ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 256

[FRL 1224-8]

Guidelines for Development and Implementation of State Solid Waste Management Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule contains guidelines for the development and implementation of State solid waste management plans (the guidelines). These guidelines are required by section 4002(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (the Act). States are eligible to receive financial assistance under subtitle D of the Act if the State plan has been approved by EPA. This rule establishes the requirements for State plans and recommends methods and procedures to meet those requirements. As set forth in the Act, the State plan must provide for the identification of State, local, and regional responsibilities for solid waste management, the encouragement of resource recovery and conservation and the application and enforcement of environmentally sound disposal practices.

EFFECTIVE DATE: August 30, 1979.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Absher, Office of Solid Waste (WH-564), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, 202/755-9145.

SUPPLEMENTARY INFORMATION: On August 28, 1978, EPA published a proposed rule (43 FR 38534) containing guidelines for State solid waste management plans. Ten public meetings and a public hearing were held during the public comment period. This rule responds to comments made at the public meetings and hearing, as well as to the written comments received. This preamble addresses the major comments raised in the public comment period. All other comments are addressed in a document entitled "Public Comment on Proposed Guidelines for the Development and Implementation of State Solid Waste Management Plans" which may be obtained at Docket 4002(b), Room 2107, EPA (WH-564), 401 M St., S.W., Washington, D.C. 20460. The docket is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

Overview of Subtitle D

The objectives of the Act are to promote the protection of health and the environment and to conserve valuable material and energy resources. In order to accomplish this, the Act sets forth a national program to improve solid waste management including control of hazardous wastes, resource conservation, resource recovery, and establishment of environmentally sound disposal practices. This is to be carried out through a cooperative effort among Federal, State, and substate governments and private enterprise.

Subtitle D of the Act fosters this cooperative effort by providing for the development of State and regional solid waste management plans that involve all three levels of government. As the Federal partner in this process, EPA seeks, through guidelines and financial assistance, to aid State initiatives in the formulation and implementation of such plans.

Section 4002(b) of the Act requires the Administrator to promulgate guidelines for the development and implementation of State solid waste management plans (the guidelines). While these guidelines are to consider a broad range of topics, section 4003 identifies the minimum requirements which State plans must address. EPA provides financial assistance to help the States develop and implement their plans. Under section 4007, EPA reviews and approves State plans which satisfy the minimum requirements of section 4003.

It is clear from the statutory language and legislative history of subtitle D that the Congress intended States and localities to retain overall responsibility for the planning and actual operation of solid waste managment programs. (This is in contrast to subtitle C which directs EPA to administer and enforce the hazardous waste program in lieu of authorized State programs.)

Several commentors raised the question of whether Federal guidelines and standards developed under subtitle D would pre-empt State requirements concerning solid wastes. The Act does not specifically address this issue. However, EPA believes that subtitle D is meant to encourage, not preclude, State initiatives. EPA establishes only "minimum" requirements under this portion of the Act which should not prevent States from developing broader programs or stricter standards under authority of State law. In discussing the subtitle D scheme the House Report (H.R. Rep. No. 94-1491, 94th Cong., 2nd Sess. 33 (1976)) specifically stated:

> It is the Committee's intention that federal assistance should be an incentive for state and local authorities to act to solve the discarded materials problem. At this time federal preemption of this problem is undesirable, inefficient and damaging to local initiative.

Therefore EPA concludes that as long as Federal requirements are satisfied by State programs, subtitle D does not limit State power concerning solid waste management.

Role of State Plan

The State solid waste management plan is the centerpiece of the subtitle D system. Through the plan the State identifies a general strategy for protecting public health and the environment from adverse effects associated with solid waste disposal, for encouraging resource recovery and resource conservation, for providing adequate disposal capacity in the State, and for dealing with other issues relevant to solid waste management. The plan must also set forth the institutional arrangements that the State will use to implement this strategy. These arrangements include indentifying State, regional and local responsibilities for solid waste management, as well as providing for the establishment of the regulatory powers needed under State law to enforce the plan's provisions. Thus, the State plan is the organizing mechanism in the subtitle D system which ties the goals and requirements of the Act to State priorities and institutional arrangements.

The other components of the subtitle D system (the open dump inventory, the annual work program and Federal financial assistance) are designed to support the State plan.

The Open Dump Inventory

Under section 4004(a) of the Act the Administrator is to promulgate "regulations containing criteria for determining which facilities shall be classified as sanitary landfills and which shall be classified as open dumps . . .". The criteria establish the level of protection necessary to assure that "no reasonable probability of adverse effects on health or the environment" will result from operation of the site. In setting these criteria EPA is providing a general definition of "sanitary landfill" and "open dump". Under section 4005(b) EPA is to publish an inventory of open dumps; i.e., a listing of those facilities which violate the criteria. Because the Act does not give EPA authority to enter private property to conduct such a survey, and because the States have the prime role

in the implementation of subtitle D (including appropriate enforcement actions), EPA has concluded that the State should be responsible for conducting the inventory.

The inventory of "open dumps" performs two major functions. First it informs the Congress and the public about the extent of the problem presented by disposal facilities which do not adequately protect public health and the environment. Second, it provides an agenda for action by identifying a set of problem sites, routinely used for disposal, which should be addressed by State solid waste management plans.

Essentially the inventory is a planning tool which supports the State planning effort. The States must know where the problem facilities are in order to satisfy section 4003(3) which requires that the plan "provide for the closing or upgrading of all existing open dumps within the State . . .". In order to accommodate that purpose and to facilitate prompt compliance with section 4005(b), EPA has given the inventory high priority in the State planning effort.

Annual Work Program

The annual work program, submitted with a State's application for financial assistance under section 4008(a)(1) of the Act, will provide a basis for determining whether the State plan continues to be eligible for approval and is being implemented by the State. The annual work program (which is described in the grant regulations (40 CFR Part 35)) summarizes the current year's program and sets forth activities for the coming year. Each year, a State's priorities and activities should be examined to ensure that the program is directed at achieving the desired health, environmental, and resource conservation results.

The annual work program represents a joint agreement between EPA and the State and presents a mutually satisfactory statement of reasonable progress in meeting the requirements of the Act as expressed in these guidelines. It represents a State's obligation incurred by acceptance of finanical assistance and must be developed in consultation with local elected officials and with public participation. As explained below, the work programs under the Resource Conservation and Recovery Act, as amended, the Clean Water Act, as amended (33 U.S.C. 466 et seq.), and the Safe Drinking Water Act (42 U.S.C. 300f et seq.) are being integrated through the State/EPA Agreement mechanism.

Financial Assistance

Sections 4008 and 4009 of the Act provide for financial assistance under subtitle D (funding of authorized State hazardous waste regulatory programs is provided under section 3011 of subtitle C of the Act). Section 4008 (a)(1) authorizes financial assistance for the development and implementation of State plans. The Act states that for this purpose, implementation does not include the acquisition, leasing, construction or modification of equipment or facilities, or the acquisition, leasing, or improvement of land. Funds appropriated under this section are to be allotted to the States in proportion to population and are to be distributed by States to State and substate agencies based upon the responsibilities of the respective parties for development and implementation of the State plan.

Section 4008 (a)(2) authorizes financial assistance to public solid waste management agencies and authorities for implementation of programs to provide solid waste management, resource recovery and resource conservation services, and planning for hazardous waste management activities. Financial assistance under section 4008(a)(2) may only be provided for programs certified by the State as consistent with the State or substate solid waste management plan. This assistance does not cover construction, equipment or land. Assistance is authorized for items such as facility planning and feasibility studies, consultation, surveys, and analyses, technology assessments, legal expenses, construction feasibility studies, and economic studies. These grants may be provided either directly to substate agencies or through the State.

Section 4008(e) authorizes financial assistance for improvement, conversion or construction of disposal facilities in which more than 75 percent of the solid waste disposal is from areas outside the jurisdiction of the community. The Act limits this assistance to not more than one community in every State. Section 4009 authorizes grants to certain rural communities which cannot feasibly be included in a regional solid waste management system. Such grants may be used for construction of solid waste management facilities which the State certifies as consistent with the State plan.

The Act provides no funding for acquisition of land or for operation or maintenance of facilities. Funding for construction of facilities is quite limited. This means that such costs will have to be borne directly by State and substate governments and by solid waste generators and facility users. The State should explore funding sources at all levels of government and should consider means of increasing its financial base through such methods as user charges.

The Guidelines

Section 4003 of the Act identifies the minimum requirements for approval of State plans. Under section 4002(b) the Administrator is authorized to issue these Guidelines for the Development and Implementation of State Solid Waste Management Plans. Section 4002(c) identifies a broad set of considerations for the guidelines. While the requirements of section 4003 clearly fall within the scope of the section 4002(b) guidelines, such guidelines are to address a range of issues broader than those found in section 4003. However, only the requirements identified in section 4003 may be the basis for disapproval of a State plan. They include:

(1) The identification of the responsibilities of State, local, and regional authorities in the development and implementation of the State plan;

(2) The prohibition of new open dumps, and the requirement that all solid waste be utilized for resource recovery or disposed of in an environmentally sound manner;

(3) The closing or upgrading of existing open dumps;

(4) The establishment of State regulatory powers necessary to implement the State plan;

(5) The elimination of State or local prohibitions of long-term contracts for the supply of solid waste to resource recovery facilities; and

(6) The provision of resource conservation, resource recovery or environmentally sound disposal practices.

EPA believes that the best way to honor Congressional intent is to draw a distinction between requirements and recommendations. Each of the subparts in the guidelines lists the overall requirements for plan approval, which are based upon section 4003 of the Act. The requirements sections are followed by a discussion of recommended procedures, which expand on the requirements and involve a consideration of the factors listed in section 4002(c). The requirements use the term "shall". The recommendations, which are advisory, use the term "should".

While failure to comply with a requirement is grounds for denying a grant, failure to comply with a recommendation will not affect grant eligibility. The recommendations are provided to assist the States in developing and implementing the State plan. Any process which complies with requirements of these guidelines will be acceptable to EPA for purposes of approval of the State plan.

The guidelines contain seven subparts (A–G). Subpart A presents the purpose and scope of the guidelines and the State plan. It also contains the procedures for State adoption and revision and EPA approval of the State plan. In addition, important terms are defined.

Subparts B, C, D, and E discuss, respectively, (1) the identification of State, local, and regional responsibilities, (2) the development of the State disposal program, (3) the development of the State resource conservation and recovery program, and (4) facility planning and development.

Subpart F discusses coordination with other programs. The broad definitions of solid waste and disposal make this coordination especially important. Subpart F emphasizes coordination with planning for residuals management under section 208 of the Clean Water Act, as amended (33 U.S.C. 1288), with the National Pollutant Discharge Elimination System (NPDES) under section 402 of that Act (33 U.S.C. 1342), with the surface impoundments assessment and State underground injection control program under the Safe Drinking Water Act (42 U.S.C. 300(f) et seq.), and with State implementation plans under the Clean Air Act (42 U.S.C. 7401 et seq.).

Subpart G lists the requirements for public participation in the development and implementation of State and substate plans.

Subpart A—Purpose, General Requirement, Definitions

These guidelines assist in the development of State solid waste plans. They include the minimum requirements for approval of State plans identified in section 4003 of the Act. They also address the portion of section 4005(c) which requires a mechanism in the State plan to allow "any entity" to protect itself from citizen suit by obtaining a compliance schedule which phases out those acts which violate the prohibition of open dumping.

Scope of the State Plan

These guidelines require the State plan to address all solid wastes in the State that pose potential adverse effects on health or the environment or provide opportunity for resource conservation or recovery. The plan should address residential, commercial, and institutional solid waste, hazardous, industrial, mining, and agricultural waste, waste treatment sludges, septic tank pumpings, and other pollution control residues. It should explore the nature and severity of these categories of solid wastes and establish priorities for their management.

State plans developed under these guidelines apply to Federal agencies, Federal lands and facilities on leased Federal lands in accord with section 6001 of the Act. Therefore, States should consult with appropriate Federal agencies and facilities during the development and implementation of the plan.

The range of activities included in the plan should be as broad as the Act's definition of "solid waste management." Accordingly, the plan should contain provisions concerning collection, source separation, storage, transportation, transfer, processing, treatment and disposal of solid waste.

Subtitle C of the Act provides for the authorization of State programs to regulate hazardous waste management and for financial assistance for such programs. Under section 3006 of the Act EPA will promulgate guidelines to assist States in the development of hazardous waste programs. Therefore, the guidelines proposed in this rulemaking defer to the section 3006 guidelines for the requirements for authorized State hazardous waste regulatory programs. However, there are a number of hazardous waste management activities that are not regulatory in nature and, thus, not covered by the section 3006 guidelines. Such activities are to be carried out under the authorities of subtitle D and are subject to these guidelines for State plans. In general, the State plan is to describe how hazardous wastes will be managed in the State, including identification of responsibilities for that management and provision of necessary hazardous waste treatment, storage, and disposal facilities.

The proposed subtitle C standards for generators of hazardous waste (40 CFR Part 250.29) would exempt persons who produce and dispose of 100 kilograms or less a month of hazardous wastes; and, these wastes could be disposed of in a facility certified by the State as meeting the section 4004 criteria. If the final subtitle C standards retain this or a similar exemption, the State should identify these exempted generators so that the State may gain control over the types and amounts of hazardous waste being disposed of at any one facility. These guidelines may be amended to require certain State actions after the final subtitle C regulations are promulgated.

State Plan Submission, Adoption and Revision

The plan must be developed in accord with public participation requirements discussed in subpart G of these guidelines. States are to adopt the plans in accord with State administrative procedures. In the proposed regulation EPA invited comment on whether it should require plan approval by the Governor or State legislature. The majority of the comments favored maintaining the flexibility inherent in allowing each State to follow its own State procedures. EPA is satisfied that as long as the public participation specified in subpart G is part of the approval process, the Act's objectives will be accomplished. Moreover, EPA believes that allowing such flexibility is consistent with subtitle D's reliance on State discretion in solid waste management planning.

These guidelines require that the State plan be developed within 18 months, that it cover a minimum of a five-year time period, and that it be adopted by the State. The State is to review the plan and, where necessary, revise and readopt it at least every three years. EPA is to approve or disapprove State plans and to provide financial assistance to States if the State plan has been approved, continues to be eligible for approval, and is being implemented by the State.

Several commentors stated that 18 months is inadequate time to develop a State plan of the broad scope required by these guidelines. While all required elements must be addressed in the State plan, EPA recognizes that certain lower priority areas will not be described in great detail in the State's initial plan submission. Therefore, EPA may approve a State plan which provides for time-phasing of activities, and which proposes less than full development of State planning and implementation activities over the five-year period, providing satisfactory justification is included in the State plan.

The plan may postpone planning and implementation activities for certain waste categories due to the need to focus resources on higher priority

categories. As indicated in § 256.02 of the guidelines, the State should determine which waste categories and activities have high priority based on the current level of management planning and implementation within the State, the extent of the solid waste management problem, the known health, environmental, and economic impacts, and the resources and management approaches available. While State priorities differ, EPA encourages States to emphasize planning and implementation activities for those waste categories with serious environmental impact and over which the State may have inadequate control, such as onsite industrial wastes.

State Plan Approval

Under section 4007 of the Act the Administrator shall approve plans which meet the requirements of paragraphs (1) (2) (3) and (5) of section 4003 and which contain provisions for revision. The State must revise its plan if the Administrator revises the minimum requirements of section 4003, if the Administrator determines that the plan is inadequate or if the Administrator determines that "such revision is otherwise necessary". Notice and public hearing must accompany such plan revision. In addition, the Administrator shall review approved plans from "time to time" and may withdraw approval of a plan if he determines that revision or correction is necessary "to bring such plan into compliance with the minimum requirements promulgated under section 4003 (including new or revised requirements) . . .".

EPA believes that sections 4007 and 4003 envision a scheme in which EPA grants initial plan approval on the basis of paragraphs (1) (2) (3) and (5) of section 4003 but reviews State plans on the basis of all the minimum requirements in section 4003, including paragraphs (4) and (6). This interpretation allows EPA to honor the Congressional intent expressed in section 4007 (that paragraphs 1, 2, 3 and 5 be the basis for initial approval) while maintaining section 4003's status as the list of "minimum requirements for approval of State plans".

This interpretation is a logical one because both paragraphs (4) and (6) involve assessments which are best made after the States have had some experience with plan implementation. For example, both EPA and a State will have a better sense of what regulations are necessary under State law to implement the plan, and thus of compliance with paragraph (4), once the state has attempted to implement plan provisions. Also, judicial interpretation of those efforts may provide insight into the adequacy of the State's regulatory scheme. Likewise a determination of what combination of practices "may be necessary to use or dispose of such waste in a manner that is environmentally sound," as required by paragraph (6) of section 4003, is best made after the State plan is in operation and there has been some experience with its implementation.

The proposed guidelines requested comment on the State/EPA Agreement concept. Under such an agreement, State work program submissions for various environmental programs would be integrated in an attempt to determine environmental priorities and develop effective and efficient solutions to environmental problems. Half of the commentors to these proposed guidelines opposed the State/EPA Agreement concept. The rest were divided between qualified and unqualified support. Some States were concerned that their existing institutional arrangements would make it difficult to integrate work programs; others were concerned that solid waste programs would lose visibility and possibly funding if combined with larger and better established programs.

In response to these and other comments, EPA issued a guidance document on March 21, 1979 (44 FR 17294) for State/EPA Agreements. The guidance does not require integrated work programs, nor does it intend to force reorganization and consolidation of State agency structures or changes to existing grantor-grantee relationships. The State/EPA Agreement process, however, is designed to bring together Federal, State and local entities to determine environmental priorities, define intermedia problems and develop creative, efficient and effective solutions. Integrated work programs are encouraged where feasible.

Beginning in fiscal year 1980, the State/EPA Agreement will present a practical and comprehensive mechanism by which the States and EPA can integrate and manage the technical and financial assistance programs to States under the Resource Conservation and Recovery Act, as amended, the Clean Water Act, as amended (33 U.S.C. 1251 et seq.), and the Safe Drinking Water Act (42 U.S.C. § 300f et seq.). States are encouraged to integrate other environmental programs into the State/EPA Agreement if possible.

Definitions.

The guidelines define certain key terms including "criteria," "facility," "implementation," "inactive facility," "inventory of open dumps," "operator," "permit," "planning," "provide for" and "substate." Commentors raised questions concerning the following definitions:

1. *Planning.* Some commentors said that there was a need to clearly distinguish between planning and implementation. Planning is defined in these guidelines as the process of "identifying problems, defining objectives, collecting information, analyzing alternatives, and determining the necessary activities and courses of action." This includes analysis of solid waste generation rates and assessment of the adequacy of existing resource recovery and disposal facilities and the need for new or expanded facilities. It also includes setting priorities for the management of different wastes, identifying responsibilities, developing the necessary legislation and administrative powers to implement the plan, and planning for State resource conservation, recovery, and disposal programs.

2. *Implementation.* Implementation is defined in these guidelines as "putting the plan into practice by carrying out planned activities or ensuring such activities are carried out." One aspect of implementation is carrying out the necessary regulatory activities to ensure that solid wastes are managed and disposed of in a manner that protects the public health and the environment. This includes applying health or environmental standards to facilities, assessing and inspecting facilities, conducting a permit or registration program, and carrying out the necessary enforcement activities.

3. *Inactive Facility.* An "inactive facility" is one which no longer accepts waste. This definition was not contained in the proposed regulation. It is included in this final regulation because some commentors were confused about the terms "closed facility" and "abandoned facility" in the proposed regulation. Those terms are no longer included in the guidelines.

These guidelines no longer treat "closed facility" as a term of art that means a *properly* closed facility. An operator may close a facility properly or improperly, but this does not change the fact that such a facility is closed. The operator's liability, if any, is based on his failure to close a facility in accord with environmental standards developed pursuant to the State plan.

The term "abandoned facility" has been dropped because it connotes the non-existence of a human agent responsible for the site. The concern over the environmental impact of so-called "abandoned" facilities is the same whether or not a party is available who may be legally liable for the damage. The concern is that a site which no longer receives wastes is creating an environmental problem due to such ongoing effects as the leaching of contaminants into groundwater. Therefore EPA addresses itself here to the broader set of "inactive" sites which may or may not be abandoned. This preamble discusses the relationship of the guidelines to inactive facilities in more detail later.

Subpart B—Identification of Responsibilities; Distribution of Funding

The guidelines require that the State plans identify the responsibilities of States and substate agencies to satisfy the requirement in section 4003(1). EPA believes that this allocation of responsibilities must be a matter for the State to work out with the other general and special purpose governments in the State. EPA does not attempt to stipulate any particular institutional arrangement because there will necessarily be circumstances where differing schemes are more appropriate.

State agencies will be responsible for planning activities. However, substate agencies may need to conduct specific types of planning concerning the number and kinds of facilities needed in particular areas and the different institutions needed (e.g., solid waste authorities or districts) for managing solid wastes. Substate planning may also be necessary for establishing coordinating management of different waste streams (e.g., coincineration of residential solid waste and municipal sewage sludge) or for establishing disposal or recovery facilities for new waste streams (e.g., industrial pretreatment residues).

Likewise there will be a need under the plan for developing health or environmental standards for facilities, assessing and inspecting facilities, conducting a permit or registration program, and carrying out the necessary enforcement activities. For the most part, such programs have been conducted by State agencies, although certain responsibilities (such as inspections) may be delegated to local public health agencies.

EPA's major concern in the process of allocating responsibility is that the institutional arrangement devised by the State aid the achievement of the substantive goals of the Act.

Subpart C—Solid Waste Disposal Programs

This subpart addresses the requirements contained in sections 4003(2) and 4003(3) of the Act. Under section 4003(2) the plan is to prohibit the establishment of new open dumps in the State and contain requirements that all solid waste be utilized for resource recovery, disposed of in sanitary landfills or otherwise disposed of in an environmentally sound manner. Under section 4003(3) the plan is to provide for the closing or upgrading of all existing open dumps within the State. The subpart has four general sets of requirements: (1) those affecting overall legal authority; (2) those involving regulatory powers; (3) those concerning closure or upgrading of existing open dumps; and (4) those involving compliance schedules for complying with the prohibition of open dumping.

Legal Authority and Regulatory Powers

Under section 4003(4) the plan shall provide for the establishment of State regulatory powers as may be necessary to implement the plan. As discussed earlier this provision is not a basis, under section 4007, for initial approval of a State plan but rather is relevant to later review of progress under the plan. The States must make a reasonable effort to develop the powers necessary for plan implementation in order to remain eligible for Federal funding.

Although the proposed version of the guidelines did not distinguish between regulatory powers and legal authority, EPA has decided to make this distinction to give meaning to the distinction made in section 4007 between the requirements of sections 4003 (2) or (3) and those of section 4003(4). EPA believes that section 4007 contemplates a scheme that would allow a State with a general statutory or common law authority to take action against new or existing open dumps to have an approved State plan while it developed the companion regulatory mechanisms necessary to fully implement the plan. At the same time EPA does not believe that a State which does not have legal authority (according to statute or common law) to take action against disposal facilities for the general categories of environmental effects covered by the criteria can be in compliance with sections 4003 (2) and (3) of the Act. Therefore, EPA requires in these guidelines that the States have adequate legal authority to prohibit new open dumps and close or upgrade all existing open dumps. States will be allowed to develop regulations and administrative systems to implement that general authority after initial approval of the State plan. However the failure to provide for the establishment of State regulatory powers, as outlined in § 256.21, could constitute noncompliance with section 4003(4) and thus be the basis for withdrawal of approval for a State plan.

In the proposed guidelines EPA suggested that the States could wait until after approval of the State plan to prohibit establishment of new open dumps. The language of the Act, particularly that found in section 4004(c), does not allow for such flexibility. Therefore, EPA has changed that requirement to be consistent with the Act's intent. The prohibition of the establishment of new open dumps shall take effect no later than six months after the date of promulgation of the criteria or on the date of approval of the State plan, whichever is later.

In establishing legal authority the States must include some type of permitting mechanism to ensure that the establishment of new open dumps is prohibited. Some commenters expressed concern that EPA's concept of a permit was too narrow and beyond the authority of subtitle D. EPA meant to give a broad interpretation of that term and the guidelines define permit to reflect that broader concept. EPA believes that effective regulations must include a mechanism for translating generally applicable standards into specific requirements for individual facilities. Some kind of a certificate of permission issued to particular parties is the best means of achieving that end. Such a certificate also performs an important informational role because it provides a clear statement of the terms to which parties will be held. This is certainly advantageous to the permittee, but it also gives EPA, the State and the public information on how this part of the solid waste management plan is being implemented.

As long as the States can devise a scheme that achieves these goals, EPA will be flexible on what constitutes a permit. With this flexibility, there can be little doubt that such a permit requirement is within the Act's purview. A State program that does not have the capacity to translate generally applicable standards into site specific requirements or to adequately inform interested parties of those requirements cannot provide adequate assurance that the Act's objective will be met.

Closure or Upgrading of Existing Open Dumps

The Guidelines require the State to classify existing solid waste disposal facilities according to the criteria. The State is to establish priorities for the classification effort after considering potential health and environmental impact of facilities, the availability of regulatory powers to address the problems presented by these facilities and the availability of financial resources in the State solid waste management program. The State submits a list of the facilities that fail to satisfy the criteria to EPA for publication in the Federal Register. The States are to take steps to close or upgrade open dumps.

1. *The Open Dump Inventory.* One of the principal issues concerning State solid waste management planning is the role of the inventory of open dumps in subtitle D. EPA has received many inquiries and comments concerning the inventory, particularly on the issue of whether notice and a hearing must precede inclusion of a facility in the inventory published in the Federal Register. The "notice and hearing" issue, however, is merely part of a broader question concerning the purpose of the inventory in the program contemplated by the Act. The issue is whether inclusion of a facility in the inventory constitutes a determination that an identifiable party is engaging in the prohibited act of open dumping.

After considering public comment on this issue and after further analysis of the issue, EPA has concluded that the Act intended the inventory to be a planning tool which provides information to the States and the public. The act of listing does *not* constitute a legal determination which subjects a particular party to legal sanctions for violation of the Act.

EPA reached this conclusion after substantial public discussion of the issue. Early in the development of these guidelines EPA indicated that the States would conduct the inventory as part of their solid waste management planning, and many of the comments on the guidelines addressed the role of he inventory. On April 24, 1979, the National Solid Wastes Management Association (NSWMA) petitioned EPA, seeking regulations providing a notice and hearing opportunity prior to a facility's inclusion in the inventory list. Since the inventory would be part of the State planning effort, NSWMA's petition directly affected the content of these guidelines. In fact, the relief NSWMA sought would logically be a part of these guidelines. At the same time EPA was under court order from the U.S. District Court for the District of Columbia to promulgate these Guidelines by June 30, 1979. In order to air the notice and hearing issue and still make a reasonable effort to comply with that court order, EPA issued on May 15, 1979, a Supplemental Notice of Proposed Rulemaking (44 FR 28344) which invited public comment for 30 days on whether the guidelines should require notice and a hearing opportunity before a disposal facility is included in the inventory. The Notice explained EPA's tentative conclusion on the issue and included a copy of the NSWMA petition.

Several commentors argued that EPA's position on this issue, as stated in the Notice, differed from previous EPA statements about the inventory. EPA had a different view of the inventory when these guidelines were at an earlier stage of development. After further analysis of the Act, however, EPA changed its view. In issuing the Supplemental Notice, EPA sought to alleviate any confusion resulting from this reassessment of the issue and to provide the public with an opportunity to focus on the inventory's role.

The fact that EPA's interpretation of the Act, as set forth in this final regulation, differs from the viewpoints expressed in the proposal and in statements by Agency personnel does not undermine the legitimacy of that interpretation. EPA is not bound to legal interpretations advanced in earlier stages of a regulation's development. The role of the inventory in the subtitle D program is a complicated issue which necessarily involves an analysis of several parts of the Act. To hold the Agency to early viewpoints on such complex questions hinders responsible decision making and discourages the Agency from engaging in open public discussion on these matters. Ultimately, questions surrounding the role of the open dump inventory must be resolved after a substantive analysis of the Act, its legislative history and other applicable Federal law.

Under section 4005(b) EPA is required to *publish* an inventory of "open dumps" (those facilities which do not satisify the criteria promulgated under section 4004). Section 4005(c) prohibits "any solid waste management practice or disposal of solid waste or hazardous waste which constitutes the *open dumping* of solid waste or hazardous waste." The essential problem presented by the Act is to determine the relationship between these two provisions. The task is complicated by the fact that sections 4005(b) and 4005(c) originated in differing House and Senate bills and that there is no conference report to resolve the problem presented by these incongruous provisions.

In the effort to reconcile the differences between the Senate and House approaches to this issue, EPA sought an interpretation of the Act that retained as much of the original intent of the two bills as possible. In doing so EPA believes that it has devised a sound program that best achieves the overall objectives of the Act.

The inventory of open dumps was part of the House bill which relied totally on the States to regulate the problems associated with these facilities. The inventory was designed to be an informational tool that would give a comprehensive picture, based on a uniform definition of unacceptable environmental effects, of the problem presented by these "open dumps". This list was also to aid the States in directing their efforts for the closing and upgrading of existing open dumps.

The Act indicates that Congress meant to maintain the inventory's status as an informational tool and not as a regulatory mechanism. For example, there is no requirement for a "hearing on the record" or a public hearing in conjunction with the inventory. Likewise, the Congress required publication within one year of promulgation of the criteria. Knowing that the volume of problem sites could run into the thousands, it is doubtful that the Congress could have envisioned the inventory as a series of individual adjudications with all the attendant delays involved in preparing and documenting every part of the case. Also, the Congress could not have viewed the inventory as anything but informational in terms of EPA's involvement. The Act does not give EPA the authority to enter on private property to take samples or to require reporting on the facility's environmental effects. The absence of these necessities of a viable regulatory program indicates that the inventory can only be an informational tool. (The absence of EPA authority to conduct a proper inventory evaluation of facilities also suggests that the States must conduct the evaluations under authority of State law.)

The Senate bill prohibited the act of open dumping and allowed for Federal, State and citizen enforcement of that prohibition. There was no facility classification scheme. In the final version of the Act, the Federal enforcement provision was deleted, but States and the public were allowed to use the citizen suit provision (section 7003) to enforce the prohibition. In

prohibiting open dumping the Act does not specify who shall be deemed responsible. The legal liability of particular individuals is a matter for the courts to resolve on a case by case basis.

EPA does not believe that the inventory was designed to implement the prohibition of open dumping. Certain flaws in statutory interpretation and basic logic appear in any attempt to link the two provisions. For example, section 4005(c) requires each State plan to assure that all open dumps listed in the inventory "comply with such measures as may be promulgated by the Administrator to eliminate *health* hazards and minimize potential *health hazards*". As section 1002(b)(4) indicates, the Act is concerned with *environmental* as well as health effects in prohibiting open dumping. Section 4005(c) also requires State plans to provide a mechanism for giving compliance schedules to parties engaged in open dumping. Such schedules are to lead to "compliance with the prohibition on open dumping" and are only available to entities which have no other "private or public alternative" to open dumping.

If inclusion on the inventory of open dumps also constitutes a determination of liability for open dumping, it is unclear which steps follow listing. Is the State to focus on the present or potential health hazards associated with the facility, or is it to address the full range of health *and* environmental concerns implicit in the open dumping concept? Also, is the State required to examine "public or private alternatives" for all listed facilities? Since the Act creates two differing approaches to handling listed open dumps and entities which could violate the open dumping prohibition, EPA believes that the dichotomy between the Senate and House approaches to the solid waste managment program should be maintained.

EPA's interpretation avoids the conceptual problems involved in using the inventory to implement the open dumping ban. Fundamental to any determination of legal liability for an offense is a clear definition of *who* is responsible and of the *acts* which constitute the offense. The inventory is not well-suited to establishing either of those. In conducting the inventory, site inspectors will be evaluating the environmental impact of particular sites on particular days. They will not be investigating the relative responsibilities of the various parties involved in disposal activity (e.g. facility owner, facility operator, parent companies, users of the facility). Likewise, inspectors will not be focusing on the particular acts which lead to the environmental damage (e.g. facility selection, design, and management; the bringing of particular wastes to the facility). Moreover, the inventory is not well-suited to defining the duration of a violation. The inventory is, after all, a picture of conditions at the facility at a particular time. The inventory does not in itself determine whether those conditions are due to ongoing practices at the facility or are the result of temporary problems at the time the evaluation occurred. Thus the inventory is not designed to establish several of the key elements necessary for placing legal liability on responsible parties and should not, therefore, be treated as an EPA determination that particular parties are open dumping.

An interpretation of the Act linking the inventory to the open dumping prohibition undermines the Act's objective of leaving principal responsibility for implementing solid waste management programs to the States. The language of subtitle D and its supporting legislative history clearly indicate that the Federal Government was to facilitate the development of State initiatives in this area. The removal of the Senate provisions for Federal enforcement of the open dumping prohibition in the final version of the Act underscores this point. Were EPA's publication of the inventory to constitute an Agency decision that each listed site is in violation of Federal law, EPA would be heavily involved in the administration of solid waste programs. EPA would have to carefully supervise the States in the conduct of the inventory. Were EPA to be ultimately responsible for the decision to list, it would have to carefully review State decision making, overruling decisions where appropriate. EPA does not believe that the Congress intended that EPA have such a central role in State solid waste management.

EPA concludes, therefore, that the inventory was not designed to be a decision on the open dumping issue. The inventory is an adjunct to the State planning process. It provides information to the public and helps the States in identifying their priorities. In publishing the inventory EPA is reporting on the first phase of the State planning effort and thus will include all facilities identified by the State. EPA will not add or remove facilities from the inventory. The open dumping prohibition is a provision of Federal law which stands on its own, separate from the State planning program. In conjunction with the citizen suit provision, the open dumping prohibition creates a Federal cause of action allowing citizens and States to seek relief in Federal Court for damaging solid waste management practices.

Information generated during the inventory could be available to parties seeking to bring an open dumping action. That data would be made available in accord with applicable Federal and State law concerning the release of such information. Questions concerning the admissibility and weight of the information as evidence are for the courts to resolve. The ultimate issue of whether particular parties are guilty of open dumping would be for the court to decide after *de novo* review of the particular facts in each case. The point, however, is that while data generated in the inventory may be evidence relevant to an open dumping suit, the act of listing a site does not constitute an EPA decision on the open dumping issue which deserves judicial deference as a matter of law.

The public comments on the inventory suggested varying interpretations of the inventory. Some called it a rule; others called it a series of adjudications. A few commentors argued that the inventory was part of a *de facto* licensing program that implied permission to operate for those facilities not included on the list. None of these characterizations are appropriate because they imply that EPA has decided something concerning the facility. The inventory is only an informational tool. It does not adjudicate the rights of any persons or provide official approval for facilities not included. Likewise it is not a rule setting EPA policy, but rather is a tool to aid the States in defining their own priorities.

2. *Notice and Hearing Implications of the Inventory.* The Supplemental Notice of Proposed Rulemaking focused public attention on the question of whether notice and a hearing opportunity must accompany the inventory of open dumps. The NSWMA petition, which was incorporated into the Supplemental Notice, argued that a notice and hearing opportunity was required by the Act, the Administrative Procedures Act and the U.S. Constitution. The Act does not require hearing proceedings for the inventory. No hearing or notice requirement is found in section 4005(b). Some commentors argued that section 7004(b) requires public participation before publication of the inventory. These guidelines provide for public participation at several key stages in the State planning process, including review of the plan's priorities for conducting the

facility classifications. Those requirements provide an ample opportunity for public input on this aspect of the subtitle D program without direct public participation in the inventory list.

An added round of public participation on the inventory is particularly inappropriate because EPA will not be rendering a decision. In publishing the list EPA is merely reporting to the public on the progress of one important phase of the State planning program. Some commentors challenged this interpretation of EPA's role arguing that conduct of the inventory was EPA's responsibility and that the States are merely acting as EPA's agents in carrying out the inventory. EPA rejects this view. Section 4005(b) only requires EPA to *publish* the inventory. More importantly, the Act does not give EPA authority to enter private property to evaluate facilities for possible inclusion in the inventory. EPA's obvious lack of necessary authority, coupled with subtitle D's clear reliance on State initiatives for implementation functions, leads EPA to conclude that the inventory should be handled by the States.

In considering the applicability of the Administrative Procedures Act (APA) (5 U.S.C. 51 et seq.), several commentors argued that the inventory was an adjudication, licensing or rulemaking proceeding for purposes of the APA. After analyzing these comments EPA concluded that none of these characterizations properly describes the inventory. As discussed earlier the inventory is only an informational tool; and, therefore, its publication in the Federal Register is not the kind of agency action meant to be covered by the Administrative Procedures Act's notice and hearing provisions.

Several commentors argued that publication of the inventory without a formal notice and hearing opportunity constituted a denial of property without due process of law, violating the Fifth Amendment of the Constitution. EPA certainly does not seek to deny the due process rights of individuals in performing its part of the subtitle D program. It must be recognized, however, that not every government action which may affect an individual's property interests requires formal notice and hearing procedures. Generally some legal sanctions must be brought to bear on an individual before the due process right arises.

The issue in considering subtitle D's implications for due process rights is not a question of whether those rights exit at all, but rather when those rights are properly invoked. Individuals involved in solid waste disposal will have an opportunity to be heard before government sanctions are permanently imposed. As indicated earlier, however, the inventory is not an EPA determination resulting in legal sanctions. By including a site on the inventory, EPA has not ordered any identifiable individuals to do anything.

Several of the key questions for legal liability—namely *who* is responsible for which *acts*—are not necessarily resolved by the inventory process. Under these circumstances it would be premature to hold a hearing because it is unclear who has the right to a hearing and what the accusations are. Once States have completed further investigations and are ready to direct their enforcement efforts at particular actions by particular individuals, the people in question will have an opportunity to be heard in either an administrative or judicial forum. States will be bound under their own laws and the U.S. Constitution to assure that there will be no denial of property without due process of law. Several comments from States showed an awareness of that obligation and indicated that existing State procedures would require various opportunities to be heard prior to the imposition of sanctions.

In arguing for a notice and hearing opportunity prior to publication of the inventory, commentors identified a variety of bases for that right. Some saw the right growing out of the link between the inventory and the open dumping prohibition. As indicated previously, there is no such link and therefore no such hearing right.

Others argued that the bad publicity associated with a facility's inclusion on the list would unfairly affect the operator's business. In particular, commentors noted that the inventory would encourage citizen actions (including suits brought under the Act) or responses by local governments which could interfere with the continued operation of listed sites.

It is not clear that the inventory will result in unfair criticism. In publishing the inventory, EPA will make every effort to clarify the status of the inventory as an informational exercise which does not imply legal liability on the part of any particular party. Such clarification may need to be given on a State by State basis in order to reflect the way the inventory is being used by each State solid waste program.

EPA cannot completely eliminate the possibility that some parties will improperly characterize the meaning of the inventory. EPA will, however, assure that the inventory clearly states the purpose, basis and significance of the information provided. Parties affected by bad publicity will have an opportunity, in an administrative or judicial forum, to present their case prior to the imposition of legal sanctions against them.

Several commentors expressed particular concern that the inventory would lead to citizen suits against listed facilities. Under some circumstances inclusion of a facility on the inventory may increase the likelihood that some party may sue some other party concerning conditions at the facility. In marginally increasing the chances of suit, however, EPA is not denying property without due process of law. A civil suit in Federal court is hardly a summary proceeding in which the defendant has little opportunity to be heard. In fact the judicial forum probably affords the ultimate in due process of law.

Some commentors suggested that inclusion on the inventory was a prerequisite to the establishment of legal liability for open dumping. That conclusion reflects a misunderstanding of the Act. Citizen suits against acts of open dumping may be initiated regardless of the inventory process. Only a compliance schedule issued to specific parties, as contemplated by section 4005(c), insulates these parties from suit.

At least one commentor suggested that a citizen suit is just one of several "hindrances" to the solid waste industry, and that EPA should not be providing information that encourages such suits until the facility operator has had a formal notice and hearing opportunity. While some people may attempt to abuse the legal system, EPA does not believe that citizen suits are merely hindrances to the industry. Citizen suits may be legitimate expressions of genuine public concern that seek relief for actions that seriously threaten public health and the environment. Such suits will provide all parties, including those accused of open dumping, their day in court.

This leads to a general point about the notice and comment issue which should not be ignored. While EPA does not seek to deny legitimate due process rights, there is a countervailing interest that must be considered—the public's right to be informed of the dangers to their health and environment. The Act intended the open dump inventory to inform the public about the dangers associated with various disposal facilities. This would allow the public and the States to take protective action.

An enforcement action against responsible parties would be only one of several available options.

Since the inventory is not an accusation of wrongdoing against specific parties and since notice and hearing opportunities will precede the imposition of legal sanctions, EPA believes that it is inconsistent with the Act and contrary to the public interest to withhold this information from the public.

EPA's interpretation of the inventory means that it is up to the States to assure protection of the due process rights of parties affected by State regulatory activities. Several State agencies indicated that various formal or informal procedures for receiving comments (including hearing opportunities) would be conducted in conjunction with the inventory as a matter of State law. EPA approves of those efforts.

EPA does not believe, however, that it should be requiring the States to inform any particular parties according to any particular procedures. There are many different ways to assure that the system is not unfair to affected parties, and EPA believes that the States should be allowed to fashion a response appropriate to the circumstances. If EPA attempted to impose particular "notice" requirements, it might be unnecessarily intruding in matters of State law. For example, inclusion of a facility on the list does not establish the legal liability of any particular person as a matter of Federal law. Therefore, it is impossible to determine under the Act who is the appropriate recipient of notice. However, depending on the use of the inventory under State law, there may be clear legal requirements for who shall receive notice.

In order to avoid this potential problem EPA has removed any reference to notice and comment procedures in the requirements of subpart C. However, to indicate EPA's general preference for full disclosure of inventory information the guidelines recommend in subpart G that the States inform all affected parties of site classification results.

In response to the Supplemental Notice, EPA received comments supporting and opposing EPA's general position. Several commentors expressed concern that the interpretation suggested by NSWMA would increase administrative expenditures per facility and greatly reduce the number of facilities that could be evaluated with the limited funding available under subtitle D.

Such an outcome is possible and would be incompatible with Congressional intent that the inventory be completed promptly. This suggests that EPA's interpretation, which avoids the need for hearings while respecting individual rights, best accords with Congressional intent.

3. *Closure or Upgrading Procedures.* Section 4003(3) requires the plan to provide for the closing or upgrading of all existing open dumps. States may achieve this through a variety of mechanisms (e.g., permits, administrative orders, general regulations). Establishment of compliance schedules for each facility may be the best mechanism to achieve compliance with section 4003(3), but EPA does not wish to exclude the use of other approaches as long as the State can show that some effective action will be taken to close or upgrade open dumps.

The plan must, however, provide some means for assuring EPA and the public that steps are being taken to deal with the problem presented by existing open dumps. The guidelines, therefore, require that the plan reference some evidence that steps have or are being taken to close or upgrade each facility. By "evidence" EPA does not imply that the States must have a document, legally admissible in court, for each facility on the inventory. EPA is merely seeking documentation which indicates that some steps have been or are being taken to eliminate the problems associated with each site. Evidence of action could include an administrative order, a permit, or even a report on the site which indicates that problems identified during the inventory have been remedied.

4. *Inactive Facilities.* The proposed guidelines required that inactive disposal facilities (referred to as "abandoned facilities" in the proposed guidelines) which continue to produce adverse health or environmental effects be subject to classification according to the criteria and publication in the open dump inventory. Most commentors agreed that inactive disposal facilities can and do cause severe adverse health and environmental problems and that these facilities should not be ignored. A number of commentors, however, questioned EPA's authority to require State plans to include such facilities in the open dump inventory process. They were also concerned about what enforcement action the State might reasonably take, especially where a facility has been abandoned or ownership has been transferred or relinquished, and legal liability and financial responsibility are difficult to establish.

It is important to note that since these guidelines were proposed, there has been an influx of reports of inactive sites posing substantial endangerment to public health and the environment. It is, therefore, incumbent upon the States to learn as much about problem sites in their jurisdictions as possible. The guidelines recommend that inactive facilities be evaluated for current or potential problems and that the State take steps to minimize or eliminate adverse health or environmental effects, particularly in emergency situations. If corrective actions by facility owners or operators cannot be brought about, public agencies should take the necessary measures to protect public health and safety. This should include, as a minimum, notification of adjacent residents and other affected parties of the potential health or environmental hazards.

EPA recognizes that there is some question about whether the environmental problems associated with inactive facilities fall within the scope of "disposal" as defined in the Act. Section 1004(3) defines disposal as "the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or waters so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water". Taken literally this definition could encompass some aspects of pollution found at inactive facilities.

A second crucial question, however, is whether the particular regulatory programs created by the Act can be meaningfully applied to inactive sites. The hazardous waste program, under Subtitle C of the Act, calls for the issuance of permits (setting performance standards and operational controls) to owners and operators of facilities for the disposal of hazardous waste. Such a scheme is inappropriate for inactive facilities and, therefore, EPA has concluded that Subtitle C does not apply to inactive facilities.

In examining the open dump inventory under subtitle D, a slightly different problem arises. There is no reason to avoid collecting information on inactive facilities as it could be useful in the development of the State plan. At the same time EPA recognizes that inactive facilities present unique management problems that will require different kinds of responses by the States. Thus the plan may not be able to establish routine procedures for the closing and

upgrading of such facilities in the same way that such procedures will be possible for active facilities.

EPA has decided that there is no basis to exclude all inactive facilities from the scope of the open dump inventory. Yet EPA also believes that active facilities were intended to be the focus of the subtitle D program. The question of how the inventory addresses inactive facilities is one to be resolved in the establishment of State priorities for the inventory. In negotiating this question EPA and the State will be able to consider the magnitude of the environmental problem presented by inactive facilities and the State's ability to close or upgrade such facilities.

In writing the Guidelines EPA has included a specific set of recommendations on inactive facilities that should be part of the State plan. In applying the Guidelines' requirements for the inventory to inactive facilities, EPA recognizes that the meaning of "closing or upgrading open dumps" may have to be flexible to accommodate the unique problems involved in addressing inactive facilities.

The agency may use Section 7003 (Imminent Hazard) of the Act to bring suit against inactive facilities which pose human health and environment problems. This section is designed to prevent any imminent and substantial endangerment to human health or the environment from the improper disposal of solid waste. Under this procedure, the Agency can seek whatever remedy may be necessary to control the problem.

Compliance Schedules Affecting the Prohibition of Open Dumping

Section 4005(c) requires the plan to provide for compliance schedules for each entity that can show that it has no "public or private alternatives for solid waste management to comply with the prohibition on open dumping". The compliance schedule is to set forth "an enforceable sequence of actions or operations, leading to compliance with the prohibition on open dumping within a reasonable time". The meaning of reasonable time is a matter for the State to decide, but no compliance schedule may allow open dumping to continue five years beyond publication of the inventory. By that time, the proper implementation of the plan should assure that adequate, environmentally acceptable disposal capacity is available in the State.

In determining whether other "public or private alternatives" exist the States should examine a range of factors concerning the State's overall solid waste management problem. EPA recommends that the State consider the availability of processing and disposal at other facilities, cost constraints, existing contractual agreements, the likelihood of incremental environmental damage and other pertinent factors. A compliance schedule for owners and operators of faciilities may involve steps to close or upgrade the facility. Upgrading is, however, the objective of the compliance schedule and not a "public or private alternative" for purposes of determining whether a compliance schedule is justified.

It should be made clear that the type of compliance schedule contemplated by section 4005(c), which includes an examination of public or private alternatives, is the only kind of compliance schedule that protects a party from the open dumping prohibition. The section 4005(c) compliance schedule is issued to particular parties, not sites. It can be issued to operators of disposal facilities but could also be issued to those parties that generate or transport wastes. The section 4005(c) compliance schedule may be coordinated with any schedule for closing or upgrading of a facility developed to comply with section 4003(3). Only those individuals bound by the compliance schedule, however, may be insulated from an open dumping action.

Subpart D—Resource Conservation and Recovery

One of the major objectives of the Act is to encourage resource recovery and resource conservation. As defined in the Act, resource recovery is the recovery of material and energy from solid waste, while resource conservation includes the reduction of the amounts of solid waste that are generated, the reduction of overall resource consumption and the utilization of recovered resources.

These guidelines establish several requirements for State plans to achieve this objective. The guidelines require the State plan to provide for the development of a policy and strategy to encourage resource recovery and resource conservation. This strategy should focus on removing existing technical, economic, and institutional constraints that impede increased resource recovery and conservation. State activities in this area could include technical assistance, training, information development and dissemination, financial support programs, and programs to develop markets for recovered materials and energy.

Several commentors suggested that the guidelines provide more detailed advice on the elements of a State strategy and on methods to implement this strategy. Such advice can be found in "Developing a State Resource Conservaton and Recovery Program," a guidance document available from EPA.

The Act and these guidelines require State plans to ensure that local governments are not prohibited under State or local law from entering into long-term contracts for supplying solid waste to resource recovery facilities. This requirement reflects the concern that the development of resource recovery facilities has been hindered by not having a guaranteed long-term supply of solid waste. The guidelines recommend that the State plan provide for State agency review of pertinent State and local statutes, and for the development of a strategy for eliminating the long-term contracting restrictions on the supply of waste to resource recovery facilities.

Several States raised concerns about their ability to comply with this requirement. They cited State constitutional provisions for home rule as restricting their influence on local laws of this type. It is recognized that States and State agencies may have limited ability to modify local procurement laws. The guidelines contain a recommended procedure for the State to pursue, in conjunction with local governments, to change local laws violating this requirement. The Act envisions a cooperative State-local effort in meeting its goals, within the framework of the State constitution and laws.

One commentor pointed out that long-term contract restrictions have been enacted for sound reasons, such as to discourage corruption. It should be noted, however, that the Act only requires elimination of restrictions impacting resource recovery facilities; and, even where these restrictions are eliminated, there are other methods which may be employed to safeguard the contracting process (such as split bidding and acceptance of the lowest bid.)

Finally, several commentors asked what is meant by "long-term". This refers to a contract length sufficient to repay the capital costs of the resource recovery project. It is usually a 20 year period.

Under section 6002 of the Act each "procuring agency" is required to procure "items composed of the highest percentage of recovered materials practicable consistent with maintaining a satisfactory level of competition".

As defined by the Act a "procuring agency" includes "any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement * * *". The proposed guidelines contained a provision requiring compliance with section 6002 as a condition for approval of a State solid waste management plan. After analyzing the comments received on that provision and reassessing the relationship between sections 6002 and 4003, EPA has decided to discuss section 6002 in the "recommendations" and not the "requirements" portion of these guidelines.

Section 6002 applies to State agencies by its own terms and does not require final guidelines under section 4002 before it is applicable to State procurement. States should be addressing the requirement of section 6002 in handling all of their Federal funds regardless of whether they develop State solid waste management plans that satisfy the requirements of section 4003. EPA has deleted any reference to section 6002 in the requirements portion of subpart D to avoid any suggestion that the procurement requirements of the Act are only enforceable in the context of State solid management planning.

A number of States commented that the State solid waste agency can have only limited impact on the State procurement process. EPA recognizes that State solid waste management agencies are generally not involved in procurement practices and policies. However, these guidelines recommend that the State solid waste agency provide information and guidance on recoverded materials to the State procurement agency and encourge that agency to develop procurement procedures in line with the section 6002 requirements. State solid waste management agencies should also seek to implement the section 6002 provisions wherever possible in their procurement activities and thereby set an example for other State agencies.

The guidelines recommend resource recovery and resource conservation as the preferred methods of solid waste management whenever technically and economically feasible. While resource recovery and conservation may reduce land disposal needs, however, these methods will not eliminate the need for land disposal. It is expected that in the near term, resource recovery and conservation will have only a limited impact on the solid waste generated nationwide. Therefore, there will continue to be a need for environmentally sound land disposal facilities in order to meet the objectives of the Act.

Subpart E—Facility Planning and Implementation

These guidelines require that the State plan provide for adequate resource conservation, recovery, storage, treatment, and disposal facilities and practices necessary to use or dispose of solid and hazardous waste in an environmentally sound manner. These guidelines also recommend a number of actions that could be undertaken to help assure that the necessary facilities and services are in fact provided for.

Several commentors emphasized that in complying with this requirement, it is important to strike an appropriate balance between public and private sector activities. These guidelines do not favor one over the other. In some parts of the country, private sector initiatives may be sufficient to ensure that the needed facilities are available. However, in other instances, there may be a need for greater involvement of State or substate governments. This involvement should include an awareness of private sector activities in order to determine whether public sector involvement in facility planning and implementation is necessary.

EPA recognizes that there is an established solid waste management industry offering a wide range of services, including the design, construction, and operation of processing, storage, treatment, transport, disposal, and recovery facilities. It is not the intent of these guidelines that the public sector needlessly supplant or duplicate activities of the private sector. State and substate agencies are encouraged to establish policies for free and unrestricted movement of solid and hazardous waste across jurisdictional boundaries and procedures for sharing information useful to prospective and established entrepreneurs, as well as to provide relevant planning information to industry regarding population and waste generation trends, environmental conditions and other topics that would assist in the establishment of financially and environmentally sound facilities.

The guidelines recommend a statewide assessment of the adequacy of existing facilities and an evaluation of the need for new or expanded facilities. The guidelines purposely leave it up to State discretion whether this needs assessment is to be conducted by State or substate agencies or by a combination of the two. One commentor pointed out that the needs assessment should consider the amount and extent of interstate transportation of solid wastes. A recommendation was added to include such considerations in assessing the need for facilities.

Where facilities and practices are found to be inadequate, actions should be taken to help ensure that needed facilities are developed by State or substate agencies or by the private sector. For areas found to have five or fewer years of capacity remaining, more detailed planning should be carried out, including evaluation of technologies and site locations. Implementation schedules also should be developed. It is widely accepted that facility siting is one of the most difficult solid waste management problems. Many commentors stressed that it is preferable for facility acquisition activities to remain the responsibility of local and regional governments. However, recent experience indicates that it is becoming more and more difficult for substate governments to obtain sites for solid waste disposal facilities. This is especially true for facilities that store, treat, or dispose of hazardous wastes.

These guidelines recommend that where there is less than two years projected capacity, the State should have the authority to acquire facilities or cause facilities to be acquired. The majority of the States responding to this recommendation agreed that it is important for the State plan to explore options for more direct State control over siting and facility development if local government and private sector initiatives fail.

Several commentors emphasized that due to the diversity in State constitutional provisions and legislative and regulatory authorities, EPA should not dictate specific methods for the State to obtain greater control over facility acquisition. EPA is not requiring any particular strategy for the States, but suggests that the States investigate the following methods recommended by commentors for acquiring more direct control over siting and facility development: obtaining the authority to override local zoning laws or to contract directly for facilities and services; using condemnation or eminent domain procedures; arbitrating siting disputes; establishing site locations at the invitation of local governments; requiring facility permits to conform to regional plans developed under the State plan; and, instituting a public utility agency to regulate the supply of services.

With regard to hazardous waste facility planning, there are certain special factors to be considered. Most hazardous waste recovery, treatment, storage, and disposal facilities are privately operated. Hazardous waste generators are often large industries with heavy capital investments in plants and equipment into which onsite hazardous waste management facilities have been integrated. In addition, there are over 100 private offsite hazardous waste management facilities which provide service to many industries.

The State plan should provide for adequate hazardous waste recovery, treatment, storage, and disposal facilities, including public facilities where necessary. States should develop implementation schedules which will insure siting of the necessary hazardous waste management facilities. State plans should also encourage waste exchanges and other waste utilization practices for hazardous wastes.

Subpart F—Coordination With Other Programs

Section 4003(1) requires the State solid waste management plan to identify means for coordinating regional planning and implementation under the State plan. Section 1006 requires the Administrator to integrate all provisions of this Act (including approval of State plans) with other Acts that grant regulatory authority to the Administrator in order to prevent duplication of administrative and enforcement efforts. To satisfy these general objectives the guidelines require that the State plan provide for coordination with Federal programs that affect State solid waste management.

Several commentors asked what the guidelines mean by coordination. Generally the goal of coordination is a balancing and sharing of responsibilities among programs with the aim of avoiding duplication of effort and gaps in program coverage. That goal may be achieved through the use of a wide range of administrative techniques, depending on the particular institutional arrangements in a State government. It is impossible to specify in these guidelines a general set of coordination steps which will be applicable to all States. Therefore, these guidelines identify several Federal programs that are relevant to solid waste management and require that the States examine the relationship between those programs and the State plan. The particular steps necessary to accommodate sound administration of solid waste programs to the objectives of other Federal programs must be developed on a State-by-State basis through negotiations between EPA, the States and other Federal agencies.

Coordination With Guidelines and Regulations Under the Act

Certain guidelines and regulations developed under the Act which should be considered in conjunction with these guidelines for State plans include:

(1) Interim regulations to implement the Resource Conservation and Recovery Act of 1976 (40 CFR Part 35), as amended. These regulations establish procedures and policies for grants and financial assistance programs.

(2) Identification of regions and agencies for solid waste management, interim guidelines (40 CFR Part 255). Identifications should be made following the criteria and procedures in the Part 255 guidelines. Completed identifications should be reviewed to determine whether new or revised identifications must be made to comply with these planning guidelines.

(3) Solid waste disposal facilities, proposed criteria for classification (40 CFR Part 257). This regulation proposes minimum criteria for determining which solid waste land disposal facilities shall be classified as posing no reasonable probability of adverse effects on health or the environment.

(4) State hazardous waste program guidelines. These were proposed as 40 CFR Part 123, subparts A and B (44 FR 34298–34307, 6/14/79); Part 123 integrates the State hazardous waste program requirements with similar State regulations under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.), and the Safe Drinking Water Act (42 U.S.C. 300f et seq.). Part 123 describes the various provisions and capabilities a State hazardous waste program must have in order to qualify for full or interim authorization under the Act. Other regulations for hazardous waste management developed under subtitle C of the Act which should be considered are:

Section 3001: Identification and Listing—40 CFR 250 Subpart A (43 FR 58954–58968, 12/18/78).

Section 3002: Generator Standards—40 CFR 250 Subpart B (43 FR 58969–58975, 12/18/78).

Section 3003: Transporter Standards—40 CFR 250 Subpart C (43 FR 18506–18512, 4/28/78; see also the DOT proposal, 43 FR 22626–22634, 5/25/78).

Section 3004: Facility Standards—40 CFR 250 Subpart D (43 FR 58994–59022, 12/18/78).

Section 3005: Permits—40 CFR 122 and 124 Subparts A and B (44 FR 34267–34282, 34321–34328, 6/14/79).

Section 3010: Notification—40 CFR 250 Subpart G (43 FR 29908–29918, 7/11/78).

Section 3011: Grants—40 CFR 35 (42 FR 56050, 10/20/77; amended by 43 FR 43424, 9/25/78).

(5) Resource recovery facility guidelines (40 CFR Part 245). These guidelines apply to Federal agencies' planning and establishment of resource recovery facilities.

Coordination With Other Environmental Programs

Plans developed under these guidelines should be coordinated with guidelines, regulations and programs developed under other Federal environmental acts:

(1) *Water Quality Management.* Subpart F of these guidelines addresses the requirements for coordinating the State plan with programs under section 208 of the Clean Water Act, as amended (33 U.S.C. 1288). Section 208 provides for the identification of complex water quality problem areas and for the designation of areawide agencies in those areas to conduct water quality management planning. The State is responsible for such planning in all areas of the State for which an areawide agency has not been identified and for coordination of all water quality management activities within the State. As part of this effort, State and areawide agencies are to identify a process to control the disposition of all residuals (solid) waste which affects water quality. After completion of such planning, the governor is to designate agencies to implement various elements of the plan.

Subpart F discusses the need to consider water quality management agencies when making agency identifications for solid waste planning and implementation. It also discusses the need to establish coordination procedures when separate agencies are identified. The following types of coordination should take place:

(a) Use of a common data base (e.g. demographic and population projections and geogragphic boundaries);

(b) Use of compatible report formats, maps, scales, legends, and so forth;

(c) Formulation of consistent policies for sludge and residuals management;

(d) Coordinated identification of State legislative changes needed for implementation; and

(e) Coordination of program development, implementation strategies, and public participation programs.

(2) *Surface Impoundment Studies.* Section 1442(a)(8)(C) of the Safe Drinking Water Act, as amended (SDWA) (42 U.S.C. 300j–1) requires a study of the nature and extent of the impact on underground water of ponds, pools, lagoons, pits, or other surface disposal of contaminants in underground water recharge areas. In partial fulfillment of this requirements, EPA is conducting through grants to State agencies, an assessment of surface impoundments and their effects on ground water. Those impoundments which are identified as having the greatest potential for serious impact on ground water quality should be considered high priority for development of the open dump inventory to be conducted under the State solid waste plan. Such impoundments which are found to violate the disposal criteria issued under section 4004 should be listed in the inventory and be liable for closure or upgrading. Those surface impoundments that receive hazardous wastes are subject to the regulations for hazardous waste disposal facilities promulgated under subtitle C of the Act.

(3) *The National Pollutant Discharge Elimination System (NPDES).* Section 402 of the Clean Water Act, as amended (33 U.S.C. 1342) establishes the National Pollutant Discharge Elimination System (NPDES) governing discharge of pollutants into navigable waters. Permits issued under section 402 should be coordinated with hazardous waste and solid waste management permits, where applicable. Specifically, the plan should provide for necessary coordination with:

(a) State or Federal issuance of NPDES permits for facilities disposing or utilizing municipal waste water treatment sludge, including new facility permits and compliance schedules under existing permits.

(b) State or Federal issuance of NPDES permits for facilities disposing or utilizing industrial pollution control sludges, including new and existing facilities.

(c) State or Federal supervision of pretreatment programs requiring facilities to comply with requirements and compliance schedules before discharging into municipal sewer systems.

Several commentors incorrectly interpreted the proposed Guidelines to imply that all disposal facilities are to be covered by an NPDES permit. The NPDES program is only applicable to disposal facilities where operation of the facility involves the discharge of a pollutant to waters of the United States. The proposed guidelines required coordination of the open dump inventory with the NPDES permit program. While such coordination is advisable where possible, coordination with a planning tool such as the inventory is not as important as coordination between parallel regulatory activities. Therefore, these guidelines only require coordination between the State solid waste permitting activity (including the establishment of compliance schedules) and the NPDES program.

(4) *State Implementation Plans.* Several commentors stated that coordination with State Implementation Plans under the Clean Air Act should receive greater emphasis in these guidelines. Coordination with State Implementation Plans has been changed to a "requirement" from "a requirement, where practicable." Commentors also stated that the guidelines should emphasize the need for full and timely coordination of plans for resource recovery systems with the requirements of State Implementation Plans. This change has been made.

(5) *Coordination With Mining Regulatory Agencies.* Title IV of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1231) provides for the establishment of a fund for reclamation of abandoned mining lands. To be eligible to receive this funding, States must first develop an enforcement program for wastes from active mines, subject to the Department of the Interior and EPA approval (title V). All mine wastes must be disposed in accordance with performance standards to be promulgated by the Office of Surface Mining, Department of the Interior. Coordination between these EPA and Department of the Interior programs will facilitate the inventory of mining wastes and may increase the beneficial use of sludge as a soil conditioner in reclamation of abandoned lands.

(6) *Endangered and Threatened Species.* The proposed regulation required "coordination, where practicable" with programs administered by the Office of Endangered Species, Department of the Interior. In examining the Act and section 7 of the Endangered Species Act (16 U.S.C. 1530 et seq.), EPA concluded that these guidelines should address this issue more specifically. Sound solid waste management should include a sensitivity to the impact of solid waste collection, source separation, storage, transportation, transfer, processing, treatment and disposal on endangered and threatened species. Therefore, these guidelines require that the State plan provide for coordination with the Office of Endangered Species in order to ensure that solid waste management activities not jeopardize the continued existence of an endangered or threatened species nor result in the destruction or adverse modification of a critical habitat. The Office of Endangered Species has identified the species and habitats of concern in its regulations (50 CFR Part 17) implementing the Endangered Species Act.

EPA does not believe that it is appropriate to require more than coordination with endangered species programs in these guidelines. The States may need to employ differing administrative tools, from general policy statements to site-specific permit conditions, to provide protection of endangered species within their borders. EPA believes that the States must have the flexibility to determine, after consultation with Federal agencies concerned with this issue, the appropriate role of the State solid waste management plan in dealing with these issues. Such an approach is consistent with subtitle D, which relies heavily on State inititative, and which ultimately provides the greatest assurance of devising a solid waste management program which will be effective in protecting endangered and threatened species.

(7) *Dredge and Fill Permit Program.* Under section 404 of the Clean Water Act, as amended (CWA), the United States Army Corps of Engineers is responsible for the issuance of permits for the discharge of dredged or fill material into the Waters of the United States. States may assume responsibility for the issuance of permits if they have a program which satisfies requirements specified in section 404 of the CWA. States should attempt to coordinate the State plan with the dredge and fill permit program, particularly in regard to the siting of disposal facilities. To emphasize the importance of this program these guidelines require coordination with the Corps of Engineers (or the appropriate State agency) concerning the dredge and fill permit program.

(8) *Programs Affecting Indian Reservations.* Suggestions were received for coordination with areas not listed in these guidelines. Several commentors were particularly concerned about coordination with programs affecting Indian tribes and lands. EPA recognizes that improper disposal of solid waste on Indian lands can cause pollution both on and off the reservation. States with Indian lands should therefore address

solid waste management on these lands in accord with treaties and State policy. A provision has been added to subpart F to encourge coordination with tribal solid waste management programs. General wording has also added to subpart F to encourage the State to coordinate with any other Act or program area the State deems appropriate.

Subpart G—Public Participation

Under authority of section 7004(b) of the Act EPA is defining in these guidelines requirements for public participation in the development and implementation of State and substate plans. The requirements in these guidelines are supplemented by the requirements in 40 CFR Part 35 for solid waste program grants and by requirements in 40 CFR Part 25. Part 25 contains general public participation requirements for programs under the Solid Waste Disposal Act, as amended by RCRA, as well as for the programs under the Clean Water Act, as amended (33 U.S.C. 1251 et seq.) and the Safe Drinking Water Act, as amended (42 U.S.C. 300f et seq.).

The guidelines consider public participation for plan development, annual work program development, regulation development, and permitting of facilities. The guidelines require the greatest public participation in development of the State plan. The State must hold a public hearing on the plan in addition to other general efforts at publicizing the content of the plan. The State also is to prepare a responsiveness summary describing how it responded to public comment on the plan. The guidelines require that the draft annual State work program be made available to the public and that the work program include a public participation work plan. In the development of State regulations the guidelines allow the States to choose between a public hearing as described in 40 CFR Part 25 or the applicable portions of State law or administative procedures. The guidelines require a public hearing on a facility permit if the State finds that there is a significant degree of public interest on the proposed permit.

Many comments were received on the requirement in these guidelines for an advisory group to assist with plan development and implementation. Several commentors stated that informal meetings or committees are a better means of obtaining public input on a solid waste management plan than formal advisory groups. Some States with formal advisory groups felt that the way their advisory groups are currently structured is more suitable than the way proposed by Part 25.

EPA recognizes these concerns and has deleted both the requirement for an advisory group and the requirement that existing groups conform to the Part 25 provisions. EPA does believe, however, that advisory groups can be an important aspect of the public consultation process and that their use should be encouraged in those States where they are effective. Therefore, these guidelines *recommend* the use of advisory groups. States considering the establishment of an advisory group are encouraged to examine the guidance for advisory group membership and responsibilities contained in Part 25.

On a related issue, several commentors felt the guidelines should encourage public education programs that inform the public about and encourage their interest in planning for solid waste management. EPA agrees, and a recommendation for public education programs has been included.

The requirement to hold a public hearing before approving a permit for a resource recovery or disposal facility generated more comments than any other issue. Commentors cited the high cost of holding hearings and the lack of public interest in many permits. A majority of States responding suggested providing an opportunity for a hearing, while some felt hearings should not be required for permit renewals. Some commentors felt that a hearing at the local level should suffice, and a few commentors stated that there should be no requirements for hearings on permits in these guidelines.

After considering these comments, EPA has revised this section to require a hearing when the State finds a significant degree of public interest on the proposed permit. This change will avoid burdening the State with the cost of a hearing where there is no public interest in a permit, while providing an opportunity for public participation in this important facet of the solid waste management process. EPA decided that permit renewals should not be exempt from this requirement because a revised permit may result in a significantly different environmental impact. The hearing or the decision on the need for such a hearing may be a State or local function depending on how the plan identifies responsibilities within the State.

It should be made clear that the guidelines only address public hearing requirements in permit proceedings. Under State or Constitutional law there may be a right to an adjudicatory, or "on the record", hearing prior to the imposition of legal sanctions. The guidelines do not address that issue.

Economic Impact

EPA has determined that this document does not require an economic impact analysis statement under Executive Order 12044 and OMB Circular A-107. The major economic impact of these guidelines is associated with the closure and upgrading of facilities in violation of the criteria for classification of solid waste disposal facilities (the Criteria, 40 CFR Part 257). The environmental impact statement prepared for the Criteria contains analysis of the cost of bringing facilities into compliance with the Criteria.

Dated: July 25, 1979.

Barbara Blum,

Acting Administrator.

Title 40 CFR is amended to add a new part 256 reading as follows:

PART 256—GUIDELINES FOR DEVELOPMENT AND IMPLEMENTATION OF STATE SOLID WASTE MANAGEMENT PLANS

Subpart A—Purposes, General Requirements, Definitions

Sec.

Subpart B—Identification of Responsibilities; Distribution of Funding

Subpart C—Solid Waste Disposal Programs

Subpart D—Resource Conservation and Resource Recovery Programs

Sec.

Authority: Sections 4002(b) and 4003 of the Solid Waste Disposal Act, as amended, Pub. L. 94–580; 90 Stat. 2813, 2814; 42 U.S.C. 6942(b), 6943.

Subpart A—Purpose, General Requirements, Definitions

§ 256.01 Purpose and scope of the guidelines.

(a) The purpose of these guidelines is to assist in the development and implementation of State solid waste management plans, in accordance with section 4002(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6942(b)) (the "Act"). These guidelines contain methods for achieving the objectives of environmentally sound management and disposal of solid and hazardous waste, resource conservation, and maximum utilization of valuable resources.

(b) These guidelines address the minimum requirements for approval of State plans as set forth in section 4003 of the Act. These are:

(1) The plan shall identify, in accordance with section 4006(b), (i) the responsibilities of State, local, and regional authorities in the implementation of the State plan, (ii) the distribution of Federal funds to the authorities responsible for development and implementation of the State plan, and (iii) the means for coordinating regional planning and implementation under the State plan.

(2) The plan shall, in accordance with section 4005(c), prohibit the establishment of new open dumps within the State, and contain requirements that all solid waste (including solid waste originating in other States, but not including hazardous waste) shall be (i) utilized for resource recovery or (ii) disposed of in sanitary landfills (within the meaning of section 4004(a)) or otherwise disposed of in an environmentally sound manner.

(3) The plan shall provide for the closing or upgrading of all existing open dumps within the State pursuant to the requirements of section 4005.

(4) The plan shall provide for the establishment of such State regulatory powers as may be necessary to implement the plan.

(5) The plan shall provide that no local government within the State shall be prohibited under State or local law from entering into long-term contracts for the supply of solid waste to resource recovery facilities.

(6) The plan shall provide for resource conservation or recovery and for the disposal of solid waste in sanitary landfills or for any combination of practices so as may be necessary to use or dispose of such waste in a manner that is environmentally sound.

(c) These guidelines address the requirement of section 4005(c) that a State plan:

> Shall establish, for any entity which demonstrates that it has considered other public or private alternatives for solid waste management to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, a timetable or schedule of compliance for such practice or disposal of solid waste which specifies a schedule of remedial measures, including an enforceable sequence of actions or operations leading to compliance with the prohibition on open dumping of solid waste within a reasonable time (not to exceed five years from the date of publication of the inventory).

§ 256.02 Scope of the State solid waste management plan.

(a)(1) The State plan shall address all solid waste in the State that poses potential adverse effects on health or the environment or provides opportunity for resource conservation or resource recovery. The plan shall consider:

(i) Hazardous wastes;
(ii) Residential, commercial and institutional solid waste;
(iii) Wastewater treatment sludge;
(iv) Pollution control residuals;
(v) Industrial wastes;
(vi) Mining wastes;
(vii) Agricultural wastes;
(viii) Water treatment sludge; and
(ix) Septic tank pumpings.

(2) The State plan shall consider the following aspects of solid waste management:

(i) Resource conservation;
(ii) Source separation;
(iii) Collection;
(iv) Transportation;
(v) Storage;
(vi) Transfer;
(vii) Processing (including resource recovery);
(viii) Treatment; and
(ix) Disposal.

(b) The State Plan shall establish and justify priorities and timing for actions. These priorities shall be based on the current level of solid waste management planning and implementation within the State, the extent of the solid waste management problem, the health, environmental and economic impacts of the problem, and the resources and management approaches available.

(c) The State plan shall set forth an orderly and manageable process for achieving the objectives of the Act and meeting the requirements of these guidelines. This process shall describe as specifically as possible the activities to be undertaken, including detailed schedules and milestones.

(d) The State plan shall cover a minimum of a five year time period from the date submitted to EPA for approval.

(e) The State plan shall identify existing State legal authority for solid waste management and shall identify modifications to regulations necessary to meet the requirements of these guidelines.

§ 256.03 State plan submission, adoption, and revision.

(a) To be considered for approval, the State plan shall be submitted to EPA within eighteen months after final promulgation of these guidelines.

(b) Prior to submission to EPA, the plan shall be adopted by the State pursuant to State administrative procedures.

(c) The plan shall be developed in accord with public participation procedures required by subpart G of this part.

(d) The plan shall contain procedures for revision. The State plan shall be revised by the State, after notice and public hearings, when the Administrator, by regulation, or the State determines, that:

(1) The State plan is not in compliance with the requirements of these guidelines;

(2) Information has become available which demonstrates the inadequacy of the plan; or

(3) Such revision is otherwise necessary.

(e) The State plan shall be reviewed by the State and, where necessary,

revised and readopted not less frequently than every three years.

§ 256.04 State plan approval, financial assistance.

(a) The Administrator shall, within six months after a State plan has been submitted for approval, approve or disapprove the plan. The Administrator shall approve a plan if he determines that:

(1) It meets the requirements of these guidelines which address sections 4003(1), (2), (3), and (5), and

(2) It contains provisions for revision pursuant to § 256.03

(b) The Administrator shall review approved plans from time to time, and if he determines that revisions or corrections are necessary to bring such plan into compliance with all of the requirements of these guidelines, including the requirements which address sections 4003(4) and (6) and any new or revised requirement established by amendment to this part, he shall notify the State and provide an opportunity for such revisions and corrections and for an appeal and public hearing. If the plan continues to remain out of compliance, he shall withdraw his approval of such plan.

(c) Such withdrawal of approval shall cease to be effective upon the Administrator's determination that the State plan complies with the requirements of these guidelines.

(d) The Administrator shall approve a State application for financial assistance under subtitle D of the Act, and make grants to such State, if the Administrator determines that the State plan continues to be eligible for approval and is being implemented by the State.

(e) Upon withdrawal of approval of a State plan, the Administrator shall withhold Federal financial and technical assistance under subtitle D (other than such technical assistance as may be necessary to assist in obtaining reinstatement of approval) until such time as approval is reinstated. (Procedures for termination of financial assistance and for settlement of disputes are contained in 40 CFR 30, appendix A, articles 7 and 8.)

§ 256.05 Annual work program.

(a) The annual work program submitted for financial assistance under section 4008(a)(1) and described in the grant regulations (40 CFR Part 35) shall be reviewed by the Administrator in order to determine whether the State plan is being implemented by the State.

(b) The Administrator and the State shall agree on the contents of the annual work program. The Administrator will consider State initiatives and priorities, in light of the goals of the Act, in determining annual work programs for each State. The annual work program represents a State's obligation incurred by acceptance of financial assistance.

(c) Annual guidance for the development of State work programs will be issued by EPA. While this guidance will establish annual national priorities, flexibility will be provided in order to accommodate differing State priorities.

(d) The following documents developed under the State plan shall be included by reference in the annual work program:

(1) Substate solid waste management plans,

(2) Plans for the development of facilities and services, including hazardous waste management facilities and services,

(3) Evidence of actions or steps taken to close or upgrade open dumps.

(e) The annual work program shall allocate the distribution of Federal funds to agencies responsible for the development and implementation of the State plan.

§ 256.06 Definitions.

Terms not defined below have the meanings assigned them by section 1004 of the Act.

"The Act" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901 et seq.).

"Criteria" means the "Criteria for Classification of Solid Waste Disposal Facilities", 40 CFR Part 257, promulgated under section 4004(a) of the Act.

"Facility" refers to any resource recovery system or component thereof, any system, program or facility for resource conservation, and any facility for collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste, including hazardous waste, whether such facility is associated with facilities generating such wastes or not.

"Implementation" means putting the plan into practice by carrying out planned activities, including compliance and enforcement activities, or ensuring such activities are carried out.

"Inactive facility" means a facility which no longer receives solid waste.

"Inventory of open dumps" means the inventory required under section 4005(b) and is defined as the list published by EPA of those disposal facilities which do not meet the criteria.

"Operator" includes facility owners and operators.

A "permit" is an entitlement to commence and continue operation of a facility as long as both procedural and performance standards are met. The term "permit" includes any functional equivalent such as a registration or license.

"Planning" includes identifying problems, defining objectives, collecting information, analyzing alternatives and determining necessary activities and courses of action.

"Provide for" in the phrase "the plan shall (should) provide for" means explain, establish or set forth steps or courses of action.

The term "shall" denotes requirements for the development and implementation of the State plan.

The term "should" denotes recommendations for the development and implementation of the State plan.

"Substate" refers to any public regional, local, county, municipal, or intermunicipal agency, or regional or local public (including interstate) solid or hazardous waste management authority, or other public agency below the State level.

Subpart B—Identification of Responsibilities; Distribution of Funding

§ 256.10 Requirements.

(a) In accordance with sections 4003(1) and 4006 and the interim guidelines for identification of regions and agencies for solid waste management (40 CFR Part 255), the State plan shall provide for:

(1) The identification of the responsibilities of State and substate (regional, local and interstate) authorities in the development and implementation of the State plan;

(2) The means of distribution of Federal funds to the authorities responsible for development and implementation of the State plan; and

(3) The means for coordinating substate planning and implementation.

(b) Responsibilities shall be identified for the classification of disposal facilities for the inventory of open dumps.

(c) Responsibilities shall be identified for development and implementation of the State regulatory program described in subpart C of this part.

(d) Responsibilities shall be identified for the development and implementation of the State resource conservation and resource recovery program described in subpart D of this part.

(e) State, substate and private sector responsibilities shall be identified for the planning and implementation of

solid and hazardous waste management facilities and services.

(f) Financial assistance under sections 4008(a) (1) and (2) shall be allocated by the State to State and substate authorities carrying out development and implementation of the State plan. Such allocation shall be based on the responsibilities of the respective parties as determined under section 4006(b).

§ 256.11 Recommendations.

(a) Responsibilities should be identified for each of the solid waste types listed in § 256.02(a)(1).

(b) Responsibilities should be identified for each of the aspects of solid waste management listed in § 256.02(a)(2).

(c) Responsibilities should be identified for planning and designating ground water use with respect to design and operation of solid waste disposal facilities.

(d) Responsibilities should be identified for the development and implementation of the authorized State hazardous waste management program under subtitle C of the Act.

(e) The State plan should include a schedule and procedure for the continuing review, reassessment and reassignment of responsibilities.

Subpart C—Solid Waste Disposal Programs

§ 256.20 Requirements for State legal authority.

In order to comply with sections 4003 (2) and (3), the State plan shall assure that the State has adequate legal authority to prohibit the establishment of new open dumps and to close or upgrade existing open dumps. The prohibition of the establishment of new open dumps shall take effect no later than six months after the date of promulgation of the criteria or on the date of approval of the State plan, whichever is later.

§ 256.21 Requirements for State regulatory powers.

In order to comply with section 4003(4), the State plan shall provide for the establishment of State regulatory powers. These powers:

(a) Shall be adequate to enforce solid waste disposal standards which are equivalent to or more stringent than the criteria for classification of solid waste disposal facilities (40 CFR Part 257). Such authority shall be as definitive as possible and clearly establish the means for compliance.

(b) Shall include surveillance capabilities necessary to detect adverse environmental effects from solid waste disposal facilities. Such capabilities shall include access for inspection and monitoring by regulatory officials and the authority to establish operator monitoring and reporting requirements.

(c) Shall make use of a permit program which ensures that the establishment of new open dumps is prohibited.

(d) Shall have administrative and judicial enforcement capabilities, including enforceable orders, fines or other administrative procedures, as necessary to ensure compliance.

§ 256.22 Recommendations for State regulatory powers.

In order to assist compliance with section 4003(4), the following are recommendations for State regulatory powers as may be necessary to prohibit new open dumps and close or upgrade all existing open dumps.

(a) Solid waste disposal standards:

(1) Should be based on the health and environmental impacts of disposal facilities.

(2) Should specify design and operational standards.

(3) Should take into account the climatic, geologic, and other relevant characteristics of the State.

(b) Surveillance systems should establish monitoring requirements for facilities.

(1) Every facility should be evaluated for potential adverse health and environmental effects. Based on this evaluation, instrumentation, sampling, monitoring, and inspection requirements should be established.

(2) Every facility which produces leachate in quantities and concentrations that could contaminate ground water in an aquifer should be required to monitor to detect and predict contamination.

(3) Inspectors should be trained and provided detailed instructions for checking on the procedures and conditions that are specified in the engineering plan and site permit. Provisions should be made to ensure chain of custody for evidence.

(c) Facility assessment and prescription of remedial measures should be carried out by adequately trained or experienced professional staff, including engineers and geologists.

(d) The State permit system should provide the administrative control to prohibit the establishment of new open dumps and to assist in meeting the requirement that all wastes be used or disposed in an environmentally sound manner.

(1) Permitting procedures for new facilities should require applicants to demonstrate that the facility will comply with the criteria.

(2) The permit system should specify, for the facility operator, the location, design, construction, operational, monitoring, reporting, completion and maintenance requirements.

(3) Permit procedures should include provisions to ensure that future use of the property on which the facility is located is compatible with that property's use as a solid waste disposal facility. These procedures should include identification of future land use or the inclusion of a stipulation in the property deed which notifies future purchasers of precautions necessitated by the use of the property as a solid waste disposal facility.

(4) Permits should only be issued to facilities that are consistent with the State plan, or with substate plans developed under the State plan.

(e) The enforcement system should be designed to include both administrative procedures and judicial remedies to enforce the compliance schedules and closure procedures for open dumps.

(1) Permits, surveillance, and enforcement system capabilities should be designed for supporting court action.

(2) Detection capabilities and penalties for false reporting should be provided for.

§ 256.23 Requirements for closing or upgrading open dumps.

In meeting the requirement of section 4003(3) for closing or upgrading open dumps:

(a) The State plan shall provide for the classification of existing solid waste disposal facilities according to the criteria. This classification shall be submitted to EPA, and facilities classified as open dumps shall be published in the inventory of open dumps.

(b) The State plan shall provide for an orderly time-phasing of the disposal facility classifications described in paragraph (a) of this section. The determination of priorities for the classification of disposal facilities shall be based upon:

(1) The potential health and environmental impact of the solid waste disposal facility;

(2) The availability of State regulatory and enforcement powers; and

(3) The availability of Federal and State resources for this purpose.

(c) For each facility classified as an open dump the State shall take steps to close or upgrade the facility. Evidence of that action shall be incorporated by reference into the annual work program and be made publicly available. When

the State's actions concerning open dumps are modified, the changes shall be referenced in subsequent annual work programs.

(d) In providing for the closure of open dumps the State shall take steps necessary to eliminate health hazards and minimize potential health hazards. These steps shall include requirements for long-term monitoring or contingency plans where necessary.

§ 256.24 Recommendations for closing or upgrading open dumps.

(a) All sources of information available to the State should be used to aid in the classification of facilities. Records of previous inspections and monitoring, as well as new inspections and new monitoring, should be considered.

(b) The steps to close or upgrade open dumps established under § 256.23(c) should be coordinated with the facility needs assessment described in § 256.41.

(c) A determination should be made of the feasibility of resource recovery or resource conservation to reduce the solid waste volume entering a facility classified as an open dump; and feasible measures to achieve that reduction should be implemented.

§ 256.25 Recommendation for inactive facilities.

Inactive facilities that continue to produce adverse health or environmental effects should be evaluated according to the criteria. The State plan should provide for measures to ensure that adverse health or environmental effects from inactive facilities are minimized or eliminated. Such measures may include actions by disposal facility owners and operators, notification of the general public, adjacent residents and other affected parties and notification of agencies responsible for public health and safety.

§ 256.26 Requirement for schedules leading to compliance with the prohibition of open dumping.

In implementing the section 4005(c) prohibition on open dumping, the State plan shall provide that any entity which demonstrates that it has considered other public or private alternatives to comply with the prohibition on open dumping and is unable to utilize such alternatives to so comply, may obtain a timetable or schedule for compliance which specifies a schedule of remedial measures, and an enforceable sequence of actions, leading to compliance within a reasonable time (not to exceed 5 years from the date of publication of the inventory).

§ 256.27 Recommendation for schedules leading to compliance with the prohibition of open dumping.

In reviewing applications for compliance schedules under § 256.26, the State should consider the availability of processing and disposal facilities, the likelihood of environmental damage from disposal at available facilities, the existence of State or substate requirements (including other compliance schedules) applicable to available facilities, cost constraints, existing contractual agreements and other pertinent factors.

Subpart D—Resource Conservation and Resource Recovery Programs

§ 256.30 Requirements.

(a) In order to comply with sections 4003(2) and (6) as they pertain to resource conservation and recovery, the State plan shall provide for a policy and strategy for encouragement of resource recovery and conservation activities.

(b) In order to comply with section 4003(5), the State plan shall provide that no local government within the State is prohibited under State or local law from entering into long-term contracts for the supply of solid waste to resource recovery facilities.

§ 256.31 Recommendations for developing and implementing resource conservation and recovery programs.

(a) In order to encourage resource recovery and conservation, the State plan should provide for technical assistance, training, information development and dissemination, financial support programs, market studies and market development programs.

(b) In order to comply with the requirement of § 256.30(b) regarding long-term contract prohibitions, the State plan should provide for:

(1) Review of existing State and local laws and regulations pertinent to contracting for resource recovery services or facilities.

(2) Reporting of all laws and regulations found to be in violation of this requirement to the executive officer of the administrative agency responsible for the statute.

(3) Development of an administrative order or a revised law or regulation or any other preliminary step for the removal or amending of a law or regulation in violation of this requirement.

(4) Development of a strategy for the consideration of the legislature to prohibit and/or remove from State or local law provisions in violation of this requirement.

(c) The State plan should aid and encourage State procurement of products containing recovered materials in accord with section 6002 of the Act. To assist this effort, the State plan should provide for:

(1) The development of a policy statement encouraging the procurement of recovered materials, wherever feasible;

(2) The identification of the key purchasing agencies of the State, along with potential uses of recovered materials by these agencies; and,

(3) The development of a plan of action to promote the use of recovered materials through executive order, legislative initiative, or other action that the State deems necessary.

(d) In order to encourage resource recovery and conservation, the State plan should provide for the elimination, to the extent possible, of restrictions on the purchase of goods or services, especially negotiated procurements, for resource recovery facilities. This should include:

(1) Review of existing State and local laws pertinent to the procurement of equipment and services for the design, construction and operation of resource recovery facilities;

(2) Listing of all laws that limit the ability of localities to negotiate for the procurement of the design, construction, or operation of resource recovery facilities;

(3) Development of administrative orders or legislation or other action that would eliminate these restrictions; and

(4) Development of a strategy and plan of action for the consideration of the legislature for execution of administrative orders or other action that would eliminate these restrictions.

(e) The State plan should encourage the development of resource recovery and resource conservation facilities and practices as the preferred means of solid waste management whenever technically and economically feasible. The State plan should provide for the following activities:

(1) The composition of wastes should be analyzed with particular emphasis on recovery potential for material and energy, including fuel value, percentages of recoverable industrial wastes, grades of wastepaper, glass, and non-ferrous and ferrous metals.

(2) Available and potential markets for recovered materials and energy should be identified, including markets for recoverable industrial wastes; wastepapers; ferrous and non-ferrous metals; glass; solid, liquid, or gaseous fuels; sludges; and tires. The following should be evaluated: location and

transportation requirements, materials and energy specifications of user industries, minimum quantity requirements, pricing mechanisms and long-term contract availability.

(3) Resource recovery feasibility studies should be conducted in regions of the State in which uses or markets for recovered materials or energy are identified. These studies should review various technological approaches, environmental considerations, institutional and financial constraints, and economic feasibility.

(4) Source separation, recycling and resource conservation should be utilized whenever technically and economically feasible.

(5) Mixed waste processing facilities for the recovery of energy and materials should be utilized whenever technically and economically feasible.

(6) Source separation, resource conservation and mixed waste processing capacity should be combined to achieve the most effective resource conservation and economic balance.

Subpart E—Facility Planning and Implementation

§ 256.40 Requirements.

In order to comply with section 4003(6), the State plan shall provide for adequate resource conservation, recovery, storage, treatment and disposal facilities and practices necessary to use or dispose of solid and hazardous waste in an environmentally sound manner.

§ 256.41 Recommendations for assessing the need for facilities.

(a) In meeting the requirement for adequate resource conservation, recovery, storage, treatment and disposal facilities and practices, the State plan should provide for an assessment of the adequacy of existing facilities and practices and the need for new or expanded facilities and practices.

(1) The needs assessment should be based on current and projected waste generation rates and on the capacities of presently operating and planned facilities.

(2) Existing and planned resource conservation and recovery practices and their impact on facility needs should be assessed.

(3) Current and projected movement of solid and hazardous waste across State and local boundaries should be assessed.

(4) Special handling needs should be determined for all solid waste categories.

(5) Impact on facility capacities due to predictable changes in waste quantities and characteristics should be estimated.

(6) Environmental, economic, and other constraints on continued operation of facilities should be assessed.

(7) Diversion of wastes due to closure of open dumps should be anticipated.

(8) Facilities and practices planned or provided for by the private sector should be assessed.

(b) The State plan should provide for the identification of areas which require new capacity development, based on the needs assessment.

§ 256.42 Recommendations for assuring facility development.

(a) The State plan should address facility planning and acquisition for all areas which are determined to have insufficient recovery, storage, treatment and disposal capacity in the assessment of facility needs.

(b) Where facilities and practices are found to be inadequate, the State plan should provide for the necessary facilities and practices to be developed by responsible State and substate agencies or by the private sector.

(c) For all areas found to have five or fewer years of capacity remaining, the State plan should provide for:

(1) The development of estimates of waste generation by type and characteristic,

(2) The evaluation and selection of resource recovery, conservation or disposal methods,

(3) Selection of sites for facilities, and

(4) Development of schedules of implementation.

(d) The State plan should encourage private sector initiatives in order to meet the identified facility needs.

(e) In any area having fewer than 2 years of projected capacity, the State plan should provide for the State to take action such as acquiring facilities or causing facilities to be acquired.

(f) The State plan should provide for the initiation and development of environmentally sound facilities as soon as practicable to replace all open dumps.

(g) The State plan should provide for the State, in cooperation with substate agencies, to establish procedures for choosing which facilities will get priority for technical or financial assistance or other emphasis. Highest priority should be given to facilities developed to replace or upgrade open dumps.

(h) The State plan should provide for substate cooperation and policies for free and unrestricted movement of solid and hazardous waste across State and local boundaries.

Subpart F—Coordination With Other Programs

§ 256.50 Requirements.

Section 4003(1) requires the State solid waste managment plan to idenifty means for coordinating regional planning and implementation under the State plan. Section 1006 requires the Administrator to integrate all provisions of this Act (including approval of State plans) with other Acts that grant regulatory authority to the Administrator in order to prevent duplication of administrative and enforcement efforts. In order to meet these requirements:

(a) The State solid waste management plan shall be developed in coordination with Federal, State, and substate programs for air quality, water quality, water supply, waste water treatment, pesticides, ocean protection, toxic substances control, noise control, and radiation control.

(b) The State plan shall provide for coordination with programs under section 208 of the Clean Water Act, as amended (33 U.S.C. 1288). In identifying agencies for solid waste management planning and implementation, the State shall review the solid waste management activities being conducted by water quality planning and management agencies designated under section 208 of the Clean Water Act. Where feasible, identification of such agencies should be considered during the identification of responsibilities under subpart B of this part. Where solid waste management and water quality agencies are separate entities, necessary coordination procedures shall be established.

(c) The State plan shall provide for coordination with the National Pollutant Discharge Elimination System (NPDES) established under section 402 of the Clean Water Act, as amended (33 U.S.C. 1342). The issuance of State facility permits and actions taken to close or upgrade open dumps shall be timed, where practicable, to coordinate closely with the issuance of a new or revised NPDES permit for such facility.

(d) The State plan shall provide for coordination with activities for municipal sewage sludge disposal and utilization conducted under the authority of section 405 of the Clean Water Act, as amended (33 U.S.C. 1345), and with the program for construction grants for publicly owned treatment works under section 201 of the Clean Water Act, as amended (33 U.S.C. 1281).

(e) The State plan shall provide for coordination with State pretreatment

activities under section 307 of the Clean Water Act, as amended (33 U.S.C. 1317).

(f) The State plan shall provide for coordination with agencies conducting assessments of the impact of surface impoundments on underground sources of drinking water under the authority of section 1442(a)(8)(C) of the Safe Drinking Water Act (42 U.S.C. 300j-1).

(g) The State plan shall provide for coordination with State underground injection control programs (40 CFR Parts 122, 123, 124, and 146) carried out under the authority of the Safe Drinking Water Act (42 U.S.C. 300f et seq.) and with the designation of sole source aquifers under section 1424 of that Act.

(h) The State plan shall provide for coordination with State implementation plans developed under the Clean Air Act (42 U.S.C. 7401 et seq.; incineration and open burning limitations; and, State implementation plan requirements impacting resource recovery systems).

(i) The State plan shall provide for coordination with the Army Corps of Engineers permit program (or authorized State program) under section 404 of the Clean Water Act, as amended (33 U.S.C. 1344) for dredge and fill activities in waters of the United States.

(j) The State plan shall provide for coordination with the Office of Endangered Species, Department of the Interior, to ensure that solid waste management activities, especially the siting of disposal facilities, do not jeopardize the continued existence of an endangered or threated species nor result in the destruction or adverse modification of a critical habitat.

(k) The State plan shall provide for coordination, where practicable, with programs under:

(1) The Toxic Substances Control Act (15 U.S.C. 2601 et seq.; disposal of chemical substances and mixtures).

(2) The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 1362 et seq.; disposal and storage of pesticides and pesticide containers).

(3)The Marine Protection, Research and Sanctuaries Act (33 U.S.C. 1420 et seq.; disposal in ocean waters).

(l) The State plan shall provide for coordination, where practicable, with programs of other Federal agencies, including:

(1) Department of the Interior.

(i) Fish and Wildlife Service (wetlands).

(ii) Bureau of Mines and Office of Surface Mining (mining waste disposal and use of sludge in reclamation).

(iii) U.S. Geological Survey (wetlands, floodplains, ground water);

(2) Department of Commerce, National Oceanic and Atmospheric Administration (coastal zone management plans);

(3) Water Resources Council (floodplains, surface and ground waters);

(4) Department of Agriculture, including Soil Conservation Service (land spreading solid waste on food chain croplands);

(5) Federal Aviation Administration (locating disposal facilities on or near airport property);

(6) Department of Housing and Urban Development (701 comprehensive planning program, flood plains mapping);

(7) Department of Defense (development and implementation of State and substate plans with regard to resource recovery and solid waste disposal programs at various installations);

(8) Department of Energy (State energy conservation plans under the Energy Policy and Conservation Act (42 U.S.C. 6321)); and

(9) Other programs.

(m) The State plan shall provide for coordination, where practicable, with solid waste management plans in neighboring States and with plans for Indian reservations in the State.

Subpart G—Public Participation

§ 256.60 Requirements for public participation in State and substate plans.

(a) State and substate planning agencies shall:

(1) Maintain a current list of agencies, organizations, and individuals affected by or interested in the plan;

(2) Provide depositories of relevant information in one or more convenient locations; and

(3) Prepare a responsiveness summary, in accord with 40 CFR Part 25.8, where required by this subpart or by an approved public participation work plan, which describes matters on which the public was consulted, summarizes the public's views; and sets forth the agency's response to the public input.

(b) State and substate planning agencies shall provide information and consult with the public on plan development and implementation. Provision of information and consultation shall occur both early in the planning process (including the preparation and distribution of a summary of the proposed plan) and on major policy decisions made during the course of plan development, revision and implementation. To meet this requirement, planning agencies shall:

(1) Publicize information in news media having broad audiences in the geographic area;

(2) Place information in depositories maintained under paragraph (a)(2) of this section;

(3) Send information directly to agencies, organizations and individuals on the list maintained under paragraph (a)(1) of this section; and

(4) Prepare and make available to the public a responsiveness summary in accord with 40 CFR Part 25.8.

(c) State and substate planning agencies shall conduct public hearings (and public meetings, where the agency determines there is sufficient interest) in accord with 40 CFR Parts 25.5 and 25.6. The purpose of the hearings and meetings is to solicit reactions and recommendations from interested or affected parties and to explain major issues within the proposed plan. Following the public hearings, a responsiveness summary shall be prepared and made available to the public in accord with 40 CFR Part 25.8.

§ 256.61 Requirements for public participation in the annual State work program.

(a) A public participation work plan in accord with 40 CFR Part 25.11 shall be included in the annual State work program.

(b) The State shall consult with the public in the development of the annual work program. One month prior to submission of the draft work program to the Regional Administrator, as required by 40 CFR Part 35, the draft work program shall be made available to the public at the State information depositories maintained under § 256.60(a)(2). The public shall be notified of the availability of the draft work program, and a public meeting shall be held if the planning agency determines there is sufficient interest.

(c) The State shall comply with the requirements of Office of Management and Budget Circular No. A-95.

(d) Copies of the final work program shall be placed in the State information depositories maintained under § 256.60(a)(2).

§ 256.62 Requirements for public participation in State regulatory development.

(a) The State shall conduct public hearings (and public meetings where the State determines there is sufficient interest) on State legislation and regulations, in accord with the State administrative procedures act, to solicit reactions and recommendations. Following the public hearings, a

responsiveness summary shall be prepared and made available to the public in accord with 40 CFR Part 25.8.

(b) In advance of the hearings and meetings required by paragraph (a) of this section, the State shall prepare a fact sheet on proposed regulations or legislation, mail the fact sheet to agencies, organizations and individuals on the list maintained under § 256.60(a)(1) and place the fact sheet in the State information depositories maintained under § 256.60(a)(2).

§ 256.63 Requirements for public participation in the permitting of facilities.

(a) Before approving a permit application (or renewal of a permit) for a resource recovery or solid waste disposal facility the State shall hold a public hearing to solicit public reaction and recommendations on the proposed permit application if the State determines there is a significant degree of public interest in the proposed permit.

(b) This hearing shall be held in accord with 40 CFR Part 25.5.

§ 256.64 Recommendations for public participation.

(a) State and substate planning agencies should establish an advisory group, or utilize an existing group, to provide recommendations on major policy and program decisions. The advisory group's membership should reflect a balanced viewpoint in accord with 40 CFR Part 25.7(c).

(b) State and substate planning agencies should develop public education programs designed to encourage informed public participation in the development and implementation of solid waste management plans.

(c) The State should inform all affected parties of the classification of a facility as an open dump, in accord with § 256.22(a), prior to publication of that facility by EPA on the open dump inventory.

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