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Solid Waste



Developing A State Resource Conservation and Recovery Program

DEVELOPING A STATE RESOURCE CONSERVATION
AND RECOVERY PROGRAM

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DEVELOPING A STATE RESOURCE CONSERVATION AND DEVELOPMENT PROGRAM

PURPOSE

This publication defines the functions and activities which the U.S. Environmental Protection Agency suggests be incorporated into a State Resource Conservation and Recovery Program.

BACKGROUND

The Resource Conservation and Recovery Act (RCRA), Public Law 94-580, mandates that each State develop a comprehensive solid waste management plan. The Act further directs that this plan address all areas of solid waste management, including resource conservation and recovery. EPA recognizes the consequent need for practical guidance to States on what they can and should do to develop resource conservation and recovery plans and programs. This document is designed to meet that need, and to guide States in determining what their roles should be in resource recovery, and in choosing activities which best fulfill those roles.

Since States vary greatly in their characteristics and in their potential for implementing resource recovery, this guide has been made as flexible as possible. For example, the "Technical Assistance" section does not suggest a process by which each project in a State should be planned or designed. Instead, it stresses the basic need for a State to make technical assistance and feasibility study support available to local and regional governments seeking such assistance.

Conservation and recovery programs involving source separation, intermediate processing, mixed-waste processing technologies, and waste reduction are all discussed in this document. The State can decide the extent of its involvement and the mix that is best suited to its needs.

REQUIREMENTS FOR STATE RESOURCE CONSERVATION AND RECOVERY PROGRAMS

The Resource Conservation and Recovery Act of 1976 places major responsibility for solid waste management and planning in the hands of the States. The Act mandates the control of hazardous wastes, the closing or upgrading of open dumps, and the disposal of all solid waste in an environmentally sound manner. The States must look to resource conservation and recovery as a key alternative for accomplishment of these goals. Below is an analysis of those sections of RCRA which mandate such a State effort.

Sec. 4001, describing the objectives of Subtitle D, instructs the States to "maximize the utilization of valuable resources and to encourage resource conservation."

Sec. 4002 instructs EPA to: identify regional planning units for solid waste management; develop guidelines for State plans; and specifically address in the guidelines "types of resource recovery facilities and resource conservation systems which are appropriate," and "available new and additional markets for recovered material."

Sec. 4003 delineates the minimum requirements of a State plan to include: a requirement by the State that all solid waste be either "utilized for resource recovery" or disposed of in an environmentally sound manner; a State requirement that eliminates any prohibitions on local governments "from entering into long-term contracts for the supply of solid waste for resource recovery facilities," and provision for such resource conservation or recovery and for the disposal of solid waste in sanitary landfills or any combination of practices as may be necessary to use or dispose of such waste in a manner that is environmentally sound.

Sec. 4004 authorizes the Administrator of EPA to issue landfill criteria which define open dumps and sanitary landfills. The section requires that "each State plan shall prohibit the establishment of open dumps and contain a requirement that disposal of all solid waste" be utilized for resource recovery or disposed of in an environmentally sound manner.

Sec. 4005 mandates the closing or upgrading of open dumps, and requires the issuance of a compliance schedule for any entity which demonstrates that it has considered other public and private alternatives for solid waste management and... is unable to utilize such alternatives.

Sec. 4008 authorizes the total FY 78-79 amount of federal financial assistance to States for the "development and implementation of State plans...." The amounts authorized are limits and do not necessarily correspond to appropriations. The areas eligible for funding include implementation of programs to provide solid waste management, resource recovery and resource conservation services, and hazardous waste management. Specific areas of assistance outlined include: "facility planning and feasibility studies; expert consultation; surveys and analyses of market needs; marketing of recovered resources; technology assessments; legal expenses; construction feasibility studies; source separation projects; and fiscal or economic investigations or studies." The Section also provides for "technical assistance to State and local governments for purposes of developing and implementing State plans." The Technical Assistance Panels Program is designed to "assist the State and local governments with respect to particular resource recovery and conservation projects under consideration and to evaluate their effect on the State plan."

In summary, resource conservation and recovery must be a key element of the State solid waste planning process. States must not only consider resource recovery as a key alternative for solid waste management, but must also develop comprehensive, ongoing State Resource Recovery Programs. This paper is intended to guide the development of such programs. The elements that should be built into a State Resource Recovery Program are described next.

ELEMENTS OF A STATE RESOURCE CONSERVATION AND RECOVERY PROGRAM

Five elements constitute the core of an effective State resource conservation and recovery program: (1) an adequate legislative base; (2) an active market assessment and development capability; (3) a policy development and project planning mechanism; (4) an assistance and education capability; and, (5) a complete and current data base on resource conservation and recovery activity within the State.

EPA recognizes the great diversity among the 56 States and territories. Rather than describe precisely that program which is best for each one of them, this document presents those elements which should be considered by any State in developing its own resource conservation and recovery program. Each element is described and explained in turn below.

A. DEVELOPMENT OF A LEGISLATIVE BASE

The development of an adequate legislative base is an essential part of any State's program. This development process has two parts: (1) removal of existing State laws which prevent or inhibit resource conservation and recovery; and, (2) enactment of new laws which promote and simplify resource conservation and recovery.

The State can develop its legislative base with respect to both of these parts through a three-stage process: First, an analysis of the relevant existing laws to identify those which inhibit or prevent the implementation of resource conservation and recovery, and to identify gaps or omissions. Second, an effort to remove or amend barriers identified in the analysis stage. And, third, the development and introduction of any new legislation necessary to correct whatever gaps or omissions have been identified.

(1) Analysis of Existing Laws

An analysis of all relevant State and local laws will almost certainly uncover some laws that unnecessarily act as barriers (e.g., the disqualification of recycled newsprint in the State procurement process); some others that act as barriers with a discernible, but debatable, rationale (e.g., the requirement that localities accept the lowest bidder); some laws that indirectly promote resource conservation through regulation (e.g., stringent landfill criteria); and some laws that directly encourage and support resource recovery and conservation programs.

The best means of developing a solid legislative base to support a State resource recovery program is to minimize or eliminate the barriers and maximize legislation promoting resource recovery. The State agency with lead responsibility for resource recovery should therefore start by determining which laws act as unnecessary barriers, as well as determining where there are needs for legislation directly supporting resource conservation.

In "gray areas" where there would be trade-offs if a barrier were removed or a regulation promulgated, the agency should objectively present the advantages and disadvantages of both viewpoints to State officials and legislators.

(2) Removal of Legislative Barriers

There is a variety of State laws and institutional arrangements which can delay or jeopardize the implementation of resource recovery. Some examples are listed below:

(a) Laws that restrict contract length or specifically prohibit long-term contracts for the supply of waste are barriers to resource recovery. The first step in a State's resource recovery effort is to work toward the elimination of these barriers, in conformance with Section 4003(5) of the Resource Conservation and Recovery Act of 1976.

(b) Laws requiring split-bidding exist in some States. These laws require that construction, plumbing, electrical work, etc., be bid for separately in a project. As a consequence, it is impossible for a community to procure a proprietary technology or hold a single turn-key contractor responsible for all phases of a project.

(c) Laws requiring acceptance of the lowest bidder mandate that procurements be awarded on a cost basis, without negotiation. Awarding contracts on a cost basis alone makes it difficult for a city to compare other important relative measures, such as a firm's experience. Prohibiting negotiation also presumes that the community is able to write a comprehensive RFP* which is unmistakable in intent and complete in detail on the first attempt. All evidence thus far shows the opposite to be the case.

* Request for proposals.

(d) Statutory ceilings on amounts of pollution control revenue bonds could deter investors. Where a community desires to enter into a full-service contract with industry, the project is likely to be more attractive to bidders if they can take advantage of both rapid depreciation and the tax-exempt status of pollution control revenue bonds in financing the project. Unfortunately, some States have limits of \$5 million for projects which can be financed with pollution control revenue bonds, while resource recovery projects often cost between \$20 and \$100 million. Historically, such limits were established for other types of projects to prevent industry from competing excessively with communities for tax-exempt bond financing. But where industry is serving the public good with solid waste disposal and/or the supply of energy, the benefit may be greater than whatever harm the competition for funds will have. For that reason, consideration should be given to waiving or altering this ceiling.

(e) Public utility regulations or policies sometimes disregard issues of resource conservation. The energy by-products from resource recovery systems (i.e. steam, electricity, gas, oil, refuse-derived fuel) are often comparable in both cost and quality to other sources of energy. Yet public utilities are unwilling to purchase such by-products from communities because of a reluctance to deal with politically oriented entities of local governments. At the same time, public utilities constitute the best potential markets for the by-products of a community's resource recovery system because of their large size (ability to take all the by-products of a resource recovery system) and their long-term stability (not as likely to close down or move away as other industry).

(f) Laws restricting the movement of solid waste also restrict the ability of resource recovery systems to take advantage of regional economies of scale. The importation of waste from a neighboring city, county, or even State is often necessary to supply a particular facility. States should view solid waste as a valuable raw material for purposes of resource recovery, and therefore not inhibit its movements where it is being used for those purposes.

The State agency with lead responsibility for resource recovery should take steps necessary to identify barriers such as those discussed here and to eliminate them where feasible. These steps include: reviewing statutes; drafting executive orders and legislation; and working toward enactment of such orders and legislation.

One New England State, for example, has declared the "removal of institutional obstacles" to resource recovery as a primary objective of its proposed State Solid Waste Management Plan. The outline of its proposed plan includes specific steps by which the State will seek the removal of those obstacles.

(3) Expansion of Legislative Authority

Resource recovery activity accelerates rapidly in States where there is political support. Both legislative and executive initiatives are vital demonstrations of that support. Also, extensive public participation enhances the political acceptance of these initiatives. There are several such initiatives that State governments can take, some politically controversial, others not. The State agency responsible for resource recovery can not, of course, bring about all the changes necessary simply by mandate. The agency can, however, do all in its power to work toward the type of expanded legislative authority necessary to create a sound base on which the program can be built.

State policies should promote resource recovery as a preferred alternative. The conservation and recovery of materials and energy is beneficial to all States, not just a select few. Resource conservation and recovery programs help to ease the ever-growing problems of disposal. In order to lay a strong foundation for resource recovery programs in this country, State legislatures must be willing to make a commitment.

A policy that declares resource conservation and recovery as a preferred alternative for solid waste management can be an effective beginning. Some States which have started with such a policy have gone on to pass specific pieces of legislation which can stimulate increased resource recovery activity.

The State should work toward establishing and publicizing executive and legislative policies which: establish recycled materials procurement programs; provide specific appropriations for technical and financial assistance; mandate that each State agency report to the legislature on the resource conservation potential of that agency; and, enact tax incentives to foster resource recovery.

B. MARKET ASSESSMENT AND DEVELOPMENT

The success of resource recovery is almost wholly dependent upon economics. If reliable markets exist for the products that can be derived from resource recovery systems, then those systems become viable. But few markets are stable over the long term, since supply and demand for products is ever-changing.

(1) Assessment of Existing and Potential Markets

The State must assume the responsibility for regional and Statewide market studies as part of its resource recovery program, and should conduct and maintain these market surveys for both secondary materials and energy. Secondary materials covered should include: industrial wastes (through waste exchanges), waste oil, tires, paper, glass, and metals. Periodic reports to local and regional governments should include both short- and long-term projections for the various markets in each of the regions studied.

As a result of one western State's market study efforts, six refuse-to-energy projects are currently being planned. In that case, the State made the cities and counties aware of the existing energy demand in their jurisdictions, as well as the potential supply available from their own wastes. The State then helped to fund feasibility studies for each of the projects. Without such a State effort, those resource recovery projects might not have materialized.

(2) Stimulation of Existing Markets

Every State government has its own built-in markets. The amount of paper and construction materials used in government operation is considerable. If secondary materials are to be proven as usable, State and Federal agencies must take the lead in demonstrating that usefulness. Section 6002 of the Resource Conservation and Recovery Act 1976 requires such action, and EPA expects the States to comply with the forthcoming 6002 guidelines through their own regulatory process.

The experience of several State programs suggests that, for reasons of political acceptability, a State recycled procurement program should start with one commodity; paper is usually the most successful. State purchasing agents should emphasize the use of that recycled commodity as much as possible. Where product specifications preclude such use, those specifications should be evaluated and modifications recommended. Once the single commodity program is successful and receives publicity, the State can expand to other materials.

A legislative or executive policy should put the State on record as encouraging the procurement of recycled materials. A few States currently have legislation that gives a cost preference of 5 to 10 percent to contract bidders proposing to use recycled materials. Such legislation could contain a "sunset" clause that would phase out the preference once the recycled commodity became competitive in price with the virgin product. One mid-Atlantic State's legislation sets annual quotas for the State purchase of recycled paper, and provides for reporting to the legislature on the accomplishment of those quotas.

Other public sector entities such as regional and local governments should also be encouraged to use recycled materials in order to enlarge the market for such products. One western State is currently investigating the possibility of organizing communities into purchasing collectives whereby source separated material could be sold, and finished recycled products purchased, in greater volumes. This would reduce the cost to communities, while creating a Statewide market for secondary materials. The leverage of such a collective would of course be considerably greater than that of the separate members.

As stated earlier, the creation and stabilization of markets is a key to success for any resource recovery endeavor. "Making the economics work" is pivotal. A favorable economic climate will exist only when supply and demand approach equality. However, for resource recovery, the supply has traditionally been greater than the demand.

In the private marketplace, potential purchasers look upon a new product with skepticism. It often requires a sophisticated marketing campaign to introduce a product and earn the public trust. For secondary materials, the State must assume the market campaigning responsibility. If the State is to increase demand for recovered resources, it must convince the private sector to greatly alter its way of thinking. Both private and public procurement offices should be made aware of the availability and usability of secondary materials. One western State, for example, has approached this problem by organizing and conducting a series of regional industrial seminars. Industries, recycling organizations, and the public have all been invited to these seminars to hear about the usefulness and market demand for certain secondary materials.

To stimulate demand further, the State should consider tax credits or loan preferences to businesses utilizing secondary materials, as an incentive to increase demand. The State agency responsible for resource recovery should consider drafting tax legislation in conjunction with the policy supporting resource recovery as the preferred alternative for solid waste management. One southern State has legislation that exempts resource recovery equipment purchases from the State sales tax, an exemption which saved more than \$1,000,000 on a single project. That is clearly a significant incentive. Such an exemption could be extended to secondary materials purchases such as paper, tires, oil, and other recycled commodities.

(3) Creation of New Markets

Although the Federal government and private industry will take the lead in researching, developing, and issuing specification standards on new secondary materials, there is also a role which the States can play. State procurement offices throughout the country can provide valuable demonstrations of the practical utility of new secondary materials. Recycled items that could be available for State use include: paper for copying machines; tires and oil for State motor vehicles; and recycled asphalt for road construction. State officials should make a commitment, either through legislation or executive order, to use at least limited quantities of these materials and to evaluate their performance.

The State should also consider providing tax incentives to corporations conducting research into new uses for secondary materials. Such tax credits could have a long-term beneficial effect on the State by creating jobs in the production of new materials, saving State procurement money, and conserving raw material resources. Legislation or an executive order would be required to initiate such a program.

C. POLICY DEVELOPMENT AND PROJECT PLANNING

RCRA requires that State solid waste management planners consider resource recovery to the maximum extent possible.

(1) Promulgation of State Resource Policy

Mere "consideration" is not enough. Resource conservation and recovery must be clearly and strongly supported by the State through legislation or executive order as the preferred alternative for solid waste management. States should not underestimate the impact of a simple statement of support for resource conservation and recovery where the Governor and legislature make or endorse the statement. Without such support, resource recovery is unlikely to have the long-term sustenance vital to its success.

(2) Statewide Resource Recovery Project Planning

Those planning resource recovery projects must make the securing of markets their first concern. But once those markets have been identified and commitments obtained, and the level of demand for recovered materials and/or energy has been determined, an adequate supply of solid waste must be secured. In conjunction with its market assessments, the State should estimate the amount of waste needed to meet the projected demand for recovered resources. The State should obtain from all local and regional governments the necessary data on waste generation, as well as estimates of the amount likely to be diverted from current disposal facilities due to the implementation of Section 4004 (RCRA) landfill criteria and/or the exhaustion of alternative landfills.

The State lead agency should encourage resource recovery activities through the State solid waste planning process wherever both the supply and the markets exist. Possible steps could include notifying the region or community of the market potential; describing the process by which the community could conduct a more detailed study; and, giving the area technical and/or financial assistance throughout the planning process. One southern State enacted legislation requiring that areas of the State with greatest resource recovery potential be identified and designated as such. These

areas (in this case counties) were then required to develop comprehensive resource recovery plans. Upon approval of its plan, the county will become eligible for State assistance in implementing resource recovery.

The State should promote the regionalization of facilities and waste supplies in areas where economies of scale could be realized. This effort should be carried out in conformance with the regional identification process set forth in EPA's Guidelines for State Solid Waste Management Plans (40 CFR 256.10 - .11). A report, possibly in conjunction with the State market projections, should be issued to local and regional governments delineating areas of the State where the potential supply of waste could meet the projected demand for recovered resources. The report should also include a suggested regionalization scheme for individual areas lacking adequate waste supplies, as well as a listing of those areas of the State where it would be economically inefficient to implement particular types of resource recovery systems at the current time. This could readily be done by mapping areas with high, medium, and low potential for various resource recovery activities.

Any Statewide resource recovery project planning must also be coordinated with other environmental programs. The areawide water planning program under Section 208 of the Clean Water Act, the wastewater treatment plant construction program under Section 201 of the same Act, air quality planning programs, and other solid waste programs should all be kept "in the loop" of information and decision-making.

(3) Intergovernmental Cooperation

Many State and Federal agencies are involved in various phases of resource recovery planning. Some of these agencies include: State and Federal Departments of Commerce, Energy, Procurement, Water Quality, Air Resources, and Transportation, as well as Solid Waste. One mid-Atlantic State has compiled a handbook for permitting a typical refuse-to-energy facility; thirty agencies and over sixty permits are involved in the process. This makes it essential that all interested agencies be at least informed of activity from the earliest stages of planning.

For planned facilities where the supply of waste will come from a neighboring State, or the finished product will be destined there, the process should include that State from the beginning. The lead resource recovery agency should determine at the outset which other States will be influenced, and include the appropriate agencies in those States in the strategy development and planning process.

D. ASSISTANCE AND EDUCATION

Once counties and municipalities are aware of the resource recovery potential, they are likely to seek assistance on how they should proceed.

(1) Technical Assistance

The State should be prepared to provide at least part of the technical assistance needed to areas having the potential to successfully implement source separation, intermediate processing, or high technology mixed-waste programs. The State should develop staff expertise to advise interested communities on the steps they must take to develop the appropriate resource recovery system. Communities will need advice and support especially during the critical feasibility study phase; therefore, expertise in the areas of financing, technology, procurement, and contracts is essential. (EPA is currently developing resource recovery training programs geared toward State technical assistance to locals.)

Several States already have developed some capability in resource recovery technical assistance. One mid-Atlantic State sends a task force with expertise in the areas of project development (source separation, marketing, and technology) to interested communities. The task force advises on the optimum resource recovery system for the individual community, and on how to go about implementing such a system. Once the community has chosen a consultant for the project, the State task force reviews and comments on facility plans, financing schemes, and any other relevant aspects of the project.

(2) Financial Assistance

Some communities will need a financial push into the resource recovery business. Feasibility studies and front-end planning can be costly ventures, and city councils are often reluctant to pay for such speculative endeavors. A State planning grant program would provide one means of ensuring that areas with resource recovery promise receive front-end assistance. The grants could be set up on a matching basis to cover feasibility studies, design studies, and marketing surveys for the type of resource recovery system that the community will need. One mid-Atlantic State currently has a bill before its legislature providing for \$4.4 million in 50-percent matching funds for such front-end planning.

The State has found that the most difficult hurdle in implementing resource recovery is the initial step into planning. After receiving an encouraging feasibility study, a community will often "carry the ball" from there. Receipt of an unfavorable feasibility, on the other hand, can save a community the money, time, and disappointment of building what would have been an unsuccessful facility. The possibility that such a study will be the end of a proposed project is both the reason why State financial assistance for the study may be necessary, and the reason why the study is so important in the first place.

Another form of State aid to local resource recovery efforts is through a construction grant or loan program. Since decision-makers are understandably cautious when faced with the high capital costs of resource recovery projects, such assistance would be eagerly welcomed in most cases. One western State currently has a grant/loan program for implementing regional and local solid waste management plans. The State will award 30% in grants and 70% in low interest loans toward implementation and construction of resource recovery facilities. The State resource recovery agency administers the grants and loans, gives technical advice and support, and closely scrutinizes the progress of projects.

The State could also provide indirect financial assistance to businesses and communities involved in resource recovery efforts through such initiatives as tax incentives. As mentioned earlier, one southern State has legislation that exempts resource recovery equipment purchases from the State sales tax. Such an exemption could be extended to secondary materials purchases such as paper, tires, and other recycled commodities. This would be an economic inducement to both the production and consumption of recyclables.

For each of the financial assistance devices above, the State resource recovery agency will need to draft legislation and to take the necessary steps to bring such action to the attention of the legislature. Additionally, States must consider whether they want to use the State buying or debt power to fund resource recovery.

(3) Public Information

There are steps which the State can take beyond technical assistance and feasibility study support to assure that localities and other interested parties receive as much assistance as necessary in deciding

what form of resource recovery and conservation fits their needs. The State should establish a program to develop and disseminate information to localities, interest groups, schools, and private citizens. Several States already provide this service. Some have libraries of Federal, State, and local resource recovery publications which are sent out upon request. Others have established "recycling hotlines" which citizens can call to locate the nearest recycling center or waste oil drop-off.

EPA's Office of Solid Waste and the EPA Regional Offices stand ready to help any State set up its own public information program.

(4) Training and Education

Another service that the State can provide localities in planning for projects is an education and training function. Training of local officials and staff about to embark upon a resource recovery effort is essential. Seminars and "peer-matching" (bringing in other local officials experienced in resource recovery) are two tools which the State can use in that effort. Still another tool is audio-visual material. One western State, for example, has developed a resource recovery/waste reduction package using slides and cassette tapes. The package is currently being tested in two school districts in the hope it will prove useful for distribution to schools statewide.

EPA will be embarking on a program to orient State personnel on all aspects of resource recovery. This same type of training program could be passed on to local officials. Citizens and students could receive a more general level of education through public seminars and resource recovery forums.

(5) Public Participation

Citizens have the right to share in program decisions. Public servants who implement Federal environmental statutes have the responsibility to seek out and be responsive to the concerns of the public in their decisions. It is essential that the public be involved from the very beginning if the State resource recovery program is to be successful. A special effort should be made to ensure that public interest groups and citizens representing themselves (whose resources and access to decisions may be limited) have every opportunity to participate. These measures will not only ensure equitable representation for all citizens, but will also enhance the likelihood of success for the State resource recovery program.

E. PROGRAM MANAGEMENT

The State should continue its involvement with resource recovery projects long after planning is complete, and should maintain information on all resource recovery activities and systems being planned, constructed, and operated within the State.

(1) Statewide Monitoring and Evaluation

The State should monitor the operation of projects and evaluate the performance of various technologies being used within the State. This information will be invaluable to newly interested communities. This kind of monitoring will of course also contribute to the growing nationwide network of data on resource recovery activity in the United States.

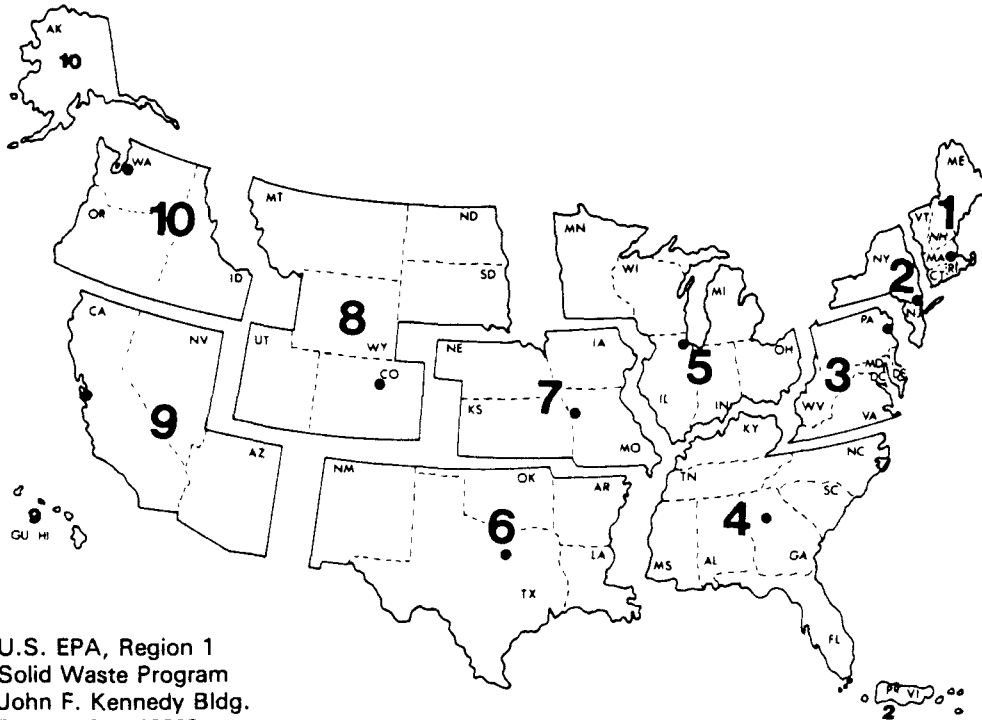
(2) Ongoing State Program Analysis

In addition to monitoring individual projects, the State should periodically evaluate its own program effectiveness. This analysis should examine whether the State program is meeting RCRA's requirements for resource recovery and conservation, and whether the State is meeting its own goals. The development of an efficient State resource recovery program must be an ongoing, iterative process. Several States have built small, but very efficient organizations to deal with all matters related to resource recovery. One southern State has established a Resource Recovery Council, but with a "sunset" clause. The Council, after developing a resource recovery program through existing State and county agencies, will disband. This can be an effective and politically palatable approach where citizens and legislatures are reluctant to establish new programs and offices in State Government.

With concern over government spending increasing, States must develop new, creative, and more cost-effective ways of accomplishing their goals. In order for resource recovery activity to continue to increase throughout the United States, every State program must be designed with economic and political feasibility at the forefront. This document has attempted to present some ways in which States can accomplish this.

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