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THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release October 19, 1992

STATEMENT BY THE PRESIDENT

I am signing into law H.R. 4016, the "Community Environmental Response Facilitation Act," which requires Federal agencies that intend to terminate operations on real property to identify those portions of the property that are not contaminated by hazardous waste or petroleum products.

The Act would, among other things, require agencies to obtain the concurrence of the appropriate State official in order to complete identification of certain property as uncontaminated. If this requirement were understood to allow the State official to prevent a Federal agency from disposing of property, then the Act would, in effect, be granting Federal Executive power to a person who has not been appointed in conformity with the Appointments Clause of the Constitution, Article II, section 2, clause 2.

In order to avoid this constitutional difficulty, I instruct all agencies affected by this Act to construe a State official's failure to concur as a statement of that official's views, but not as a bar to transfer of the property. Because the Act nowhere states the consequences of a failure to concur, a Federal agency may terminate operations on a property and dispose of it, in accordance with applicable Federal laws, regardless of whether a State official fails to concur in the identification of it as uncontaminated.

GEORGE BUSH

THE WHITE HOUSE,
October 19, 1992.

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FEDERAL FACILITY COMPLIANCE ACT (FFCA)

On October 6, 1992 President Bush signed the Federal Facility Compliance Act into law. This new Act amends the Solid Waste Disposal Act.

ISSUE: WHAT ARE THE NEW ENFORCEMENT AUTHORITIES FROM THE FFCA?

DISCUSSION: A. Waiver of Sovereign Immunity: One of the major changes of the FFCA is the waiver of sovereign immunity for fines and penalties for violations of hazardous and solid waste requirements. While the states have always had injunctive authority, it now appears that states have the ability to sue the Federal government for fines and penalties. In addition, as the states have penalty authority, it appears that EPA, likewise, has penalty authority.

B. EPA and Section 3008(a) Order Authority: Another significant change added by the FFCA is that EPA clearly has administrative Section 3008(a) order authority. Congress stated that EPA shall initiate administrative enforcement actions against the Federal government in the same manner and under the same circumstances as an action would be initiated against any other person. EPA interprets this to mean that EPA will issue Section 3008(a) complaints and compliance orders to the Federal government for compliance violations.

Congress, though, added an additional provision which EPA is gathering comment on to determine the appropriate interpretation. Congress stated that no administrative order to the Federal government shall become final until the Federal government has had the opportunity to confer with the Administrator. The question for the Agency to consider is when should this opportunity to confer occur and with whom.

C. Action Item: EPA sent out proposed guidance on October 9, 1992 and has received comments from the Regions (and the Department of Justice) regarding the proposal. We hope to have a second draft out this January.

OE Point of Contact: Gordon M. Davidson, 260-9801 or Sally Dalzell, 260-9808.

ISSUE: WHAT ARE THE FEDERAL FACILITY ASSESSMENTS?

DISCUSSION: A. Federal Facility Assessments: The Administrator is required to undertake inspections at all Federal facilities that treat, store, and dispose of hazardous waste. EPA is determining the appropriate interpretation for this provision by working with the Regions, OGC, the Office of Federal Facilities Enforcement (OFFE) and The Office of Waste Programs Enforcement (OWPE). Some issues regarding this language are: 1

FEDERAL FACILITIES COMPLIANCE ACT

REQUIREMENT	DESCRIPTION & EPA RESPONSIBILITY
Waiver of Sovereign Immunity	States have the ability to sue the Federal government and collect fines and penalties.
Section 3008(a) Order Authority	EPA shall initiate administrative enforcement actions against the Federal government in the same manner and under the same circumstances as actions would be initiated against any other person. No administrative order shall become final until the Federal government has had the opportunity to confer with the Administrator.
Comprehensive Environment Inspections	The EPA Administrator is required to undertake inspections at all Federal treatment, storage, and disposal facilities for hazardous waste. The owner or operator shall reimburse the EPA for costs of the inspections.
Groundwater Inspections	The EPA Administrator shall conduct a comprehensive groundwater monitoring evaluation at Federal facilities.
Mixed Waste	DOE must submit two inventory reports within 180 days of October 6, 1992: 1) a national inventory of all of its mixed wastes regardless of the time they were generated on a state-by-state basis; and 2) a national inventory of its mixed waste treatment capacities and technologies. Both EPA and the state have 90 days to comment. DOE will then develop a plan for developing treatment capacities and technologies to treat all the mixed wastes to standards in RCRA. Upon approval of the plan, EPA, or the delegated state, shall issue an order requiring compliance with the approved plan. OFFE has convened a workgroup to address the various requirements of the mixed waste provisions of the FFCA. States will be major players in this process.
Munitions as Hazardous Waste	The EPA Administrator shall propose, after consulting with the Secretary of Defense and appropriate state officials, regulations identifying when military munitions become hazardous waste and providing for safe transportation and storage of such waste. Within 24 months of the April 6, 1992, EPA shall promulgate the regulations.
Federally Owned Treatment Works (FOTW)	Federal government is now eligible for domestic sewage exclusion provided that the exempted material meets pretreatment standards of Section 307 of the Clean Water Act. OFFE has formed a workgroup to develop guidance in order to implement this new FOTW provision. Moreover, OFFE may propose a rulemaking to ensure proper monitoring of the FOTW by the Federal agency.
Public Vessels Provision	Public Vessels are not subject to RCRA requirements until the waste is transferred to shore. This exemption disappears if the waste is stored on a vessel for more than 90 days when the vessel is placed in reserve or the waste is transferred to another public vessel within the territorial waters of the United States for more than 90 days after the date of transfer. This new amendment appears to be self-implementing.

Can the states perform these inspections in lieu of EPA; 2. Are these inspections only RCRA inspections or are other media to be addressed; and 3. How will the reimbursement provisions in the new amendments be performed (the FFCA requires the Federal agencies inspected to reimburse EPA).

B. Action Item: OFFE is working with the other affected offices and OMB to develop the appropriate interpretation regarding reimbursement. In addition, OWPE plans to send out a proposed guidance on the assessments to the Regions for comment this January.

OE Point of Contact: Gordon M. Davidson, 260-9801 or Sally Dalzell, 260-9808.

ISSUE: WHAT ARE THE MIXED WASTE PROVISIONS?

DISCUSSION: A. 3-year Extension for the Waiver of Sovereign Immunity: DOE has stated that three years are necessary and adequate to develop treatment capacities and treatment technologies for mixed waste. The statute provides that the waiver of sovereign immunity for fines and penalties for violations of only RCRA Section 3004(j) (storage of mixed waste) does not apply for three years provided DOE complies with all other applicable requirements.

B. New Requirements added by the FFCA: DOE, within 180 days of October 6, must submit two inventory reports: 1. a national inventory of all of its mixed wastes regardless of the time they were generated on a state-by-state basis and 2. a national inventory of its mixed waste treatment capacities and technologies. DOE submits these reports to EPA and the appropriate state. Both EPA and the state have 90 days to comment. DOE shall consider and publish the comments before finalizing the two inventories.

DOE will then develop a PLAN for developing treatment technologies for treating the inventory wastes where no treatment exists and also for developing more treatment capacities where technologies are available.

Once DOE completes these plans, DOE will submit them to the state (provided the state has the requisite delegated authority) for review, approval, disapproval, or modification within 6 months of receipt. If the state does not have the necessary delegated authority, DOE will submit the plan to EPA for similar action within the same time frame. Depending on which has the lead authority under RCRA, the state or EPA will announce the availability of the plan to the public.

Upon approval of the plan, EPA or the delegated state sha issue an Order requiring compliance with the approved plan.

C. Action Item: OFFE has convened a workgroup to address the various requirements of the mixed waste provisions of the FFCA. The workgroup has met several times. At this time, the

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