifested waste--as described yesterday under the require-
3 ments of Section 3002--will not require permits under this
4 section.
5 Hospitals or other health care facili-
6 ties that either store or treat on site--by treatment I
7 mean either autoclaving or some type of pathological
8 incinerator on the premises and that are under some type
9 of state regulation--will not require a permit under this
10 section.
11 And storage facilities that store
12 hazardous wastes for a period of 90 days or less would
13 not require a permit as we, I believe, discussed yester-
14 day.
15 We are developing a category that we
16 are for the time calling special permits that will have
17 either reduced requirements than the--what's called the
18 general permit or will receive expedited handling. And
19 these categories that we have are for the research re-
20 covery facility that I believe we discussed pretty much
21 at length yesterday. For those facilities that receive
22 waste either for storage treatment or disposal that
23 resulted from the emergencies that again we discussed
24 yesterday--when you have an accidental occurrence.
25 We are developing these special permits

1 to handle those type of facilities that happen to be near-
2 by that the person who was in charge of the on the scene
3 coordinator deemed it necessary for protection of public
4 health or the environment to have the facilities taken
5 there. We are developing this special permit to handle
6 those type situations.
7 And another category is what we call
8 experimental facilities. That's to handle those facilities
9 that either are pilot plants or come into being, hopefully,
10 to advance the state of the art, all of the treatment of
11 hazardous waste that we will handle in an expedited manner
12 or through the special permit mechanism to assure that we
13 do have some growth in the technology for handling these
14 materials.
15 The rest of the regulations or prospec-
16 tive content of the regulations deal with the requirements,
17 more detailed requirements of what is to be contained in
18 each application.
19 And we are hoping that it will be
20 sufficient information to insure efficient and expedient
21 determination by EPA in reviewing and passing on these
22 applications.
23 The regulations will require time
24 limits for submission of applications and for EPA to act
25 on these applications. They will establish procedures for

1 maintaining confidentiality of any trade secret type of
2 information that the applicant indicates must be so handled.
3 We will establish procedures for re-
4 voking or for modifying permits insuring that all due
5 process considerations are met and will require a compliance
6 schedule to be mutually agreed on. That is for those
7 existing facilities that come in for a permit that a
8 compliance schedule will be worked out to bring the facility
9 up to the Section 3004 standards.
10 At the moment we are--our current
11 thinking is that this compliance schedule time frame will
12 not exceed four years. And it can receive one extension.
13 The regulations will also impose con-
14 ditions in a permit to insure compliance with the standards
15 of the Section 3004. And they will provide the opportunity
16 for public participation prior to EPA's decision to issue,
17 modify or deny a permit.
18 Some of our unresolved issues at the
19 present time involve a--kind of a technical issue--legal
20 more than technical, I guess--that the way the Act is
21 written it accommodates only existing facilities as of
22 the date that the law was inacted on October 21, 1976.
23 And we are struggling with the concept
24 of what to do about those facilities that have begun
25 operation or are under construction since October 21, 1976.

1 And we are leaning towards the way of handling those is
2 assumed that they existed prior to October 21, 1976, and
3 treat them as existing facilities.
4 Another issue that is fairly controver-
5 sial, within EPA, is whether to have one permit cover those
6 new facilities. That is issue one permit at the time that
7 the application is approved or whether to have two permits.
8 That is a construction permit that will be issued in order
9 for the design to be approved and the facility to be con-
10 structed. And a separate permit which we call the operat-
11 ing permit when the facility is, in fact, constructed and
12 desires to begin operation. So that's another issue that
13 we haven't really come down on one way or the other yet.
14 We are also, as I indicated in the
15 beginning, still working on the details on how to reduce
16 the requirements for the special permit for the resource
17 recovery facilities for the sites that receive emergency
18 type hazardous waste and for the experimental facilities.
19 Another issue that has yet to be re-
20 solved is the potential need for an environmental impact
21 statement to be prepared prior to EPA's issuing of a per-
22 mit--on any given permit, I think, to recognize what the
23 implication for that type of issue is.
24 Another issue that again is still up
25 in the air deals with the concept of whether to have site

1 life type permits. That is permits that are forever. Or
2 to have a finite period specified what we call a renewable
3 permit concept for these facilities. Our thinking now
4 is leaning towards the renewable type of permit. And we
5 are using a period of ten years as the maximum that a
6 permit will be issued. But again as I say it is still
7 under some debate anyhow.
8 That completes my presentation.
9 Back to you, Bill.
10 CHAIRMAN SANJOUR: Is there anyone who
11 wants to give any prepared statements for five minutes in
12 length?
13 (No response.)
14 If not, we will take any written ques-
15 tions. The cards are being handed out.
16 Just raise your hand if you would like
17 to give a question.
18 The first question: "Will a hazardous
19 waste management facility which has an incinerator inter-
20 mittent discharge from lagoons and handles manifested
21 hazardous wastes have three permits or one permit issued
22 under RCRA?"
23 Out thinking now is that it will be one
24 permit. However, on the conditions on the permit we will
25 identify these independent separate prosthesis and impose

1 whatever requirement needs to be imposed on these. But the
2 idea is that it will be one piece of paper, one permit, if
3 you will, but will identify these unit prosthesis on this
4 facility.
5 MR. KOVALICK: I have a question:
6 "Please clarify the statement made yesterday that a facility
7 which at sometime in the past disposed of waste that is now
8 considered as hazardous but is no longer practicing on site
9 disposal is required to obtain a permit?"
10 Now let me review again what Bill
11 explained yesterday. When the law passed we asked our
12 general counsel for an opinion about whether or not the
13 date of signing of the law made a difference in deciding
14 whether something was a hazardous waste.
15 And he explained that one member of
16 his staff gave an oral opinion that there is nothing in
17 the legislative history that speaks to the fact of the
18 date of the passage of the Act in the cutoff point. That
19 is that before that date things that were--that had hazar-
20 dous properties were not hazardous waste. So that is the
21 only base we have at the moment.
22 But if you carry that opinion to its
23 logical extension then storage piles, lagoons, and even
24 closed facilities would potentially require permits.
25 Since we haven't concluded our inves-

1 tigation of how general counsel feels about that knowing
2 the implications of it, we are still under development on
3 that subject. But the point was that the date of the
4 passage of the Act appears not to have anything to do with
5 whether or not a waste is hazardous, you know.
6 There may be some other--there are
7 other policy ways of trying to work around that which we
8 have to explore.
9 MR. LINDSEY: I have a couple here.
10 Another waste oil question: "If waste oil from service
11 stations is declared to be hazardous waste, will the station
12 operator have to get a storage permit or is he considered
13 a generator of such hazardous waste or can he be exempted
14 as a small generator?"
15 To begin with he would be considered
16 a generator of hazardous waste. He might be considered
17 a small generator if his generator rate is less than
18 whatever the cutoff turns out to be. That's questionable.
19 If he sends his waste material--assum-
20 ing he is not a small generator now--if he sends his waste
21 material to a product recovery facility, then he would not
22 be--he would not have to enter into all of the record
23 keeping and manifesting activities that a regular generator
24 would have to enter into.
25 As far as getting a storage permit goes,

he wouldn't have to get a storage permit under any conditions provided he doesn't hold the waste oil more than 90 days. O.K. That covers several different basis there.

It is very difficult now to get permits for ordinary municipal landfills because of public reaction to a facility in their neighborhood.

"With a continued emphasis on the hazardous nature of the waste under discussion here, what do you think the odds are for ever obtaining a permit for a commercial disposal facility?"

This again gets back to the question we discussed, I think, in length yesterday concerning the availability of adequate capacity--the availability of enough adequate capacity to handle all the waste and how that may very well be a problem and how the problem is two-fold relative to the ability of the industry to expand, mainly being capital availablity and this public opposition to--local public opposition to the siting issue.

I'm not sure that the passage of RCRA will make it more difficult to site such facilities, more difficult than it has been. I think for those of you who are in that business can bear me out it's been becoming more difficult for some period of time.

It may, in fact, the passage of the Act and the implimentation of the regulations may, in fact,

1 make it somewhat easier in that the public, from all the
2 indications we have, will be looking on an EPA permit to
3 operate or build such a facility as a clean bill of health.
4 That is that at least somebody with the authority has taken
5 a look, a detailed indepth look, at the safeguards and the
6 design and the operations--projected operations of these
7 facilities and has concluded that is, in fact, an adequate
8 safe facility.
9 We think that that may help to--may
10 influence the local citizenry at least to accept these
11 kinds of facilities. We don't know that for certain. And
12 we won't know that until it goes into play. We don't really
13 know how serious a problem the public opposition aspect is
14 going to be to development of adequate capacity.
15 We think it will be a problem. But we
16 don't know whether it will be the kind of thing that can
17 be overcome through public education, through adequate
18 siting, through locating in places where the opposition is
19 not severe or what have you. So I don't know the answer
20 to that.
21 Another question along the same line:
22 "Do you think that the policy of issuing temporary or
23 renewable permits will inhibit investment?"
24 Now that really gets to two questions,
25 two different kinds of permits.

First of all, the temporary permit. The temporary permit will be issued only to those facilities who are in existence, who for one reason or another do not meet and probably cannot meet all of the criteria. Maybe because they are located in an area that the criteria may not allow for full permit, yet they don't pose an immanent hazard. In other words, a demonstratable immediate kind of problem.

They will also only be issued where those facilities are necessary in an area. That is where there is no adequate alternative facility available to-- for the users of that facility to go to.

It is a mechanism for allowing orderly implementation. That is for not shutting down facilities that have been operating without any demonstratable immediate problem, without shutting those facilities down before there is an adequate alternative.

If we do shut those facilities down, where is the material going to go? A lot of it may end up in the fields and streams which is certainly a much worse hazard.

So that's the situation with temporary. There won't be a great number of them. There probably will be some.

Relative to renewable permits, that's

a regular permit we're talking about now--the fact that every ten years, as it's now written, each permit will come up for review by EPA. Whether or not there has been any problems, complaints or anything of that nature identified EPA will review the permits to be sure that it's up to date and continues to be adequate.

This is--what we have actually done here is come down somewhere in the middle. There ~~is~~ are two poles. The first pole is that we do it--we renew--we have these permits looked at very often, every six months, every year, every two years. The idea being there that you exercise a maximum amount of control. No facility is left to operate without being continuously scrutinized by EPA, whether or not there has been a demonstrated problem. And there is a group of people who feel very strongly that we should do that.

There is another group of people who say, "Look, you know,we can't get adequate investments type of capital if we are not assured or reasonably assured that providing we don't have any problems, we are going to be able to operate for relatively long periods of time."

And that group, of course, argues for a life-time permit. A permit which runs the life of the facility.

From the indications we have is that

the ten year limit is kind of in the middle there. It allows a sufficient time period to operate for the obtaining of investment capital. Ten years is a fairly long time.

On the other hand, it does not permit a facility just to operate ad infinitum without any review by the Agency. That is that no facility will be falling through the cracks permanently.

And so that is why the ten year limit is choosen. That's not cast and concrete at this point. And if we here somemore cogent arguments that are different than the ones we have heard, why, we can--we will consider them.

MR. MOREKAS: O.K. I have several here. Question: "Will a permit cover each piece of equipment or will it cover various operations a facility has?"

I believe I attempted to answer that earlier. Let me try again: That we invision one permit being issued to a facility that would cover all the prothesis on that facility. But within the specific conditions outlined in that permit, we may have different requirements for a given operation or process.

And whether it means a separate finite piece of equipment, it would be too early to tell at this point just exactly how the--it will vary from facility to

facility obviously.

The second part of the question: "Are solvent recovery units to be permitted?"

We envision those to fall under the category of the resource recovery special permit requirement, as I indicated, that we are developing.

Question: "We are operating deep well injection sites in Texas and California with state permits. Will these require EPA 3005 permits?"

As I indicated that's one of the areas that we are working with those folks who are developing the regulations for the Safe Water Drinking Act, UIC Program. And I know this is a tricky question in that the state is issuing the permits the way the regulations are coming out of the Safe Drinking Water Act, UIC Program will allow the states to continue issuing the permits.

As we go down the road in developing the specific language I expect that our permits requirements will attempt to insert the language that will allow those states, who are now issuing the permits for the deep wells to continue to do so provided they agree to insert any requirements that we deem necessary.

The idea again is to avoid having to issue two permits for one deep well. And this is what we are attempting to do. To work out in advance those

things we need to work out so that you only need to get one permit and it covers all the laws.

A follow-up to that question: "Is new sites--will new sites require both EPA and state permits?"

Now I assume this is past the deep well question earlier.

Again the answer to that is obviously if a state is authorized to run the program in lieu of the Federal Program, there will not be a Federal permit for a site.

However, we can invision the situation where a state such as California, as an example, right now do have an ongoing hazardous waste program. They issue permits. And assuming that they decide not to seek authorization under RCRA then we would be forced--we would be in a position of having to issue a Federal permit on top of the state permit, which I don't believe anybody wishes. But this is the position we would be in.

Hopefully we will be able to work out the overlapping requirements at that point.

Question: "If you stay with the idea of two permits, will you have a public hearing for only the construction permit with the operating permit only to be handled by the staff?"

Good question!

We have struggled with that. And we have come up with this concept that once the construction stage is completed and the applicant has certified to EPA that he has completed the construction in accordance with the disign that he submitted and was reviewed by EPA and has met all the conditions, we expect the staff to visit the site prior to taking an action on the operating--on issuing the operating permit. And if they are satisfied that all construction has been performed in accordance with the disign submitted, the applicant will be also required to certify that no knew conditions have been encountered that were not anticipated earlier.

And if we're talking about a disposal site in geology/hydrology. that varied from whatever was permitted initially, then a second public hearing will not be required, if no new condition has been uncovered in the process of the constructing of the facility.

However, if there is any new information that in the opinion of the staff and the regional administrator is considered significant knew information that was not submitted during the review of the application say, that a public hearing will be conducted to issue the operating permit.

Question: "Assuming our refinery has spent caustic tanks, which we are continuously, daily,

putting caustic and trucking caustic out of, we cannot sell this caustic and must dispose of it. Do we need a permit because of these tanks?"

I suppose the only way that you would not need a permit, if all of these can be categorized as a 90-day storage facility. But this is happening over a long period of time. And I see the potential of needing a storage permit for these tanks.

Question: "Under 3005 will a facility established prior to October, 1976, but whose process has been modified be classified as 'new or old?"

I assume that it has been modified between 1976--October, 1976, and now. And I would classify that as in the category of "old" and not a new facility.

Question: "Has the Agency considered issuing special permits for closed on-site storage facilities?"

Frankly, no. And I think that's a very good idea. That's something that we need to consider.

"Will the adjudicatory hearing right be included in this system?"

The answer is, yes. We will have the adjudicatory hearing right in these regulations.

"State again the different kinds of permits under which existing and new hazardous waste disposal

1 facilities will be permitted?"

2 Again the three kinds of special permits,

3 that I mentioned were: the resource recovery facility, the

4 facilities that accept waste from an emergency, from a spill,

5 the experimental facilities for demonstrating advances to

6 the state of the art. Those are the special permits.

7 And what I stated earlier were the

8 facilities that would be excluded from a permit were the

9 hospitals or health care facilities that store or treat

10 waste on the premises would not require a permit provided

11 that they are under some state regulation, which most I

12 believe are.

13 And the sanitary landfills that do not

14 accept manifested waste, would not require a permit.

15 And the storage facilities for less than

16 90 days, would not require a permit.

17 Question: "Will an EIF be required for

18 a facility existing before the passage of the Act?"

19 Again as I indicated,we really haven't

20 arrived at the final decision in this. But as of the moment

21 our approach is that only new facilities would fall under

22 the EIF requirement and what is considered major modifi-

23 cations to existing facilities. And that obviously is an

24 ambiguous term. And it's a judgment called what would be

25 considered a major modification. But that's the two areas

that we are considering now.

Question: "When do you expect the final decision will be made as to how previously existing disposal sites since abandoned will be treated?"

I think I better let the Chairman attempt an answer to this. I think it's within the same vein as was answered, I guess, yesterday and earlier by Walt Kovalick. It is a legal matter. We have an informal legal opinion at the present time. Hopefully there will be a written opinion before we publish these regulations and propose the form I would think, in order to let--before February. So that, I guess, is as good a target date as any.

Question: "Don't you think that identifying so many relatively common wastes as 'hazardous' is counterproductive? There probably won't be enough permitted sites merely because of 'dilution'of this calssification."

It seems to me that's more of a 3001 question. But again that's probably a reasonable expectation. If we have too many of these things to handle, probably there won't be enough sites, as we indicated, to handle them.

So I don't know how to get out of that box.

CHARIMAN SANJOUR: Well, I think that's

1 kind of an assumption in the question that we are going to
2 do that. Since we haven't defined the hazardous waste yet,
3 I don't know how that assumption can be made.
4 MR. MOREKAS: That's my last one.
5 CHAIRMAN SANJOUR: I've got two ques-
6 tions here dealing with the same subject.
7 Let me read them first: "An existing
8 hazardous waste management facility has an operating permit
9 from the state will the EPA issue a new permit? And if so
10 will the facility now hold two permits?"
11 And the similar question is: "What
12 benefit accrues to the public by requiring an EPA permit
13 for an incinerator that is already permitted by an air
14 control board?"
15 Well, if the state elects to have its
16 own hazardous waste program, then the state will be issuing
17 the permits and presumably they will not issue duplicate
18 permits.
19 However, if the state does not elect
20 to take over the program, the Federal Government must.
21 There is no option. And the Federal Government must permit
22 the facility. I admit it is rather stupid and silly to
23 have duplicate permits. And the way to avoid it clearly
24 is to have the state take over the program, which is what
25 Congress intended and what we would encourage.

The next question is: "How would a resource recovery facility be defined to make it different from a treatment facility?"

First of all we have changed the word resource recovery facilities, Sam. As of yesterday we are not going to call it that anymore. And the reason we are not is because it seems that the Act only defines the term resource recovery facility. And we are using it in a slightly different sense. So we are not calling that a materials recovery facility.

And our concept is that that would be a subset of treatment facilities. All materials recovery facilities are treatment facilities but not all treatment facilities are material recovery facilities.

And we would define it as follows:-- we wrote this yesterday morning too--Definition of materials recovery: Treating a waste for purposes of restoring it to the original product, whereas reuse means using waste, the waste as is.

Other uses which do not fit into either category would be handled on a case by case basis. Now it's only the material for recovery facilities that we intend to give these special permits, not for materials reused or any other treatment.

And I have some examples here of materials

recovery facilities. They would be: a waste oil rerefinery, for example, solvent--waste solvent distillation, mercury reprocessing.

Some examples of reuse which is not materials recovery would be: using waste oil for fuel or for road oiling or blending oil for that purpose, using pickle liquor in sewage treatment plants, land farming of sewage ~~slug~~ sludge, and energy recovery of waste. So those are the examples of reuse which is not materials recovery and would not be eligible for that special materials recovery permit.

I hope that clarifys that question.

Next question: "If hazardous ~~sluges~~ sludges from an NPDES waste treatment system API separated and dissolved in air flotation, et cetera, are ponded in the lagoon by pipe and truck transport on-site for further gravi-separation (one word) of oil and water before recovering the oil sending the water back to the treatment system in dispose of the ~~slug~~ sludge, would these be covered by RCRA? If so, would a permit require ground water (one word) monitoring?"

I suspect this comes from a refinery. I think the answer would be, yes, and, yes. A permit would be required under RCRA and ground water (one word) monitoring, if it's appropriate. If it's necessary, ground water (one word) monitoring could be required depending on the lagoon itself.

Now that's still an issue that we are studying somewhat. And, in fact, this sounds like an excellent case study for us to cut our teeth on. And if the gentleman who submitted this question is interested in our taking a close look at his particular facility so that we ourselves can figure out where we want to cut the line on this, I would appreciate him getting in touch with me.

The next question: "In the manufacture of phosphoric acid from sulfuric acid and phosphate rock, you produce gypsum that is sent to a gypsum pile. The water discharge from the dark pile is discharge under an NPDES permit under regulations for ECFR 418. Will the pile also need a permit under RCRA?"

It's manufacturing, it says in the manufacture of phosphoric acids and phosphate rock that is not mining and milling.

I guess if the gypsum itself is a hazardous waste then it would be covered by RCRA, yes. The water discharge would not be because that would be covered by NPDES. But the gypsum pile nevertheless would require a permit from RCRA, if it's a hazardous waste.

Do you have any questions?

MR. LINDSEY: "What provisions are you considering for permit modifications if a disposal site

being--begins a new process, example: chemical landfill expands to land farming, incineration or whatever?"

The approach would be an amendment to the existing permit.

"If a modification is issued and one part of the operation violates the permit, would the other permitted operation be affected?"

Well, the--any enforcement action would be oriented or order or what have you would be oriented toward the problems that existed. The permit for the whole facility could be revoked. On the other hand, we might revoke just part of it or cause new conditions to be placed on the permit as a result of the source of the problem. So it could go either way.

"The permit system appears to grant permission to operate?"

That's basically correct, to operate a treatment or storage disposal facility. I guess the point is it doesn't grant permission to generate a waste. It permits operation of a treatment, storage, or disposal facility.

"A closed site which contains what would now be defined as hazardous waste does not wish to operate. How then--is there a difficulty with the date of the law or a need to obtain a permit? Also how could such sites be

1 tested to determine hazardous content?"

2 Well, we keep coming back to this issue

3 of preexisting sites which are closed. And we have been

4 over, I think, the problem there that we don't have a

5 definitive answer for that.

6 The only thing that I can say, relative

7 to the permit, is that in the Act under 3005 it says that

8 regulations will require each person owning or operating

9 a facility to have a permit. So if it turns out that the

10 legal interpretation is that such existing facilities are

11 required--somehow fall under the Act--then one could make

12 the extension that they would require a permit, I suppose.

13 That is a serious problem, as we have been indicating. I

14 don't know how we would handle that.

15 "Are permits required for materials

16 that are stored in a staging area?"

17 In other words, as part of an incinerator

18 operation you may store materials in bulk or drums to be

19 disposed of at a time when enough material is on hand to

20 make disposal economical, at some later date. As a result

21 you may create a 90-day limit. O.K.

22 Storage permits are required in such

23 instances--would be required in such instances probably

24 even if the--you are not under 90 (Stat) days, even if you were

25 under 90 days.

The storage exemption--the 90-day storage exemption applies, at least as we have it now, only to generators of waste for the purpose of obtaining enough waste to economically ship it. O.K. So it applies only to the generators of such waste to obtain enough material to economically ship it. And that's got a 90-day cutoff on it.

Now if you are an incinerator, the storage of whatever your bringing in at the front end would require a permit, just as your incinerator would. And you would get one permit for the whole works.

If on the other hand you have a residue that comes out of that incineration, which in itself is hazardous, then the incinterator operation becomes a generator of that waste and would be eligible then for the 90-day exclusion for that particular operation, if they want it.

"Is there a way for process whereby a hazardous waste site operator can obtain Federal funds to conduct research and develop new handling techniques for methods to obtain--excuse me--to better treat some waste streams?"

First of all there is no construction grant of moneys in this operation in this Act. There is no provision for that.

On the other hand, that is not what is addressed in this question. This question addresses research development and demonstration kinds of funds. And, yes, there is authority for that kind of thing under Subtitle H of the Act. And the Act is out there and it's kind of long and involved. And it gives some examples of the kinds of things that can be done.

And there is money appropriated for research and development kinds of activity. And you would, in this case, the money for that kind of work is administered out of EPA's office of research and development. The laboratories are for that or headquarters in our Cincinnati office. And some of the people are here from that office now, Don Staning I see in the back.

And Don, why don't you raise your hand. If somebody has any questions, why, you can--stand up, Don, so everybody can see you. Don is with our office of research and development. And he may be able to talk with anybody who is interested in that later.

Additionally there is authority for demonstration operations. Now these are full scale demonstrations of new technology. Unfortunately we don't have enough money to do any of that at the moment. We are conducting one project in that area now, which is a chemical waste landfill which is development of and operation of a

chemical--full scale chemical landfill in the Twin Cities area.

That, I guess, is the only hazardous waste demonstration going on at the moment. But there is the authority for that but at the moment we don't have any new funds for that kind of thing.

"If one concedes the retroactive permitting requirements or a logical extension of the law as written--" and this interpretation creates a significant impact on industry. The person here has in parenthesis ridiculous. "--would not there be the same case for now requiring manifest to have been made also, retroactive?"

I don't know if one can make that logical extension going back or not that we would have to manifest everything for the last 50 years. I guess I have no comment on that.

"How many permits do you estimate will be issued?"

We have made estimates, contractors made estimates, and we have backed into estimates based on our knowledge of the waste coming out--directly coming out of industry and out of the NPEDS process. And the number we keep coming up with is somewhere in the order of 20,000 permit applications, nationwide.

That does not mean to say that 20,000

1 facilities are going to be judged to be fully permittable,
2 right off or anything of that nature. That is just the
3 number we expect to get.
4 Now the secondary questions here is:
5 How long will it take to get to them all? How long will it
6 EPA to pass judgment on all these applications?
7 Bear in mind now that anyone who makes
8 application and has notified us will be presumed to have
9 an interim permit to operate until EPA does act on that
10 permit. So nobody is shut down by this. They keep operat-
11 ing until we get around to acting on the permit.
12 O.K. How long is it going to take us
13 to get through all 20,000 permits? Well, that depends on
14 two things: No. 1, it depends on how many states seek and
15 are authorized to carry out the program. The more states
16 that do it the quicker that it will get done. We don't
17 know how many states will be in that position. We will
18 hear more about some of the things that may prevent some
19 of the states or encourage some of the states to take the
20 program in the next session.
21 Another factor in this is how many--
22 how much resource we are going to have to carry out this
23 program in the regional office. Most of the impact and
24 most of this permit granting activity will begin in the
25 fiscal year '79. It's not clear yet just how many re-

sources we will have. The fewer states that play the game, that take the Act, the state authorization under the Act, and the fewer resources we have the longer it is going to take. It may take several years. I just don't know.

MR. KOVALICK: A follow-up to the question of ~~quote~~ "dilution" ~~unquote~~ of the title hazardous waste. "So when there are enough permitted facilities to accept the waste, what then?"

And the parenthetical comment is if you don't know, please give me your address so I can send my materials to your office.

My personal view is what is going to happen is something like the following: If you remember, we said that about 80 per cent of the--70 to 80 per cent of the hazardous waste that we know of, we have studied, are disposed or treated on-site, by the generator.

So I think one of the intial things that is going to happen when the appearance of a shortage of sites becomes clear to the state and local and municipal officials there will be a number of additional permits of a variety of calibers issued for using portions of the back forty of certain industrial plants for on-site treatment, or disposal, or storage. That is storing the waste, which we happen to know goes on today.

The other thing that will happen is

that the pressures on city counsels and mayors and county commissioners will suddenly increase rapidly, in terms of conversations like, "We can't find a place to put our waste and we are going to find another place to do business."

So it is my personal view that finding waste disposal sites is going to become as critical as transportation costs and raw material input to firms who are in this business of treating and manufacturing products.

So, I think, as is not unusual in many of these situations when crisis appear and it's already appearing to the planners who are divising probable waste plants, and when the crisis appears to the political controls in various municipalities in these states, then accommodations will be made.

And as we mentioned none of the facilities that are currently operating will be shut down because they will have this interim permit that allows them to stay in business. So that's my summarial personally about things that might work out. And we are not going to give you our guess for that purpose.

CHAIRMAN SANJOUR: If you have ever seen our office, it's already a hazardous facility."

MR. KOVALICK: "Will existing dumps that contain hazardous substances,once this is published, be subject to reclamation procedures, such as: removing

removing material from the site in addition to the scheduled disclosure requirement? If this is true will reclamation procedures be applicable to sanitary missiles landfills containing hazardous substances?"

We think that's very unlikely. I think the intent to those of you who are familiar with Sub Title D is that the open dumps will be closed. And if they do have some particularly harmful environmental effects that are identified during the open dump inventory, there may be some remedial action needed for a few of those sites.

But we do not speculate, at least from our view of Subtitle D work which is not our prime purpose, that reclamation is going to be the order of the day.

Here is a review question for those of you who were with us yesterday: "Who will make the final decision on what will be kept confidential and what will not?"

As we discussed yesterday about confidentiality of business information, basically the holder of the information makes that decision. So in the private sector the generator or the transporter and the treating disposal firm have contractural arrangements with each other.

We would presume, deal with the subject of what happens to the manifest data each of those parties keeps or their EPA records. So what I am about to discuss

1 has nothing to do with private sector arrangements and how
2 that data is guarded or not guarded under these contractual
3 arrangements.
4 In terms of the public sector, I
5 mentioned yesterday that--let me be specific, obviously
6 if EPA were running the program you are going to be--and
7 you're a generator disposer you're going to be sending
8 quarterly reports with manifest actions on them.
9 If you're a disposer, you will be sending
10 environmental monitoring reports. And your notification
11 will be on file telling us what kind of business you are in,
12 what kind of waste you generate.
13 And as I pointed out yesterday, any
14 smart marketing person would then find that a nice place
15 to spend the day and discover where all the wastes are
16 that he should be interested in, if you were in the disposal
17 business or the transport business.
18 So what I explained yesterday was that
19 EPA has a set of Freedom of Information Act regulations.
20 And right now those regulations cover the Clean Air Act,
21 and the Water Act, and several other of our statutes.
22 In the next, I would say, 45 to 90 days,
23 there will be proposed in the Federal Register amendments
24 to the Freedom of Information Act requirements or regulations
25 that extend those regulations to cover RCRA.

1 Now if that happens, then what will
2 occur is that all the forms that you use that come from EPA
3 will have a box on the bottom of them where you check off
4 if you believe that the date you are submitting should be
5 treated as confidential information. In other words, we
6 give you the right to make a declaration or not on the form
7 that you are sending in.
8 Then if someone comes to our office,
9 we have to run through the procedures that are outlined in
10 these regulations--and they are about two or three pages
11 long--but basically it involves our ascertaining specifically
12 what data that person wants, verifying whether you have been
13 offered the opportunity to call it confidential information.
14 If you have, then it's a negotiated process to see whether
15 it is confidential information.
16 And the basic test, as I recall, although
17 I don't have those regulations with me, revolves around
18 is it possible to get that kind of information about your
19 firm from public sources and other sources of business
20 information, like Dun's and other places.
21 I would be happy to discuss that more
22 but that's the basic gripe. The thing I didn't mention is
23 what happens if the state takes over the program. Now if
24 the state takes over the program all the data that I have
25 just been discussing, the manifest or the reports, I should

say, will be going to them.

If they have--and you will hear in a few minutes about what the requirements are for a state taking over the hazardous waste program--but as it stands now, the state's current Freedom of Information Act requirements would apply. So if they have none, if you are in a state which has no procedures by which information is guarded until such time if you have been notified that it might be released, then you might want to take a very careful look during public hearing process of making that happen in that state, if you think it's important.

In other words, when the state takes over the program if the only thing they don't have is the--some kind of Freedom of Information Act controls, it's not likely that they will be denied the program for that reason. So that is a possible problem from your point of view that you should be aware of if the states take over the program.

"An amendment to RCRA has been proposed by representative Finley of Illinois to require hazardous waste facilities to be on Federal land, existing or newly acquired. Will this resolve siting problems?"

This question refers to--I believe it's HR-8538 I'm not quite certain of that number, which was introduced by representative Finley. It has a number of provisions in it which do regulate basically making sure

that there is at least one hazardous waste disposal facility in every state. And making provisions for those sites to meet Federal standards when they are selected.

The Bill does not have a funding provision in it of any substantial size. And it does not-- basically says that the land can be obtained by public spector meaning the states or the Federal Government. And then the operation contract about the private spector. We are not at all sure that this is going to solve the problem even if it were funded and passed, which neither of which has taken place. Because the public hearings would still be required to site the facility.

And even though many people feel that having such a facility on state ~~of~~ or Federal land makes it much more comfortable, when it's closed I'm not sure that effects the public's attitude in the extent to when it's open. That is the trucks still roll and whatever concerns they have about the basic operations may remain.

So you are correct, if you are interested in that Bill we can get you the actual number or a Congressman can get you a copy to study. But it's not clear it's hand stamped.

I have about three different questions all revolving around the definition about the waste. And they also revolve around the subject of used oil. So if

you will bear with me while I read them, and then I will try and go back and deal with them one by one.

Oh, I'm sorry, it's HR-8657, let me correct the record. It's the Finley Bill, it's HR-8657.

These are the three questions: "We recover our own spent soluble oils on-site and burn recover oils for fuel. ~~Slug~~ Sludge from that process goes to waste to water treatment process covered under our NPDES permit. Do we need a 3005 permit?"

Let me try and deal with that. It's related--let me repeat for some of you I know that the hotel gave out that information when the meeting began yesterday. The definition that we are using for when is the waste a waste. We are currently considering that all discarded and abandoned materials are wastes. Then the definition of waste goes on that a waste is something that if it is not a prime product of your process and if some significant percentage is disposed of nationwide like at the rate of 5 per cent. That's an and statement. If it is not the defined product and if some percentage is disposed that is in your part of the country it may be totally recycled but in other parts of the country it is disposed, it is a waste unless it has immediate reuse as a by-product, this thing we are discussing, this material, or unless it goes to material recovery within three months.

And remember Mr. Sanjour just ran through, in detail, our current split on the difference between material recovery, meaning solvent reclaiming, re-refining ~~rerefining~~ versus reuse. Like burning for fuel, road oiling and so forth.

So, it's two and statements. If it's prime product and if some smidgen of percentage is disposed of in a national view, then, it is a waste. And then you would apply to have the squeeze test. Unless it had immediate reuse as a by-product or is sent to research material recover within 90 days.

Now, he ran through yesterday, the fact that the 90-day number is one that we're still evolving on and that obviously the word "immediate reuse" is a negotiable item that we need to examine.

So, in that context, I'll try and answer this question again.

This follow recovers soluble oil on-site and burns the recovered oils for fuel and sludge goes to an NPDES ~~NBES~~ permitted treatment facility.

We're assuming here, then, I would assume that this--let us assume, I should say, that everything is tight and connected. If that were the case, and he's reusing that oil or recovering it immediately, it's not a waste. So, he's not covered from that point of view, that

1 particular recovery operation. And the burning of the oil,
2 which may also be piped, would not be covered. If any of
3 these conditions, other than the immediate utility is broken
4 or the recovery within three months is broken, or the con-
5 nections by pipe is broken, then, it would probably flop in-
6 to permit site assistance.
7 I'd also like to repeat that generators
8 do not get permits. Only the treatment or disposal facili-
9 ty gets permits.
10 This question was phrased, "Do we need
11 a 3005 permit." We're only talking about the treatment and
12 disposal. Not the fact that you're producing waste.
13 A similar question or a related ques-
14 tion is: "Will storage permit be required for hazardous
15 materials held in excess of 90 days, but intended for future
16 processing in the finished products."
17 Okay, the manufacturing unit does not
18 consider these to be abandoned or discarded. What steps,
19 if any, would be required to certify that these are not
20 waste materials. I hope, again, that you see that this ques-
21 tion relates to the fact we're using--we're still working
22 on it, we're using that 90 day definition to reflect whether
23 or not it is a waste. And that 90 days also coincides with
24 the start date for permits for generators.
25 So, as this is--a permit for stores,

excuse me, permit for stores. So, if this is phrased that since the product is held in excess of 90 days, and as our regular currently concedes, then, this would require a storage permit, as it does not have--it is not sent to material recovery within 90 days.

Another one: "Used oil collected by a service station is stored and sold to a scavenger for research recovery. Is this a hazardous waste?"

Well, as we said yesterday, we're still evolving a definition of hazardous waste, but I think there is some likelihood that used oils will either be flammable and/or possibly fail the toxicity test because of there metals contents. So, let's assume for a moment, this oil has hazardous properties.

"What permits will be required from service stations selling about a hundred gallons used oil per month."

Well, first of all, no permits for the generation of the oil are required. What we're talking about might be permits for storage. But I would say, this probably is in the category that I was discussing, of immediate reuse, I'm sorry, shipment to resource or material recovery, within 90 days.

It sounds as if this kind of facility could be in the category where it not a waste, because it

is sent to material recovery within 90 days. That would be the case, except it is likely, as I think about it, that much of--not 100 per cent of waste oil is researched recovered. Remember the "and" statement, it's a combination of not being the prime product of whatever you're doing, and also have some significant percentage being disposed.

In this case, some used oil, as a matter of fact I know some is used for used like road oiling and so forth.

So, if we assume he is a waste generator, and if we assume that he's not a small waste generator, then, he would fall unto their record keeping of how much he had, I would presume in this business the transporter, we are aware the transporter supplies this service, he would probably come with the manifest which the service agent would just sign on the bottom. The transporter would handle all the paper work for this facility to get it to its use or coverage.

It's very complicated area and it's hard for me to run through all the ifs, ands, and buts. So, perhaps this person ought to nail us down afterwards. But I think it's a good chance for us to try and run through this definition of when is a waste, a waste again. And the fact that recovery versus use is an important distinction.

MR. SANJOUR: Walter, considering all

the interest in this area of gas stations--service stations, perhaps we ought to write some kind of issue paper pointing out all the possibilities for service stations.

MR. KOVALICK: It's a complicated area and there are a lot of people involved in it too.

MR. MOREKAS: At the last count there are 289,000 service stations in the United States. You can see it's a significant issue.

AUDIENCE MEMBER: Don't forget the question.

MR. KOVALICK: "If a land fill (one word) or something has its waste prior to publication of the regular regulations, but the operator decides to stop and qualifies a sanitary landfill in the future, would they have to comply with ~~Sub Title~~ Subtitle C or ~~Sub Title~~ Subtitle D or both?"

Well, were it not for this headache that we run through three or four times this morning, about the time at which waste is being created is not a factor, we would have viewed this as a ~~Sub Title~~ Subtitle D problem.

Now, if this facility wants to get out of the hazardous waste disposal business and would not be covered. And the only remaining issue is, how are we going to cope with these facilities that had accepted in the past. And that as we explained, is a policy matter we're still wrestling with.

"Do you have an estimate of how many industrial plants don't have the back forty that Walt mentioned."

No.

MR. LINDSEY: I have a couple here: "Solvent recovery operations are often a standard and intrical part of petroleum refineries and petro-chemical plants. Would such operations require a permit under RCRA?"

If you can remember the discussion yesterday about the integral piping, if it's connected integrally to a--by pipe or conveyor, to a manufacturing operation, and the answer is, it doesn't become a waste. Doesn't become a waste ~~tit~~ until it exits the pipe and is carried by truck or some conveyance such as that, to a non-integrally attached treatment facility.

So, in this case, I presume that we're talking about a situation where it would not become a waste. It would not, then, need a permit.

A suggestion, which I think is a good one, and I'll read it into the record: "When you implement the permit program, consider staggering the permit expiration dates, in an effort to help distribute your work load for the permit renewers." The people that will be renewing the permit.

I think that will probably happen. In-

1 cidentally, just purely by the fact that we are not going to
2 be able to process all the permits at once. So, the expira-
3 dates will also be staggered. But that's a good suggestion.
4 "What is the procedure for amending a
5 permit, to add new hazardous waste, say, at a disposal fa-
6 cility, and how long would it normally take to get it?"
7 "What does the generator have to do if
8 he is storing the waste while he is waiting for the disposal
9 facility to get a permit?"
10 He's storing the waste waiting for the
11 disposal facility to get a permit.
12 That's several questions. Procedure
13 for amending a permit. We're still developing this and I
14 think this is a thoughtful question and one which we have
15 not fully addressed as yet, is for minor modifications to
16 a permit. Is, in fact, the full procedure going to be re-
17 quired, as it would for a major modification.
18 A major modification would be the add-
19 ing of an incinerator or something of that nature. Whereas,
20 the monor modification might be a moving the storage facili-
21 ty someplace or changing the conditions or maybe adding a
22 waste, or something of that nature.
23 We haven't fully thought that through.
24 And we will. And so, I'll take that as a very good sugges-
25 tion.

In talking about the adding of new waste, first of all, it will be possible for an applicant for a permit to come in,in his application for the ability to handle broad classes of waste.

For example, I want to be able to handle all clorinated hydrocarbons except X, Y, and Z perhaps. If he wants that, as opposed to coming in and saying I want a permit to handle hexachlorocyclopentadiene ~~hexacloro[redacted]clopentadiene~~ ~~(phonetically)~~ waste from X, he's going to have to provide more information, presumably, on how these materials are going to be stored and handled, et cetera.

So, it may be more difficult to get a broad base permit than a narrow permit. But that will certainly be allowed.

"How long is it going to take to get a permit."

That depends to some extent on the delays, et cetera, that are necessary to obtain all the data we think we need to make the proper decision and so forth. It will depend on the hearing situation, whether or not as a result of the hearings, or whether or not as a result of our position, an adjudicatory hearing may be required. Those kinds of things.

I'm not sure we have, at this point, a firm feel for just how long it's going to take on the aver-

age to obtain a permit. It's--and that will also depend, to an extent on whether or not the system,which is developed at the facility, or is planned at the facility, is going to be designed along the, what do you call it, suggested standards, now? Along the lines of the suggested standards, 3004, or whether it's going to be some totally new kind of facility for which much more analysis is going to be required.

The last question: "What does the generator do if he is storing the waste while he is waiting for the disposal facility to get a permit?"

Now, if this is an existing disposal facility, the disposal facility will have an interim permit. If, in fact, he has made application and has notified us. Okay?

The storage provisions, the same thing is in effect. If a person is storing waste for more than 90 days, now, and if he has made application, and if he has notified us that he does that, then, he will have an interim storage permit. Okay.

If a company is planning to develop a new waste, et cetera, there going to have to have the permit before they can begin storing or treating, or whatever, waste.

"Missouri has already passed a law to run

1 the hazardous waste program. Has Illinois done so already?"
2 I don't know that Illinois needs a
3 special law which says they can seek authorization under
4 RCRA. Perhaps whoever asked this question, would get with
5 Scott Miller, or one of the other Illinois people who are
6 here.
7 Scott, would you raise your hand, so
8 that whoever asked that question can speak with them. I
9 don't really know what kind of authorization or authority
10 they would need from their legislature.
11 "For those of us latecomers, would you
12 please discuss the 3005 NEPA interplay. The need for EIS's
13 statements."
14 As Mr. Morekas indicated, this is an
15 area which we have definitely not made a final decision on.
16 And were not really certain at this point, what our options
17 really are. There's a legal matter involved here, but let
18 me see if I can run through it anyway. To kind of give a
19 feel.
20 As I understand it, at this point, the
21 Agency is not required by law to issue EIS's. The Agency
22 has voluntarily agreed, after some--a lot of hassle and
23 court battles and arguments and this and that, the Agency
24 voluntarily agreed to write these EIS's on major actions.
25 Now, major actions would include a

broad varity of things, including the passage of regulations, like we're doing here. And we are writing an environmental impact statement on these --the development of these regulations.

We're not sure how all that reflects on the granting of permits under this Act. We believe we could adopt an EIS position, if we choose to. It's done for example, on new sources under an ~~NDPDS~~ NPDES program, some new sources.

It's done in the Ocean Dumping ACT for refining of sites, on-sites, for ocean dumping. But on the other hand, in those Acts, as I understand it, it's required.

This Act does not require, it's silent on the issue. So, we're not sure what we're going to do with that. First of all, we're not really sure what our options are. Second of all, we're not really sure, at this point, given a range of options, which one we would choose to take.

We're interested in the pros and cons, provided we do have the ability to make a choice in this area. And if somebody wants to tell us what they are, we know some of them, I think, but we not have all the informations that's needed here. We would be interested in hearing that too.

"Why the total emphasis on transfer by pipe onsite? Tank wagon transfer to an incinerator is usually much more economical on large plant sites. It would appear to be equivalent. The vehicle is usually not licensed to leave the site."

The whole emphasis on the pipe line thing, is we would like to internalize or encourage the internalization of the handling of waste onsite, to an extent.

The reason for that is an environmental reason. If it's handled directly onsite, by a pipe that doesn't move, or a conveyor or something similar to that, there is very little chance for that material to be dumped in a field someplace.

There is very little chance also for an accident, such as trucks, whatever, having a wreck.

Therefore, the environment is better served. And for that reason, that's one reason why the pipeline concept is being encouraged.

Another reason is, that it's necessary to draw the line someplace, to get the bonafide recycling operations within a plant, and those of you who are in process operations are familar, there are many many recycling operations directly within a process. And somewhere the line has to be drawn, to get these kinds of direct recycling, routine recycling operations, oppose no danger to the en-

1 vironment, out of the system.

2 And the connection, the direct connec-

3 tion in feeding, by pipeline by conveyor or what have you,

4 is a convenient way to do that. These kinds of operations

5 that we want to get out of the system, because they pose no

6 environmental danger and because they are an integral part

7 of the system, are usually piped directly.

8 And so, this is the reason for that.

9 MR. SANJOUR: The later we stay here,

10 the tougher the questions get. I hope you people don't come

11 out to Phoenix.

12 "Under Section 3004, will waste materi-

13 als, liquids, paste, solids, having flash point less than

14 140 degrees Fahrenheit, be accepted by hazardous waste, land-

15 fill for burial, or must they be recycled or incinerated. If

16 approved for burial, what conditions or regulations will be

17 specified to protect workers in handling and burial of the

18 low flash point materials? Will this be specified before a

19 permit is issued?"

20 Well, our standards are such that we

21 do not approve of landfilling these volatile or flammable

22 materials. There is not a blanket prohibition, but what it

23 boils down to is that if you do--if you want to landfill

24 such materials, the burden of proof will be on you, to prove

25 to the permit granting official that you can, in fact, do it

safely and meet our environmental goals. So, therefore, you would have to devise a way of doing it. And then prove to the permit granting official that your procedures meet our over-all objectives.

If the permit granting official accepts your arguments, your proofs, your materials, then, those procedures would be your permit conditions. So, basically, the ball is in your court, if you want to landfill these volatile or flammable materials. We, in general, don't approve of it.

The next question is: "A solvent is used to clean equipment after a product run. A year later another product run is made and the solvent is processed for residual product recovery. Assuming the product is a hazardous material, would this activity be considered materials recovery and, therefore, require a permit? Would a storage permit also be required?"

Well, I'm not really clear what the question is, and I'm going to take the same position that the Supreme Court always takes, I'm going to assume the nature of the question and the form that's the easiest for me to answer.

And that is that you're using the solvent, and after it's used it's stored, it's cleaned and then reused, and stored and cleaned. If that's the case, it's

never really the waste, under any sense that we're using. So, it wouldn't come under this Act at all.

Now, if I'm misunderstanding the question, please get back to me.

The next question is: "Would a waste water treatment system which disposes of water by evaporating, no discharge, be covered by RCRA?"

The waste water treatment system would not be. However, if there are lagoons, which--well, first of all, if there is a final discharge lagoon, and that lagoon contains a hazardous waste, then, such a lagoon would be covered. Regardless of the discharge or not, if it contains a hazardous waste.

If it's an intermediate lagoon, that is material is pumped in, pumped out, as part of the waste water treatment system, and is covered by NPDES, then, we are not clear yet, on whether or not it'd be covered by RCRA. And we're still investigating that situation.

The next question is--the next half of that is: "If the same facility has an NPDES permit, but does not use it, or he reports no discharge?"

Well, the fact is, if it has an NPDES permit, it's covered by the Water Act, and whether or not they use it, I think, is immaterial. I mean, I don't think the fact that they're not reporting any discharge is rele-

vant, at all. If they have a permit, they have a permit.

All right, now, I have a whole fistful of questions here which go back to the same issue that Walt Kovalick was just addressing at some length on the whole issue of recycling waste, and our waste waste if they are sold and recycled.

And the fact that we're still getting these questions after Walt's answer, I guess, I'll have to try a different approach to answering the full range of questions.

So, what I propose to do, is first read the questions. I'm not going to attempt to answer them individually, but to try to give you the philosophical background and base for why we're doing what we're doing, in the hope that it would be clear after I explain why we're taking the steps we're taking. And let me first read the questions.

"How can you categorize or do you have refuse to fuel as recycling the claim that burning or dust control of waste oil is not recycling?"

First of all, as far as we're concerned, neither one of those is materials recovery. Both of them are recycling, but neither one is materials recovery.

"Yesterday, waste was defined as "abandoned or discarded material". Does this mean that materials which are sold and bought are not waste, are not subject to

1 RCRA?" For example, scrap and slag sold by the generator
2 to a material secondary refinery or refineries."
3 The next question is: "Should the de-
4 finition of waste recovery or by-product be broad to encour-
5 age recycling, reprocessing or developing of new uses for
6 item which may now be considered hazardous waste? If the
7 definitions are too conservative you may hinder such develop-
8 ment."
9 The next question is: "Does waste oil
10 used on site for road dust control, need a permit?"
11 The answer is, yes.
12 The next question is: "We purchase a
13 waste chemical which becomes a minor chemical input to a un-
14 related process. Are we a disposer needing a permit?"
15 On this the answer to use of waste oil
16 in in-plant roads is permit needed. I think the answer is
17 yes. No manifest--permit yes.
18 Let me get into what we're driving at
19 here. We have spent an awful lot of time on this subject as
20 you can tell by the talk. We spent a lot of time amoung our-
21 selves discussing this and we probably will continue to spend
22 a great deal of more time.
23 What it boils down to, is there are two
24 conflicting needs in the Act. The conflict, and when two
25 things conflict over the same subject you have to draw a very

1 fine line, and that often is a very complicated line.

2 Let me point out what our left hand and

3 right hand problems are.

4 On the one hand, a great deal of the

5 environmental problems caused by waste, hazardous waste, are

6 caused by the reuse of such waste. Such as, right here in

7 Missouri, there was a famous case of a scavenger, a waste oil

8 scavenger, who collected waste oil, and then, amoung other

9 things that he did with it was to sell his services for road

10 oiling.

11 There was a horse arena here, that hired

12 his services, he came in and he oiled the horse arena, and

13 over the course of something like three or four years, that

14 place went through hell.

15 Horses died, miscarried, brood mares

16 that were there, that were leased, people sent out their

17 brood mares to stable there, died, miscarried, dead birds,

18 dogs. Children who slept in the barns sometimes, got violent-

19 ly ill, were brought to the hospital.

20 This went on for a period of years, un-

21 diagnosed. The place was eventually bankrupt, the woman who

22 ran it had to close up the business. All the brood mares

23 she rented were killed, I think, eventually. And she her-

24 self took a one person struggle to try to find out what had

25 been going on there.

Samples, she suspected the road oiling, she sent samples to the state to be ~~analized~~ analyzed, it came back with a clean bill of health, several time, something like that. I'm not sure of all the details. In fact, if somebody is here from the Disease Control Unit, they perhaps have more detail.

But she herself pursued it, even after she was wiped out. And eventually she found out what happened, was that that road oil was contaminated with dioxane, which is about one of the most poisonous substances known to man.

It was picked up as the waste oil from part of a manufacturing process. Okay. Yes, that was sold as a product in commerce. That was one of the reasons the Act was passed in the first place.

This case is a rather classical case of the misuse of hazardous waste. So, clearly Congress intended us to control such misuse. Even if it's sold as a product. That's on the one extreme.

On the other extreme, Congress intended us to encourage resource recovery and recycling of waste. Clearly they called it a Resource Conservation & Recovery Act.

So, on the one hand, we want to encourage the recycling of waste. On the other hand we've got to

prevent the misuse of recycled misuse of waste.

So, that's the introduction of what we have got to achieve. They're obviously conflicting goals, because the same philosophical aproach of recycling could be either good or bad, depending on the environmental end.

Recycling is good, so long as it doesn't damage the environment. It's bad if it does. And we have to draw the line between the bad and the good uses of recycling.

The way we try to do this, is first of all, define the concept of materials recovery. Materials recovery is just a subset of the whole set of recycling. It is one way to recycle a waste. Materials recovery means restoring the waste to its original use.

If we're talking about waste lube oil, that means making a lube oil out of it. If we're talking about waste solvents, that means making of it, essentially a virgin solvent out of it.

In ~~Roseland~~ Rosslyn, I ran into a gentleman who takes waste, PVC, disolves it into some kind of a solvent and restores it to essentially a virgin PVC. And then, it's used as any other PVC. That is materials recovery.

Now, this is clearly unambiguously a beneficial resource recovery, because you're restoring it back to the original product. So we never have to worry

about the environmental effect of such products. So, therefore, we've isolated that as a subclass of resource recovery and given that special treatment. Because it's clearly the one way of resource recovery that we never have to worry about. That doesn't mean that we always have to worry about any other use. But it does mean that we never have to worry about this use. So, that's why we've given that category special treatment, in that facilities that practice materials recovery, will be exempt from the full permit requirements. They will be getting special permits.

And anyone sending their materials to such facilities, will be exempt from the manifest requirements, in order to encourage such facilities.

Now, does mean all other reuse of waste are environmentally unacceptable? No, it doesn't. But it does mean, that we have to look more closely at those other uses, to see whether or not they are environmentally unacceptable.

And in order to do that, we've created this elaborate structure of when is a waste not a waste, if you recycle within 90 days, this whole--I call it the Corson Manifesto, because it's ~~Allen~~ Alan Corson that wrestles with all these ifs, ands, and buts. And if you talk to ~~Allen~~ Alan Corson, you'll find the change is almost daily,after you've talked to a whole new set of people like yourselves, you come up

with a whole new set of conditions.

And the one you just heard a few hours ago, if you were to come to Phoenix, I have no doubt you'll hear something slightly different as a result of this meeting.

But that's the fine line we're trying to draw here, without actually drawing it for you, I'm try- to explain what the background is.

CHAIRMAN SANJOUR: Let's take a break.

(Short recess.)

CHAIRMAN SANJOUR: We're slipping our schedule. I'm going to allow 30 more minutes for questions under section 3005, then we'll get into 3006, and just hope there are fewer questions there, but I doubt it.

We're not going to accept any more cards for 3005, but we will attempt to go through the ones we have and I'll encourage the panelist to try to answer them as a group, rather than each question individually, if they can.

Mr. Morekas.

MR. MOREKAS: I have several which I don't believe fall in a category as a group, but I will try to give a concise an answer as I can.

The first one is a lengthy question that deals again with the potential need for environmental impact statement under NEPA, I believe both I and Fred have answered

the situation there as being one still tentative and just say that much about it in trying to answer this question.

However, the second part of the questions, I want to clarify in the mind of the questioner. He's asking: "Whether environmental statements will be needed for transporters who receive permits and whether DOT or EPA would be the lead agency."

Now, the point that should be make clear is that transporters do not receive permits. So, obviously there is no need for an EIS transporters, unless they store it.

But, the questions was asked for transporters and whether DOT would be the lead agency.

The question is: "Would a manufacturing plant need only one permit for storage, for example, if its facilities in a city were not contiguous?"

The answer is, yes. Conceivably when the application is submitted, I would think, if these facilities store the same waste in the same manner, that an arangement can be made with the regional office, at least to keep down the paper work, that they can be described on one final permit. But, I believe, that is kind of a case-by-case decision on the permit granting authority. But obviously, there are in different parts of the city, different sites a specific requirements would have to be described for these

different storage facilities.

The question is: "Alternate permitting will be determined by the local community. Anticipating the emotional aspect and the certain opposition at public hearings for site permits, has the EPA addressed the issue of public education? That is for shows, films, news media, et cetera."

Yes, that's a very good question. And we have been thinking of the type of public education, if you will, that will be necessary in order to educate the local communities about what we are attempting to do and what the implications of the permit system.

We are planning, and I guess, the latter part of fiscal '78 to have a seminar conducted throughout the country with local or state elected representative, to try to upgrade and update their knowledge in the system. So, this is part of the over-all scheme that EPA is attempting, to educate the local citizens.

Question: "How often will a storage permit have to be renewed?"

Again, that falls under that issue that we have not resolved yet, the life-time versus the renewable. At the present time, our thinking is the same as we indicated, a 10 (hyphen) year renewable period for all permits.

The question is: "Would an industrial

1 waste water impoundment, which receives leachate from a non-
2 hazardous land disposal site, where the leachate is hazar-
3 dous from the non-hazardous land disposal site, and the
4 leachate is permitted by NPDES, need a hazardous waste faci-
5 lity permit?"
6 Again, I think the person who asked this
7 question--we debated a few minutes earlier, so, I'll say I'll
8 stick by my answer, the one I gave you. Instead of trying
9 to go through it again.
10 CHAIRMAN SANJOUR: What was the answer?
11 MR. MOREKAS: Maybe, depending on you
12 resolving this lagoon issue. I think that's how we resolved
13 it.
14 But if that leachate is deemed to be
15 hazardous and if the final impoundment does have an NPDES
16 permit and if the lagoon--
17 CHAIRMAN SANJOUR: If it's coming there
18 by pipe, the answer is no. If it's coming there by truck
19 the answer is yes.
20 MR. MOREKAS: Well, it's not. We deter-
21 mined that it's trucked.
22 The question is: "Are you seriously
23 expecting to permit municipal sites as hazardous waste
24 sites? Most have a difficult time with garbage or demoli-
25 tion."

I believe I try to make it clear in my presentation that municipal sanitary land fills do not-- (one word) will not be permitted, if they do not accept the 3002 manifested type of waste.

So, we do not envision those facilities requiring a permit, unless they accept waste that have been deemed hydrogenous and do have a manifest.

Question: "Assume that a facility has obtained an interim permit. What obligation do they have to upgrade their facility prior to the time that EPA gets around to reviewing the details of their permit application?"

And the answer is, they have no obligation, so long as they have received that interim permit, and EPA then has the responsibility of reviewing and passing on that application as early as possible.

Question: "Can one expand a hazardous waste storage facility, right now, without getting a federal permit? Would any federal notification be required?"

And the answer is, you can go and do whatever you wish until our regulations are published and become effective. Unless there is a state requirement, obviously, but the question dealt with the federal permit.

Question: "Does the ~~US~~ U.S. EPA issue permits in a state that has no programs, must or will, the ~~US~~ U.S. EPA get state agreements to permit conditions prior to is-

sue? This situation exists as a problem in the NPDES system."

At this point, I would say, that if the state has no program, ~~US~~ U.S. EPA will proceed and issue the permit. However, in our regulations, that we are drafting, we are sending, the process will include sending the application material to the state agency for their information and comment.

But as we envision, if the state has no program, the ~~US~~ U.S. EPA program will apply.

That's all I have.

MR. KOVALICK: I have a comment. Many of these issues are still evolving, and one of the questions which Sam just answered was, "Do you have any obligation to do anything while you have an interim permit?"

And very recently, we have been having a number of discussions with the Office of Enforcement, as to whether in the public way, EPA can afford to have nothing happening at those facilities while we do get around to the various applications.

So, I think it's fair to say that that is still evolving too, in that we're not the final--we're not the only word and the only input on that question.

Another amendment to an earlier discussion, had to do with the question on treating phosphate

rock to produce phosphoric acid, I guess. And we gave a rather matter-of-fact answer that, yes, it would be covered. But we have. I was reminded that perhaps,one of our members of our working groups today, that we had discussed that in a working group as being a possible--being classified along with milling waste, because of the huge quantities of this gypsum-like material that is accumulated when the process takes place.

Plus the fact that the major problem of these waste is radio-activity in addition to their water pollution detention.

So, I just wanted to highlight the fact, for the record, that is not a closed issue either, and it may well end up in the mining clean category.

My questions I have is: "Will EPA or the state being in charge of hauling hazardous waste by barge or on inland ~~water ways~~ waterways?"

If the state has an authorized program then, the state regulations for transportation would apply. So, on the case where there are on instate waters they would be affected by state regulations.

"Will the barge towing company be required to have a hauling permit?"

Definitely not. There's no such thing as a transportation permit at Federal EPA. Now, as to whe-

ther there are new key requirements or state requirements, that's another matter. But we're not designing any transportation permits.

MR. LINDSEY: I guess this is the last one.

"For so many materials for section 3004 say, storage must be zero discharged. Does RCRA require this by law or is this a new ~~US~~ U.S. EPA goal like the Clean Water Act 1985 Goals?"

The definition of storage and disposal is written right in the Act under the definition section, which is Section 1002, excuse me, 4, and it identifies what disposal is. And that is that disposal is a condition of placing something into or on the land in such a way, that some constituent of that material can gain access to the environment, through leaking, through air emission, or what have you.

And on the other hand, storage is the opposite of that, that is doing something so that it doesn't constitute disposal.

So, the answer to that is, yes, it's a goal. And no, we will not be outlawing disposal. We will not be absolutely forbidding--absolutely requiring zero discharge.

CHAIRMAN SANJOUR: I'm not sure you an-

swered the question, exactly that was asked. I think the question that was asked is: "Is this something that the law requires or is this something that EPA is requiring?" And our intrepretation of the law, is that the law requires this. That the law is saying that storage means zero discharge. That's how we read the law, and we don't have the option to say it means anything else.

Well, that completes then, the discussion of 3005. Let's get on to Section 3006. Matt Straus will give the presentation.

MR. STRAUS: Good morning, Ladies and Gentlemen!

For the next 20 minutes or so, I would like to describe our current thinking in developing guidelines under Section 3006 of the Resource Conservation & Recovery Act.

Now, Section 3006 of the Act, requires that EPA promulgate guidelines to assist state in the development of state hazardous waste programs. These guidelines are to be promulgated, not later than 18 months after the date of enactment of RCRA, which would take it to April 21, 1978, and after the administrator has consulted with the various state authorities.

Now, the Resource Conservation and Recovery Act required that a hazardous waste program be con-

ducted and operated in each and every state jurisdiction. It is our judgement that Congress intended that the states would develop and operate the hazardous waste program.

However, in the event the states choose not to assume the program or EPA does not authorize the state, EPA is required and mandated to conduct the program.

For the past day, day and a half, we have been talking about the Federal program that will be carried out, in the event that the state does not choose to assume the program.

For the next hour, or hour and a half, we will be talking about the state hazardous waste program.

Now, in the Act, the state can receive one of two types of authorization. The first type, full authorization, describes an authorization without any fixed beginning and of unlimited duration. And a state will be granted full authorization in lieu of the Federal program. That is the state will be conducting the program in its entirety.

If the state is found to be equivalent to the Federal program, consistent with the Federal program, or other applicable state programs and can provide adequate enforcement.

Now, unfortunately, Congress did not tell us what an equivalent, consistent and adequately enforced

program means, so, one of our tasks was to define these three terms.

Now, the term equivalency has been defined in terms of seven separate elements. And these elements are as follows: State must have the legislative authority to control hazardous waste. This authority must include both on-site and off-site management authority.

The state must have published criteria and standards related to hazardous waste management. And in all cases, the state's criteria and standards can be no less stringent than those promulgated by EPA, as stipulated in Section 3009 of the Act.

Now, this does not mean the state's criteria and standards can not be different. We are just saying they can be no less stringent.

The state must also have a permit-like mechanism which provides an administrative, legal and resource framework to issue, revoke and deny permits.

The state must also have a manifest system which will track waste from the point of generation to the point of final disposal.

The state must also have sufficient or adequate resources in which to conduct and operate the hazardous waste program.

Now, the sixth element applies only to

those states which have more than one state agency involved in the administration and enforcement of the hazardous waste program. And for those particular states, in the application to be submitted to EPA, the state must explicitly delineate the responsibilities of each state agency, as they relate to hazardous waste management.

In addition, a lead agency should be or shall be designated, so as to facilitate communications between EPA and the various state agencies.

The seventh, and final elements in defining an equivalent state program, is that the state must include a public participation plan or program in their application. And this public participation plan must comply with the public participation guidelines which will be promulgated under Section 7004 (b) of the Act.

Now, the second criterion in evaluating a fully authorized hazardous waste program, is whether the state program is consistent with the Federal program or other applicable state programs.

On all our meeting and all our discussions, we were only able to identify one issue dealing with consistency, and that pertains to the free movement of hazardous waste.

And this particular issue was the most controversial and the most hotly contested issue in the de-

velopment of these guidelines. This particular issue, free movement of hazardous waste can be subdivided into two sub-issues.

The first sub-issue deals with legislative importation bans, and in the guidelines, we have taken the stance, that a state which has a legislative importation ban will be considered inconsistent with the Federal program, and, therefore, will not be elegible to assume a fully authorized hazardous waste program.

The second sub-issue deals with the similarity or dissimilarity of standards of the states--that the state will have promulgated, to those promulgated by EPA. And the stance that we have taken in the guidelines is that a states criterion standards shall be evaluated by EPA as to their consistency.

Section 3009 of the Act, stipulates that a states criterion standards can be no less stringent. However, they were silent in the area of more stringent.

However, we still feel,that to get some consistency, from state to state, the states' criterion/standards have to be evaluated.

Two tests will be applied by the EPA to determine the consistency of the states' criterion/standards.

The first test is; are the states' cri-

terion/standards justified on grounds of public health in the environment.

Secondly, is there any discrimination of the states' criterion/standards by geographic origin. That is, is there a different standard for in-state waste, as there are for out-state waste.

In using these two criteria, we hope to be able to determine the consistency of those criterion standards.

Now, the third criterion, in evaluating fully authorized hazardous waste programs, is whether the state program provides adequate enforcement.

Now, our initial intent, was to put quantifiable standards into the guidelines, such as, the state must make so many inspections per number of permited facilities. They must take so many samples per visit. However, in the meetings that were held, it was quickly pointed out that putting hardened fast numbers into the guidelines, would make it very difficult to determine the adequacy of enforcement, since each states program may vary all over the map.

So, therefore, what we decided to do was to write the guidelines, so as to allow the regional administrator, who will be authorizing the state program, maximum flexibility to take into account any individual charac-

teristics, any bureaucracy, any efficiency or inefficiencies the state might have, to determine the adequacy of the state enforcement program.

However, we will be assisting the regional administrator, by putting out a guidance document which will address this whole area of adequacy and enforcement.

This guidance document will be available to anybody who wishes to see it, the states, industry or anybody else, and we hope to get some consistency from region to region, by using this document.

Now, that fairly well describes a fully authorized hazardous waste program. The second type of authorization that is described in the guidelines, is called partial authorization.

Now, as I indicated earlier, there are two types of authorization stipulated or indicated in the Act. Partial authorization is not one of them. Partial authorization came about as a result of our meetings, and several of the state meetings that were held, several individuals indicated to us that states might not be able to take over the full hazardous waste program because they may lack certain legislative authorities or certain resources. And, therefore, they have urged us to make a provision in the guidelines, that the state can assume part of the program or

partial authorization. Therefore, there is such a provision.

Now, under partial authorization, the state would be conducting part of the program, and the Federal EPA would be conducting part of the program. You would, in a sense, having two regulatory agencies conducting the hazardous waste program.

Now, the discretion of whether to grant partial authorization will rest entirely with the EPA office who will be evaluating the state program.

In addition, the determination of whether to grant partial authorization will be limited such that a state will only be able to apply for partial authorization, where they lack specific legislative authority. And in all cases, the combination of the state hazardous waste program and the EPA hazardous program must meet the substantative and procedural requirements of a fully authorized hazardous waste program, which I just previously described.

Now, the second type of authorization that is discussed in the Act, is called interim authorization. And the state will be granted interim authorization, if they are found to have a hazardous waste program in existance by July 20, 1978, and if the state program is found to be substantially equivalent to the Federal program.

In addition the state will be conducting the hazardous waste program in lieu of the Federal program

for a maximum of 24 months.

Now, it's important to know that this interim authorization is a limited time authorization. A state can only apply for interim authorization in a specified time period, that being July 20, 1978 to October 20, 1978, and a state can only operate the hazardous waste program under interim authority for a definite calendar period. That being October 21, 1978 to October 20, 1980.

After that date, there will be no such thing as interim authorization, and you'll just have full or partial authorization.

Now, it appears that Congress intended that this interim period be kind of a grace period for the state to assume the hazardous waste program, while at the same time building up their program without EPA being in there conducting a parallel program.

Therefore, we see the major difference between the equivalency defined under full authorization and substantially equivalent which is defined under interim, is that this latter program may lack certain legislative and statutory authorities.

We think that this relaxation of the strict equivalence is consistent with Congress' intent to maximize the number of state to get into the program under interim authority, get their program up to par to a fully

authorized hazardous waste program and untimately assume the program under full authorization.

EPA supports this viewpoint and, therefore, has structured the guidelines as follows: For a state to be considered substantially equivalent, the state must have (1) ~~one~~; the legislative authority to control at a minimum either on-site or off-site disposal.

The state must have some resouces in which to conduct and operate the hazardous waste program. The state must have a permit like mechanism to control at a minimum, either on-site or off-site disposal and the state must have some surveilance and enforcement program.

Now, the adequacy of the surveilance and enforcement and the resources to run the program, will be based entirely on the regional administrator's own judgement and experience.

Now, in addition, when a state applies for an interim authorization, he will submit a document, which we are calling an authorization plan. And the authorization plan will lay out any additions or modification, which have to be made to the state program, so as to get them in line with a fully authorized hazardous waste program.

The authorization plan will also lay out the schedule in which the state proposes to meet these deadlines.

Now, that basically describes the various types of authority the state must have for both full and interim and partial.

Now, in addition, there will be three sections in the guidelines. One, which will describe the substantative and procedural requirements for states applying for authorization. One, describing the substantative and procedural requirements for the withdrawal authorization. And one section describing EPA's oversight of the state hazardous waste program.

And due to time constraints, I will not be getting into these particular sections.

Now, in addition, there is certain elements that we are calling them, which will not be required by EPA for a state to have to get the program, but we will be recommending them.

And these recommended elements are: a technical assistance program, a hazardous waste inventory and confidentially provisions, privacy acts or a public records law.

Now, the last thing I'd like to go over is the unresolved issues. As I indicated earlier, there is basically one unresolved issue although we have taken a stance for the time being, that deals with importation bans.

Just to remind you, we have taken the

position, that a state which has an importation ban, will be considered inconsistent with the Federal program, and, therefore, will not be eligible to assume a fully authorized hazardous waste program.

Now, we have taken this position for several reasons. First of all, we have always espoused the philosophy that waste should be managed at the best possible facilities with regard to environmental, economic and technological reasons, regardless of states or any borders or bounderies.

Furthermore, the hazardous waste management in this industry, usually requires large generating districts. That is, they usually need to receive waste from a large area, out of state waste also, to meet an economic scale on equipment cost. So, therefore, we feel that if we do not take this position that we might be hurting the hazardous waste management industry.

Some people have indicated that if we do not take this position, more and more states would be imposing importation bans, 'til eventually you might have 56 separate importation bans, and then, each state would have to have a facility which could handle the hazardous waste generated within that state. We really don't think that this is the way to go. There would be a lot of duplications, a lot of redundancy.

In addition, one of the intents cited in the Act, is the regional management of solid waste which includes hazardous waste.

Now, some of the arguments given, by not taking this position and being silent, that right now there is a legal case occurring. The city of Philadelphia has sued the state of New Jersey for imposing an importation ban for all waste going into New Jersey for final disposal.

This will probably not be heard for another year or two at the Supreme Court. It already was at the Supreme Court and was remanded back to the State Supreme Court, and is going back to the ~~US~~ U.S. Supreme Court.

But, basically, they say since it is a legal matter, that EPA can not get involved and should let the Courts decide what the outcome is.

I would like to just make one point here, that the Courts are deciding a ~~C~~c onstitutional matter. That is, whether it restricts interstate ~~C~~c ommerce. We are not debating the constitutionally of importation bans. We are looking at them purely on a management standpoint, whethere they are part of a sound national management program.

Another argument that has been presented that since the drafters of the legislation intentionally left out this point of out-of-state ban, that we don't have the authority to use the existence or non-existence of a pro-

gram, to--as a requirement for full authorization.

And one of the final arguments that has been presented, is that legislative bans, or keeping waste out-of-state, can be done by other means other than legislatively, such as local and county bans, discriminatory ~~race~~ rates, restriction on landfill operations, things like this.

And therefore, it would not be fair and equitable to penalize only those state which have gone to the trouble of actually imposing out-of-state bans, legislatively, and not to those others.

That concludes my presentation, thank you.

CHAIRMAN SANJOUR: Does anybody wish to give a formal statement of no longer than five minute duration?

Yes, sir. Would you come up to the microphone and state your name and affiliation?

MR. MILLER: Scott Miller, Illinois EPA.

I'm going to address the that was just talked about. It's 250.622 (No space) (b).

The tax payers in Illinois paid salaries to the employees of the Illinois Environmental Protection Agency, and are thereby, paying for the entire permit system that our state operates under. And we receive no Federal monies now

that we are operating under, and we are doing this entirely from tax payers? monies.

It's safe to assume that 15 per cent of the special waste disposed of disposed of in our state, are from states outside, or neighboring states, in effect as far away as the East Coast.

And since we believe we are the only state in the Midwest to address our special waste probelms to the extent that we are capable of handling any and all waste generated in our state, and as such, we have become the dumping ground of the Midwest.

I propose the statement be changed to read this way:

The regional administrator will find a state program which includes a ban on the importation of hazardous waste from other states, inconsistent for the purposes of Section 3006 (no space) (b), unless the state or states on which the ban or tariffs are imposed have failed to address their problem of hazardous waste regulations, whether by total lack of regulations or by inavailability of permitted disposal sites that are able to accept the majority of the waste generated in their states.

We have no intention of detering waste from out-of-state. We feel we should have the right to impose tariffs, to reimburse the tax payers of our state for

the monies that they are outlaying to receive waste from states who do not wish to address their problems.

We feel we should also have the right to selectively discriminate against certain waste frames coming into our state. If nothing else for self-defense reasons.

It has come to light lately that Courts from other states have, in their proceedings, said to the extent, that waste will be removed, that waste that have been buried at illegal disposal sites will be dug up and moved to the state of Illinois.

I mean it's nothing--you can't address an issue any less than that.

We feel that we should not have to take the heat from the private sector, for those states that don't want to address their problems.

Thank you.

CHAIRMAN SANJOUR: Any other statements?

(No response.)

CHAIRMAN SANJOUR: We will now take written comments on cards.

MR. LINDSEY: I have a few left over from yesterday. Two of them are kind of quick. I think Matt may have addressed these, so I'll just quickly go through them.

"Under an authorized state program

would generators report to ~~US~~ the U.S. EPA or to the state agency or both?"

"And similarly,the state runs its own program, will records be sent to both the State and EPA?"

And the answer is, if the state if authorized, the records will go to the state.

"Will bans on interstate transportation of waste be allowed?" This is the same issue which Mr. Miller was addressing and which Mr. Straus addressed a little earlier.

Depending on the outcome of that Supreme Court case, it may be legal to do it--in other words, to have a ban on imports. ~~Depending on the outcome of that Supreme Court case, it may be legal to do it~~. In other words, to have a ban on import, depending on the outcome of that case, which is being decided on whether or not those bans represent a hindrance to the interstate commerce.

On the other hand, the way our regulations are written--or our (State) guidelines are written now, such states which have such bans will not be found to be consistent with the purposes of RCRA and thus will not be authorized. Which means, in those states that have bans, the bans may be legal and they still exist, but EPA will be running the program, as it stand now.

This is a long one: "Where states have

1 solid waste disposal regulations and have a hazardous waste
2 class in existence and active sites have met and are meeting
3 current regulations, what will the effect be of EPA regu-
4 lations when they are promulgated? Modifications may very
5 well be impossible or difficult since--well, may be well
6 nigh impossible, and since in installation were made in good
7 faith may meet with some degree of chagrin."
8 Now, I'm sure that's true. The situa-
9 tion is, that under Section 3009 of the Act, the Federal
10 standards are minimum standards. No state or any other go-
11 vernmental entity can develop standards which are less
12 stringent than the standards being developed in Sub Federal
13 C. This is written right in the Section 3009, and you'll
14 see that.
15 State regulations and standards, on the
16 other hand, may be different than the federal standards, but
17 they can not be less stringent, they must be judged to pro-
18 vide an equivalent degree of control over the waste or over
19 the situation involved, in order to be judged to be equiva-
20 lent.
21 On the other hand, within limits, as
22 Mr. Straus indicated, the state regulations can be more
23 stringent than the Federal.
24 If a state elects not to administer the
25 EPA regulations--I'll will get back to that, that's not ex-

actly a correct way of stating it, but if a state elects not to be authorized, will the EPA regulations preempt and take precedents over such state laws and regulations concerning hazardous waste disposal or will hazardous waste generators, transporters, disposers be faced with complying with comflicting and potentially irreconcilable laws and regulations?"

Okay, this kind of is the same thing I just addressed. The Federal standards are National minimums, no state regulations or any other kind of regulations can be less severe than the Federal ones.

If a state decides not to seek authorization and has a program, we have no choice, we will have to institute a Federal program in parallel with the state program. It's certainly undesirable, and is one of the main reasons for the state taking over the program--the state seeking authorization, as it were. Because there would be duplicated programs, that would be a possibility.

MR. STRAUS: I have a few questions here that relate to the same question, and that is, I will read them. One says: "When will EPA begin granting full authorization? Sometime before October 20, 1980 or by October 21, 1978?"

And the other one says: "What is the earliest date that a state will have enough information from the U.S. EPA to know all the requirements upon it for full

1 authorization?"

2 Well, as I indicated, the state could

3 apply for full authorization at any time. By definition of

4 the Act, the state could have applied for full authorization

5 the day the Act passed, October 21, 1976.

6 However, since the states requirements

7 can be no less stringent, we will be not be able to authorize

8 a state for full authorization until all regulations, that

9 is Sections 3001 through 5, are promulgated.

10 So, saying that the regulations are--

11 will be promulgated final by October--I guess, mid-year of

12 '78, sometime after that--sometime very soon after that, a

13 state can start applying for full authorization and start

14 accepting it.

15 Full authorization does not have to wait

16 until--that is, the state does not have to get interim au-

17 thorization before it can take full. The state can go to

18 full authorization if they can meet all the requirements.

19 Next question is: "Many states screen

20 all waste entering their states. If the state deems the

21 hazardous waste material unacceptable, the material is not

22 allowed to be disposed of in the states hazardous waste man-

23 agement site. Is this not a ban in a sense?"

24 Well, basically, we do not want to dic-

25 tate to the states, how they should run their business. If

they feel that the facility itself is not capable of handling the waste, we certainly don't want to put a hazardous waste into a--for example, you do not want to incinerate an organic waste, so, to say this, I want to take my waste to your incinerator, if you can not burn it and destroy it, we wouldn't want to do that.

So, it might be a ban in a sense, but we are taking the, I guess, the viewpoint, that the state should decide which waste they can handle, out of which facilities they should go to.

Then it says: "Doesn't placing restrictions on a permanent facility, as to what hazardous waste it can accept, in fact, which waste can be handled in a state?"

Well, I guess that's pretty much true, but again, you do not want to take waste to a facility that can not adequately handle it.

And then: "Won't the problems, addressed by the person from Illinois,be resolved as neighboring states receive full authorization by 1980?"

The answer is, yes. I'm not sure if all the states neighboring Illinois will receive the full authorization. We don't know which states will receive the full authorization. So, we'll have to wait and see.

Next question is: "What is EPA's commitment to provide adequate resources, that is, Federal grant

funds, in fiscal year '79, and future years to state programs? It appears justified that EPA should fund state hazardous waste programs at the 90 per cent to 100 per cent funding level, when you consider that EPA must operate the program, if the state does not. The present funding level and 75 per cent limit, is inadequate."

Well, the 75 per cent limit is for fiscal year '78 funds, and all funds are being, I guess, distributed under 4008. There is a section in ~~Sub Titl~~e C, Section 3011, which provides funds to be distributed to the states, for the hazardous waste program.

We are planning on distributing funds to the states in fiscal year '79, under Section 3011. Those regulations have not been promulgated yet. We don't know what the matching requirement will be, whether it will be 75 per cent or 90 per cent. Probably will not be 100 per cent, there's only one case in which 100 per cent funding has been given in the past, and that's been under 2008, and that was specifically mandated by Congress.

So, that still is up in grabs, we're not sure what the funding level will be. And as far as the fund-level, it will--a lot of it will depend on the amount of money that Congress appropriates to the grant program.

"Will full authorization be granted to portions of the state or only to the entire state?"

It will only be granted to the state. There will have to be a state program.

"With states whose hazardous waste programs are not authorized, does EPA have enforcement funding to enforce a Federal hazardous waste regulation activities through RCRA?"

Interesting, fair questions. Since Congress intends that the states will be taking over the program they are not giving us very many resources because they expect all the states to take over.

So, if we had assumed all the programs, then, 1978, if very few states applied for authorization, we would have to do the job. We probably could not do the job as good as we did if we had additional people.

So, I guess the question really relates to the number of states that will take over the program. If Congress fines that the states are not accepting the program, they might give us additional resources in which to conduct the program.

MR. LINDSEY: "The state of Louisiana has passed a law giving the Louisiana State Health Department the authority to determine what waste they will allow to be imported into Louisiana. In your, EPA's opinion, how does this fit with your intended descrimination program?"

It depends, really, on how and why this

1 position is taken. If the state has regulations relative to
2 certain kinds of waste or all kinds of waste, which are based
3 upon public health in the environment, which don't descrimin-
4 ate between in-state and out-of-state waste, for which the
5 basis of and public health and environmental protection can
6 be substantiated. And the result of all that is to lead to
7 a conclusion, in that there is no facility within the state
8 that can handle these materials. Then, that will be allowed.
9 "In a state with an importation ban,
10 will this ban stand even if the Federal Government runs the
11 state program?"
12 Again that gets back to the decision,
13 really, in the state court, in the New Jersey versus Phila-
14 delphia case, as to whether or not such bans are constitu-
15 tional. If there are found to be constitutional, then, the
16 answer is, yes, the state ban would stand, even if the Fed-
17 eral Government were running the program.
18 We wouldn't be enforcing it. The state
19 would have to enforce it.
20 "Will the state without permitted dis-
21 posal site, be able to receive full authorization?"
22 They can call them something else. It
23 would have to be a facility permitting mechanism. They could
24 call it a licensed, you could call it whatever you would like
25 to call it. But there would have to be a control mechanism

based on standards for permitting, in essence, of facilities.

Mr. Sanjour addressing--oh, I see, I see, okay. I can interpret this two different ways. The one way that I did interpret it, whether or not they have a permitting program for sites. And the second one, is whether or not they have any sites, which are permitted.

The answer is, to the former, is no. The answer to the latter is, yes. Just because they have no sites would not preclude a state from receiving authorization.

"If a state has a program, but does not participate--is not seeing authorization, but already has a program, will the ~~US~~ U.S. EPA issue permits that violate state program requirements?"

Just let me say this about that. Under the law we will be carrying out the Federal program according to the standards that are developed. If a state has other standards, first of all, they can not have standards which are less stringent than ours, they could have standards which are more stringent than ours, if they do not seek the program.

And they can have them in any event, even if they do seek it, to certain limits that we discussed before.

If, for example, there are--and it's

conceivable that there may be standards--state standards and Federal standards, which are irreconcilable, and there be parallel programs.

If that were the case, we'll carry out our own program, and if they're irreconcilable, then, one would expect that there would be a Court battle over that, as to which ~~as~~ has primacy. I'm not sure how I could answer that.

"When does ~~US~~ U.S. EPA plan to enforce RCRA 6000 series RE state local permits for Federal installations?"

For those of you who may not be familar Section 6001 is clear, that Federal facilities are to be treated for purposes of this Act like any other generator of hazardous waste.

We're talking here about coke-coal plants ~~(phoutcally)~~ and things of that nature. As such, whether the Feds are running the program, they will be treated like any other generator of hazardous waste. That is, they'll have to have permits and so on.

But the Act also indicates, that such facilities must also meet the procedural and and substantative requirements of state and local laws. Just as any other facility.

"What are the incentative to a state to

have their program authorized by ~~US~~ U.S. EPA, for example, is there substantial money involved in the state?"

Under section 3011, there is 25 million dollars appropriated for each of two years that are addressed--no, authorized--authorized, not appropriated, by Congress for this exact purpose, to carry out hazardous waste programs. Congress seldom appropriates all the money they authorize and in this case, they probably will not.

On the other hand, there will still be substantial federal funds. Under Section 3011, which we will commence distributing under a formula, that we have yet to develop, in 1979.

In 1978, state program development will be fundable under Section 4008 of the Act, and there is money available to do that. Whether that's sufficient money to encourage or to support all state activities that might be required is questionable, since we don't know particularly in '79 how much funding that will be, and also, I should point out, that there is and will be a state matching requirement, which for fiscal year '78 activities is a 25 per cent match.

Under 3011 and fiscal year '79, it's not been decided yet. So, the availability of funds is one reason why the state may want to take over the program, on the other hand, it's been pointed out to us, that the match

requirement may be a reason why some state may not be able to. They may not be able to get the state matching requirements from their legislature. A problem.

"What may be other incentives for a state to take over the program?"

One of the big ones is home rule. Many state governments and people in states would much rather deal with issues that relate to their local well-being. They'd much rather deal with the state officials then they would with Washington or the regional offices of EPA. And that's a very strong incentive in some places.

The lack of duplicate programs, that we just talked about, and the impact that it'll have on industries and on the people within the state, to have two programs addressing the same thing. Industry, and to an extent the environmentalists in many places, would much rather deal with local people than with somebody in Washington or Chicago or Kansas City, or wherever.

Further, if the state assumes the program as we indicated, they don't really assume the Federal program. Their program, that is the state program is found to be equivalent to the Federal program, and we authorize the state to carry out that program in lieu of the Federal program, which gives quite a bit of leeway to the state to tailor its program to the needs and concerns and conditions with-

in that particular state. And that's another reason why a state may want to assume the program and not be stuck with a Federal program, which is not tailored to the local concerns and needs of a given area.

And I apparently made a comment earlier which bothered one of our other people here, and he gave me a note. I apparently talked about records being sent to the state.

Under the Federal system, the ~~record keeping~~ recordkeeping requirements or requirements for the generaters and disposers. There are the ones who keep the records. They don't send it to EPA. Reports are sent to EPA. Okay? And reports will be sent to the state.

Now, the definition of what is a report and what is a record--you know, we can get into that, but basically, a report is something that's made to the state or EPA, but a record is something that is kept by the company involved. So, I wanted to clarify that for the purpose of others.

CHAIRMAN SANJOUR: Okay, I've got one I can answer, then, I'll give it to you, Matt.

"Under a state authorized program, who would regulate the waste generated by a Federal facility?" Like an army base? ~~US~~ U.S. EPA or the state?"

The law clearly states that the state

would regulate such facilities. Section 6001 discusses that.

MR. STRAUS: Here's another one that deals with Federal facilities. It says: "I assume EPA will be regulating Federal facilities' disposal sites, since these would be outside state authority?"

Well, he said he just answered this, so you have the answer.

But then another question is: "Will EPA be doing ~~Sub Title~~ Subtitle D inventory of federal dumps.

And as I understand it, the state will be performing the open dump inventory, including both private and federal facilities, I imagine. Am I right? Will the state be conducting the federal open dump--any open dumps on federal facilities?

MR. LINDSEY: That's a ~~sub title~~ Subtitle D question and frankly, we're not the ones who are involved in that.

The way it's set up now, the agents, and I'm speaking for the people who are involved with this, the states are being encouraged to carry out the open dump inventory and if they do, I presume, it's like the rest of the Act, that the Federal facilities would be treated just anybody else. And the states would be conducting the inventory there as well. I presume that, but I'm not certain that's the case.

1 MR. STRAUS: Okay, the next question is
2 a little complex. It says: "If the state has a program and
3 seeks authorization, with the states classification scheme,"
4 and I'm not sure if he's talking about hazardous waste or
5 what, "is different in terms of some tests of leads, what
6 guidelines will EPA use to determine technical equivalency?"
7 Well, we've written the guidelines to
8 allow as much flexibility to the regional offices to make
9 this determination of what is equivalent, what is consistent
10 and what is adequate enforcement. And it's going to be part
11 the state's responsibility to show where the tests are equiva-
12 lent, and it's going to be part EPA's responsibility to make
13 an evaluation.
14 Now, I'm not sure that we could ever
15 put out a set of guidelines that would cover every case,
16 every particular situation. I'm not sure if we are going to
17 be putting out guidelines or if we're just going to count on
18 the regional offices' judgement.
19 However, there will be instances where
20 the regional offices will probably give us a call and say,
21 well, do you think this technically equivalent, and we will
22 probably get into the ball game.
23 But let me just reiterate. The states
24 will be authorized by the regional offices of EPA, not
25 Washington Headquarters.

If I did not answer that question adequately, he can come up to the microphone or send another card up.

"If a hazardous waste is transported across several states, and the generator is in a state which is authorized, and the disposal site is in a state which is authorized, does the manifest of the waste need to be filed with the in-between states, for their information?"

Well, there's two answers. The first is, if the states in-between are the state program--or I should say, the program is operated by the Federal government, then, a manifest will not be sent to those in-between states. As I understand it.

If the states in-between have their own state program, it would be up to--for that state to make that determination, whether they want any manifest for waste transported through the state. So, it's an "either/or", depending on who's conducting the program.

"I believe you stated that a state can ban importation but, if it does ~~US~~ U.S. EPA will administer RCRA in that state. The end result is that the ban still stands. What then, is the purpose or result of ~~US~~ U.S. EPA denying authorization? If the state has an otherwise acceptable program it will result in a dual permit and reporting system."

Well, basically, it's a good question.

1 And one we wrestle with a lot, but the whole question of ca-
2 pacity, whether there is going to be sufficient capacity, has
3 come up time and time again. And we feel, and other feel,
4 that we do not take this stance, even though some states,
5 about 10, presently have some type of importation ban, that
6 will not be able to accept the program, we feel that if we do
7 not take this stance, that more and more states will be im-
8 posing these bans.
9 More and more states will say, well,
10 they are imposing bans, so, I don't want to get all the ha-
11 zardous waste, so eventually you get 56 state bans. Or may-
12 be not that many, but somewhere around there.
13 And we feel that each state would then
14 have to have a hazardous waste facility to manage the waste.
15 Well, the problem with generating capa-
16 city would be greatly impaired if we did not take a positive
17 stance, I think. I think that whatever the outcome of whe-
18 ther we take this position, whatever EPA's position is, will
19 be a difficult decision to make. But I think that the--well,
20 I'm not sure there is anything else I can say. Well, let's
21 just stop it there. I've already said everything I can.
22 MR. LINDSEY: Let me expand briefly on
23 that if I could. The bottom line in all this, in implemen-
24 ting this act, is going to be the availability of facilities.
25 If we don't have available adequate facilities, then the Act

1 is not going to be implementable. Now, that's clear.
2 And anything that is going to impact
3 upon the ability of an adequate industry to develop, is some-
4 thing we're going to have to address. And we see this im-
5 portation ban issue as bearing on that.
6 We have direct input from a number of
7 states which indicates, for example, the states were quite
8 vocal on this, both ways, and they take a position. Some
9 states are totally opposed to the position we've taken, other
10 states are quite vocal in support of our keeping it, the
11 provision as it exists or some modification perhaps.
12 We heard the position that, gee, no mat-
13 ter--even if you take this position, it's not going to ef-
14 fect anything whatsoever, and your just going to be excluding
15 states from assuming authorization and your going to have to
16 run more than you otherwise would have to.
17 On the other hand, we've also had states
18 tell us, on the record, that if you do not maintain this
19 ban or this approach, simply all states in our region will
20 have such a ban very soon. And this is the only thing, per-
21 haps one of the major things that stands between some states
22 and the imposition of these bans.
23 So, we get it from both ways. Probably
24 be sued in either event. Okay, here's a couple.
25 "Can a state receive interim authoriza-

tion, if they have no authority to run, for example, a manifest?"

Now, in the case of a manifest, the answer is yes.

"If so, would ~~US~~ U.S. EPA run that part?"

And the answer to that is, that during this interim period, which is a maximum of two years, the state will have to develop that manifest capability. And the answer is no. ~~US~~ U.S. EPA, during the interim period is not going to come in and run a parallel program. However--what I'm saying is, though that for the interim period up to two years, there would be no manifest system in that state.

Now, as I say, sometime during that period, the state will have to develop such a thing, otherwise, they're going to ~~forfiet~~ forfeit their interim authorization.

As you may recall, Mr. Straus adressed the issue--not the issue, but the provision for an authorization plan, which says, this is the things we have to do, the state proposes this.

These are the things we have to do to get from where we are now, to where we need to be for full authorization. And this is the time schedule by which we're going to meet those things.

So, there is this plan, and the plan, is, if you will, an implementation plan, a compliance sche-

dule, or whatever you want to call it. Okay.

"If a state has its own hazardous waste program, but this program is unable to receive authorization would not your attempt to carry out the program against the wishes of the state, violate the state's rights?"

Well, that's very interesting and that's a constitutional issue and I'm not going to address that. I have no authority with which to address that.

Clearly we have our marching orders. The state is not authorized, we have to do it. It says so in the Act. Congress has spoken.

"If a state is operating its own program, will quarterly reports from generators and disposers still have to be sent to the ~~US~~ U.S. EPA?"

No, if that state program is authorized. Let me just further elaborate. The state might not have quarterly reporting, they might require that the individual manifest be sent in. Again, the state will not adopt the Federal program, they will adopt their own program. And that program can be different.

This is rather long, and the question is--and we did address it yesterday and maybe we'll have to address it again.

"Sometime before the end of the program please review the schedule of activities by EPA through pro-

1 mulgation and regulations and the time table for activities
2 by persons requiring permits."
3 The next step is for us to put these
4 standards and guidelines out to the public through the Fed-
5 eral Register as proposed regulations and guidelines. The
6 first of these, Section 3006, will--this will be done, hope-
7 fully, in November. The other sections will be done, hope-
8 fully, one at a time. First, Section 3010, then, Section
9 3003 through roughly February.
10 There will then be a 60-day comment per-
11 iod, during which hearings will be held. Probably in several
12 places for each section. Some of the sections may travel
13 together. For example, the regulations under Section 3004
14 and 3005, you can't discuss one without discussing the other
15 very readily. And they will travel together, and they will
16 be joint hearings
17 And this may be the case for others.
18 For example, 3001 and 3002. That's the next step. After the
19 comment period and the hearings, then, we will do our thing
20 again and we will go back out with the final regulations.
21 Now, the Act specifically identifies
22 what happens then. Once the regulations are promulgated,
23 that is, made final, the clock starts. Most of them are
24 geared to Section 3001, and most of the regulations go into
25 effect 180 days after that point.

1 I don't think I want to get into each
2 individual regulation, as to how that--how each one is de-
3 veloped. I think from reading the Act itself, under each
4 section, you can see what the time limits are there. If
5 there are any individual questions or misunderstandings on
6 that, that would take an inordinate amount of time for me
7 to go through them all here. Why don't you ask them indi-
8 vidually or something like that. We'll see if we can clear
9 them up.
10 MR. STRAUS: It says: "How many peo-
11 ple do you anticipate EPA will employ just to administer
12 RCRA, such as handle permits, inspections, review quarterly
13 reports?"
14 Well, that a question, because a lot
15 of it will depend on the number of states which will seek
16 authorization and which will be authorized. For example, if
17 most of the states are authorized then, EPA will not probably
18 have to hire to many additional people.
19 However, if very few states seek au-
20 thorization and are authorized, I imagine that there will
21 be a lot more hiring in EPA and maybe some job opportunities
22 for some of you. But, I really can't answer it, it all de-
23 pends on the number of states that will seek authorization.
24 Now, here's a legal question, I don't
25 think we can answer it, but it says: "Even if the Supreme

1 Court says that bans are illegal, does not a state have a
2 right to ban the importation of those items which can be
3 considered a hazard, much like the Western States banning the
4 transportation of plants, fruits and vegetables, because
5 they may represent a hazard."
6 Well, I'm not a lawyer. I don't know
7 if anybody else here wants to take a crack at it, but as I
8 understand it, the--if the ~~US~~ U.S. Supreme Court says that bans
9 are illegal, such bans are illegal. But, I'd talk to a law-
10 yer about that.
11 MR. KOVALICK: One comment on that.
12 A nuance on that is that the Supreme Court case, as we under-
13 stand it, has to do with the use of the police power or
14 health power, as to whether waste is a commodity, and so
15 if they were to decide that the bans on waste are illegal,
16 then, you would not be able to have such bans, because they
17 would be calling waste a non-commodity, and therefore, not
18 subject to those powers.
19 I have four seconds to answer this
20 question--it's from yesterdays session.
21 CHAIRMAN SANJOUR: I was just going to
22 say, I think we're going to close any more questions, be-
23 cause we are running overtime. We'll just complete the
24 ones that we have at the desk.
25 MR. KOVALICK: If I may, back to 3001

(b), identification and listing, would you speculate on the hazard of: (1) flash, (2) bottom ash, (3) scrubber sludge, (4) small capacitors, (5) boron."

The same answer applies for flash, bottom ash and scrubber sludge, which is we know that some of them contain metal and it's possible that upon leaching and using that leachate in our toxicity test, it could be hazardous. But the basic answer, we don't know.

Small capacitors, as you may know or may be regulated under toxic substance control act, because of their PCB content. So, they are product, and it's likely they will be dealt with under that Act as a specific product. Not impossible, but as a waste it could be controled under RCRA.

Boron, we did a bit of consulting on, it's hazardous properties and apparently it could be both. It has some explosive properties and/or some fibre toxic properties. It's more of a yes than no for waste containment.

MR. LINDSEY: These are the last two, I guess. "What if a state, not having an importation ban, included a nearly impossible condition in hazardous waste disposal, a standard. For example, a 200-foot thick clay liners, that is in effect forcing all hazardous waste out of the state and baning importation for disposal. Would the

state still be eligible for full authorization?"

First of all, the thing the ~~RA~~ R.A. will do, the Regional Administrator will do, is determine whether or not the effect is to force materials out of the state, and is inhibiting free movement of waste.

If that were the case, then he would apply two tests. Number 1, does the standard descriminate between in state generated waste and out state generated waste.

Number 2, he would make a judgement on whether or not the standard can be substantiated on the basis for the need for public health protection or environmental protection.

Now, this is his judgement call, and he'll compare that against the Federal standards which are being developed to protect public health from the environment.

If, however, special conditions within that state make it clear that some more stringent standards can be supported, then, he would find in favor of allowing that to happen. Now, if it's a nearly impossible condition and one that is clearly arbitrary, then, he's going to find it not consistent.

It's going to be a difficult judgement call, if that happens, and it's going to take a lot of work

I'm afraid.

"Do you have a feel, at this time, how many states will run their own program and how many states EPA will have to do it in?"

And the answer is, not really, it depends on a great many things. Now, there are a lot of things that impact on a states assuming.

Our thinking, at this point, is that something better than 40 of the 56 jurisdictions, including the territories, will be eligible for interim authorization.

Okay, I think that's about all I can say.

CHAIRMAN SANJOUR: We'll adjourn for lunch now, and reconvene at 1:10 o'clock.

AFTERNOON SESSION

CHAIRMAN LINDSEY: Would everybody take their seat, please, so that we can get underway it's time.

Let me welcome you again to the last session of this public meeting of the Resource Conservation and Recovery Act.

This afternoon we are going to cover the notification procedures under Section 3010. The preparation of the environmental and economic impact statements which we are doing on that regulatory development. We are going to go through a series of case examples of typical kinds of conditions that a variety of different firms might find applicable to them.

Again we will be taking general prepared statements, five minutes in duration, into the record.

Our intention is to conclude this by 5:00 o'clock. And I know many of you have plane reservations, et cetera, to catch. So I expect there will be people in and out all afternoon.

I am Fred Lindsey. And I am going to be sharing this particular session, to my right is Bill Sanjour and to my left is Walt Kovalick. And they will be sharing the answering of questions along with the people who will be making the presentations.

Now just like the other sessions here,

for those of you who may not have been here, we will have the desk officer, that is the person who is in charge of a particular portion of the regulation and presents approximately a 20-minute summary.

And then that will be followed up with the opportunity to make a prepared statement of five minutes in length or less on that portion or on that section of the Act.

And that will be followed then by written questions. And if time allows, questions from the floor.

With that I will turn the podium over to Tim Fields, who is our technology program manager and is the desk officer for 3010, which deals with the notification regulations.

Tim.

MR. FIELDS: Thank you, Fred.

What I am going to discuss right now is the process or procedures that are being established to initiate the notification program that is tied to the 3001 regulation.

Ninety days after the 3001 criteria identifying a listing of hazardous wastes, all people who handle the hazardous waste, that is generators of hazardous waste, transporters, and operators and owners of treatment

storage and disposal facilities will have to notify the EPA for an authorized state program that they are in one of those five categories or one or more of those five categories.

As stated in the law the notification must state the location, general description of the activity, and the types of hazardous waste that are being handled for that activity.

The notification must be filed either with the state or,as stated in the law,an authorized state hazardous waste program under Section 3006.

Again, at this critical point, there probably won't be any authorized state program under Section 3006 at that time.

The reason we are promulgating regulations in this section--or we feel that: No. 1, procedures must be set up to receive and process the notices that are going to be received by EPA or the designated state agency. Certainly we feel that affective parties will be made more aware of the notification requirements by us publishing a regulation in the register.

By, you know, publishing something there, we will issue press releases at the same time and advertising the trade. We feel that this is the way of making people aware of the requirements of Section 3010.

1 Thirdly, we want to assure that there
2 is non-ambiguity about, you know, what the law specifies.
3 Certain terms like general description of your activity,
4 we feel there would be a lot of questions about what that
5 really means unless we promulgate a regulation specifying
6 what we mean be a general description of an activity, both
7 for the prospective party and for the EPA and the state
8 that has to receive that notice.
9 And finally we need to promulgate a
10 regulation under Section 3010 because we want to get the
11 state involved, the state involvement in the notification
12 process. Because of the timing of the Section 3006 guide-
13 lines, as Matt Straus talked about earlier this morning,
14 there won't be any authorized state probably during the
15 initial 90-day notification period. So the procedures
16 need to be established to allow states to get authorization
17 to handle the notices that are going to be submitted during
18 this initial 90-day notification period.
19 As stated in the law in the Act it says
20 that authorized state programs should receive these notices
21 under Section 3006.
22 So it's clear that the intent of Congress
23 is that states be allowed to handle as much of this activity
24 as possible and as early as possible. So we initiating
25 regulations to comply with that Congressional intent. O.K.

The regulations themselves are broken down in two major sections. The first major section is on the whole procedure for a state acquiring a term--what we call limited interim authorization--this is a special authorization that only applies to Section 3010. You shouldn't confuse this with the authorization of partial and interim and full, which ~~Mat~~ Matt Straus discussed this morning.

This is a special authorization which allows the state to receive and conduct notification activities. This allows the state to receive the notices from affected parties in their state. And the state can conduct support activities, in support of the EPA regional office, in implementing and assuring compliance with the Section 3010 procedures.

The certain authorities that are reserved to EPA though, under this limited interim authorization, EPA regulations must be adhered to both by the state and ~~affective~~ affected parties in those states for this notification process.

They can't define affective parties differently than EPA. If we are going to exclude mining operations from notifying, a state can't require that mining operation to notify in that state. So there has to be a certain amount of ~~consistancy~~ consistency. And we will not allow the

state to grant exemptions from the notification process, during this initial 90-day period and thereafter.

Enforcement will have to be done by the EPA. State Legislative Mandates don't generally have any notification provision. So if people identify people who are not requiring the notification requirements the states will then have to notify EPA--the EPA regional office, in this case. And the EPA regional office will have to deal with the violator of the notification requirement.

The conditions for a state receiving a limited interim authorization are basically two. The first one is the state basically agrees to do certain things. The state has to agree to maintain the notices that they receive in their files for a period of at least three years.

They have to agree to--in writing--to supply to EPA this information or make available this information upon request. If the EPA has a need for the information that the state has received on particular people, the state has to agree to share this information with EPA.

Thirdly, the state has to agree to report the violators. The people that they know are not complying with Section 3010 requirements. That has to be contained in the application.

The second major item is that the state must submit some sort of implementation plan for how they plan to implement Section 3010 under their jurisdiction. That is a mechanism for notifying effective parties in their state. A mechanism for how they intend to receive the notices and what they plan to do with them, and that kind of thing. This has to be in their implementation plan.

Once the regional administrator receives this application which contains these agreements as well as the implementation plan, he then must review it. And it is his decision. The regional administrator makes the decision based on a technical review by his, you know, technical people there as to whether he is going to accept or reject that application.

If the regional administrator decides to accept an application, he has to make that decision within a certain period of time, 30 days, as is in our current draft of the regulations. That's what we are thinking about.

The state, by the way, has 30 days to get that application in to the regional administrator from the time the final regulations on 3010 are promulgated in the Federal Register (underline). It is a whole process of 60 days.

The state has 30 days to get their application in. And the EPA regional administrator has 30

days to make his decision.

Once the regional administrators make their decisions about what states under their jurisdiction will be allowed to handle notices from affected parties in their states, then the EPA regional administrator notifies the EPA headquarters. We then will probably publish another notice in the Federal Register identifying those states, so that everybody will know about them, those states that are being granted authority to handle 3010.

Those states that have not been granted this special limited interim authorization--the notices in those states will have to be sent to the EPA regional office. So it will be a dual notification process. Some notices, depending on which state you are in, will be sent to your state. Other notices, in another state, might be sent to EPA regional office. We plan to make people aware of that pretty early. O.K.

The notification--the second major part of the regulation addresses the actual notification procedure. This is the part of the regulation that applies to the affected parties, the people who have to file notice.

First of all each individual facility must file notification. Individual companies--a company can't file notification for all of his facility. For example, you have a company and you have a facility in 30

states, you know, you can't file one notice--each individual facility that you operate will have to file notification. The one exception is in the case of transporters of hazardous waste. Where are going to allow--in the current drafted regulations anyway--we are considering allowing transporters of hazardous waste to file notification via the headquarters office.

However, a copy of that individual overall notice will have to be sent to every jurisdiction that you own or operate a terminal in. For example, you have a headquarters office in Washington, D.C., you might have terminals in St. Louis or wherever. St. Louis--the facility in St. Louis wouldn't have to file notice but the headquarters should send a copy of that notice to the state of Missouri, if the state of Missouri has authorization to handle 3010. O.K.

We also are going to institute a continuing notification project. The need has been identified for EPA and the state to be aware of all new people who come into the hazardous waste arena.

So the law states that 90 days after the hazardous waste criteria are promulgated, all existing facilities are required to notify EPA as to whether they are in one of those five categories I addressed earlier.

After this initial 90-day period, all new

1 facilities will then also have to notify EPA or the state
2 agency. They will have 90 days from the commencement of
3 their hazardous waste activity to notify EPA or the state.
4 One point I would like to make here to
5 make this a little clearer: Section 3005(e), which Sam
6 Morekas discussed earlier this morning, allows notification
7 to be one of the three conditions for an interim permit.
8 This interim permit provision only
9 applies for those people who file--who are existing facili-
10 ties and file notification within the initial 90-day period.
11 If you are not an existing--you don't file notification
12 within this initial 90-day period, you do not qualify for
13 an interim permit. You will have to go through the regular
14 permit application procedures, et cetera. You can't get
15 an interim permit as if you were an existing facility
16 although you might notify us later.
17 The notifications must be sent to EPA
18 regions or states. The notices should not be sent to EPA
19 headquarters. O.K.
20 All right. We provide an alternate in
21 our regulations for filing notification. We are going to
22 publish at the same time that we publish our final regula-
23 tions a suggested or model notification form. If you fill
24 out that notification form accurately and completely, you
25 will have to fill all requirements for notification.

If you decide not to use that form for some reason or the state decides to send you an additional or alternative form for some other reason, you can still file notification in some alternative means and just ignore our form.

However, you will have to send in the mandatory minimum amount of information. And that information will be specified in the regulation. Some standard items I can name: name, address, phone number, technical contact located at that facility.

Some of the crucial items are: that you should specify the waste types according to the six criteria which Alan Corson discussed yesterday, as well as any lists of hazardous wastes that we might promulgate, those waste types that you are handling should be identified in that notice that you file in this initial 90-day period.

All right. We are also asking that you specify the type of hazardous waste operation you are. If you are a generator, you might dispose on-site, well, you should indicate that you are a generator and also that you are a disposer of hazardous waste. O.K., in your notification.

Some sort of verbal description on the hazardous waste should be provided. You might say that the hazardous waste that I have are still bottoms from Perclo

1 Ethylene Manufacturing, you know, for example, if you are
2 an organic chemical plant. So some sort of description
3 should be provided, you know, a general description in this
4 notification.
5 Just one more point I would like to
6 point out about the actual submitting of the criteria--
7 complying with the criteria identifications. All we are
8 requesting--if you are in the five category of flammability,
9 et cetera, you know, those first five categories, you have
10 to make a decision within the initial 90-day period as to
11 whether you handle--you are handling hazardous waste or
12 not and let EPA or the state know.
13 If you are handling a waste that falls
14 into the topic category and you can't make a determination
15 within the initial 90-day period, we will give you the
16 option of saying you don't know or it is undetermined
17 whether I have a hazardous waste or not.
18 However, you will have a--you will be
19 given a--if we get that notice in within the initial 90-day
20 period, you will be given an additional 90-day period to
21 make a decision and determination, yes or no. Well, if we
22 don't hear from you we are going to assume that you are a
23 hazardous waste handler for notification purposes. But if
24 you find out--if you analyze or determine that your wastes
25 are not hazardous, you can indicate and we will take you off

our list of hazardous waste handlers.

One key thing on this notification is those people who identify themselves, of course, as treatment storage and disposal facilities, will automatically we mailed a permit application. So this is kind of a kick-off for, you know, for getting permit application to people--getting them in the hands of people who need it.

We are doing certain things that impact upon this--I think I need to go over a couple of these. We are developing a state-by-state directory of potentially affected parties, you know, people who we think--now this is being done by contract--might be generating hazardous waste, people who might be transporting hazardous waste, and people who might be receiving hazardous waste. This will be made available to our EPA regions and states in implementing their notification programs.

We are also developing a list of labs and test facilities that are available to analyze, to test peoples waste to determine whether the waste are in compliance with the Section 3001 criteria.

The model form that we are developing, by the way, and the instructions are going to have to be approved by the Office of Management of Budget and the General Services Administration, since they also apply to Federal facilities to make sure that the implemation

requirements we are imposing are the minimum amount of information that is needed to fulfill Section 3010. And that it is not going to impose a great economic burden upon those people who have to comply with the requirements.

So we are trying to make sure that we have a good balance here in terms of notification requirements. O.K. Some of the issues that we wrestled with in getting to our current version of the regs. were the old issure, first of all of sample versus mandatory form. We decided to go with the sample notification form to allow for a certain degree of flexibility.

Certain states have indicated that they want to send out notices to affective parties on their own letterhead, use their own form, and we at EPA don't have any problem with that, as long as the same minimum anount of information is submitted. A state, however, might request some additional information in notification that they might want.

So we are just going to allow--we are publishing a sample form in the Federal Register and people can use it if they want to. The mass mailing of notification forms,originally we thought about doing a nationwide mailing of notification forms to everybody in the country that might be effected by these regulations. We at Headquarters don't think we need to do that.

1 Some of the regions, however, and some
2 of the states have indicated they might want to do so.
3 This issue still hasn't been resolved. We don't know yet
4 how we are going to go on this issue. In any event, if
5 the regions and the states indicate they need these forms,
6 EPA Headquarters will print the required number of forms
7 that are needed by affected parties that have to comply
8 with the requirements.
9 There is a need, of course, for EPA
10 and a state coordination on the whole notification process
11 to discuss the application procedures. There is a need
12 for us to promulgate these regulations earlier than the
13 rest of the regulations because states have to submit these
14 applications, we have to review those applications and make
15 decisions about what states are going to be allowed to
16 conduct the activity.
17 So there is a timing problem here. We
18 have to go early on these regulations in the Federal Regis-
19 ter. So we are going to make you--well, people who are
20 affected by these requirements aware of, you know, who you
21 have to send your notices to, and what information should
22 be in that notice. O.K.
23 One final issue was the issue of long-
24 going hazardous waste programs. About seven or eight
25 states already have hazardous waste programs. They already

say that they are aware of their--the people who are handling hazardous waste in their state. And they say why should these people be required to notify again. Well, you know, Section 3010 requires that, you know, that people notify and we don't have much to say in that matter.

Our position has been that every individual facility should notify whether people know about him or not. Because our Section 3001 criteria for hazardous waste might be different than the state criteria. You might be excluding certain people that are not going to be excluded on the 3001. You might be including some people that might not be included, et cetera.

So our position has been that--on this issue that everybody whether we know about him or not should be required to file a notification.

O.K. With that that completes my presentation. So I'll turn it back to Fred.

CHAIRMAN LINDSEY: Thank you, Tim.

First of all are there any prepared comments on statements on Section 3010?

(No response.)

Seeing none, we will take questions on cards. That is the next phase. If you have a question, raise your hand and we will give you a card. Tim Fields has some left over from before. So, Tim, why don't you go

ahead and answer those while we are waiting?

MR. FIELDS: O.K. I have a few questions. The first one is: "Suppose a disposer takes more than 90 days to comply with Section 3010 as authorized by your regulations, is the interim permit valid?" The second part of his question is: "What if a citizen sues to have a disposal facility closed because it does not have an interim permit as defined by Section 3005(e)?"

I guess I have answered the question, you know, since the question came before the presentation. But I will try to address it again. Basically if a disposer takes more than 90 days and he is in business--I assume this is an existing facility. If he is in business and he fails to notify, he will not have complied with the requirement of Section 3005(e). He will thus not be eligible for an interim permit under those conditions.

So, you know, the question is the interim permit valid, he doesn't really have an interim permit, O.K., if he hasn't done those three things that are specified under Section 3005(e).

The second part of the question is, what is a person sues. Well, you know, the person who sues that guy has a valid complaint because the person doesn't have an interim permit and, you know, shouldn't be operating under those conditions.

I might add here that we are going to make--EPA and the states are going to make sure--are going to try to make every attempt to make sure people are aware of the notification requirement. And there shouldn't be any reason for a disposer who is in business as a waste disposer not notifying within the initial 90-day period. We are going to make--we are going to have a public information campaign and publish regulations in the Federal Register. We are going to make every attempt to make sure people are aware of the requirements.

MR. SANJOUR: Excuse me, Tim. Didn't you say there was some provision for people who have toxic wastes to take more than 90 days.

MR. FIELDS: Yes, the point there is that, you know, if--except for toxicity, you have to make that determination within the initial 90-day period. However, you can make that determination as to whether your wastes are toxic or not. You can indicate you don't know in the initial 90-day period. And then you will then have an additional 90 days to make that determination.

So you have really got six months to make that determination as to whether you have a hazardous waste, if your waste is toxic. O.K.

"If a new source of hazardous waste begins operation after the Section 3010 limit of 90 days

1 before notification ends, how does this source comply with
2 regulations regarding notification?"
3 O.K. This question was asked before
4 the presentation. So I think I have answered it already.
5 We will have a continuing notification process. And new
6 people who come into the business, after the initial 90
7 day period, will be allowed to notify. And they can comply
8 with the requirements very easily.
9 MR. KOVLICK: This is somewhat related
10 "What role do the Section 208 under Public Law 92500, Water
11 Quality Management Agency have ~~is~~ as hazardous waste manage-
12 ment?"
13 Some of you--first of all, the section
14 we are discussing today, of course, and yesterday is ~~Sub~~ Subtitle
15 ~~Title~~ C. However, part of the ~~Sub Title~~ Subtitle D work under
16 RCRA is devoted to setting up of planning of districts,
17 both by state in constitute with local governments. And
18 that set of guidelines for planning districts has already
19 been promulgated as a way to give states an early start on
20 their planning.
21 Now the planning done by the--under
22 RCRA, is at the discretion of the government in terms of
23 what agency you would have do that planning for him. That
24 is whether he wants to use some existing planning districts
25 or whether he wants to use 208 type agencies and whether

he wants to use state government.

However, under RCRA there is local involvement in the decision of the Governor to do that planning. So in the case where there are some 208 agencies, who are involved in the planning for the disposition of the hazardous waste sludges usually--but they normally end up in going to water--they may very well be involved in the planning process under ~~Sub Title~~ Subtitle D.

And likewise, that would be up to the Governor to reconcile the use of ~~Sub Title~~ Subtitle D authorities with 208 agencies that already exist out there today. I am also aware that 208 agencies, some of them are presumed to be not only in planning but management agencies. So that they will actually handle or contract the handling of sludges and material.

In this case they would be getting into the operational business and start calling in the number of requirements that we have been discussing in the last two days. So that's really kind of a general discussion of the planning and possible implementation responsibilities of the 208 agencies.

MR. SANJOUR: The question is: "Will all waste hazardous, nonhazardous, undetermined be required to notify?"

The answer is: No, only hazardous waste.

"What if a state has authority to implement 3010 and it sends out its own form but a generator sends back in the EPA form, is he in compliance?"

Well, I think that's a moot question because I don't think we will allow any states to send out their own form, different than the EPA form.

CHAIRMAN LINDSEY: Yes, they can.

MR. SANJOURN: They can?

CHAIRMAN LINDSEY: They have to have the same basic information but they can add more to it, if they have authorization.

MR. SANJOURN: Well, nevertheless, though if a generator sends back an EPA form, I would think he would be in compliance. Wouldn't you agree?

CHAIRMAN LINDSEY: Yes.

MR. SANJOURN: The next question is: "What criteria will be used to develop a list of recommended laboratories?"

I thought we weren't promulgating a list of laboratories.

CHAIRMAN LINDSEY: They won't be recommended. They will be a list of labs, just a list.

MR. SANJOURN: What's the criteria, Tim? I believe it's anybody that says they can do it.

MR. FIELDS: That's the criteria.

We have had a contractor in Washington, a consulting firm, to develop a list of labs that are available to do certain types of analysis on industrial waste and by SA tests and local tests, et cetera. That list of labs is being gathered by a contractor on a state by state basis. He is doing a mail questionaire to a list of available labs and people are sending back the kind of capability they have. So this will just be a list of labs to find what their capabilities are . And that's all it will be. It won't be an EPA certified list or anything like that.

MR. SANJOURN: Will EPA promulgate that list to the public?

MR. FIELDS: The decision hasn't been made. If someone called in and requested it, we couldn't very well withhold it.

CHAIRMAN LINDSEY: "How many states, if any, do you expect to have more stringent standards than EPA?"

I have no idea at this particular time.

"Is it possible to obtain a transcript of these hearings? And if so, how?

Well, there are several possible ways of doing that. The first one would be to make arrangements with the folks here who are doing the transcribing and then presumably that would cost some money. I can't say how much. If you are interested in that perhaps you can get with this

gentleman over here at break time or whatever. And that should be available probably within a matter of days. By the end of next week we will have--shall we call it an unedited version in the docket system in Washington. And one could stop by there, if they are in that area, to take a look at it.

On the other hand, everybody that's on the attendance list here, has registered here, will get a copy of the transcript when they are published which we expect to be about the end of November.

"How can we get a list of all the speakers and the panel members?"

Now first of all, of course, that will be in the transcript when you get it. But if you want it now or soon, I have a list here. I don't have copies of it but I have a list. And what I will do is leave it right up here on the table and anybody who wants to take a look at it during the break time is welcome to come up and copy it or whatever they want to do.

"Can interim permits be modified? For example, after the initial notification and apparently application for the permit, if a facility decides to accept new waste, changes its operations, et cetera, must the facility submit an amended notification?"

Well, this really gets to two things.

First of all, I talked about the notification and every time you change your process you are going to have to renotify, particularly if you change or add a storage or treatment. And I think I'll let you answer that, Tim, and then get back to me.

MR. FIELDS: All right.

Well, if you start generating a new hazardous waste or treating a new hazardous waste at your facility, you should notify EPA that you are accepting a new waste for purposes of notification.

CHAIRMAN LINDSEY: For purposes of notification.

MR. FIELDS: Relative to the permit, in terms of a regular permit. O.K. You would have to obtain a modification to the permit. But the question had to do with interim permits. Now in interim permits EPA takes no action on these. In other words, you have a permit or deem to have a permit, if you have made application and if you have notified.

Now the question comes up--it may take us some period of time then to get around to acting on the application. And during that period of time, the interim permit, as it were, will be in effect.

Now suppose during that period of time, after you have made application and after the cutoff date

for interim permits, you change the process. That's the question. Or add waste to the process, how is that handled?

And I must answer that I don't know. That's a new wrinkle, one that we haven't thought through. And I'm glad that's been raised and we will address that. I don't know whether one would come in, for example, and with an amended permit application or whether he would not be able to start that until we had acted at least on that part of the operation. We will have to think that through and see where we go.

CHAIRMAN LINDSEY: I have a few more here. First of all: "An existing generator is not notified by mail that he might come under 3010, where does this place him after the 90-day period?"

O.K. making several assumptions here, first of all, I guess we make the assumption that this person who is not notified as a hazardous waste generator. If he is a hazardous waste generator, he is in violation of Section 3010. That's where it places him.

I understand the point, you know. That's the reason we are promulgating these regulations. We are promulgating these regulations although we are not specifically required to in the Act. Because one of the objectives is to let people know about the notification requirements by publishing in the Federal Register, advertis-

1 ing in the Trade Press, advertising, you know, in the media.
2 Some states and regions are going to do mailings. So it's
3 not really our obligation to put that form in your hands.
4 So even if you don't receive a notification form whether
5 you are a generator, transporter, whatever, you still are
6 assumed to, you know, if you are handling a hazardous waste,
7 you are assumed to have to comply with the notification
8 requirements.
9 It's not EPA's or the state's job to
10 put a notification form in your hands.
11 MR.KOVALICK: Can I follow up on that?
12 I have a similar question here which is:
13 "What is the penalty for not filing notification?" I
14 guess that's kind of a follow up, in other words. So what?
15 This relates to the discussion I went
16 through at least twice yesterday on how the hazardous
17 waste listing be used. If you--let's take the case where
18 you do not notify even though the conditions of existing
19 generator are met. If you were silent then and we did not
20 have an item, your waste on a list, then when EPA or the
21 state discovered you and took examples of your waste,as
22 allowed under 3007, and tested it and gave you a copy of
23 the results and we had a copy of the results.
24 We would then write you a letter
25 giving you notice that we had found your waste to be

1 to be hazardous and that you have 30 days to comply with
2 the basic requirements of the Act. At which time we then
3 can issue a compliance order to see that you do that.
4 Now if we have a list of hazardous
5 waste, you will remember my example yesterday where I said
6 waste from a certain process, and we, using the computer,
7 for example, find that eight of ten beryllium casters in
8 one state had sent us a notification and beryllium foundry
9 wastes are on the list. Then we would send you a letter
10 immediately that says, "We find that you are in the cate-
11 gory of listed waste. And you have 30 days in which to
12 comply."
13 This gets at the point that I described
14 yesterday, the burden on us versus the burden on you once
15 we get into this system that we are operating. It is
16 illegal to transport, store, treat, or dispose of a hazar-
17 dous waste without notifying.
18 So once we did establish that you did
19 have that waste, whether we took the sample ourselves and
20 did it or whether it would take a little longer, or whether
21 we used the rebuttable presumption list, then we go through
22 the civil penalties of the Act, in terms or going to
23 District Court and so forth.
24 So there is one other wrinkle, however.
25 Whis is: If you are a generator who also stores, treats and

disposes on your own property. Remember yesterday and this morning I cited a statistic that about 70 or 80 per cent of the waste we believe are disposed of on generators property. If you do not notify that you are both the generator and the disposer during the 90-day period, you have lost your right to an interim permit because your risks are much higher.

That is when we discover you either by running the computer against the listed waste that are rebuttable presumptions or by testing your waste. And when we prove that you have it, you have lost the right to have an interim permit. And you are out of compliance. And you are operating that disposal facility without a permit.

So we believe the logic argues for those who store, treat or dispose on their own property to notify even if they are in doubt because they have preserved the option to get an interim permit. But by not notifying you loose that option. And once you are discovered you are out of luck, as it were, because you have no place to legally dispose of your waste on site. Sorry.

MR. FIELDS: I have several other questions here. The first one is: "If the state has its own notification form and it requires more information than EPA, than the EPA format, can the generator choose the EPA

format?"

O.K. A logical question.

First of all, I guess, we will go back through procedures. This is a thing we are going to have to rethink because I had another similar question earlier.

But basically the EPA administrator, the regional administrator will make a decision. He will approve or disapprove every states notification system implementation plan, which, I assume, will include what the state recommends should be the states notification form.

That means the state will have all the authority of the EPA regional administrator and will have all the authority to act in lieu of EPA. So the state can then send that form to affective parties in the state.

But in turn, if that generator decides not to use the state form and send back the EPA form, under Section 3010, since states don't have any enforcement authority under notification, I don't really know what the state could do about it. I think this generator would still be in compliance with Section 3010. And that's my current feeling. We are going to have to rethink this issue. But I still feel that the generator would still have to comply with Section 3010.

MR. KOVALICK: It would be possible that he might delay the issuance of his state permit because

he sent the notification to the regional office. And that's going to have to be matched up with the State Capital's receipt of a permit application and so there is going to be a delay.

MR. FIELDS: The state might not like it too much if you, you know, did this. But that's one--especially if you are a treatment, storage, disposal operator you might not want to do this. If the state requires something, you might just want to send it in to make sure you get an interim permit.

The next question is--I guess some confusion about what I said maybe: "Ninety days after--" The statement is: "Ninety days after 3010 announce add 90 days to days to determine toxicity or bioassay tests. This may be insufficient time depending upon date of 3001 and extent of criteria tested."

Well, it's not really 90 days after 3010 is announced. It's really 90 days after the 3001 criteria are promulgated. So you will have a lot more--we plan to promulgate the 3010 regulations in the Federal Register probably four months before--you know, final regulations for 3010 about four months before the 3001 criteria for hazardous waste are promulgated. So it's really 90 days after the 3001 criteria that you have to notify.

But the basic point, I guess, is you still asking is 180 days sufficient? One hundred-eighty days after 3001 criteria, is that sufficient to do the tests and, you know, the bioassay test, whatever, for toxicity. I don't know. And we think it is but we are not sure.

MR. KOVALICK: Would it be helpful to run through the months right now just to see what is--in other words, sometime in February or January we are going to propose Section 3001. So you will have your first official look at what we might have as criteria.

Sometime in March or April we will finalize 3010. So you will know the kind of waste we are thinking about in February. You will know the kind of format we are thinking about for sure in March. And then sometime in June we will finalize the regs. for 3001.

So you have really all of the time from February, assuming that there are some changes, but the bulk of the time from February to June plus the 90 days minimum to comply with 3010. If you also need another 90 days toxicity, then you will have July, August, into almost December to get the final word back.

MR. FIELDS: O.K. The next question is: "On notification, would a rail carrier be required to make notification on waste shipped by others?"

The second part of that question is: "How do we determine we are shipping a waste before a shipper gives us a shipment?"

O.K. The first part of the question is: Yes, if you are a carrier, a rail carrier, of hazardous waste you are required to notify us that you are shipping somebody elses hazardous waste, you know. If you are taking hazardous waste from a generator, you will be required to file notification that you are a carrier of a hazardous waste on your rail system.

How do we determine we are shipping a waste before a shipper gives us a shipment? You can't really. But, you know, we assume that if you are--the generator will have to know whether his wastes are hazardous or not. And I would expect he would most likely tell you. And it would be your obligation to find you. If you are potentially affected by the 3001 criteria and you are transporting some waste, it's your job as a rail carrier to determine in some manner whether you carrying hazardous waste. Once the guy gives it to you, you still have to make that determination.

So if you are shipping hazardous waste, you have to notify. But, of course, you can't do it until you get the waste from the shipper or make some arrangements to rail carry his waste.

Next question is: "Under Section 3005 permit conditions, there is a requirement for new facilities to apply for permits between 150 and 90 days to start-up. Is the notification requirement for new facilities which you have described totally redundant and unnecessary concerning the Section 3005 provisions?"

Some I wasn't totally aware of--it looks like it might be redundant if that's in the 3005 regs. for a treatment storage and disposal facility. It still would apply for generators and transporters because the notification is the only way we are going to know about new generators and transporters.

So I guess we are going to have to rethink this for our treatment, storage, and disposal facilities. You know, we might just have to modify notifications for that. So I appreciate the comment and we will consider it in our next version of the regs.

This is a comment: "Question their evaluation of the labs. It may be recommended that you consult the states as to which labs they (the states) are willing to accept analysis from. Illinois has a lab certification program. And they will only accept analysis from a certified lab."

Good point!

And I assure you that those states that

1 are given the authority to handle Section 3010 will only
2 be given this list of labs as a service from EPA. You can
3 do with this list whatever you want to.
4 So, you know, the state will have an
5 opportunity to review this list of labs that we come up
6 with. They can add to it, subtract from it, do whatever
7 they want with it.
8 So, sure, if the state has a lab certi-
9 fication program I would advise that you use the labs that
10 you are already aware of in your state. We are only doing
11 this as a service for those states who really don't know
12 where labs are or for those affected parties in certain
13 states, who don't know where labs are that they might go
14 to.
15 The next question is: "If we have a
16 Class 1 site, which takes many hazardous wastes, will they
17 have to include every one of the hazardous wastes by
18 generic name in their notification? This would be nearly
19 impossible and for what useful purpose?"
20 I agree with that. We are trying to
21 make notification as simple as possible. If you are a
22 complex treatment facility or Class 1 landfill, you might
23 be accepting hundreds of wastes annually. We are not going
24 to require you to list the 200 wastes that you are accepting.
25 You have to indicate that I'm a hazardous waste handler.

I dispose of hazardous waste on my Class 1 site. And I accept petroleum refining waste, you know, some sort of general description.

We are not requiring a generic name for each individual hazardous waste that you handle.

Question on 3010: "Paragraph A on the 3010 clearly states what information is to be sent in as notification. Asking for phone numbers, SIC's number, names of persons, or signatures is clearly outside the scope of the law and EPA will be subject to penalties provided for, under Section 3008 of P.L. 94-580. Why would EPA risk that much by not following the law as written in Section 3010?"

O.K. I will try to address the first part first. We don't think, first of all, that asking for SIC code, phone numbers, et cetera, are outside the scope of the law. We think that--if the law says that the location, a general description of that activity, et cetera, are to be provided. The SIC number is clearly a part, you know, if you are a petroleum refinery and you are identified as a generator we would like to know that. That is part of a general description of your activity.

The state or EPA,and I would think the affected party, would want to provide a phone number and the name of a person that could be contacted in case EPA or the state has questions about the information that is

1 submitted.

2 So we think the information is quite

3 reasonable. And we don't have any, you know, we don't think

4 it is outside the law, first of all. So, you know, I would

5 be happy to talk to the person who sent this question in

6 about this issue at the break or whatever. But, you know,

7 I don't agree with the comment.

8 O.K. I'm just reading this but it says:

9 "Mr. Fields stated that state interim authorization relative

10 to Section 3010 should not be confused with interim authori-

11 zation under Section 3006. I cannot find this distinction

12 in Act. Please, explain."

13 O.K. Fred might want to pick up on

14 this. The term I addressed was limited interim authorization.

15 This is a special authorization which is not discussed any-

16 where in the Act. And we are instituting this limited

17 interim authorization because there won't be any authorized

18 state hazardous program during the initial 90 day notifica-

19 tion period.

20 So in an effort to give states an

21 opportunity to receive notices from affected parties in

22 their state and to allow affected parties, you know, who

23 might want to deal with the state as opposed to EPA, you

24 know, we are instituting this limited interim authorization

25 as a special authorization so the states can accept and

1 conduct a notification program.

2 After this period, the limited authoriza-

3 tion--I'm sorry--interim authorization, which Matt Straus

4 discussed this morning, will then, you know, you will be

5 sending applications in and you will be applying for and

6 EPA will be granting this authorization to the states.

7 And so this limited interim authoriza-

8 tion is just to get states involved before 3006 takes

9 effect. O.K.

10 CHAIRMAN LINDSEY: You know, that's the

11 basic point here that it's clear from 3010 that the states

12 are to be allowed to do this, if they are authorized. But

13 whoever wrote this section of the Act didn't check his

14 dates out carefully because it won't be possible for a

15 state to have received regular authorization by the time

16 it is necessary to be prepared to carry out this section.

17 So that's why we are developing a

18 special kind of an authorization for the states to comply

19 or to be able to handle this. Otherwise that wouldn't be

20 possible to do because of the difference in timing in the

21 Act.

22 These two don't really address the

23 section but I don't know where else to put them so I will

24 address them now.

25 "Will you at the EPA investigate the

1 citizens complaints of alledged failure to notify by a
2 facility?"
3 I guess this does relate to this section.
4 "In other words, if a facility calls up
5 EPA and says, 'Have these people notified you?' And we say,
6 'Gee, we don't have anything yet.' And they could possibly
7 say they generate a hazardous waste we want you to look at
8 it."
9 Well, our ability to do that will depend
10 on the resources we have. No. 1 whether we have enough
11 enforcement in these resources to go out and track these
12 things down. And it will also depend on our enforcement
13 priority.
14 In addition to enforceing the notifica-
15 tion part of this, shortly after this notification proce-
16 dure the permit systems will be cranking up. And there will
17 be the need to go out and catch the midnight dumpers and,
18 you know, things like that.
19 So a lot of this will depend on the
20 enforcement personnel that we have and on the priorities
21 which we set or which have been set for doing this.
22 "Assuming you are destroying minimal
23 amounts of chemicals and research compounds as waste from
24 a research lab, will it be necessary to list all of these
25 chemical compounds as hazardous on your permit application

in many instances you don't know what the research compound may be as it was just synthesized."

Now that's a very special kind of situation. First of all, let me address that. It's quite probable that most, at least very many, laboratories are going to qualify as small generators in one fashion or another. And if you are receiving then only waste from small generators, then you don't have to have a permit, if you are receiving nonmanifested waste. That is one of the provisions.

This, of course, gets the sanitary landfill on your home town out of the system because he is receiving hazardous waste from home owners. But they are nonmanifested waste. The same thing with small generators.

So that would be one possible solution. On the other hand, if you are receiving manifested waste, then you would need a permit. Now the permit application can be made in such a way that you request the permit to be able to handle classes of waste, not individual substances, if that be your rathers. For example, chloronated hydrocarbon perhaps with certain exceptions.

To get a permit like that you are going to have to demonstrate your capabilities to handle those kinds of waste. And probably to a greater extent than you would if you were only going to handle say one or two kinds

of waste.

So that's the situation. In other words, in coming in for the permit application you would have to give us sufficient information to know what the kinds of waste are you are going to handle. And it would seem to me that if you are handling and destroying waste from your own safety standpoint you are going to need to know what is in them.

You are not going to be receiving waste, I wouldn't imagine, that you have no idea what it is. That's about all I can say on that at this point. We would have to take a look at it in an individual situation.

MR. SANJOURN: The question is: "Am I correct in assuming that the generator is responsible, once notified, to classify his waste according to 3001 as hazardous or nonhazardous and would only be required to submit the notification to EPA only if his determination about the waste classified is as hazardous?"

Well, the statement is almost correct. It's incorrect in the sense that EPA is not going to notify someone to notify EPA. I mean we will take out advertisements, et cetera, but essentially within 90 days after regulations are promulgated on the 3001, a generator is required to make his own determination of whether or not his waste is hazardous and notify EPA based on his determina-

tion. That is correct.

The next question is: "Why is there a discrepancy between names used on a waste stream? Why not use either the ~~RUPAC~~ IUPAC name or the generic name? Preference is given to the ~~RUPAC~~ IUPAC name system."

Well, I would say either one of them would certainly do for the purposes of notification on the 3010.

AUDIENCE MEMBER: You are using both the 3001 specified as a transportation on this action, specified to generic?

CHAIRMAN LINDSEY: Why don't we hold that question and you can make that after we are done with these written questions. We can talk back and forth from the mike as from the floor. We will complete the written questions, I think, first.

MR. KOVALICK: This is a follow-up to my comment on 208: "Which Federal Register promulgated planning district guidelines and Agency rates?"

That's the May 16th Federal Register, Line 42, No. 94, May 16th.

"Company A generates a hazardous waste. And Company B transports it to a disposal site operated by Company C. Do all three have a notification requirement?"

Yes.

"If company A files a notification on the 90th day, and Company B and C aren't aware of that hazardous classification until that time what can they do?"

Well, I--if we assume that Company B and C have been asked to begin hauling and disposing of this hazardous waste,they should notify if they are going to be in that business. This is a continuing notification requirement that Tim was talking about.

As a footnote, presumably Company C went and got a permit to handle the kind of waste he is going to accept. So notification should be--perhaps it's kind of late for all of that. He already would have been through that process to get his permit.

If Company B and C has been hauling it all along and disposing of it all along, and do not notify, I think the generator would be able--well, the generator would be reluctant to use them because they are going to be out of compliance. And I think that he should suggest that they immediately notify.

This is another question--two sets of questions related to the size of generators and notification: "Do you anticipate all 286,000 service stations to file notification in that they may generate hazardous waste? Also what about numerous waste water districts which may have secondary treatment sludges which must be disposed of?"

This question gets at the subject of how to deal with massive numbers of small generators, service stations in that case, and we are trying to cope, as you heard yesterday, we are coming up with a definition of "small" that would get people out of the system. Certainly, I think we have all been listening to this question and agree that would be a very large number of notifications received and probably not that useful because the data would be so overwhelming.

As far as the waste water treatment sludges, again, it's not it's not entirely clear that all of them would be hazardous waste. And they are a more finite set and I think it's less out of the question that they might be in the notification system. But we are still evolving the subject of a small generator.

MR. FIELDS: I have one final question here: "I believe mention was made yesterday that generators; transporters; and disposers would be assigned identification numbers. Will a corporation generating waste in a dozen states and is a common carrier required to transport hazardous waste can operate for its own convenience several disposal sites for hazardous waste be assigned a signle I.D. Number?"

Well, the--I didn't address this in my presentation. I guess I should have. The answer is:

1 No, he would not be assigned a single I.D. Number for the
2 whole corporation. We plan to provide, you know, for a
3 corporation that is generating hazardous waste in a dozen
4 states, we hope that each individual generator will have a
5 distinct I.D. Number.
6 As a part of the notification, one
7 element that I didn't address was requesting that people
8 submit to us their Internal Revenue Service Employer Iden-
9 tification Number. In the case of a Federal Facility they
10 are a nine digit number, General Services Administration
11 I.D. Number, several transporters already have a public
12 utilities permit number.
13 We are requesting that some sort of--
14 we haven't really worked this out yet in our regs. but we
15 are going to be requesting that a identification number be
16 submitted in the--as a part of the 3010 notice. And if
17 an employer, for--if a large corporation, for example, has
18 a one single employer identification number that applies to
19 all his facilities--we haven't really worked it out yet but
20 we might have some sort of indexing system where each indi-
21 vidual facility has a little different number.
22 So we are not--the simple answer, I
23 guess, is that, you know, no--we don't plan on assigning a
24 single I.D. Number for all the facilities in a single
25 corporation.

1 MR. KOVALICK: I think the statement
2 goals here helps a little. We are trying to know the
3 reporting system we described yesterday is going to be
4 managed by ADP system. There will have to be a coding of
5 that. And rather than have us invent a new coding system
6 for every generator, transporter, and treater storer disposer
7 we want to use existing numbering systems.
8 And what we are trying to do is use
9 those systems and yet still have a way to identify the
10 difference between a Company A plant in Linchburg, Virginia,
11 and Company A plant in Sioux City as I determined in their
12 originating waste.
13 The goal is to use these known numbers
14 and somehow adapt them to the data needs of the quarterly
15 reports.
16 MR. SANJOUR: I won't read the whole
17 question. It has to do with whether or not householders
18 would have to comply with the provisions of 3010 and
19 whether or not people who haul municipal trash and garbage
20 would have to comply.
21 And the answer is: No, they would not.
22 CHAIRMAN LINDSEY: And one final one
23 here: "Who is the contractor developing the list of labora-
24 tories?"
25 Wapora is the name of the outfit. They

1 are in suburban Washington, actually in the Maryland suburbs
2 out there. I have forgotten what town.
3 O.K. We have just a few seconds here.
4 Does anybody have a question they would
5 like to address from the floor?
6 Here comes one. Your name and affilia-
7 tion, please?
8 SCOTT MILLER: Scott Miller of Illinois
9 EPA.
10 I would just like to answer the question
11 that I wrote and sent in. The question being: Why do you
12 use two different names waste streams. Why not either use
13 one or the other?
14 MR. KOVALICK: Well, Scott, I think
15 you are reading both drafts of one notification system and
16 the other is the system to find the manifest. And the
17 implication of your remark is that there is some devastating
18 problem with having those different. That may be and we
19 will look into it.
20 But I think the basic thrust of it is
21 that the notification is a much more general indicator not
22 intended to supply the detailed kind of data that one would
23 hope to find on a manifest.
24 So I think there is a different purpose.
25 Different purposes sometimes have different systems. But

this doesn't mean that we are going to end up that way. But that could be a reason that they are different.

SCOTT MILLER: I have just brought out the point because I thought it needed clarification, as a chemist it's much easier to work with an ~~IDPA~~ IEPA. I am sure that none of you would be able to understand the generic names that are used because they usually don't indicate what the waste actually is.

MR. KOVALICK: It depends on the use you are going to make of the notification data.

SCOTT MILLER: That's true.

CHAIRMAN LINDSEY: Thank you, Scott. O.K. We have one last question or comment, which the panel doesn't understand. And what we are going to do here is try and move on to the next section. So if the person who sent in this last card--I'm sure you will remember who you are--if you would come up at the break time or else resubmit it in another section, we will try to address it in that way.

The next section has to do with the environmental and economic impact assessment. And Michael Shannon, who is our program manager for quality analysis and our desk officer for environmental and economic impact assessments, will address this point.

MR. SHANNON: Thank you, Fred.

At the outset what I would like to do is to point out that the EIS that we are conducting is not the site specific kind of EIS that has been discussed particularly with reference to Section 3005 permitting. Which those EIS's did have to do with specific permit applications dealing with new facilities as I understand it.

But the EIS that I am going to talk about now deals with a programmatic or regulatory action that EPA is conducting. Namely the implementation of the ~~Sub Title~~ Subtitle C regulations. It will be an EIS of the total aggregate impact of the regulations, you know, across the nation.

But, of course, it will touch on, deal with specific sectors and problems. The EPA position for doing EIS's stems from a 1974 decision by the Administrator to conduct EIS's. Basically he made the decision to do this on a voluntary basis. The National Environmental Policy Act of 1970 does not require EPA to conduct EIS's.

However, he did make the decision to do EIS's basically to improve the overall decision making process. The economic analysis that we are conducting stems, at least in part, from the EIS requirement, itself, which does require that economic considerations be taken in promulgating the regulations.

In recent years there a number of

1 additional requirements that come into play regarding
2 economic analysis. I guess the most significant of those
3 is the fact that the executive office requires economic
4 impact analysis of Federal Government regulatory actions.
5 And the Office of Budget and Management has issued implement-
6 ing guidelines for the executive agencies having to carry
7 out these analysis.
8 In addition it has been EPA's policy to
9 conduct these analysis even if the criteria--the O & B
10 criteria for conducting economic impact analysis were not
11 met. In other words, the administrator wants to know what
12 the economic impact of an action are regardless of how small
13 they may be.
14 Regarding these prospective comments, I
15 would like to cover it in three parts. Generally talk about
16 the background and description in a general way of what the
17 EPA--the economic impact analysis requirements will do.
18 And then specifically talk about the
19 EIS process and what will be in the analysis.
20 And then do the same thing for the
21 economic impact analysis.
22 The purpose of the impact analysis, first
23 of all, is to present the environmental and economic conse-
24 quences of the regulatory action to all the government
25 agencies that would be involved, the public, President,

1 Congress.

2 The EIS, in particular, is to be
3 written so that extensive scientific or technical expertise
4 is not necessary for the reader to understand evaluate the
5 action that is being taken. The EIS is to be written for
6 a general audience.

7 So that the first thing the EIS parti-
8 cularly will do is simply lay out the problems associated
9 with hazardous waste. How much hazardous waste is generated
10 by industry spectors. And will go on to discuss the trans-
11 portation problem, treatment storage and disposal of hazar-
12 dous waste.

13 In addition it would discuss the--
14 generically that is the criteria that are used for defining
15 hazardous waste. It will discuss the environmental and
16 public health problems associated with hazardous waste
17 management. Air and water problems and the public health
18 hazards.

19 The next part of the EIS--the more
20 difficult part deals with the analysis of the action being
21 proposed and the alternatives of that action. But before
22 the analysis proceeds to that point what has to be done is
23 the state, the rationale for seclusion of some major
24 regulatory alternatives that have been dropped from the
25 analysis.

For instance, in this case--this isn't definitely decided but it seems apparent that we will not be regulating setting out specific regulations on industry by industry basis, for example. We would have to document why we are not doing that.

And then go on to test the remaining alternatives for reasonableness. In viewing this process, we will have to determine which options increase the attainment of the objectives of ~~Sub Title~~ Subtitle C and the Act in general.

O.K. At that point we select a reasonable and manageable set of alternatives for the actual analysis of impact. The intent of doing an alternatives analysis is to require us to do an enter disciplinary analysis of the alternatives.

We are looking at not only the technical aspects but social, economic, political aspects too, for example.

Then the next step would be to begin the discussion of the actual impacts of the action that is being choosen, the preferred action, the base line action, for instance, that we have been primarily discussing up to this point.

And then what the impacts are of the alternatives to that particular base line action including

an alternative of no action, doing nothing. Other alternatives that have been defined and we are trying to develop for the analysis are alternatives that enhance the public health plus environmental aspects of this base line action, say by 50 per cent or a less stringent alternative that we will be analyzing is one that would decrease the public health and environmental protection.

Also an alternative that explicitly enhances resource recovery and conservation. The impact that we will evaluate fall into several categories. The primary impact that we will have to document are: What is the pollution reduction associated with the base line and the alternatives to the base line? What kind of procedural or structural changes are to occur in the management of hazardous waste from the point of generation to ultimate disposal? The resource recovery conservation benefits will also have to be addressed.

In addition the secondary kinds of impact that will be discussed are changes in the social/political aspects of hazardous waste management. Community impacts, for instance. For instance, the public opposition to siting problems will have to be evaluated and accepted at that point in the analysis.

Another secondary impact is what are the cross or are there cross-media impacts related to this

1 particular environmental action. Will we be creating another
2 pollution problem because of hazardous waste management
3 control.
4 Other considerations that are analyzed
5 in the impact analysis are long-term adverse impacts,
6 irreversible, irretrievable impacts and the relationship
7 between short term uses or goals as opposed to let's say
8 sacrifice of long term objectives or we sacrifice the long
9 term--short term gains.
10 Going on to the economic analysis,
11 there are really two--three major parts of that at this
12 point. The first part is to deal with the total cost of
13 compliance with the regulation. And our primary data on
14 that and primary impact, of course, comes from the technical
15 cost of control. How much does it cost to--for incineration,
16 the technical aspect of incineration, disposal or physical
17 chemical treatment process.
18 In addition, we are--we have just
19 recently begun a study of what are the remaining costs of
20 compliance with these regulations. Namely the non-technical
21 administrative costs. Such as the testing, record keeping,
22 reporting, and things like insurance, for example.
23 As that work proceeds we will take the
24 cost and begin to translate them into the broader economic
25 impact of how those increased costs will impact generators,

transporters, and disposal firms, and the public in general, for instance, will the increased costs lead to an increase in price that someone cannot pass on, have to absorb completely. What impact will it have on the production of goods and services. Will there be employment impacts in that people will loose their jobs, lay-offs in particular industry sectors.

What is the impact of increased capital cost on the ability of the industry or firm to generate productive capital for his main business.

O.K. The next step in the economic anaylsis is really a little complex because what we are--in the analysis as it is described we are looking at individual sectors. We are looking at organic chemicals industry, inorganics, electroplating, et cetera, all kind of in a static sense.

But what's going to be happening is that there are likely to be shifts in the amount of business that is done or the amount of hazardous waste that are managed onsite as opposed to the amounts that are managed offsite. More may be managed offsite than is now managed offsite. What kind of impacts will that have, you know, sectorbysector impact.

O.K. Regarding the unresolved issues, most of the issues that we are dealing with are actually

problems that we face in the analysis due to the fact that the standard of ~~Sub Title~~ Subtitle C itself are changing or have been changing a lot to this point. And they are likely to continue to change somewhat.

So, you know, it is difficult to get a good understanding of what the impact will be because of the definitions of hazardous waste are changing.

Other problems--one that I touched on was the nontechnical cost date problem. Another aspect of that is--would be a data gaps really on those who will be effected. We have fairly good information on the primary industrial generators of hazardous waste. We don't have a good handle on those outside of that area. For instance, you know, small industry that may generate minor quantities of hazardous waste.

However, there still could be some adverse or significant impact, both environmentally and economically on those sectors. Well, gasoline stations are nonmanufacturing sectors, for instance, or dry cleaning establishments. Those are the kinds of areas where we don't-- where we need more and better data.

A difficult problem too is looking at alternatives. The EIS and economic analysis actually require us to look at and evaluate alternatives. The problem that we face is actually trying to translate the goals of the

1 Act and the Agency into meaningful alternatives. What can
2 we do to encourage resource conservation and recovery. The
3 office has basically tried to include all of these things
4 into this base line action as we see it now.
5 But we are attempting to do things that
6 specifically will lead to other goals. Then in the final
7 analysis the ultimate decision making on the environmental
8 and economic impact is a difficult issue that will have to
9 be faced.
10 In other words, the balancing of the
11 economic impacts with the technical and environmental aspects,
12 trade-off analysis or trade-offs between those considerations,
13 you know, if there are adverse impacts, will likely have
14 to occur.
15 Thank you.
16 CHAIRMAN LINDSEY: Thank you, Mike.
17 Is there anyone who would like to make
18 a statement which directly relates to the environmental
19 impact or economic impact work directly?
20 (No response.)
21 O.K. Seeing none, we will take questions
22 on this area.
23 Mr. Kovalick will say a few words about
24 the data management system which we are putting together.
25 MR. KOVALICK: We made several references

in the two days to data processing. And I wanted to give you an idea of what is happening along that line while Mike is reading the questions.

We have let a contract to contract to develop a system, a data system that would be used by our regional offices and software from it will be available to states. So let me just talk as if the system were just used in a regional office.

The major principal would be to basically manage the three files of information that we are developing. A file of information relating to those people who notify as opposed to those people for whom we had an idea that they should notify. The file of people who are prospective permit applicants and those who actually do file for permits. And the file of people who actually do report on waste shipped and waste received.

Now if you just think a minute,you can see how we can make and match all of those lists. That is someone who has notified that he is a generator one would expect to start receiving reports on their manifest shipments. Someone who is not applying for a permit and yet has notified would obviously be another kind of signal.

So what we are designing here is management by exception system to be used in our regions--would be used in our regions for the state for rearranging programs.

1 And it would make software available to states if they wish
2 to use it. So that they can match these various files.
3 And I just wanted to give you a flavor
4 for how we were going to simplify what some people view is
5 a fairly large problem in only looking for the items that
6 are outside the system.
7 Mike has some questions.
8 MR. SHANNON: This question says--well,
9 it starts off with the comment, "Because the EIS and the
10 EIA are being developed at the same time as the regs. it
11 would appear that the effort will do nothing more that justi-
12 fy the regs. (A white wash) Just how will the EIS and EIA
13 process be used in the decision making."
14 That you could presume is a possibility
15 from an office standpoint we are not approaching the analysis
16 with that in mind. In fact, it has been pointed out we are
17 only one--no, several offices that--well, although we are
18 the lead office, there are other offices that have decision-
19 making voices in the regulations that are being developed
20 and will ultimately be proposed, promulgated.
21 And we know that some of these offices
22 have differing (one word) view points. There are, you know--there are
23 offices that think that we should go with, you know, a very
24 definitive, mandatory type of list, for instance, or that
25 we should phase the regulations.

In other words, what's happening is that we are being forced in our analysis of the alternatives to look at the environmental and economic considerations of those particular actions. We, you know, as an office have a preferred position at this point and you have heard what it is at this point. It's changing, it's evolving from day to day. In fact, that is one of the difficulties of doing the EIS and the EIA analysis.

So, for instance, when we get into the decision making process, if a particular faction of EPA says, you know, what we think you should pursue. This is your alternative. Hopefully we will be--well, we will be open enough to consider that and evaluate.

We will also at the same time will have economic and environmental information to say these are the impacts. At this point we hope to have three drafts, EIS's and economic impact analysis prepared when we go into the internal decision making process. When the regs. are proposed, the draft EIS will be published.

The further point on this question is that at that point the public will have formal opportunities to comment throughout a 60-day period. So I hope that answers at least part of that question.

Another one is: "Do you personally feel that you will be able to make a representative estimate

1 of what the actual economic impact implementation of RCRA
2 regulations are on industry? And will you consider industry
3 individually or as a group?"
4 We have done some--we have completed
5 one industry economic impact analysis. We did it for the
6 Industrial Inorganic Chemicals Industry. If all of that--
7 whatever that SIC code is--but in conducting the analysis
8 the industry was segmented, categorized to a great extent.
9 We categorized it based on geographic
10 location, plant size,raw material, input, etcetera. Because
11 those are the factors that determine the ability of an
12 individual firm and the industry to deal with increased
13 costs, to pass them on or their inability to pass them on
14 to have to absorb them.
15 We are--that study is completed. We
16 are doing additional industry studies on, I guess, about--
17 well, about ten or twelve other industries. Those primary
18 generating industies that have been the subject and I don't
19 know if they have been mentioned up to now or not.
20 Starting three or four years ago this
21 office conducted a series of assessment studies. What was
22 the waste problem, the technology available to deal with
23 the waste, and what were the internal costs impact of the
24 regulations. It was on those 15 industries that we are
25 now doing the economic impact analysis.

At this point we are concentrating particularly on those small firms or let's say those sectors that we can identify as having a more significant implemental cost impact. So we are considering industries, firms, small firms, specific segments of the industry as opposed to large broad categories.

CHAIRMAN LINDSEY: O.K. I have a couple here. This is a long one: "Although domestic household garbage generators have been exempted from the RCRA Act and Regulation--"

They are not going to exempt it from the Act. We have exempted them from the regulations.

"--what would be the expected per cent tonnage of waste delivered to sanitary landfills that would be comprised of hazardous waste material, one the list is published, based on a per capita (2 words), per day basis? And will such a study be undertaken to assess this situation and the total tonnage of hazardous waste materials generated by domestic households delivered to landfills? And could this evaluation be expanded to determine what per cent of hazardous waste, once the list is published, is presently exists at all landfills? And a per cent tonnage of hazardous materials present at landfills versus total tonnage of all waste present at landfills?"

I get the question. I get that. Will

we have in the EIS, which is what this specifies, an analysis to the comparative impact of allowing home owners not to be in the system, as it were. That is the comparative impact of exempting them.

And I think we will address that in some manner. I should point out though that the reason--one of the primary reasons for exempting home owners is the uncontrollable nature of these kinds of things. First of all, if each home owner had to generate a manifest, each garbage truck had to carry that manifest, each sanitary landfill, et cetera, had to get a permit and so on, it would be clearly unmanageable.

Secondly, the damage assessment work, which we have done quite a number of case studies, et cetera, do not indicate that significant--that home owners--that waste generated by home owners are a serious source of environmental damage.

So part of it--a good portion of the reason for our decision to exempt home owners is one simply not being able to control it. I should point out that the preliminary information that we have on home--on information we have from one state indicates that the generation of hazardous waste by home owners is something on the order of under one pound per day per household of materials which might be considered as to be hazardous. Just to give you

1 some kind of an idea there.

2 Now here is a question that has to do

3 with the NEPA requirements not for the kind of NEPA

4 environmental impact statements that we are doing here but

5 rather relative to the permit granting: "Within the meaning

6 and intent of the NEPA 1969 requirements will the issuing

7 of the permit by EPA to facilities or hazardous waste

8 landfill operations constitute a major Federal action

9 significantly affecting the environment?"

10 I addressed before, I think, in some

11 detail before lunch the interplay of and our uncertainty

12 concerning what the impact of the--and what our options are,

13 relative to NEPA, relative to this granting of permits.

14 I don't really think I want to go through

15 that again. If there is somebody that has a specific

16 question on that again, let me know. However, this specifi-

17 cally addresses whether or not we think that the granting

18 of a permit constitutes a major Federal action.

19 As I say, and we still are not sure

20 legally, what our alternatives are. And so, I guess, my

21 answer to that is: I don't really know at this point.

22 MR. KOVALICK: This is a general ques-

23 tion related to definition: "I believe background or

24 justification documents were prepared for each criteria like

25 flammability for Section 3001. Are these completed and if so,

how may a copy be obtained?"

We have draft versions which are available to you of the document except for the toxicity document and the radioactivity may be available by the time we get back. But flammability, reactivity, corrosiveness are available. I think the easiest way would be for those of you who have given Mrs. Wyer outside your card to get a copy of the draft read, indicate on there which criteria documents, if you know, or all of them that you would like to have. These are not final but they are drafts.

"Regarding my management information system discussion,how do you plan to act on the generators that produce hazardous waste under 3001 but do not notify?"

O.K. Running through our options again, if we have a list of ~~rebutall~~ rebuttal presumption waste, it would be a very easy matter to take the SIC codes of industry for which, and using the notification list that Mr. Field's mentioned, run the kinds of industries through the machine that have those kinds of waste and figure out who we didn't hear from. That would be one place to start.

If we did not have the rubuttable presumption list, we would look for exceptions in that SIC code. Using my example earlier, if you heard from eight of the ten beryllium foundries in that area, you would naturally go out and look at the other two. After finishing all of

that work you would go out and using a prioritized list of industries that we think are good targets, start running those through comparing the directories of possible affected parties that we had, that the contractor is developing as Tim mentioned under the 3010, against those we have heard from.

So it would be a very easy matter to get print outs of the exceptions as I mentioned before.

MR. SHANNON: This question says, "Both impacts, environmental and economic, will depend principally on 3001 criteria. Are impacts being considered in 3001 criteria development?"

The impacts that were--I'm going to start off a different way. The definition or the ultimate position on the 3001 criteria and the lising are, of course, primary significance in that they define the waste, hazardous waste that will be included in the net that will have to comply with the other regulations.

So from that standpoint, you know, we place a difficulty in understanding what the impact will be. We are beginning to understand what they are as the definition is now constituted. And we are also considering the--one of the alternatives is the phasing of the levels of criteria under 3001.

In the particular phasing alternative,

we are looking at phasing of things other than the levels of criteria too. We are not specifically looking at a phasing of just the levels.

So the answer to the question is: Yes, we are considering--in this development process, will be considering impacts of various wastes as defined in 3001 criteria.

In addition, let me say that the impact analysis are of the total, you know, instrumental impact of all of the ~~Sub Title~~ Subtitle C. To a generator, he is being--the start of the impact begins with how waste is defined. But he is being impacted, you know, in part by 3002, in part by 3003, and the initial impact of 3004, and the other Sections too.

And that--you know, we are analyzing the total impact of the ~~Sub Title~~ Subtitle C regulations.

CHAIRMAN LINDSEY: O.K. That being the last written question. Does anybody have any questions from the floor?

JOHN GOULIAS: I really have so many questions that I better defer to anybody else who wants to speak first.

CHAIRMAN LINDSEY: All right. Anybody else?

MR. BORMAN: My name is Bert Borman.

I have a quick question. Can you tell me why when you are talking about contractors doing studies on waste, why it is in this law that contractors are not authorized to get information but EPA employees are or his designated contractor?

MR. KOVALICK: No, I don't think we can. I don't think we know the answer to that.

MR. BORMAN: There must be a reason for it, I would think.

MR. KOVALICK: I'm not sure our general counsel has interpreted that. The last thing in here means that we couldn't do that. In other words, if we came to your plant and asked for information under our procedures and you had to let us in. The question: Why shouldn't our contractors be allowed to do the same thing. So we may end up having to accompany him to a facility that denied that contractor entry. But if the facility would allow our contractor to come in that would simplify it. I think that's where we are at the moment.

There are more problems, I think, with contractors frequently than there are with EPA people.

MR. BORMAN: Thank you.

MR. MICKOLAJ: Paul Mickolaj. I have a general question. It was estimated that sometime earlier today or maybe yesterday that you are expecting about

1 20,000 interim permits to be granted. What kind of priorities
2 will be set as far as how these will be evaluated? And
3 do you anticipate that there will be any deadline as far as
4 how long these interim permits will be valid?
5 CHAIRMAN LINDSEY: O.K. Let me take
6 the second part first. There is no closing date on interim
7 permits. They are--and we don't, EPA, doesn't take any
8 action to grant an interim permit. All a person has to do
9 is notify and make application and he has an interim permit
10 until EPA gets around to looking at it.
11 So we take no action. And the only way
12 of ending an interim permit is for EPA then to act on the
13 permit application. If we act on it and deny it, then that
14 is the end or whatever.
15 The first part of the question was--I
16 have forgotten, I'm sorry.
17 MR. MIKOLAJ: Priority, how--
18 CHAIRMAN LINDSEY: Oh, how are we going
19 to get through the stack. Clearly it will fit priorities.
20 And it will be partly regional option. There will be
21 guidance from Headquarters, from our Headquarters Enforcement
22 Group who is not represented here today, and from us as to
23 what those priorities should be.
24 So I can only speculate at this point.
25 That won't be set out in regulations. That will be something

1 that the Agency will do. Clearly the squeaky wheel is going
2 to have some effect. O.K. Where there is a group or some
3 people who are adamant that some facility should not exist
4 or have questions about it, they are going to raise a lot
5 of fuss about it and EPA is going to look at that applica-
6 tion pretty soon, I would imagine.
7 Other than that, I would tend to--from
8 a personal manner to take a look at the very good facilities
9 first that we know are good facilities and get them into
10 the system to encourage them so that they can gain adequate
11 capital to expand. And I, of course, would take a look at
12 those facilities that I thought were very poor--that the
13 facilities were very poor or very marginal. So as to get
14 the worst factors out of the system. And then maybe work
15 toward the great middle ground.
16 But there are a variety of other scenar-
17 ios one can concoct of how you should do that. And as I
18 say it will be something we will do later on in terms of
19 sending out guidance to the regions for doing that.
20 I guess you are next.
21 MR. GOULIAS: John Goulias, Columbia,
22 Missouri.
23 I guess I should explain the thrust of
24 my questions first so you will understand. I am trying to
25 think through this process with you and that I'm not

1 necessarily casting disputations on the whole process of both
2 environmental impact statement and economic impact state-
3 ment development. Having personally been involved in the
4 initiation of the economic impact statement program and in
5 the development of about 15 to 20 of these and I feel for
6 you. And so that my questions are related also to develop-
7 ing an environmental impact statement and economic impact
8 statement that can be truly meaningful.
9 I guess in a sense I believe that they
10 become as important as the thought that has gone into them
11 and the interaction between both the draft of the regula-
12 tions and the statements and obviously you are under the
13 same time pressures as we were under. And all of this has
14 to proceed at the same time. And I am trying to work with
15 regulations that are continually changing.
16 And, of course, this brings problems in
17 terms of both the environmental impact and economic impact
18 as such. So this whole area I believe is extremely important
19 toward focasing in on those part of the regulations which are
20 truly helpful to society. And even though the tools are
21 very vague, and not very exact, often times they tend to fall
22 out from the regulatory portions. Certain aspects of regula-
23 tions which become more meaningful than others from a cost
24 and benefit standpoint.
25 In other words, some portions of the

of the drafts will be much more meaningful that others. Also in evaluating the alternative strategies it will become clear as to which ones become most cost-effective, if both processes are done in a meaningful way.

John, you did not get into benefits very much because I know that this is a most difficult portion. I am just wondering in terms of the contractors how they will proceed with regard to both benefits and damage assessment.

MR. SHANNON: You are right that is the most difficult part. What our contractors will--well, our contractors are doing the, you know, the information gathering for us. It will be up to EPA to do the ultimate analysis of those benefits cost of the alternatives. But the approach that we, in reality, are going to have to be taking is that the benefits will have to be described very generically.

The Agency recognizes this as a weakness. It's not only--it's a weakness because the concept of doing the benefit cost now is very, very difficult. And, in fact, the value is in serious question within the regulatory world. In fact, in the recent past EPA in doing the true benefit cost analysis--basically they have not done it and that omission has been recognized by the agencies that are responsible for reviewing our statements, The Counsel and

1 Environmental Quality, The Office Management and Budget,
2 and the counsel on ways and price stability. What we do
3 is we, you know, broadly discuss or generically discuss
4 the kinds of adverse economic impacts that are likely to
5 occur under each alternative.
6 In other words, you know, with the
7 avoidance of damages in a particular area, you know, that's
8 a kind of benefit. Beyond that, in terms or establishing
9 a benefit cost ratio we, you know, I don't believe we will
10 be able to do it.
11 You made a comment earlier about, in
12 your experience, focasing on certain aspects of a regulations
13 that you think that the analysis shows to be really helpful
14 in dealing with the solution. I would like to talk to you
15 about your experience after this particular session. I
16 think it would be helpful.
17 MR. GOULIAS: May I make some suggestions
18 along these lines. I am wondering how much you have looked
19 into or will be having contractors look into the damage
20 assessment reports available at all local, state, and Federal
21 agencies.
22 MR. SHANNON: Yes, our ERS contractor
23 will begin that, yes.
24 MR. GOULIAS: Fine.
25 MR. SHANNON: They are categorized so

that we can tie them into possibly, you know, the types of control on the transporters, for instance, or the broader Subtitle C alternative.

MR. GOULIAS: So that during the completion of the study then there will be an evaluation of the kinds of incidents that have occurred and what the damages have been, whether this has been related to transportation, whether it's been related to bulk storage, whether it's been related to--well, any other incident could have occurred.

MR. SHANNON: Right.

MR. GOULIAS: Now along those lines, I might mention another bias and this is related to human error and emergency response. I feel that a lot of these programs eventually in the long term over a long period of time will be found to be associated to a great extent with human error. And also to equipment malfunction either to the caring of certain kinds of wastes or whatever equipment malfunction.

And I base this experience primarily on incidents that have been tabulated in various states. It seems to me that one portion of the regulation needs to address emergency response or let's say that an economic impact statement needs to address emergency response. Now true, this may not be part of RCRA, I don't know. It may

not be part of TSCA, I don't know. But I believe it's part of the total U.S. EPA picture and how this will be done, I don't know.

But at some point there are a number of emergency response activities under way within U.S. EPA now as you well know. And part of them will be regulated under TSCA in the future. I understand there are guidelines out now, interim guidelines issued by--I think it was somebody's office at the time. I'm not positive. As to how emergency responses will be handled, but under your Act, if it should turn out that many of these incidents are in some way related to an emergency response situation, and I think that this needs addressing because it's very strongly tied in with the economics of insurance liabilities and civic liabilities.

CHAIRMAN LINDSEY: In that regard, there will be continuance plans in the way of self emergency response, a planning provision which is being written in Section 3004.

On the other hand if you are talking about the kind of emergency response reaction in teams that occurs when there is a spill, Coast Guard or EPA teams occur when there is a spill. We would not look to duplicate that.

As a matter of fact, I'm not sure that

1 the Act that we have gives us really the authority to do
2 that. But the Agency, within the past month maybe five weeks,
3 has been looking at ways of consolidating the emergency
4 response needs and ability to react in the more comprehensive
5 fashion. So that is being done.
6 MR. GOULIAS: Well, I am glad to hear
7 that.
8 CHAIRMAN LINDSEY: I don't know whether
9 it's going to be simple but they were working on it.
10 MR. GOULIAS: It is an extremely difficult
11 problem. So along those lines let me proceed, John, to get
12 into the liability insurance aspects. You mentioned pre-
13 viously that you thought in terms of a hazardous waste
14 disposal facility might require twice the annual gross
15 revenues in terms of either insurance or bonding or what-
16 ever. And that the various guidelines had not been developed
17 by you or by the contractors as yet, but you are thinking
18 in terms of a $50,000,000 figure. Did I understand that
19 correctly yesterday?
20 MR. SHANNON: No, the question that I
21 responded to yesterday said what kinds of protection have
22 been suggested to us. And what I mentioned was a--it
23 was suggested as a possibility based on other risk areas,
24 both environmental and product liability and other kinds
25 of things. It's not an EPA, even an office position at

this point.

MR. GOULIAS: Will this figure be determined by your contractors?

CHAIRMAN LINDSEY: No, contractors don't choose those kinds of things. They may study options for us. But they don't make choices.

MR. GOULIAS: But they will be making studies that will be related to helping you choose the option?

CHAIRMAN LINDSEY: That's a fair statement, yes.

MR. GOULIAS: Along those lines will they also be looking at the economics of those various waste disposal sites that are in existence now?

MR. SHANNON: Are you tying that question into financial responsibility?

MR. GOULIAS: Yes.

MR. SHANNON: O.K. Let me put together what I think you are saying. What our contractor who is doing this managerial issue study,including financial responsibility, is doing is estimating the individual cost of the specific option that he is evaluating. One of them is liability insurance. You know, we know how much each of these particular options will cost. Then what we do is we take that cost along with all the other costs of the

whole Act, including the administrative or nontechnical costs, and factor them into the economic impact analysis. It could be that the costs of financial responsibility by themselves are somewhat significant and they will require a closer look at the alternatives for financial responsibility will be required, based on economic cost impact.

MR. GOULIAS: Well, maybe I can get more specific, John. We are in the process of developing a hazardous waste disposal site. How much bonding, how much liability insurance would we require?

MR. SHANNON: Ultimately, presuming the state picks up the program, whatever the state would require. As long as it has been determined that provisions in that particular area were good,substantial, consistant, but we can't tell you what we will be recommending in those particular areas yet. We don't know. I have given you some indication.

MR. FOULIAS: Well, let me give you some figures in return. from fellows that have been in business some 20 - 25 years related to nuclear waste disposal, which I think is even more difficult than a hazardous waste disposal. The gross revenues generated, from what I understand, are approximately--now this would be the gross revenues--are in the order of say $200,000 - $300,000 an acre. So assume a site would fill in, at a maximum, 15

1 acres a year and most sites would be on the order of say
2 3 to 5 acres. That would be on the order--say 4 or 5 acres
3 would be a million to a million and a half dollars gross
4 revenue before expenses.
5 Now are you saying or were you indicat-
6 ing yesterday that such a facility would probably require
7 $50,000,000 bonding based on that annual gross revenue?
8 MR. SHANNON: This is a facility that
9 has an annual gross revenue of $1,000,000 you said?
10 MR. GOULIAS: Yes.
11 MR. SHANNON: Well, what--I was suggest-
12 ing based on the information study that has been done today.
13 That facility would be required to have a total liability
14 coverage. We are talking about financial responsibility of
15 $2,000,000 twice the annual revenues not $50,000,000.
16 MR. GOULIAS: O.K. Fine. I wanted to
17 get a clarification of that. Whatever the annual gross
18 revenue would be.
19 CHAIRMAN LINDSEY: That's not a very
20 hard number though. I mean that's just an idea of a concept
21 or the way it might go.
22 MR. GOULIAS: Whatever I said was con-
23 siderably more. But nevertheless the $50,000,000 is certainly
24 staggering and well beyond the small operator. O.K. This
25 I'm sure you understand.

1 In terms then of the rating--let's forget
2 that line. I guess, in terms philosophical importance of
3 human error on transportation incidents and other things
4 related to that the--it seems to me that it would be very
5 helpful to look into a total emergency response system
6 involved in both industry and government. I know it exists
7 now to a certain extent. But from industries point of view,
8 they have many problems in responding to more than their
9 particular product.
10 The industry attorneys would say, as a
11 particular manufacture facility, to your emergency response
12 team that goes out in the field must limit its activities
13 to those chemicals that you produce and nothing more.
14 And often times there is a tendency to give the good industry
15 team involved more than what their public attorneys often
16 times would want them to get involved in. Which gets back
17 to the problem of civil liabilities and cost of insurance.
18 Now assuming that our waste disposal
19 site was also equiped to handle materials from an emergency
20 response systems collected during emergency responses, I
21 guess, what I am wondering about is if the cost of any such
22 liability insurance amount and, if, in fact, it is available?
23 Now where they will be addressing will
24 this particular economic impact statement be getting that
25 involved in addressing the emergency response issue and the

collection of those materials for hazardous waste disposal sites?

MR. SHANNON: What you are doing is, you know, really defining a specific situation in terms of what a facility is receiving as I understand it. In terms or insurance for financial protection of that facility, I believe it would make no difference as to where or how that particular waste arrived at the facility.

MR. GOULIAS: Not only the facility. I'm talking now about insurance going out to the scene to handle those materials in terms of response.

CHAIRMAN LINDSEY: No, I don't think that addressable under RCRA. Now it may be--I think that's something that the still response people under Section 311 of the SWPCA has to address under that area. I don't think that is coverable under RCRA.

MR. SHANNON: No, financial responsibility deals strictly with the hazardous waste management facility site under 3004.

MR. GOULIAS: But there would be additional cost associated for collection of materials that would be under RCRA, under emergency response that are not present now.

CHAIRMAN LINDSEY: But the collecting of those materials and the cost associated with the doing

1 of that would be handled under the spills regulations as
2 opposed to under RCRA. I think that's fair to say.
3 MR. GOULIAS: O.K. Now in terms of
4 looking at the insurance companies and the availability of
5 liability insurance, will your contractors be looking at
6 this?
7 CHAIRMAN LINDSEY: Yes.
8 MR. GOULIAS: What I might suggest here
9 is that, in terms of the insurance companies I have contacted,
10 no such insurance is available. And the reason for this,
11 at least up to a certain dollar limit, even for a very large
12 company, I would say for the first million to two-million
13 dollars could not be covered at the present day. Any thing
14 above that is very, very expensive. So that--and the
15 insurance companies say that the only thing they worry about
16 are the statistics of incidence and the existance increase
17 or decrease.
18 They are not concerned about the impact
19 of safety response teams on reducing the incidents they
20 want the record to speak for itself over the long term,
21 which might mean you may have to have anywhere from a five
22 to ten year history of records that would show that as a
23 result of emergency response plans the number of instances
24 have, in fact, decreased before the insurance company
25 actually can, in fact, write insurance that will be reduced.

1 CHAIRMAN LINDSEY: O.K. Thank you.
2 I think it might be worthwhile for us to talk with you in
3 some more depth. We are kind of running over here. So
4 I think--
5 MR. GOULIAS: I apologize for taking a
6 long time. But I have a lot more in terms of safety. I
7 view this as really an extension of industrial safety.
8 But often times people best equiped to handle the problem
9 can't get involved because of several liabilities and their
10 own individual liabilities that would be incurred. It has
11 nothing to do with any of the EPA legislation at all. It
12 has to do with several liabilities and company response
13 teams that are best able to do the job and their own product
14 liability insurance becomes enormous including those that
15 are self written requires so much deposit in the bank and
16 so on. But we can go into that in more detail.
17 CHAIRMAN LINDSEY: I think that we would
18 like to do that on a one to one basis. And we will look for
19 your assistance, if that's possible. We are just about on
20 schedule at this point. We have two major things to do.
21 We are going to take a short break. The two major things
22 to do after that are run through of some case examples and
23 John Schaum over here has copies of the case examples we are
24 going to go through if you haven't picked them up yet.
25 And then we have an opportunity for the

1 those who have requested to make statements, general state-
2 ments on the Act as a whole. Let us take a 15 minute break
3 and be back and ready to go at 3:30.
4 Thank you.
5 (A short recess was taken.)
6 CHAIRMAN LINDSEY: Will everybody take
7 a seat again, please. We will get back underway here.
8 We have decided to change the schedule
9 very slightly to take the requested statements at this
10 time. As I have indicated we are going to limit these
11 statements. So we are going to ask those who want to make
12 the statements to limit them to five minutes. We would
13 also like to ask that the written transcript or the written
14 statement be given to the Court Reporter at the time we
15 give the statement, if that's possible. If not, we would
16 like to have them post marked and in the mail by Tuesday
17 at the very latest.
18 Let me go through the list here of
19 people that I have. First of all there is a Mr. Glen A.
20 Gettinger of Midwest Oil Refinery Company here. Would you
21 like to make a five minutes statement at this point?
22 MR. GETTINGER: I am here but I will
23 pass on the statement.
24 CHAIRMAN LINDSEY: Fine, if you
25 could do that by Tuesday, it will get into the transcript.

If not, it will still get into the record and be in the docket. O.K.

Thank you.

Mr. C. Clark from Illinois EPA.

Charlie, do you want to make a five minute statement now?

MR. CLARK: No, I will just let it go and mail mine in.

CHAIRMAN LINDSEY: Let me just say again that if you can do that, post mark it by Tuesday, it will get into the written transcript. If not, it will go into the docket but won't be in the published transcript.

MR. CLARK: Either that or I'll mail it in.

CHAIRMAN LINDSEY: Thank you.

I guess that's it. Everyone else has made their statements.

Therefore, we will press on to the discussion of the case examples. The object here is to go through several kinds of alternatives scenarios. We have more or less been doing that on a question and answer basis for the last couple of days. But we have some published examples which we think represent different approaches. And we think it might be worthwhile to investigate them.

John Schaum here in the middle has copies of what we are talking about here. And we will proceed to do that. Mr. Kovalick will be summarizing.

MR. KOVALICK: The format to this is I would like to read one example at a time and take any oral questions that you have from the floor or thoughts. And if you have none, we will move on to the next one.

Since this was an experiment to try and thread through for you what all the regulations that affect one party, and we went through this and Rosslyn discovered some additions and corrections. So let me read you the additions: Item A, we need to add the word on the third line where it says "send to commercial disposal firms", we need to add the words "via common/contract carrier." We need to add on the third line "via common/contract carrier."

So now the first example would read like this: "The Organic Chemical Company produces significant quantities of hazardous waste, sends those wastes to a commercial disposal firm via common/contract carrier."

Now we are going to run through what we believe that company's obligations to be. We need another caveat here. When we write hazardous waste in the initial description of the waste a person has--I used this analogy in Rosslyn perhaps not successfully, but if you are

familiar with the statement: If a tree falls in a forest and there is no one there, is there a sound?

Well, in this case if a hazardous waste has the property and we are assuming that the hazardous waste, in all these cases, has the property that make it a hazardous waste whether EPA knows it or the generator knows it, we are still assuming that it has those properties if it says a significant quantity of hazardous waste, that is what we mean.

O.K. So this organic chemical company under 3001 will do one of two things depending on the way that the regulations turn out. I have been over this several times in the last two days. If we have a rebuttable presumption list, as you remember that waste whether it's by processing or by the name of a chemical in that waste, would be a hazardous waste. And that company would not have to test its waste unless it believed its particular process did not produce a hazardous waste. In which case it may use our criteria or test to prove that it's not in the system.

For example, if you had a waste that was on the rebuttable presumption list, but because of its special kind of treatment that you have built into your process you are sure that it is locked up, the hazardous properties are locked up in there, you can run the toxicity

1 test on that waste to demonstrate to EPA that it is not
2 hazardous. That would be the scenario if we had a rebuttable
3 presumption list.
4 If we do not have a rebuttable presump-
5 tion list or if your wastes were not listed at all, which-
6 ever way it turns out, you may declare your waste as a
7 hazardous waste without testing at all. Now we got into
8 that yesterday somewhat. And pointed out that the decision
9 about being in or out of ~~Sub Title~~ Subtitle C regulatory system is
10 independent of any decision you want to make about how to
11 containerize it, how to meet DOT container spec, how to
12 treat and dispose of.
13 All we are talking about here is you
14 may not have to test it to determine it is a hazardous
15 waste. I mean you may declare it as a hazardous waste
16 without processing. You may declare it a hazardous waste
17 without testing. Or, as it shows here, you may test the
18 waste against the criteria. You might decide that it is
19 likely that this waste is corrosive and that is a very in-
20 expensive test to run to see if it is a hazardous waste.
21 So your first obligations are outlined
22 there in either/or statement, because we don't know how
23 the regs. are going to turn out.
24 No. 2, under 3002 you, as the generator
25 must then properly label, provide placard instructions or

1 placard to the transporter,containerize, enter the data
2 about the waste on the manifest, as we discussed yesterday,
3 including designating the permit facility to which this
4 waste would go, keep records, and report to EPA or to the
5 state quarterly.
6 That is you would summarize your mani-
7 fest actions on this quarterly reqport. Finally you have
8 an obligation to notify EPA in 90 days of the publication
9 of Section 3001 as to whether you are a generator.
10 So that, taking this kind of facility,
11 you are threading through the obligations you have. I
12 might add the reason we added the amendment was pointed
13 out to me that if you ran your own trucking firm and you
14 were a private carrier, you would also have to comply with
15 the transportation regulations under 3003. That's why we
16 added that amendment on the third line.
17 Does anyone have any questions on that
18 example?
19 (No response.)
20 If not, I will go on to Example B: A
21 petroleum refinery producing hazardous sludge and disposing
22 in a lagoon on his own property, that is property contigu-
23 ous to the generation. You remember my discussion about
24 the about a public highway cutting through contiguous
25 property is still on site. His obligation, this petroleum

1 refiner, are the same under 3001, either/or a scenario. He
2 only record keeps because he is disposing on his own
3 property. And no manifest is required because he is not--
4 he is disposing on site.
5 And under Section 3005 he is required
6 to get a disposal permit. Remember this is a lagoon and may
7 evaporate into the air and, therefore, it is disposal and
8 not storage. And he must meet the standards of Section
9 3004, including a report quarterly to EPA or the state.
10 Finally, Section 3010 applies. And
11 the refiner would notify EPA in 90 days of publication
12 that he was a disposer, generator and a disposer and even
13 potentially a transporter. I presume that's possible but
14 since he had no transportation obligations that may be
15 peripheral.
16 Anyone?
17 Yes, sir.
18 AUDIENCE MEMBER: That contiguous
19 generation--what would be the difference if the property
20 was not contiguous but the waste was delivered by pipe
21 lines? That is a question that was asked previously. You
22 can deliver your waste by pipe lines through your own
23 property and not have this contiguous requirement. But
24 that contiguous is resented.
25 MR. KOVALICK: You are correct. The

same rules apply. The pipe line example was developed within the last three days as an example. The reason it is worded this way is that if you own a piece of property a half mile down the road and you truck it there that is when you are getting into the transportation system, the manifest, and so forth. That is the reason. But you can truck it on your own property, you know, contiguous property.

MR. MIKOLAJ: This goes back to Example A and the 3001. It says you may declare hazardous waste without test. Now the declaration part of that fits in to the 3010.

MR. KOVALICK: Right. We are trying to associate what you would do though. And I gave these two options.

Anyone else?

(No response.)

O.K. Example C: A photographic lab generates a small quantity of hazardous waste and sends to a commercial disposal firm--this also I should say via common/contract carrier but I guess you would assume that would be known. This is an example that would be the same as A.

Now you may ask why is that small quantities would be sent as that. The reason for that is that only manifested waste can be accepted at permitted

storage, treatment, and disposal facilities. And so these kinds of waste would have to go via the normal system. Now it doesn't mean that the disposal facility could not provide service to such a lab in terms of manifest forms made by this client or something like that.

The basic problem is--the issue here is that these wastes, in order to be accepted, have to come in on a manifest so that the disposer can balance his books, if you will. What is not stated here is that it would be possible for a small generator, a small quantity, a small generator of waste to use municipal sanitary landfill for that small quantity, which we ran through very briefly yesterday. If he provided information to the owner of that facility, that he was bringing it.

You may remember Harry was talking about bringing some paint thinner to a sanitary landfill. And if you say this is flammable, then that's a nonmanifested waste and is taken to a nonpermitted ~~Sub Title~~ Subtitle C facility. That would be possible, given that the information is provided to the disposal facility.

Yes, sir.

MR. GETTINGER: I have a question for you. Now we accept waste oil from home owners. We have a tank that sets out in front of our plant. They bring it and dump it in there. Do I have to put them on manifest

because I accepted their hazardous waste?

MR. KOVALICK: No. We have definitely, from the beginning, said home owners are out all together. They are not small. They are not large.

MR. GETTINGER: I can take their waste without any problem?

MR. KOVALICK: Right. Now you're storing waste, I presume, it may stay there over 90 days. And then we are into another discussion. But as far as the home owner is concerned, no.

MR. GETTINGER: How does he know he is not getting oil from a service station instead of from a home owners?

MR. KOVALICK: Well, if the service station ends up being ~~incistant~~ insistent--and I spent a few minutes on that earlier today about how many there are and whether that's reasonable. Then the service stations has obligations which he is not following. In other words, he is--but we are not saying that he is definitely in the system. That is not this gentleman's problem. That is an illegal act if they were in the system by the service station.

Anything else?

(No response.)

Example D is going to need several corrections--additions I should say. Pesticide aerial

applicators generate small quantities of hazardous waste. And soil incorporates the waste on its own property. As our thinking goes now, he would be record keeping in terms of his generator requirements. Notification is required, that's admitted here. In other words, 3010 notification would be required. And a footnote is that even though that Section 3004 standards apply to this person--even though there isn't a permit, there is no paper involved, if he were violating the national standards and it were necessary to enforce against him, those standards could be applied.

Usually the question I get immediately after this is what about the small farmer. So I will ask it myself. And we have recognized that they are a problem to themselves. And we are trying to find a way to draw a line in between the individual farmer, who uses a seasonal basis moderate amounts of pesticides and this kind of waste generator who has maybe hundreds of cans--five-gallon containers of pesticides, and residues for other kinds of waste.

So we solicit your help on that problem. But it is not an easy line to draw between agri-business and aerial applicators and the individual farming.

Are there any questions on this one?

MR. REDDINGTON: Would you classify a golf course, who uses quite a bit in the way of pesticides,

as an individual farmer?

MR. KOVALICK: No, we wouldn't classify him as a farmer. This gets into the small generator question. Would he generating a small quantity outside the basic requirements of this category here. In other words, record keeping, by the way, could be bills that you keep to speak of your purchased pesticide. The number of cans purchased could be records of how many cans you have disposed of on your own property. In this case it really applies to bags or rise solutions.

Yes, sir.

MR. WILSON: Does this small quantity of hazardous waste have to be specifically under the small generator?

MR. KOVALICK: Well, this means that the aerial applicator would be a small generator because of his small quantity. So as it is written now, small generators are not a category of people who do nothing. Small generators are a category of people who do a lot less than a regular generator. In this case a small generator has to keep records and it may be the fact of his purchases. And he has to notify. I don't know if that helps but we are wrestling with what, you know, who is a small generator.

Do you want to ask me something else?

MR. GASPER: He is generating a small quantity of waste, right? Does that make him a small generator?

MR. KOVALICK: Right.

Yes, sir.

AUDIENCE MEMEBER: Maybe I missed your reason and your discussion but why is it--he is disposing of this small quantity of waste on his land--why does he need a disposal permit?

MR. KOVALICK: Well, we are trying to design the Section 3005 permit regulations to be compatable with the small generator number, you know, tonnage or SIC codes that fit under 3002. So if you have a small quantity and a small generator under 3002, you don't need a disposal permit for that small amount under 3005. We are trying to thread through both of them to make them come out the same.

O.K. The next item is about transporters, not about generators, per se, a transporter picks up hazardous waste pumpings from several manufacturers' lagoons. And these are the obligations of the transporter, as far as we can see them now.

He must have a manifest certified by the generator as to the destination for those wastes. He must have placarding from the generator and other information. Now Harry described yesterday, it's not unlikely

1 that the transporter provide this service for generators.
2 That is they know what placarding belongs on that kind of
3 waste. They may well be in the disposal business and they
4 know what their normal spill response is and they write
5 that down.
6 So in this case all the generator does
7 is sign on the bottom line along the purchase order that
8 he gets with this waste. At any rate the manifest must be
9 certified. And under 3003 that transporter must certify
10 that he accepted the waste to the signature and delivered
11 that waste only to the place noted on the manifest. That
12 is it can't end up anywhere else, which is where we get
13 out the enforcement if it ends up in a ditch.
14 And finally the transporter, which is
15 not on here, should notify under Section 3010.
16 Any questions on that?
17 (No response.)
18 All right. Now we are getting into
19 recovery. A electronic firm has etching solutions which
20 are a hazardous waste. Half of them are sent to commercial
21 disposal firms--and again via common/contractor carrier--
22 and half are recycled.
23 For the disposed portion. The portion
24 that our sense of the disposal firm, Example A applies,
25 just as if we were running through that whole scenario

under Example A. That would be 3001, 3002, 3010.

For the recycled portion--let me just wrap up one--the recycled portion is not a waste pursuant to ~~Sub Title~~ Subtitle C. Now the way that this firm would demonstrate the fact that that half is recycled, you know, recycled within 90 days sent the material within 90 days or is immediately reused, he would have to keep his records of a bill of sale or his shipment records to show that the half that went out is not covered.

And finally the generator needs to notify EPA under 3010.

Now the first man in the back, who has been waiting, and then we will rest.

MR. ~~RITCHEY~~ Ritchie: I am Kenneth ~~Ritchey~~ Ritchie, EPA, Region VII.

I would like to address the pesticide applicator. Let's say he had numerous cans that he is applying the material. The cans give you the disposal instructions. Why would he be in the system?

MR. KOVALICK: The triple rinse containers would not be a hazardous waste. The rinsing solution, if he does what he is supposed to, which is put in the rinse, he wouldn't have any hazardous waste. This could be a motivation to get people to follow what are not regulations but are really guidelines. This triple rinse

and their reuse.

AUDIENCE MEMBER: Just merely because he is an applicator he is going to have to file just in case he may not do this?

MR. KOVALICK: The question is just because he was an applicator he would have to file in case he may not do this. Like most of the regulations, there may be times when the--there may be times when in the system strikes, Acts of God and other problems happen.

If your normal expectation is that you always triple rinse and you always reuse the rinsate, then the one time that doesn't happen is the exception. So I expect that you would not have a hazardous waste.

Now let me give you a specific example. There are several wastes that we are ~~are~~ aware of where 100 per cent nationwide is used, is never disposed--some slags are in that category--in which case it is already out of the waste system. In this case some etching solutions, as a matter of fact in this very firm, are disposed and some are recycled. So it does not jump out of the system because of that rule. Where this one jumps out of the system is on the unless statements. So the and statements where it is not the prime product of your process and some significant percentage is disposed in this category unless you have immediate reuse of the by-product, which does not apply here or it is material recovered within 90 days.

That is where this one falls out. It is material recovered within 90 days and, therefore, falls out as a nonwaste under Subtitle C.

MR. GETTINGER: Waste oil by nature is a recyclable product. Now I am disconnected somewhere to the fact that if it's a recyclable product why does it have to be classified as a hazardous waste?

MR. KOVALICK: The connection is that 100 per cent of that waste oil is not recycled. You are very familiar with here in Missouri, in Verona, Missouri, where it was spread on the horse arena and--

MR. GETTINGER: It was recycled. It did not wind up in a recycling plant but it was recycled.

MR. KOVALICK: Well, the test is did it actually arrive there?

MR. GETTINGER: You can say that about anything, about your slags that you say are recycled. How do you prove that they get back to the recycling?

MR. KOVALICK: The information we have so far is that 100 per cent of it is sold.

MR. GETTINGER: Possibly.

MR. KOVALICK: So that doesn't mean that the oils couldn't be used--material recovered within 90 days. And that would be out of the system also. I don't think that gets those oils out of the system but the facility

go on. The facility that receives them would need a permit but they still are out of the manifest systems.

MR. GETTINGER: Yes, but the terminology of oil is going to remain as hazardous waste as I understand it?

CHAIRMAN LINDSEY: You are presuming that. The presumption has been that it might and that's possible.

MR. GETTINGER: It's a very strong presumption as I get it.

CHAIRMAN LINDSEY: Maybe, I don't know.

MR. SANJOURN: I think there is a strong presumption that some, some waste oils will be a hazardous waste. There is not a strong presumption at all that all waste oils will be hazardous waste.

MR. KOVALICK: Anyone else?

Yes, sir.

MR. MAXSON: I am Bill Maxson of Olin Corporation. Under Example F, if all the solutions were recycled, would they have any requirements to meet under Subtitle ~~Sub Title~~ D?

MR. KOVALICK: Well, this is written here in the example that it wouldn't be a waste under Subtitle ~~Sub Title~~ C. They would not have any Subtitle ~~Sub Title~~ C obligations. It doesn't mean that they can take it out and dump it.

1 As I mentioned ~~Sub Title~~ Subtitle D effects the
2 future of open dumps and sanitary landfills.
3 CHAIRMAN LINDSEY: This gets to the
4 point, the main purpose behind all this is to get out what
5 the recovery, recycle activity which is an integral part
6 of very many manufacturing processes. And we don't want
7 to get into that business of trying to regulate those
8 kinds of things, which are integral parts of the process.
9 So that's, I think, the basic purpose of all of this or
10 a lot of this kind of thing that you see.
11 MR. KOVALICK: Example G: A solid
12 reclaimer accepts waste solvents from a variety of manu-
13 facturers and produces clean solvent and hazardous waste
14 residue. These later residues are sent somewhere for dis-
15 posal.
16 Now what we are going to discuss is
17 what are the requirements on that reclaimer. With regard
18 to the hazardous waste residues, he falls into the same
19 scenario as Example A. He is a generator of hazardous
20 waste for the residues.
21 His other obligation as, if you will,
22 a king of treatment facility or a material recovery facility
23 is that he will require a special permit under Section 3005
24 meeting the standards of 3004 including the reporting. We
25 spent some time on that in the last two days.

He also then would be notifying EPA within 90 days of the publication 3001 because he is one of those types of treatment facilities. The note at the bottom is no manifest is required for incoming waste to this reclaimer. This goes back to this gentleman's question that it is not a waste as far as the sender is concerned, and, therefore, a hazardous waste. So it does not require manifest.

Again our logic here is that since it's valuable we believe that between the solvent reclaimer and the original waste solvent owner there will be enough motivation to make sure it is not lost along the way. So we are trying to reduce the requirements on that tender to the solvent reclaimer.

Yes, sir.

MR. GETTINGER: That is the very thing I would like to see happen with service stations.

CHAIRMAN LINDSEY: He is saying that is the very thing he would like to have happen with regard to service stations and they waste oil recycling it.

Does anyone have any questions from the floor?

My colleagues have made up a question. Does anyone have any other questions from the floor?

CHAIRMAN LINDSEY: Off the record.

(Discussion off the record.)

CHAIRMAN LINDSEY: O.K. That's the last of the examples. Does anybody have any last questions they would like to bring up before we break this up and take off?

MR. POLLANICH: Paul Pollanich from Mobay Chemical Corporation. I notice that at the tops-- the standard covers specifically in the law with the small generator and the householders and their status, existing sites and so on. I also note that EPA has taken the liberty of establishing certain specifications which do not appear within the law, where they say I have the right to do this even though it's not in the law. And in some other instances they say "Gee, that's not in the law I can't do that." The philosophy that seems to underlie at the times when EPA says "I can do that" is when it causes them a great deal of study. At times when they say "I can't do that" is when it doesn't cause anyone any trouble but it causes perhaps industry some trouble.

Could you comment a little bit on what philosophy you feel underlies this, the times we can take liberties with the law or subtract from it and the times when you can't.

CHAIRMAN LINDSEY: I will take a wack at it.

1 First of all, we don't think we are
2 taking liberties with the law in anything we do. Basically
3 most of the area,when we get into question on this kind of
4 thing when there comes up a question as to whether we have
5 the authority or not to do that, we go to general counsel
6 and ask about it.
7 We don't do that unless we have a reason,
8 first of all, for saying to ourselves, you know, this is
9 the way we think we need to go. And we think we need to
10 go that way because it makes sense. It makes the whole
11 thing easier, more straight forward, clearer or because
12 we have some basic interest by way of protecting public
13 health and the environment or by way of encouraging recovery
14 or some of the other goals of the act.
15 In other words, based on that we see
16 some way to do one or the other of these things, we proceed
17 on that basis. You may think that we do it to make things
18 harder for people but I just want to assure you that clearly
19 is not our intent. Our intent is to further some goal of
20 the Act.
21 And in so doing if we think we have a
22 question on whether or not we have the authority to do that
23 we take it up with general counsel, who are the legal
24 people within the Agency. And they tell us whether we have
25 the authority or don't have the authority. That's the way

we do it.

Any others?

Oh, I have one thing here. I am asked to remind everyone of--I would like to remind you again of the meeting we discussed that is going to be held on October the 26th, in Chicago with U.S. Environment Protection Agency and the Department of Transportation to discuss the development of regulations for the transport of hazardous waste. Basically the 3003 Reg.

This will be held at the Ramada Inn. And there are some fliers for this out--I think still out on the table out there. If you are interested in that, I would urge you to attend if you can.

Any other questions before--oh, here is one.

AUDIENCE MEMBER: The written correspondence in reference to the 3000 series regulations, do you have a particular mailing address that we should in fact address comments and attitudes toward this series of regulations?

CHAIRMAN LINDSEY: Yes, I think you can write to the Docket Section--attention to the section you are interested in like the Docket Section, Attention: Section 3001 or 5, if you have a particular section. U.S. EPA, Office of Solid Waste, and then in parenthesis after

that. WH-465, that is our mail code, 401 M Street, M as in mother, Southwest, Washington, D.C. 20460.

MR. SANJOURN: Can I make a comment on the docket number? I think there is a certain amount of confusion about the docket and its purpose. Any comments that you submit to the docket now are advisory to us. There is no legal obligation for us to consider them. Once our regulations are proposed formally in the Federal Register, any comments you make in that docket then, within the formal period of six days--60 days, after publication we are required by law to consider and address.

Therefore, if your complaints are in a nature of advice, fine, send them now. But if the complaints are legal ones, like if you really think we are going in the wrong direction and you want to try to change us, force us, in other words, require us, then you better wait until--do it now but also specifically make sure you get that in after we formally propose the regulations. Otherwise it doesn't have the weight.

CHAIRMAN LINDSEY: It has also been pointed out to me, I didn't want to--I want to make sure that I didn't overlook somebody who wanted to make a formal statement. And I did go through the list of people I thought wanted to make a formal statement and who hadn't told us they had retracted it.

1 Is there anybody here now who would like
2 to do that? As I say it is still possible to get a formal
3 statement, a written statement into the record, into the
4 transcript, if you can post mark it by Tuesday night. On
5 the other hand, you can send them at anytime and it will
6 go into the docket record.
7 O.K. If there are no more business
8 then this meeting will be declared adjourned. Thank you.
9 (Whereupon, at 4:15 o'clock p.m.,
10 October 14, 1977, the above-entitled public
11 meeting was closed.)
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8 C E R T I F I C A T E
9
10 I, DAVID L. ARGIE, do certify that I appeared
11 at the time and place first hereinbefore set forth;
12 that I took down in stenomask the entire proceedings
13 had at said time and place; and that the foregoing
14 Pages 296 through 549 constitute a true, correct and
15 complete transcript of my said stenomask notes.
16
17
18
19
20 David L. Argie
21 REPORTER
22
23
24
25

HOLSTON FUEL COMPANY, INC.

ROUTE 1, BOX 214 - WAYNESVILLE, N. C. 28786
TELEPHONE 704 456-3658

October 18, 1977

Docket Section
United States Environmental Protection Agency
Office of Solid Waste
WH-465
401 M Street, S.W.
Washington, D.C. 20460

Dear Sirs:

Holston Fuel Company, Inc. has reviewed the proposed 3000 series regulations discussed in the public meeting in St. Louis, Missouri on October thirteenth and fourteenth. In reference to 3001, we find a number of areas that should be considered in the classificiation of hazardous wastes.

Used lubricants, commonly referred to as "waste oil", would be classified as a "hazardous waste" under the proposed criteria of 3001. The predominate species considered in this used oil is the Lead which originates from the use of leaded gasoline. The most recent studies performed by ERDA indicate little or no change in the concentration of the other inorganics used as additives in lubricants.

The same studies estimated an annual generation of 1.1 billion gallons of lubricants and one billion gallons of industrial oils. These 1.1 billion gallons of lubricants are sold in bulk, at discount sales stores, and in an estimated 280,000 service stations.

As a result, used lubricants are probably the most widely used of all the materials and the most dispersed throughout the country. The dispersion of these lubricants, make it physically impossible to achieve 100% collection for recycling into useable products.

Based on the available information, Holston Fuel Company, Inc. finds the effects of 3001 as follows:

1. Classification of used lubricants as hazardous waste will dramatically hinder the collection and recovery of used oil. As a result, there is a high probability of increased indescriminate disposal and "back lot" dumping.

2. Classification of used oil as a hazardous waste will result in used oil and other <u>very</u> toxic materials being mixed and disposed of as one unit of hazardous waste. Recovery will not be economically feasable.

As a result, We propose an alternate classificiation of used lube oil as an "E.P.A. Regulated Petroleum By-Product." Such a modified classification should be aimed at full recycling to fuel or lubricants and minimize in descriminate dumping and burning.

We appreciate your review of the proposed regulations and solicting pre-regulation input in this matter. Thank you.

Sincerely,

James L. Breece

James L. Breece Ph.D.
Vice President Quality
Control and Purchasing

JLB/kdb

Monsanto

MONSANTO CHEMICAL INTERMEDIATES CO.
P O Box 1311
Texas City, Texas 77590
Phone (713) 945-4431

October 28, 1977

Mr. Walter W. Kovalick, Jr.
Chief, Guidelines Branch
Hazardous Waste Management Division (WH465)
United States Environmental Protection Agency
401 M Street, S.W.
Washington, D. C. 20460

Re: Texas Chemical Council Comments,
EPA Regulations Subpart A
Section 3001 of RCRA
Public Meeting 10-13-77

Dear Mr. Kovalick:

Pursuant to the discussions at your St. Louis public meeting on Hazardous Wastes Management, we submit for your consideration the following impressions and comments.

In general, we find that the proposed criteria for hazardous wastes in Subpart A are extreme and, therefore, include relatively common and non-hazardous substances (Coca-Cola, vinegar, livestock drinking water, etc.). We believe this is contrary to the intent of the Act and, specifically, the definition under Section 1004 (5). Furthermore, the stringent standards in Subpart D, intended to be applicable to a narrow spectrum of hazardous wastes, will consequently be extended to the general classification of solid wastes.

We submit that this dilution of the hazardous waste classification is contrary to the desirable isolation of these materials and counterproductive to an effective solid waste management program.

The following comments address the meeting discussions of Subpart A (RCRA Section 3001) with references to the September 14, 1977, draft of these regulations. Generally, the criteria are so broad that innocuous common substances will be included as hazardous waste. This is contrary to the language in the Act which defines a hazardous waste in terms of "an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or...etc." As an example of over-control, a 1050 mg/l sodium chloride solution would be classified in the proposal as a hazardous waste; even though a salinity level of 3000 mg/l is acceptable for livestock drinking water (EPA Proposed

Criteria for Water Quality - Volume I, page 76, October 1973). In previous comments to EPA at various public hearings, Texas Chemical Council has taken the position that the desirable effective segregation of hazardous wastes could be accomplished by a rational system of identification of these materials. Conversely, the program could become unmanageable by dilution with non-hazardous substances.

250.12 CRITERIA

(b) Corrosive Wastes (page 5)

(1) A waste would be classified as hazardous if its pH exceeded 12. The inclusion of corrosion as a criteria for hazardous designation was for the purpose of protecting steel transportation and storage equipment as verified in the second section of this criteria. Alkaline materials are not generally corrosive to steel and the upper pH limit is an incorrect specification.

The use of lime as a filter aid and disinfectant is a common practice in conditioning municipal and industrial biosludge. This results in an approximately 12.5 pH sludge which is not corrosive to steel.

We do not believe that tissue damage, as discussed in EPA background document, was the intent of the reference to corrosiveness in Section 3001(a) of the Act.

(f) Toxic Waste (page 9)

The criteria discussed in this section should refer only to standard leachate or entrained liquor in the waste and not to "a representative sample" as stated in the introductory paragraph. In a properly operated disposal site, aquifers would not be affected by insoluble materials in the waste.

(2) Analysis Test Method

(B) As shown for the case of sodium chloride discussed previously, a concentration of 0.35 times an oral mammalian LD_{50} does not describe a hazardous waste. The consideration of concentration is mandated by the Law, but the 0.35 factor is much too low. Texas uses a 1.0 factor in its Hazardous Index calculation, and even this results in relatively innocuous materials included as Class I waste. As an alternate approach, we would recommend that all substances with an oral mammalian LD_{50} of greater than 50 be excluded from hazardous waste designation per page 4 of EPA/530/SW-171 of December 1975.

Mr. Walter W. Kovalick, Jr.
Re: EPA Regulations Subpart A
Section 3001 of RCRA
Public Meeting 10-13-77
October 28, 1977

(C) The aquatic toxicity LC_{50} values are not contained in the "Registry" reference.

These comments represent the viewpoint of the member companies of the Texas Chemical Council, an association of seventy-two companies all operating one or more plants in Texas and employing over 60,000 Texans. A formal position statement on implementation of the Act was presented for the record of the Public Meeting in Dallas, Texas, on March 9, 1977, and additional suggestions were offered at subsequent meetings in Houston and New Orleans. We are vitally interested in the development of an effective program for management of hazardous wastes and submit these comments towards that goal. We appreciate the opportunity to participate in these proceedings.

Sincerely yours,

P. E. Brubaker, Chairman,
Water Conservation Committee
Texas Chemical Council

Rec'd 10/19/77

Illinois Environmental Protection Agency

October 17, 1977

Mr. Walter W. Kovalick, Jr., Chief
Guidelines Branch,
Hazardous Waste Management Division, OWHM
U.S. Environmental Protection Agency
Washington, D.C. 20460

Hazardous Wastes/General

Dear Mr. Kovalick:

Attached is our written testimony relative to Title 40, Chapter 1, Part 250, Hazardous Waste Guidelines and Regulations, Subparts A-E, for inclusion in the transcript of the Public Meeting held in St. Louis, Mo., on October 13 and 14, 1977.

Very truly yours,

C.E. Clark

C.E. Clark, PE, Mgr.
Technical Operations Section
DL/NPC

cc: Region V, USEPA,
Attn: Mr. Jay Goldstein
National Governor's Assoc.
Attn: Ms. Terry Grasso
John Moore
Scot Miller
Division File

CEC;sae

2200 Churchill Road, Springfield, Illinois 62706

Rec'd 10/14/77

Statement for the record regarding issues pursuant to Sub-Title C of RCRA as prepared for the public meeting in St. Louis, Missouri the 13th and 14th of October 1977

Hazardous Waste Guidelines and Regulations

Subpart A - Criteria, Identification and Listing of Hazardous Waste

Section 250.10 Authorization and Scope

(c) Persons exempted from Subtitle C

(2) Small quantities of waste as defined in Subpart B of Part 250 of this Chapter - Delete

Section 250.12 Criteria

(a) Flammability

(1) Any liquid waste which has a flash point less than 140°F (60°C) determined by the method cited in section 250.13a of this Chapter.

(1a.) The use of the quantity 140°F (60°C) is bewildering especially in light of 3004's sect. 2.21 proposed regulation that materials with a flash point less than 65°C not be disposed of at a disposal site. Since municipal refuse can decompose at temperatures in excess of 160°F a more realistic approach may be to classify flammable material into

two separate categories - the highly flammable (f.p. 100°F) and the flammable (f.p. 101°F to 180°F) The 180°F to allow for a margin of error.

(b) Corrosive Wastes

(1) Any liquid waste or saturated solution of non-fluid waste having a pH less than 2 or greater than 12 as the method cited in section 250.13b of this Chapter.

(1a.) Percent alkalinity or acidity may be a more relevant approach since there are a number of pickling liquors that are corrosive with a pH of 3 and white vinegar is relatively innocuous with a pH 2.

(2) A corrosion rate greater than .25 inch per year on steel (SAE 1020) at a test temperature of 130°F as determined by the method cited in section 250.13b(2) of this Chapter.

(2a.) Why 1/4" of 1020 steel at 130°F for one year - it is doubtful the bulk tanks will have walls 1/4" thick. Why not use a more realistic material - say skin. We are more interested in the possible ramifications in the advent of a spill than we are of the integrity of a tank for one year.

(c) Infectious Waste

(3) Sewage treatment plant sludge

(3a.) Sewage treatment plant sludge would have to be autoclaved in order to be classified non-hazardous.

(d) Reactive Wastes

To include this point that was overlooked

(4) Wastes that in combinations with one or more heterogeneous or homogeneous waste streams undergoes violent chemical change, frees potentially toxic gases, detonates, or has flame as an end product to the reaction.

(e) Radioactive Waste

With the levels set at 3 picocuries/gm many of the STP sludges from the so called radium belt will have to be classified radioactive waste. Since the value used is simply an extrapolation from the water quality standard it is recommended that the value be increased one order of magnitude or 30 picocuries/gm.

(f) The definition of Toxic Wastes as set forth in this section along with the analytical protocol used to arrive at this definition are unusable to this state for the following reasons:

(1) Of the approximately four million compounds in the chemical universe and the geometrically progressing number that would result in the combination of these, your definition may address as many as five thousand. The majority of the organic compounds received in this state, ear-marked for disposal, are chemical intermediates, many of which exhibit properties totally divorced from those properties of the final product, of the reaction.

(2) One of the premises used in the defining of toxicity regarding a waste, is the use of a Standard Leaching Test. The use of a S.L.T. pre-disposes that a landfill will allow the formation of leachate that will escape then the problem is a design problem of the landfill.

The point here is that we would rather know what is in a waste as opposed to what might not leach-out under the conditions set forth in a leach test; however close or divorced this test is from reality. It is our recommendation that not only the acid digest be used but the all water be evaporated fromm the sample so as to allow a comparison to be made between samples. This will allow a more accurate correlation between samples regardless of attempts to dilute to achieve compliance. By using the original weight one can still an accurate concentration on the sample as originally received (un-dryed).

(3) Rather than attempt to quantify or qualify those substances and wastes that are toxic, it may be more realistic to assume the all wastes be classified as special (hazardous) waste (with the exception of household refuse) unless it can be proven otherwise.

(4) The analytical protocol starts with an assumption, continues with more assumptions and terminates with what we were told was the product of a logical progression. Aside from the fact that logic has little to do with your "guess" this method of determining toxicity could very well set the hazardous waste program back three years. Answer for us these questions with your logic: why a 154 lb. man and not a 10 lb. infant - why a one hundred fold dilution factor when some wastes actually bio-accumulate (Endrin) - and why use the LD50 values for a rat when a rat cannot vomit and man can and there are LD50 values for such a small number of chemicals.

Subpart B - Standards Applicable to Generators

Section 250.22 - Small Generators: The classification "small generators" should be eliminated completely from the subject guidelines. The original draft defines such a small generator as one who generated less than 27 pounds of hazardous waste per month. This was grossly ill-informed in that it did not establish any levels of toxicity or concentrations. It is understood from various discussions that the inclusion of reduced requirements for small generators is intended to relieve some of the load on small businesses. However, it is our

impression that the entire act is aimed at reducing or eliminating the impact to the environment, and consequently the public, from the disposal of hazardous waste. This cannot be done by eliminating any generator of hazardous waste. The small volumes of highly concentrated and extremely toxic hazardous wastes can have a tremendous impact on the environment and on the public when improperly disposed.

Appendix B, the requirements for small generators, should be eliminated totally from the Guidelines regardless of the disposition of small generator classifications.

Section 250.22B taken in context with Appendix B presents the following scenario: a small generator may follow the requirements set down for other generators, or he may wrap his hazardous waste in newspaper and send it to an unlicensed (illegal) dump provided that he notifies the hauler that the material wrapped in newspapers is hazardous waste. A large part of Public Law 94-580 is aimed at the elimination of open dumps, not the encouragement of their use for the disposal of hazardous waste.

Section 250.23A and B: It is again recommended that all reference to small generators be deleted.

Section 250.24 - Manifest System: In general, the following comments are provided regarding the proposed manifest system: several states

including Illinois has in effect or nearing completion a manifest system. These systems are tailored to the needs of the states, and in the case of Illinois, will be keyed to our present permit system and our data bank. It is strongly recommended that the requirements contained herein be sufficiently flexible to allow incorporation of certain facets of the existing state manifest systems. One important point from our viewpoint is the number of copies of the manifest and the final disposition. We believe that the manifest system is almost totally useless unless we receive a copy of the manifest as originated by the generator and a copy as received by the disposer. We have a list of 5,000 potential generators in the State of Illinois and it would be an impossible task to have to contact everyone of those generators to look at their manifest records. It would be even more difficult and impractical to obtain information in this matter from out-of-state generators who ship hazardous waste into Illinois. In general, the sample manifest form would meet our needs, however, the distribution and final disposition of copies would not be compatible with the program which we have ready to place in effect. The following additional comments are also presented:

1. The type and number of containers could very well be eliminated from the form as useless information. It is envisioned that the descriptions will be such as drums, barrels, and boxes. The practical use of such information is not clear.

2. It is strongly recommended that all volume reporting be limited to the English system. The use of english or metric system will only create unnecessary complications in any future use of the information provided.

Section 250.25 - Reporting System: It is strongly recommended that a copy of any and all reports required herein be forwarded to the state authority in which the generator is located, as well as the state to which the waste is designated for shipment. Even though a state may elect not to participate in this program, it is imperative that they receive this information. It is even more important that participating states receive the information on a direct basis from the generator.

Subpart C - Standards Applicable to Transporters

Section 250.35A - Loading and Stowage for Transport - It is recommended that this requirement be expanded with regard to separation of wastes which are incompatible. It is doubtful that it is adequate to state that they should be separated from each other or protected from contact during transport. This could easily be construed by a transporter to mean that they should be placed in separate containers side-by-side on the truck. One incident has occurred in the State of Illinois wherein hazardous materials, namely liquid bromine, freon cylinders and aerosol containers were all placed in the same trailer presumably in accordance with DOT Regulations. Leaking or spilled bromine containers resulted in a fire and the explosion of a number of the freon and aerosol containers. Large

amounts of free bromine were released and it was fortunate that no one was injured.

Section 250.36 - Compliance With the Manifest - It is recommended that subparagraph 1A and B be deleted in entirety. The alternates contained therein are unnecessary and only weaken the system.

Section 250.38 - Emergency Situations - Subparagraph B: It is strongly recommended that the state authority controlling the hazardous waste program be included in the subparagraph 1 for notification in the event of an emergency situation. Regional representatives of the state authority can be on the scene of an emergency before any of the other persons included in this subparagraph with the possible exception of the local fire department.

It is difficult to understand the reason for requiring a reporter to file a report in writing with the U.S. Department of Transportation and the Hazardous Materials Regulations Board, and not with the State Hazardous Waste authority. If such a report is to be made, the state hazardous waste authority should at least be included with a copy of the report.

Section 250.39 - Marking/Placcarding - Subparagraph D: The U.S. DOT criteria for hazardous materials and placcarding is questionable at best for hazardous materials. It is believed to be totally inadequate and unsatisfactory for the placcarding of hazardous wastes. It is our

further belief that the excessive use of poison labels on waste hauling trucks will only lead to increased public objection to the location of disposal sites.

Subpart D - Performance Regulations for *Hazardous Waste Treatment, Storage and Disposal Facilities*

Paragraph 1.2 - It is our recommendation that paragraph 1.2 be deleted in its entirety. Subparagraph A utilizes a leachate criteria which is based upon several questionable assumptions, not the least of which are that all landfills leach, all leachate will be diluted by a factor of 100, and that all persons who drink water weight at least 150 pounds. Subparagraph B requires that the facility demonstrate to the permitting agency that it can meet certain objectives. Such a demonstration would require an in-place test of several to many years duration, after which there is little to no chance of correcting the damage caused by a failure to meet those objectives.

Paragraph 1.32 - *It is recommended that the subphrase "or engineered"* be deleted from this paragraph. The President has dictated a national policy to save the wetlands and floodplains. Considering all the space which is available in this country, we see no acceptable reason for engineering a hazardous waste site such that it can be placed in the floodplain without being inundated.

Paragraph 1.33 - It is noted that the term "impoundment" has been used in this paragraph as well as several others apparently synonymous with landfill. It is suggested that landfill and impoundment are not synonymous and that impoundment should be redefined or the term changed.

Paragraph 1.35 - The requirement that all wastes which are to be landfilled be pretreated to reduce solubility, water content and overall toxicity to the greatest extent possible is unrealistic and unreasonable. All of the prestated objectives are or may be desirable in specific circumstances, but as stated, are unreasonable on an across-the-board basis. Many of the hazardous waste streams being landfilled today in the State of Illinois are the result of pretreatment of industrial wastes. Many of them are already pretreated to the maximum degree of practicality. Such an open ended requirement is an invitation for extensive abuse.

Paragraph 1.36 - This outright ban on landfilling of wastes with a flash point of less than 65°C is also unrealistic and extremely unfair. Many solvent waste streams which fall within this category are small quantities of polluted solvents which will cause more environmental problems when burned due to the contaminants and which are not acceptable to solvent reclaimers due to the pollutants, mixed nature of solvents, or their practice of only handling solvents for reclamation on a consignment basis. There are several ways in which they can be safely disposed in a landfill, inluding containerization and injection in old cells of the

landfill. In addition, the temperature which is established is not realistic. It is much higher than necessary considering ambient air temperatures, and is lower than the temperature which can normally be expected from the decomposition within the landfill.

Paragraph 1.37 - This is an example of a less than desirable method of attempting to reach a desirable position. If the geology of the site is such that a landfill will leach to the point that leachate could be monitored beneath the landfill and above an aquifer, then the landfill should not be permitted in that location. We believe that it is much more desirable to establish a minimum aquaclude standard between the landfill and the aquifer and establish monitoring points in the aquifer immediately upstream and downstream from the landfill. Any means of monitoring between the bottom of the landfill and the top of the aquifer is less than desirable. Lysimeters have not been proven effective in all types of soil and monitor wells drilled through the bottom of the landfill are subject to accidental contamination caused by poor drilling and well construction methods. Such wells may also be an actual physical hazard to the aquifer.

Paragraph 1.4 - We are in agreement with the location of monitoring equipment up-gradient and down-gradient from all landfills. However, we question the feasibility of in stalling equipment capable of collecting a representative sample of any leachate which may escape a landfill on a nonpoint basis.

Paragraph 2 1 - It is recommended that subparagraph A and B be deleted in entirety. They are unnecessary and are believed to be unworkable.

Paragraph 2.21 - Please refer to paragraph 1.36.

Paragraph 2.23 - It is believed that 1000°C is not an adequate operating temperature for PCBs and possibly numerous other chlorinated hydrocarbons.

Paragraph 2.24 - Wet scrubbers are desirable from the standpoint of controlling air pollution from an incinerator. However, some provision should be set up in the requirements for disposing of the heavily polluted hazardous residuals from the scrubber.

Paragraph 2.26 - Heavy metal bearing wastes should not be incinerated in any concentration. We fail to see the difference in burning 100 pounds of waste at 10,000 parts per million and 1,000 pounds at 1,000 parts per million. Additionally, mercury, lead and arsenic and others will vaporize during incineration and the other heavy metals will be converted from a relatively insoluble state to soluble salts during the incineration process.

Subpart E - Standards for Permits

Section 1.1(e) closure - expand to include perpetual or long term care - precisely defined

(x) storage - expand definition to clarify that a "zero discharge" S.L.F. is a storage site and a clay "containment" site utilizing the ion exchange capacity and slow leachate movement is a treatment facility. And if the above is true! What is a disposal site?

(y) treatment - where the term "change" is noted, use "non-reversible change."

Section 2.1(d) two part permit system - 1. construct, 2. operate is execellent! This concept has been proven in Illinois. Limiting public participation to the construction permit phase has much merit.

Section 2.4(c) permit application submitted 700 days before construction permit. Unrealistic!

Suggest:
1. Technical review - 90 days
2. Public Participation - 60 days
3. Review of (2) above - 30 days

   Total = 180 days
4. Construction permit issued/denied

Section 2.4(g)(1) "including maps" - more detail - scale sufficient to evaluate (1" 200") etc.

(g)(2)(vii) "period after closure" - perpetual or long term care?

(g)(4) insert - 30' below the lowest invert of the lowest trench.

Section 2.6(a)	applications "shall be available to the public". How about several hundred requests for these documents from the public? Define· who pays, who makes the reproductions, who processes. Feds , State, Applicant?
(b)	"trade secrets" - further define - is a list of customers (generators) a trade secret?
Section 3.1(a)(3)	"the high water times of the year". Ground water elevations vary: day to day, month to month, year to year, and are cyclical. Lets be more precise.
Section 3.1(b)(3)	"store vs. dispose (see comments 1.1(x) above).
Section 3.1(f)	add requirements for long term (perpetual) responsibility.
Section 3.1(i)(2)	"impervious artificial or natural material" - define impervious: (see comment 1.1(x) above).
Section 3.2(a)(13)	"recoverable" - most waste is recoverable! The key to recycling is markets. The R.A. can force separation and recovery - but he cannot force the market place to purchase and use the recovered materials. Our experience has been "separated" materials end up in landfills for want of a market - obviously making disposal more expensive.

Section 3.5(f)	inspect facility "at least once each calendar year" is too loose - suggest not less than once per quarter.
Section 4.1	public participation: should somehow be limited to two public hearings within a 60 day period. (See comment 2.4(c) above). Definite ground rules for the hearing should be spelled out, i.e., submittal of written statements prior to hearing, limit time for verbal statement, etc.

CEC:ma/787a

HF/MM/ Docket for 3002

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SOIL MECHANICS-FOUNDATIONS
HYDROLOGY-HYDRAULICS
RESOURCE RECLAMATION
DRAINAGE-PAVEMENTS
LAND DEVELOPMENT
WATER RESOURCES
SOLID WASTE

October 17, 1977

RECEIVED 10/20/77

Mr. Harry Trask
Hazardous Waste Management Division (AW-465)
Office of Solid Waste
EPA
401 "M" Street, S.W.
Washington, D.C., 20460

Re: Section 3002
Hazard I.D. System

Dear Mr. Trask:

This is a followup of our conversation on October 14, 1977, at the St. Louis meeting of the EPA Review of RCRA subtitle C.

It is recommended consideration be given to using the NFBA Hazard Identification System which is more complete than the existing DOT marking system. This diagram identification system provides planning guidance to fire departments for safe technical procedures and emergency operations, gives on-the-spot information to safeguard the lives of firefighting personnel and others that may be exposed and provides plant design engineers, plant protection and safety personnel with a means of identifying hazardous materials. This identification system can also be used for the same purpose by operating personnel of hazardous waste management facilities.

Attached for your review and file are copies of pages 49-20, -21, -22 and -23 of "Recommended System for Identification of the Fire Hazards of Materials and EPA No. 704M" and the Hazard I.D. Summary Sheet from back of manual. The diamond-shaped diagram for each chemical shown, gives at a glance the general idea of the inherent hazards of the chemical and order of severity of hazards under emergency conditions such as spills, leaks and fires.

Basically, the DOT System marks the most severe hazard of a material. Many materials have several types of hazards. The NFBA System recognizes this fact. The diagram identifies the "health", "flammability" and "reactivity" (instability and water reactivity) of a chemical and indicates the order of severity of each hazard by use of 1 to 5 numerals from four (4) indicating the severe hazard or extreme danger to zero (0) indicating no special hazard. In the diamond-shaped diagram health hazard is identified to the left, flammability at the top and reactivity at the right. The bottom space is primarily used to identify unusual reactivity with water. The bottom space may also be used to identify radiation hazard. Oxidizing chemicals are identified in the bottom space by OXY.

Thank you very much for your consideration of this matter.

Very truly yours,
REITZ & JENS, INC.

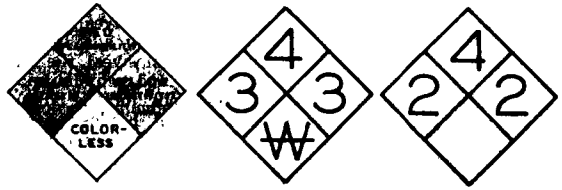
David E. Murray

DAVID E. MURRAY

DEM/rs

called initiating explosives) are comparatively sensitive to friction, impact (blows), shock, and heat. Primary high explosives differ widely in properties, and it is not to be inferred that those listed are equally hazardous. *Secondary high explosives* generally require initiation by a primary explosive.

Hazard Identification System. The diamond-shaped diagram shown for each chemical gives at a glance a general idea of the inherent hazards of the chemical and the order of severity of these hazards under emergency conditions such as spills, leaks and fires. The Hazard Identification System is not intended to identify the nonemergency health hazards of chemicals. Based on the hazard identification system in "Recommended System for the Identification of the Fire Hazards of Materials, NFPA No. 704M," the diagram provides planning guidance to fire departments for safe tactical procedures in emergency operations, gives on-the-spot information to safeguard the lives of fire fighting personnel and the others who may be exposed, and provides plant design engineers, plant protection and safety personnel with a means of identifying hazardous materials and areas in which they are stored.



Diborane Vinylidene Chloride

The diagram identifies the "health," "flammability" and "reactivity" (instability and water reactivity) of a chemical and indicates the order of severity of each hazard by use of one of five numeral gradings, from four (4), indicating the severe hazard or extreme danger, to zero (0), indicating no *special* hazard. In the diamond-shaped diagram "health" hazard is identified at the left, "flammability" at the top, and "reactivity" at the right.

The bottom space is primarily used to identify unusual reactivity with water. A W with a line through its center ₩ alerts fire fighting personnel to the possible hazard in use of water. This bottom space may be also used to identify a radiation hazard by the symbol ☢. Oxidizing chemicals are identified in the bottom space by OXY.

To supplement the spatial arrangement, NFPA No. 704M recommends the use of colored backgrounds or colored numbers to identify the hazard categories — blue for "health," red for "flammability," yellow for "reactivity." Examples of spatial arrangement and color schemes are shown on the preceding page.

For a detailed description of the hazard identification system used here, see "Recommended System for the Identification of the Fire Hazards of Materials, NFPA No. 704M, 1969 Edition."

The following paragraphs summarize the meanings of the numbers in each hazard category and explain what a number should tell fire fighting personnel about protecting themselves and how to fight fires where the hazard exists.

Health

4 A few whiffs of the gas or vapor could cause death; or the gas, vapor, or liquid could be fatal on penetrating the fire fighters' normal full protective clothing which is designed for resistance to heat. For most chemicals having a Health 4 rating, the normal full protective clothing available to the average fire department will not provide adequate protection against skin contact with these materials. Only special protective clothing designed to protect against the specific hazard should be worn.

3 Materials extremely hazardous to health, but areas may be entered with extreme care. Full protective clothing, including self-contained breathing apparatus, rubber gloves, boots and bands around legs, arms and waist should be provided. No skin surface should be exposed.

2 Materials hazardous to health, but areas may be entered freely with self-contained breathing apparatus.

1 Materials only slightly hazardous to health. It may be desirable to wear self-contained breathing apparatus.

0 Materials which on exposure under fire conditions would offer no health hazard beyond that of ordinary combustible material.

Flammability

4 Very flammable gases, very volatile flammable liquids, and materials that in the form of dusts or mists readily form explosive mixtures when dispersed in air. Shut off flow of gas or liquid and keep cooling water streams on exposed tanks or containers. Use water spray carefully in the vicinity of dusts so as not to create dust clouds.

3 Liquids which can be ignited under almost all normal temperature conditions. Water may be ineffective on these liquids because of their low flash points. Solids which form coarse dusts, solids in shredded or fibrous form that create flash fires, solids that burn rapidly, usually because they contain their own oxygen, and any material that ignites spontaneously at normal temperatures in air.

2 Liquids which must be moderately heated before ignition will occur and solids that readily give off flammable vapors. Water spray may be used to extinguish the fire because the material can be cooled to below its flash point.

1 Materials that must be preheated before ignition can occur. Water may cause frothing of liquids with this flammability rating number if it gets below the surface of the liquid and turns to steam. However, water spray gently applied to the surface will cause a frothing which will extinguish the fire. Most combustible solids have a flammability rating of 1.

0 Materials that will not burn.

Reactivity

4 Materials which in themselves are readily capable of detonation or of explosive decomposition or explosive reaction at normal temperatures and pressures. Includes materials which are sensitive to mechanical or localized thermal shock. If a chemical with this hazard rating is in an advanced or massive fire, the area should be evacuated.

3 Materials which in themselves are capable of detonation or of explosive decomposition or of explosive reaction but which require a strong initiating source or which must be heated under confinement before initiation. Includes materials which are sensitive to thermal or mechanical shock at elevated temperatures and pressures or which react explosively with water without requiring heat or confinement. Fire fighting should be done from an explosion-resistant location.

2 Materials which in themselves are normally unstable and readily undergo violent chemical change but do not detonate. Includes materials which can undergo chemical change with rapid release of energy at normal temperatures and pressures or which can undergo violent chemical change at elevated temperatures and pressures. Also includes those materials which may react violently with water or which may form potentially explosive mixtures with water. In advanced or massive fires, fire fighting should be done from a protected location.

Reactivity (Contined)

1 Materials which in themselves are normally stable but which may become unstable at elevated temperatures and pressures or which may react with water with some release of energy but not violently. Caution must be used in approaching the fire and applying water.

0 Materials which are normally stable even under fire exposure conditions and which are not reactive with water. Normal fire fighting procedures may be used.

	Identification of Flammability Color Code: RED		Identification of Reactivity (Stability) Color Code: YELLOW	
	Susceptibility of Materials to Burning		Susceptibility to Release of Energy	
	Signal		Signal	
4	4	Materials which will rapidly or completely vaporize at atmospheric pressure and normal ambient temperature, or which are readily dispersed in air and which will burn readily.	4	Materials which in themselves are readily capable of detonation or of explosive decomposition or reaction at normal temperatures and pressures.
3	3	Liquids and solids that can be ignited under almost all ambient temperature conditions.	3	Materials which in themselves are capable of detonation or explosive reaction but require a strong initiating source or which must be heated under confinement before initiation or which react explosively with water.
2	2	Materials that must be moderately heated or exposed to relatively high ambient temperatures before ignition can occur.	2	Materials which in themselves are normally unstable and readily undergo violent chemical change but do not detonate. Also materials which may react violently with water or which may form potentially explosive mixtures with water.
1	1	Materials that must be preheated before ignition can occur.	1	Materials which in themselves are normally stable, but which can become unstable at elevated temperatures and pressures or which may react with water with some release of energy but not violently.
0	0	Materials that will not burn.	0	Materials which in themselves are normally stable, even under fire exposure conditions, and which are not reactive with water.

INDUSTRIAL/CHEMICAL WASTE DISPOSAL REQUEST

I. GENERAL INFORMATION

A. Name of applicant: Bob's Home Service, Inc.
Address: Rt. 1, Box 116F, Wright City, MO 63390
Telephone: 745-3158

B. Name of technical consultant: Reitz & Jens, Inc.
Address: 111 S. Meramec, St. Louis, MO 63105
Telephone: 727-0403

C. Name of waste generator: [redacted]
Address
Contact Person
Telephone

D. Name of waste hauler:
Address
Telephone

II. WASTE MATERIAL INFORMATION*

A. Quality

1. Name of waste (include as many chemical names as possible):
Xylene, dichloromethane, chloroform, ethyl acetate

2. General description (If available, include chemical and physical characteristics, composition, and amount of each component. If applicable, include percent solids, ability to be pumped, etc.):
Xylene (NFPA 704M Rating: Health 2, [redacted], Reactivity 0)
Dichloromethane (NFPA 704M Rating: Health 2, Fire 0, Reactivity 0)
Chloroform (NFPA 704M Rating: [redacted]3, Fire 1, Reactivity 0)
Ethyl Acetate (NFPA 704M Rating: Health 1, [redacted]3, Reactivity 0)

3. Known hazards associated with this waste (toxic, explosive, flammable, hazardous metal component, gas producing constituents, etc.):
Health and fire hazards as in the NFPA 704M Ratings given above.

B. Quantity

1. Amount of waste on hand for immediate disposal:
Xylene, 5 gallons
Dichloromethane, chloroform, ethyl acetate, 2 x 5 gallons

2. Frequency and amount of disposal if waste is generated on a periodic basis (is the disposal "one-time" or "periodic"?):
Periodic: monthly
Xylene, 10 gallons per month
Dichloromethane, chloroform, ethyl acetate, 5 gallons per 3 months

* Use additional pages to supplement blank spaces if additional space is necessary

Public Works Phone 935-3381 320 Washington Av South, Hopkins, Minnesota 55343

HENNEPIN COUNTY

18 October 1977

Mrs. Gerri Wyer
Public Participation Officer
(WH-462)
Office of Solid Waste
U.S. Environmental Protection Agency
Washington, D.C. 20460

Dear Mrs. Wyer:

Hennepin County of the State of Minnesota requests that the following statement be entered into the public record as part of the proceedings of the "Public Meeting on Hazardous Waste Management Guidelines/Regulations Pursuant to Subtitle C of the Resource Conservation and Recovery Act of 1976", which was held October 13-14, 1977 at St. Louis, Missouri.

In 1974 the Minnesota State Legislature passed a law providing for the establishment of a hazardous waste management program. Additional legislation mandated the program for the Minnesota Pollution Control Agency and the metropolitan area counties, and set April 1, 1977 as the effective date for Minnesota's hazardous waste rules and regulations. However, due to the technical, economic, and legal ramifications of a hazardous waste management program, the effective date of the regulations will be delayed, optimistically speaking, by one (1) year.

The State of Minnesota has spent in excess of $300,000 and devoted three (3) years into the development of this set of regulations. This arduous struggle to develop a set of rules and regulations, which will guarantee the safety of the environment and public health, minimize the economic impact upon industry, and be legally sound cannot be proclaimed a universal success. It is not possible to develop a perfect set of regulations. It is possible, however, to implement a set of regulations which contains the best available technology, weighs the significance of the economic impact, and most importantly, initiates controls on heretofore uncontrolled hazardous wastes. Such a set of regulations is needed and needed today! We cannot afford any more time delays trying to develop the perfect set of regulations while the problem related to the mismanagement of hazardous wastes continues to remain unattended.

Therefore, Hennepin County strongly supports the U.S. Environmental Protection Agency's proposed timetable for implementation of the Federal rules and regulations of mid 1978. Hennepin County further urges that all necessary actions be taken by the U.S. Environmental Protection Agency to avoid any future time delays.

The County supports the U.S. Environmental Protection Agency's position on importation bans of hazardous wastes across state lines. The State of Minnesota has a very limited number of acceptable hazardous waste facilities and will probably never be able to dispose of all its own hazardous waste within the State. If Minnesota is not allowed to ship some of its hazardous wastes across state lines to environmentally safe hazardous waste processing or disposal facilities, the implementation of a hazardous waste management program would be impossible.

Sincerely,

Luther D. Nelson

Luther D. Nelson, P.E.
Department of Environment and Energy

LDN/lp

Help Stop Stream and Air Pollution
use RE-REFINED LIFE MOTOR OIL

MIDWEST OIL REFINING CO.
1900 WALTON ROAD
St. Louis, Missouri 63114

Area Code 314
427-2662

October 18, 1977

Statement for the record on proposed guidelines/regulations pursuant to Subtitle C - Resource Conservation and Recovery Act of 1976 - Public Law (94-580)

WASTE OIL

Oil today is one of our most vital resources and should be conserved in every way possible. The recycling of oil in the U.S. for over fifty years has proved the practicality and potentiality of this used product. Through the recycling and reuse of oil, several benefits are achieved:

1. Conserving a vital resource.
2. Protecting the environment from pollution.
3. Lessening our dependency on foreign oil.
4. Providing a substantial savings to the consumer.

If you wish to recycle any used product, several objectives must be met:

1. Education of the public to the fact that the product is recycleable.
2. Sociological encouragement of its reuse.
3. Economic incentive to the generator of the used product to save it for storage collection.
4. Profit for the collector and recycler improving return on investment and capital for growth.
5. Savings to the consumer to encourage its reuse.
6. Protection of the environment by reuse instead of dumping and discarding, which will be substantially reduced, if not eliminated. This may possibly have to be the lesser of two evils; [illegible] pollution by no reuse versus reduced pollution by reuse.
7. Market potential for the recovered product.

It is my opinion that most of these objectives and all incentives will be removed if used oil is classified a Hazardous Waste because the word "hazardous" creates a negative attitude toward storage, transportation, processing and resale. I recommend that used oil and other recycleable used products that could present a health or environmental hazard, if not handled properly, be classified as a Special Waste or better yet, classified a Recycleable Product. These used products should be regulated [illegible] modified set of guidelines and regulations to insure a positive attitude toward reuse. If oil is classified a Hazardous Waste, many problems will have to be solved, some of which are listed on the following page.

1. Due to the added cost of complying with the regulations, the generator will not be paid for the used oil but rather charged for hauling it which will encourage dumping waste oil rather than recycling it.

2. There will be added cost to the collectors and transporters to upgrading all tank truck equipment to comply with Department of Transportation regulations governing Hazardous Waste. Insurance for spill and transportation of Hazardous Waste is next to impossible to get, and the cost is out of reach for small businesses.

3. Finding a site for a new oil recycling plant could be as difficult as finding one for a Hazardous Waste dump. The public will not want it in their area. Cost of construction will increase, making it difficult to attract new investors or working capital.

4. Today in the U.S. there is approximately 1 billion gallons of used oil collected each year for reuse. It is used for road oil, re-refined into lube and burned as industrial fuel. Road oiling and re-refining into lube use less than two hundred million gallons, leaving approximately eight hundred million gallons to be used as industrial fuel. If the re-refining industry started expanding today, it would take ten years or more to reach the 1 billion gallon per year level. When you produce lube from used oil, approximately 15 to 20% is lost as a by-product. This by-product consists of still bottoms or pre-treat sludges which should be dumped into Hazardous Dumps because of extremely high concentrations of toxic heavy metals, etc. The cost today to dump this type of hazardous material in the St. Louis area will be 50¢ per gallon of waste or more depending on which hazardous waste dump is available to be used and in what state.

5. There exists a problem in burning used oil as a fuel and still protecting the consumer and the environment. Under the EPA proposed regulations and guidelines, burning would be greatly reduced and cause a back-up at the point of generation. It is my opinion that used oil can be burned as a fuel and reach these goals if minimum standards are followed:

A. Prohibit open burning of oil pits, ponds, lagoons, etc.
B. Prohibit the blending of used oil with home heating oil.
C. Prohibit the use of used oil as industrial fuel, unless it is blended with 90% or more virgin #5 or #6 fuel oil.
D. Used oil should meet the following specifications before sale to blender or wholesaler for industrial fuel.
   1. Remove water to less than 1/4 of 1% to prevent freeze ups.
   2. Flash of 200 degrees F. minimum.
   3. Screened to 30 mesh or finer to prevent clogging of fuel line filters, etc.

I do not recommend the removal of the suspended contaminants in used oil for fuel purposes because it is cost prohibitive and will kill the only incentives to recycle any used product - Profit. If I removed all the toxic contaminants from used oil, I could not compete in the open market because I would lose 20% or more in recovery, plus the cost of disposing of the 20% waste at 50¢ per gallon or more.

6. What if 800 million gallons of re-refined lube oil hit the lube oil market? It could cause in one year a big impact. However, if the same thing happened to the industrial fuel market, 1 billion gallons would only be a drop in the bucket, causing very little impact.

7. If all the contaminants were removed from 300 million gallons per year of used oil, we would not have enough Class I dumps to put it in, so I recommend leaving it to be burned with oil as a means of disposal. It is the lessor of the two evils. By burning at a 10% or less ratio, the harmful effects in any one area will be held to a minimum.

I feel that the proposed Hazardous Waste Management Guidelines and Regulations, pursuant to Subtitle C, will drastically hamper the used oil, re-refining and recycling industry and thus defeat the purpose of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580).

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