

William & Mary Environmental Law and Policy Review

Volume 3 (1977-1978)
Issue 2 *Environmental Practice News*

Article 5

April 1978

Subtitle C of the Resource Conservation and Recovery Act of 1976

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Subtitle C of the Resource Conservation and Recovery Act of 1976, 3 Wm. & Mary Envtl. L. & Pol'y Rev. 5 (1978), <https://scholarship.law.wm.edu/wmelpr/vol3/iss2/5>

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SUBTITLE C OF THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976

This paper deals with Title II, Subtitle C of the Resource Conservation and Recovery Act of 1976. It attempts to trace the steps that a producer of hazardous wastes would have to follow as well as pointing out the overlaps in this Act with other legislation on the production, disposal and treatment of hazardous materials.

The first possibility to consider is that the Administrator of the E.P.A. may determine the waste produced as hazardous waste. If such a finding is made, then the wastes produced by the manufacture of the sanitizer would fall under Title II, Subtitle C of the Resource Conservation and Recovery Act of 1976, Hazardous Waste Management [Resource Conservation and Recovery Act of 1976, Pub. L. No. 94-580, Title II Solid Waste Disposal, Subtitle C, Sections 3001-3011]. As a regulated substance under Subtitle C, the waste material will be subject to a series of regulations established by Congress and promulgated by the Administrator from time to time as he sees fit to protect human health and the environment [some of the things taken into account in determining what is a hazardous waste and how it should be dealt are ". . . toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics." Subtitle C, Section 3001 (a). The Environmental Protection Agency has established criteria for defining what constitutes a flammable waste, a corrosive waste, an infectious waste, a reactive waste, a radioactive waste, and a toxic waste. The E.P.A. has established a list of sources which generate infectious wastes and a list of etiologic agents which are of potential hazard. The agency has made no final decision as to whether a more comprehensive list of hazardous wastes will be developed which tends to give the Administrator a somewhat more open hand in that he, in his discretion, subject, of course, to some limits,

may make on what substances are to be regulated. However, the E.P.A. has established methods for testing for flammable wastes, corrosive wastes, reactive wastes, radioactive wastes, and toxic wastes]. The Administrator's determinations are based on and tempered by public hearings, Environmental Protection Agency testing and consultations with appropriate Federal and State agencies. The list of hazardous wastes compiled by the Administrator might also be enlarged by the governor of any state who may ". . . petition the Administrator to identify or list a material as a hazardous waste [Subtitle C, Section 3001 (c). Such petitioning may be done at any time after the date eighteen months after the enactment of Title II]." Such a petitioning will not act as an automatic inclusion of the material in question, but forces the Administrator to consider the substance within ninety days. It becomes clear that certain substances in the waste matter produced may be placed on the hazardous waste list at one point and removed at a later point. Another chemical substance in the same waste matter may be placed on the list at still a later time. The list is far from stable and any corporation producing any sort of wastes at all must be mindful of the constant changes occurring in the area.

Once a manufacturer finds his waste material has been determined hazardous, he must follow the prescribed standards applicable to generators of such wastes [Subtitle C, Section 3002 (1)--(6)]. First, the generator must use "record keeping 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." Second, proper labeling must be done to assure accurate identification of the waste. This labeling must be in accordance with Department of Transportation regulations on labeling [49 CFR 100-189]. If the waste is bio-accumulative, infectious, or has

potential for genetic change (i.e., carcinogens, mutagens and teratogens) it must be labeled with the Department of Transportation's "Poison A/B" label, or a United States Environmental Protection Agency "Toxic" label [Jeffrey L. Hilliker, Hazardous Waste Control under the New Resource Conservation and Recovery Act, (Dec. 8-9), 1977, Toxic Substance Control Conference]. Third, all hazardous wastes must be stored prior to disposal in appropriate containers. This poses a further problem since quaternary ammonium has such a high corrosive effect that it must be diluted with sodium nitrite to prevent it from eating through its canister. This step will require tests to assure that the proper amount of sodium nitrite is added to prevent any possibility of accident. Because of the high probability of accident and this required additional procedure, the Administrator may require the submission of additional reports to whichever agency has authority over hazardous waste in the State [Subtitle C, Section 3006 (6) authorizes the request for such reports whenever the Administrator or State agency deems them necessary]. The remaining standards for the generator requires him to furnish information on the general chemical composition of such hazardous waste to persons transporting, treating, storing or disposing of such wastes; and to use a manifest system to assure that all hazardous waste generated is designated for disposal.

After the generator has complied with all the regulations required of him, he must find a company that can meet with all the regulations required of the transporter [Subtitle C, Section 3003 (a) deals with the standards applicable to transporters of hazardous waste only from on-site of generation to off-site disposal. This section does not apply to transportation of hazardous wastes on-site of generation or on-site of a permitted hazardous waste management facility. The consideration of on-site disposal will be considered later in the paper]. The standards applying to transporters of hazardous waste shall be established by the Administrator, after consultation

with the Secretary of Transportation and the States. These standards may be whatever the Administrator deems necessary to carry out the purpose of this act; that is to protect human health and the environment. Some of the procedures set out by the Solid Waste Disposal Act require that any transporter of hazardous waste notify the Environmental Protection Agency which, in turn, will issue that transporter an identification number which must be included on the manifest as required by the standards for generators. The transporter must maintain a copy of the manifest and delivery document for a period of not less than three years from the date of certification of delivery to the permitted facility. No shipment of hazardous waste may be accepted without a properly filled-out manifest and unless all the containers are properly labeled. The transporter is required to load and stow the material so that those which are incompatible will not come into contact with each other. This, of course, requires the transporter to have some degree of knowledge as to which of the chemical wastes he carries will react with each other. More tests must be performed to ensure that each waste does not adversely react to any other. The transporter must at all times have a copy of the manifest with each shipment, and if the transport vehicle contains one thousand pounds or more, the vehicle must be placarded "controlled waste." The entire quantity of waste must be delivered to the designated permitted facility [those hazardous wastes which also meet the definition and criteria for hazardous materials as defined by the Department of Transportation regulations, 49 CFR 171.8 and 173, must meet both Environmental Protection Agency standards under Section 3003 and applicable Transportation standards under 49 CFR 177 (carriage by public highway)]. The object of these regulations is to guard against the escape of these dangerous pollutants from the generator to the disposal facility. A major problem encountered by the manufacturer is to locate a transporter who is capable of dealing with these regulations at a reasonable cost. If there is a qualified transporter already in the area, most of the

problem is solved. If there is not, then the problem is convincing a local trucking line, with the administrative personnel to handle the regulatory paper work, to haul the material. It may reach the point where the manufacturer finds his only economically feasible alternative is to undertake such transportation on his own.

A further irony which could come into play is that the Administrator of Environmental Protection Agency may decide that the waste material produced is not a hazardous substance, yet the Secretary of Transportation may determine that matter left over from production does present a risk to life and property placing the substance under the Hazardous Materials Transportation Act [Hazardous Materials Transportation Act, Pub. L. No. 93-633; 88 Stat. 2156; 49 U.S.C.A. 1801 and following (1975)]. "Upon a finding by the Secretary, in his discretion, that the transportation of a particular quantity and form of material in commerce may pose an unreasonable risk to health and safety or property, he shall designate such quantity and form of material or group or class of such materials as hazardous material [Id. at Section 1803. The remainder of the section reads as follows: "The material so designated may include, but are not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, and compressed gases."]." Subtitle C requires the Administrator to keep all regulations promulgated under the subtitle consistent with the requirements of the Hazardous Materials Transportation Act, and to make recommendations to the Secretary of Transportation respecting the regulation of such waste under the Act and for addition of materials to be covered by the Act. Yet, since both directors may act at their discretion, it is possible that the directors will arrive at two completely different rulings [Subtitle C, Section 3003 (b)].

The standards under the Hazardous Materials Transportation Act are fairly

similar to those standards applicable to transporters under Subtitle C. Criteria is established for handling, registration, records, inspections and penalties. The acts are similar in each category except one; who is to make the final decision of which materials will be subject to regulation as hazardous. This lack of similarity creates a problem. While Subtitle C specifically states that there is to be communication and consultation between the agencies, no such language can be found in the Transportation Act. Clearly, the door is open for overregulation, or at least duplicate regulation.

The next problem arises once you have the material loaded on the truck. Where will it be taken and what will be done with it? This, too, is a problem the manufacturer is going to have to cope with. Subtitle C requires that "each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subtitle to have a permit issued . . . [Subtitle C, Section 3005 (a). This permit system applies to both on- and off-site treatment, storage or disposal. Permit must be obtained for both on-going operations and for facilities which are constructed subsequent to the passage of the Act. A permit must be obtained for all new facilities as well as for modifications to existing facilities prior to the commencement of construction. After completion, the permittee must request recertification. These permits will be issued for periods not to exceed ten years and may be renewed for a similar period]." No waste that has been designated as hazardous may be treated, stored, or disposed of at any site, be it on or off the generating site, if a permit has not been obtained. A permit is issued "upon a determination by the Administrator of compliance by the facility for which a permit is applied for . . ." with the requirements of this section and the other applicable sections [Subtitle C, Section 3005 (c). The requirements of this section as well as Section 3004 of this Subtitle must be met prior to the issuance of a permit. The permit requirements are spelled out in

ection 3005 (b).] .

The requirements placed upon each applicant for a permit under this section are promulgated by the Administrator. He may demand information on the site at which hazardous waste or the products of treatment of such hazardous waste will be disposed of, treated, transported to, or stored. The administrator would also require each application to contain information respecting the composition, quantities and concentration of any hazardous waste identified or listed, or combinations of any such waste and any other solid waste. In effect, these regulations involve testing, filing, expense, and delay before production can begin. The Administrator also has the power to determine what modifications are necessary to conform to the requirements set out and to deny a permit or issue a permit which specifies the time allowed to complete the modifications. With the authority to grant a permit, there is also the authority to revoke a permit, again within the Administrator's, necessarily, wide discretion. Under a showing of special need, a special permit may be authorized [Special permits are authorized under 3005 for: officially declared emergencies, hospital or medical-care facilities, experimental facilities, product recovery or for facilities which cannot be modified or upgraded to comply with Section 3004 Standards a temporary permit may be issued] .

The Administrator is also responsible for the promulgation of regulations establishing performance standards for owners and operators of facilities that treat, store, or dispose of hazardous material as identified and listed under Subtitle C [Subtitle C, Section 3004 (1)--(7). These are some of the standards which shall be included, but are not conclusive.] . Again, the basic record-keeping and reporting procedures are required, as well as monitoring and inspecting the manifest system imposed on the generator and transporter. These standards applicable to owners and operators of treatment, storage, and disposal facilities are comprehensive regulations for the protection of ground water,

surface water and air. They call for visual inspections, technical requirements for closure and long-term care against fires, explosives and spills.

Again, the corporation can attempt to meet these standards on its own by establishing its own facility for treatment, storage or disposal. In the alternative, the corporation may seek to find a facility nearby which is able to handle their waste materials. Finding a plant which can fill this stiff administrative bill may be difficult. It may require a substantial amount of transportation which will increase the degree of regulation on that aspect of the disposal procedure. In total, Subtitle C establishes a "cradle to grave" regulatory program for dealing with hazardous waste [One other section of Subtitle C that is important to note is Section 3007 dealing with inspections. In particular, Section 3007 (b) is of interest in it requires any records, reports, or information obtained from any person under this section shall be available to the public, except upon a showing, satisfactory to the Administrator that those records, reports, or information, or particular part thereof, to which the Administrator has access under this section if made public, would divulge information entitled to protection under Section 1905 of Title 18 of the United States Code. This section, while not technically difficult to comply with, does add to an increasing amount of administrative work.] .