

Approved JANUARY 30, 1985
Date

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources

The meeting was called to order by Senator Merrill Werts at
Chairperson

8:00 a.m./p.m. on Thursday, January 17, 1985 in room 123-S of the Capitol.

All members were present except:

Committee staff present:

Ramon Powers, Research Department
Don Hayward, Revisor's Office
Rainey Gilliland, Research Department
Nancy Jones, Secretary to the Committee

Conferees appearing before the committee:

Secretary Barbara Sabol, Department of Health and Environment
Dennis Murphy, Department of Health and Environment

Senator Gordon moved that minutes of the January 16, 1985 meeting be approved. Senator Daniels seconded the motion, and the motion carried.

At the request of Senator Arasmith, Chairman Werts presented a bill draft to the Committee regarding fish and game licenses for persons whose age is under 65. Motion was made by Senator Daniels that the bill be introduced. Senator Hayden seconded the motion and the motion carried. (Attachment A).

Secretary Barbara Sabol requested the Committee to introduce a bill on underground injection of hazardous waste (Attachment "B"), Senator Werts explained to the Committee that as a matter of courtesy we introduce bills requested by agencies and asked for a motion to introduce this bill. Senator Hayden made a motion for introduction of the bill and it was seconded by Senator Vidricksen. The motion carried.

Secretary Sabol then began her review of the Kansas Hazardous Waste Management Program (Attachment "C") to bring the Committee current. The department continued its aggressive program of monitoring compliance of the state's hazardous waste statutes and regulations, taking appropriate enforcement action where necessary to achieve compliance. The department has initiated and participated in a significant number of special activities relating to hazardous waste. During the summer and fall, hearings for the Special Committee were held with testimony from a large number of firms which treat and dispose of hazardous waste in Kansas and the message from them was clear: alternative technology for hazardous waste management is presently being utilized on a large scale in Kansas. For overseeing private party cleanups at sites other than NIES, Strother Field and Big River Sand and Gravel Company, the department has requested and the Governor has recommended additional positions and funding for the hazardous waste program in the fiscal year 1986 budget. The department did also adopt rules and regulations necessary for the implementation of the hazardous waste legislation from the 1984 session. A particular focus of educational efforts this year is that businesses being brought into the regulatory program and the department has continued to pursue final authorization from EPA to operate the federal hazardous waste management program. Secretary Sabol said the department is aggressively pursuing the statutory mandates for meeting concerns of hazardous waste and she is pleased with the progress made. The Governor's recommendations for FY 86 will assist them to move forward.

Senator Werts inquired of Secretary Sabol if she believed there should be an absolute ban now or should it be at some date in the future. Secretary Sabol answered that for those generators currently being regulated we should move expeditiously toward full prohibition. Senator Werts asked if there was adequate alternative technology to accommodate all generators right now. The recommendation of Secretary Sabol is that the bill which was passed only by the House last year, and with which the interim committee concurred, would provide that the department move expeditiously in the proper direction, i.e., full prohibition and build in a provision for an exemption which will be given only after the generators demonstrate there is no alternative

Unless specifically noted, the individual remarks recorded herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Energy and Natural Resources,
room 123-S, Statehouse, at 8:00 a.m./~~p.m.~~ on Thursday, January 17, 1985

technology. In answer to the question of private party cleanups, Secretary Sabol stated this is being funded from the \$200,000 cleanup fund appropriated for FY 85.

Senator Martin inquired what it would take to qualify for the national priority list for federal super fund site cleanup assistance. Secretary Sabol said each state makes its request to the federal government and the department identifies those sites they think ought to be on the federal list and the reasons why. There is no guarantee the sites they list will get on the super fund list. Senator Hayden asked if sites were moved up on the priority list with regard to length of time they have been on the list and Secretary Sabol replied that the longevity on the national priority list isn't the triggering factor, rather it is the seriousness of health impact compared with all other sites. She also stated there is no cut off date of sites on the list, also that there is an ongoing process looking for sites that should be on the list.

Dennis Murphy of the Kansas Department of Health and Environment, explained the Resource Conservation and Recovery Act as reauthorized by the 1984 Congress (Attachment "D"), with emphasis on Land Disposal, Small Quantity Generators, Underground Storage Tanks, and other specific provisions. At present it is too early to tell what the total impacts of RCRA reauthorization will be on the hazardous waste management program. Much will depend upon specific regulations developed in response to the statute. Legislative action needed this session is the approval of the agency's budget request for three additional positions to support the RCRA related activities. Mr. Murphy was asked to define hazardous waste and said that basically, it is waste discarded that can cause harm to the populace or environment based on the factors of corrosivity, reactivity, ignitability and toxicity. The Secretary has the authority to determine this and there are a number of materials that are exempted specifically from hazardous waste regulations. Senator Werts asked if there are any geologic zones in this country which would not be offensive to the environment as hazardous waste underground burial sites. Mr. Murphy said that salt zones have been considered by the RCRA and that certain areas with very little ground water or ground water of poor quality are actively being considered for radio active waste disposal. Senator Werts also asked if RCRA recognizes that, as an alternative to land burial in Kansas, where we have aquifers underlying all parts of the state, disposal sites might be established in areas other than Kansas. Mr. Murphy said the total ban applies to all 50 states and the criterion is that land disposal is to be viewed on a national perspective and regional differences have not been allowed in terms of land disposal. He noted that disposal sites for radioactive waste from Wolf Creek are being considered by the NRC in Washington, Nevada and Texas. Mr. Murphy said that used oil is not a problem as it is being recycled and is seen as a resource so is regulated as a special solid waste.

Chairman Werts reminded the committee that joint meetings with the House will be held on January 22, 23, and 24 at 3:30 p.m. and possibly the following Monday and Tuesday for a comprehensive review of the proposed Kansas Water Plan.

Ramon Powers extended an invitation from Representative Fox to committee members to attend the House Energy Committee meeting today at 3:30 p.m. to hear Prof. John Peck of the University of Kansas School of Law review Kansas water law.

Meeting was adjourned at 8:50 a.m.

GUEST LIST

1-17-85

Ed Reincert	Topoka	Ks League of Voters
Pat Schafer	Topoka	Budget
Nancy Ingle	"	Budgets
Chip Wheelers	"	Legis. Policy WMTL
Mary Ann Bumgarner	Lawrence	Sen. Burke-intern
Sharon J. McKeith	"	Kansas Natural Res. Council
Dennis Murphy	Topoka	KDHE
Jersey Conrad	TOPOKA	KG & E

SENATE BILL NO. _____

By Committee on Energy and Natural Resources

AN ACT relating to fish and game; authorizing the issuance of institutional group fishing licenses for facilities licensed by or under the jurisdiction of the secretary of social and rehabilitation services; amending K.S.A. 1984 Supp. 32-104 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. The Kansas fish and game commission shall issue an annual institutional group fishing license to each facility which is operating under the jurisdiction of, or licensed by, the secretary of social and rehabilitation services, and which applies to the commission for such license. All applications shall be made with the approval of the secretary and shall provide such information as the director of the Kansas fish and game commission may require. The fee for an institutional group fishing license shall be \$100 and the license shall expire on December 31 following the date of issuance. Persons that have been admitted to and are currently residing at the facility, not to exceed 20 at any one time, may fish under an institutional group fishing license within the state while on a group trip, outing or other group activity which is supervised by the facility. All persons fishing under an institutional group fishing license shall not be required to obtain a fishing license, but shall be subject to all other laws and to all rules and regulations relating to fishing. The staff personnel of the facility supervising the group trip, outing or other group activity shall exhibit the institutional group fishing license to any game protector or other law enforcement officer upon request.

Sec. 2. K.S.A. 1984 Supp. 32-104 is hereby amended to read as follows: 32-104. (a) No person, except as hereinafter

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ATTACHMENT A

provided, shall hunt, shoot, kill, molest, trap, catch or take in any manner any game bird, or game or fur-bearing animal, or any wild birds or animals, including coyotes, or attempt to take or take any fish during any portion of the year, without first having in possession a license issued to such person, as hereinafter provided, for the calendar year in which such hunting, trapping or fishing is done. A furharvester license shall be required to hunt and trap fur-bearing animals and to trap coyotes, except that any resident individual under 14 years of age and accompanying a person having a furharvester license is hereby authorized to hunt and trap any fur-bearing animal and to trap coyotes without obtaining a furharvester's license. Inmates sentenced to the custody of the secretary of corrections while in honor camps operated by the secretary of corrections and ~~residents--under--the--age--of--21--years--in--institutions--under--the--supervision--of--the--secretary--of--social--and--rehabilitation~~ services shall not be required to obtain a fishing license, pursuant to any agreement by and between the secretary of corrections ~~or--the--secretary--of--social--and--rehabilitation~~ services and the director of the Kansas fish and game commission. It shall be unlawful for any person or persons to sell or ship or offer for sale or shipment any fur-bearing animals or their hides, pelts or furs without first having in possession a furharvester license issued to such person for the calendar year. Nonresidents may sell fur-bearing animals or their hides, pelts or furs legally taken in other states to licensed Kansas fur dealers if such nonresident has been issued and is in possession of a trapping, furharvester or other appropriate license permitting such taking or selling in the issuing state. It shall be unlawful for any person to pursue, shoot at or kill wild birds or animals from an aircraft. It shall also be unlawful to locate, hunt or pursue wild animals or birds from an aircraft, or to give information concerning the location thereof by radio or other mechanical device from an aircraft, during open seasons established by law or rule and regulation for the use of firearms

for hunting deer. Nonresidents participating in field trials for dogs recognized by rule and regulation of the Kansas fish and game commission in Kansas shall not be required to purchase hunting or furharvester licenses. Notwithstanding any provision of this section to the contrary, nonresident minors under 16 years of age shall not be required to obtain a license for the taking of fish.

(b) The Kansas fish and game commission shall adopt rules and regulations to authorize unlicensed individuals to accompany a person having a furharvester license.

Sec. 3. K.S.A. 1984 Supp. 32-104 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

120-5

SENATE BILL _____

(By Committee on Energy and Natural Resources)

AN ACT concerning the underground injection of hazardous waste; amending K.S.A. 1984 Supp. 65-171d, 65-3431 and 65-3439 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 1984 Supp. 65-171d is hereby amended to read as follows:

65-171d.

(a) For the purpose of preventing surface and subsurface water pollution and soil pollution detrimental to public health or to the plant, animal and aquatic life of the state, and to protect beneficial uses of the waters of the state and to require the treatment of sewage predicated upon technologically based effluent limitations, the secretary of health and environment shall make such rules and regulations, including registration of potential sources of pollution, as may in the secretary's judgment be necessary to: (1) Protect the waters of the state from pollution by oil, gas, salt water injection wells, other underground injection wells or underground storage reservoirs; (2) control the disposal, discharge or escape of sewage as defined in K.S.A. 65-164 and amendments thereto, by or from municipalities, corporations, companies, institutions, state agencies, federal agencies or individuals any plants, works or facilities owned or operated, or both, by them; and (3) establish water quality standards for the waters of the state to protect their beneficial uses.

(b) The secretary of health and environment may adopt by reference any regulation relating to water quality and effluent standards promulgated by the federal government pursuant to the provisions of the federal water pollution control act and the 1972 amendments thereto, which the secretary is otherwise authorized by law to adopt.

(c) For the purposes of this act, including K.S.A. 65-161 through 65-171h and amendments to those statutes, pollution means: (1) Such contamination or other alteration of the physical, chemical or biological properties of any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental or injurious to public health, safety or welfare,

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ATTACHMENT B

or to the plant, animal or aquatic life of the state or to other designated beneficial uses; or (2) such discharge as will or is likely to exceed state effluent standards predicated upon technologically based effluent limitations.

(d) In making rules and regulations, the secretary of health and environment taking into account the varying conditions that are probable for each source of sewage and its possible place of disposal, discharge or escape, may provide for varying the control measures required in each case to those the secretary finds to be necessary to prevent pollution. The storage or disposal of salt water, oil or refuse in surface ponds shall be prohibited unless a permit for such storage or disposal shall first be obtained from the secretary of health and environment, and such permit shall be considered as granted unless denied within 10 days. The secretary of health and environment is authorized to deny or revoke a permit for such storage or disposal in any case where the secretary finds such storage is causing or likely to cause pollution. Where a fresh water reservoir or farm pond is privately owned and where complete ownership of land bordering the reservoir is under common private ownership, such fresh water reservoir or farm pond shall be exempt from water quality standards except as it relates to water discharge or seepage from the reservoir to waters of the state, either surface or groundwater, or as it relates to the public health of persons using the reservoir or pond or waters therefrom.

(e) (1) Whenever the secretary of health and environment or the secretary's duly authorized agents shall find that the waters of the state are not being protected from pollution by oil, gas, salt water injection wells, other underground injection wells or underground storage reservoirs or that storage or disposal of salt water, oil or refuse in any surface pond is causing or is likely to cause pollution of soil or waters of the state, the secretary or the secretary's duly authorized agents shall issue an order prohibiting the operation or use of such oil, gas, salt water injection well, other underground injection wells, underground storage reservoir or surface pond. Such order to take effect 10 days after service upon the owner, operator, contractor or agents thereof. Any person aggrieved by such order may within 10 days of service of the order request a hearing on the order.

(2) Hearings may be conducted by the secretary or hearing officers appointed by the secretary. Such hearing officers shall have the power and authority to conduct such hearings in the name of the secretary at any time and place and a record of the proceedings of such hearings shall be taken and filed with the secretary together with findings of fact. On the basis of the evidence produced at the hearing, the secretary shall make findings of fact and conclusions of law and shall give written notice of such findings and conclusions to the alleged violator. The order of the secretary shall be final unless appealed to the courts within 30 days after the order has been made.

(3) Any notice, order or instrument issued by or with the authority of the secretary may be made by mailing a copy of the notice, order or other instrument by registered or certified mail directly to the person affected at such person's last known post office address as shown by the files or records of the secretary.

(4) An appeal may be taken from any final order or final determination of the secretary, by any person adversely affected, to the district court of the county of residence of the appellant. Notice of appeal from any such final order or determination shall be served on the secretary. Failure to serve such notice of appeal within 30 days shall operate as a waiver of the right of appeal. Notice of appeal shall refer to the action of the secretary appealed from and shall specify the grounds for appeal. Copy of the original notice of appeal with proof of service on the secretary shall be filed by the appellant with the clerk of the court within 10 days of the service of the notice and thereupon the court shall have jurisdiction of the appeal. Service of a notice of appeal shall not operate as a stay of the secretary's order. The appellant has the right to apply to the secretary for a stay, which the secretary in the secretary's discretion may grant. Upon receipt by the secretary of the notice of appeal, the secretary shall within 15 days, file with the clerk of the district court a certified transcript of all files and proceedings relating to the order or decision appealed from. The review shall be conducted by the court without a jury and shall be de novo, except that in cases of alleged irregularities in procedure, testimony thereon may be taken in the court. The court may affirm the order or decision of the secretary, or may reverse or modify the order. Appeals may be taken from the order or decision of the district court in the same manner as in other civil cases.

(f) The secretary may adopt rules and regulations establishing fees for the following services:

(1) Plan approval, monitoring and inspecting underground or buried petroleum products storage tanks, for which the annual fee shall not exceed \$5 for each tank in place:

(2) permitting, monitoring and inspecting salt solution mining operators, for which the annual fee shall not exceed \$1,950 per company;

(3) permitting, monitoring and inspecting hydrocarbon storage wells and well systems, for which the annual fee shall not exceed \$1,875 per company; and

(4) permitting, monitoring and inspecting oil and gas lease salt water and oil storage, disposal and emergency facilities, for which the fee shall not exceed \$.012 for each barrel of oil and \$.00036 for each 1,000 cubic feet of gas produced and removed from the lease each month.

(5) For initial review of an application for a hazardous waste underground injection well, the applicant shall submit an application fee of \$25,000 with the permit application. In cases of a permitted facility submitting an application for the construction and operation of an additional well on the permitted site, the permit fee shall not exceed \$10,000. For renewal of a hazardous waste underground injection well permit, the permit holder shall submit a permit renewal fee not to exceed \$10,000, the amount of which shall be determined by the Secretary.

Sec. 2. K.S.A. 1984 Supp. 65-3431 is hereby amended to read as follows: 65-3431.

The secretary is authorized and directed to: (a) Adopt such rules and regulations, standards and procedures relative to hazardous waste management as shall be necessary to protect the public health and environment and enable the secretary to carry out the purposes and provisions of this act.

(b) Report to the legislature on further assistance needed to administer the hazardous waste management program.

(c) Administer the hazardous waste management program pursuant to provisions of this act.

(d) Cooperate with appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out the duties under this act.

(e) Develop a statewide hazardous waste management plan.

(f) Provide technical assistance, including the training of personnel, to industry, local units of government and the hazardous waste management industry to meet the requirements of this act.

(g) Initiate, conduct and support research, demonstration projects, and investigations and coordinate all state agency research programs with applicable federal programs pertaining to hazardous waste management.

(h) Establish policies for effective hazardous waste management.

(i) Authorize issuance of such permits and orders, conduct inspections and collect samples or require information and copy records or data as may be necessary to implement the provisions of this act and the rules and regulations and standards adopted pursuant to this act.

(j) Conduct and contract for research and investigations in the overall area of hazardous waste storage, collection, transportation, treatment, recovery and disposal including, but not limited to, new and novel procedures.

(k) Adopt rules and regulations establishing criteria for identifying the characteristics of hazardous waste and for listing hazardous waste. The secretary shall prepare and keep current a listing of hazardous wastes and set of characteristics based on the rules and regulations adopted pursuant to this subsection. The listing shall identify, but need not be inclusive of, all the hazardous waste subject to the provisions of this act. The criteria for identification and listing shall be consistent with the criteria for identification and listing adopted by the administrator of the United States environmental protection agency under the authority vested in the administrator by the Resource Conservation and Recovery Act of 1976 (42 USC 6921) as amended by the Solid Waste Disposal Act of 1980 (P.L. 94-482, October 21, 1980).

(l) Adopt rules and regulations, establishing: (1) Appropriate measures for monitoring generators, transporters and facilities during operation, closure, and after closure of such facilities to insure compliance with the rules and regulations adopted under this act and any permit issued under this act; (2) procedures to suspend operation of such generators, transporters, or facilities as may be required to protect the public health and safety or the environment; and (3) appropriate measures to insure that any use of a hazardous waste disposal facility after closure will not endanger the public health or safety or the environment.

(m) Adopt rules and regulations establishing standards for hazardous waste generators including, but not limited to, notification of hazardous waste generation, reporting, record keeping, labeling, containerization, source separation, storage, manifests, monitoring, sampling and analysis and manner of filing notifications, reports and manifests.

(n) Adopt rules and regulations prescribing the form of the manifest and requiring such manifest to accompany any hazardous waste collected, transported, treated, recovered or disposed of, and prescribing the contents of the manifest which shall include, but not be limited to the quantity and composition of the hazardous waste, generator, transporter, destination, facility and the manner of signing and filing of the manifest and for the maintenance of records.

(o) Adopt rules and regulations establishing standards for routes and equipment used for transporting hazardous waste within the state with the concurrence of the Kansas department of transportation. Such standards shall be consistent with those of the United States and Kansas departments of transportation, with respect to transportation of hazardous materials. Motor vehicles which are used for the transportation of hazardous waste in accordance with this act shall be exempt from the requirements of K.S.A. 66-1,108 et seq., and amendments thereto, and any rules and regulations adopted thereunder pertaining to routes and the motor vehicle equipment used for the containment of hazardous waste which both shall be under the jurisdiction of the secretary as provided in this act including any rules and regulations adopted thereunder. Otherwise such motor vehicles shall be subject to the requirement of K.S.A. 66-1,108 et seq., and amendments thereto and any rules and regulations adopted thereunder.

(p) Adopt rules and regulations establishing standards for transporters of hazardous waste including, but not limited to, notification of hazardous waste transport, manifests, labeling, record keeping and the filing of reports.

(q) Adopt rules and regulations establishing standards and procedures to protect public health and the environment from any accidental release of hazardous waste into the environment and to insure the prompt correction of any such release and damage resulting therefrom by the person transporting, handling or managing such hazardous waste.

(r) Adopt rules and regulations requiring that, for such period of time as the secretary shall specify, any assignment, sale, conveyance or transfer of all or any part of the real property upon which a hazardous waste treatment, storage or disposal facility is or has been located shall be subject to such terms and conditions as to the use of such property as the secretary shall specify to protect human health and the environment.

(s) Adopt rules and regulations establishing a permit system which includes standards for facilities and procedures for implementation of a permit system for the construction, alteration, or operation of a hazardous waste treatment, storage or disposal facility including, but not limited to, content of applications, evidence of financial responsibility, existing hydrogeological characteristics, environmental assessment, training of personnel, maintenance of operations, qualifications of ownership, continuity of operation, public notification and participation and compliance with those standards established pursuant to subsection (t).

(t) Adopt rules and regulations establishing minimum standards for the design, location, construction, alteration, operation, termination, closing and long-term care of facilities for the treatment, storage or disposal of hazardous waste including, but not limited to, notification of hazardous waste treatment, storage or disposal, general facility standards, contingency plans, emergency procedures, manifest system, record-keeping, inspections, monitoring, reporting, closure and post-closure plans and financial requirements. The operator of the facility shall be responsible for long-term care of the facility for 30 years after closure of the facility except that the secretary may modify the long-term care requirements for any facility when all hazardous waste is removed from the facility at closure. The secretary may extend the long-term care responsibility of any operator of a facility as the secretary may deem necessary to protect the public health and safety or the environment. Any person acquiring rights of possession or operation of any facility permitted by the secretary for the treatment, storage or disposal of hazardous waste at any time after the facility has begun to accept waste and prior to the end of the required period of long-term care shall be subject to all of the requirements, terms and conditions of the permit for the facility including all requirements relating to long-term care of the

facility. The sale or acquisition of a hazardous waste disposal facility during the long-term care period shall be subject to the assignment of long-term care responsibilities as determined by the secretary.

(u) Adopt rules and regulations establishing a schedule of fees to be paid to the secretary by: (1) Permittees operating hazardous waste treatment, storage or disposal facilities; (2) hazardous waste transporters or (3) hazardous waste generators producing or bringing into existence hazardous waste in Kansas. The fees shall be for monitoring facilities both during and after operation, for monitoring generators of hazardous waste in Kansas and for monitoring the transportation of hazardous wastes. The fees shall be sufficient to reimburse the cost of the state in performing these monitoring responsibilities, except that the fee established under this subsection for each hazardous waste disposal facility shall not exceed ~~\$40,000~~ \$25,000 annually. In setting fees, the secretary may exempt those fees which would be payable on treatment processes which recover substantial amounts of either energy or materials from hazardous wastes. The secretary shall remit any moneys collected from such fees to the state treasurer. Upon receipt of any such remittance, the state treasurer shall deposit the entire amount thereof in the state general fund.

(v) (1) Adopt rules and regulations establishing a schedule of fees to be paid to the secretary by permittees operating hazardous waste disposal facilities. In establishing fees, the secretary shall give consideration to degree of hazard, costs of treatment and disposal, estimated future receipts and estimated future expenses to the state for monitoring, maintenance and supervision of the facilities after closure. Fees shall be in an amount not to exceed \$.25 per cubic foot of hazardous waste disposed of. Each permittee, as an advance payment of the fees authorized under this subsection, shall remit to the secretary an amount to be established by the secretary not to exceed \$25,000 upon request and notification by the secretary that an initial application for a permit or initial renewal thereof has been approved, subject to receipt of the advance payment. Commencing with the second renewal, no advance payment shall be required. The advance payment shall constitute a credit against any fee which may be assessed pursuant to this subsection.

(2) The secretary shall remit any money collected pursuant to this subsection to the state treasurer to be deposited in the state treasury and credited to the hazardous waste perpetual care trust fund, which fund is hereby limited to the following uses: (A) Payment of extraordinary costs of monitoring a permitted hazardous waste disposal facility after the responsibility of the operator has terminated; (B) payment of costs of repairing a hazardous waste disposal facility, as a result of a post-closure occurrence which poses a substantial hazard to public health or safety or the the environment. If an expenditure made under this subsection would not have been necessary had the person responsible for the operation or long-term care of the permitted hazardous waste disposal facility complied with the requirements of a plan of operation approved by the secretary when the permit was issued, a course of action in favor of the fund shall be accrued to the state of Kansas against such person, and the secretary shall take such action as is appropriate to enforce this cause of action by recovering any amounts so expended. The net proceeds of any such recovery shall be paid into the fund; and (C) on an emergency basis up to 20% of the balance in the hazardous waste perpetual care trust fund may be allocated for investigation, engineering and construction related to the removal, treatment and disposal of hazardous waste disposed of in any hazardous waste disposal facility closed prior to the date of this act, when such hazardous waste is found to pose an imminent and substantial risk to the public health or safety or the environment.

(3) Effective September 30, 1983, or when the tax on hazardous waste imposed by subtitle C of public law 96-510 becomes applicable, whichever date is later, the secretary shall revise the fee schedule and the fee collected after the effective date shall not be used for the payment of any costs or damages or claims which may be compensated under the comprehensive environmental response, compensation and liability act of 1980, public law 96-510 as in effect on the effective date of this act.

(4) The pooled money investment board may invest and reinvest moneys in the perpetual care trust fund established under this subsection in obligations of the United States or obligations the principal and interest of which are guaranteed by the United States or in interest-bearing time deposits in any commercial bank, or trust company located in Kansas or, if the board determines that it is impossible to deposit such moneys in such time deposits,

in repurchase agreements of less than 30 days' duration with a Kansas bank for direct obligations of, or obligations that are insured as to principal and interest by the United States government or any agency thereof. Any income or interest earned by such investments shall be credited to the hazardous waste perpetual care trust fund.

(5) All expenditures from the hazardous waste perpetual care trust fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this subsection.

(w) Encourage, coordinate or participate in one or more waste exchange clearing houses for the purpose of promoting reuse and recycling of industrial wastes.

(x) Adopt rules and regulations establishing the criteria to specify when a change of principal owners or management of a hazardous waste treatment, storage or disposal facility occurs and under what circumstances and procedures a new permit shall be required to be issued to the transferees of a facility which was permitted to the transferor.

(y) Adopt rules and regulations concerning the types of hazardous waste for which any method, technique or process to recover energy will be considered hazardous waste treatment. Such rules and regulations should specify a minimum heat value of the waste so as to ensure that a legitimate energy recovery will occur and should consider other characteristics of the waste which are appropriate to ensure that such method, technique or process for energy recovery will not pose a threat to the public health or environment.

Sec. 3. K.S.A. 1984 Supp. 65-3439 is hereby amended to read as follows:
65-3439.

(a) Permits for hazardous waste treatment, storage and disposal facilities shall be issued for fixed terms not to exceed 10 years.

(b) Plans, designs and relevant data for the construction of hazardous waste treatment, storage and disposal facilities shall be prepared by a professional engineer licensed to practice in Kansas and shall be submitted to the department for approval prior to the construction, modification or operation of such a facility. In adopting rules and regulations, the

secretary may specify sites, areas of facilities where the environmental impact is minimal and may waive the requirement that plans and designs for on-site storage or treatment facilities be prepared by a professional engineer.

(c) Hazardous waste underground injection wells may be permitted only if deemed the most reasonable disposal methods after consideration of all other options. Factors to be considered in determining the most reasonable method may include, but are not limited to health and environmental effects, alternate treatment and disposal technologies, potential for reuse, and economic impacts. The applicant shall be responsible for providing whatever information the secretary may require to be able to make said determination.

(d) The fluids to be injected by a hazardous waste underground injection well must meet minimum pretreatment requirements that are set by the secretary. The purpose of the pretreatment requirements include protecting public health and the environment if the injection well fluids were to inadvertently enter useable aquifers or surface waters, and encouraging adoption of alternatives to the underground injection of hazardous waste. In addition, pretreatment shall render the injection fluid compatible with the injection tubing and with the disposal formation.

In setting these requirements, the secretary shall consider values 100 times applicable drinking water standards and values 100 times applicable 1×10^{-5} cancer risk levels, or other values necessary to prevent contamination of underground drinking water supplies, to protect the public health, and to take into account environmental and compatibility considerations.

(e) Each permit granted by the secretary, as provided in this act, shall be subject necessary to protect human health and the environment and to conserve the sites. Such conditions shall include approval by the secretary of the types and quantities of hazardous waste allowable for storage, treatment or disposal at the permitted location.

~~(d)~~ (f) Permits granted by the secretary, as provided in this act, shall be revocable or subject to suspension whenever the secretary shall determine that the hazardous waste treatment, storage or disposal facility is, or has been constructed or conducted in violation of this act or the rules and regulations or standards adopted pursuant to the act, or is creating a hazard to the public health or safety or to the environment, or for failure to make payment of any fee to any funds created under this act.

(e) (g) In case any permit is denied, suspended or revoked any person aggrieved by such decision may request a hearing before the secretary in accordance with K.S.A. 65-3440, and amendments thereto.

Sec. 4. K.S.A. 1974 Supp. 65-171d, 65-3431, and 65-3439 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
Testimony on the Kansas Hazardous Waste Management Program
By
Barbara J. Sabol, Secretary
To
Senate Energy and Natural Resources Committee
January 17, 1985

In the time period that has passed since the conclusion of last year's legislative session, much has happened at the state and federal level in the area of hazardous waste management.

At the state level, the department continued its aggressive program of monitoring compliance of the state's hazardous waste statutes and regulations, taking appropriate enforcement action where necessary to achieve compliance, reviewing applications for waste management facility permits, and providing technical assistance to the regulated community and the citizenry as a whole regarding hazardous waste management. In 1984, more than 300 inspections of hazardous waste generators and treatment/storage/disposal facilities were conducted in addition to nearly 300 facility visits which consisted of follow up inspections, complaint investigations, and consultant services. The department also issued seven permits to hazardous waste storage facilities.

In addition to carrying out these program responsibilities, the department has initiated and participated in a significant number of special activities related to hazardous waste.

Many of you participated in the Special Committee on Energy and Natural Resources which met throughout the summer and fall and which recommended Senate Bill No. 1 that would prohibit the land burial of hazardous waste in Kansas unless an exception was granted by a seven member review board. This committee held a full day hearing at which they received testimony from a large number of firms who treat and dispose of hazardous waste in Kansas utilizing alternative technologies - incineration, recycling, treatment, and beneficial reuse. The message they heard was clear: alternative technology for hazardous waste management is presently being utilized on a large scale in Kansas. A prohibition of below ground burial of hazardous waste would further stimulate the development and utilization of alternative technology.

A Hazardous Waste Injection Well Task Force comprised of a wide variety of industrial and public interest groups was convened to make recommendations to the department regarding whether deep well disposal of hazardous waste should be continued, and if so, whether any additional requirements should be imposed on such practices. Their recommendations have been incorporated into recommended statutory changes which will be considered by you during this session. These amendments would provide for application fees and increased monitoring fees for hazardous waste injection wells. They would only allow disposal of hazardous waste via injection wells when no other reasonable alternative exists and would require pretreatment prior to injection in all cases.

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ATTACHMENT C

Investigation and remedial action at hazardous waste problem sites continued to be a major effort of the department. Three additional sites in Kansas have been submitted as candidates for the National Priority List of Superfund sites - NIES, Strother Field, and Big River Sand and Gravel Company. Remedial activities are in various stages of progress at all three of these sites. The department is overseeing private party cleanups at numerous other sites and is presently seeking contractors to perform cleanups at sites where no identifiable, willing, or financially capable responsible party exists. In order to carry out our responsibilities in this area, we have requested additional positions for the hazardous waste program in our fiscal 1986 budget.

The department has also adopted rules and regulations necessary for the implementation of the hazardous waste legislation from the 1984 session and currently has under review by the Department of Administration temporary regulations which would prohibit certain types of hazardous waste from land burial in Kansas.

In the area of technical assistance and information, the department has carried out a substantial amount of educational activities in the past year. Our hazardous waste staff has been in increasing demand as speakers at trade association, public interest group, and professional organization meetings. In addition, we conducted four seminars across the state (Wichita, Chanute, Kansas City, and Dodge City) to update the industrial community regarding changes in the regulatory program for hazardous waste management.

A particular focus of our educational efforts this past year were the businesses being brought into the regulatory program as a result of the phasedown of the small quantity hazardous waste generator exemption limit enacted in H.B. 2740 last session. In June the department mailed out information packets regarding the regulatory requirements and notification forms to 3,000 businesses statewide. This was followed by an information hotline for small quantity generators which was operated through the month of July. The department has also provided speakers to meetings of trade associations representing such businesses and has assisted in the preparation of an article for the Kansas Chamber of Commerce and Industry newsletter. At the recommendation of the Special Committee on Energy and Natural Resources, the department entered into a Memorandum of Understanding with the State Fire Marshal's office to provide assistance in the statewide distribution of a hazardous waste information brochure to describe the state's regulations regarding hazardous waste and a listing of service providers available for waste generators in Kansas.

The department has also continued to pursue final authorization from EPA to operate the federal hazardous waste management program. Although Region VII issued an intent to delegate the program to Kansas in the Federal Register on October 24, 1984, a statutory technicality has been subsequently identified which the department and the regional office of EPA are attempting to resolve in order for the state to receive delegation this month.

At the federal level, the U.S. Congress passed a RCRA reauthorization bill in October which was signed into law by President Reagan on November 8, 1984. This was the only environmental reauthorization bill to emerge from the Congress in 1984 and it expanded the provisions of the existing RCRA extensively. At present it appears that few, if any, substantive changes in our Kansas statutes would be required for us to administer the new provisions of RCRA although their implementation will require a major effort by the U.S. EPA and KDHE.

This has been an overview of hazardous waste activities for the year past. We believe that 1984 was a most productive year and we look forward to the opportunities to carry forth our efforts into 1985.

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT
Testimony on the Reauthorization Bill
for RCRA Enacted by the U.S. Congress in 1984
To
Senate Energy and Natural Resources Committee
January 17, 1985

In 1976 Congress enacted the Resource Conservation and Recovery Act (RCRA). Subtitle C of the act required EPA to develop and promulgate regulations to establish a comprehensive hazardous waste regulatory program. In November, 1980 federal regulations went into effect which were designed to provide "cradle to grave" management of hazardous wastes. The regulations established standards for generators, transporters, and treatment, storage, and disposal facilities for hazardous waste.

In November of 1984, Congress reauthorized RCRA (the only environmental reauthorization bill to emerge from the session) and expanded its provisions extensively. Among the major revisions were: 1) reduction of the federal small quantity generator exemption limit from 1000 kg/month to 100 kg/month, 2) the prohibition of land disposal (land burial and deep well injection) for all hazardous wastes unless EPA determines within specified time frames that continued land disposal of any particular waste will not result in harm to the public health or environment, and 3) the establishment of a leaking underground storage tank program.

Land Disposal

The bill contains a clear statement of national policy in its "Congressional Findings" section: "The Congress finds with respect to the environment and health, that.....to avoid substantial risk to human health and the environment, reliance on land disposal should be minimized or eliminated".

In the section of the bill which addresses land disposal, the language is so detailed that the act reads as if it were a series of regulations rather than an authorizing statute. These and other provisions of the bill appear to reflect congressional response to public concern over EPA's implementation of the original act.

With respect to land disposal of hazardous waste Congress has mandated the following schedule:

- Within 24 months of enactment, EPA must decide whether to ban land disposal of dioxins and solvents, and 8 months later the "California wastes."

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Attachment "D"

-Within 24 months of enactment, EPA must publish a schedule for determining whether to ban the land disposal of all listed hazardous wastes. High hazard/high volume wastes are to be scheduled first.

-EPA must determine whether to ban land disposal (including deep well injection) according to the following schedule:

1/3 of listed wastes in 45 months

2/3 of listed wastes in 55 months

All listed and characteristic wastes in 66 months

Land disposal must be prohibited unless it is demonstrated that there will be no migration from the disposal unit/injection zone for as long as the waste remains hazardous.

A unique feature of the reauthorization bill, and further evidence of Congressional concern regarding EPA's implementation of RCRA, is the "hammer provision." This provision states that if EPA fails to make the determinations for the various hazardous wastes within the allotted time periods, land disposal of such wastes will automatically be prohibited.

Small Quantity Generators

Under the original RCRA, EPA established standards for generators who produced in excess of 1000 kg/month of hazardous waste. Now EPA must promulgate standards for those generators who produce between 100 and 1000 kg/month.

In Kansas, we have regulated those generators producing in excess of 100 kg/month for four years and we are currently regulating at the 75 kg/month generation rate. Therefore, it is anticipated that this provision of the reauthorization bill will have minimal, if any, impact in Kansas.

Underground Storage Tanks

A completely new program under RCRA established in the reauthorization bill is a regulatory control program for underground storage tanks containing petroleum products and hazardous chemical products. Tanks with ten percent or more of their volume underground (including underground piping) will be regulated. Excluded are farm and residential tanks storing motor fuels, septic tanks, pipelines regulated under other acts, surface impoundments, stormwater and wastewater collection systems, and flow-through process tanks.

The first phase of the program entails a notification process according to the following schedule:

-Within 6 months the states are to identify the agency responsible for receiving the notification forms.

-Within 12 months the owners of currently used tanks are to notify the designated state agency.

-Within 18 months the owners of tanks taken out of operation within the past 10 years are to notify the designated state agency.

The second phase of the program requires the development of technical standards for petroleum tanks within 27 months, for new non-petroleum tanks within 33 months, and existing non-petroleum tanks within 45 months. For existing tanks the regulations must include requirements for:

- leak detection or inventory control and tank testing
- recordkeeping and reporting
- corrective action
- financial responsibility for corrective action and third party liability

For new tanks the regulations must include requirements for:

- design, construction and installation
- release detection
- compatibility standards

Although we presently operate an underground storage tank program for petroleum tanks in Kansas, the specific impacts of this program will not be known until the implementing regulations are promulgated by EPA. At present, we are working with the Region VII office to provide input to EPA headquarters prior to their development of the regulations. During 1985-1988 the Congress has authorized \$100 million to be utilized for state grants to operate the program.

Other Provisions

There are a large number of other revisions to RCRA in the reauthorization bill:

- Requirements to retrofit existing hazardous waste surface impoundments with double liners and leachate collection systems.
- All hazardous waste facility permits must address any releases of hazardous waste from the facility and require owners/operators to provide financial assurance to ensure cleanup of such releases.
- Generators must certify that the volume and/or quantity and toxicity of their hazardous waste has been reduced to the maximum degree economically practicable.

-Within 12 months EPA must propose whether to list used automotive oil as a hazardous waste and within 24 months make a final determination.

-A groundwater commission is established to assess groundwater issues and submit several reports to Congress.

Several other provisions are enumerated in the attached "EPA Staff Summary of 1984 Amendments to RCRA."

At present, it is too early to tell what the total impacts of the RCRA reauthorization bill will be on the hazardous waste management program. Much will depend upon the specific regulations developed in response to the statute. However, it does not appear that additional statutory authority will be needed in Kansas, with the possible exception of the underground storage tank program.

If Senate Bill No. 1 is enacted, land burial of hazardous waste will be prohibited in Kansas. We are already regulating the hazardous waste generators who will be brought into the federal system at the 100 kg/month generation level. We also have existing statutory authority to regulate underground tanks. It also appears that the department has sufficient authority to carry out all other provisions of the act if the decision is made to pursue authorization to administer them in lieu of EPA.

This has been a brief overview of a very extensive statute and your attention is directed to the attached "EPA Staff Summary of 1984 Amendments to RCRA" for more details regarding its provisions. The RCRA reauthorization bill is a complex piece of legislation and its implementation will require a major effort by the EPA and state regulatory agencies. The legislative action needed this session is the approval of the agency's budget request for three additional positions to support our RCRA-related activities: 1) an additional person to provide inspection and oversight of the businesses newly regulated due to the phasedown of the state's small quantity exemption limit, 2) an additional person to review and evaluate permit applications for hazardous waste treatment, storage, and disposal facilities, and 3) one position to track shipments of hazardous waste from point of generation to point of ultimate disposal by monitoring the hazardous waste manifests in Kansas. These positions were needed prior to RCRA reauthorization; that need is now reinforced by the reauthorization and the workload it will generate.

EPA STAFF SUMMARY OF 1984 AMENDMENTS TO RESOURCE CONSERVATION AND RECOVERY ACT

(Dated Oct. 9, 1984)

1. SMALL QUANTITY GENERATORS (SQGs)

a. Management Standards:

— by March 31, 1986, EPA Must promulgate standards for waste generated in quantities greater than 100 and less than 1000 kg/month. The standards may vary from the conventional Subtitle C regulations, but must protect human health and the environment (HH&E).

— until the effective date of the standards, within 270 days of enactment, SQG waste that is not managed at a permitted Subtitle C facility may be disposed of only at a State-approved municipal or industrial facility.

— at a minimum, the standards must provide that: (1) on-site storage may occur for 180 days without a permit,* and (2) all other management of SQG waste must occur at a Subtitle C facility.

— if EPA fails to promulgate standards on time, SQG waste generated above 100 kg/month becomes subject to the "minimum" requirements described above plus the following: exception reports, and retention of manifests for three years.

b. *Manifest*: Within 270 days of enactment, waste generated in quantities between 100 and 1000 kg/mth [sic] must be accompanied by a Uniform Manifest.

c. Reports to Congress:

— By April 1, 1985, EPA must submit a study characterizing the generators, wastes, practices, and the risks posed by wastes generated in quantities less than 1000 kg/mth.

— By April 1, 1987, EPA must submit studies on (1) the feasibility of establishing a licensing system whereby transporters assume the responsibilities of SQGs, (2) the merits of retaining the existing manifest system for SQG waste, and (3) the problems associated with the disposal of hazardous waste generated by educational institutions.

d. *Public Education*: Within 30 months of enactment, EPA must inform SQGs of their responsibilities under the 1984 amendments. \$500,000/year is authorized for FY 1985 through 1987 to perform this task.

2. "BANNED WASTE"

a. Decision Rule:

—The land disposal of a hazardous waste must be banned unless EPA determines that the prohibition of one or methods of land disposal is not required in order to protect HH&E. A method of land disposal may not be determined to be protective of HH&E unless a petitioner demonstrates there will be no migration from the disposal unit/injection zone for as long as the waste remains hazardous.

—EPA must promulgate regulations specifying levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste such that threats to HH&E are minimized.

* The onsite storage period may be extended to 270 days for waste that must be transported more than 200 miles, provided that no more than 6000 kgs of such waste is stored during this period.

"Otherwise banned" wastes so treated are exempt from the ban.

b. Schedule:

—Other than for disposal in injection wells, EPA must decide whether to ban the land disposal of dioxins and solvents within 24 months of enactment, and 8 months later, the "California wastes." The decision whether to ban these wastes from injection wells must be made within 45 months of enactment.

—Within 24 mths of enactment, EPA must publish a schedule for determining whether to ban the land disposal of listed hazardous wastes. High hazard/high volume wastes must be scheduled first. The schedule is not subject to paperwork reduction or judicial review.

—EPA must determine whether to ban the land disposal of wastes according to the following schedule:

1/3 of listed wastes in 45 mths

2/3 of listed wastes in 55 mths

All listed & characteristic wastes in 66 mths

Wastes listed after enactment, 6 mths after listing

c. Variances:

The prohibitions are effective immediately unless:

—another date is selected because, on a national scale, alternative capacity is unavailable. The furthest the effective date can be extended is two years.

—a variance is granted to an individual facility. Variances can be granted for one year, and renewed for an additional year, upon a showing of a binding contractual commitment to construct or provide alternative capacity.

—For the duration of the variances, disposal of waste in a landfill or surface impoundment must be conducted at a facility in compliance with the minimum technology reqt's [sic] described below in §6(a).

The prohibitions for dioxins, solvents and the California wastes do not apply for 45 months to contaminated debris from cleanup and removal actions.

d. Hammer:

—If EPA fails to make a determination during the allotted time for the California wastes, dioxins, solvents, the characteristic wastes and the "last third" of the listed wastes, land disposal of such waste is prohibited.

—If EPA fails to make a determination during the allotted time for the "first and second thirds" of the listed wastes, disposal in a landfill or surface impoundment must be conducted only if (1) the generator certifies that there is no alternative capacity available, and (2) disposal takes place at a facility in compliance with the minimum technology reqt's. However, if EPA fails to make a determination for these wastes within 66 months of enactment, land disposal of such waste is prohibited.

3. OTHER LAND DISPOSAL RESTRICTIONS

a. Liquids in Landfills:

— within 6 months of enactment, the landfilling of hazardous or non-containerized liquids is prohibited.

— within 12 months of enactment, the disposal of nonhazardous liquids is prohibited in Subtitle C facilities unless the only reasonable alternative is disposal in a Subtitle C landfill or unlined impoundment that complies with the following requirements:

or may contain hazardous waste, and such disposal will not endanger a USDW.

— within 15 months of enactment, EPA must promulgate regulations that minimize the landfilling of containerized hazardous liquids, and prohibit the landfilling of liquids absorbed in materials that biodegrade or release liquids when compressed.

b. *Salt Domes:*

— the placement of bulk liquids in salt domes, salt beds, underground mines or caves is prohibited until EPA promulgates rules for such placement, and the facility receives a permit.

— the placement of containerized hazardous waste is prohibited in these places until the facility receives a permit.

— the Waste Isolation Pilot Project in New Mexico is not subject to these restrictions.

c. *Dust Suppressants:* waste oil contaminated with hazardous wastes (except ignitable wastes) cannot be used as a dust suppressant.

d. *Waste Injection:* within six months of enactment (or sooner if the State has primacy and such a requirement), hazardous waste cannot be injected into or above any formation which contains, within 1/4 mile of the well, a USDW unless the injection is part of a cleanup action under CERCLA or RCRA that meets certain conditions. The provision is to be enforced under RCRA until the State/EPA has established a UIC program under SDWA.

4. RETROFITTING SURFACE IMPOUNDMENTS

a. *Requirement:* Interim status impoundments must either comply with the double-liner, leachate collection and groundwater monitoring req'ts for new impoundments described below in #6(a), or stop receiving, storing or treating hazardous waste.

b. *Compliance Date:*

— within 4 years of enactment for impoundments that now have interim status

— within 4 years of the date an impoundment becomes subject to Subtitle C

— for "exempted impoundments" other than wastewater impoundments that no longer qualify for the exemption, within 2 years of discovering the condition that caused the disqualification. Subsequently "disqualified" wastewater impoundments have three years to retrofit.

c. *Exemptions:*

— impoundments that (1) are not located within 1/4 mile of a USEW, (2) have at least one liner that complies with the current Part 264 standards for new impoundments* and for which there is no evidence the liner is leaking, and (3) are in compliance with the Part 264 groundwater monitoring requirements.

— wastewater impoundments conducting "aggressive" biological treatment (and downstream impoundments) that are:

- (i) subject to a §402 CWA permit, and
- (ii) in compliance with the Part 264 groundwater monitoring requirements, and

(iii) are part of a facility in compliance with BAT effluent guidelines, or where no BAT guideline is applicable, and the facility is not implementing BAT based on a BPJ permit, the impoundment is part of a facility with a §402 CWA permit which is achieving a significant degradation of hazardous pollutants and hazardous constituents in the untreated wastestream.

— impoundments that are designed, located and operated to prevent the migration of any hazardous constituent into the ground water or surface water at any future time and for which, after notice and comment, EPA has modified the retrofitting requirement. EPA must take into account the locational criteria for vulnerable hydrogeology when determining whether to modify the retrofitting requirement.

— impoundments for which, prior to the date of enactment, EPA or an authorized state has entered into a consent decree, order, or agreement which mandates corrective action and provides protection of HH&E equivalent to a double-liner and leachate collection.

d. *Override:*

— If EPA determines an "exempted" impoundment is likely to leak hazardous constituents to groundwater, it may impose any requirement necessary to protect HH&E, including retrofitting. "Leakage" is defined as any statistically significant increase over background.

— An exempted impoundment other than a wastewater impoundment that is found to be leaking, or otherwise no longer qualifies for the exemption, must be retrofitted.

— An exempted wastewater impoundment that is found to be leaking must be retrofitted unless EPA determines within 3 years of enactment that retrofitting is not necessary to protect HH&E.

e. *Procedures for Obtaining an Exemption:* in general, owners or operators must:

- apply within 24 months of enactment
- submit a Part B application and supply groundwater monitoring data and all reasonably ascertainable evidence on whether the impoundment is leaking
- supply a certification by a registered professional engineer that the impoundment meets the applicable criteria for the variance

EPA must provide for notice and comment, and process the application within 12 months of receipt.

e. *Study:* EPA must submit a Report to Congress on the environmental consequences of the exemption for wastewater impoundments, and on the feasibility and cost of deleting it.

5. STORAGE OF BANNED WASTE

Surface impoundments that store or treat hazardous wastes banned from land disposal units must:

- remove hazardous treatment residues within 1 year of the waste's placement in the impoundment,
- comply with the requirements for new impoundments described below in #6(a), unless the impoundment meets the conditions for a waiver from the retrofitting requirement (see #4 above), and
- be solely for the purpose of accumulating sufficient quantities to facilitate proper subsequent management.

6. MINIMUM TECHNOLOGY STANDARDS

a. *New Land Disposal Facilities:*

* Impoundments with clay liners must close as storage impoundments.

- a landfill unit or impoundment for which a Part B application has not been received by the date of enactment must have a double liner with leachate collection above (for landfills) and between the liners, and monitor ground water.

- within two years of enactment, EPA must promulgate implementing regulations or issue guidance documents. In the meantime, the double liner requirement may be satisfied by installing a synthetic/clay liner system that meets certain specifications.

- a variance from the double-liner requirement is provided:

- (1) where the owner/operator can demonstrate that an alternative design, together with location characteristics, is as effective in preventing migration of hazardous constituents to ground water. (The variance, however, is not available to landfills in Alabama.)

- (2) for monofills containing foundry wastes that meet certain conditions.

b. Interim Status Land Disposal Facilities:

- expansions & replacements of interim status landfills, impoundments and piles that receive waste six months after enactment are subject to the requirements for double-liners and leachate collection applicable to new landfills, impoundments & piles.

- owner/operator's of such landfills and impoundments must notify EPA sixty days before the unit receives waste, and submit a Part B application six months thereafter.

- EPA may not require owner/operator's of interim status units who installed double-liner systems in good faith compliance with regulations/guidance documents to alter these systems in order to receive a permit. However, EPA is not precluded from requiring that a new liner be installed where it has reason to believe the existing liner is leaking.

- interim status landfills, impoundments, land treatment facilities and piles that received waste after 7/26/82 are subject to the requirements for groundwater monitoring, unsaturated zone monitoring and corrective action applicable to new landfills, impoundments, land treatment facilities and piles.

c. New Incinerators: incinerators receiving permits after the date of enactment must achieve a 99.99 percent DRE.

d. Other New Requirements:

- Within 18 months of enactment, EPA must publish guidance criteria identifying areas of vulnerable hydrogeology. EPA must also write regulations for the acceptable location of new & existing hazardous waste facilities.

- within 30 months of enactment, EPA must promulgate standards for leak detection and air emissions.

7. GROUNDWATER MONITORING

The Part 264/5 variance from the groundwater monitoring standards for certain double lined facilities is eliminated. EPA is authorized to exempt from the groundwater monitoring requirements land disposal units that are both designed to prevent liquids from entering the unit & equipped with multiple leak detection systems.

8. CORRECTIVE ACTION

a. Financial Responsibility: EPA must promulgate regulations that require evidence of financial responsibility for corrective action.

b. Beyond the Facility Boundary: As soon as practicable, EPA must amend the hazardous waste regulations to require that corrective action be taken beyond the facility boundary. The regulations take effect immediately upon promulgation, and apply to all permitted facilities and interim status landfills, impoundments and piles that received waste after 7/26/82. Until the regulations are promulgated, EPA must issue corrective action orders on a case-by-case basis as necessary to protect HH&E.

c. Prior Releases: all permits issued after the date of enactment must address releases of hazardous waste or constituents from any solid waste management unit, regardless of when the waste was placed in the unit, or whether the unit is closed. Owners/operators must provide financial assurance to ensure cleanup of such releases.

d. Abatement Order: EPA is authorized to issue an administrative order requiring corrective action for releases of hazardous waste from interim status facilities, and to commence a civil action for appropriate relief.

9. PERMITS

a. Permit Life: Permits must be renewed every 10 years, and land disposal permits must be reviewed every 5 years. Permit renewals are subject to regulations applicable to new permits, and must reflect improvements in the state of control and measurement technology.

b. Permit Application Timetable: Interim status terminates for a facility unless a Part B application is submitted according to the following schedule:

Facility	Interim Status	Unless Part B
	Terminates	Submitted
Land disposal	Oct. '85	Oct. '85
Incinerators	Oct. '89	Oct. '86
Other facilities	Oct. '92	Oct. '88

Land disposal owner/operator's must also certify that they are in compliance with the groundwater monitoring and financial responsibility requirements in order to retain interim status.

d. Permit Decision Timetable: EPA or the States must process permit applications within 4, 5 & 8 years of the date of enactment for land disposal units, incinerators & other facilities, respectively.

e. R & D Facilities: EPA is authorized to issue temporary permits for experimental facilities without first issuing permitting standards under §3004. The permits are limited to one year, but are renewable each year for up to four years.

f. Interim Status for Newly Listed Waste: interim status is granted to facilities that become subject to Subtitle C as a result of the 1984 amendments or implementing regulations.

g. Construction Ban: a permit is required before construction of a hazardous waste facility can begin, except for PCB incinerators approved under TSCA.

10. EXPOSURE ASSESSMENTS

Within nine months of enactment, permit applications for landfills and surface impoundments must be accompanied by an assessment of the potential for the public to be exposed to hazardous substances released from these units. Facilities whose applications have already been submitted to EPA or authorized State have nine months to submit the

assessment. ATSDR is to conduct health assessments of communities surrounding those facilities where the exposure assessment indicates the presence of a substantial risk. The health assessments are to be funded from EPA's RCRA appropriation; the funds can be recovered under §107 of CERCLA for facilities found to be contributing to a release of a hazardous substance.

11. WASTE MINIMIZATION

a. *Manifests*: After September 1, 1985, manifests must contain a generator certification that the volume and or quantity and toxicity of the waste has been reduced to the maximum degree economically practicable, and the method used to manage the waste minimizes risk to the extent practicable.

b. *Generator Reports*: Biennial reports must indicate efforts to reduce waste volume and the reduction actually achieved.

c. *Permits*: After September 1, 1985, as a condition for an on-site permit, the generator must certify at least annually the same information described under "b" above.

d. *Study*: By October 1, 1986, EPA must submit a Report to Congress on the feasibility and desirability of establishing waste minimization regulations.

12. LISTINGS & OTHER MEASURES TO ADD NEW WASTES

a. *Additional Listings*: EPA must determine whether to list the following wastes within the following dates of enactment:

- 6 months: chlorinated dioxins and dibenzofurans
- 12 months: other halogenated dioxins and dibenzofurans
- 15 months: coal slurry pipeline effluent, coke byproducts, chlorinated aliphatics, dioxin, dimethyl hydrazine, TDI, carbamates, bromacil, linuron, organobromines, solvents, refining wastes, chlorinated aromatics, dyes and pigments, inorganic wastes, lithium batteries & paint production wastes.

In addition, EPA and ATSDR must identify or list hazardous wastes that are hazardous solely because they contain recognized hazardous constituents (e.g., known carcinogens) at levels exceeding those at which human health is endangered.

b. *Additional Characteristics*: within 2 years of enactment, EPA must identify additional characteristics, including measures of toxicity.

c. *EP Toxicity*: within 28 months of enactment, EPA must select a media that accurately predicts the leaching potential of wastes which pose a threat to HH&E when mismanaged.

13. DELISTINGS

a. *Additional Factors*: EPA must consider factors in addition to those for which the waste was listed when processing delisting petitions, and must provide notice and comment before making such decisions.

b. *Deadlines*: temporary delistings not finalized within 24 months of enactment lapse. To the extent practical, new petitions must be processed within 24 mths of the date EPA receives a complete application. Temporary exclusions are prohibited without prior notice and comment.

14. BURNING/BLENDING

a. *Regulations*:

- within 15 months of enactment, persons who produce, burn, and distribute/market hazardous waste-derived fuel must notify EPA.

- within 15 months of enactment, EPA must promulgate recordkeeping requirements for these persons.

- within 2 years of enactment, EPA must promulgate technical stds for these persons and for persons who transport such fuel.

b. *Labeling*: within 90 days of enactment, invoices for hazardous waste-derived fuel must have a warning label, except for fuels from petroleum refining operations where oil-containing hazardous wastes from the refining process are reintroduced to the process.

c. *Cement Kilns*: until the regulations in "a" are promulgated, certain cement kilns cannot burn hazardous waste-derived fuel unless they comply with the incinerator standards.

d. *Petroleum Coke*: hazardous-waste derived coke is exempt from the labeling and recordkeeping requirements and the regulations for producers, burners, and distributors, provided the coke is derived from on-site refinery wastes and does not meet any of the listing characteristics.

e. *"De minimis" Exemption*: EPA may exempt from these same requirements facilities burning "de minimis" quantities of hazardous waste provided they meet certain requirements.

15. USED OIL

a. *Listing*: within 12 months of enactment, EPA must propose whether to list used automotive oil as a hazardous waste and, within 24 months, make a final determination regarding automotive and other used oil.

b. *Performance Standard*: the performance standard for the used oil regulations under §3014 is to protect human health and the environment (as well as to promote recycling).

c. *Regulations*: recycled used oil is exempt from the §§3002 and 3003 standards for generators and transporters. Instead, EPA must promulgate within 24 months of enactment special standards for these persons, and must subject recyclers to the conventional §3004 standards.

c. *Manifest*: generators who enter into an agreement to deliver used oil to a permitted recycling facility are exempt from the manifest requirements, provided the generator does not mix hazardous waste with the oil and keeps records as the Administrator deems necessary.

d. *Permits*: EPA is authorized to avoid issuance of permits for certain generators and transporters that treat or recycle used oil, but retains the discretion to require individual permits.

16. BURNING OF MUNICIPAL SOLID WASTE

a. *Household Waste Exclusion*: the burning of municipal solid waste at a resource recovery facility is exempt from the Subtitle C reqts provided that the o/o takes certain precautions to ensure that hazardous wastes are not burned at the facility.

b. *Dioxin Emissions Study*: as soon as practicable, EPA must submit a Report to Congress on the risk of dioxin emissions from resource recovery facilities that burn municipal solid wastes, and on operating practices appropriate to controlling such emissions.

17. DOMESTIC SEWAGE

a. *Pretreatment Study and Regulations*: within 15 months of enactment, EPA must report to Congress on hazardous wastes exempt from Subtitle C because they are mixed with domestic sewage or other wastes that pass

through a sewer to a POTW. Then, within 18 months, EPA must promulgate rules to assure that these wastes are adequately controlled to protect human health and the environment.

b. *Wastewater Lagoon Study*: within 36 months of enactment, EPA must submit a Report to Congress on wastewater lagoons at POTWs and their effect on ground water.

c. §§3007 and 3010(a): The inspection and notification requirements of RCRA apply to solid or dissolved materials in domestic sewage in the same way they apply to other hazardous wastes.

18. HAZARDOUS WASTE EXPORTS

Within 24 months of enactment, no person may export hazardous waste unless: (1) they have filed a notification, (2) the receiving country has agreed in writing to accept the waste, (3) a copy of the consent is attached to the manifest, and (4) the shipment conforms to the terms of the consent. Within 12 months of enactment, EPA must promulgate implementing regulations. (1)-(4) does not apply if there exists a bilateral agreement between the U.S. and the gov't of the receiving country establishing hazardous waste export procedures. Exporters must file annual reports to EPA.

19. MINING WASTE, UTILITY WASTES & CEMENT KILN DUST

EPA is authorized to modify certain requirements for these wastes to take into account the special characteristics of the waste and the site, provided that HH&E is protected. This discretion is restricted to three aspects of the Section 3004 requirements for landfills and surface impoundments: double-liners (including the retrofitting requirement for surface impoundments), prior releases and the land disposal restrictions.

20. URANIUM MILL TAILINGS

The regulations under UMTRCA for mill tailings need not be modified to reflect the requirements of the 1984 RCRA amendments.

21. EFFECTIVE DATES

EPA may provide for an effective date shorter than six months in certain circumstances.

22. STATE IMPLEMENTATION

a. *Moving Target*: The set of standards against which States must be measured to receive final authorization is "fixed" to standards in effect either prior to the State's application or 1 23 83, whichever is later.

b. *Available Information*: To obtain or maintain authorization, States must make available to the public information they have obtained on TSDFs to the extent such information would be available if EPA were running the program.

c. *Deadline*: The deadline to obtain final authorization is extended by one year.

d. *Requirements in Authorized States*: Any requirement imposed under the 1984 amendments applies immediately in authorized States until the States' programs are revised to incorporate the requirements. EPA is to administer the requirements until the States receive authorization; States with provisions substantially equivalent to the new requirements may apply for interim authorization to administer the requirements in lieu of EPA.

e. *Cooperative Agreements*: EPA is authorized to enter into cooperative agreements with States to assist in the administration of the 1984 amendments. EPA is also author-

ized to jointly issue permits with the States for those reqts not yet incorporated into the State's program.

f. *Manifests*: States are authorized to require that copies of manifests for intra-State shipments be sent to them.

23. SUBTITLE D CRITERIA

a. *Study*: within 36 months of enactment, EPA must submit a Report to Congress determining whether the §§1008(a) and 4004 criteria are adequate to protect HH&E from groundwater contamination, and recommending whether add'l authorities are needed to enforce them.

b. *Criteria*: By March 31, 1988, EPA must revise the criteria for facilities that may receive hazardous household or SQG waste. The criteria must protect HH&E, and may take into account the practicable capability of the facilities. At a minimum, EPA should require groundwater monitoring, establish location criteria, and provide for corrective action where appropriate.

c. *State Programs*:

— within 36 months of enactment, each State must develop a program to ensure that municipal facilities comply with the existing criteria. Within 18 months of promulgation of the revised criteria, States must develop a program to ensure compliance with the criteria. If States fail to do so, EPA may enforce them.

— \$15MM of the 1985 appropriation for State grants, and \$20 MM/yr of the 1986-88 appropriation can be used to implement the criteria.

24. OTHER SUBTITLE D RELATED PROVISIONS

a. *Energy Recovery Facilities*: State solid waste plans for waste-to-energy facilities must consider the present and future needs of the recycling and resource recovery interests within the area, including those created by the implementation of §6002.

b. *Municipal Landfill Study*: By October 1, 1986, EPA must submit a Report to Congress on methods for extending the useful life of sanitary landfills and for putting to more efficient use closed landfills.

25. PROCUREMENT GUIDELINES

Each procuring agency is required to develop a program to promote the preferential purchase of items containing recovered materials. EPA must promulgate guidelines for paper within 180 days of enactment, and for 3 additional products (including tires) by October 1, 1985. The Office of Procurement Policy must submit biennial Reports to Congress on the federal government's progress promoting the use of recovered materials.

26. INVENTORY OF UNDERGROUND INJECTION WELLS

Within 6 months of enactment, EPA must submit to Congress an inventory of hazardous waste injection wells, including specified information.

27. INVENTORY OF FEDERAL FACILITIES

Each Federal Agency must submit biennially to EPA an inventory of each TSDF it owns/operates or owned/operated. Agencies need not resubmit information already submitted under §103 of CERCLA or §§3005 and 3010 of RCRA. EPA must conduct the inventory where Federal agencies fail to do so.

28. INSPECTIONS

a. *Private & State Facilities:* EPA must inspect each hazardous waste facility operated by a State or municipality annually. At least every two years, EPA (or authorized States) must inspect privately-operated facilities, with EPA promulgating within one year of enactment procedures for conducting these inspections. Within 6 months of enactment, EPA must submit a Report to Congress on the merits of using private inspectors to supplement government inspections.

b. *Federal Facilities:* EPA must, and authorized States may inspect each federally owned or operated TSD facility annually.

29. FEDERAL ENFORCEMENT

a. *Civil Penalties:* EPA is authorized to assess civil penalties administratively for past as well as present violations of RCRA.

b. *Criminal Provisions:* The maximum criminal penalties are raised and the list of actions that qualify as a crime is expanded to include, among other things, violations of interim status standards, failure to file required reports, & transportation of hazardous waste without a manifest. The list of actions subject to the "knowing endangerment" provision of §3008(e) is also expanded.

c. *Special Marshalls:* The Attorney General is authorized to deputize EPA employees to act as special marshalls in RCRA criminal investigations.

d. *EPA-initiated Investigations:* EPA is authorized to conduct criminal investigations, and to refer the results to the Attorney General for prosecution.

e. *Employee Liability:* The criminal provisions of §3008(d) apply not only to persons required to obtain a RCRA permit, but also to persons who knowingly violate any material requirement of the permit (e.g., employees of the owner/operator).

30. COURT AUTHORITY

a. *Attorneys Fees:* Payment of fees is limited to "prevailing or substantially prevailing parties."

b. *Judicial Review:* Defendants in enforcement proceedings cannot challenge permit terms and conditions or State program provisions that could have been challenged at the time of permit issuance.

31. CITIZENS RIGHTS

a. *Citizen Suits:*

— Citizens are authorized to bring actions under §7003 in cases where past or present management of hazardous waste presents an imminent hazard. This right is circumscribed in several ways (e.g., where EPA or the State is diligently bringing and prosecuting an action under §7003 of RCRA or §106 of CERCLA, or has settled the action by entering into a consent decree).

— Common carriers are immunized from citizen suits for imminent hazards arising after shipments are delivered to the consignee.

— Citizens are authorized to bring an action against persons engaged in open dump activities.

b. *Imminent Hazard:* Section 7003 applies to past generators and to situations or sites where past acts or failures to act may have contributed to a present endangerment to HH&E. The Administrator is prevented from bringing an action against common carriers for imminent hazards arising after delivery of the shipment to the consignee.

c. *Immediate Notice:* EPA must notify local officials and post a sign at sites posing an imminent and substantial threat to HH&E.

d. *Public Participation:* EPA must provide for public notice and comment before entering into a settlement or covenant not to sue under §7003.

e. *Ombudsman:* EPA must establish an Office of Ombudsman to provide information, receive complaints and assist in their resolution. The Office terminates four years after enactment.

32. DIRECT ACTION

Claimants are provided with the right of a direct action against guarantors, guarantors may invoke as a defense the terms and conditions of the guarantor's insurance policy with the o/o, and the guarantor's liability under RCRA is limited to the amount the guarantor provided as evidence of financial responsibility to the owner/operator.

33. GROUNDWATER COMMISSION:

A groundwater commission is established until January 1, 1987 to assess groundwater issues and to submit several Reports to Congress. \$7MM is authorized for 1985-87 to carry out the Commission's responsibilities.

34. UNDERGROUND TANKS.

By March 1, 1985, EPA must issue regulations under Subtitle C of RCRA for underground tanks containing hazardous wastes.* In addition, Subtitle I is added to RCRA to establish a program to control underground tanks containing "regulated substances" (i.e., petroleum and CERCLA hazardous chemical products). The Subtitle I program is described below:

a. *Definition of underground tank:* tanks with 10% or more of their volume underground (including the volume of pipes). Excluded, among other things, are farm and residential tanks storing motor fuels, heating oil tanks used for noncommercial purposes, septic tanks, pipelines regulated under other Acts, surface impoundments, stormwater and wastewater collection systems, and flow-through process tanks.

b. *Notification:* the following schedule of events take place regarding notification:

Month	
6	States identify the agency responsible for receiving the notification forms
12	EPA and the States design the notification form
12	owners of currently used tanks notify the designated state agency
18	owners of tanks taken out of operation within the past ten years notify the state agency
13-13	suppliers of regulated substances inform tank o/o's of the latter's responsibility to notify
after 31	tank sellers notify tank purchasers of the latter's responsibility to notify within 30 days of bringing to tank into use

c. *Interim Standards:* Within 180 days of enactment, and until the effective date of the standards described in "d" below, a tank may be installed or brought into use only if:

* Within 48 months of enactment, EPA must modify these regulations to include the standards required under Subtitle I.

(1)(a) the tank will prevent releases due to corrosion or structural failure for the operational life of the tank;

(b) the tank is cathodically protected, constructed of a noncorrosive material, steel-clad with a noncorrosive material, or designed in a manner to prevent the release of the stored substance; and

(c) the material used in constructing or lining the tank is compatible with the substance to be stored; OR

(2) the tank is located in soil having a resistivity greater than 12,000 ohm/cm.

d. *Final Standards:* Within the following dates from enactment, EPA must issue regulations that protect HH&E for the following underground tanks:

Month	
27	petroleum tanks
33	new non-petroleum tanks
45	existing non-petroleum tanks

For existing tanks, the regulations must include req'ts for:

- leak detection or inventory control system & tank testing
- recordkeeping & reporting
- corrective action

- financial responsibility, as necessary or desirable, for corrective action & third party liability

- closure

For new tanks, the regulations must include req'ts for: design, construction, installation, release detection and compatibility standards.

e. *State Programs:* within 30 months, States may apply to EPA to administer the underground tank program in lieu of EPA. The States' requirements must be no less stringent than the federal req'ts. Grace periods are provided for States that must adopt regulatory or legislative changes to meet this standard.

f. *Studies:* Within 12 months of enactment, EPA must conduct a study of petroleum tanks. Within 36 months, EPA must conduct studies of (1) underground tanks containing other "regulated substances," and (2) certain "exempted" tanks.

g. *Federal Enforcement:* There are no criminal penalties. Civil penalties are as follows:

- \$25K for noncompliance with an administrative order
- \$10K for knowing violation of notification rules
- \$10K for noncompliance with all other req'ts

h. *Appropriations:* during 1985-88, \$40MM is authorized for EPA to develop the program, and \$100MM is authorized for State grants.



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EXECUTIVE BRANCH

Departments and Agencies

Agriculture Department Oct. 12 asked for public comments on the department's proposed procedures for the Agricultural Research Service to comply with the National Environmental Policy Act (49 FR 40664); comments may be sent by Dec. 11 to Richard M. Parry, USDA, ARS, Beltsville Agricultural Research Center-West, Building 005, Room 115, Beltsville, Md. 20705.

Environmental Protection Agency Oct. 12 requested public comments and announced a public hearing on the agency's tentative determination to approve Arkansas' application for final authorization of the state's hazardous waste management program under the Resource Conservation and Recovery Act (49 FR 40055). Comments should be sent by Nov. 13 to H.J. Parr, Hazardous Materials Branch, EPA, 1201 Elm. St., Dallas, Texas 75270. A public hearing on the application is scheduled for 7 p.m. on Nov. 13 at the Arkansas Department of Pollution Control and Ecology, 8001 National Dr., Little Rock, Ark. 72219.

EPA Oct. 16 made typographical corrections in the agency's final regulation amending the definition of secondary treatment, published Sept. 20 (49 FR 40405).

EPA Oct. 17 asked for public comment on the agency's tentative determination to approve Massachusetts' application for final authorization of the state's hazardous waste management program under RCRA (49 FR 40610); comments may be sent by Nov. 20 to Gary B. Gosbee, Massachusetts State Coordinator, State Waste Programs Branch, EPA Region I, JFK Federal Building, Boston, Mass. 02203.

EPA requested public comments on the agency's proposal to recommend that the Cross Valley Aquifer, Snohomish Valley, Wash., be designated as sole or principal drinking water source for the area, under the Safe Drinking Water Act (49 FR 40664); comments may be sent by Dec. 28 to Wendy Marshall M/S 409, EPA Region IX, 1200 Sixth Ave., Seattle, Wash. 98101.

EPA Oct. 18 issued the agency's revised regulations for training (49 FR 41004) and fellowship (49 FR 41006) awards and for administering those agency awards.

EPA Oct. 23 proposed to exclude wastes on a "site-specific" basis generated at Texas Instruments Inc., Dallas; Imperial Clevite, Salem, Ind.; Stauffer Chemical Co., Axis, Ala., and St. Gabriel, La.; LCP Chemical Co., Orrington, Maine; Chrysler Corp., Belvidere, Ill., and Fenton, Mo; and Amoco Oil Co., Wood River, Ill., under RCRA (49 FR 42580)

EPA approved North Carolina's request to regulate federal facilities under the state's water pollution permit program in accordance with the Clean Water Act (49 FR 42572).

EPA requested nominations for members of the National Drinking Water Advisory Council under the SDWA (49 FR 42629); nominations should be sent by Nov. 23 to the Executive Assistant, National Drinking Water Advisory Council, Office of Drinking Water (WH-550), EPA, 401 M St., S.W., Washington, D.C., 20460.

EPA announced a meeting of the Science Advisory Board's Environmental Health Committee's Chlorinated Organics Subcommittee to review the draft health assessment document on dichloroethane to be held Nov. 8 at 9 a.m. in the Noland Hall Conference Room, University of Wisconsin, 250 N. Mills St., Madison, Wis. (49 FR 42630).

