

(1) for additional officers or employees of the Environmental Protection Agency authorized by the Administrator to conduct criminal investigations (to investigate, or supervise the investigation of, any activity for which a criminal penalty is provided) under this chapter; and

(2) for support costs for such additional officers or employees.

**(f) Underground storage tanks**

(1) There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of subchapter IX of this chapter (relating to regulation of underground storage tanks), \$10,000,000 for each of the fiscal years 1985 through 1988.

(2) There is authorized to be appropriated \$25,000,000 for each of the fiscal years 1985 through 1988 to be used to make grants to the States for purposes of assisting the States in the development and implementation of approved State underground storage tank release detection, prevention, and correction programs under subchapter IX of this chapter.

(Pub. L. 89-272, title II, §2007, formerly §2006, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2805, renumbered Pub. L. 96-463, §4(a), Oct. 15, 1980, 94 Stat. 2055; amended Pub. L. 96-482, §§6, 31(a), Oct. 21, 1980, 94 Stat. 2336, 2352; Pub. L. 98-616, §2(a), (i), Nov. 8, 1984, 98 Stat. 3222, 3223.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, §2(a), substituted “\$80,000,000 for the fiscal year ending September 30, 1982, \$70,000,000 for the fiscal year ending September 30, 1985, \$80,000,000 for the fiscal year ending September 30, 1986, \$80,000,000 for the fiscal year ending September 30, 1987, and \$80,000,000 for the fiscal year 1988” for “and \$80,000,000 for the fiscal year ending September 30, 1982”.

Subsecs. (e), (f). Pub. L. 98-616, §2(i), added subsecs. (e) and (f).

1980—Subsec. (a). Pub. L. 96-482, §31(a), authorized appropriation of \$70,000,000, \$80,000,000, and \$80,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

Subsec. (b). Pub. L. 96-482, §6(a), inserted “, or \$5,000,000 per fiscal year, whichever is less,” after “subsection (a) of this section”.

Subsec. (d). Pub. L. 96-482, §6(b), added subsec. (d).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

**§ 6917. Office of Ombudsman**

**(a) Establishment; functions**

The Administrator shall establish an Office of Ombudsman, to be directed by an Ombudsman. It shall be the function of the Office of Ombudsman to receive individual complaints, grievances, requests for information submitted by any person with respect to any program or requirement under this chapter.

**(b) Authority to render assistance**

The Ombudsman shall render assistance with respect to the complaints, grievances, and re-

quests submitted to the Office of Ombudsman, and shall make appropriate recommendations to the Administrator.

**(c) Effect on procedures for grievances, appeals, or administrative matters**

The establishment of the Office of Ombudsman shall not affect any procedures for grievances, appeals, or administrative matters in any other provision of this chapter, any other provision of law, or any Federal regulation.

**(d) Termination**

The Office of the Ombudsman shall cease to exist 4 years after November 8, 1984.

(Pub. L. 89-272, title II, §2008, as added Pub. L. 98-616, title I, §103(a), Nov. 8, 1984, 98 Stat. 3225.)

SUBCHAPTER III—HAZARDOUS WASTE  
MANAGEMENT

**§ 6921. Identification and listing of hazardous waste**

**(a) Criteria for identification or listing**

Not later than eighteen months after October 21, 1976, the Administrator shall, after notice and opportunity for public hearing, and after consultation with appropriate Federal and State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be subject to the provisions of this subchapter, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate.

**(b) Identification and listing**

(1) Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 6903(5) of this title), which shall be subject to the provisions of this subchapter. Such regulations shall be based on the criteria promulgated under subsection (a) of this section and shall be revised from time to time thereafter as may be appropriate. The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to the provisions of this subchapter solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratogens)<sup>1</sup> at levels in excess of levels which endanger human health.

(2)(A) Notwithstanding the provisions of paragraph (1) of this subsection, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy shall be subject only to existing State or Federal regulatory programs in lieu of this sub-

<sup>1</sup> So in original. Probably should be “teratogens”.

chapter until at least 24 months after October 21, 1980, and after promulgation of the regulations in accordance with subparagraphs (B) and (C) of this paragraph. It is the sense of the Congress that such State or Federal programs should include, for waste disposal sites which are to be closed, provisions requiring at least the following:

(i) The identification through surveying, platting, or other measures, together with recordation of such information on the public record, so as to assure that the location where such wastes are disposed of can be located in the future; except however, that no such surveying, platting, or other measure identifying the location of a disposal site for drilling fluids and associated wastes shall be required if the distance from the disposal site to the surveyed or platted location to the associated well is less than two hundred lineal feet; and

(ii) A chemical and physical analysis of a produced water and a composition of a drilling fluid suspected to contain a hazardous material, with such information to be acquired prior to closure and to be placed on the public record.

(B) Not later than six months after completion and submission of the study required by section 6982(m) of this title, the Administrator shall, after public hearings and opportunity for comment, determine either to promulgate regulations under this subchapter for drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil or natural gas or geothermal energy or that such regulations are unwarranted. The Administrator shall publish his decision in the Federal Register accompanied by an explanation and justification of the reasons for it. In making the decision under this paragraph, the Administrator shall utilize the information developed or accumulated pursuant to the study required under section 6982(m) of this title.

(C) The Administrator shall transmit his decision, along with any regulations, if necessary, to both Houses of Congress. Such regulations shall take effect only when authorized by Act of Congress.

(3)(A) Notwithstanding the provisions of paragraph (1) of this subsection, each waste listed below shall, except as provided in subparagraph (B) of this paragraph, be subject only to regulation under other applicable provisions of Federal or State law in lieu of this subchapter until at least six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p) of section 6982 of this title and after promulgation of regulations in accordance with subparagraph (C) of this paragraph:

(i) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels.

(ii) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and overburden from the mining of uranium ore.

(iii) Cement kiln dust waste.

(B)(i) Owners and operators of disposal sites for wastes listed in subparagraph (A) may be required by the Administrator, through regulations prescribed under authority of section 6912 of this title—

(I) as to disposal sites for such wastes which are to be closed, to identify the locations of such sites through surveying, platting, or other measures, together with recordation of such information on the public record, to assure that the locations where such wastes are disposed of are known and can be located in the future, and

(II) to provide chemical and physical analysis and composition of such wastes, based on available information, to be placed on the public record.

(ii)(I) In conducting any study under subsection (f), (n), (o), or (p), of section 6982 of this title, any officer, employee, or authorized representative of the Environmental Protection Agency, duly designated by the Administrator, is authorized, at reasonable times and as reasonably necessary for the purposes of such study, to enter any establishment where any waste subject to such study is generated, stored, treated, disposed of, or transported from; to inspect, take samples, and conduct monitoring and testing; and to have access to and copy records relating to such waste. Each such inspection shall be commenced and completed with reasonable promptness. If the officer, employee, or authorized representative obtains any samples prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, or monitoring and testing performed, a copy of the results shall be furnished promptly to the owner, operator, or agent in charge.

(II) Any records, reports, or information obtained from any person under subclause (I) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, to which the Administrator has access under this subparagraph is made public, would divulge information entitled to protection under section 1905 of title 18, the Administrator shall consider such information or particular portion thereof confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter. Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subparagraph shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

(iii) The Administrator may prescribe regulations, under the authority of this chapter, to prevent radiation exposure which presents an unreasonable risk to human health from the use in construction or land reclamation (with or without revegetation) of (I) solid waste from the

extraction, beneficiation, and processing of phosphate rock or (II) overburden from the mining of uranium ore.

(iv) Whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subparagraph, the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification, the Administrator may issue an order requiring compliance within a specified time period or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(C) Not later than six months after the date of submission of the applicable study required to be conducted under subsection (f), (n), (o), or (p), of section 6982 of this title, the Administrator shall, after public hearings and opportunity for comment, either determine to promulgate regulations under this subchapter for each waste listed in subparagraph (A) of this paragraph or determine that such regulations are unwarranted. The Administrator shall publish his determination, which shall be based on information developed or accumulated pursuant to such study, public hearings, and comment, in the Federal Register accompanied by an explanation and justification of the reasons for it.

**(c) Petition by State Governor**

At any time after the date eighteen months after October 21, 1976, the Governor of any State may petition the Administrator to identify or list a material as a hazardous waste. The Administrator shall act upon such petition within ninety days following his receipt thereof and shall notify the Governor of such action. If the Administrator denies such petition because of financial considerations, in providing such notice to the Governor he shall include a statement concerning such considerations.

**(d) Small quantity generator waste**

(1) By March 31, 1986, the Administrator shall promulgate standards under sections 6922, 6923, and 6924 of this title for hazardous waste generated by a generator in a total quantity of hazardous waste greater than one hundred kilograms but less than one thousand kilograms during a calendar month.

(2) The standards referred to in paragraph (1), including standards applicable to the legitimate use, reuse, recycling, and reclamation of such wastes, may vary from the standards applicable to hazardous waste generated by larger quantity generators, but such standards shall be sufficient to protect human health and the environment.

(3) Not later than two hundred and seventy days after November 8, 1984, any hazardous waste which is part of a total quantity generated by a generator generating greater than one hundred kilograms but less than one thousand kilograms during one calendar month and which is shipped off the premises on which such waste is generated shall be accompanied by a copy of the Environmental Protection Agency Uniform Hazardous Waste Manifest form signed

by the generator. This form shall contain the following information:

(A) the name and address of the generator of the waste;

(B) the United States Department of Transportation description of the waste, including the proper shipping name, hazard class, and identification number (UN/NA), if applicable;

(C) the number and type of containers;

(D) the quantity of waste being transported; and

(E) the name and address of the facility designated to receive the waste.

If subparagraph (B) is not applicable, in lieu of the description referred to in such subparagraph (B), the form shall contain the Environmental Protection Agency identification number, or a generic description of the waste, or a description of the waste by hazardous waste characteristic. Additional requirements related to the manifest form shall apply only if determined necessary by the Administrator to protect human health and the environment.

(4) The Administrator's responsibility under this subchapter to protect human health and the environment may require the promulgation of standards under this subchapter for hazardous wastes which are generated by any generator who does not generate more than one hundred kilograms of hazardous waste in a calendar month.

(5) Until the effective date of standards required to be promulgated under paragraph (1), any hazardous waste identified or listed under this section generated by any generator during any calendar month in a total quantity greater than one hundred kilograms but less than one thousand kilograms, which is not treated, stored, or disposed of at a hazardous waste treatment, storage, or disposal facility with a permit under section 6925 of this title, shall be disposed of only in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste.

(6) Standards promulgated as provided in paragraph (1) shall, at a minimum, require that all treatment, storage, or disposal of hazardous wastes generated by generators referred to in paragraph (1) shall occur at a facility with interim status or a permit under this subchapter, except that onsite storage of hazardous waste generated by a generator generating a total quantity of hazardous waste greater than one hundred kilograms, but less than one thousand kilograms during a calendar month, may occur without the requirement of a permit for up to one hundred and eighty days. Such onsite storage may occur without the requirement of a permit for not more than six thousand kilograms for up to two hundred and seventy days if such generator must ship or haul such waste over two hundred miles.

(7)(A) Nothing in this subsection shall be construed to affect or impair the validity of regulations promulgated by the Secretary of Transportation pursuant to chapter 51 of title 49.

(B) Nothing in this subsection shall be construed to affect, modify, or render invalid any requirements in regulations promulgated prior to January 1, 1983 applicable to any acutely hazardous waste identified or listed under this sec-

tion which is generated by any generator during any calendar month in a total quantity less than one thousand kilograms.

(8) Effective March 31, 1986, unless the Administrator promulgates standards as provided in paragraph (1) of this subsection prior to such date, hazardous waste generated by any generator in a total quantity greater than one hundred kilograms but less than one thousand kilograms during a calendar month shall be subject to the following requirements until the standards referred to in paragraph (1) of this subsection have become effective:

(A) the notice requirements of paragraph (3) of this subsection shall apply and in addition, the information provided in the form shall include the name of the waste transporters and the name and address of the facility designated to receive the waste;

(B) except in the case of the onsite storage referred to in paragraph (6) of this subsection, the treatment, storage, or disposal of such waste shall occur at a facility with interim status or a permit under this subchapter;

(C) generators of such waste shall file manifest exception reports as required of generators producing greater amounts of hazardous waste per month except that such reports shall be filed by January 31, for any waste shipment occurring in the last half of the preceding calendar year, and by July 31, for any waste shipment occurring in the first half of the calendar year; and

(D) generators of such waste shall retain for three years a copy of the manifest signed by the designated facility that has received the waste.

Nothing in this paragraph shall be construed as a determination of the standards appropriate under paragraph (1).

(9) The last sentence of section 6930(b) of this title shall not apply to regulations promulgated under this subsection.

**(e) Specified wastes**

(1) Not later than 6 months after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)(1) of this section, additional wastes containing chlorinated dioxins or chlorinated-dibenzofurans. Not later than one year after November 8, 1984, the Administrator shall, where appropriate, list under subsection (b)(1) of this section wastes containing remaining halogenated dioxins and halogenated-dibenzofurans.

(2) Not later than fifteen months after November 8, 1984, the Administrator shall make a determination of whether or not to list under subsection (b)(1) of this section the following wastes: Chlorinated Aliphatics, Dioxin, Dimethyl Hydrazine, TDI (toluene diisocyanate), Carbamates, Bromacil, Linuron, Organo-bromines, solvents, refining wastes, chlorinated aromatics, dyes and pigments, inorganic chemical industry wastes, lithium batteries, coke by-products, paint production wastes, and coal slurry pipeline effluent.

**(f) Delisting procedures**

(1) When evaluating a petition to exclude a waste generated at a particular facility from

listing under this section, the Administrator shall consider factors (including additional constituents) other than those for which the waste was listed if the Administrator has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. The Administrator shall provide notice and opportunity for comment on these additional factors before granting or denying such petition.

(2)(A) To the maximum extent practicable the Administrator shall publish in the Federal Register a proposal to grant or deny a petition referred to in paragraph (1) within twelve months after receiving a complete application to exclude a waste generated at a particular facility from being regulated as a hazardous waste and shall grant or deny such a petition within twenty-four months after receiving a complete application.

(B) The temporary granting of such a petition prior to November 8, 1984, without the opportunity for public comment and the full consideration of such comments shall not continue for more than twenty-four months after November 8, 1984. If a final decision to grant or deny such a petition has not been promulgated after notice and opportunity for public comment within the time limit prescribed by the preceding sentence, any such temporary granting of such petition shall cease to be in effect.

**(g) EP toxicity**

Not later than twenty-eight months after November 8, 1984, the Administrator shall examine the deficiencies of the extraction procedure toxicity characteristic as a predictor of the leaching potential of wastes and make changes in the extraction procedure toxicity characteristic, including changes in the leaching media, as are necessary to insure that it accurately predicts the leaching potential of wastes which pose a threat to human health and the environment when mismanaged.

**(h) Additional characteristics**

Not later than two years after November 8, 1984, the Administrator shall promulgate regulations under this section identifying additional characteristics of hazardous waste, including measures or indicators of toxicity.

**(i) Clarification of household waste exclusion**

A resource recovery facility recovering energy from the mass burning of municipal solid waste shall not be deemed to be treating, storing, disposing of, or otherwise managing hazardous wastes for the purposes of regulation under this subchapter, if—

(1) such facility—

(A) receives and burns only—

(i) household waste (from single and multiple dwellings, hotels, motels, and other residential sources), and

(ii) solid waste from commercial or industrial sources that does not contain hazardous waste identified or listed under this section, and

(B) does not accept hazardous wastes identified or listed under this section, and

(2) the owner or operator of such facility has established contractual requirements or other

appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in such facility.

**(j) Methamphetamine production**

Not later than every 24 months, the Administrator shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report setting forth information collected by the Administrator from law enforcement agencies, States, and other relevant stakeholders that identifies the byproducts of the methamphetamine production process and whether the Administrator considers each of the byproducts to be a hazardous waste pursuant to this section and relevant regulations.

(Pub. L. 89-272, title II, §3001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2806; amended Pub. L. 96-482, §7, Oct. 21, 1980, 94 Stat. 2336; Pub. L. 98-616, title II, §§221(a), 222, 223(a), Nov. 8, 1984, 98 Stat. 3248, 3251, 3252; Pub. L. 104-119, §4(1), Mar. 26, 1996, 110 Stat. 833; Pub. L. 109-177, title VII, §742, Mar. 9, 2006, 120 Stat. 272.)

**CODIFICATION**

In subsec. (d)(7)(A), “chapter 51 of title 49” substituted for “the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.]” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1373, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

**AMENDMENTS**

2006—Subsec. (j). Pub. L. 109-177 added subsec. (j).  
1996—Subsec. (d)(5). Pub. L. 104-119 made technical amendment to reference in original act which appears in text as reference to this section.

1984—Subsec. (b)(1). Pub. L. 98-616, §222(b), inserted at end “The Administrator, in cooperation with the Agency for Toxic Substances and Disease Registry and the National Toxicology Program, shall also identify or list those hazardous wastes which shall be subject to the provisions of this subchapter solely because of the presence in such wastes of certain constituents (such as identified carcinogens, mutagens, or teratagens) [sic] at levels in excess of levels which endanger human health.”

Subsec. (d). Pub. L. 98-616, §221(a), added subsec. (d).  
Subsecs. (e) to (h). Pub. L. 98-616, §222(a), added subsecs. (e) to (h).

Subsec. (i). Pub. L. 98-616, §223(a), added subsec. (i).  
1980—Subsec. (b). Pub. L. 96-482 designated existing provisions as par. (1) and added pars. (2) and (3).

**REGULATION**

Pub. L. 99-499, title I, §124(b), Oct. 17, 1986, 100 Stat. 1689, provided that: “Unless the Administrator of the Environmental Protection Agency promulgates regulations under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.] addressing the extraction of wastes from landfills as part of the process of recovering methane from such landfills, the owner and operator of equipment used to recover methane from a landfill shall not be deemed to be managing, generating, transporting, treating, storing, or disposing of hazardous or liquid wastes within the meaning of that subtitle. If the aqueous or hydrocarbon phase of the condensate or any other waste material removed from the gas recovered from the landfill meets any of the characteristics identified under section 3001 of subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921], the preceding sentence shall not apply and such condensate phase or other waste material shall be deemed a hazardous waste under that subtitle, and shall be regulated accordingly.”

**TRANSFER OF FUNCTIONS**

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

**ASH MANAGEMENT AND DISPOSAL**

Pub. L. 101-549, title III, §306, Nov. 15, 1990, 104 Stat. 2584, provided that: “For a period of 2 years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], ash from solid waste incineration units burning municipal waste shall not be regulated by the Administrator of the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921]. Such reference and limitation shall not be construed to prejudice, endorse or otherwise affect any activity by the Administrator following the 2-year period from the date of enactment of the Clean Air Act Amendments of 1990.”

**SMALL QUANTITY GENERATOR WASTE; INFORM AND EDUCATE; WASTE GENERATORS**

Pub. L. 98-616, title II, §221(b), Nov. 8, 1984, 98 Stat. 3249, directed Administrator of Environmental Protection Agency to undertake activities to inform and educate waste generators of their responsibilities under subsec. (d) of this section during the period within thirty months after Nov. 8, 1984, to help assure compliance.

**STUDY OF EXISTING MANIFEST SYSTEM FOR HAZARDOUS WASTES AS APPLICABLE TO SMALL QUANTITY GENERATORS; SUBMITTAL TO CONGRESS**

Pub. L. 98-616, title II, §221(d), Nov. 8, 1984, 98 Stat. 3250, directed Administrator of Environmental Protection Agency to cause to be studied the existing manifest system for hazardous wastes as it applies to small quantity generators and recommend whether the current system should be retained or whether a new system should be introduced, such study to include an analysis of the cost versus the benefits of the system studied as well as an analysis of the ease of retrieving and collating information and identifying a given substance, with any new proposal to include a list of those standards that are necessary to protect human health and the environment, and with such study to be submitted to Congress not later than Apr. 1, 1987.

**ADMINISTRATIVE BURDENS; SMALL QUANTITY GENERATORS; RETENTION OF CURRENT SYSTEM; REPORT TO CONGRESS**

Pub. L. 98-616, title II, §221(e), Nov. 8, 1984, 98 Stat. 3250, directed Administrator of Environmental Protection Agency, in conjunction with Secretary of Transportation, to prepare and submit to Congress, not later than Apr. 1, 1987, a report on the feasibility of easing the administrative burden on small quantity generators, increasing compliance with statutory and regulatory requirements, and simplifying enforcement efforts through a program of licensing hazardous waste transporters to assume the responsibilities of small quantity generators relating to preparation of manifests and associated recordkeeping and reporting requirements, such report to examine the appropriate licensing requirements under such a program including the need for financial assurances by licensed transporters and to make recommendations on provisions and requirements for such a program including the appropriate division of responsibilities between Department of Transportation and Environmental Protection Administration.

**EDUCATIONAL INSTITUTIONS; ACCUMULATION, STORAGE AND DISPOSAL OF HAZARDOUS WASTES; STUDY**

Pub. L. 98-616, title II, §221(f), Nov. 8, 1984, 98 Stat. 3250, as amended by Pub. L. 107-110, title X, §1076(aa),

Jan. 8, 2002, 115 Stat. 2093, directed Administrator of Environmental Protection Agency, in consultation with Secretary of Education, the States, and appropriate educational associations, to conduct a comprehensive study of problems associated with accumulation, storage, and disposal of hazardous wastes from educational institutions, such study to include an investigation of feasibility and availability of environmentally sound methods for treatment, storage, or disposal of hazardous waste from such institutions, taking into account the types and quantities of such waste which are generated by these institutions, and the non-profit nature of these institutions, and directed Administrator to submit a report to Congress containing the findings of the study not later than Apr. 1, 1987.

**§ 6922. Standards applicable to generators of hazardous waste**

**(a) In general**

Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting—

(1) recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such wastes;

(2) labeling practices for any containers used for the storage, transport, or disposal of such hazardous waste such as will identify accurately such waste;

(3) use of appropriate containers for such hazardous waste;

(4) furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;

(5) use of a manifest system and any other reasonable means necessary to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in, and arrives at, treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued as provided in this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; and

(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out a permit program pursuant to this subchapter) at least once every two years, setting out—

(A) the quantities and nature of hazardous waste identified or listed under this subchapter that he has generated during the year;

(B) the disposition of all hazardous waste reported under subparagraph (A);

(C) the efforts undertaken during the year to reduce the volume and toxicity of waste generated; and

(D) the changes in volume and toxicity of waste actually achieved during the year in

question in comparison with previous years, to the extent such information is available for years prior to November 8, 1984.

**(b) Waste minimization**

Effective September 1, 1985, the manifest required by subsection (a)(5) of this section shall contain a certification by the generator that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

(Pub. L. 89-272, title II, § 3002, as added Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2806; amended Pub. L. 95-609, § 7(f), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, § 8, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98-616, title II, § 224(a), Nov. 8, 1984, 98 Stat. 3252.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (a)(5), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, § 224(a)(1), designated existing provisions as subsec. (a).

Subsec. (a)(6). Pub. L. 98-616, § 224(a)(2), amended par. (6) generally. Prior to amendment, par. (6) read as follows: “submission of reports to the Administrator (or the State agency in any case in which such agency carries out an authorized permit program pursuant to this subchapter) at such times as the Administrator (or the State agency if appropriate) deems necessary, setting out—

“(A) the quantities of hazardous waste identified or listed under this subchapter that he has generated during a particular time period; and

“(B) the disposition of all hazardous waste reported under subparagraph (A).”

Subsec. (b). Pub. L. 98-616, § 224(a)(2), added subsec. (b).

1980—Par. (5). Pub. L. 96-482 inserted “and any other reasonable means necessary” and “, and arrives at,” after “use of a manifest system” and “disposal in”, respectively.

1978—Par. (5). Pub. L. 95-609, § 7(f)(1), inserted provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Par. (6). Pub. L. 95-609, § 7(f)(2), closed the parenthetical after “to this subchapter”.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

**§ 6923. Standards applicable to transporters of hazardous waste**

**(a) Standards**

Not later than eighteen months after October 21, 1976, and after opportunity for public hearings, the Administrator, after consultation with the Secretary of Transportation and the States, shall promulgate regulations establishing such standards, applicable to transporters of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting—

(1) recordkeeping concerning such hazardous waste transported, and their source and delivery points;

(2) transportation of such waste only if properly labeled;

(3) compliance with the manifest system referred to in section 6922(5)<sup>1</sup> of this title; and

(4) transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.].

**(b) Coordination with regulations of Secretary of Transportation**

In case of any hazardous waste identified or listed under this subchapter which is subject to chapter 51 of title 49, the regulations promulgated by the Administrator under this section shall be consistent with the requirements of such Act and the regulations thereunder. The Administrator is authorized to make recommendations to the Secretary of Transportation respecting the regulations of such hazardous waste under the Hazardous Materials Transportation Act and for addition of materials to be covered by such Act.

**(c) Fuel from hazardous waste**

Not later than two years after November 8, 1984, and after opportunity for public hearing, the Administrator shall promulgate regulations establishing standards, applicable to transporters of fuel produced (1) from any hazardous waste identified or listed under section 6921 of this title, or (2) from any hazardous waste identified or listed under section 6921 of this title and any other material, as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (4) of subsection (a) of this section as may be appropriate.

(Pub. L. 89-272, title II, §3003, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2807; amended Pub. L. 95-609, §7(g), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 98-616, title II, §204(b)(2), Nov. 8, 1984, 98 Stat. 3238.)

REFERENCES IN TEXT

Section 6922(5) of this title, referred to in subsec. (a)(3), was redesignated section 6922(a)(5) of this title,

<sup>1</sup> See References in Text note below.

by Pub. L. 98-616, title II, §224(a)(1), Nov. 8, 1984, 98 Stat. 3253.

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (a)(4), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

CODIFICATION

In subsec. (b), “chapter 51 of title 49” substituted for “the Hazardous Materials Transportation Act (88 Stat. 2156) [49 App. U.S.C. 1801 et seq.]” on authority of Pub. L. 103-272, §6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-616 added subsec. (c).

1978—Subsec. (a)(4). Pub. L. 95-609, §7(g)(1), inserted provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Subsec. (b). Pub. L. 95-609, §7(g)(2), substituted “Administrator under this section” for “Administrator under this subchapter”.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

**§ 6924. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities**

**(a) In general**

Not later than eighteen months after October 21, 1976, and after opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. In establishing such standards the Administrator shall, where appropriate, distinguish in such standards between requirements appropriate for new facilities and for facilities in existence on the date of promulgation of such regulations. Such standards shall include, but need not be limited to, requirements respecting—

(1) maintaining records of all hazardous wastes identified or listed under this chapter which is treated, stored, or disposed of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of;

(2) satisfactory reporting, monitoring, and inspection and compliance with the manifest system referred to in section 6922(5)<sup>1</sup> of this title;

(3) treatment, storage, or disposal of all such waste received by the facility pursuant to such

<sup>1</sup> See References in Text note below.

operating methods, techniques, and practices as may be satisfactory to the Administrator;

(4) the location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;

(5) contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste;

(6) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility (including financial responsibility for corrective action) as may be necessary or desirable; and

(7) compliance with the requirements of section 6925 of this title respecting permits for treatment, storage, or disposal.

No private entity shall be precluded by reason of criteria established under paragraph (6) from the ownership or operation of facilities providing hazardous waste treatment, storage, or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage, or disposal of specified hazardous waste.

**(b) Salt dome formations, salt bed formations, underground mines and caves**

(1) Effective on November 8, 1984, the placement of any noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as—

(A) the Administrator has determined, after notice and opportunity for hearings on the record in the affected areas, that such placement is protective of human health and the environment;

(B) the Administrator has promulgated performance and permitting standards for such facilities under this subchapter, and;

(C) a permit has been issued under section 6925(c) of this title for the facility concerned.

(2) Effective on November 8, 1984, the placement of any hazardous waste other than a hazardous waste referred to in paragraph (1) in a salt dome formation, salt bed formation, underground mine, or cave is prohibited until such time as a permit has been issued under section 6925(c) of this title for the facility concerned.

(3) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) of this section applies shall affect the prohibition contained in paragraph (1) or (2) of this subsection.

(4) Nothing in this subsection shall apply to the Department of Energy Waste Isolation Pilot Project in New Mexico.

**(c) Liquids in landfills**

(1) Effective 6 months after November 8, 1984, the placement of bulk or noncontainerized liquid hazardous waste or free liquids contained in hazardous waste (whether or not absorbents have been added) in any landfill is prohibited. Prior to such date the requirements (as in effect on April 30, 1983) promulgated under this section

by the Administrator regarding liquid hazardous waste shall remain in force and effect to the extent such requirements are applicable to the placement of bulk or noncontainerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.

(2) Not later than fifteen months after November 8, 1984, the Administrator shall promulgate final regulations which—

(A) minimize the disposal of containerized liquid hazardous waste in landfills, and

(B) minimize the presence of free liquids in containerized hazardous waste to be disposed of in landfills.

Such regulations shall also prohibit the disposal in landfills of liquids that have been absorbed in materials that biodegrade or that release liquids when compressed as might occur during routine landfill operations. Prior to the date on which such final regulations take effect, the requirements (as in effect on April 30, 1983) promulgated under this section by the Administrator shall remain in force and effect to the extent such requirements are applicable to the disposal of containerized liquid hazardous waste, or free liquids contained in hazardous waste, in landfills.

(3) Effective twelve months after November 8, 1984, the placement of any liquid which is not a hazardous waste in a landfill for which a permit is required under section 6925(c) of this title or which is operating pursuant to interim status granted under section 6925(e) of this title is prohibited unless the owner or operator of such landfill demonstrates to the Administrator, or the Administrator determines, that—

(A) the only reasonably available alternative to the placement in such landfill is placement in a landfill or unlined surface impoundment, whether or not permitted under section 6925(c) of this title or operating pursuant to interim status under section 6925(e) of this title, which contains, or may reasonably be anticipated to contain, hazardous waste; and

(B) placement in such owner or operator's landfill will not present a risk of contamination of any underground source of drinking water.

As used in subparagraph (B), the term "underground source of drinking water" has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act) [42 U.S.C. 300f et seq.].

(4) No determination made by the Administrator under subsection (d), (e), or (g) of this section regarding any hazardous waste to which such subsection (d), (e), or (g) of this section applies shall affect the prohibition contained in paragraph (1) of this subsection.

**(d) Prohibitions on land disposal of specified wastes**

(1) Effective 32 months after November 8, 1984 (except as provided in subsection (f) of this section with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition on one or more methods of land disposal of such waste is not required in order to



protect human health and the environment for as long as the waste remains hazardous, taking into account—

- (A) the long-term uncertainties associated with land disposal,
- (B) the goal of managing hazardous waste in an appropriate manner in the first instance, and
- (C) the persistence, toxicity, mobility, and propensity to bioaccumulate of such hazardous wastes and their hazardous constituents.

For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section), unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) Paragraph (1) applies to the following hazardous wastes listed or identified under section 6921 of this title:

(A) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing free cyanides at concentrations greater than or equal to 1,000 mg/l.

(B) Liquid hazardous wastes, including free liquids associated with any solid or sludge, containing the following metals (or elements) or compounds of these metals (or elements) at concentrations greater than or equal to those specified below:

- (i) arsenic and/or compounds (as As) 500 mg/l;
- (ii) cadmium and/or compounds (as Cd) 100 mg/l;
- (iii) chromium (VI and/or compounds (as Cr VI)) 500 mg/l;
- (iv) lead and/or compounds (as Pb) 500 mg/l;
- (v) mercury and/or compounds (as Hg) 20 mg/l;
- (vi) nickel and/or compounds (as Ni) 134 mg/l;
- (vii) selenium and/or compounds (as Se) 100 mg/l; and
- (viii) thallium and/or compounds (as Th) 130 mg/l.

(C) Liquid hazardous waste having a pH less than or equal to two (2.0).

(D) Liquid hazardous wastes containing polychlorinated biphenyls at concentrations greater than or equal to 50 ppm.

(E) Hazardous wastes containing halogenated organic compounds in total concentration greater than or equal to 1,000 mg/kg.

When necessary to protect human health and the environment, the Administrator shall substitute more stringent concentration levels than the levels specified in subparagraphs (A) through (E).

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated

soil or debris resulting from a response action taken under section 9604 or 9606 of this title or a corrective action required under this subchapter.

**(e) Solvents and dioxins**

(1) Effective twenty-four months after November 8, 1984 (except as provided in subsection (f) of this section with respect to underground injection into deep injection wells), the land disposal of the hazardous wastes referred to in paragraph (2) is prohibited unless the Administrator determines the prohibition of one or more methods of land disposal of such waste is not required in order to protect human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraph (A) through (C) of subsection (d)(1) of this section. For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment for a hazardous waste referred to in paragraph (2) (other than a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section), unless upon application by an interested person it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(2) The hazardous wastes to which the prohibition under paragraph (1) applies are as follows—

(A) dioxin-containing hazardous wastes numbered F020, F021, F022, and F023 (as referred to in the proposed rule published by the Administrator in the Federal Register for April 4, 1983), and

(B) those hazardous wastes numbered F001, F002, F003, F004, and F005 in regulations promulgated by the Administrator under section 6921 of this title (40 C.F.R. 261.31 (July 1, 1983)), as those regulations are in effect on July 1, 1983.

(3) During the period ending forty-eight months after November 8, 1984, this subsection shall not apply to any disposal of contaminated soil or debris resulting from a response action taken under section 9604 or 9606 of this title or a corrective action required under this subchapter.

**(f) Disposal into deep injection wells; specified subsection (d) wastes; solvents and dioxins**

(1) Not later than forty-five months after November 8, 1984, the Administrator shall complete a review of the disposal of all hazardous wastes referred to in paragraph (2) of subsection (d) of this section and in paragraph (2) of subsection (e) of this section by underground injection into deep injection wells.

(2) Within forty-five months after November 8, 1984, the Administrator shall make a determination regarding the disposal by underground injection into deep injection wells of the hazardous wastes referred to in paragraph (2) of subsection (d) of this section and the hazardous wastes referred to in paragraph (2) of subsection (e) of this section. The Administrator shall promulgate final regulations prohibiting the dis-

posal of such wastes into such wells if it may reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1) of this section. In promulgating such regulations, the Administrator shall consider each hazardous waste referred to in paragraph (2) of subsection (d) of this section or in paragraph (2) of subsection (e) of this section which is prohibited from disposal into such wells by any State.

(3) If the Administrator fails to make a determination under paragraph (2) for any hazardous waste referred to in paragraph (2) of subsection (d) of this section or in paragraph (2) of subsection (e) of this section within forty-five months after November 8, 1984, such hazardous waste shall be prohibited from disposal into any deep injection well.

(4) As used in this subsection, the term "deep injection well" means a well used for the underground injection of hazardous waste other than a well to which section 6979a(a)<sup>2</sup> of this title applies.

**(g) Additional land disposal prohibition determinations**

(1) Not later than twenty-four months after November 8, 1984, the Administrator shall submit a schedule to Congress for—

(A) reviewing all hazardous wastes listed (as of November 8, 1984) under section 6921 of this title other than those wastes which are referred to in subsection (d) or (e) of this section; and

(B) taking action under paragraph (5) of this subsection with respect to each such hazardous waste.

(2) The Administrator shall base the schedule on a ranking of such listed wastes considering their intrinsic hazard and their volume such that decisions regarding the land disposal of high volume hazardous wastes with high intrinsic hazard shall, to the maximum extent possible, be made by the date forty-five months after November 8, 1984. Decisions regarding low volume hazardous wastes with lower intrinsic hazard shall be made by the date sixty-six months after November 8, 1984.

(3) The preparation and submission of the schedule under this subsection shall not be subject to the Paperwork Reduction Act of 1980.<sup>2</sup> No hearing on the record shall be required for purposes of preparation or submission of the schedule. The schedule shall not be subject to judicial review.

(4) The schedule under this subsection shall require that the Administrator shall promulgate regulations in accordance with paragraph (5) or make a determination under paragraph (5)—

(A) for at least one-third of all hazardous wastes referred to in paragraph (1) by the date forty-five months after November 8, 1984;

(B) for at least two-thirds of all such listed wastes by the date fifty-five months after November 8, 1984; and

(C) for all such listed wastes and for all hazardous wastes identified under section 6921 of

this title by the date sixty-six months after November 8, 1984.

In the case of any hazardous waste identified or listed under section 6921 of this title after November 8, 1984, the Administrator shall determine whether such waste shall be prohibited from one or more methods of land disposal in accordance with paragraph (5) within six months after the date of such identification or listing.

(5) Not later than the date specified in the schedule published under this subsection, the Administrator shall promulgate final regulations prohibiting one or more methods of land disposal of the hazardous wastes listed on such schedule except for methods of land disposal which the Administrator determines will be protective of human health and the environment for as long as the waste remains hazardous, taking into account the factors referred to in subparagraphs (A) through (C) of subsection (d)(1) of this section. For the purposes of this paragraph, a method of land disposal may not be determined to be protective of human health and the environment (except with respect to a hazardous waste which has complied with the pretreatment regulations promulgated under subsection (m) of this section) unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

(6)(A) If the Administrator fails (by the date forty-five months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first one-third of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (o) of this section which are applicable to new facilities (relating to minimum technological requirements); and

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(B) If the Administrator fails (by the date 55 months after November 8, 1984) to promulgate regulations or make a determination under paragraph (5) for any hazardous waste which is included in the first two-thirds of the schedule published under this subsection, such hazardous waste may be disposed of in a landfill or surface impoundment only if—

(i) such facility is in compliance with the requirements of subsection (o) of this section which are applicable to new facilities (relating to minimum technological requirements); and

<sup>2</sup> See References in Text note below.

(ii) prior to such disposal, the generator has certified to the Administrator that such generator has investigated the availability of treatment capacity and has determined that the use of such landfill or surface impoundment is the only practical alternative to treatment currently available to the generator.

The prohibition contained in this subparagraph shall continue to apply until the Administrator promulgates regulations or makes a determination under paragraph (5) for the waste concerned.

(C) If the Administrator fails to promulgate regulations, or make a determination under paragraph (5) for any hazardous waste referred to in paragraph (1) within 66 months after November 8, 1984, such hazardous waste shall be prohibited from land disposal.

(7) Solid waste identified as hazardous based solely on one or more characteristics shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f) of this section, or any requirement promulgated under subsection (m) of this section (other than any applicable specific methods of treatment, as provided in paragraph (8)) if the waste—

(A) is treated in a treatment system that subsequently discharges to waters of the United States pursuant to a permit issued under section 1342 of title 33, treated for the purposes of the pretreatment requirements of section 1317 of title 33, or treated in a zero discharge system that, prior to any permanent land disposal, engages in treatment that is equivalent to treatment required under section 1342 of title 33 for discharges to waters of the United States, as determined by the Administrator; and

(B) no longer exhibits a hazardous characteristic prior to management in any land-based solid waste management unit.

(8) Solid waste that otherwise qualifies under paragraph (7) shall nevertheless be required to meet any applicable specific methods of treatment specified for such waste by the Administrator under subsection (m) of this section, including those specified in the rule promulgated by the Administrator June 1, 1990, prior to management in a land-based unit as part of a treatment system specified in paragraph (7)(A). No solid waste may qualify under paragraph (7) that would generate toxic gases, vapors, or fumes due to the presence of cyanide when exposed to pH conditions between 2.0 and 12.5.

(9) Solid waste identified as hazardous based on one or more characteristics alone shall not be subject to this subsection, any prohibitions under subsection (d), (e), or (f) of this section, or any requirement promulgated under subsection (m) of this section if the waste no longer exhibits a hazardous characteristic at the point of injection in any Class I injection well permitted under section 300h-1 of this title.

(10) Not later than five years after March 26, 1996, the Administrator shall complete a study of hazardous waste managed pursuant to paragraph (7) or (9) to characterize the risks to human health or the environment associated with such management. In conducting this

study, the Administrator shall evaluate the extent to which risks are adequately addressed under existing State or Federal programs and whether unaddressed risks could be better addressed under such laws or programs. Upon receipt of additional information or upon completion of such study and as necessary to protect human health and the environment, the Administrator may impose additional requirements under existing Federal laws, including subsection (m)(1) of this section, or rely on other State or Federal programs or authorities to address such risks. In promulgating any treatment standards pursuant to subsection (m)(1) of this section under the previous sentence, the Administrator shall take into account the extent to which treatment is occurring in land-based units as part of a treatment system specified in paragraph (7)(A).

(11) Nothing in paragraph (7) or (9) shall be interpreted or applied to restrict any inspection or enforcement authority under the provisions of this chapter.

#### **(h) Variance from land disposal prohibitions**

(1) A prohibition in regulations under subsection (d), (e), (f), or (g) of this section shall be effective immediately upon promulgation.

(2) The Administrator may establish an effective date different from the effective date which would otherwise apply under subsection (d), (e), (f), or (g) of this section with respect to a specific hazardous waste which is subject to a prohibition under subsection (d), (e), (f), or (g) of this section or under regulations under subsection (d), (e), (f), or (g) of this section. Any such other effective date shall be established on the basis of the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available. Any such other effective date shall in no event be later than 2 years after the effective date of the prohibition which would otherwise apply under subsection (d), (e), (f), or (g) of this section.

(3) The Administrator, after notice and opportunity for comment and after consultation with appropriate State agencies in all affected States, may on a case-by-case basis grant an extension of the effective date which would otherwise apply under subsection (d), (e), (f), or (g) of this section or under paragraph (2) for up to one year, where the applicant demonstrates that there is a binding contractual commitment to construct or otherwise provide such alternative capacity but due to circumstances beyond the control of such applicant such alternative capacity cannot reasonably be made available by such effective date. Such extension shall be renewable once for no more than one additional year.

(4) Whenever another effective date (hereinafter referred to as a "variance") is established under paragraph (2), or an extension is granted under paragraph (3), with respect to any hazardous waste, during the period for which such variance or extension is in effect, such hazardous waste may be disposed of in a landfill or surface impoundment only if such facility is in compliance with the requirements of subsection (o) of this section.

**(i) Publication of determination**

If the Administrator determines that a method of land disposal will be protective of human health and the environment, he shall promptly publish in the Federal Register notice of such determination, together with an explanation of the basis for such determination.

**(j) Storage of hazardous waste prohibited from land disposal**

In the case of any hazardous waste which is prohibited from one or more methods of land disposal under this section (or under regulations promulgated by the Administrator under any provision of this section) the storage of such hazardous waste is prohibited unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal.

**(k) "Land disposal" defined**

For the purposes of this section, the term "land disposal", when used with respect to a specified hazardous waste, shall be deemed to include, but not be limited to, any placement of such hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

**(l) Ban on dust suppression**

The use of waste or used oil or other material, which is contaminated or mixed with dioxin or any other hazardous waste identified or listed under section 6921 of this title (other than a waste identified solely on the basis of ignitability), for dust suppression or road treatment is prohibited.

**(m) Treatment standards for wastes subject to land disposal prohibition**

(1) Simultaneously with the promulgation of regulations under subsection (d), (e), (f), or (g) of this section prohibiting one or more methods of land disposal of a particular hazardous waste, and as appropriate thereafter, the Administrator shall, after notice and an opportunity for hearings and after consultation with appropriate Federal and State agencies, promulgate regulations specifying those levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.

(2) If such hazardous waste has been treated to the level or by a method specified in regulations promulgated under this subsection, such waste or residue thereof shall not be subject to any prohibition promulgated under subsection (d), (e), (f), or (g) of this section and may be disposed of in a land disposal facility which meets the requirements of this subchapter. Any regulation promulgated under this subsection for a particular hazardous waste shall become effective on the same date as any applicable prohibition promulgated under subsection (d), (e), (f), or (g) of this section.

**(n) Air emissions**

Not later than thirty months after November 8, 1984, the Administrator shall promulgate such

regulations for the monitoring and control of air emissions at hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment.

**(o) Minimum technological requirements**

(1) The regulations under subsection (a) of this section shall be revised from time to time to take into account improvements in the technology of control and measurement. At a minimum, such regulations shall require, and a permit issued pursuant to section 6925(c) of this title after November 8, 1984, by the Administrator or a State shall require—

(A) for each new landfill or surface impoundment, each new landfill or surface impoundment unit at an existing facility, each replacement of an existing landfill or surface impoundment unit, and each lateral expansion of an existing landfill or surface impoundment unit, for which an application for a final determination regarding issuance of a permit under section 6925(c) of this title is received after November 8, 1984—

(i) the installation of two or more liners and a leachate collection system above (in the case of a landfill) and between such liners; and

(ii) ground water monitoring; and

(B) for each incinerator which receives a permit under section 6925(c) of this title after November 8, 1984, the attainment of the minimum destruction and removal efficiency required by regulations in effect on June 24, 1982.

The requirements of this paragraph shall apply with respect to all waste received after the issuance of the permit.

(2) Paragraph (1)(A)(i) shall not apply if the owner or operator demonstrates to the Administrator, and the Administrator finds for such landfill or surface impoundment, that alternative design and operating practices, together with location characteristics, will prevent the migration of any hazardous constituents into the ground water or surface water at least as effectively as such liners and leachate collection systems.

(3) The double-liner requirement set forth in paragraph (1)(A)(i) may be waived by the Administrator for any monofill, if—

(A) such monofill contains only hazardous wastes from foundry furnace emission controls or metal casting molding sand,

(B) such wastes do not contain constituents which would render the wastes hazardous for reasons other than the Extraction Procedure ("EP") toxicity characteristics set forth in regulations under this subchapter, and

(C) such monofill meets the same requirements as are applicable in the case of a waiver under section 6925(j)(2) or (4) of this title.

(4)(A) Not later than thirty months after November 8, 1984, the Administrator shall promulgate standards requiring that new landfill units, surface impoundment units, waste piles, underground tanks and land treatment units for the storage, treatment, or disposal of hazardous waste identified or listed under section 6921 of

this title shall be required to utilize approved leak detection systems.

(B) For the purposes of subparagraph (A)—

(i) the term “approved leak detection system” means a system or technology which the Administrator determines to be capable of detecting leaks of hazardous constituents at the earliest practicable time; and

(ii) the term “new units” means units on which construction commences after the date of promulgation of regulations under this paragraph.

(5)(A) The Administrator shall promulgate regulations or issue guidance documents implementing the requirements of paragraph (1)(A) within two years after November 8, 1984.

(B) Until the effective date of such regulations or guidance documents, the requirement for the installation of two or more liners may be satisfied by the installation of a top liner designed, operated, and constructed of materials to prevent the migration of any constituent into such liner during the period such facility remains in operation (including any post-closure monitoring period), and a lower liner designed, operated<sup>3</sup> and constructed to prevent the migration of any constituent through such liner during such period. For the purpose of the preceding sentence, a lower liner shall be deemed to satisfy such requirement if it is constructed of at least a 3-foot thick layer of recompacted clay or other natural material with a permeability of no more than  $1 \times 10^{-7}$  centimeter per second.

(6) Any permit under section 6925 of this title which is issued for a landfill located within the State of Alabama shall require the installation of two or more liners and a leachate collection system above and between such liners, notwithstanding any other provision of this chapter.

(7) In addition to the requirements set forth in this subsection, the regulations referred to in paragraph (1) shall specify criteria for the acceptable location of new and existing treatment, storage, or disposal facilities as necessary to protect human health and the environment. Within 18 months after November 8, 1984, the Administrator shall publish guidance criteria identifying areas of vulnerable hydrogeology.

**(p) Ground water monitoring**

The standards under this section concerning ground water monitoring which are applicable to surface impoundments, waste piles, land treatment units, and landfills shall apply to such a facility whether or not—

(1) the facility is located above the seasonal high water table;

(2) two liners and a leachate collection system have been installed at the facility; or

(3) the owner or operator inspects the liner (or liners) which has been installed at the facility.

This subsection shall not be construed to affect other exemptions or waivers from such standards provided in regulations in effect on November 8, 1984, or as may be provided in revisions to those regulations, to the extent consistent with this subsection. The Administrator is authorized

on a case-by-case basis to exempt from ground water monitoring requirements under this section (including subsection (o) of this section) any engineered structure which the Administrator finds does not receive or contain liquid waste (nor waste containing free liquids), is designed and operated to exclude liquid from precipitation or other runoff, utilizes multiple leak detection systems within the outer layer of containment, and provides for continuing operation and maintenance of these leak detection systems during the operating period, closure, and the period required for post-closure monitoring and for which the Administrator concludes on the basis of such findings that there is a reasonable certainty hazardous constituents will not migrate beyond the outer layer of containment prior to the end of the period required for post-closure monitoring.

**(q) Hazardous waste used as fuel**

(1) Not later than two years after November 8, 1984, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing such—

(A) standards applicable to the owners and operators of facilities which produce a fuel—

(i) from any hazardous waste identified or listed under section 6921 of this title, or

(ii) from any hazardous waste identified or listed under section 6921 of this title and any other material;

(B) standards applicable to the owners and operators of facilities which burn, for purposes of energy recovery, any fuel produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title; and

(C) standards applicable to any person who distributes or markets any fuel which is produced as provided in subparagraph (A) or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title;

as may be necessary to protect human health and the environment. Such standards may include any of the requirements set forth in paragraphs (1) through (7) of subsection (a) of this section as may be appropriate. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. For purposes of this subsection, the term “hazardous waste listed under section 6921 of this title” includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel.

(2)(A) This subsection, subsection (r) of this section, and subsection (s) of this section shall not apply to petroleum refinery wastes containing oil which are converted into petroleum coke at the same facility at which such wastes were generated, unless the resulting coke product would exceed one or more characteristics by which a substance would be identified as a hazardous waste under section 6921 of this title.

(B) The Administrator may exempt from the requirements of this subsection, subsection (r)

<sup>3</sup> So in original. Probably should be followed by a comma.

of this section, or subsection (s) of this section facilities which burn de minimis quantities of hazardous waste as fuel, as defined by the Administrator, if the wastes are burned at the same facility at which such wastes are generated; the waste is burned to recover useful energy, as determined by the Administrator on the basis of the design and operating characteristics of the facility and the heating value and other characteristics of the waste; and the waste is burned in a type of device determined by the Administrator to be designed and operated at a destruction and removal efficiency sufficient such that protection of human health and environment is assured.

(C)(i) After November 8, 1984, and until standards are promulgated and in effect under paragraph (2) of this subsection, no fuel which contains any hazardous waste may be burned in any cement kiln which is located within the boundaries of any incorporated municipality with a population greater than five hundred thousand (based on the most recent census statistics) unless such kiln fully complies with regulations (as in effect on November 8, 1984) under this subchapter which are applicable to incinerators.

(ii) Any person who knowingly violates the prohibition contained in clause (i) shall be deemed to have violated section 6928(d)(2) of this title.

**(r) Labeling**

(1) Notwithstanding any other provision of law, until such time as the Administrator promulgates standards under subsection (q) of this section specifically superceding this requirement, it shall be unlawful for any person who is required to file a notification in accordance with paragraph (1) or (3) of section 6930 of this title to distribute or market any fuel which is produced from any hazardous waste identified or listed under section 6921 of this title, or any fuel which otherwise contains any hazardous waste identified or listed under section 6921 of this title if the invoice or the bill of sale fails—

(A) to bear the following statement: “WARNING: THIS FUEL CONTAINS HAZARDOUS WASTES”, and

(B) to list the hazardous wastes contained therein.

Beginning ninety days after November 8, 1984, such statement shall be located in a conspicuous place on every such invoice or bill of sale and shall appear in conspicuous and legible type in contrast by typography, layouts, or color with other printed matter on the invoice or bill of sale.

(2) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from petroleum refining waste containing oil if—

(A) such materials are generated and reinserted onsite into the refining process;

(B) contaminants are removed; and

(C) such refining waste containing oil is converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Manage-

ment and Budget Standard Industrial Classification Manual.

(3) Unless the Administrator determines otherwise as may be necessary to protect human health and the environment, this subsection shall not apply to fuels produced from oily materials, resulting from normal petroleum refining, production and transportation practices, if (A) contaminants are removed; and (B) such oily materials are converted along with normal process streams into petroleum-derived fuel products at a facility at which crude oil is refined into petroleum products and which is classified as a number SIC 2911 facility under the Office of Management and Budget Standard Industrial Classification Manual.

**(s) Recordkeeping**

Not later than fifteen months after November 8, 1984, the Administrator shall promulgate regulations requiring that any person who is required to file a notification in accordance with subparagraph (1), (2), or (3), of section 6930(a) of this title shall maintain such records regarding fuel blending, distribution, or use as may be necessary to protect human health and the environment.

**(t) Financial responsibility provisions**

(1) Financial responsibility required by subsection (a) of this section may be established in accordance with regulations promulgated by the Administrator by any one, or any combination, of the following: insurance, guarantee, surety bond, letter of credit, or qualification as a self-insurer. In promulgating requirements under this section, the Administrator is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are unacceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this chapter.

(2) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the Federal Bankruptcy Code or where (with reasonable diligence) jurisdiction in any State court or any Federal Court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(3) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this chapter. Nothing in this subsection shall be construed to limit any other State or Federal statutory, contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such

guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under section 9607 or 9611 of this title or other applicable law.

(4) For the purpose of this subsection, the term "guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator under this section.

**(u) Continuing releases at permitted facilities**

Standards promulgated under this section shall require, and a permit issued after November 8, 1984, by the Administrator or a State shall require, corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under this subchapter, regardless of the time at which waste was placed in such unit. Permits issued under section 6925 of this title shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action.

**(v) Corrective action beyond facility boundary**

As promptly as practicable after November 8, 1984, the Administrator shall amend the standards under this section regarding corrective action required at facilities for the treatment, storage, or disposal, of hazardous waste listed or identified under section 6921 of this title to require that corrective action be taken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility concerned demonstrates to the satisfaction of the Administrator that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such action. Such regulations shall take effect immediately upon promulgation, notwithstanding section 6930(b) of this title, and shall apply to—

- (1) all facilities operating under permits issued under subsection (c) of this section, and
- (2) all landfills, surface impoundments, and waste pile units (including any new units, replacements of existing units, or lateral expansions of existing units) which receive hazardous waste after July 26, 1982.

Pending promulgation of such regulations, the Administrator shall issue corrective action orders for facilities referred to in paragraphs (1) and (2), on a case-by-case basis, consistent with the purposes of this subsection.

**(w) Underground tanks**

Not later than March 1, 1985, the Administrator shall promulgate final permitting standards under this section for underground tanks that cannot be entered for inspection. Within forty-eight months after November 8, 1984, such standards shall be modified, if necessary, to cover at a minimum all requirements and standards described in section 6991b of this title.

**(x) Mining and other special wastes**

If (1) solid waste from the extraction, beneficiation or processing of ores and minerals, in-

cluding phosphate rock and overburden from the mining of uranium, (2) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, or (3) cement kiln dust waste, is subject to regulation under this subchapter, the Administrator is authorized to modify the requirements of subsections (c), (d), (e), (f), (g), (o), and (u) of this section and section 6925(j) of this title, in the case of landfills or surface impoundments receiving such solid waste, to take into account the special characteristics of such wastes, the practical difficulties associated with implementation of such requirements, and site-specific characteristics, including but not limited to the climate, geology, hydrology and soil chemistry at the site, so long as such modified requirements assure protection of human health and the environment.

**(y) Munitions**

(1) Not later than 6 months after October 6, 1992, the Administrator shall propose, after consulting with the Secretary of Defense and appropriate State officials, regulations identifying when military munitions become hazardous waste for purposes of this subchapter and providing for the safe transportation and storage of such waste. Not later than 24 months after October 6, 1992, and after notice and opportunity for comment, the Administrator shall promulgate such regulations. Any such regulations shall assure protection of human health and the environment.

(2) For purposes of this subsection, the term "military munitions" includes chemical and conventional munitions.

(Pub. L. 89-272, title II, §3004, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2807; amended Pub. L. 96-482, §9, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98-616, title II, §§201(a), 202(a), 203, 204(b)(1), 205-209, Nov. 8, 1984, 98 Stat. 3226, 3233, 3234, 3236, 3238-3240; Pub. L. 102-386, title I, §107, Oct. 6, 1992, 106 Stat. 1513; Pub. L. 104-119, §§2, 4(2)-(5), Mar. 26, 1996, 110 Stat. 830, 833.)

REFERENCES IN TEXT

Section 6922(5) of this title, referred to in subsec. (a)(2), was redesignated section 6922(a)(5) of this title, by Pub. L. 98-616, title II, §224(a)(1), Nov. 8, 1984, 98 Stat. 3253.

The Safe Drinking Water Act, referred to in subsec. (c)(3), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title note set out under section 201 of this title and Tables.

Section 6979a of this title, referred to in subsec. (f)(4), was in the original a reference to section 7010 of Pub. L. 89-272, which was renumbered section 3020 of Pub. L. 89-272 by Pub. L. 99-339, title II, §201(c), June 19, 1986, 100 Stat. 654, and transferred to section 6939b of this title.

The Paperwork Reduction Act of 1980, referred to in subsec. (g)(3), is Pub. L. 96-511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (§3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104-13, §2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

The Federal Bankruptcy Code, referred to in subsec. (t)(2), probably means a reference to Title 11, Bankruptcy.

## AMENDMENTS

1996—Subsec. (g)(5). Pub. L. 104-119, §4(3), substituted “subparagraphs (A) through (C)” for “subparagraph (A) through (C)”.

Subsec. (g)(7) to (11). Pub. L. 104-119, §2, added pars. (7) to (11).

Subsec. (q)(1)(C). Pub. L. 104-119, §4(2), inserted a semicolon at end of subpar. (C).

Subsec. (r)(2)(C). Pub. L. 104-119, §4(4), substituted “petroleum-derived” for “pertroleum-derived”.

Subsec. (r)(3). Pub. L. 104-119, §4(5), inserted “Industrial” after “Standard”.

1992—Subsec. (y). Pub. L. 102-386 added subsec. (y).

1984—Subsec. (a). Pub. L. 98-616, §201(a), designated existing provisions as subsec. (a).

Subsec. (a)(6). Pub. L. 98-616, §208, inserted “(including financial responsibility for corrective action)”.

Subsecs. (b) to (n). Pub. L. 98-616, §201(a), added subsecs. (b) to (n).

Subsec. (o). Pub. L. 98-616, §202(a), added subsec. (o).

Subsec. (p). Pub. L. 98-616, §203, added subsec. (p).

Subsecs. (q) to (s). Pub. L. 98-616, §204(b)(1), added subsecs. (q) to (s).

Subsec. (t). Pub. L. 98-616, §205, added subsec. (t).

Subsec. (u). Pub. L. 98-616, §206, added subsec. (u).

Subsecs. (v), (w). Pub. L. 98-616, §207, added subsecs. (v) and (w).

Subsec. (x). Pub. L. 98-616, §209, added subsec. (x).

1980—Pub. L. 96-482 required standards regulations to reflect distinction in requirements appropriate for new facilities and for facilities in existence on date of promulgation of the regulations.

## TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

### § 6925. Permits for treatment, storage, or disposal of hazardous waste

#### (a) Permit requirements

Not later than eighteen months after October 21, 1976, the Administrator shall promulgate regulations requiring each person owning or operating an existing facility or planning to construct a new facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 6930 of this title and upon and after such date the treatment, storage, or disposal of any such hazardous waste and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit. No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polychlorinated biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter.

#### (b) Requirements of permit application

Each application for a permit under this section shall contain such information as may be

required under regulations promulgated by the Administrator, including information respecting—

(1) estimates with respect to the composition, quantities, and concentrations of any hazardous waste identified or listed under this subchapter, or combinations of any such hazardous waste and any other solid waste, proposed to be disposed of, treated, transported, or stored, and the time, frequency, or rate of which such waste is proposed to be disposed of, treated, transported, or stored; and

(2) the site at which such hazardous waste or the products of treatment of such hazardous waste will be disposed of, treated, transported to, or stored.

#### (c) Permit issuance

(1) Upon a determination by the Administrator (or a State, if applicable), of compliance by a facility for which a permit is applied for under this section with the requirements of this section and section 6924 of this title, the Administrator (or the State) shall issue a permit for such facilities. In the event permit applicants propose modification of their facilities, or in the event the Administrator (or the State) determines that modifications are necessary to conform to the requirements under this section and section 6924 of this title, the permit shall specify the time allowed to complete the modifications.

(2)(A)(i) Not later than the date four years after November 8, 1984, in the case of each application under this subsection for a permit for a land disposal facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(ii) Not later than the date five years after November 8, 1984, in the case of each application for a permit under this subsection for an incinerator facility which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(B) Not later than the date eight years after November 8, 1984, in the case of each application for a permit under this subsection for any facility (other than a facility referred to in subparagraph (A)) which was submitted before such date, the Administrator shall issue a final permit pursuant to such application or issue a final denial of such application.

(C) The time periods specified in this paragraph shall also apply in the case of any State which is administering an authorized hazardous waste program under section 6926 of this title. Interim status under subsection (e) of this section shall terminate for each facility referred to in subparagraph (A)(ii) or (B) on the expiration of the five- or eight-year period referred to in subparagraph (A) or (B), whichever is applicable, unless the owner or operator of the facility applies for a final determination regarding the issuance of a permit under this subsection with—

(i) two years after November 8, 1984 (in the case of a facility referred to in subparagraph (A)(ii)), or

(ii) four years after November 8, 1984 (in the case of a facility referred to in subparagraph (B)).



(3) Any permit under this section shall be for a fixed term, not to exceed 10 years in the case of any land disposal facility, storage facility, or incinerator or other treatment facility. Each permit for a land disposal facility shall be reviewed five years after date of issuance or reissuance and shall be modified as necessary to assure that the facility continues to comply with the currently applicable requirements of this section and section 6924 of this title. Nothing in this subsection shall preclude the Administrator from reviewing and modifying a permit at any time during its term. Review of any application for a permit renewal shall consider improvements in the state of control and measurement technology as well as changes in applicable regulations. Each permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment.

**(d) Permit revocation**

Upon a determination by the Administrator (or by a State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) of noncompliance by a facility having a permit under this chapter with the requirements of this section or section 6924 of this title, the Administrator (or State, in the case of a State having an authorized hazardous waste program under section 6926 of this title) shall revoke such permit.

**(e) Interim status**

(1) Any person who—

(A) owns or operates a facility required to have a permit under this section which facility—

(i) was in existence on November 19, 1980, or

(ii) is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section,

(B) has complied with the requirements of section 6930(a) of this title, and

(C) has made an application for a permit under this section,

shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated.

(2) In the case of each land disposal facility which has been granted interim status under this subsection before November 8, 1984, interim status shall terminate on the date twelve months after November 8, 1984, unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection

(c) of this section for such facility before the date twelve months after November 8, 1984; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

(3) In the case of each land disposal facility which is in existence on the effective date of statutory or regulatory changes under this chapter that render the facility subject to the requirement to have a permit under this section and which is granted interim status under this subsection, interim status shall terminate on the date twelve months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility—

(A) applies for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility before the date twelve months after the date on which the facility first becomes subject to such permit requirement; and

(B) certifies that such facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements.

**(f) Coal mining wastes and reclamation permits**

Notwithstanding subsection (a) through (e) of this section, any surface coal mining and reclamation permit covering any coal mining wastes or overburden which has been issued or approved under the Surface Mining Control and Reclamation Act of 1977 [30 U.S.C. 1201 et seq.] shall be deemed to be a permit issued pursuant to this section with respect to the treatment, storage, or disposal of such wastes or overburden. Regulations promulgated by the Administrator under this subchapter shall not be applicable to treatment, storage, or disposal of coal mining wastes and overburden which are covered by such a permit.

**(g) Research, development, and demonstration permits**

(1) The Administrator may issue a research, development, and demonstration permit for any hazardous waste treatment facility which proposes to utilize an innovative and experimental hazardous waste treatment technology or process for which permit standards for such experimental activity have not been promulgated under this subchapter. Any such permit shall include such terms and conditions as will assure protection of human health and the environment. Such permits—

(A) shall provide for the construction of such facilities, as necessary, and for operation of the facility for not longer than one year (unless renewed as provided in paragraph (4)), and

(B) shall provide for the receipt and treatment by the facility of only those types and quantities of hazardous waste which the Administrator deems necessary for purposes of determining the efficacy and performance capabilities of the technology or process and the effects of such technology or process on human health and the environment, and

(C) shall include such requirements as the Administrator deems necessary to protect human health and the environment (including,

but not limited to, requirements regarding monitoring, operation, insurance or bonding, financial responsibility,<sup>1</sup> closure, and remedial action), and such requirements as the Administrator deems necessary regarding testing and providing of information to the Administrator with respect to the operation of the facility.

The Administrator may apply the criteria set forth in this paragraph in establishing the conditions of each permit without separate establishment of regulations implementing such criteria.

(2) For the purpose of expediting review and issuance of permits under this subsection, the Administrator may, consistent with the protection of human health and the environment, modify or waive permit application and permit issuance requirements established in the Administrator's general permit regulations except that there may be no modification or waiver of regulations regarding financial responsibility (including insurance) or of procedures established under section 6974(b)(2) of this title regarding public participation.

(3) The Administrator may order an immediate termination of all operations at the facility at any time he determines that termination is necessary to protect human health and the environment.

(4) Any permit issued under this subsection may be renewed not more than three times. Each such renewal shall be for a period of not more than 1 year.

**(h) Waste minimization**

Effective September 1, 1985, it shall be a condition of any permit issued under this section for the treatment, storage, or disposal of hazardous waste on the premises where such waste was generated that the permittee certify, no less often than annually, that—

(1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) the proposed method of treatment, storage, or disposal is that practicable method currently available to the generator which minimizes the present and future threat to human health and the environment.

**(i) Interim status facilities receiving wastes after July 26, 1982**

The standards concerning ground water monitoring, unsaturated zone monitoring, and corrective action, which are applicable under section 6924 of this title to new landfills, surface impoundments, land treatment units, and waste-pile units required to be permitted under subsection (c) of this section shall also apply to any landfill, surface impoundment, land treatment unit, or waste-pile unit qualifying for the authorization to operate under subsection (e) of this section which receives hazardous waste after July 26, 1982.

**(j) Interim status surface impoundments**

(1) Except as provided in paragraph (2), (3), or (4), each surface impoundment in existence on

November 8, 1984, and qualifying for the authorization to operate under subsection (e) of this section shall not receive, store, or treat hazardous waste after the date four years after November 8, 1984, unless such surface impoundment is in compliance with the requirements of section 6924(o)(1)(A) of this title which would apply to such impoundment if it were new.

(2) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) has at least one liner, for which there is no evidence that such liner is leaking; (B) is located more than one-quarter mile from an underground source of drinking water; and (C) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section.

(3) Paragraph (1) of this subsection shall not apply to any surface impoundment which (A) contains treated waste water during the secondary or subsequent phases of an aggressive biological treatment facility subject to a permit issued under section 1342 of title 33 (or which holds such treated waste water after treatment and prior to discharge); (B) is in compliance with generally applicable ground water monitoring requirements for facilities with permits under subsection (c) of this section; and (C)(i) is part of a facility in compliance with section 1311(b)(2) of title 33, or (ii) in the case of a facility for which no effluent guidelines required under section 1314(b)(2) of title 33 are in effect and no permit under section 1342(a)(1) of title 33 implementing section 1311(b)(2) of title 33 has been issued, is part of a facility in compliance with a permit under section 1342 of title 33, which is achieving significant degradation of toxic pollutants and hazardous constituents contained in the untreated waste stream and which has identified those toxic pollutants and hazardous constituents in the untreated waste stream to the appropriate permitting authority.

(4) The Administrator (or the State, in the case of a State with an authorized program), after notice and opportunity for comment, may modify the requirements of paragraph (1) for any surface impoundment if the owner or operator demonstrates that such surface impoundment is located, designed and operated so as to assure that there will be no migration of any hazardous constituent<sup>2</sup> into ground water or surface water at any future time. The Administrator or the State shall take into account locational criteria established under section 6924(o)(7) of this title.

(5) The owner or operator of any surface impoundment potentially subject to paragraph (1) who has reason to believe that on the basis of paragraph (2), (3), or (4) such surface impoundment is not required to comply with the requirements of paragraph (1), shall apply to the Administrator (or the State, in the case of a State with an authorized program) not later than twenty-four months after November 8, 1984, for a determination of the applicability of paragraph (1) (in the case of paragraph (2) or (3)) or for a modification of the requirements of paragraph (1) (in the case of paragraph (4)), with respect to

<sup>1</sup> So in original. Probably should be "responsibility".

<sup>2</sup> So in original. Probably should be "constituent".

such surface impoundment. Such owner or operator shall provide, with such application, evidence pertinent to such decision, including:

(A) an application for a final determination regarding the issuance of a permit under subsection (c) of this section for such facility, if not previously submitted;

(B) evidence as to compliance with all applicable ground water monitoring requirements and the information and analysis from such monitoring;

(C) all reasonably ascertainable evidence as to whether such surface impoundment is leaking; and

(D) in the case of applications under paragraph (2) or (3), a certification by a registered professional engineer with academic training and experience in ground water hydrology that—

(i) under paragraph (2), the liner of such surface impoundment is designed, constructed, and operated in accordance with applicable requirements, such surface impoundment is more than one-quarter mile from an underground source of drinking water and there is no evidence such liner is leaking; or

(ii) under paragraph (3), based on analysis of those toxic pollutants and hazardous constituents that are likely to be present in the untreated waste stream, such impoundment satisfies the conditions of paragraph (3).

In the case of any surface impoundment for which the owner or operator fails to apply under this paragraph within the time provided by this paragraph or paragraph (6), such surface impoundment shall comply with paragraph (1) notwithstanding paragraph (2), (3), or (4). Within twelve months after receipt of such application and evidence and not later than thirty-six months after November 8, 1984, and after notice and opportunity to comment, the Administrator (or, if appropriate, the State) shall advise such owner or operator on the applicability of paragraph (1) to such surface impoundment or as to whether and how the requirements of paragraph (1) shall be modified and applied to such surface impoundment.

(6)(A) In any case in which a surface impoundment becomes subject to paragraph (1) after November 8, 1984, due to the promulgation of additional listings or characteristics for the identification of hazardous waste under section 6921 of this title, the period for compliance in paragraph (1) shall be four years after the date of such promulgation, the period for demonstrations under paragraph (4) and for submission of evidence under paragraph (5) shall be not later than twenty-four months after the date of such promulgation, and the period for the Administrator (or if appropriate, the State) to advise such owners or operators under paragraph (5) shall be not later than thirty-six months after the date of promulgation.

(B) In any case in which a surface impoundment is initially determined to be excluded from the requirements of paragraph (1) but due to a change in condition (including the existence of a leak) no longer satisfies the provisions of paragraph (2), (3), or (4) and therefore becomes subject to paragraph (1), the period for compliance

in paragraph (1) shall be two years after the date of discovery of such change of condition, or in the case of a surface impoundment excluded under paragraph (3) three years after such date of discovery.

(7)(A) The Administrator shall study and report to the Congress on the number, range of size, construction, likelihood of hazardous constituents migrating into ground water, and potential threat to human health and the environment of existing surface impoundments excluded by paragraph (3) from the requirements of paragraph (1). Such report shall address the need, feasibility, and estimated costs of subjecting such existing surface impoundments to the requirements of paragraph (1).

(B) In the case of any existing surface impoundment or class of surface impoundments from which the Administrator (or the State, in the case of a State with an authorized program) determines hazardous constituents are likely to migrate into ground water, the Administrator (or if appropriate, the State) is authorized to impose such requirements as may be necessary to protect human health and the environment, including the requirements of section 6924(o) of this title which would apply to such impoundments if they were new.

(C) In the case of any surface impoundment excluded by paragraph (3) from the requirements of paragraph (1) which is subsequently determined to be leaking, the Administrator (or, if appropriate, the State) shall require compliance with paragraph (1), unless the Administrator (or, if appropriate, the State) determines that such compliance is not necessary to protect human health and the environment.

(8) In the case of any surface impoundment in which the liners and leak detection system have been installed pursuant to the requirements of paragraph (1) and in good faith compliance with section 6924(o) of this title and the Administrator's regulations and guidance documents governing liners and leak detection systems, no liner or leak detection system which is different from that which was so installed pursuant to paragraph (1) shall be required for such unit by the Administrator when issuing the first permit under this section to such facility. Nothing in this paragraph shall preclude the Administrator from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this subsection is leaking.

(9) In the case of any surface impoundment which has been excluded by paragraph (2) on the basis of a liner meeting the definition under paragraph (12)(A)(ii), at the closure of such impoundment the Administrator shall require the owner or operator of such impoundment to remove or decontaminate all waste residues, all contaminated liner material, and contaminated soil to the extent practicable. If all contaminated soil is not removed or decontaminated, the owner or operator of such impoundment shall be required to comply with appropriate post-closure requirements, including but not limited to ground water monitoring and corrective action.

(10) Any incremental cost attributable to the requirements of this subsection or section

6924(o) of this title shall not be considered by the Administrator (or the State, in the case of a State with an authorized program under section 1342 of title 33)—

(A) in establishing effluent limitations and standards under section 1311, 1314, 1316, 1317, or 1342 of title 33 based on effluent limitations guidelines and standards promulgated any time before twelve months after November 8, 1984; or

(B) in establishing any other effluent limitations to carry out the provisions of section 1311, 1317, or 1342 of title 33 on or before October 1, 1986.

(11)(A) If the Administrator allows a hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsections) to be placed in a surface impoundment (which is operating pursuant to interim status) for storage or treatment, such impoundment shall meet the requirements that are applicable to new surface impoundments under section 6924(o)(1) of this title, unless such impoundment meets the requirements of paragraph (2) or (4).

(B) In the case of any hazardous waste which is prohibited from one or more methods of land disposal under subsection (d), (e), or (g) of section 6924 of this title (or under regulations promulgated by the Administrator under such subsection) the placement or maintenance of such hazardous waste in a surface impoundment for treatment is prohibited as of the effective date of such prohibition unless the treatment residues which are hazardous are, at a minimum, removed for subsequent management within one year of the entry of the waste into the surface impoundment.

(12)(A) For the purposes of paragraph (2)(A) of this subsection, the term “liner” means—

(i) a liner designed, constructed, installed, and operated to prevent hazardous waste from passing into the liner at any time during the active life of the facility; or

(ii) a liner designed, constructed, installed, and operated to prevent hazardous waste from migrating beyond the liner to adjacent sub-surface soil, ground water, or surface water at any time during the active life of the facility.

(B) For the purposes of this subsection, the term “aggressive biological treatment facility” means a system of surface impoundments in which the initial impoundment of the secondary treatment segment of the facility utilizes intense mechanical aeration to enhance biological activity to degrade waste water pollutants and

(i) the hydraulic retention time in such initial impoundment is no longer than 5 days under normal operating conditions, on an annual average basis;

(ii) the hydraulic retention time in such initial impoundment is no longer than thirty days under normal operating conditions, on an annual average basis: *Provided*, That the sludge in such impoundment does not constitute a hazardous waste as identified by the extraction procedure toxicity characteristic in effect on November 8, 1984; or

(iii) such system utilizes activated sludge treatment in the first portion of secondary treatment.

(C) For the purposes of this subsection, the term “underground source or<sup>3</sup> drinking water” has the same meaning as provided in regulations under the Safe Drinking Water Act (title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.]).

(13) The Administrator may modify the requirements of paragraph (1) in the case of a surface impoundment for which the owner or operator, prior to October 1, 1984, has entered into, and is in compliance with, a consent order, decree, or agreement with the Administrator or a State with an authorized program mandating corrective action with respect to such surface impoundment that provides a degree of protection of human health and the environment which is at a minimum equivalent to that provided by paragraph (1).

(Pub. L. 89-272, title II, §3005, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2808; amended Pub. L. 95-609, §7(h), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, §§10, 11, Oct. 21, 1980, 94 Stat. 2338; Pub. L. 98-616, title II, §§211-213(a), (c), 214(a), 215, 224(b), 243(c), Nov. 8, 1984, 98 Stat. 3240-3243, 3253, 3261; Pub. L. 104-119, §4(6), (7), Mar. 26, 1996, 110 Stat. 833.)

#### REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (f), is Pub. L. 95-87, Aug. 3, 1977, 91 Stat. 445, as amended, which is classified generally to chapter 25 (§1201 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

The Safe Drinking Water Act, referred to in subsec. (j)(12)(C), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code see Short Title note set out under section 201 of this title and Tables.

#### AMENDMENTS

1996—Subsec. (a). Pub. L. 104-119, §4(6), substituted “polychlorinated” for “polychlorinated”.

Subsec. (e)(1)(C). Pub. L. 104-119, §4(7), inserted comma at end of subpar. (C).

1984—Subsec. (a). Pub. L. 98-616, §211, substituted “an existing facility or planning to construct a new” for “a”, inserted “and the construction of any new facility for the treatment, storage, or disposal of any such hazardous waste”, and inserted at end “No permit shall be required under this section in order to construct a facility if such facility is constructed pursuant to an approval issued by the Administrator under section 2605(e) of title 15 for the incineration of polychlorinated [sic] biphenyls and any person owning or operating such a facility may, at any time after operation or construction of such facility has begun, file an application for a permit pursuant to this section authorizing such facility to incinerate hazardous waste identified or listed under this subchapter.”

Subsec. (c)(1), (2). Pub. L. 98-616, §213(c), designated existing provisions as par. (1) and added par. (2).

Subsec. (c)(3). Pub. L. 98-616, §212, added par. (3).

Subsec. (e). Pub. L. 98-616, §213(a), designated existing provisions as par. (1), redesignated former pars. (1), (2), and (3) thereof as subpars. (A), (B), and (C), respec-

<sup>3</sup> So in original. Probably should be “of”.

tively, designated existing provisions of previously redesignated subpar. (A) as cl. (i) and added cl. (ii), inserted "This paragraph shall not apply to any facility which has been previously denied a permit under this section or if authority to operate the facility under this section has been previously terminated." to closing provisions of par. (1), and added pars. (2) and (3).

Subsec. (g). Pub. L. 98-616, §214(a), added subsec. (g).

Subsec. (h). Pub. L. 98-616, §224(b), added subsec. (h).

Subsec. (i). Pub. L. 98-616, §243(c), added subsec. (i).

Subsec. (j). Pub. L. 98-616, §215, added subsec. (j).

1980—Subsec. (e)(1). Pub. L. 96-482, §10, substituted "November 19, 1980" for "October 21, 1976".

Subsec. (f). Pub. L. 96-482, §11, added subsec. (f).

1978—Subsec. (a). Pub. L. 95-609 inserted "treatment, storage, or" after "and after such date the".

#### TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

### § 6926. Authorized State hazardous waste programs

#### (a) Federal guidelines

Not later than eighteen months after October 21, 1976, the Administrator, after consultation with State authorities, shall promulgate guidelines to assist States in the Development of State hazardous waste programs.

#### (b) Authorization of State program

Any State which seeks to administer and enforce a hazardous waste program pursuant to this subchapter may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his findings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this subchapter in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste (and to enforce permits deemed to have been issued under section 6935(d)(1)<sup>1</sup> of this title) unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this subchapter, (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such program does not provide adequate enforcement of compliance with the requirements of this subchapter. In authorizing a State program, the Administrator may

base his findings on the Federal program in effect one year prior to submission of a State's application or in effect on January 26, 1983, whichever is later.

#### (c) Interim authorization

(1) Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date of promulgation of regulations under sections 6922, 6923, 6924, and 6925 of this title, may submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subchapter. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subchapter, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subchapter for a period ending no later than January 31, 1986.

(2) The Administrator shall, by rule, establish a date for the expiration of interim authorization under this subsection.

(3) Pending interim or final authorization of a State program for any State which reflects the amendments made by the Hazardous and Solid Waste Amendments of 1984, the State may enter into an agreement with the Administrator under which the State may assist in the administration of the requirements and prohibitions which take effect pursuant to such Amendments.

(4) In the case of a State permit program for any State which is authorized under subsection (b) of this section or under this subsection, until such program is amended to reflect the amendments made by the Hazardous and Solid Waste Amendments of 1984 and such program amendments receive interim or final authorization, the Administrator shall have the authority in such State to issue or deny permits or those portions of permits affected by the requirements and prohibitions established by the Hazardous and Solid Waste Amendments of 1984. The Administrator shall coordinate with States the procedures for issuing such permits.

#### (d) Effect of State permit

Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subchapter.

#### (e) Withdrawal of authorization

Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subchapter. The Administrator shall not withdraw authorization of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

#### (f) Availability of information

No State program may be authorized by the Administrator under this section unless—

<sup>1</sup> See References in Text note below.

(1) such program provides for the public availability of information obtained by the State regarding facilities and sites for the treatment, storage, and disposal of hazardous waste; and

(2) such information is available to the public in substantially the same manner, and to the same degree, as would be the case if the Administrator was carrying out the provisions of this subchapter in such State.

**(g) Amendments made by 1984 act**

(1) Any requirement or prohibition which is applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste and which is imposed under this subchapter pursuant to the amendments made by the Hazardous and Solid Waste Amendments of 1984 shall take effect in each State having an interim or finally authorized State program on the same date as such requirement takes effect in other States. The Administrator shall carry out such requirement directly in each such State unless the State program is finally authorized (or is granted interim authorization as provided in paragraph (2)) with respect to such requirement.

(2) Any State which, before November 8, 1984, has an existing hazardous waste program which has been granted interim or final authorization under this section may submit to the Administrator evidence that such existing program contains (or has been amended to include) any requirement which is substantially equivalent to a requirement referred to in paragraph (1) and may request interim authorization to carry out that requirement under this subchapter. The Administrator shall, if the evidence submitted shows the State requirement to be substantially equivalent to the requirement referred to in paragraph (1), grant an interim authorization to the State to carry out such requirement in lieu of direct administration in the State by the Administrator of such requirement.

**(h) State programs for used oil**

In the case of used oil which is not listed or identified under this subchapter as a hazardous waste but which is regulated under section 6935 of this title, the provisions of this section regarding State programs shall apply in the same manner and to the same extent as such provisions apply to hazardous waste identified or listed under this subchapter.

(Pub. L. 89-272, title II, §3006, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2809; amended Pub. L. 95-609, §7(i), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 98-616, title II, §§225, 226(a), 227, 228, 241(b)(2), Nov. 8, 1984, 98 Stat. 3254, 3255, 3260; Pub. L. 99-499, title II, §205(j), Oct. 17, 1986, 100 Stat. 1703.)

REFERENCES IN TEXT

Section 6935(d)(1) of this title, referred to in subsec. (b), was in the original a reference to section 3012(d)(1) of Pub. L. 89-272, which was renumbered section 3014(d)(1) of Pub. L. 89-272 by Pub. L. 98-616 and is classified to section 6935(d)(1) of this title.

The Hazardous and Solid Waste Amendments of 1984, referred to in subssecs. (c)(3), (4), and (g), is Pub. L. 98-616, Nov. 8, 1984, 98 Stat. 3221, which amended this chapter. For complete classification of this Act to the

Code, see Short Title of 1984 Amendment note set out under section 6901 of this title and Tables.

AMENDMENTS

1986—Subsec. (h). Pub. L. 99-499 added subsec. (h).

1984—Subsec. (b). Pub. L. 98-616, §§225, 241(b)(2), inserted “(and to enforce permits deemed to have been issued under section 6935(d)(1) of this title)”, and inserted provision at end that in authorizing a State program, the Administrator may base his findings on the Federal program in effect one year prior to submission of a State’s application or in effect on January 26, 1983, whichever is later.

Subsec. (c)(1). Pub. L. 98-616, §227(1), (2), designated existing provisions as par. (1) and substituted “period ending no later than January 31, 1986” for “twenty-four month period beginning on the date six months after the date of promulgation of regulations under sections 6922 through 6925 of this title”.

Subsec. (c)(2) to (4). Pub. L. 98-616, §227(3), added pars. (2) to (4).

Subsec. (f). Pub. L. 98-616, §226(a), added subsec. (f).

Subsec. (g). Pub. L. 98-616, §228, added subsec. (g).

1978—Subsec. (c). Pub. L. 95-609 substituted “of” for “required for” wherever appearing and “may submit” for “submit”.

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-616, title II, §226(b), Nov. 8, 1984, 98 Stat. 3254, provided that: “The amendment made by subsection (a) [enacting subsec. (f) of this section] shall apply with respect to State programs authorized under section 3006 [this section] before, on, or after the date of enactment of the Hazardous and Solid Waste Amendments of 1984 [Nov. 8, 1984].”

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

**§ 6927. Inspections**

**(a) Access entry**

For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, such officers, employees or representatives are authorized—

(1) to enter at reasonable times any establishment or other place where hazardous wastes are or have been generated, stored, treated, disposed of, or transported from;

(2) to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes.

Each such inspection shall be commenced and completed with reasonable promptness. If the of-

ficer, employee or representative obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

**(b) Availability to public**

(1) Any records, reports, or information (including records, reports, or information obtained by representatives of the Environmental Protection Agency) obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof, to which the Administrator (or the State, as the case may be) or any officer, employee or representative thereof has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter.

(2) Any person not subject to the provisions of section 1905 of title 18 who knowingly and willfully divulges or discloses any information entitled to protection under this subsection shall, upon conviction, be subject to a fine of not more than \$5,000 or to imprisonment not to exceed one year, or both.

(3) In submitting data under this chapter, a person required to provide such data may—

(A) designate the data which such person believes is entitled to protection under this subsection, and

(B) submit such designated data separately from other data submitted under this chapter.

A designation under this paragraph shall be made in writing and in such manner as the Administrator may prescribe.

(4) Notwithstanding any limitation contained in this section or any other provision of law, all information reported to, or otherwise obtained by, the Administrator (or any representative of the Administrator) under this chapter shall be made available, upon written request of any duly authorized committee of the Congress, to such committee.

**(c) Federal facility inspections**

The Administrator shall undertake on an annual basis a thorough inspection of each facility for the treatment, storage, or disposal of hazardous waste which is owned or operated by a department, agency, or instrumentality of the United States to enforce its compliance with this subchapter and the regulations promulgated thereunder. Any State with an authorized hazardous waste program also may conduct an inspection of any such facility for purposes of

enforcing the facility's compliance with the State hazardous waste program. The records of such inspections shall be available to the public as provided in subsection (b) of this section. The department, agency, or instrumentality owning or operating each such facility shall reimburse the Environmental Protection Agency for the costs of the inspection of the facility. With respect to the first inspection of each such facility occurring after October 6, 1992, the Administrator shall conduct a comprehensive ground water monitoring evaluation at the facility, unless such an evaluation was conducted during the 12-month period preceding October 6, 1992.

**(d) State-operated facilities**

The Administrator shall annually undertake a thorough inspection of every facility for the treatment, storage, or disposal of hazardous waste which is operated by a State or local government for which a permit is required under section 6925 of this title. The records of such inspection shall be available to the public as provided in subsection (b) of this section.

**(e) Mandatory inspections**

(1) The Administrator (or the State in the case of a State having an authorized hazardous waste program under this subchapter) shall commence a program to thoroughly inspect every facility for the treatment, storage, or disposal of hazardous waste for which a permit is required under section 6925 of this title no less often than every two years as to its compliance with this subchapter (and the regulations promulgated under this subchapter). Such inspections shall commence not later than twelve months after November 8, 1984. The Administrator shall, after notice and opportunity for public comment, promulgate regulations governing the minimum frequency and manner of such inspections, including the manner in which records of such inspections shall be maintained and the manner in which reports of such inspections shall be filed. The Administrator may distinguish between classes and categories of facilities commensurate with the risks posed by each class or category.

(2) Not later than six months after November 8, 1984, the Administrator shall submit to the Congress a report on the potential for inspections of hazardous waste treatment, storage, or disposal facilities by nongovernmental inspectors as a supplement to inspections conducted by officers, employees, or representatives of the Environmental Protection Agency or States having authorized hazardous waste programs or operating under a cooperative agreement with the Administrator. Such report shall be prepared in cooperation with the States, insurance companies offering environmental impairment insurance, independent companies providing inspection services, and other such groups as appropriate. Such report shall contain recommendations on provisions and requirements for a program of private inspections to supplement governmental inspections.

(Pub. L. 89-272, title II, §3007, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2810; amended Pub. L. 95-609, §7(j), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, §12, Oct. 21, 1980, 94 Stat. 2339;

Pub. L. 98-616, title II, §§ 229-231, title V, § 502(a), Nov. 8, 1984, 98 Stat. 3255, 3256, 3276; Pub. L. 102-386, title I, § 104, Oct. 6, 1992, 106 Stat. 1507.)

#### AMENDMENTS

1992—Subsec. (c). Pub. L. 102-386 in first sentence substituted “The Administrator shall undertake” for “Beginning twelve months after November 8, 1984, the Administrator shall, or in the case of a State with an authorized hazardous waste program the State may, undertake” and “department, agency, or instrumentality of the United States” for “Federal agency”, inserted after first sentence “Any State with an authorized hazardous waste program also may conduct an inspection of any such facility for purposes of enforcing the facility’s compliance with the State hazardous waste program.”, and inserted at end “The department, agency, or instrumentality owning or operating each such facility shall reimburse the Environmental Protection Agency for the costs of the inspection of the facility. With respect to the first inspection of each such facility occurring after October 6, 1992, the Administrator shall conduct a comprehensive ground water monitoring evaluation at the facility, unless such an evaluation was conducted during the 12-month period preceding October 6, 1992.”

1984—Subsec. (b)(1). Pub. L. 98-616, § 502(a), modified directory language for amendment by sec. 12(b)(4) of Pub. L. 96-482.

Subsec. (c). Pub. L. 98-616, § 229, added subsec. (c).

Subsec. (d). Pub. L. 98-616, § 230, added subsec. (d).

Subsec. (e). Pub. L. 98-616, § 231, added subsec. (e).

1980—Subsec. (a). Pub. L. 96-482, § 12(a), substituted “chapter” for “subchapter”, “any officer, employee or representative” for “any officer or employee”, “duly designated officer, employee or representative” for “duly designated officer employee”, “such officers, employees or representatives” for “such officers or employees”, “furnish information relating to such wastes and permit” for “furnish or permit”, and “officer, employee or representative obtains” for “officer or employee obtains”, struck out “maintained by any person” after “establishment or other place”, substituted “officer, employee or representative obtains” for “officer or employee obtains”, and inserted “or has handled” after “otherwise handles” and “or have been” after “where hazardous wastes are”.

Subsec. (b)(1). Pub. L. 96-482, § 12(b)(1)-(3), designated existing provisions as par. (1), inserted “or any officer, employee or representative thereof” before “has access under this section” and substituted “such information or particular portion thereof shall be considered” for “the Administrator (or the State, as the case may be) shall consider such information or portion thereof”.

Pub. L. 96-482, § 12(b)(4), as modified by Pub. L. 98-616, § 502(a), inserted “(including records, reports, or information obtained by representatives of the Environmental Protection Agency)” after “information”.

Subsec. (b)(2) to (4). Pub. L. 96-482, § 12(b)(3), added pars. (2) to (4).

1978—Subsec. (a)(1). Pub. L. 95-609 substituted “disposed of, or transported from” for “or disposed of”.

#### TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

### § 6928. Federal enforcement

#### (a) Compliance orders

(1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person has violated

or is in violation of any requirement of this subchapter, the Administrator may issue an order assessing a civil penalty for any past or current violation, requiring compliance immediately or within a specified time period, or both, or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

(2) In the case of a violation of any requirement of this subchapter where such violation occurs in a State which is authorized to carry out a hazardous waste program under section 6926 of this title, the Administrator shall give notice to the State in which such violation has occurred prior to issuing an order or commencing a civil action under this section.

(3) Any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation. Any penalty assessed in the order shall not exceed \$25,000 per day of noncompliance for each violation of a requirement of this subchapter. In assessing such a penalty, the Administrator shall take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

#### (b) Public hearing

Any order issued under this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

#### (c) Violation of compliance orders

If a violator fails to take corrective action within the time specified in a compliance order, the Administrator may assess a civil penalty of not more than \$25,000 for each day of continued noncompliance with the order and the Administrator may suspend or revoke any permit issued to the violator (whether issued by the Administrator or the State).

#### (d) Criminal penalties

Any person who—

(1) knowingly transports or causes to be transported any hazardous waste identified or listed under this subchapter to a facility which does not have a permit under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.],

(2) knowingly treats, stores, or disposes of any hazardous waste identified or listed under this subchapter—

(A) without a permit under this subchapter or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; or

(B) in knowing violation of any material condition or requirement of such permit; or



(C) in knowing violation of any material condition or requirement of any applicable interim status regulations or standards;

(3) knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(4) knowingly generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter (whether such activity took place before or takes place after November 8, 1984) and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with regulations promulgated by the Administrator (or by a State in the case of an authorized State program) under this subchapter;

(5) knowingly transports without a manifest, or causes to be transported without a manifest, any hazardous waste or any used oil not identified or listed as a hazardous waste under this subchapter required by regulations promulgated under this subchapter (or by a State in the case of a State program authorized under this subchapter) to be accompanied by a manifest;

(6) knowingly exports a hazardous waste identified or listed under this subchapter (A) without the consent of the receiving country or, (B) where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, in a manner which is not in conformance with such agreement; or

(7) knowingly stores, treats, transports, or causes to be transported, disposes of, or otherwise handles any used oil not identified or listed as a hazardous waste under this subchapter—

(A) in knowing violation of any material condition or requirement of a permit under this subchapter; or

(B) in knowing violation of any material condition or requirement of any applicable regulations or standards under this chapter;

shall, upon conviction, be subject to a fine of not more than \$50,000 for each day of violation, or imprisonment not to exceed two years (five years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment under the respective paragraph shall be doubled with respect to both fine and imprisonment.

**(e) Knowing endangerment**

Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous

waste identified or listed under this subchapter or used oil not identified or listed as a hazardous waste under this subchapter in violation of paragraph (1), (2), (3), (4), (5), (6), or (7) of subsection (d) of this section who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment for not more than fifteen years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than \$1,000,000.

**(f) Special rules**

For the purposes of subsection (e) of this section—

(1) A person's state of mind is knowing with respect to—

(A) his conduct, if he is aware of the nature of his conduct;

(B) an existing circumstance, if he is aware or believes that the circumstance exists; or

(C) a result of his conduct, if he is aware or believes that his conduct is substantially certain to cause danger of death or serious bodily injury.

(2) In determining whether a defendant who is a natural person knew that his conduct placed another person in imminent danger of death or serious bodily injury—

(A) the person is responsible only for actual awareness or actual belief that he possessed; and

(B) knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant;

*Provided*, That in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information.

(3) It is an affirmative defense to a prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(A) an occupation, a business, or a profession; or

(B) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subsection by a preponderance of the evidence.

(4) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subsection (e) of this section and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(5) The term “organization” means a legal entity, other than a government, established, or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(6) The term “serious bodily injury” means—

(A) bodily injury which involves a substantial risk of death;

(B) unconsciousness;

(C) extreme physical pain;

(D) protracted and obvious disfigurement;

or

(E) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

**(g) Civil penalty**

Any person who violates any requirement of this subchapter shall be liable to the United States for a civil penalty in an amount not to exceed \$25,000 for each such violation. Each day of such violation shall, for purposes of this subsection, constitute a separate violation.

**(h) Interim status corrective action orders**

(1) Whenever on the basis of any information the Administrator determines that there is or has been a release of hazardous waste into the environment from a facility authorized to operate under section 6925(e) of this title, the Administrator may issue an order requiring corrective action or such other response measure as he deems necessary to protect human health or the environment or the Administrator may commence a civil action in the United States district court in the district in which the facility is located for appropriate relief, including a temporary or permanent injunction.

(2) Any order issued under this subsection may include a suspension or revocation of authorization to operate under section 6925(e) of this title, shall state with reasonable specificity the nature of the required corrective action or other response measure, and shall specify a time for compliance. If any person named in an order fails to comply with the order, the Administrator may assess, and such person shall be liable to the United States for, a civil penalty in an amount not to exceed \$25,000 for each day of noncompliance with the order.

(Pub. L. 89-272, title II, §3008, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2811; amended Pub. L. 95-609, §7(k), Nov. 8, 1978, 92 Stat. 3082; Pub. L. 96-482, §13, Oct. 21, 1980, 94 Stat. 2339; Pub. L. 98-616, title II, §§232, 233, 245(c), title IV, §403(d)(1)-(3), Nov. 8, 1984, 98 Stat. 3256, 3257, 3264, 3272; Pub. L. 99-499, title II, §205(i), Oct. 17, 1986, 100 Stat. 1703.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (d)(1), (2)(A), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

AMENDMENTS

1986—Subsec. (d)(4). Pub. L. 99-499, §205(i)(1), inserted “or any used oil not identified or listed as a hazardous waste under this subchapter”.

Subsec. (d)(5). Pub. L. 99-499, §205(i)(1), (2), inserted “or any used oil not identified or listed as a hazardous waste under this subchapter” and struck out “; or” after “accompanied by a manifest;”.

Subsec. (d)(6). Pub. L. 99-499, §205(i)(3), inserted at end “; or”.

Subsec. (d)(7). Pub. L. 99-499, §205(i)(4), added par. (7).

Subsec. (e). Pub. L. 99-499, §205(i)(5), inserted “or used oil not identified or listed as a hazardous waste under this subchapter” and substituted “(5), (6), or (7)” for “(5), or (6)”.

1984—Subsec. (a)(1). Pub. L. 98-616, §403(d)(1), in amending par. (1) generally, expanded authority of Administrator by empowering him to determine that a person “has violated” a requirement of this subchapter, and to assess a civil penalty for a past or current violation.

Subsec. (a)(3). Pub. L. 98-616, §403(d)(2), in amending par. (3) generally, substituted provision that any order issued pursuant to this subsection may include a suspension or revocation of any permit issued by the Administrator or a State under this subchapter and shall state with reasonable specificity the nature of the violation, and provision that any penalty assessed in the order shall not exceed \$25,000 per day of noncompliance for each violation of a requirement of this subchapter, and that in assessing such a penalty, the Administrator take into account the seriousness of the violation and any good faith efforts to comply with applicable requirements, for provision that if such violator fails to take corrective action within the time specified in the order, he shall be liable for a civil penalty of not more than \$25,000 for each day of continued noncompliance and the Administrator may suspend or revoke any permit issued to the violator, whether issued by the Administrator or the State.

Subsec. (b). Pub. L. 98-616, §233(b), inserted “issued under this section”.

Subsec. (c). Pub. L. 98-616, §403(d)(3), substituted provisions relating to penalties for violation of compliance orders for former provisions which set forth requirements for compliance orders.

Subsec. (d). Pub. L. 98-616, §232(a)(3), amended closing provisions generally. Prior to amendment, closing provisions read as follows: “shall, upon conviction, be subject to a fine of not more than \$25,000 (\$50,000 in the case of a violation of paragraph (1) or (2)) for each day of violation, or to imprisonment not to exceed one year (two years in the case of a violation of paragraph (1) or (2)), or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than two years, or by both.”

Subsec. (d)(1). Pub. L. 98-616, §232(a)(1), inserted “or causes to be transported” and substituted “this subchapter” for “section 6925 of this title (or section 6926 of this title in case of a State program)”.

Subsec. (d)(2). Pub. L. 98-616, §232(a)(2)(A), struck out “either” after “subchapter” in provision preceding subpar. (A).

Subsec. (d)(2)(A). Pub. L. 98-616, §232(a)(2)(B), (c), substituted “this subchapter” for “section 6925 of this title (or section 6926 of this title in the case of a State program)” and struck out “having obtained” before “a permit under”.

Subsec. (d)(2)(C). Pub. L. 98-616, §232(a)(2)(C), added subpar. (C).

Subsec. (d)(3) to (5). Pub. L. 98-616, §232(a)(3), in amending pars. (3) and (4) generally, expanded par. (3) by providing criminal penalties for one who knowingly omits material information from documents required to be filed, maintained or used under this subchapter, expanded par. (4) by providing criminal penalties for one who knowingly fails to file required material under this subchapter, and added par. (5).

Subsec. (d)(6). Pub. L. 98-616, §245(c), added par. (6).

Subsec. (e). Pub. L. 98-616, §232(b), in amending subsec. (e) generally, struck out provisions referring to violations of interim status standards and omission of material information from permit applications, struck out provision requiring proof of “unjustifiable and inexcusable disregard for human life” or “extreme indifference to human life” for conviction under this subsection, and inserted provision increasing maximum prison sentence to fifteen years for violation of subsec. (d)(1) through (6) of this section by one who knowingly places another person in imminent danger of death or serious bodily injury, replacing former provision calling for maximum imprisonment of two years, or five years in cases evidencing extreme indifference to human life.

Subsec. (h). Pub. L. 98-616, §233(a), added subsec. (h). 1980—Subsec. (a)(1). Pub. L. 96-482, §13(1), (2), struck out “the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator’s notification” before “the Administrator may issue” and substituted “compliance immediately or within a specified time period” for “compliance within a specified time period”.

Subsec. (a)(2). Pub. L. 96-482, §13(2), struck out “thirty days” after “violation has occurred”.

Subsec. (b). Pub. L. 96-482, §13(3), substituted “order shall become final unless, no later than thirty days after the order is served” for “order or any suspension or revocation of a permit shall become final unless, no later than thirty days after the order or notice of the suspension or revocation is served”.

Subsec. (c). Pub. L. 96-482, §13(4), authorized orders for suspension or revocation of permits.

Subsec. (d). Pub. L. 96-482, §13(5), in par. (2), designated existing provisions as subpar. (A) and added subpar. (B), in par. (3), inserted provision requiring the statement or representation to be material, added par. (4), and in provisions following par. (4), inserted provision authorizing a fine of \$50,000 and a two year imprisonment for violation of par. (1) or (2).

Subsecs. (e) to (g). Pub. L. 96-482, §13(5), added subsecs. (e) to (g).

1978—Subsec. (d)(1). Pub. L. 95-609, §7(k)(1), inserted provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Subsec. (d)(2). Pub. L. 95-609, §7(k)(2), inserted provisions relating to treatment or storage of hazardous wastes and relating to title I of the Marine Protection, Research, and Sanctuaries Act.

#### TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

#### § 6929. Retention of State authority

Upon the effective date of regulations under this subchapter no State or political subdivision may impose any requirements less stringent than those authorized under this subchapter respecting the same matter as governed by such regulations, except that if application of a regulation with respect to any matter under this subchapter is postponed or enjoined by the action of any court, no State or political subdivision shall be prohibited from acting with respect to the same aspect of such matter until such time as such regulation takes effect. Nothing in this chapter shall be construed to prohibit any State or political subdivision thereof from im-

posing any requirements, including those for site selection, which are more stringent than those imposed by such regulations. Nothing in this chapter (or in any regulation adopted under this chapter) shall be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility within that State.

(Pub. L. 89-272, title II, §3009, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2812; amended Pub. L. 96-482, §14, Oct. 21, 1980, 94 Stat. 2342; Pub. L. 98-616, title II, §213(b), Nov. 8, 1984, 98 Stat. 3242.)

#### AMENDMENTS

1984—Pub. L. 98-616 inserted “Nothing in this chapter (or in any regulation adopted under this chapter) shall be construed to prohibit any State from requiring that the State be provided with a copy of each manifest used in connection with hazardous waste which is generated within that State or transported to a treatment, storage, or disposal facility within that State.”

1980—Pub. L. 96-482 prohibited construction of this chapter as barring a State from imposing more stringent requirements than provided in Federal regulations.

#### § 6930. Effective date

##### (a) Preliminary notification

Not later than ninety days after promulgation of regulations under section 6921 of this title identifying by its characteristics or listing any substance as hazardous waste subject to this subchapter, any person generating or transporting such substance or owning or operating a facility for treatment, storage, or disposal of such substance shall file with the Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) a notification stating the location and general description of such activity and the identified or listed hazardous wastes handled by such person. Not later than fifteen months after November 8, 1984—

(1) the owner or operator of any facility which produces a fuel (A) from any hazardous waste identified or listed under section 6921 of this title, (B) from such hazardous waste identified or listed under section 6921 of this title and any other material, (C) from used oil, or (D) from used oil and any other material;

(2) the owner or operator of any facility (other than a single- or two-family residence) which burns for purposes of energy recovery any fuel produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title; and

(3) any person who distributes or markets any fuel which is produced as provided in paragraph (1) or any fuel which otherwise contains used oil or any hazardous waste identified or listed under section 6921 of this title<sup>1</sup>

shall file with the Administrator (and with the State in the case of a State with an authorized hazardous waste program) a notification stating the location and general description of the facil-

<sup>1</sup> So in original. Probably should be followed by a semicolon.

ity, together with a description of the identified or listed hazardous waste involved and, in the case of a facility referred to in paragraph (1) or (2), a description of the production or energy recovery activity carried out at the facility and such other information as the Administrator deems necessary. For purposes of the preceding provisions, the term "hazardous waste listed under section 6921 of this title" also includes any commercial chemical product which is listed under section 6921 of this title and which, in lieu of its original intended use, is (i) produced for use as (or as a component of) a fuel, (ii) distributed for use as a fuel, or (iii) burned as a fuel. Notification shall not be required under the second sentence of this subsection in the case of facilities (such as residential boilers) where the Administrator determines that such notification is not necessary in order for the Administrator to obtain sufficient information respecting current practices of facilities using hazardous waste for energy recovery. Nothing in this subsection shall be construed to affect or impair the provisions of section 6921(b)(3) of this title. Nothing in this subsection shall affect regulatory determinations under section 6935 of this title. In revising any regulation under section 6921 of this title identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste subject to this subchapter, the Administrator may require any person referred to in the preceding provisions to file with the Administrator (or with States having authorized hazardous waste permit programs under section 6926 of this title) the notification described in the preceding provisions. Not more than one such notification shall be required to be filed with respect to the same substance. No identified or listed hazardous waste subject to this subchapter may be transported, treated, stored, or disposed of unless notification has been given as required under this subsection.

**(b) Effective date of regulation**

The regulations under this subchapter respecting requirements applicable to the generation, transportation, treatment, storage, or disposal of hazardous waste (including requirements respecting permits for such treatment, storage, or disposal) shall take effect on the date six months after the date of promulgation thereof (or six months after the date of revision in the case of any regulation which is revised after the date required for promulgation thereof). At the time a regulation is promulgated, the Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for:

- (1) a regulation with which the Administrator finds the regulated community does not need six months to come into compliance;
- (2) a regulation which responds to an emergency situation; or
- (3) other good cause found and published with the regulation.

(Pub. L. 89-272, title II, §3010, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2812; amended Pub. L. 96-482, §15, Oct. 21, 1980, 94 Stat. 2342; Pub. L. 98-616, title II, §§204(a), 234, Nov. 8, 1984, 98 Stat. 3235, 3258.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, §204(a), inserted provisions after first sentence relating to burning and blending of hazardous wastes and substituted "the preceding provisions" for "the preceding sentence" in three places.

Subsec. (b). Pub. L. 98-616, §234, inserted provision that at the time a regulation is promulgated, the Administrator may provide for a shorter period prior to the effective date, or an immediate effective date for a regulation with which the Administrator finds the regulated community does not need six months to come into compliance, a regulation which responds to an emergency situation, or other good cause found and published with the regulation.

1980—Subsec. (a). Pub. L. 96-482 struck out "or revision" after "after promulgation or revision of regulations" and inserted provision for filing of notification when revising any regulation identifying additional characteristics of hazardous waste or listing any additional substance as hazardous waste subject to this subchapter.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

**§ 6931. Authorization of assistance to States**

**(a) Authorization of appropriations**

There is authorized to be appropriated \$25,000,000 for each of the fiscal years 1978 and 1979<sup>1</sup> \$20,000,000 for fiscal year 1980, \$35,000,000 for fiscal year 1981, \$40,000,000 for the fiscal year 1982, \$55,000,000 for the fiscal year 1985, \$60,000,000 for the fiscal year 1986, \$60,000,000 for the fiscal year 1987, and \$60,000,000 for the fiscal year 1988 to be used to make grants to the States for purposes of assisting the States in the development and implementation of authorized State hazardous waste programs.

**(b) Allocation**

Amounts authorized to be appropriated under subsection (a) of this section shall be allocated among the States on the basis of regulations promulgated by the Administrator, after consultation with the States, which take into account, the extent to which hazardous waste is generated, transported, treated, stored, and disposed of within such State, the extent of exposure of human beings and the environment within such State to such waste, and such other factors as the Administrator deems appropriate.

**(c) Activities included**

State hazardous waste programs for which grants may be made under subsection (a) of this section may include (but shall not be limited to) planning for hazardous waste treatment, storage and disposal facilities, and the development and execution of programs to protect health and the environment from inactive facilities which may contain hazardous waste.

(Pub. L. 89-272, title II, §3011, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2812; amended

<sup>1</sup> So in original. Probably should be followed by a comma.

Pub. L. 96-482, §§16, 31(b), Oct. 21, 1980, 94 Stat. 2342, 2352; Pub. L. 98-616, §2(b), Nov. 8, 1984, 98 Stat. 3222.)

#### AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616 substituted “\$40,000,000 for fiscal year 1982, \$55,000,000 for fiscal year 1985, \$60,000,000 for fiscal year 1986, \$60,000,000 for fiscal year 1987, and \$60,000,000 for fiscal year 1988” for “and \$40,000,000 for fiscal year 1982”.

1980—Subsec. (a). Pub. L. 96-482, §31(b), authorized appropriation of \$20,000,000, \$35,000,000, and \$40,000,000 for fiscal years 1980, 1981, and 1982, respectively.

Subsec. (c). Pub. L. 96-482, §16, added subsec. (c).

#### TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

### § 6932. Transferred

#### CODIFICATION

Section, Pub. L. 89-272, title II, §3012, as added Pub. L. 96-463, §7(a), Oct. 15, 1980, 94 Stat. 2057, was redesignated section 3014 of Pub. L. 89-272 by Pub. L. 98-616, title V, §502(g)(1), Nov. 8, 1984, 98 Stat. 3277, and was transferred to section 6935 of this title.

### § 6933. Hazardous waste site inventory

#### (a) State inventory programs

Each State shall, as expeditiously as practicable, undertake a continuing program to compile, publish, and submit to the Administrator an inventory describing the location of each site within such State at which hazardous waste has at any time been stored or disposed of. Such inventory shall contain—

(1) a description of the location of the sites at which any such storage or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage or disposal;

(2) such information relating to the amount, nature, and toxicity of the hazardous waste at each such site as may be practicable to obtain and as may be necessary to determine the extent of any health hazard which may be associated with such site;

(3) the name and address, or corporate headquarters of, the owner of each such site, determined as of the date of preparation of the inventory;

(4) an identification of the types or techniques of waste treatment or disposal which have been used at each such site; and

(5) information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated or disposed of at such site (and if not, the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

For purposes of assisting the States in compiling information under this section, the Administrator shall make available to each State undertaking a program under this section such infor-

mation as is available to him concerning the items specified in paragraphs (1) through (5) with respect to the sites within such State, including such information as the Administrator is able to obtain from other agencies or departments of the United States and from surveys and studies carried out by any committee or subcommittee of the Congress. Any State may exercise the authority of section 6927 of this title for purposes of this section in the same manner and to the same extent as provided in such section in the case of States having an authorized hazardous waste program, and any State may by order require any person to submit such information as may be necessary to compile the data referred to in paragraphs (1) through (5).

#### (b) Environmental Protection Agency program

If the Administrator determines that any State program under subsection (a) of this section is not adequately providing information respecting the sites in such State referred to in subsection (a) of this section, the Administrator shall notify the State. If within ninety days following such notification, the State program has not been revised or amended in such manner as will adequately provide such information, the Administrator shall carry out the inventory program in such State. In any such case—

(1) the Administrator shall have the authorities provided with respect to State programs under subsection (a) of this section;

(2) the funds allocated under subsection (c) of this section for grants to States under this section may be used by the Administrator for carrying out such program in such State; and

(3) no further expenditure may be made for grants to such State under this section until such time as the Administrator determines that such State is carrying out, or will carry out, an inventory program which meets the requirements of this section.

#### (c) Grants

(1) Upon receipt of an application submitted by any State to carry out a program under this section, the Administrator may make grants to the States for purposes of carrying out such a program. Grants under this section shall be allocated among the several States by the Administrator based upon such regulations as he prescribes to carry out the purposes of this section. The Administrator may make grants to any State which has conducted an inventory program which effectively carried out the purposes of this section before October 21, 1980, to reimburse such State for all, or any portion of, the costs incurred by such State in conducting such program.

(2) There are authorized to be appropriated to carry out this section \$25,000,000 for each of the fiscal years 1985 through 1988.

#### (d) No impediment to immediate remedial action

Nothing in this section shall be construed to provide that the Administrator or any State should, pending completion of the inventory required under this section, postpone undertaking any enforcement or remedial action with respect to any site at which hazardous waste has been treated, stored, or disposed of.

(Pub. L. 89-272, title II, §3012, as added Pub. L. 96-482, §17(a), Oct. 21, 1980, 94 Stat. 2342; amended Pub. L. 98-616, §2(c), Nov. 8, 1984, 98 Stat. 3222.)

#### CODIFICATION

Another section 3012 of Pub. L. 89-272 as added by Pub. L. 96-463, §7(a), Oct. 15, 1980, 94 Stat. 2057, was redesignated section 3014 of Pub. L. 89-272, and is classified to section 6935 of this title.

#### AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98-616 substituted “\$25,000,000 for each of the fiscal years 1985 through 1988” for “\$20,000,000”.

#### TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

### § 6934. Monitoring, analysis, and testing

#### (a) Authority of Administrator

If the Administrator determines, upon receipt of any information, that—

(1) the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or

(2) the release of any such waste from such facility or site

may present a substantial hazard to human health or the environment, he may issue an order requiring the owner or operator of such facility or site to conduct such monitoring, testing, analysis, and reporting with respect to such facility or site as the Administrator deems reasonable to ascertain the nature and extent of such hazard.

#### (b) Previous owners and operators

In the case of any facility or site not in operation at the time a determination is made under subsection (a) of this section with respect to the facility or site, if the Administrator finds that the owner of such facility or site could not reasonably be expected to have actual knowledge of the presence of hazardous waste at such facility or site and of its potential for release, he may issue an order requiring the most recent previous owner or operator of such facility or site who could reasonably be expected to have such actual knowledge to carry out the actions referred to in subsection (a) of this section.

#### (c) Proposal

An order under subsection (a) or (b) of this section shall require the person to whom such order is issued to submit to the Administrator within 30 days from the issuance of such order a proposal for carrying out the required monitoring, testing, analysis, and reporting. The Administrator may, after providing such person with an opportunity to confer with the Administrator respecting such proposal, require such person to carry out such monitoring, testing, analysis, and reporting in accordance with such proposal, and such modifications in such proposal as the Administrator deems reasonable to ascertain the nature and extent of the hazard.

#### (d) Monitoring, etc., carried out by Administrator

(1) If the Administrator determines that no owner or operator referred to in subsection (a) or (b) of this section is able to conduct monitoring, testing, analysis, or reporting satisfactory to the Administrator, if the Administrator deems any such action carried out by an owner or operator to be unsatisfactory, or if the Administrator cannot initially determine that there is an owner or operator referred to in subsection (a) or (b) of this section who is able to conduct such monitoring, testing, analysis, or reporting, he may—

(A) conduct monitoring, testing, or analysis (or any combination thereof) which he deems reasonable to ascertain the nature and extent of the hazard associated with the site concerned, or

(B) authorize a State or local authority or other person to carry out any such action,

and require, by order, the owner or operator referred to in subsection (a) or (b) of this section to reimburse the Administrator or other authority or person for the costs of such activity.

(2) No order may be issued under this subsection requiring reimbursement of the costs of any action carried out by the Administrator which confirms the results of an order issued under subsection (a) or (b) of this section.

(3) For purposes of carrying out this subsection, the Administrator or any authority or other person authorized under paragraph (1), may exercise the authorities set forth in section 6927 of this title.

#### (e) Enforcement

The Administrator may commence a civil action against any person who fails or refuses to comply with any order issued under this section. Such action shall be brought in the United States district court in which the defendant is located, resides, or is doing business. Such court shall have jurisdiction to require compliance with such order and to assess a civil penalty of not to exceed \$5,000 for each day during which such failure or refusal occurs.

(Pub. L. 89-272, title II, §3013, as added Pub. L. 96-482, §17(a), Oct. 21, 1980, 94 Stat. 2344.)

#### TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

### § 6935. Restrictions on recycled oil

#### (a) In general

Not later than one year after October 15, 1980, the Administrator shall promulgate regulations establishing such performance standards and other requirements as may be necessary to protect the public health and the environment from hazards associated with recycled oil. In developing such regulations, the Administrator shall conduct an analysis of the economic impact of

the regulations on the oil recycling industry. The Administrator shall ensure that such regulations do not discourage the recovery or recycling of used oil, consistent with the protection of human health and the environment.

**(b) Identification or listing of used oil as hazardous waste**

Not later than twelve months after November 8, 1984, the Administrator shall propose whether to list or identify used automobile and truck crankcase oil as hazardous waste under section 6921 of this title. Not later than twenty-four months after November 8, 1984, the Administrator shall make a final determination whether to list or identify used automobile and truck crankcase oil and other used oil as hazardous wastes under section 6921 of this title.

**(c) Used oil which is recycled**

(1) With respect to generators and transporters of used oil identified or listed as a hazardous waste under section 6921 of this title, the standards promulgated under section<sup>1</sup> 6921(d), 6922, and 6923 of this title shall not apply to such used oil if such used oil is recycled.

(2)(A) In the case of used oil which is exempt under paragraph (1), not later than twenty-four months after November 8, 1984, the Administrator shall promulgate such standards under this subsection regarding the generation and transportation of used oil which is recycled as may be necessary to protect human health and the environment. In promulgating such regulations with respect to generators, the Administrator shall take into account the effect of such regulations on environmentally acceptable types of used oil recycling and the effect of such regulations on small quantity generators and generators which are small businesses (as defined by the Administrator).

(B) The regulations promulgated under this subsection shall provide that no generator of used oil which is exempt under paragraph (1) from the standards promulgated under section<sup>1</sup> 6921(d), 6922, and 6923 of this title shall be subject to any manifest requirement or any associated recordkeeping and reporting requirement with respect to such used oil if such generator—

(i) either—

(I) enters into an agreement or other arrangement (including an agreement or arrangement with an independent transporter or with an agent of the recycler) for delivery of such used oil to a recycling facility which has a permit under section 6925(c) of this title (or for which a valid permit is deemed to be in effect under subsection (d) of this section), or

(II) recycles such used oil at one or more facilities of the generator which has such a permit under section 6925 of this title (or for which a valid permit is deemed to have been issued under subsection (d) of this section);

(ii) such used oil is not mixed by the generator with other types of hazardous wastes; and  
(iii) the generator maintains such records relating to such used oil, including records of agreements or other arrangements for delivery

of such used oil to any recycling facility referred to in clause (i)(I), as the Administrator deems necessary to protect human health and the environment.

(3) The regulations under this subsection regarding the transportation of used oil which is exempt from the standards promulgated under section<sup>1</sup> 6921(d), 6922, and 6923 of this title under paragraph (1) shall require the transporters of such used oil to deliver such used oil to a facility which has a valid permit under section 6925 of this title or which is deemed to have a valid permit under subsection (d) of this section. The Administrator shall also establish other standards for such transporters as may be necessary to protect human health and the environment.

**(d) Permits**

(1) The owner or operator of a facility which recycles used oil which is exempt under subsection (c)(1) of this section, shall be deemed to have a permit under this subsection for all such treatment or recycling (and any associated tank or container storage) if such owner and operator comply with standards promulgated by the Administrator under section 6924 of this title; except that the Administrator may require such owners and operators to obtain an individual permit under section 6925(c) of this title if he determines that an individual permit is necessary to protect human health and the environment.

(2) Notwithstanding any other provision of law, any generator who recycles used oil which is exempt under subsection (c)(1) of this section shall not be required to obtain a permit under section 6925(c) of this title with respect to such used oil until the Administrator has promulgated standards under section 6924 of this title regarding the recycling of such used oil.

(Pub. L. 89-272, title II, §3014, formerly §3012, as added Pub. L. 96-463, §7(a), Oct. 15, 1980, 94 Stat. 2057, and renumbered and amended Pub. L. 98-616, title II, §§241(a), 242, title V, §502(g)(1), Nov. 8, 1984, 98 Stat. 3258, 3260, 3277.)

CODIFICATION

Section was formerly classified to section 6932 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-616, §§241(a), 242, designated existing provisions as subsec. (a) and inserted “, consistent with the protection of human health and the environment” at end.

Subsecs. (b) to (d). Pub. L. 98-616, §241(a), added subsecs. (b) to (d).

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, and subsequent transfer to Secretary of Energy, then to Federal Coordinator for Alaska Natural Gas Transportation Projects, see note set out under section 6903 of this title.

**§ 6936. Expansion during interim status**

**(a) Waste piles**

The owner or operator of a waste pile qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the

<sup>1</sup> So in original. Probably should be “sections”.

same requirements for liners and leachate collection systems or equivalent protection provided in regulations promulgated by the Administrator under section 6924 of this title before October 1, 1982, or revised under section 6924(o) of this title (relating to minimum technological requirements), for new facilities receiving individual permits under subsection (c) of section 6925 of this title, with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under section 6925 of this title, and with respect to waste received beginning six months after November 8, 1984.

**(b) Landfills and surface impoundments**

(1) The owner or operator of a landfill or surface impoundment qualifying for the authorization to operate under section 6925(e) of this title shall be subject to the requirements of section 6924(o) of this title (relating to minimum technological requirements), with respect to each new unit, replacement of an existing unit, or lateral expansion of an existing unit that is within the waste management area identified in the permit application submitted under this section, and with respect to waste received beginning 6 months after November 8, 1984.

(2) The owner or operator of each unit referred to in paragraph (1) shall notify the Administrator (or the State, if appropriate) at least sixty days prior to receiving waste. The Administrator (or the State) shall require the filing, within six months of receipt of such notice, of an application for a final determination regarding the issuance of a permit for each facility submitting such notice.

(3) In the case of any unit in which the liner and leachate collection system has been installed pursuant to the requirements of this section and in good faith compliance with the Administrator's regulations and guidance documents governing liners and leachate collection systems, no liner or leachate collection system which is different from that which was so installed pursuant to this section shall be required for such unit by the Administrator when issuing the first permit under section 6925 of this title to such facility, except that the Administrator shall not be precluded from requiring installation of a new liner when the Administrator has reason to believe that any liner installed pursuant to the requirements of this section is leaking. The Administrator may, under section 6924 of this title, amend the requirements for liners and leachate collection systems required under this section as may be necessary to provide additional protection for human health and the environment.

(Pub. L. 89-272, title II, §3015, as added Pub. L. 98-616, title II, §243(a), Nov. 8, 1984, 98 Stat. 3260.)

**§ 6937. Inventory of Federal agency hazardous waste facilities**

**(a) Program requirement; submission; availability; contents**

Each Federal agency shall undertake a continuing program to compile, publish, and submit to the Administrator (and to the State in the

case of sites in States having an authorized hazardous waste program) an inventory of each site which the Federal agency owns or operates or has owned or operated at which hazardous waste is stored, treated, or disposed of or has been disposed of at any time. The inventory shall be submitted every two years beginning January 31, 1986. Such inventory shall be available to the public as provided in section 6927(b) of this title. Information previously submitted by a Federal agency under section 9603 of this title, or under section 6925 or 6930 of this title, or under this section need not be resubmitted except that the agency shall update any previous submission to reflect the latest available data and information. The inventory shall include each of the following:

(1) A description of the location of each site at which any such treatment, storage, or disposal has taken place before the date on which permits are required under section 6925 of this title for such storage, treatment, or disposal, and where hazardous waste has been disposed, a description of hydrogeology of the site and the location of withdrawal wells and surface water within one mile of the site.

(2) Such information relating to the amount, nature, and toxicity of the hazardous waste in each site as may be necessary to determine the extent of any health hazard which may be associated with any site.

(3) Information on the known nature and extent of environmental contamination at each site, including a description of the monitoring data obtained.

(4) Information concerning the current status of the site, including information respecting whether or not hazardous waste is currently being treated, stored, or disposed of at such site (and if not, the date on which such activity ceased) and information respecting the nature of any other activity currently carried out at such site.

(5) A list of sites at which hazardous waste has been disposed and environmental monitoring data has not been obtained, and the reasons for the lack of monitoring data at each site.

(6) A description of response actions undertaken or contemplated at contaminated sites.

(7) An identification of the types of techniques of waste treatment, storage, or disposal which have been used at each site.

(8) The name and address and responsible Federal agency for each site, determined as of the date of preparation of the inventory.

**(b) Environmental Protection Agency program**

If the Administrator determines that any Federal agency under subsection (a) of this section is not adequately providing information respecting the sites referred to in subsection (a) of this section, the Administrator shall notify the chief official of such agency. If within ninety days following such notification, the Federal agency has not undertaken a program to adequately provide such information, the Administrator shall carry out the inventory program for such agency.

(Pub. L. 89-272, title II, §3016, as added Pub. L. 98-616, title II, §244, Nov. 8, 1984, 98 Stat. 3261.)



**§ 6938. Export of hazardous wastes****(a) In general**

Beginning twenty-four months after November 8, 1984, no person shall export any hazardous waste identified or listed under this subchapter unless<sup>1</sup>

(1)(A) such person has provided the notification required in subsection (c) of this section,

(B) the government of the receiving country has consented to accept such hazardous waste,

(C) a copy of the receiving country's written consent is attached to the manifest accompanying each waste shipment, and

(D) the shipment conforms with the terms of the consent of the government of the receiving country required pursuant to subsection (e) of this section, or

(2) the United States and the government of the receiving country have entered into an agreement as provided for in subsection (f) of this section and the shipment conforms with the terms of such agreement.

**(b) Regulations**

Not later than twelve months after November 8, 1984, the Administrator shall promulgate the regulations necessary to implement this section. Such regulations shall become effective one hundred and eighty days after promulgation.

**(c) Notification**

Any person who intends to export a hazardous waste identified or listed under this subchapter beginning twelve months after November 8, 1984, shall, before such hazardous waste is scheduled to leave the United States, provide notification to the Administrator. Such notification shall contain the following information:

(1) the name and address of the exporter;

(2) the types and estimated quantities of hazardous waste to be exported;

(3) the estimated frequency or rate at which such waste is to be exported; and the period of time over which such waste is to be exported;

(4) the ports of entry;

(5) a description of the manner in which such hazardous waste will be transported to and treated, stored, or disposed in the receiving country; and

(6) the name and address of the ultimate treatment, storage or disposal facility.

**(d) Procedures for requesting consent of receiving country**

Within thirty days of the Administrator's receipt of a complete notification under this section, the Secretary of State, acting on behalf of the Administrator, shall—

(1) forward a copy of the notification to the government of the receiving country;

(2) advise the government that United States law prohibits the export of hazardous waste unless the receiving country consents to accept the hazardous waste;

(3) request the government to provide the Secretary with a written consent or objection to the terms of the notification; and

(4) forward to the government of the receiving country a description of the Federal regu-

lations which would apply to the treatment, storage, and disposal of the hazardous waste in the United States.

**(e) Conveyance of written consent to exporter**

Within thirty days of receipt by the Secretary of State of the receiving country's written consent or objection (or any subsequent communication withdrawing a prior consent or objection), the Administrator shall forward such a consent, objection, or other communication to the exporter.

**(f) International agreements**

Where there exists an international agreement between the United States and the government of the receiving country establishing notice, export, and enforcement procedures for the transportation, treatment, storage, and disposal of hazardous wastes, only the requirements of subsections (a)(2) and (g) of this section shall apply.

**(g) Reports**

After November 8, 1984, any person who exports any hazardous waste identified or listed under section 6921 of this title shall file with the Administrator no later than March 1 of each year, a report summarizing the types, quantities, frequency, and ultimate destination of all such hazardous waste exported during the previous calendar year.

**(h) Other standards**

Nothing in this section shall preclude the Administrator from establishing other standards for the export of hazardous wastes under section 6922 of this title or section 6923 of this title.

(Pub. L. 89-272, title II, §3017, as added Pub. L. 98-616, title II, §245(a), Nov. 8, 1984, 98 Stat. 3262.)

**§ 6939. Domestic sewage****(a) Report**

The Administrator shall, not later than 15 months after November 8, 1984, submit a report to the Congress concerning those substances identified or listed under section 6921 of this title which are not regulated under this subchapter by reason of the exclusion for mixtures of domestic sewage and other wastes that pass through a sewer system to a publicly owned treatment works. Such report shall include the types, size and number of generators which dispose of such substances in this manner, the types and quantities disposed of in this manner, and the identification of significant generators, wastes, and waste constituents not regulated under existing Federal law or regulated in a manner sufficient to protect human health and the environment.

**(b) Revisions of regulations**

Within eighteen months after submitting the report specified in subsection (a) of this section, the Administrator shall revise existing regulations and promulgate such additional regulations pursuant to this subchapter (or any other authority of the Administrator, including section 1317 of title 33) as are necessary to assure that substances identified or listed under section 6921 of this title which pass through a sewer system to a publicly owned treatment works are adequately controlled to protect human health and the environment.

<sup>1</sup> So in original. Probably should be followed by a dash.

**(c) Report on wastewater lagoons**

The Administrator shall, within thirty-six months after November 8, 1984, submit a report to Congress concerning wastewater lagoons at publicly owned treatment works and their effect on groundwater quality. Such report shall include—

- (1) the number and size of such lagoons;
- (2) the types and quantities of waste contained in such lagoons;
- (3) the extent to which such waste has been or may be released from such lagoons and contaminate ground water; and
- (4) available alternatives for preventing or controlling such releases.

The Administrator may utilize the authority of sections 6927 and 6934 of this title for the purpose of completing such report.

**(d) Application of sections 6927 and 6930**

The provisions of sections 6927 and 6930 of this title shall apply to solid or dissolved materials in domestic sewage to the same extent and in the same manner as such provisions apply to hazardous waste.

(Pub. L. 89-272, title II, §3018, as added Pub. L. 98-616, title II, §246(a), Nov. 8, 1984, 98 Stat. 3264.)

**§ 6939a. Exposure information and health assessments****(a) Exposure information**

Beginning on the date nine months after November 8, 1984, each application for a final determination regarding a permit under section 6925(c) of this title for a landfill or surface impoundment shall be accompanied by information reasonably ascertainable by the owner or operator on the potential for the public to be exposed to hazardous wastes or hazardous constituents through releases related to the unit. At a minimum, such information must address:

- (1) reasonably foreseeable potential releases from both normal operations and accidents at the unit, including releases associated with transportation to or from the unit;
- (2) the potential pathways of human exposure to hazardous wastes or constituents resulting from the releases described under paragraph (1); and
- (3) the potential magnitude and nature of the human exposure resulting from such releases.

The owner or operator of a landfill or surface impoundment for which an application for such a final determination under section 6925(c) of this title has been submitted prior to November 8, 1984, shall submit the information required by this subsection to the Administrator (or the State, in the case of a State with an authorized program) no later than the date nine months after November 8, 1984.

**(b) Health assessments**

(1) The Administrator (or the State, in the case of a State with an authorized program) shall make the information required by subsection (a) of this section, together with other relevant information, available to the Agency for Toxic Substances and Disease Registry established by section 9604(i) of this title.

(2) Whenever in the judgment of the Administrator, or the State (in the case of a State with an authorized program), a landfill or a surface impoundment poses a substantial potential risk to human health, due to the existence of releases of hazardous constituents, the magnitude of contamination with hazardous constituents which may be the result of a release, or the magnitude of the population exposed to such release or contamination, the Administrator or the State (with the concurrence of the Administrator) may request the Administrator of the Agency for Toxic Substances and Disease Registry to conduct a health assessment in connection with such facility and take other appropriate action with respect to such risks as authorized by section 9604(b) and (i) of this title. If funds are provided in connection with such request the Administrator of such Agency shall conduct such health assessment.

**(c) Members of the public**

Any member of the public may submit evidence of releases of or exposure to hazardous constituents from such a facility, or as to the risks or health effects associated with such releases or exposure, to the Administrator of the Agency for Toxic Substances and Disease Registry, the Administrator, or the State (in the case of a State with an authorized program).

**(d) Priority**

In determining the order in which to conduct health assessments under this subsection, the Administrator of the Agency for Toxic Substances and Disease Registry shall give priority to those facilities or sites at which there is documented evidence of release of hazardous constituents, at which the potential risk to human health appears highest, and for which in the judgment of the Administrator of such Agency existing health assessment data is inadequate to assess the potential risk to human health as provided in subsection (f) of this section.

**(e) Periodic reports**

The Administrator of such Agency shall issue periodic reports which include the results of all the assessments carried out under this section. Such assessments or other activities shall be reported after appropriate peer review.

**(f) "Health assessments" defined**

For the purposes of this section, the term "health assessments" shall include preliminary assessments of the potential risk to human health posed by individual sites and facilities subject to this section, based on such factors as the nature and extent of contamination, the existence of potential for pathways of human exposure (including ground or surface water contamination, air emissions, and food chain contamination), the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected human exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants, and the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of

exposure. The assessment shall include an evaluation of the risks to the potentially affected population from all sources of such contaminants, including known point or nonpoint sources other than the site or facility in question. A purpose of such preliminary assessments shall be to help determine whether full-scale health or epidemiological studies and medical evaluations of exposed populations shall be undertaken.

**(g) Cost recovery**

In any case in which a health assessment performed under this section discloses the exposure of a population to the release of a hazardous substance, the costs of such health assessment may be recovered as a cost of response under section 9607 of this title from persons causing or contributing to such release of such hazardous substance or, in the case of multiple releases contributing to such exposure, to all such release.

(Pub. L. 89-272, title II, §3019, as added Pub. L. 98-616, title II, §247(a), Nov. 8, 1984, 98 Stat. 3265.)

**§ 6939b. Interim control of hazardous waste injection**

**(a) Underground source of drinking water**

No hazardous waste may be disposed of by underground injection—

- (1) into a formation which contains (within one-quarter mile of the well used for such underground injection) an underground source of drinking water; or
- (2) above such a formation.

The prohibitions established under this section shall take effect 6 months after November 8, 1984, except in the case of any State in which identical or more stringent prohibitions are in effect before such date under the Safe Drinking Water Act [42 U.S.C. 300f et seq.].

**(b) Actions under Comprehensive Environmental Response, Compensation, and Liability Act**

Subsection (a) of this section shall not apply to the injection of contaminated ground water into the aquifer from which it was withdrawn, if—

- (1) such injection is—
  - (A) a response action taken under section 9604 or 9606 of this title, or
  - (B) part of corrective action required under this chapter<sup>1</sup>

intended to clean up such contamination;

- (2) such contaminated ground water is treated to substantially reduce hazardous constituents prior to such injection; and

- (3) such response action or corrective action will, upon completion, be sufficient to protect human health and the environment.

**(c) Enforcement**

In addition to enforcement under the provisions of this chapter, the prohibitions established under paragraphs (1) and (2) of subsection (a) of this section shall be enforceable under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] in any State—

- (1) which has adopted identical or more stringent prohibitions under part C of the Safe Drinking Water Act [42 U.S.C. 300h et seq.] and which has assumed primary enforcement responsibility under that Act for enforcement of such prohibitions; or

- (2) in which the Administrator has adopted identical or more stringent prohibitions under the Safe Drinking Water Act [42 U.S.C. 300f et seq.] and is exercising primary enforcement responsibility under that Act for enforcement of such prohibitions.

**(d) Definitions**

The terms “primary enforcement responsibility”, “underground source of drinking water”, “formation” and “well” have the same meanings as provided in regulations of the Administrator under the Safe Drinking Water Act [42 U.S.C. 300f et seq.]. The term “Safe Drinking Water Act” means title XIV of the Public Health Service Act.

(Pub. L. 89-272, title II, §3020, formerly §7010, as added Pub. L. 98-616, title IV, §405(a), Nov. 8, 1984, 98 Stat. 3273; renumbered §3020, and amended Pub. L. 99-339, title II, §201(c), June 19, 1986, 100 Stat. 654.)

REFERENCES IN TEXT

Title XIV of the Public Health Service Act, referred to in subsec. (d), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93-523, §2(a), 88 Stat. 1660, as amended, known as the Safe Drinking Water Act, which is classified generally to subchapter XII (§300f et seq.) of chapter 6A of this title. Part C of the Act is classified generally to part C (§300h et seq.) of subchapter XII of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was formerly classified to section 6979a of this title, prior to renumbering by Pub. L. 99-339.

AMENDMENTS

1986—Subsec. (c). Pub. L. 99-339, §201(c)(1), substituted “enforcement under the provisions of this chapter” for “enforcement under sections 6972 and 6973 of this title”.

**§ 6939c. Mixed waste inventory reports and plan**

**(a) Mixed waste inventory reports**

**(1) Requirement**

Not later than 180 days after October 6, 1992, the Secretary of Energy shall submit to the Administrator and to the Governor of each State in which the Department of Energy stores or generates mixed wastes the following reports:

- (A) A report containing a national inventory of all such mixed wastes, regardless of the time they were generated, on a State-by-State basis.

- (B) A report containing a national inventory of mixed waste treatment capacities and technologies.

**(2) Inventory of wastes**

The report required by paragraph (1)(A) shall include the following:

- (A) A description of each type of mixed waste at each Department of Energy facility

<sup>1</sup> So in original. Probably should be followed by a comma.

in each State, including, at a minimum, the name of the waste stream.

(B) The amount of each type of mixed waste currently stored at each Department of Energy facility in each State, set forth separately by mixed waste that is subject to the land disposal prohibition requirements of section 6924 of this title and mixed waste that is not subject to such prohibition requirements.

(C) An estimate of the amount of each type of mixed waste the Department expects to generate in the next 5 years at each Department of Energy facility in each State.

(D) A description of any waste minimization actions the Department has implemented at each Department of Energy facility in each State for each mixed waste stream.

(E) The EPA hazardous waste code for each type of mixed waste containing waste that has been characterized at each Department of Energy facility in each State.

(F) An inventory of each type of waste that has not been characterized by sampling and analysis at each Department of Energy facility in each State.

(G) The basis for the Department's determination of the applicable hazardous waste code for each type of mixed waste at each Department of Energy facility and a description of whether the determination is based on sampling and analysis conducted on the waste or on the basis of process knowledge.

(H) A description of the source of each type of mixed waste at each Department of Energy facility in each State.

(I) The land disposal prohibition treatment technology or technologies specified for the hazardous waste component of each type of mixed waste at each Department of Energy facility in each State.

(J) A statement of whether and how the radionuclide content of the waste alters or affects use of the technologies described in subparagraph (I).

### **(3) Inventory of treatment capacities and technologies**

The report required by paragraph (1)(B) shall include the following:

(A) An estimate of the available treatment capacity for each waste described in the report required by paragraph (1)(A) for which treatment technologies exist.

(B) A description, including the capacity, number and location, of each treatment unit considered in calculating the estimate under subparagraph (A).

(C) A description, including the capacity, number and location, of any existing treatment unit that was not considered in calculating the estimate under subparagraph (A) but that could, alone or in conjunction with other treatment units, be used to treat any of the wastes described in the report required by paragraph (1)(A) to meet the requirements of regulations promulgated pursuant to section 6924(m) of this title.

(D) For each unit listed in subparagraph (C), a statement of the reasons why the unit

was not included in calculating the estimate under subparagraph (A).

(E) A description, including the capacity, number, location, and estimated date of availability, of each treatment unit currently proposed to increase the treatment capacities estimated under subparagraph (A).

(F) For each waste described in the report required by paragraph (1)(A) for which the Department has determined no treatment technology exists, information sufficient to support such determination and a description of the technological approaches the Department anticipates will need to be developed to treat the waste.

### **(4) Comments and revisions**

Not later than 90 days after the date of the submission of the reports by the Secretary of Energy under paragraph (1), the Administrator and each State which received the reports shall submit any comments they may have concerning the reports to the Department of Energy. The Secretary of Energy shall consider and publish the comments prior to publication of the final report.

### **(5) Requests for additional information**

Nothing in this subsection limits or restricts the authority of States or the Administrator to request additional information from the Secretary of Energy.

### **(b) Plan for development of treatment capacities and technologies**

#### **(1) Plan requirement**

(A)(i) For each facility at which the Department of Energy generates or stores mixed wastes, except any facility subject to a permit, agreement, or order described in clause (ii), the Secretary of Energy shall develop and submit, as provided in paragraph (2), a plan for developing treatment capacities and technologies to treat all of the facility's mixed wastes, regardless of the time they were generated, to the standards promulgated pursuant to section 6924(m) of this title.

(ii) Clause (i) shall not apply with respect to any facility subject to any permit establishing a schedule for treatment of such wastes, or any existing agreement or administrative or judicial order governing the treatment of such wastes, to which the State is a party.

(B) Each plan shall contain the following:

(i) For mixed wastes for which treatment technologies exist, a schedule for submitting all applicable permit applications, entering into contracts, initiating construction, conducting systems testing, commencing operations, and processing backlogged and currently generated mixed wastes.

(ii) For mixed wastes for which no treatment technologies exist, a schedule for identifying and developing such technologies, identifying the funding requirements for the identification and development of such technologies, submitting treatability study exemptions, and submitting research and development permit applications.

(iii) For all cases where the Department proposes radionuclide separation of mixed

wastes, or materials derived from mixed wastes, it shall provide an estimate of the volume of waste generated by each case of radionuclide separation, the volume of waste that would exist or be generated without radionuclide separation, the estimated costs of waste treatment and disposal if radionuclide separation is used compared to the estimated costs if it is not used, and the assumptions underlying such waste volume and cost estimates.

(C) A plan required under this subsection may provide for centralized, regional, or on-site treatment of mixed wastes, or any combination thereof.

**(2) Review and approval of plan**

(A) For each facility that is located in a State (i) with authority under State law to prohibit land disposal of mixed waste until the waste has been treated and (ii) with both authority under State law to regulate the hazardous components of mixed waste and authorization from the Environmental Protection Agency under section 6926 of this title to regulate the hazardous components of mixed waste, the Secretary of Energy shall submit the plan required under paragraph (1) to the appropriate State regulatory officials for their review and approval, modification, or disapproval. In reviewing the plan, the State shall consider the need for regional treatment facilities. The State shall consult with the Administrator and any other State in which a facility affected by the plan is located and consider public comments in making its determination on the plan. The State shall approve, approve with modifications, or disapprove the plan within 6 months after receipt of the plan.

(B) For each facility located in a State that does not have the authority described in subparagraph (A), the Secretary shall submit the plan required under paragraph (1) to the Administrator of the Environmental Protection Agency for review and approval, modification, or disapproval. A copy of the plan also shall be provided by the Secretary to the State in which such facility is located. In reviewing the plan, the Administrator shall consider the need for regional treatment facilities. The Administrator shall consult with the State or States in which any facility affected by the plan is located and consider public comments in making a determination on the plan. The Administrator shall approve, approve with modifications, or disapprove the plan within 6 months after receipt of the plan.

(C) Upon the approval of a plan under this paragraph by the Administrator or a State, the Administrator shall issue an order under section 6928(a) of this title, or the State shall issue an order under appropriate State authority, requiring compliance with the approved plan.

**(3) Public participation**

Upon submission of a plan by the Secretary of Energy to the Administrator or a State, and before approval of the plan by the Administrator or a State, the Administrator or State shall publish a notice of the availability of the

submitted plan and make such submitted plan available to the public on request.

**(4) Revisions of plan**

If any revisions of an approved plan are proposed by the Secretary of Energy or required by the Administrator or a State, the provisions of paragraphs (2) and (3) shall apply to the revisions in the same manner as they apply to the original plan.

**(5) Waiver of plan requirement**

(A) A State may waive the requirement for the Secretary of Energy to develop and submit a plan under this subsection for a facility located in the State if the State (i) enters into an agreement with the Secretary of Energy that addresses compliance at that facility with section 6924(j) of this title with respect to mixed waste, and (ii) issues an order requiring compliance with such agreement and which is in effect.

(B) Any violation of an agreement or order referred to in subparagraph (A) is subject to the waiver of sovereign immunity contained in section 6961(a) of this title.

**(c) Schedule and progress reports**

**(1) Schedule**

Not later than 6 months after October 6, 1992, the Secretary of Energy shall publish in the Federal Register a schedule for submitting the plans required under subsection (b) of this section.

**(2) Progress reports**

(A) Not later than the deadlines specified in subparagraph (B), the Secretary of Energy shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a progress report containing the following:

(i) An identification, by facility, of the plans that have been submitted to States or the Administrator of the Environmental Protection Agency pursuant to subsection (b) of this section.

(ii) The status of State and Environmental Protection Agency review and approval of each such plan.

(iii) The number of orders requiring compliance with such plans that are in effect.

(iv) For the first 2 reports required under this paragraph, an identification of the plans required under such subsection (b) of this section that the Secretary expects to submit in the 12-month period following submission of the report.

(B) The Secretary of Energy shall submit a report under subparagraph (A) not later than 12 months after October 6, 1992, 24 months after October 6, 1992, and 36 months after October 6, 1992.

(Pub. L. 89-272, title II, §3021, as added Pub. L. 102-386, title I, §105(a)(1), Oct. 6, 1992, 106 Stat. 1508.)

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on

Commerce of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

#### GAO REPORT

Pub. L. 102-386, title I, §105(c), Oct. 6, 1992, 106 Stat. 1512, provided that:

“(1) REQUIREMENT.—Not later than 18 months after the date of the enactment of this Act [Oct. 6, 1992], the Comptroller General shall submit to Congress a report on the Department of Energy’s progress in complying with section 3021(b) of the Solid Waste Disposal Act [42 U.S.C. 6939c(b)].

“(2) MATTERS TO BE INCLUDED.—The report required under paragraph (1) shall contain, at a minimum, the following:

“(A) The Department of Energy’s progress in submitting to the States or the Administrator of the Environmental Protection Agency a plan for each facility for which a plan is required under section 3021(b) of the Solid Waste Disposal Act and the status of State or Environmental Protection Agency review and approval of each such plan.

“(B) The Department of Energy’s progress in entering into orders requiring compliance with any such plans that have been approved.

“(C) An evaluation of the completeness and adequacy of each such plan as of the date of submission of the report required under paragraph (1).

“(D) An identification of any recurring problems among the Department of Energy’s submitted plans.

“(E) A description of treatment technologies and capacity that have been developed by the Department of Energy since the date of the enactment of this Act and a list of the wastes that are expected to be treated by such technologies and the facilities at which the wastes are generated or stored.

“(F) The progress made by the Department of Energy in characterizing its mixed waste streams at each such facility by sampling and analysis.

“(G) An identification and analysis of additional actions that the Department of Energy must take to—

“(i) complete submission of all plans required under such section 3021(b) for all such facilities;

“(ii) obtain the adoption of orders requiring compliance with all such plans; and

“(iii) develop mixed waste treatment capacity and technologies.”

#### § 6939d. Public vessels

##### (a) Waste generated on public vessels

Any hazardous waste generated on a public vessel shall not be subject to the storage, manifest, inspection, or recordkeeping requirements of this chapter until such waste is transferred to a shore facility, unless—

(1) the waste is stored on the public vessel for more than 90 days after the public vessel is placed in reserve or is otherwise no longer in service; or

(2) the waste is transferred to another public vessel within the territorial waters of the United States and is stored on such vessel or another public vessel for more than 90 days after the date of transfer.

##### (b) Computation of storage period

For purposes of subsection (a) of this section, the 90-day period begins on the earlier of—

(1) the date on which the public vessel on which the waste was generated is placed in reserve or is otherwise no longer in service; or

(2) the date on which the waste is transferred from the public vessel on which the waste was generated to another public vessel within the territorial waters of the United States;

and continues, without interruption, as long as the waste is stored on the original public vessel (if in reserve or not in service) or another public vessel.

##### (c) Definitions

For purposes of this section:

(1) The term “public vessel” means a vessel owned or bareboat chartered and operated by the United States, or by a foreign nation, except when the vessel is engaged in commerce.

(2) The terms “in reserve” and “in service” have the meanings applicable to those terms under section 7293 and sections 7304 through 7308 of title 10 and regulations prescribed under those sections.

##### (d) Relationship to other law

Nothing in this section shall be construed as altering or otherwise affecting the provisions of section 7311 of title 10.

(Pub. L. 89-272, title II, §3022, as added Pub. L. 102-386, title I, §106(a), Oct. 6, 1992, 106 Stat. 1513.)

#### § 6939e. Federally owned treatment works

##### (a) In general

For purposes of section 6903(27) of this title, the phrase “but does not include solid or dissolved material in domestic sewage” shall apply to any solid or dissolved material introduced by a source into a federally owned treatment works if—

(1) such solid or dissolved material is subject to a pretreatment standard under section 1317 of title 33, and the source is in compliance with such standard;

(2) for a solid or dissolved material for which a pretreatment standard has not been promulgated pursuant to section 1317 of title 33, the Administrator has promulgated a schedule for establishing such a pretreatment standard which would be applicable to such solid or dissolved material not later than 7 years after October 6, 1992, such standard is promulgated on or before the date established in the schedule, and after the effective date of such standard the source is in compliance with such standard;

(3) such solid or dissolved material is not covered by paragraph (1) or (2) and is not prohibited from land disposal under subsections<sup>1</sup> (d), (e), (f), or (g) of section 6924 of this title because such material has been treated in accordance with section 6924(m) of this title; or

(4) notwithstanding paragraphs<sup>1</sup> (1), (2), or (3), such solid or dissolved material is generated by a household or person which generates less than 100 kilograms of hazardous waste per month unless such solid or dissolved

<sup>1</sup> So in original. Probably should be singular.

material would otherwise be an acutely hazardous waste and subject to standards, regulations, or other requirements under this chapter notwithstanding the quantity generated.

**(b) Prohibition**

It is unlawful to introduce into a federally owned treatment works any pollutant that is a hazardous waste.

**(c) Enforcement**

(1) Actions taken to enforce this section shall not require closure of a treatment works if the hazardous waste is removed or decontaminated and such removal or decontamination is adequate, in the discretion of the Administrator or, in the case of an authorized State, of the State, to protect human health and the environment.

(2) Nothing in this subsection shall be construed to prevent the Administrator or an authorized State from ordering the closure of a treatment works if the Administrator or State determines such closure is necessary for protection of human health and the environment.

(3) Nothing in this subsection shall be construed to affect any other enforcement authorities available to the Administrator or a State under this subchapter.

**(d) “Federally owned treatment works” defined**

For purposes of this section, the term “federally owned treatment works” means a facility that is owned and operated by a department, agency, or instrumentality of the Federal Government treating wastewater, a majority of which is domestic sewage, prior to discharge in accordance with a permit issued under section 1342 of title 33.

**(e) Savings clause**

Nothing in this section shall be construed as affecting any agreement, permit, or administrative or judicial order, or any condition or requirement contained in such an agreement, permit, or order, that is in existence on October 6, 1992, and that requires corrective action or closure at a federally owned treatment works or solid waste management unit or facility related to such a treatment works.

(Pub. L. 89-272, title II, §3023, as added Pub. L. 102-386, title I, §108(a), Oct. 6, 1992, 106 Stat. 1514.)

**§ 6939f. Long-term storage**

**(a) Designation of facility**

**(1) In general**

Not later than January 1, 2010, the Secretary of Energy (referred to in this section as the “Secretary”) shall designate a facility or facilities of the Department of Energy, which shall not include the Y-12 National Security Complex or any other portion or facility of the Oak Ridge Reservation of the Department of Energy, for the purpose of long-term management and storage of elemental mercury generated within the United States.

**(2) Operation of facility**

Not later than January 1, 2013, the facility designated in paragraph (1) shall be operational and shall accept custody, for the pur-

pose of long-term management and storage, of elemental mercury generated within the United States and delivered to such facility.

**(b) Fees**

**(1) In general**

After consultation with persons who are likely to deliver elemental mercury to a designated facility for long-term management and storage under the program prescribed in subsection (a), and with other interested persons, the Secretary shall assess and collect a fee at the time of delivery for providing such management and storage, based on the pro rata cost of long-term management and storage of elemental mercury delivered to the facility. The amount of such fees—

(A) shall be made publically<sup>1</sup> available not later than October 1, 2012;

(B) may be adjusted annually; and

(C) shall be set in an amount sufficient to cover the costs described in paragraph (2).

**(2) Costs**

The costs referred to in paragraph (1)(C) are the costs to the Department of Energy of providing such management and storage, including facility operation and maintenance, security, monitoring, reporting, personnel, administration, inspections, training, fire suppression, closure, and other costs required for compliance with applicable law. Such costs shall not include costs associated with land acquisition or permitting of a designated facility under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] or other applicable law. Building design and building construction costs shall only be included to the extent that the Secretary finds that the management and storage of elemental mercury accepted under the program under this section cannot be accomplished without construction of a new building or buildings.

**(c) Report**

Not later than 60 days after the end of each Federal fiscal year, the Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on all of the costs incurred in the previous fiscal year associated with the long-term management and storage of elemental mercury. Such report shall set forth separately the costs associated with activities taken under this section.

**(d) Management standards for a facility**

**(1) Guidance**

Not later than October 1, 2009, the Secretary, after consultation with the Administrator of the Environmental Protection Agency and all appropriate State agencies in affected States, shall make available, including to potential users of the long-term management and storage program established under subsection (a), guidance that establishes procedures and standards for the receipt, management, and long-term storage of elemental mercury at a designated facility or facilities, including re-

<sup>1</sup> So in original. Probably should be “publicly”.

quirements to ensure appropriate use of flasks or other suitable shipping containers. Such procedures and standards shall be protective of human health and the environment and shall ensure that the elemental mercury is stored in a safe, secure, and effective manner. In addition to such procedures and standards, elemental mercury managed and stored under this section at a designated facility shall be subject to the requirements of the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], including the requirements of subtitle C of that Act [42 U.S.C. 6921 et seq.], except as provided in subsection (g)(2) of this section. A designated facility in existence on or before January 1, 2013, is authorized to operate under interim status pursuant to section 3005(e) of the Solid Waste Disposal Act [42 U.S.C. 6925(e)] until a final decision on a permit application is made pursuant to section 3005(c) of the Solid Waste Disposal Act [42 U.S.C. 6925(c)]. Not later than January 1, 2015, the Administrator of the Environmental Protection Agency (or an authorized State) shall issue a final decision on the permit application.

**(2) Training**

The Secretary shall conduct operational training and emergency training for all staff that have responsibilities related to elemental mercury management, transfer, storage, monitoring, or response.

**(3) Equipment**

The Secretary shall ensure that each designated facility has all equipment necessary for routine operations, emergencies, monitoring, checking inventory, loading, and storing elemental mercury at the facility.

**(4) Fire detection and suppression systems**

The Secretary shall—

(A) ensure the installation of fire detection systems at each designated facility, including smoke detectors and heat detectors; and

(B) ensure the installation of a permanent fire suppression system, unless the Secretary determines that a permanent fire suppression system is not necessary to protect human health and the environment.

**(e) Indemnification of persons delivering elemental mercury**

**(1) In general**

(A) Except as provided in subparagraph (B) and subject to paragraph (2), the Secretary shall hold harmless, defend, and indemnify in full any person who delivers elemental mercury to a designated facility under the program established under subsection (a) from and against any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of elemental mercury as a result of acts or omissions occurring after such mercury is delivered to a designated facility described in subsection (a).

(B) To the extent that a person described in subparagraph (A) contributed to any such release or threatened release, subparagraph (A) shall not apply.

**(2) Conditions**

No indemnification may be afforded under this subsection unless the person seeking indemnification—

(A) notifies the Secretary in writing within 30 days after receiving written notice of the claim for which indemnification is sought;

(B) furnishes to the Secretary copies of pertinent papers the person receives;

(C) furnishes evidence or proof of any claim, loss, or damage covered by this subsection; and

(D) provides, upon request by the Secretary, access to the records and personnel of the person for purposes of defending or settling the claim or action.

**(3) Authority of Secretary**

(A) In any case in which the Secretary determines that the Department of Energy may be required to make indemnification payments to a person under this subsection for any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage referred to in paragraph (1)(A), the Secretary may settle or defend, on behalf of that person, the claim for personal injury or property damage.

(B) In any case described in subparagraph (A), if the person to whom the Department of Energy may be required to make indemnification payments does not allow the Secretary to settle or defend the claim, the person may not be afforded indemnification with respect to that claim under this subsection.

**(f) Terms, conditions, and procedures**

The Secretary is authorized to establish such terms, conditions, and procedures as are necessary to carry out this section.

**(g) Effect on other law**

**(1) In general**

Except as provided in paragraph (2), nothing in this section changes or affects any Federal, State, or local law or the obligation of any person to comply with such law.

**(2) Exception**

(A) Elemental mercury that the Secretary is storing on a long-term basis shall not be subject to the storage prohibition of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)). For the purposes of section 3004(j) of the Solid Waste Disposal Act, a generator accumulating elemental mercury destined for a facility designated by the Secretary under subsection (a) for 90 days or less shall be deemed to be accumulating the mercury to facilitate proper treatment, recovery, or disposal.

(B) Elemental mercury may be stored at a facility with respect to which any permit has been issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)), and shall not be subject to the storage prohibition



of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)) if—

(i) the Secretary is unable to accept the mercury at a facility designated by the Secretary under subsection (a) for reasons beyond the control of the owner or operator of the permitted facility;

(ii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will ship the mercury to the designated facility when the Secretary is able to accept the mercury; and

(iii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will not sell, or otherwise place into commerce, the mercury.

This subparagraph shall not apply to mercury with respect to which the owner or operator of the permitted facility fails to comply with a certification provided under clause (ii) or (iii).

**(h) Study**

Not later than July 1, 2014, the Secretary shall transmit to the Congress the results of a study, conducted in consultation with the Administrator of the Environmental Protection Agency, that—

(1) determines the impact of the long-term storage program under this section on mercury recycling; and

(2) includes proposals, if necessary, to mitigate any negative impact identified under paragraph (1).

(Pub. L. 110-414, §5, Oct. 14, 2008, 122 Stat. 4344.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsecs. (b)(2) and (d)(1), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to this chapter. Subtitle C of the Act is classified generally to this subchapter. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CODIFICATION

Section was enacted as part of the Mercury Export Ban Act of 2008, and not as part of the Solid Waste Disposal Act which comprises this chapter.

**§ 6939g. Hazardous waste electronic manifest system**

**(a) Definitions**

In this section:

**(1) Board**

The term “Board” means the Hazardous Waste Electronic Manifest System Advisory Board established under subsection (f).

**(2) Fund**

The term “Fund” means the Hazardous Waste Electronic Manifest System Fund established by subsection (d).

**(3) Person**

The term “person” includes an individual, corporation (including a Government corporation), company, association, firm, partnership, society, joint stock company, trust, municipality, commission, Federal agency, State, political subdivision of a State, or interstate body.

**(4) System**

The term “system” means the hazardous waste electronic manifest system established under subsection (b).

**(5) User**

The term “user” means a hazardous waste generator, a hazardous waste transporter, an owner or operator of a hazardous waste treatment, storage, recycling, or disposal facility, or any other person that—

(A) is required to use a manifest to comply with any Federal or State requirement to track the shipment, transportation, and receipt of hazardous waste or other material that is shipped from the site of generation to an off-site facility for treatment, storage, disposal, or recycling; and

(B)(i) elects to use the system to complete and transmit an electronic manifest format; or

(ii) submits to the system for data processing purposes a paper copy of the manifest (or data from such a paper copy), in accordance with such regulations as the Administrator may promulgate to require such a submission.

**(b) Establishment**

Not later than 3 years after October 5, 2012, the Administrator shall establish a hazardous waste electronic manifest system that may be used by any user.

**(c) User fees**

**(1) In general**

In accordance with paragraph (4), the Administrator may impose on users such reasonable service fees as the Administrator determines to be necessary to pay costs incurred in developing, operating, maintaining, and upgrading the system, including any costs incurred in collecting and processing data from any paper manifest submitted to the system after the date on which the system enters operation.

**(2) Collection of fees**

The Administrator shall—

(A) collect the fees described in paragraph (1) from the users in advance of, or as reimbursement for, the provision by the Administrator of system-related services; and

(B) deposit the fees in the Fund.

**(3) Fee structure**

**(A) In general**

The Administrator, in consultation with information technology vendors, shall determine through the contract award process described in subsection (e) the fee structure that is necessary to recover the full cost to the Administrator of providing system-related services, including—

(i) contractor costs relating to—

(I) materials and supplies;

(II) contracting and consulting;

(III) overhead;

(IV) information technology (including costs of hardware, software, and related services);

(V) information management;

- (VI) collection of service fees;
- (VII) reporting and accounting; and
- (VIII) project management; and

(ii) costs of employment of direct and indirect Government personnel dedicated to establishing, managing, and maintaining the system.

**(B) Adjustments in fee amount**

**(i) In general**

The Administrator, in consultation with the Board, shall increase or decrease the amount of a service fee determined under the fee structure described in subparagraph (A) to a level that will—

- (I) result in the collection of an aggregate amount for deposit in the Fund that is sufficient and not more than reasonably necessary to cover current and projected system-related costs (including any necessary system upgrades); and
- (II) minimize, to the maximum extent practicable, the accumulation of unused amounts in the Fund.

**(ii) Exception for initial period of operation**

The requirement described in clause (i)(II) shall not apply to any additional fees that accumulate in the Fund, in an amount that does not exceed \$2,000,000, during the 3-year period beginning on the date on which the system enters operation.

**(iii) Timing of adjustments**

Adjustments to service fees described in clause (i) shall be made—

- (I) initially, at the time at which initial development costs of the system have been recovered by the Administrator such that the service fee may be reduced to reflect the elimination of the system development component of the fee; and
- (II) periodically thereafter, upon receipt and acceptance of the findings of any annual accounting or auditing report under subsection (d)(3), if the report discloses a significant disparity for a fiscal year between the funds collected from service fees under this subsection for the fiscal year and expenditures made for the fiscal year to provide system-related services.

**(4) Crediting and availability of fees**

Fees authorized under this section shall be collected and available for obligation only to the extent and in the amount provided in advance in appropriations Acts.

**(d) Hazardous Waste Electronic Manifest System Fund**

**(1) Establishment**

There is established in the Treasury of the United States a revolving fund, to be known as the “Hazardous Waste Electronic Manifest System Fund”, consisting of such amounts as are deposited in the Fund under subsection (c)(2)(B).

**(2) Expenditures from Fund**

**(A) In general**

Only to the extent provided in advance in appropriations Acts, on request by the Administrator, the Secretary of the Treasury shall transfer from the Fund to the Administrator amounts appropriated to pay costs incurred in developing, operating, maintaining, and upgrading the system under subsection (c).

**(B) Use of funds by Administrator**

Fees collected by the Administrator and deposited in the Fund under this section shall be available to the Administrator subject to appropriations Acts for use in accordance with this section without fiscal year limitation.

**(C) Oversight of funds**

The Administrator shall carry out all necessary measures to ensure that amounts in the Fund are used only to carry out the goals of establishing, operating, maintaining, upgrading, managing, supporting, and overseeing the system.

**(3) Accounting and auditing**

**(A) Accounting**

For each 2-fiscal-year period, the Administrator shall prepare and submit to the Committee on Environment and Public Works and the Committee on Appropriations of the Senate and the Committee on Energy and Commerce and the Committee on Appropriations of the House of Representatives a report that includes—

- (i) an accounting of the fees paid to the Administrator under subsection (c) and disbursed from the Fund for the period covered by the report, as reflected by financial statements provided in accordance with—
  - (I) the Chief Financial Officers Act of 1990 (Public Law 101-576; 104 Stat. 2838) and amendments made by that Act; and
  - (II) the Government Management Reform Act of 1994 (Public Law 103-356; 108 Stat. 3410) and amendments made by that Act; and
- (ii) an accounting describing actual expenditures from the Fund for the period covered by the report for costs described in subsection (c)(1).

**(B) Auditing**

**(i) In general**

For the purpose of section 3515(c) of title 31, the Fund shall be considered a component of an Executive agency.

**(ii) Components of audit**

The annual audit required in accordance with sections 3515(b) and 3521 of title 31 of the financial statements of activities carried out using amounts from the Fund shall include an analysis of—

- (I) the fees collected and disbursed under this section;
- (II) the reasonableness of the fee structure in place as of the date of the audit

to meet current and projected costs of the system;

(III) the level of use of the system by users; and

(IV) the success to date of the system in operating on a self-sustaining basis and improving the efficiency of tracking waste shipments and transmitting waste shipment data.

**(iii) Federal responsibility**

The Inspector General of the Environmental Protection Agency shall—

(I) conduct the annual audit described in clause (ii); and

(II) submit to the Administrator a report that describes the findings and recommendations of the Inspector General resulting from the audit.

**(e) Contracts**

**(1) Authority to enter into contracts funded by service fees**

After consultation with the Secretary of Transportation, the Administrator may enter into 1 or more information technology contracts with entities determined to be appropriate by the Administrator (referred to in this subsection as “contractors”) for the provision of system-related services.

**(2) Term of contract**

A contract awarded under this subsection shall have a term of not more than 10 years.

**(3) Achievement of goals**

The Administrator shall ensure, to the maximum extent practicable, that a contract awarded under this subsection—

(A) is performance-based;

(B) identifies objective outcomes; and

(C) contains performance standards that may be used to measure achievement and goals to evaluate the success of a contractor in performing under the contract and the right of the contractor to payment for services under the contract, taking into consideration that a primary measure of successful performance shall be the development of a hazardous waste electronic manifest system that—

(i) meets the needs of the user community (including States that rely on data contained in manifests);

(ii) attracts sufficient user participation and service fee revenues to ensure the viability of the system;

(iii) decreases the administrative burden on the user community; and

(iv) provides the waste receipt data applicable to the biennial reports required by section 6922(a)(6) of this title.

**(4) Payment structure**

Each contract awarded under this subsection shall include a provision that specifies—

(A) the service fee structure of the contractor that will form the basis for payments to the contractor; and

(B) the fixed-share ratio of monthly service fee revenues from which the Administrator shall reimburse the contractor for

system-related development, operation, and maintenance costs.

**(5) Cancellation and termination**

**(A) In general**

If the Administrator determines that sufficient funds are not made available for the continuation in a subsequent fiscal year of a contract entered into under this subsection, the Administrator may cancel or terminate the contract.

**(B) Negotiation of amounts**

The amount payable in the event of cancellation or termination of a contract entered into under this subsection shall be negotiated with the contractor at the time at which the contract is awarded.

**(6) No effect on ownership**

Regardless of whether the Administrator enters into a contract under this subsection, the system shall be owned by the Federal Government.

**(f) Hazardous Waste Electronic Manifest System Advisory Board**

**(1) Establishment**

Not later than 3 years after October 5, 2012, the Administrator shall establish a board to be known as the “Hazardous Waste Electronic Manifest System Advisory Board”.

**(2) Composition**

The Board shall be composed of 9 members, of which—

(A) 1 member shall be the Administrator (or a designee), who shall serve as Chairperson of the Board; and

(B) 8 members shall be individuals appointed by the Administrator—

(i) at least 2 of whom shall have expertise in information technology;

(ii) at least 3 of whom shall have experience in using or represent users of the manifest system to track the transportation of hazardous waste under this subchapter (or an equivalent State program); and

(iii) at least 3 of whom shall be a State representative responsible for processing those manifests.

**(3) Duties**

The Board shall meet annually to discuss, evaluate the effectiveness of, and provide recommendations to the Administrator relating to, the system.

**(g) Regulations**

**(1) Promulgation**

**(A) In general**

Not later than 1 year after October 5, 2012, after consultation with the Secretary of Transportation, the Administrator shall promulgate regulations to carry out this section.

**(B) Inclusions**

The regulations promulgated pursuant to subparagraph (A) may include such requirements as the Administrator determines to

be necessary to facilitate the transition from the use of paper manifests to the use of electronic manifests, or to accommodate the processing of data from paper manifests in the electronic manifest system, including a requirement that users of paper manifests submit to the system copies of the paper manifests for data processing purposes.

**(C) Requirements**

The regulations promulgated pursuant to subparagraph (A) shall ensure that each electronic manifest provides, to the same extent as paper manifests under applicable Federal and State law, for—

(i) the ability to track and maintain legal accountability of—

(I) the person that certifies that the information provided in the manifest is accurately described; and

(II) the person that acknowledges receipt of the manifest;

(ii) if the manifest is electronically submitted, State authority to access paper printout copies of the manifest from the system; and

(iii) access to all publicly available information contained in the manifest.

**(2) Effective date of regulations**

Any regulation promulgated by the Administrator under paragraph (1) and in accordance with section 6923 of this title relating to electronic manifesting of hazardous waste shall take effect in each State as of the effective date specified in the regulation.

**(3) Administration**

The Administrator shall carry out regulations promulgated under this subsection in each State unless the State program is fully authorized to carry out such regulations in lieu of the Administrator.

**(h) Requirement of compliance with respect to certain States**

In any case in which the State in which waste is generated, or the State in which waste will be transported to a designated facility, requires that the waste be tracked through a hazardous waste manifest, the designated facility that receives the waste shall, regardless of the State in which the facility is located—

(1) complete the facility portion of the applicable manifest;

(2) sign and date the facility certification; and

(3) submit to the system a final copy of the manifest for data processing purposes.

**(i) Authorization for start-up activities**

There are authorized to be appropriated \$2,000,000 for each of fiscal years 2013 through 2015 for start-up activities to carry out this section, to be offset by collection of user fees under subsection (c) such that all such appropriated funds are offset by fees as provided in subsection (c).

(Pub. L. 89-272, title II, §3024, as added Pub. L. 112-195, §2(a), Oct. 5, 2012, 126 Stat. 1452.)

REFERENCES IN TEXT

The Chief Financial Officers Act of 1990, referred to in subsec. (d)(3)(A)(i)(I), is Pub. L. 101-576, Nov. 15, 1990, 104

Stat. 2838. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 501 of Title 31, Money and Finance, and Tables.

The Government Management Reform Act of 1994, referred to in (d)(3)(A)(i)(II), is Pub. L. 103-356, Oct. 13, 1994, 108 Stat. 3410. For complete classification of this Act to the Code, see Short Title of 1994 Amendment note set out under section 3301 of Title 31, Money and Finance, and Tables.

SUBCHAPTER IV—STATE OR REGIONAL  
SOLID WASTE PLANS

**§ 6941. Objectives of subchapter**

The objectives of this subchapter are to assist in developing and encouraging methods for the disposal of solid waste which are environmentally sound and which maximize the utilization of valuable resources including energy and materials which are recoverable from solid waste and to encourage resource conservation. Such objectives are to be accomplished through Federal technical and financial assistance to States or regional authorities for comprehensive planning pursuant to Federal guidelines designed to foster cooperation among Federal, State, and local governments and private industry. In developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs, including those needs created by thorough implementation of section 6962(h) of this title, of the recycling and resource recovery interest within the area encompassed by the planning process.

(Pub. L. 89-272, title II, §4001, as added Pub. L. 94-580, §2, Oct. 21, 1976, 90 Stat. 2813; amended Pub. L. 96-482, §32(b), Oct. 21, 1980, 94 Stat. 2353; Pub. L. 98-616, title III, §301(a), title V, §501(f)(1), Nov. 8, 1984, 98 Stat. 3267, 3276.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 3254 of this title, prior to the general amendment of the Solid Waste Disposal Act by Pub. L. 94-580.

AMENDMENTS

1984—Pub. L. 98-616, §501(f)(1), inserted “, including those needs created by thorough implementation of section 6962(h) of this title,”.

Pub. L. 98-616, §301(a), inserted at end “In developing such comprehensive plans, it is the intention of this chapter that in determining the size of the waste-to-energy facility, adequate provision shall be given to the present and reasonably anticipated future needs of the recycling and resource recovery interest within the area encompassed by the planning process.”

1980—Pub. L. 96-482 included as an objective in the disposal of solid waste the utilization of energy and materials recoverable from solid waste.

**§ 6941a. Energy and materials conservation and recovery; Congressional findings**

The Congress finds that—

(1) significant savings could be realized by conserving materials in order to reduce the volume or quantity of material which ultimately becomes waste;

(2) solid waste contains valuable energy and material resources which can be recovered and