

The original documents are located in Box 68, folder “10/21/76 S2150 Resource Conservation and Recovery Act (1)” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

Exact duplicates within this folder were not digitized.

APPROVED
OCT 21 1976

THE WHITE HOUSE
WASHINGTON
October 20, 1976

810/81/76

ACTION

Last Day: October 23

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON *J. Cannon*

SUBJECT: S. 2150 - Resource Conservation and Recovery Act

Noted
10/22/76

Attached for your consideration is S. 2150, sponsored by Senators Randolph and Hart.

archive
10/22/76

The enrolled bill proposes a comprehensive Federal-State program for conserving material and energy resources by improving the collection, treatment and disposal of solid waste. The program includes plans for research and development, technical and financial assistance to States, training grants, promulgation of regulations and guidelines, and the promotion by funding of demonstration systems.

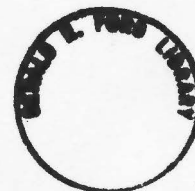
A detailed description of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

Agency Recommendations

The Environmental Protection Agency and the Council on Environmental Quality recommend approval of the enrolled bill.

The Department of Defense recommends disapproval of the bill.

OMB recommends approval of the enrolled bill.



OCT 27 1976

Staff Recommendations

Counsel's Office (Kilberg), Robert Hartmann and Max Friedersdorf recommend approval of the enrolled bill. Max indicates that there is strong interest by Sam Devine

Steve McConahey recommends approval of the enrolled bill and indicates that local and county officials support the signing of this bill very strongly. Letters have been received from the National Association of Regional Councils, which represents a cross-section of local and county officials, and other interest groups.

Recommendation

I recommend that you sign S. 2150 at Tab B and approve the signing statement at Tab C which has been cleared by Doug Smith.

Approve

A handwritten signature in black ink, appearing to be 'MRJ', is written over a horizontal line.

Disapprove



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 19 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2150 - Resource Conservation and Recovery Act
Sponsors - Sen. Randolph (D) West Virginia and Sen. Hart (D) Colorado

Last Day for Action

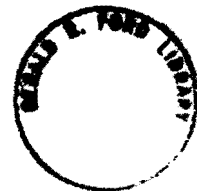
October 23, 1976 - Saturday

Purpose

Provides authority to control hazardous waste disposal and for State planning for improved solid waste management.

Agency Recommendations

Office of Management and Budget	Approval
Environmental Protection Agency	Approval (Signing statement attached)
Council on Environmental Quality	Approval(Informally)
Energy Research and Development Administration	Approval
Office of Science and Technology Policy	Approval
Department of Transportation	No objection
Department of the Interior	No objection
Department of Commerce	No objection (Signing statement attached)
General Services Administration	No objection(Informally)
Department of Justice	Defers to agencies more directly concerned
Department of Agriculture	Defers to agencies more directly concerned(Informally)
Department of the Treasury	No recommendation
Department of Defense	Disapproval



Background

The Solid Waste Disposal Act of 1965 did not provide any Federal regulatory authority for either hazardous or non-hazardous waste disposal. EPA's role was limited to:

- promulgation of guidelines for solid waste recovery, collection, and disposal systems which were binding on Federal facilities;
- provision of limited financial assistance to States establishing Solid Waste Management Programs; and,
- research and demonstration of new technologies for resource recovery, hazardous and other waste disposal approaches.

In fiscal year 1974, the solid waste program was reduced by 50 percent and redirected to emphasize (1) solving the national hazardous waste problem, (2) eliminating institutional barriers to resource recovery, and (3) providing assistance to States requiring technical advice to improve local solid waste management.

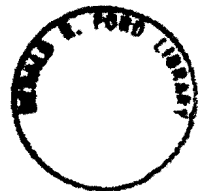
Also in fiscal year 1974, the prior Administration proposed the Hazardous Waste Act which would have required the Federal Government to:

- issue all permits for hazardous waste disposal sites and take necessary actions;
- delegate a limited implementation role to States;
- provide financial assistance to States implementing appropriate portions of the Federal permit program; and,
- conduct research and demonstrate alternative approaches for hazardous waste management.

Summary of the Enrolled Bill

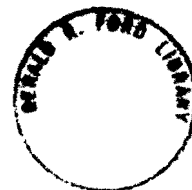
S. 2150 would significantly improve upon the 1974 Executive Branch proposal. The major provisions of the bill would:

- Authorize EPA to regulate the flow of hazardous wastes from the point of generation through their ultimate disposal in order to prevent the contamina-



tion of the Nation's groundwater. EPA would be required to delegate this regulatory authority if a State wishes to assume the program and if the State demonstrates that it is capable of implementing the program.

- Authorize EPA to issue guidelines to States for developing comprehensive management plans for solving solid waste problems. These plans would include actions to close or upgrade existing open dumps and the plans would not be enforceable by EPA.
- Authorize EPA to provide grants to rural communities with inadequate waste disposal systems.
- Authorize EPA to conduct research and provide financial assistance for the demonstration of new or improved technologies for controlling hazardous wastes, traditional land disposal problems and resource recovery systems.
- Minimize the Federal regulatory authority since:
 - ° hazardous waste disposal sites existing at the time of enactment and new sites which have submitted an application for a permit would be treated as if they have been issued a Federal permit;
 - ° EPA would be required to delegate regulatory and enforcement responsibilities to the States unless EPA makes a negative finding, holds a public hearing, and publishes substantive reasons which delineate why State primacy was denied; and,
 - ° Federal enforcement activities would be limited to civil actions against individual violators.
- EPA would promulgate uniform national standards and criteria for controlling hazardous wastes and thus ensure that all State programs would be similar (industry supports the bill largely because of this feature).



- Authorize \$35 million for fiscal year 1977 and \$161 million for fiscal year 1978; however, the two major categorical grant programs terminate in fiscal year 1979.

In its attached enrolled bill letter, EPA strongly recommends approval as it notes that S. 2150:

".. essentially conforms to the recommendations made to the Congress by the Administration, especially with regard to the very important hazardous waste management provisions. Other provisions in the enrolled bill represent a logical evolution of programs envisioned by the Solid Waste Disposal Act, first enacted in 1965 and extensively amended by the Resource Recovery Act in 1970."

Arguments for Approval

S. 2150 would:

- Provide for the regulation of hazardous waste which contaminates groundwater;
- Minimize the regulatory authority of the Federal Government in the area of hazardous wastes; and,
- Not extend any regulatory authority to the Federal Government for non-hazardous wastes, such as garbage and other solid wastes.

Moreover, the bill has the support of many industrial groups and State and local governments.

Arguments against Approval

- Federal facilities which dispose hazardous wastes would be treated in the same manner as private industrial firms in that they would have to meet State procedural requirements in order that they be granted a permit. The President could exempt any Federal facility when he determines it is in the national interest to do so.

(Note -- Defense has informally advised that it is recommending disapproval on the basis that this feature of the bill could create regulatory problems and disrupt certain Defense activities.)



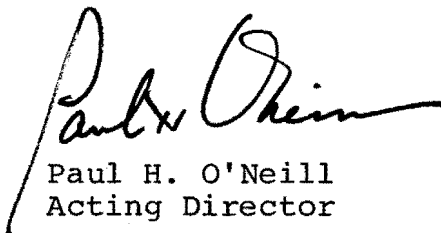
- The bill would provide an \$80 million authorization for marginal programs such as: (1) Federal financial assistance to rural communities which would have to close or upgrade an open dump; (2) Federal contribution of 5 percent of the purchase price for tire shredders which can be used on a regional basis; and (3) a demonstration program for proven resource recovery systems.

Conclusion

On balance, we believe the arguments for approval are stronger and therefore recommend approval.

With respect to Defense's concerns, we will work with EPA to minimize such problems through the development of regulations for hazardous waste management. In any event, the Presidential exemption could be used in specific cases where State procedural requirements can not be handled through such Federal regulations.

Finally, we have reviewed EPA's proposed signing statement and we recommend it for your consideration.



Paul H. O'Neill
Acting Director

Enclosures

STATEMENT BY THE PRESIDENT

I have approved S. 2150, the "Resource Conservation and Recovery Act of 1976."

I believe this bill provides a workable program aimed at solving one of the highest priority environmental problems confronting the Nation, the disposal of hazardous wastes. This legislation provides for State responsibility for the control of hazardous wastes while at the same time assuring uniform national standards for the protection of public health and welfare. The legislation also provides sound State and local programs to deal with ever increasing amounts of municipal solid wastes generated in this country.

These new controls over hazardous wastes will assure that such wastes are disposed of in a manner which is protective of public health and environmentally sound. The Act directs the Federal Government through the Environmental Protection Agency (EPA) to establish criteria for identifying and listing of hazardous wastes; to promulgate standards for generators and transporters of hazardous wastes; and to establish permit requirements for the owners and operators of sites disposing such wastes. States are encouraged to issue these permits in lieu of the Federal Government. Civil and criminal penalties are provided to insure compliance with the Act.

The legislation also provides for State and local development of methods for solid waste management which are environmentally sound and which will encourage the utilization of valuable resources and resource conservation. This will be accomplished through Federal financial and technical assistance to State and local communities for planning and implementing alternatives that address the management, intergovernmental, financial and technical problems associated with the disposal of solid wastes.

Federal guidelines for State and regional planning will include information on solid waste management practices, resource recovery measures, and guidance for the gradual elimination of open dumps. This latter provision is aimed at ensuring the protection of the quality of ground and surface waters from leachate and surface runoff contamination, and the protection of ambient air quality.

Provision is also made in the Act for EPA to conduct and encourage studies of resource recovery systems, fuel recovery from solid wastes, and solid waste reduction; the Administrator of EPA will serve as Chairman of a Resource Conservation Committee which will study economic incentives and product charges, and EPA could enter into contracts with and provide financial assistance for full-scale demonstration facilities.

Finally, the legislation recognizes that the real impediments to local development of resource recovery facilities are not financial, but institutional and technical, in nature. Its enactment will thus lead to greater encouragement of the market forces capable of generating demand for recovered materials.

I believe this legislation is another step forward in improving the quality of the environment.

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: October 29

Time: 1000pm

FOR ACTION: George Humphreys
Max Friedersdorf
Bobbie Kibegg
Robert Hartmann

cc (for information): Jack Marsh
Ed Schmu~~ts~~
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 20

Time: 100pm

SUBJECT:

S.2150-Resource Conservation and Recovery Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 910

Date: October 19

Time: 1000pm

FOR ACTION: George Humphreys
Max Friedersdorf
Bobbie Kiberg
Robert Hartmann

cc (for information): Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 20

Time: 100pm

SUBJECT:

S.2150-Resource Conservation and Recovery Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

*Recommend Approval. Strong interest
by Sam Devine.*

Kref

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 910

Date: October 19

Time: 1000pm

FOR ACTION: George Humphreys
Max Friedersdorf
Bobbie Kiberg
Robert Hartmann

cc (for information): Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 20

Time: 100pm

SUBJECT:

S.2150-Resource Conservation and Recovery Act

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

George Kiberg 10/20/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

To: Johnson
10-19-76
6:30 P.M.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

OCT 19 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 2150 - Resource Conservation and Recovery Act
Sponsors - Sen. Randolph (D) West Virginia and Sen. Hart (D) Colorado

Last Day for Action

October 23, 1976 - Saturday

Purpose

Provides authority to control hazardous waste disposal and for State planning for improved solid waste management.

Agency Recommendations

Office of Management and Budget	Approval
Environmental Protection Agency	Approval (Signing statement attached)
Council on Environmental Quality	Approval (Informally)
Energy Research and Development Administration	Approval
Office of Science and Technology Policy	Approval
Department of Transportation	No objection
Department of the Interior	No objection
Department of Commerce	No objection (Signing statement attached)
General Services Administration	No objection (Informally)
Department of Justice	Defers to agencies more directly concerned
Department of Agriculture	Defers to agencies more directly concerned (Informally)
Department of the Treasury	No recommendation
Department of Defense	Disapproval



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 5 1976

OFFICE OF THE
ADMINISTRATOR



Dear Mr. Lynn:

This is in response to your request for our comments on the enrolled bill, "The Resource Conservation and Recovery Act of 1976."

The enrolled bill would amend the existing Solid Waste Disposal Act and provide for a hazardous waste regulatory program; a program to end open dumping; technical and financial assistance for planning improved solid waste management; grants to rural communities to improve solid waste programs; and authority for research, demonstrations and studies. The bill provides a balanced approach in which hazardous waste regulations, with an emphasis on State implementation and enforcement, would be put in place over the next several years; open dumping would be phased out in accord with Federal criteria for sanitary landfills over the next six years; and other improvements in solid waste management, including conduct of resource conservation and recovery through a program of information collection and dissemination, on site technical assistance, and financial assistance for planning. The studies called for in the Act would aid in delineating the issues and potential problems in sludge, agriculture, and mining wastes.

I recommend that this enrolled bill be signed by the President. It essentially conforms to the recommendations made to the Congress by the Administration, especially with regard to the very important hazardous waste management provisions. Other provisions in the enrolled bill represent a logical evolution of programs envisioned by the Solid Waste Disposal Act, first enacted in 1965 and extensively amended by the Resource Recovery Act in 1970.

The current provisions of the Solid Waste Disposal Act require the formulation of guidelines for solid waste recovery, collection, separation, and disposal. The enrolled

bill would expand this existing authority of the Administrator of EPA by directing the publication of guidelines on alternative solid waste management practices. Such guidelines would assist the States and regional authorities in the development of solid waste management plans, particularly with regard to complying with hazardous waste and open dumping control regulations. Federal agencies which generate or dispose of solid or hazardous waste or which permit the use of Federal property for such purposes must also comply with the guidelines.

This bill provides for new controls over hazardous wastes. The Act directs EPA to identify which wastes are hazardous and in what quantities, qualities, concentrations, and forms of disposal such wastes become a threat to human health and the environment. EPA would also be required to promulgate standards for generators and transporters of hazardous wastes bearing on methods of recordkeeping, labeling, and disposition of such wastes. EPA and State officials would inspect disposal facilities and enforce the requirements. Civil and criminal penalties are provided to enforce against violators of the compliance provisions of the Act. Twenty-five million dollars is authorized to implement the hazardous waste program each year in fiscal years 1978 and 1979.

The bill also provides for State or regional solid waste plans which include the gradual elimination of open dumps. Guidelines for such plans would include reasonable protection of the quality of ground and surface waters from leachate and surface runoff contamination, and the reasonable protection of ambient air quality. EPA would publish criteria for classifying sanitary landfills and for providing an inventory of all open dumps in the United States. States would begin phasing out open dumps in accordance with a five-year timetable. There are authorized to be appropriated \$30 million for the fiscal year 1978 and \$40 million for the fiscal year 1979 for purposes of making grants for development and implementation of these federally approved State or regional plans to encourage environmentally sound solid waste disposal and resource conservation and including the closing or upgrading of the existing open dumps.

The Act calls for an Office of Solid Waste within the EPA to be headed by a Deputy Assistant Administrator to oversee the implementation of the hazardous waste and open dumping provisions, as well as the other solid waste management, resource recovery, and resource conservation programs established by the Act. Through this Office, States and regional

agencies would be provided with technical and financial assistance. Upon request, the EPA would dispatch Resource Conservation and Recovery Panels (teams of expert personnel) to assist States with technical, marketing, financial, and institutional problems in the development of their solid waste management strategies. Thirty-five million dollars will be authorized to be appropriated for the Office's activities for the 1977 fiscal year, \$38 million for the 1978 fiscal year, and \$42 million for the 1979 fiscal year.

The Act also provides for broader commercialization of proven resource recovery technologies by requiring the Secretary of Commerce to set forth accurate specifications for recovered materials and to encourage the development of markets for such materials. Two years following enactment each Federal agency is required to procure items composed of the highest percentage of recovered materials.

The Act contains citizen suit provisions similar to the other citizen suit provisions in environmental legislation.

An enhanced program for research, development, and demonstration of solid waste management and resource recovery and conservation is provided by the legislation. EPA would conduct and encourage studies of resource recovery systems, fuel recovery from solid wastes, solid waste reduction and collection, sludge, land disposal practices, mining wastes, discarded tires, bird congregations near landfills, and air quality as it relates to waste disposal. In addition, the Administrator would serve as Chairman of a Resource Conservation Committee which would study economic incentives and product charges. EPA would also enter into contracts with and provide financial assistance for full-scale demonstration facilities and may make grants to any State or local agency for demonstration of new or improved waste disposal facilities. Forty-five million dollars is authorized to be appropriated for the fiscal year 1978 for the research, development, demonstration, training and study provisions.

Unlike earlier versions of solid waste bills in the Congress, this bill generally follows the recommendations of the Administration. Most of the more objectionable aspects of earlier House and Senate versions have been eliminated. In particular, loan guarantees for resource recovery have been deleted.

The enrolled bill recognizes that the real impediments to local development of resource recovery facilities are not

financial, but institutional and technical, in nature. Its enactment will thus lead to greater encouragement of the market forces capable of generating demand for recovered materials. The hazardous waste management section of the bill is also in conformity with Administration policy. Implementation is delegated to the States and enforcement is directed toward individual violators rather than at local or State governments. Similarly, the provisions of the Act which direct the promulgation of criteria for siting, construction, and operation of sanitary landfills conform to earlier Administration proposals.

The enrolled bill, in several of its provisions, contains funding authorizations in excess of funding anticipated to be proposed by the Administration. These funding authorizations are, of course, subject to the normal budgeting process of the executive and legislative branches. I believe there is adequate flexibility in the budgetary process to exercise appropriate control over these funding programs.

This legislation is needed at this time and will greatly advance the solid waste management programs at all levels of government. I strongly recommend that it be signed by the President.

Sincerely yours,



Russell E. Train
Administrator

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, D.C. 20503

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY

722 JACKSON PLACE, N. W.

WASHINGTON, D. C. 20006

OCT 19 1976

MEMORANDUM FOR JAMES FREY, OFFICE OF MANAGEMENT AND BUDGET


ATTN: Ms. Ramsey

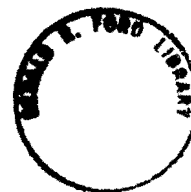
SUBJECT: S. 2150, a bill "to provide technical and financial assistance for the development of management plans and facilities for the recovery of energy and other resources from discarded materials and to regulate the management of hazardous waste."

The Council on Environmental Quality recommends that the President sign the "Resource Conservation and Recovery Act of 1976."

Solid waste disposal is seen at the local level as one of the most important environmental issues. The bill provides for national criteria and standards for operating sanitary landfills, and for planning and technical assistance to states and localities in helping them address the economic, environmental and health problems resulting from inadequate and inappropriate solid waste disposal practices. The bill recognizes the Administration position that solid waste management is a state and local responsibility and that the Federal Government's role is only to support state and local efforts.

The bill also addresses the serious public health, safety, and welfare problems caused by the improper disposal of hazardous and toxic wastes, by providing for Federal regulation of hazardous waste treatment, storage, and disposal activities with delegation of implementation to the states. Finally, the bill establishes a Resource Conservation Committee which is to report to the President and the Congress on a regular basis on the economic, social and environmental aspects of alternative resource conservation strategies related to the solid waste problem.


Gary L. Widman
General Counsel





DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

October 18, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget

Dear Mr. Lynn:

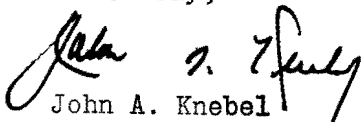
As requested by your office, here are our views on the enrolled enactment S. 2150, "the Resource Conservation and Recovery Act of 1976."

Insofar as the Act affects the responsibilities of this Department, we recommend that the President approve S. 2150. We defer to the Secretary of Commerce and the Administrator of the Environmental Protection Agency on the overall merits of the Act.

S. 2150 would amend the Solid Waste Disposal Act (42 U.S.C. 3251 et seq.) to establish an Office of Solid Waste within the Environmental Protection Agency, to require standards for and regulation of hazardous wastes, to require State or Regional Solid Waste Plans, to establish Federal responsibilities for solid waste management, and to provide for development, demonstration, and information on solid waste management.

We would like to point out that "Subtitle F - Federal Responsibilities" would require Federal agencies to meet both substantive and procedural requirements of State Solid Waste Management Plans. Under the present statute, Federal land management agencies involved in solid waste disposal activities are required to comply with guidelines developed pursuant to the Act. Executive Order No. 11572 requires Federal agencies to comply with substantive State and local requirements respecting solid waste disposal and other forms of environmental pollution. Neither require Federal agencies to comply with State or local procedural requirements. The Forest Service of this Department is heavily impacted by the existing solid waste statute both in disposal of solid wastes from Forest Service facilities and in issuance of permits for sanitary landfills. The requirement that we now must seek permits from the States and follow other State procedural requirements may add a significant administrative burden and may create delays in constructing or issuing permits for solid waste facilities. If the President signs the enrolled enactment, we urge that the Environmental Protection Agency issue guidance as quickly as possible to all Federal agencies on meeting the procedural requirements of the States so that there is consistent Federal compliance with this aspect of the Act and unnecessary delays are avoided.

Sincerely,


John A. Knebel
Acting Secretary

UNITED STATES OF AMERICA
GENERAL SERVICES ADMINISTRATION
WASHINGTON, DC 20405



October 19, 1976

Honorable James T. Lynn
Director, Office of
Management and Budget
Washington, DC 20503

Dear Mr. Lynn:

By letter of October 12, 1976, you requested the views of the General Services Administration (GSA) on enrolled bill S. 2150, "To provide technical and financial assistance for the development of management plans and facilities for the recovery of energy and other resources from discarded materials, and to regulate the management of hazardous waste."

GSA has completed its review of this bill and offer no objection to presidential approval.

Sincerely,

A handwritten signature in black ink, reading "Terry Chambers".

TERRY CHAMBERS
Acting Administrator

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 910

Date: October 19

Time: 1000pm

FOR ACTION: George Humphreys
Max Friedersdorf
Bobbie Kiberg
Robert Hartmann

cc (for information): Jack Marsh
Ed Schmults
Steve McConahey

FROM THE STAFF SECRETARY

DUE: Date: October 20

Time: 100pm

SUBJECT:

S.2150-Resource Conservation and Recovery Act

Being typed

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

10/20 - copy sent for researching. nm

10/20 - Researched copy returned. nm

Strongly may ok
RD

*Recommendation
Approval*



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

STATEMENT BY THE PRESIDENT

I have approved S. 2150, the "Resource Conservation and Recovery Act of 1976."

I believe this bill provides a workable program aimed at solving one of the highest priority environmental problems confronting the Nation, the disposal of hazardous wastes. This legislation provides for State responsibility for the control of hazardous wastes while at the same time assuring uniform national standards for the protection of public health and welfare. The legislation also provides sound State and local programs to deal with ever increasing amounts of municipal solid wastes generated in this country.

These new controls over hazardous wastes will assure that such wastes are disposed of in a manner which is protective of public health and environmentally sound. The Act directs the Federal Government through the Environmental Protection Agency (EPA) to establish criteria for identifying and listing of hazardous wastes; to promulgate standards for generators and transporters of hazardous wastes; and to establish permit requirements for the owners and operators of sites disposing such wastes. States are encouraged to issue these permits in lieu of the Federal Government. Civil and criminal penalties are provided to insure compliance with the Act.

The legislation also provides for State and local development of methods for solid waste management which are environmentally sound and which will encourage the utilization of valuable

resources and resource conservation. This will be accomplished through Federal financial and technical assistance to State and local communities for planning and implementing alternatives that address the management, intergovernmental, financial and technical problems associated with the disposal of solid wastes. Federal guidelines for State and regional planning will include information on solid waste management practices, resource recovery measures, and guidance for the gradual elimination of open dumps. This latter provision is aimed at ensuring the protection of the quality of ground and surface waters from leachate and surface runoff contamination, and the protection of ambient air quality.

Provision is also made in the Act for EPA to conduct and encourage studies of resource recovery systems, fuel recovery from solid wastes, and solid waste reduction; the Administrator of EPA will serve as Chairman of a Resource Conservation Committee which will study economic incentives and product charges, and EPA could enter into contracts with and provide financial assistance for full-scale demonstration facilities.

Finally, the legislation recognizes that the real impediments to local development of resource recovery facilities are not financial, but institutional and technical, in nature. Its enactment will thus lead to greater encouragement of the market forces capable of generating demand for recovered materials.

I believe this legislation is another step forward in

10/20/76 - 8:55 am

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

9 10

Date: October 19

Time: 1000pm

FOR ACTION: George Humphreys
Max Friedersdorf
Bobbie Kiberg
Robert Hartmann

cc (for information): Jack Marsh
Ed Schmults
Steve McConahey

to DJS
10/20 1:00
GAM

[Handwritten signatures]

FROM THE STAFF SECRETARY

DUE: Date: OCTober 20

Time: 100pm

SUBJECT:

S.2150-Resource Conservation and Recovery Act

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

please return to judy johnston, ground floor west wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
for the President

STATEMENT BY THE PRESIDENT

ok/jmc

ok
I have approved S. 2150, the "Resource Conservation and Recovery Act of 1976."
ok

attached backup

I believe this bill provides a workable program aimed at solving one of the highest priority environmental problems confronting the Nation, the disposal of hazardous wastes. This legislation provides for State responsibility for the control of hazardous wastes while at the same time assuring uniform national standards for the protection of public health and welfare. The legislation also provides sound State and local programs to deal with ever increasing amounts of municipal solid wastes generated in this country.

attached backup

These new controls over hazardous wastes will assure that such wastes are disposed of in a manner which is protective of public health and environmentally sound. The Act directs the Federal Government through the Environmental Protection Agency (EPA) to establish criteria for identifying and listing of hazardous wastes; to promulgate standards for generators and transporters of hazardous wastes; and to establish permit requirements for the owners and operators of sites disposing such wastes. States are encouraged to issue these permits in lieu of the Federal Government. Civil and criminal penalties are provided to insure compliance with the Act.

The legislation also provides for State and local development of methods for solid waste management which are environmentally sound and which will encourage the utilization of valuable

resources and resource conservation. This will be accomplished through Federal financial and technical assistance to State and local communities for planning and implementing alternatives that address the management, intergovernmental, financial and technical problems associated with the disposal of solid wastes. Federal guidelines for State and regional planning will include information on solid waste management practices, resource recovery measures, and guidance for the gradual elimination of open dumps. This latter provision is aimed at ensuring the protection of the quality of ground and surface waters from leachate and surface runoff contamination, and the protection of ambient air quality.

Provision is also made in the Act for EPA to conduct and encourage studies of resource recovery systems, fuel recovery from solid wastes, and solid waste reduction; the Administrator of EPA will serve as Chairman of a Resource Conservation Committee which will study economic incentives and product charges, and EPA could enter into contracts with and provide financial assistance for full-scale demonstration facilities.

Finally, the legislation recognizes that the real impediments to local development of resource recovery facilities are not financial, but institutional and technical, in nature. Its enactment will thus lead to greater encouragement of the market forces capable of generating demand for recovered materials.

I believe this legislation is another step forward in



UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

OCT 14 1976

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget

Dear Mr. Frey:

The Energy Research and Development Administration (ERDA) is pleased to respond to your invitation to comment on the Enrolled Bill, S. 2150. This legislation, which amends the Solid Waste Disposal Act, is cited as the "Resource Conservation and Recovery Act of 1976."

The Act proposes a comprehensive Federal-State program for conserving material and energy resources by improving the collection, treatment, and disposal of solid waste. The program includes plans for research and development, technical and financial assistance to States, training grants, the promulgation of regulations and guidelines, and the promotion by funding of demonstration systems.

Although the Act creates a potential of duplication of efforts by ERDA and the Environmental Protection Agency (EPA) in the area of research and development, ERDA is satisfied that cooperative efforts such as those described in the Inter-Agency Agreement of May 7, 1976, and mentioned in section 8001 of the Act will minimize such difficulties. ERDA would also note that some form of less direct financial assistance for demonstration projects would be preferable to the large grants described in section 8006.

On balance, however, ERDA feels that S. 2150 is a significant and constructive legislative effort. Accordingly, ERDA recommends that the President sign into law the Enrolled Bill, S. 2150.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. C. Seamans, Jr.", written in a cursive style.

Robert C. Seamans, Jr.
Administrator



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY POLICY
WASHINGTON, D.C. 20500

October 18, 1976

MEMORANDUM FOR: Jim Frey
Assistant Director
Legislative Reference
Office of Management and Budget

SUBJECT: S. 2150, "Resource Conservation and Recovery Act of 1976"
-- "Title II - Solid Waste Disposal"

I recommend approval of this bill. In making this recommendation, I would make the following observations:

- . There is currently produced annually some 3 billion tons of waste, of which a significant portion has the potential of adverse effects on air, land or water quality, aesthetics, or health. Because about one-half of the drinking water supply in the U.S. comes from ground water, a serious problem exists from contamination of ground water from leaching from solid waste disposal sites. Earlier legislation has provided for guidance in some research and development on solid waste disposal, but no regulatory authority has been provided to control dumping or disposal of hazardous substances. Although many technological problems must still be overcome to solve the problems of solid waste disposal, I believe that this legislation is a move in the right direction.
- . The bill takes a balanced approach to the solid waste problem by including strong emphasis on positive action including research, innovative demonstrations with local participation, technical assistance, and planning as well as regulation of specific problem areas related to landfills, open dumping, and hazardous waste disposal. S.2150 also stresses both resource recovery and reduction of waste.
- . I am pleased to note that the bill provides for a number of agencies to cooperate with EPA in approaching the solid waste problem. Other agency roles include: Department of Commerce with encouraging recycling and helping private enterprise develop recovery methods; ERDA with energy potential of solid waste; and Department of Interior with mining wastes. The Federal Coordinating Council for Science, Engineering and Technology established by P.L. 94-282, which I Chair as Director of this Office, voted last Friday, October 15, at its first meeting to establish, inter alia, two new problem-oriented committees on Earth and Natural Resources and on Human Resources and Community Development. These and other committees of FCCSET will be considering specific interagency problems and developments in the fields of science, engineering and technology including the

problem of solid waste disposal. Through this and other coordinating mechanisms I am sure that we can help implement the S.2150 in terms of more effective planning and administration, identification of research needs and more effective utilization of resources and facilities.

A handwritten signature in black ink, appearing to read 'H. Stever', written in a cursive style.

H. Guyford Stever
Director



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

October 15, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

This is in response to your request for our views on S. 2150,
an enrolled bill,

"To provide technical and financial assistance
for the development of management plans and
facilities for the recovery of energy and other
resources from discarded materials and for
the safe disposal of discarded materials, and
to regulate the management of hazardous waste."

Of major concern to the Department of Transportation (DOT)
are those provisions of S. 2150, found mostly in Subtitle C -
Hazardous Waste Management, that bear on the transportation
of hazardous materials in interstate commerce, an area for
which this Department already exercises primary responsibility.

The list of specific hazardous wastes to be developed under
the bill is likely to duplicate the list of hazardous materials
subject to regulation by this Department under the Hazardous
Materials Transportation Act of 1974. Consequently, there
will be an extensive area of overlapping responsibilities between
the Environmental Protection Agency (EPA) and this Department
regarding the transportation of hazardous waste.

The potential adverse effects of overlapping responsibilities are
addressed by Section 3003(b) of the bill, which requires regulations
promulgated by the EPA Administrator to be consistent with
the Hazardous Materials Transportation Act and regulations
promulgated thereunder. Although inconsistency is prohibited,

the inefficiency which would result from duplication of effort remains a potential problem. For example, the bill requires the EPA Administrator to establish labeling requirements for containers used in transporting hazardous wastes. This may result in the duplication of this Department's existing regulations requiring the proper labeling of hazardous material containers prior to their transport.

The bill also authorizes the EPA Administrator to approve a State hazardous waste program in lieu of the Federal program if the State program meets certain criteria. This is of concern because of the probable confusion resulting from the fact that authority rests with the EPA Administrator to approve State hazardous waste programs, which programs must be consistent with the Hazardous Materials Transportation Act and regulations issued thereunder. The Hazardous Materials Transportation Act expressly preempts any State or local transportation requirement which is inconsistent with that Act or regulations issued thereunder unless, upon State application, this Department determines that the requirement affords an equal or greater degree of protection than DOT requirements and that the requirement does not unreasonably burden interstate commerce. Consequently, this Department must concern itself not only with whether the EPA Administrator's actions and those State programs he may approve are consistent with DOT programs, we also must concern ourselves with stringent State regulations emanating from those programs, that for some reason fail to be enforceable under S. 2150, but which States may nevertheless attempt to enforce. The structure of S. 2150 is such that preemption questions arising under the Hazardous Materials Transportation Act are potentially a more frequent occurrence than would otherwise be the case, thereby increasing the administrative burden of this Department.

In spite of our misgivings about the matters just addressed, I believe that close coordination between this Department and EPA will be adequate to forestall the generation of serious conflicts between our responsibilities for insuring transportation safety and actions or programs arising under S. 2150. Therefore, we have

no objection to the signing of this bill by the President. As to matters not addressed herein, we would defer to the expertise of other Federal agencies more directly affected.

Sincerely,

Bill

William T. Coleman, Jr.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

OCT 15 1976

Dear Mr. Lynn:

This responds to your request for the views of this Department with respect to an enrolled bill S. 2150, "To provide technical and financial assistance for the development of management plans and facilities for the recovery of energy and other resources from discarded materials and for the safe disposal of discarded materials, and to regulate the management of hazardous waste."

Insofar as the enrolled bill bears on responsibilities of this Department, our comments are set forth below. In other respects, we defer to those other agencies having the primary policy or program responsibilities under this bill.

The enrolled bill confers major responsibilities concerning solid waste management and regulation on the Environmental Protection Agency, with functions also being given to the Department of Commerce. The Departments of the Interior, Transportation, Labor, the Energy Research and Development Administration, the General Services Administration, and other agencies with responsibilities bearing on solid waste management would have a variety of participative and advisory roles. Considerable State involvement is provided for by the bill.

The bill would establish within EPA an Office of Solid Waste, whose functions would include primary management responsibilities and development of regulations to implement the Act, coordination with other agencies, and technical and financial assistance to State and regional agencies for solid and hazardous waste programs. The bill provides for Federal regulation of hazardous waste management, including identification of substances, development of standards for those dealing with hazardous substances, Federal inspection and permit programs, State program provisions and assistance to States. Additional provisions would apply in the area of State and regional solid waste plans, with Federal guidelines and minimum criteria for such plans, landfill and open dumping criteria, approval of and Federal assistance for State plans. The Secretary of Commerce is directed to promote technology and develop markets and specifications relative to recovered and secondary materials. The bill would establish, under EPA leadership, a broad and varied program of research, studies, demonstrations, education, and training pertinent to many aspects of solid waste management and resource recovery. This program would be funded at a level of \$45 million for F.Y. 1978



and includes grants to States and local agencies for demonstration resource recovery systems. Other significant provisions cover the application of Federal, State and local laws and solid waste guidelines to Federal facilities and agencies, and apply new requirements in Federal procurement. Other provisions relate to citizens suits and public participation, labor standards, employee protection, and other matters.

Interior's concern with solid waste problems involves (1) mining wastes and mineral supplies, traditional responsibilities of the Bureau of Mines and the Geological Survey, and (2) management of public lands, the province of the Bureau of Land Management.

A major concern in S. 2150 is Section 6001. It requires that each agency of the Federal Government "(1) having jurisdiction over any solid waste management facility or disposal site or (2) engaged in any activity . . . resulting in the disposal of solid waste or hazardous waste shall be subject to and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural . . . respecting control or abatement of solid waste or hazardous waste disposal in the same manner and to the same extent as any person is subject to such requirements, including the payment of reasonable service charges." Section 6001 also provides that such requirements cover permits and makes the Federal Government subject to suit in a State court and enforcement of injunctive relief which may be granted.

Section 6001 is inappropriate for a number of reasons. It is not clear how this section would apply to an agency such as the Bureau of Land Management which merely permits lands to be used for waste disposal rather than operating a Federal solid waste facility. Where a State permit is required, the State could presumably condition its permit in such a way as to preclude both a specific federally licensed activity generating waste and any use of Federal lands as a disposal site. Not only would the United States be subject to suit in State court for its own actions resulting in waste disposal, but it also appears that actions by a permittee, lessee or licensee may subject the United States to suit in a State court. Such suits are objectionable in both instances. The imposition of undetermined non-Federal service charges on the Federal Government is also objectionable.

Section 6004 is burdensome because it would require that Federal agencies "insure" compliance with guidelines issued under section 1008 rather than that agencies merely require compliance, even though other Federal agencies would be able to participate in

development of the guidelines. On the other hand, many other EPA responsibilities under the Act would be carried out without respect to other affected agencies. For example, regulations concerning permits issued under Section 3005, criteria for identifying sanitary land fills and open dumps required by Section 4004, and approval of State plans under Section 4007, would be handled by EPA alone.

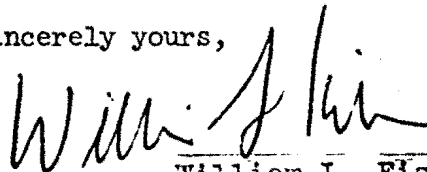
Section 4005(a) prohibits open dumping. If applied to mining wastes, this could close many mining operations.

Section 1004(27) includes mining wastes in the definition of solid wastes. Broad authority for research in solid waste, including mining wastes, has been given to the EPA. This Department through its Bureau of Mines clearly has expertise in the disposal and utilization of mining and milling wastes and is continuing a strong research program in this area. Some areas of research specified by the legislation either are being studied or could be undertaken as part of the Bureau of Mines present program. Mining waste responsibilities would more properly be assigned to the Bureau of Mines.

Implementation of the bill should make full use of the extensive experience and expertise of the Bureau of Mines in mining wastes. Section 8002(f) now states that the Environmental Protection Agency will consult with the Secretary of Interior in conducting a comprehensive study of mining wastes. Section 8002(j) now includes the Secretary of Interior as a member of the Resource Conservation Committee. Section 8005(10) calls for a special study and demonstrations for the recovery of useful energy and materials as related to mining wastes. The Administrator is given authority to undertake the study in consultation with the Secretary of Interior. However, the bill does not include Interior in Section 8001 which discusses the Government's role in R&D related to identification, collection, disposal, recycling and utilization of solid waste of all kinds, including mining wastes.

If the President signs S. 2150, implementation guidelines should assure involvement by affected agencies and minimize potential undesirable impacts of such Sections as 6001, 4005(a), and others mentioned above.

Sincerely yours,



William L. Fisher
Assistant Secretary of the Interior

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.



GENERAL COUNSEL OF THE
UNITED STATES DEPARTMENT OF COMMERCE
Washington, D.C. 20230

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning S. 2150, an enrolled enactment

"To provide technical and financial assistance for the development of management plans and facilities for the recovery of energy and other resources from discarded materials and for the safe disposal of discarded materials, and to regulate the management of hazardous waste,"

to be cited as the "Resource Conservation and Recovery Act of 1976".

S. 2150 is an omnibus bill which would amend the Solid Waste Disposal Act of 1965, as amended, (42 U. S. C. 3251 et seq.) to establish a federal program for the management of hazardous wastes and to provide federal financial and technical assistance to the states for the development of solid waste management plans and resource recovery facilities.

The bill recites the following principal objectives: to provide technical and financial assistance to state and local governments for the development and implementation of solid waste plans; to prohibit future open dumping on the land and to close or upgrade existing open dumps within five years; to establish a federal permit program (which the states may administer) for the regulation of the treatment, storage, transportation and disposal of hazardous wastes; to provide for the promulgation of federal guidelines for solid waste collection, transportation, separation, recovery, and disposal practices; to promote a national research, development and demonstration program for improved solid waste management and resource recovery techniques; and, to establish a cooperative effort among federal, state and local governments, and private enterprise in order to recover usable materials and energy from solid waste.



S. 2150 would authorize to be appropriated to the Environmental Protection Agency (EPA) for the purposes of carrying out this bill a total of approximately \$35 million in fiscal year 1977, \$173 million in fiscal year 1978, and \$152 million in fiscal year 1979. This would include the following allocations for principally authorized activities: \$25 million in each of fiscal years 1978 and 1979 for grants to the states to assist them in developing and implementing authorized state hazardous waste programs; \$45 million in fiscal year 1978 and \$55 million in 1979 for grants to the states to assist them in developing and implementing solid waste management programs; \$25 million for each of fiscal years 1978 and 1979 for grants to the states to assist rural communities in upgrading dumping facilities; \$35 million in fiscal year 1978 for research, development and demonstration grants; \$8 million for each of fiscal years 1978 and 1979 to carry out special studies, such as the demonstration of promising techniques of energy recovery from solid waste and studies on mining waste and sludge; and, \$2 million for a Cabinet-level resource conservation study.

Subtitle E of the bill would direct the Secretary of Commerce to encourage greater commercialization of proven resource recovery technology by providing (1) accurate specifications for recovered materials; (2) stimulation of development of markets for recovered materials; (3) promotion of proven technology; and, (4) a forum for the exchange of technical and economic data relating to resource recovery facilities. The Secretary, acting through the National Bureau of Standards (NBS), and in conjunction with national standards-setting organizations, would be directed to publish guidelines for the development of specifications for the classification of recovered materials within two years from enactment of S. 2150.

The Secretary of Commerce would be designated to participate in a Cabinet-level study of such matters as the appropriateness and feasibility of restricting the manufacture or use of categories of consumer products as a resource conservation strategy and the imposition of solid waste management charges on consumer products.

S. 2150 would further authorize the EPA Administrator to use the information, facilities, personnel and other resources of Federal agencies, including the National Bureau of Standards and the National Bureau of the Census, on a reimbursable basis, to perform related resource recovery and conservation research and studies. EPA would be directed to publish, with the cooperation of the Bureau of the Census, an inventory of all disposal facilities or sites in the United States that are "open dumps" as defined in the Act.

While the enrolled bill is generally acceptable to the Department of Commerce, we have some concerns.

We fear that the language regarding the open dumping of all solid and hazardous waste, stated in the purposes section of the bill and in section 4005(c) of S. 2150, could be interpreted as a federal prohibition. Such a prohibition is unrealistic and would be costly. We do not believe that it was the intent of Congress that this language constitute a federal prohibition. Among other arguments, we would point out that there is neither authority nor funds for federal enforcement and the statement of the prohibition appears in the context of a prescription of the content of acceptable state plans. Accordingly, we recommend that in the event the President approves this bill, he assert his understanding in a signing statement to the Congress.

In addition, we would like to draw your attention to the fact that several of the activities that this bill would impose upon the Department of Commerce are not specifically funded in the bill. We estimate, for instance, that carrying out the requirement in section 5002, could cost NBS approximately \$400,000 to \$500,000 per year. We further estimate that the work of the Census Bureau pursuant to section 4005(b) would require approximately \$200,000 to \$300,000 in the first year. Neither NBS nor the Census Bureau could undertake such programs without additional adequate funding.

Finally, we note that section 2002(a)5 would authorize EPA to use "information" from the Census Bureau. We assume that any implementation of this general authority would be carried out only in a manner consistent with the confidentiality provisions applicable to the Census Bureau and contained in title XIII of the United States Code.

The Department of Commerce has no objection to the President's approval of the enrolled bill. We have enclosed a signing statement for his consideration and we recommend he sign it in connection with his action on S. 2150.

Sincerely,



General Counsel

Enclosure

SIGNING STATEMENT

I am today giving my approval to S. 2150, the Resource Conservation and Recovery Act of 1976.

This legislation would amend the Solid Waste Disposal Act of 1965 to provide technical and financial assistance to the states for the development of solid waste management and hazardous waste plans; to give federal guidance in the areas of solid waste collection, transportation, separation, recovery and disposal practices; to regulate the treatment, storage, transportation, and disposal of hazardous wastes; to encourage through research and demonstration the development of improved solid waste management and resource recovery techniques; and, to promote the recovery of usable materials and energy from discarded materials.

The new program would be principally administered by the Environmental Protection Agency. The Department of Commerce would participate by encouraging greater commercialization of resource recovery technology and providing certain technical support and information.

This bill establishes a new direction in the field of environmental law -- the disposal of solid and hazardous waste in a manner that will protect our land and water supply. S. 2150 will also serve to promote the re-use of discarded materials, thereby encouraging conservation of our resources.

These are needed programs and I commend the Congress for its work in this regard. It is my understanding that, in the area of solid waste management, EPA will not issue federal standards but will promulgate guidelines which the states must follow if they want federal financial assistance in developing and implementing management plans.

by the Administrator in order to render the state eligible for assistance under the Act, include a ban on open dumping and a requirement that all solid waste be disposed of in an environmentally sound manner.

The regulation of solid waste disposal is primarily of concern to state and local governments. I am encouraged that S. 2150 recognizes this by providing for federal guidelines and limited financial assistance, leaving the detailed planning and all implementation to the state and local governments.

Department of Justice
Washington, D.C. 20530

October 15, 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 2150, "To provide technical and financial assistance for the development of management plans and facilities for the recovery of energy and other resources from discarded materials and for the safe disposal of discarded materials, and to regulate the management of hazardous waste."

The Department of Justice defers to those agencies more directly concerned with the subject matter of the bill as to whether it should receive Executive approval.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General



THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

OCT 15 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative
Reference

Sir:

This letter responds to your request for the views of this Department on S. 2150, "To provide technical and financial assistance for the development of management plans and facilities for the recovery of energy and other resources from discarded materials and for the safe disposal of discarded materials, and to regulate the management of hazardous waste."

The objectives of the enrolled enactment are to promote the protection of health and the environment and to conserve valuable material and energy resources by establishing a program for the handling of waste materials. The program would include financial assistance to State and local governments in the form of grants. The bill as passed by the Senate contained loan guarantee provisions which are not included in the enrolled enactment.

Section 6001 would apply Federal, State, interstate, and local requirements regarding solid waste and hazardous waste management and disposal to Federal facilities. The Department has no objection to this provision.

Other than as noted above, the enrolled enactment does not affect this Department's activities. Consequently, we have no recommendation concerning it.

Sincerely yours,



General Counsel

Richard R. Albrecht



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D. C. 20301

October 18, 1976

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

This is in response to your request for the views of the Department of Defense on an enrolled bill, S. 2150, 94th Congress, "To provide technical and financial assistance for the development of management plans and facilities for the recovery of energy and other resources from discarded materials and for the safe disposal of discarded materials, and to regulate the management of hazardous waste." S. 2150, the "Resource Conservation and Recovery Act of 1976" amends the Solid Waste Disposal Act (42 USC 3251).

S. 2150 amends the present Act to promote the protection of health and the environment and to conserve valuable material and energy resources by: (1) providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans, (2) provide training grants in certain occupations dealing with solid waste management, (3) prohibiting future open dumping and further regulating existing dumping, (4) regulating hazardous wastes, (5) providing for the promulgation of guidelines for solid waste management, (6) promoting a national research and development program for improved solid waste management, (7) promoting solid waste management systems that preserve and enhance environmental quality, and (8) establish cooperative efforts among various levels of government. Although the Department of Defense readily recognizes the laudatory nature of these objectives, the Department has serious reservations about two Subtitles of the Act which are of the utmost concern to us.

The two Subtitles are Subtitle C - Hazardous Waste Management (Sections 3001-3011) and Subtitle F - Federal Responsibilities (Sections 6001-6004).

Subtitle C - Hazardous Waste Management is particularly bothersome in that once the Administrator of the Environmental Protection Agency identifies and lists hazardous waste and promulgates regulations establishing standards for operators and transporters of hazardous solid

waste as necessary to protect human health and the environment, he must then promulgate regulations requiring owners or operators of facilities for the treatment, disposal, or storage of hazardous waste to have a permit, which, in turn, prohibits the disposal of any hazardous waste except in accordance therewith. Moreover, Section 3006 provides for the authorization of State Programs by the Environmental Protection Agency, and once such a program is authorized, it can be carried out in lieu of the Federal program, notwithstanding the fact that there is no provision in the Act for uniformity of Federal and State regulations and standards. This lack of uniformity, and the possibility that strategic military installations will be subject to the regulatory inclinations of State and local governments without uniformity, raises grave questions regarding the long term capability of the Department of Defense to conduct properly its affairs. For example, the Department of Defense has a considerable number of munitions facilities that deal extensively in hazardous substances and hazardous wastes in a number of States. The potential for disruption and major problems of a debilitating nature to the Department of Defense are very real if S. 2150 becomes law.

Subtitle F - Federal Responsibilities deals with the application of Federal, State and local laws to Federal facilities. This Subtitle is of equal or greater concern to the Department of Defense than Subtitle C since it explicitly includes hazardous waste as well as all solid wastes. In brief, Section 6001 requires Federal agencies to comply with Federal, State, interstate, and local requirements, both substantive and procedural (including reporting and permit requirements and provisions for injunctive relief), pertaining to the control and abatement of solid waste or hazardous waste disposal (emphasis added). The Constitution entrusts the defense of the United States to the Federal Government. The Nation's defense should never be subjected to State control. To do so is contrary to the principle of Federal supremacy embodied in the Constitution. In 1819, Justice Marshall stated in the famous case of McCulloch vs. Maryland that, "If the controlling power of the states (over federal activities) be established, if their supremacy as to taxation be acknowledged, what is to restrain their exercising control in any shape they may please to give it."

The Department of Defense carefully considers the views of each State and local government, and strives to conduct Defense operations in a manner consistent with those views, that is, to fully comply with substantive standards whether they be Federal or State. Under no circumstances, however, should the Defense establishment be subjected to State or local control, i.e., procedural controls, as mandated by Section 6001. Moreover, the exemption provision of Section 6001 is inadequate to overcome the injurious effect the section will have on the Department of Defense. Permitting the President to exempt solid

waste management facilities only when he determines the granting of such an exemption to be "in the paramount interest of the United States" is unduly restrictive and of such narrow construction that it is for all intents and purposes unworkable. In addition, when one takes into consideration the fact that the exemption authority is for only one year, and renewal on a year-to-year basis can occur only providing the President makes a new determination, it becomes even more apparent that the exemption provision is unworkable from a defense standpoint.

Another section under Subtitle F which is of major concern to the Department of Defense is 6002, which deals with Federal procurement. That section requires that two years after enactment, each procuring agency is required to procure items composed of the highest percentage of recovered materials consistent with maintaining a satisfactory level of competition, except where: (1) items are not reasonably available, (2) items fail to meet performance standards or, (3) the price is unreasonable. Vendors will be required to certify the percentage of recovered materials used in the contract.

The effect of these provisions on the Department of Defense is not fully known; however, they would be extremely difficult, if not impossible, to administer. There is no indication of how such a preference would be established and the extent to which a preference would be appropriate. More importantly, there is the problem of how the amount of recovered resources could be ascertained without an inordinate amount of record keeping at all levels of subcontracting, down to the producer of the basic materials used in manufacture.

Defense items, particularly weapons systems, are composed of various materials in varying quantities and mixes. Manufacturers cannot accurately determine the percentage of recovered materials in their end products. Even in the production of basic materials, such as steel and aluminum, the percentage of recycled material varies, depending on the composition of the scrap. Losses during production in stack gas, slag, evaporation, scrap, etc. also may vary. The problem is compounded for the fabricator of the end item. If bidders were asked to state the percentage of recovered material in their items, they would not be able to comply with any degree of accuracy. Nor would we be able to verify any such information presented. Thus, any effort to make awards based on the greatest percentage of recovered material would be ineffective.

Any contract award decision based on the use of recovered materials in the offered items or services would be subject to immediate challenge by the unsuccessful bidders. There would be no way to adjudicate the disputes on a factual basis. Defense procurements would be bogged down by arbitration proceedings or other dispute-resolving processes. Receipt of needed defense materials would be unduly delayed, and our defense readiness posture would suffer as a result.

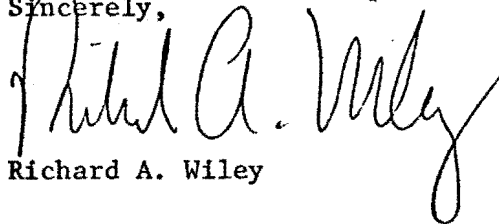
Section 6002 also contains another onerous provision, that of specification review. It requires that the Department of Defense undertake within eighteen months to review each specification--to ascertain whether or not it is in full compliance with the recycled-material procurement requirements. In other words, the Department of Defense must make a determination regarding the use of recycled material for each of the Department's specifications. Since there are over 40,000 specifications, this across-the-board requirement for review of all specifications is administratively impracticable.

The Department of Defense strongly supports the Nation's effort to clean up the environment and recognizes that reasonable legislation to control solid waste and hazardous wastes is necessary. In our opinion, S. 2150 is not the best approach to enhance the national effort in this area. In fact, we are firmly of the opinion that S. 2150 is unduly restrictive and that its enactment would create the real potential for serious regulatory problems and disruption to the Department of Defense in areas that are of strategic importance to the Nation's defense effort.

In addition, the Act could be interpreted to interfere with the responsibilities and authorities of the Federal Government to maintain navigable waterways for their use in interstate and foreign commerce.

The Department of Defense is opposed to S. 2150 for the reasons outlined above and respectfully urges that the President not sign the bill into law.

Sincerely,

A handwritten signature in cursive script that reads "Richard A. Wiley". The signature is written in dark ink and is positioned to the right of the typed name.

Richard A. Wiley