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NEW HAZARDOUS WASTE FACILITY SITING PREVENTIONS

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

SEP 14 1987

LETTER TO STATE ENVIRONMENTAL COMMISSIONERS

In recent months I've noted a number of actions by State legislatures aimed at preventing the siting of new hazardous waste management facilities, or otherwise limiting new capacity to deal with these wastes. In addition, some States have set moratoria on completing permit decisions, or on approving changes to permits needed for expanded waste management capacity. Another potential action being considered is limiting the amount of waste coming into a State from other States.

I'm sure you share my concern that if this trend continues, it will become increasingly difficult to site or permit new waste management facilities. The irony is that these new facilities are often safer and better designed than older, existing facilities. Also, the resulting capacity shortfalls in some areas could mean that wastes would be shipped longer distances for handling. Such transportation of hazardous wastes increases, of course, the risk of spills and leaks.

I'm particularly concerned about actions designed to limit much needed treatment capacity. Sound, permanent treatment is usually preferable to continuing the storage or disposal of wastes in or on the land. Also, there is already a nationwide shortage of commercial hazardous waste incineration capacity.

The Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (SARA) requires States to certify by October 1989 that adequate capacity to handle hazardous wastes is available in their States, or through arrangements with other States. This certification is a requirement for continued Superfund funding in a State after October 1989. Erecting statutory barriers to hazardous waste management in a State may not be consistent with the required capacity certification.

Most States are authorized by EPA to manage their own Resource Conservation and Recovery Act (RCRA) program. Although RCRA requires an authorized State program to be "consistent," it also allows States to be more stringent. EPA took both of these provisions into account when developing rules that required authorized States to avoid unreasonable restrictions and prohibitions on waste movements and management. We may be compelled to initiate withdrawal of RCRA authorization from a State which takes an action in violation of these requirements.

We recognize, however, that States must balance public health and environmental concerns with the need for adequate waste management capacity. EPA has not opposed, for example, legitimate State measures to protect areas with vulnerable hydrogeology from the effects of waste disposal. Nor has EPA discouraged States from providing greater public involvement in permit decisions. We are concerned, however, that States not use their authorities arbitrarily to prohibit environmentally sound waste management practices.

I hope I can count on your support in this vital matter. Please let me know if you have any questions or comments on this letter.

Sincerely,

Original Document signed

J. Winston Porter
Assistant Administrator