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Statement on Hazardous Waste Management
by Douglas M. Costle
Administrator
Environmental Protection Agency
Friday, October 12, 1979

I am today submitting to Judge Gerhard A. Gesell of the United States District Court for the District of Columbia my quarterly affidavit on our progress in developing final regulations under the Resource Conservation and Recovery Act. I have informed Judge Gesell that our initial hazardous waste regulatory package will most likely be promulgated in late winter and early spring. I am extremely frustrated that we are not able to meet the schedule we proposed, and the Judge adopted, which called for promulgation of the regulations by December 31.

Among the many pressing environmental problems currently facing EPA and the nation, I consider hazardous waste to be the most serious. In many respects, I think that EPA has performed very credibly in the 14 months since the tragedy of Love Canal unfolded. Yet what we have been able to do has not met my goals in terms of what I had hoped we might achieve.

Hazardous waste constitutes an extremely serious public health and environmental problem. Since the chemical revolution following the Second World War, these wastes have been disposed improperly into the air, into the water, and into the land.

Industry, government, and the public were content with the idea of "out of sight, out of mind." The "ticking time bombs" were primed.

Then Love Canal went off, followed by other explosions all around the country. Industry's failings--both careless and callous--were exposed. Government's shortcomings also became evident. The public is concerned and frightened, and it is demanding action.

EPA has taken action.

First, working with the Department of Justice and the States, EPA has initiated a remedial and enforcement program directed against hazardous waste sites which pose substantial risk to public health and the environment. A new hazardous waste task force of 28 persons now exists in Washington. Our Regional Offices have redirected approximately 100 work-years focussed on this effort. Over 300 sites have been investigated. Seven major enforcement actions have been initiated, and many more are under preparation.

This effort will be greatly strengthened in the coming year. An additional 68 EPA employees, supported by 180 work-years of technical contractor personnel, will permit the investigation and filing of additional enforcement actions.

Second, to provide funds for the cleanup of abandoned sites and to permit more rapid response where health and the environment are threatened, EPA developed legislation, submitted by the President to Congress in June, to establish a multi-million dollar Superfund. Hearings have been held by several Congressional committees, and I am hopeful that the Congress will enact such legislation in the near future.

Third, we have used authority in other statutes to promulgate regulations which can be applied to the hazardous waste problem. An example is our emergency response authority under Section 311 of the Clean Water Act. This authority enables the Federal Government itself to act to mitigate releases of oil and 299 designated hazardous substances, many of which are found in hazardous waste sites, if released into navigable waters.

Fourth, because the hazardous waste program is a part of EPA's overall effort to achieve control of toxic substances in our environment, we have directed authorities and resources made available for related environmental problems to a broad-scale effort to control hazardous wastes. Actions taken by our Region II Office in New York are typical and illustrative of this. Importantly, all of these actions were taken in close cooperation with State and local government. For example:

- In the case of Love Canal, which is just one of a major series of response efforts, EPA provided the technical and analytical support by which the presence of toxic chemicals in the basements of homes along the Canal were identified. Subsequently, EPA made a \$4 million demonstration grant and worked closely with the State in the design and implementation of remedial measures being taken there.
- A joint EPA-State effort has identified 160 sites in Erie/Niagara Counties where hazardous wastes have been disposed. An EPA contract effort is now seeking to rank these sites in terms of their threat to public health and the environment.
- With funding under Section 208 of the Clean Water Act, EPA has made grants totaling \$1.2 million to the States of New York and New Jersey to develop programs to apprehend and criminally prosecute midnight dumpers of hazardous wastes. Also under 208, EPA supported the identification of the Lapari landfill in southern New Jersey as a source of leaching toxic pollutants and assigned over \$1 million in Clean Lakes and research funds for control, treatment, and disposal.

- In carrying out responsibility for safe management of PCB's under the Toxic Substances Control Act, the Region has been directly involved in assessing and approving landfills and incinerators for disposing of PCB's.
- On Long Island, as a result of the discovery of pesticides and other toxic substances in drinking water supplies, the Regional Office worked with State and local health departments to close wells. As the result of the designation by EPA of the groundwaters under Long Island as a sole source aquifer, the development of new landfills has been severely restricted.
- With grant funds provided under Section 201 of the Clean Water Act, New York and New Jersey will be requiring municipalities whose industries are implementing pre-treatment to develop programs for the safe management of the resulting hazardous wastes.
- As water discharge permits under 402 of the Clean Water Act are reissued, EPA is requiring the use of best management practices to control spills of hazardous wastes and hazardous materials.

In large part because of his performance in attacking hazardous waste in Region II, as well as his previous experience at the State level and in Washington, I have chosen Chris Beck, Regional Administrator, to oversee hazardous waste as Assistant Administrator for Water and Waste Management.

Which brings me back to what we have not accomplished--the promulgation of the hazardous waste regulations--and my frustration that we were not able to produce those regulations yesterday or last week or last month. The affidavit explains why.

There are two points which I think it important that the public understand.

The first is the significance of the fact that we have received over 1200 sets of comments on our regulations which, when placed together, constitute a stack of text over seven feet high. Under the laws governing rulemaking, EPA is required to read, digest, analyze, and respond to every major point made by every commenter in that entire record.

The public should understand that most of those comments were prepared by highly trained and sophisticated Washington lawyers and technical experts who represent the industries who will be regulated. Their comments relate to practically every word in the proposed regulations. They are designed to raise every issue and every question that creative, well trained professionals can imagine.

Looked at from one point of view, these comments are extremely helpful to us. We at EPA are not all-knowing with respect to hazardous waste or any other environmental issue. Our goal is to develop a reasonable and sensible regulatory system, and we need and value additional information and perspectives. And we recognize the right of industry to protect its legitimate interests.

But from another point of view, these comments are designed to stake out territory on which industry lawyers can subsequently sue, seeking court-ordered stays and remands of promulgated regulations. In other words, these comments are a minefield with the potential of blowing our hazardous waste regulatory program right out of the water. We must deal with each comment as though it were a mine, taking every care that we do not make a procedural, legal, or technical error. If we do not take such care, industry lawyers can, in the courts, undo everything we have been trying to achieve.

So to achieve effective regulation of hazardous waste we must take the time to do our homework.

The second point that the public should understand is the continuous nature of rulemaking. The promulgated regulations will be continuously in a process of expansion and revision.

What EPA will promulgate over the coming months will provide the basis for an operational hazardous waste management program. It will identify a substantial segment, but not the entire universe, of potentially hazardous wastes. It will establish a substantial complement, but not a complete set, of rigorous regulatory requirements. It will provide critical regulatory tools--such as the manifest system to control midnight dumping--but it will not provide every desirable regulatory tool. It will not be (and Judge Gesell told us last January that he did not expect it to be) a gold plated program.

I have made every effort to assure myself that the Agency has a management system and plan of action which, with a high degree of confidence, can achieve the promulgation of a high quality, legally defensible, operational hazardous waste regulatory program by next April.

We will, consistent with the overriding objective of assuring a high quality product, make every effort to promulgate regulations before then. If particular regulations are ready earlier, EPA will promulgate them so that the regulated community has immediate opportunity to understand what will be required of it.

In closing, I would ask the public to ponder one final, critical point.

EPA's desire, and that of the public, is to bring hazardous wastes under safe management and control. We want to identify the hazardous wastes, control them during storage or transport, and destroy or neutralize or contain them.

The still largely unanswered question is how we are going to decide where we are going to undertake such destruction, neutralization or containment. Everyone wants these wastes managed, but not in their backyard. And our entire nation is someone's backyard.

This is a very difficult question. Our society is only in the earliest stages of facing up to it. And few, if any, believe they have the complete answer. But we are going to have to answer this question if we are to achieve effective control over hazardous wastes.

Promulgation of RCRA Hazardous Waste Program

- to be promulgated in February and April
 - 3001 Ignitable, Corrosiveness, Reactive,
Toxic Characteristics
Listing of wastes for those charac-
teristics
 - 3002
 - 3003
 - 3004 Interim Status Standards
 - 3010

- to be repropoed this Spring
 - 3001 Organic Listing
 - 3004 Main Frame

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF ILLINOIS,)	
Plaintiff,)	
vs.)	Civil Action No. 78-1689
DOUGLAS M. COSTLE,)	
Defendant.)	
ENVIRONMENTAL DEFENSE FUND, INC., et al.,)	
Plaintiffs,)	
vs.)	Civil Action No. 78-1715
STEFFEN PLEHN, et. al.,)	
Defendants.)	
CITIZENS FOR A BETTER ENVIRONMENT,)	
Plaintiffs,)	
vs.)	Civil Action No. 78-1734
DOUGLAS M. COSTLE,)	
Defendant.)	
NATIONAL SOLID WASTE MANAGEMENT ASSOCIATION,)	
Plaintiff,)	
vs.)	Civil Action No. 78-1899
DOUGLAS M. COSTLE,)	
Defendant.)	

ADMINISTRATOR'S THIRD QUARTERLY REPORT ON THE
STATUS OF DEVELOPMENT OF REGULATIONS UNDER THE
RESOURCE CONSERVATION AND RECOVERY ACT OF 1976

In accordance with the Court's January 3, 1979, order in these consolidated proceedings, I, Douglas M. Costle, Administrator of the United States Environmental Protection Agency (EPA), am submitting the following report on EPA's progress during the period July 1, through September 30, 1979, in meeting the Court's schedule for the development of final regulations under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. §6901 et seq:

A. Section 3001 - 3004 Regulations
(Proposed December 18, 1978)

1. As discussed in EPA's December 4, 1978, Proposed Schedule for Promulgation of Solid Waste Regulations and Memorandum in Support Thereof, finalizing lengthy, complex environmental regulations which potentially affect hundreds of thousands of persons is a difficult and time consuming task. It entails organizing public comments received on the proposed regulations; analyzing and resolving the issues raised by those comments; making decisions on the desirability or necessity of reproposing part or all of the regulations; collecting additional data or conducting additional studies to respond to comments or otherwise support the final regulations; writing final regulations and preambles, responses to comments, final support or background documents, and, for some regulations, a final Environmental Impact Statement (EIS), Economic Impact Analysis (EIA) and Regulatory Analysis (RA); and assuring, through a thorough intra-Agency review, that the final regulatory package is internally consistent, consistent with other EPA programs, defensible and workable.

2. During the past calendar quarter, EPA has worked diligently to complete these tasks on its Section 3001-3004 regulations.

3. During June, July, August, at my express direction and in accordance with the unprecedented decisionmaking procedure which I established in June (see my June 4, 1979, affidavit), twenty key personnel from each of the major EPA offices affected by the regulations ¹ met sixteen all-day sessions to discuss approximately forty major issues raised by the proposed regulations and to make recommendations to

¹ E.g., the Office of Solid Waste, the Office of Planning and Evaluation, the Office of Enforcement, the Office of Research and Development, and the Office of General Counsel.

me as to how each of these issues should be resolved. In July and August, I met personally with high-level EPA management (including my Assistant Administrator for Water and Waste Management, General Counsel, and Assistant Administrator for Research and Development) on several occasions to make decisions on these recommendations so that the job of writing the final regulations could proceed expeditiously. In addition to working on these major issues, the Office of Solid Waste has also started to address the literally hundreds of minor issues raised by the proposed regulations.

4. As preliminary decisions have been made on issues, and the final regulations have begun to take shape, we have started to assess the need for supplemental proposals and repropoals. We have already proposed a supplemental list of approximately 45 hazardous wastes (44 Fed. Reg. 49402 (August 22, 1979)) and repropoed the statistical test to be used in determining a statistically significant difference in groundwater monitoring samples under §250.43-8 of the proposed regulations (44 Fed. Reg. 54323 (September 19, 1979)). Other repropoals and partial repropoals will be published as soon as final decisions can be made on related technical and policy issues and the formal repropoals and associated background materials prepared. See ¶10.

5. In order to adequately respond to public comment on the proposed regulations and to better support the final regulations, we have attempted to obtain additional information on hazardous waste management and the health and environmental dangers caused by improper transportation, storage and disposal of hazardous wastes. For example, over the last several months we have collected additional State manifest and waste composition data to better support EPA's hazardous waste list.

6. Much of the data we are gathering are being used in contractor and in-house studies of major issues raised by the proposed regulations (e.g., the regulation of small generators, wastewater treatment lagoons, the mining industry and new vs. existing treatment, storage and disposal facilities). As discussed in ¶11, below, several of these studies have recently been completed and the rest are scheduled to be completed within the next few months. Half a dozen reports of these studies have already been noticed for public comment (see 44 Fed. Reg. 49277 (August 22, 1979) and 44 Fed. Reg. 56724 (October 2, 1979)).

7. During this past calendar quarter, EPA also started the substantial task of writing a first draft of the final background documents for the regulations (which will support the final regulations and respond to comments), as well as related portions of the final regulations, final preamble, and final EIS/EIA/RA. We estimate that these documents, when finalized, will run over 5,000 pages in length (approximately 1,000 pages of final regulation and preamble, a 1,000-page EIS/EIA/RA, and over 3,000 pages of background documents).

8. In addition to developing final section 3001-3004 regulations, EPA has been hard at work on a number of other major projects which deal with the environmental and health problems caused by improper hazardous waste management and supplement the hazardous waste management program under Subtitle C of RCRA:

(a) On June 13, 1979, the President submitted to Congress legislation drafted by EPA which would, among other things, establish a multimillion dollar Federal fund ("Superfund") to finance the clean-up of inactive hazardous waste sites. EPA is now in the process of providing the Congressional

briefings necessary to assure that this legislation (or something similar) is enacted within the next year.

(b) EPA is also drafting legislation to establish a Federal post-closure liability fund which would provide compensation for post-closure damages from permitted hazardous waste treatment, storage or disposal facilities and finance monitoring for such facilities after the twenty-year time limit provided in EPA's proposed regulations. We expect to submit this legislation to Congress early next year.

(c) During FY 1979, EPA's regional offices devoted approximately 100 work-years to the task of investigating and assisting the Department of Justice in instituting actions against hazardous waste sites which pose substantial risks to human health and the environment. As a result of this effort, over 300 sites have been investigated and seven major enforcement actions initiated to date. With the assistance of an additional \$17 million and 68 positions in FY 1980, a new headquarters hazardous waste task force (formed in May, 1979 with an authorized size of 28 persons), and a new Hazardous Waste Section at the Department of Justice, we anticipate that a significant number of additional sites will be investigated and a substantial number of additional enforcement actions filed over the next couple of years.

(d) Using regulatory authorities other than RCRA, we have been funding the development of municipal programs for the safe management of hazardous waste, State hazardous waste enforcement programs and disposal site clean-up; approving landfills and incinerators for PCB disposal and treatment; and providing technical assistance to State and local authorities to help them in analyzing and remedying existing or potential public health problems caused by improper hazardous waste management.

9. Notwithstanding these efforts, and the progress which we have made over the last nine months, it is now clear that EPA will not be able to finalize its Section 3001-3004 regulations by December 31, 1979. There are many reasons why additional time is required; I will outline the major ones below.

10. Over the last several months, we have decided to make a number of significant changes in the regulations -- both in response to public comment and as a result of receiving new information -- which are likely to require reproposal or partial reproposal of major portions of the Section 3001 and 3004 regulations, including:

The list of hazardous wastes

The criteria for listing wastes as hazardous

The criteria for demonstrating that a listed waste from an individual facility is not hazardous

The contents of petitions for the approval of equivalent sampling, testing, or analytical methods

The regulation of re-used/recovered wastes

The technical standards for landfills, landfarms and surface impoundments

The regulation of storage of waste piles

The regulation of certain special wastes

It is physically impossible to prepare Federal Register notices announcing these reproposals and the background documents to support them, allow a reasonable public comment period (at least thirty days), organize and evaluate the comments received, prepare written responses to comments and revise the regulations, preambles and background documents (while simultaneously finalizing the remainder of the regulations) by December 31, 1979.

11. An estimated fifteen studies and other documents or sets of documents which will be used to support the final

Section 3001 and 3004 regulations will not be completed even in draft form until November or December. We are unable to announce the availability of these materials for comment, allow a reasonable comment period, evaluate the comments received, prepare written responses, and revise the regulations, preambles, background documents and draft reports (while simultaneously finalizing the remainder of the regulations and dealing with the reproposals discussed in ¶10) by December 31, 1979.

12. It has taken us much longer than we originally anticipated to responsibly address the now 1200 sets of public comments (some as long as 1,500 pages and totalling over seven linear feet in length) which have been submitted on the proposed regulations.² As noted in my June 4, 1979, affidavit, this is, to the best of my knowledge, more comments than we have received on any proposed regulation in the history of the Agency. The issues raised in these comments are extraordinarily complex, reflecting the length, complexity and scope of the proposed regulations. For example:

(a) A major issue in developing our hazardous waste regulations has simply been defining what constitutes a "waste". In our December 18, 1978, regulations, EPA proposed to exclude from its definition of "waste" materials which are destined for reuse or recovery (e.g., used solvents sent to a solvent reclaiming facility). Our objective was to create an incentive for resource recovery by relieving legitimate reclamation activities from the burdens of complying with Subtitle C requirements.

² This figure does not include the comments that will be received on the supplemental proposals, reproposals or notices of availability of reports, studies and other documents discussed in ¶¶4, 6, 10 and 11.

Although industry generally supported this approach, many States and environmental groups argued that it would create a substantial loophole in the hazardous waste management system. They contended that wastes going to recovery facilities present the same hazards in storage and transport as wastes going to disposal facilities; that allowing a generator, transporter, treater, storer, or disposer to avoid regulation under Subtitle C simply by stating that a material would be reused would encourage sham "reuses" and allow individuals to improperly store wastes for long periods of time if the wastes were purportedly going to be "reused" at some point in the future; and that there have been serious damage incidents at hazardous waste recovery facilities. We are still trying to figure out how to balance our stated objective with these legitimate environmental and public health concerns.

(b) In our proposed regulations, we exempted from regulation under Subtitle C all generators who produced and disposed of less than 100 kg. of hazardous waste a month, if they disposed of their waste in a permitted Subtitle C facility or a Subtitle D sanitary landfill. This "small generator" exemption provoked hundreds of comments. At one extreme, commenters urged that no exclusion be provided for small quantities of hazardous waste because they may pose environmental or health hazards. At the other end of the spectrum, commenters argued for a broader exclusion (e.g., 1,000 kg. per month) because of the economic impact of the regulations on small business. Still other commenters took a middle of the road course, urging the phase-in of a limitation or a cut-off based on the degree of hazard posed by the waste. How EPA addresses this issue will determine the applicability of the hazardous waste program to an estimated 500,000 small generators of hazardous waste.

EPA is carefully assessing these comments and attempting to develop the information which will enable it to determine who the small generators of hazardous waste are, how they currently manage their wastes, what types of waste they are producing and the economic and environmental/health impacts of establishing various exemption levels. To date, \$600,000 in contract funds and eight work years have been expended to collect this information. Even when our data base is completed, EPA must evaluate it, develop regulatory options, solicit comment on its data/options, review and consider the comments, respond to comments received, and make a final decision.

(c) Another controversial issue in our proposed rules was the requirement that existing surface impoundments treating, storing or disposing of hazardous waste be retrofitted with liners, soil barriers, leachate collection systems, etc., unless the owner/operator of an impoundment could demonstrate that it did not leak. As proposed, this requirement would potentially apply to an estimated 20,000 wastewater treatment lagoons built to meet Clean Water Act requirements.

EPA received widely divergent comments on this section of its regulations. Some commenters contended that EPA had no authority to regulate wastewater treatment lagoons under RCRA, and that even if EPA did have such authority, requiring existing facilities to retrofit to meet RCRA requirements would be prohibitively expensive and would cause many facilities to violate their Clean Water Act discharge permits. Other commenters stated that surface impoundments were a major source of groundwater pollution and should be strictly regulated.

EPA is now thoroughly evaluating these comments, and, through a major contractor/in-house study, collecting data on the number of wastewater treatment lagoons affected by the regulations, the types of liners, soil barriers, etc. which

are currently in place at these facilities, and the cost and practical difficulties of retrofitting these facilities to meet RCRA requirements. As with EPA's small generator study, even when this data base is assembled, EPA must review it, develop regulatory options, solicit public comment on the data/options, review and respond to those comments and reach a final decision. This decision will be complicated by the fact that there are now pending in Congress amendments to RCRA which would modify EPA's authority to regulate these facilities.

13. Although we are learning a great deal from the public comments we have received, responding to these comments has required not only additional data gathering, but also developing and analyzing alternative regulatory approaches (both in isolation and in the context of the entire regulatory program) on literally hundreds of major and minor issues, and preparing a written response to each issue raised.

14. In retrospect, certain of the extraordinary (and therefore untested) emergency procedures which we adopted to meet the December 31, 1979, deadline did not prove to be fully successful, largely because they required us to do too much too quickly. For example, the decisionmaking strategy which we adopted this spring to streamline the development of final regulations (see my June 4, 1979, affidavit) has turned out to be largely unworkable in practice. In attempting to meet our court schedule, we tried to make decisions on major issues in June and July before we had an opportunity to fully analyze those issues and obtain all available data, and before we could examine issues in the content of the entire hazardous waste program. As a result, many of our early decisions are now being re-evaluated in the light of new information. Similarly, our extraordinarily tight internal schedules

for the completion of draft final background documents, regulations and preambles have resulted in the production of documents which my General Counsel has advised me must be significantly improved if the final regulations are to withstand judicial review.

15. As noted in #8 above, the Agency's program to remedy and prevent the health and environmental hazards associated with the improper transportation, storage, treatment and disposal of hazardous waste involves activities other than the development of hazardous waste regulations under RCRA. Not surprisingly, these activities have diverted Agency resources (both personnel and funds) from the job of developing final hazardous waste regulations. For example, the attorneys in the Office of General Counsel who are responsible for overseeing the development of the Section 3001 and 3004 regulations must also review the Section 3005 and 3006 regulations, draft legislation, and provide advice to the Office of Enforcement and assist the Justice Department on the hazardous waste site enforcement effort, as well as provide overall legal counsel on the Agency's solid waste program.

16. As a result of the problems outlined above, I and my Assistant Administrator for Water and Waste Management³ and General Counsel have discussed how we can best maximize our limited resources and rearrange our priorities to produce a defensible, operative hazardous waste program as quickly as possible. We have reached the following conclusions:

³ My former Assistant Administrator for Water and Waste Management, Thomas C. Jorling, left EPA on September 7, 1979, to assume his teaching position at Williams College. In choosing his successor, I have tried, among other things, to select an individual who has a strong track record in dealing with hazardous waste. The man I have designated, Eckhardt C. Beck, was previously EPA's Regional Administrator in EPA Region II, and has been both aggressive and creative in dealing with the serious hazardous waste problems which have arisen in New York (e.g., Love Canal) and New Jersey (e.g., Kin-Buc).

(a) We feel fairly confident that we can finalize our Section 3002 generator standards and Section 3003 transporter standards (as well as our Section 3010 notification regulations, which were not the subject of this lawsuit but are an integral part of the hazardous waste program) by February, 1980. While these regulations would not become operative until we promulgate our Section 3001 regulations, identifying those hazardous wastes which are subject to regulation under Subtitle C, their publication at this time would allow generators and transporters to begin preliminary planning and would permit States to begin preparation of the legislation and regulations needed to allow them to obtain EPA approval of their hazardous waste programs under Section 3006.

(b) Because of the reproposal and data notification requirements discussed in ¶¶10 and 11, we will be unable to promulgate final Section 3001 regulations and final Section 3004 treatment, storage, and disposal standards at the same time as our Section 3002, 3003, and 3010 regulations. We do think it may be possible to finalize portions of the Section 3001 regulations and the interim status standards under Section 3004 by April, 1980. With related portions of the Section 3005 regulations (see Part B of this report), this would allow us to have a meaningful "core" Federal hazardous waste management system in place only four months after the deadline set forth in the Court's January 3, 1979, order. When the regulations become effective (see Section 3010), generators, transporters, treaters, storers, and disposers of the wastes identified in the final Section 3001 regulations will be required to provide notification to EPA under Section 3010. Generators of those wastes will have to begin properly containerizing and labeling their wastes for shipment, maintaining records, and reporting to EPA; transporters will have to

begin safely transporting wastes; the manifest system will be in operation; and owners/operators of treatment, storage, and disposal facilities will have to begin properly storing wastes and meeting EPA's interim status standards, including standards for security, recordkeeping, reporting, visual inspection, training of personnel, contingency plans, closure and financial responsibility.

Congress clearly anticipated that it would take time to issue permits to all treatment, storage and disposal facilities, as evidenced by the provision for "interim status" under Section 3005(e). EPA estimates that this permitting process will take between five and ten years. Thus, while the schedule outlined above does not cover certain portions of the Section 3004 regulations, it would result in the promulgation of those elements of the hazardous waste management program which will have the greatest impact over the short term (and the only elements most facilities would be required to meet for the next several years even if EPA were able to promulgate the remaining portions of the Section 3004 regulations by April, 1980).

(c) We hope to repropose those portions of Section 3001 which require reproposal and are not finalized in April, and the technical standards for treatment, storage and disposal facilities under Section 3004 after the core program is finalized. We are unable to make any meaningful prediction at this time as to when these two sets of supplemental regulations might be promulgated in final form, but expect to do so in our next quarterly report.

17. Bringing the management of hazardous wastes under control has been the greatest challenge of my administration. It is with deep regret that I report these facts to the Court, to Congress, and to the public at large. I wish we could

issue a sound, workable, defensible hazardous waste program by December 31, 1979. For the reasons outlined above, however, I do not believe that is possible. I do believe that the regulatory development schedule which I have set forth above, and which I have discussed in detail with representatives of the major EPA offices involved with this program, represents the best prioritization of our limited resources and time, and will maximize the number of elements of an operative hazardous waste program which we can promulgate within the next year. We will make every effort to meet it.

B. Section 3005 and 3006 Regulations
(Proposed June 14, 1979)

18. In my first quarterly report and June 4, 1979, affidavit, I explained in some detail why it was taking EPA approximately four months longer than we had originally predicted to propose regulations implementing Sections 3005 (procedures for permitting hazardous waste treatment, storage and disposal facilities) and 3006 (standards for approvable State hazardous waste programs) of RCRA. As I stated at that time, much of this delay was attributable to the fact that the Section 3005 and 3006 regulations were being published as part of a consolidated permitting regulation, which attempts to integrate Federal permitting and State permit program approval regulations under Sections 402 and 404 of the Clean Water Act (The National Pollutant Discharge Elimination System (NPDES) permit program and the Section 404 dredge and fill material program), the underground injection control (UIC) program under the Safe Drinking Water Act, the prevention of significant deterioration program under the Clean Air Act, and the hazardous waste program under RCRA. I also noted that while we would try to promulgate final regulations by

December 31, 1979, it "could require until March of 1980" (June 4, 1979, affidavit at ¶11).

19. We have made a great deal of progress in developing these regulations during the last calendar quarter. For example, we held five three-day public hearings on the consolidated permit regulations in July and August and began drafting issue papers based on the oral presentations made at those hearings. The comment period on the regulations closed on September 12, 1979, and we are now beginning to catalogue (with the help of a contractor) and review the 500 plus written comments submitted, and analyze the issues raised.

20. It is clear, however, that we will not be able to finalize these regulations by the end of the year. Based on our preliminary review of public comments, and our experience in promulgating final NPDES regulations last June, our current best estimate of a final promulgation date for these regulations is now April, 1980. This estimate is premised, among other things, on the following considerations:

(a) It took over ten months following proposal to develop the final NPDES regulations on which the consolidated regulations are based. These regulations were also on an expedited schedule.

(b) While we learned a great deal from the development of the final NPDES regulations which can be used to expedite the development of a final consolidated permits package, these gains are largely offset by the greater complexity of the latter regulations. For example, whereas the NPDES regulations involved one section of the Clean Water Act and one EPA office, the consolidated regulations involve two sections of the Clean Water Act, the Safe Drinking Water Act, the Clean Air Act and RCRA, and six separate EPA program offices.

(c) The regulations are quite long (an estimated 500 pages, not including related permit application forms and instructions).

(d) Because of the length of the regulations and the number of EPA headquarters and Regional offices involved, the logistical problems of providing thorough intra-agency review of the regulations are significant. For example, it takes one to two days simply to type a redraft of the regulations, another day to reproduce it for distribution, and several more days to disseminate it to reviewers at headquarters and in the Regions. We estimate that it will take an average of four weeks between each draft to review internal comments and make necessary revisions.

21. I have carefully considered whether it might be possible to promulgate final Section 3005 and 3006 regulations sooner by extricating them from the consolidated permits regulations. However, because a large portion of the consolidated regulations are necessary to implement Sections 3005 and 3006, I do not think there would be any real time gained by breaking off the hazardous waste program from the other environmental programs included in this package. In addition, such a move would frustrate a major goal of EPA's regulatory reform effort -- to better integrate and improve consistency among its permitting programs.

C. Section 4002(b) Guidelines
(Proposed August 28, 1978)

22. EPA issued final Section 4002(b) State solid waste management plan guidelines on July 31, 1979 (44 Fed. Reg. 45066). A copy of these regulations was filed with the Court on August 9, 1979.

D. Section 4004/1008(a)(3) Criteria for
Classification of Solid Waste Disposal
Facilities and Practices
(Proposed February 6, 1978)

23. On September 13, 1979, EPA published sanitary landfill/open dump criteria implementing Sections 4004 and 1008(a)(3) of RCRA (44 Fed. Reg. 53438). A copy of these regulations is attached.

24. Although most of the criteria were published in final form, two portions dealing primarily with sewage sludge disposal -- §257.3-5 (Application to Land Used for the Production of Food Chain Crops) and §257.3-6(b) (Disease: sewage sludge and septic tank pumpings) -- were issued as "interim final" regulations. This means that while these regulations will become effective on October 15, 1979, EPA will take additional public comment on them before issuing a "final final" regulation. The public comment period on these interim final sections closes on November 20, 1979.

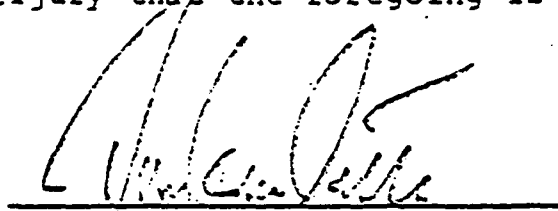
25. On September 13, 1979, EPA also proposed an amendment to §257.3-4 (Groundwater Criteria) of the final regulations which would expand the list of groundwater contaminants regulated. The public comment period on this supplemental proposal will close on November 13, 1979, and a public hearing will be held on the proposal on November 1, 1979.

E. Section 1008(a)(1) Guidelines
(Proposed March 26, 1979)

26. The public comment period on these guidelines closed on May 25, 1979. EPA received very few comments on them, and we expect to promulgate them on or about January 31, 1980, as required by the Court's schedule.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 12, 1979

A handwritten signature in dark ink, appearing to read "Douglas M. Costle", is written over a solid horizontal line. The signature is stylized and cursive.

Douglas M. Costle

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Administrator's Third Quarterly Report, has been hand-delivered or mailed first class postage prepaid this 15th day of October 1979 to each of the following:

Russell R. Eggert, Esquire
Dean Hansell, Esquire
George W. Wolff, Esquire
Environmental Control Division
188 West Randolph, Suite 2315
Chicago, Illinois 60601

William A. Butler, Esquire
Jacqueline H. Warren, Esquire
Environmental Defense Fund
1525 18th Street, N.W.
Washington, D.C. 20036

Bill S. Forcade, Esquire
Robert Goldsmith, Esquire
Citizens for a Better Environment
59 East Van Buren, Suite 2610
Chicago, Illinois 60605

Ellen Weiss, Esquire
Sheldon, Harmon, Roisman and Weiss
1025 15th Street, N.W.
Washington, D.C. 20005

William C. Brashares, Esquire
Richard W. Bowe, Esquire
Cladouhous & Brashares
1750 New York Avenue, N.W.
Washington, D.C. 20006

Thomas H. Truitt, Esquire
Toni K. Golden, Esquire
Wald, Harkrader & Ross
1320 Nineteenth Street, N.W.
Washington, D.C. 20036

John H. Pickering, Esquire
Andrew T.A. Macdonald, Esquire
Wilmer, Cutler & Pickering
1666 K Street, N.W.
Washington, D.C. 20036

Michael K. Glenn, Esquire
Dunnington, Bartholow & Miller
1120 Connecticut Avenue, N.W.
Washington, D.C. 20036

Loren K. Olson, Esquire
John R. Quarles, Jr., Esquire
1800 M Street, N.W.
Washington, D.C. 20036

Stark Ritchie, Esquire
2101 L Street, N.W.
Washington, D.C. 20037

Alan B. Mallohan, Esquire
J. Roy Spradley, Esquire
Rose, Schmidt, Dixon, Hasley,
Whyte & Hardesty
818 Connecticut Avenue
Washington, D.C. 20006

Lawrence A. Demase, Esquire
Ronald S. Cusano
Rose, Schmidt, Dixon, Hasley,
Whyte & Hardesty
900 Oliver Building
Pittsburgh, Pennsylvania 15222

Honorable John Culver
Subcommittee on Resource Protection
Room 4202
Senate Office Building
Washington, D.C. 20510

Honorable Bob Eckhardt
Subcommittee on Oversight and
Investigations
Committee on Interstate and
Foreign Commerce
Rayburn House Office Building
Washington, D.C. 20515

Lisa K. Friedman
Lisa K. Friedman