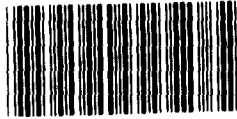


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STATEMENT OF
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RESOURCES, COMMUNITY AND ECONOMIC
DEVELOPMENT DIVISION

BEFORE THE
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS
OF THE
HOUSE COMMITTEE ON ENERGY AND COMMERCE
ON
EPA'S DISPOSAL OF SUPERFUND WASTES

Mr. Chairman and members of the Committee:

We are pleased to be here today to discuss the results of our work on the Environmental Protection Agency's (EPA) disposal of hazardous wastes removed from Superfund sites. Concerned that such wastes were being sent to commercial hazardous waste landfills which were not in compliance with applicable regulations, the Chairman, Subcommittee on Oversight and Investigations, and the Chairman, Subcommittee on Commerce, Transportation, and Tourism, asked us to provide information on (1) the extent to which Superfund wastes were being disposed of in this manner and (2) the extent EPA's policies and other guidance prohibit sending Superfund wastes to landfills that do not comply with applicable requirements.

Specifically, our work shows that:

--Over half (16 of 28) of the commercial hazardous waste landfills operating as of November 1984 and receiving

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Superfund wastes had significant violations of EPA regulations. In addition, for the two landfills we reviewed in detail, we found that EPA's staff generally did not determine compliance status of the landfills before sending Superfund wastes to them.

--EPA's policy concerning disposal of Superfund wastes is still evolving. The current policy provides only general direction and leaves implementation decisions to regional judgment.

Before expanding on our findings, I will give you a brief overview of how the 1980 Superfund Act and the 1976 Resource Conservation and Recovery Act (RCRA) programs complement each other to require the appropriate and safe disposal of hazardous wastes to landfills. The Superfund Act sought to clean up uncontrolled hazardous waste sites that pose threats to health and the environment. The cleanup of these sites often involves the transfer of hazardous wastes to commercial hazardous waste landfills. RCRA regulates the management and disposal of currently generated hazardous wastes and requires that any person or company owning or operating a landfill where hazardous waste is treated, stored, or disposed obtain a permit. RCRA regulations dictate such operating requirements as (1) having groundwater monitoring systems to detect migration of wastes from sites and (2) having owners or operators demonstrate through financial assurance instruments their ability to finance closure and postclosure activities when the landfills cease

operations.¹ Noncompliance with either requirement is considered a class 1 (significant) violation.

COMPLIANCE STATUS OF COMMERCIAL
HAZARDOUS WASTE LANDFILLS THAT
RECEIVED SUPERFUND WASTES

At our request, program officials in EPA's 10 regional offices developed data that showed, as of November 1984, 57 commercial hazardous waste landfills were operating throughout the country; 28 of which had received Superfund wastes. Of these 28 landfills, according to these officials, 8 were in full compliance with RCRA regulations and 4 had minor violations. The remaining 16 landfills had class I violations. Most of the violations concern the failure to install, operate, and maintain an adequate groundwater monitoring system. These officials also told us that 5 of the 16 landfills were leaking contaminants into the groundwater.

To determine landfills' compliance with RCRA regulations at the time Superfund wastes were sent, we reviewed at your request, EPA's regional records for two landfills. These landfills were Chemical Waste Management, Emelle, Alabama (EPA Region 4) and Rollins Environmental Services, Baton Rouge, Louisiana (EPA Region 6). We found that 23 Superfund shipments,

¹Closure activities include securing or removing all hazardous waste from the facility and cleaning all affected structures and equipment. Postclosure activities include groundwater monitoring and maintenance of waste containment systems such as clay or synthetic liners at land disposal facilities.

within the 2 regions, were sent to these 2 landfills from July 1981 to November 1984. Of these 23 shipments, 10 were made when the landfills had class I violations. Included in these 10 shipments were 2,960 tons of contaminated soils and hazardous waste solids; 313 drums containing pesticides, flammable substances, and other hazardous wastes; and 411 cubic yards of contaminated soils, solvents, and other wastes.

For 17 of the 23 shipments EPA's on-scene coordinators, who are responsible for Superfund cleanup actions, told us that they did not contact either the EPA or the state to determine the landfills' compliance with RCRA regulations. The coordinators said that they assumed the landfills were in compliance unless they heard otherwise. For the other six cases the coordinators made informal inquiries about the landfills' compliance status.

EPA GUIDANCE

Official agency policy regarding Superfund shipments to RCRA facilities was defined in a January 28, 1983, memorandum. The policy provides that Superfund wastes sent off-site be taken to a RCRA landfill. Except for emergency cleanup actions EPA requires that Superfund wastes be disposed of in landfills that also have had a RCRA compliance inspection within the last 12 months. If the inspection disclosed deficiencies that are minor and will not affect its performance, the landfill may receive Superfund wastes. However, if class I violations are reported,

regional staff are to evaluate the seriousness of the violations to determine if they adversely affect the landfill's performance before sending Superfund wastes to it.

On July 10, 1984, EPA drafted another policy that was more stringent. Although the policy was not formally issued, 6 of EPA's 10 regions voluntarily adopted it. The proposed policy (1) applies to all cleanup actions, (2) requires inspections within 6 rather than 12 months of a disposal action, and (3) requires that landfills being considered for off-site disposal have a liner and leachate collection system. In addition, the proposed policy recommended that Superfund waste be destroyed through treatment (such as incineration), when feasible and cost effective, rather than disposed into landfills.

Although the proposed policy was more comprehensive than the existing policy, it also did not prohibit Superfund wastes from being sent to landfills with class I violations. Much was left to the judgment and interpretation of regional staff. For example, we asked Superfund program managers in the 6 regions who adopted the proposed policy if its provisions would prohibit sending Superfund wastes to landfills with class I violations. Their responses varied:

--Two said that under no circumstance could Superfund wastes be sent to landfills with class I violations.

--One said that wastes could be sent only if the violation posed no risk to groundwater quality or human health.

--One said that wastes could be sent only if the landfill was under an enforceable EPA/state schedule to correct the violations.

--One said that wastes could be sent only if no other disposal options were available.

--One said that it would be difficult to send wastes to a landfill that is in violation but that such a case had not occurred in the region.

In light of these responses, additional disposal guidance is needed. We believe preventing Superfund wastes from going to landfills with class I violations is important because such landfills could become uncontrolled hazardous waste sites which may present risks to health and the environment and cause additional Superfund expenditures.

The Congress in November 1984 amended RCRA by adding new requirements for the safe management of hazardous wastes. These amendments require that landfill owners or operators certify compliance with groundwater and financial requirements. Those landfills not certified as in compliance by November 1985 are to be closed.

Because of (1) EPA's responsibility to assure that others properly manage and dispose of their wastes, (2) the potential for landfills with significant violations to become uncontrolled hazardous waste sites, and (3) the November 1985 compliance deadline established by the 1984 RCRA amendments; we believe that Superfund wastes should not now be going to

landfills that have groundwater or have financial assurance class I violations, unless the owner or operator has developed an approved compliance schedule to meet RCRA's November 1985 compliance deadline.

EPA also recognizes the importance of prohibiting wastes from being sent to landfills that have significant violations. As a result it has proposed another policy, dated March 15, 1985, for sending Superfund wastes to landfills.

This policy states that unless two conditions are met, no Superfund hazardous substances shall be taken off-site to a landfill if the region determines that the landfill has significant RCRA violations or other environmental conditions that affect the satisfactory operation of the landfill. If the landfill has violations, the following conditions must be met:

- (1) The owner or operator must commit, through a signed enforceable agreement (i.e., consent order or decree), to correct the problem. In addition, the regional administrator must determine that the agreement is likely to result in correction of the problems and the owner or operator is capable of compliance with the terms of the agreement.
- (2) Disposal only occurs within the landfill at a new or existing unit² that is in compliance with RCRA

²Landfills can be comprised of many disposal units. After May 1985, the RCRA Act requires that new units have at least two liners and leachate detection, collection, and removal systems.

requirements. The new or existing unit must not contribute in any significant way to adverse conditions at the landfill.

In addition, the latest proposed policy requires that all regions adopt procedures to implement and continually monitor compliance with these requirements. The procedures are to include the designation of a management official who is responsible for providing information on RCRA landfill compliance.

As of April 24, 1985, this proposed policy was still with OMB for review. We believe that EPA's policy, if adopted and effectively implemented, provides reasonable interim criteria for the disposal of Superfund wastes into landfills until November 1985 when all landfills must be in compliance with RCRA.

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Mr. Chairman, this concludes my statement. We will be pleased to respond to your questions.