



Office of the General Counsel

B-275517

December 11, 1996

The Honorable John H. Chafee
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable Thomas J. Bliley, Jr.
Chairman
The Honorable John D. Dingell
Ranking Minority Member
Committee on Commerce
House of Representatives

Subject: Environmental Protection Agency: Financial Assurance Mechanisms for
Local Government Owners and Operators of Municipal Solid Waste
Landfill Facilities

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by Environmental Protection Agency (EPA), entitled "Financial Assurance Mechanisms for Local Government Owners and Operators of Municipal Solid Waste Landfill Facilities" (RIN: 2050-AD04). We received the rule on November 20, 1996. It was published in the Federal Register as a final rule on November 27, 1996. 61 Fed. Reg. 60327.

The final rule amends the financial assurance provisions of the Municipal Solid Waste Landfill Criteria under subtitle D of the Resource Conservation and Recovery Act. The purpose of the financial assurance regulations is to assure that adequate funds will be readily available to cover the costs of closure, post-closure care and corrective action associated with solid waste landfills.

The rule allows local government owners and operators to use a financial test to demonstrate financial assurance and avoid incurring the expenses associated with

demonstrating financial assurance through the use of third party financial instruments such as a trust fund, letter of credit or insurance policy.

Enclosed is our assessment of the EPA's compliance with the procedural steps required by sections 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the EPA complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Senior Attorney, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Environmental Protection Agency is Peter Guerrero, Director, Environmental Protection Issues. Mr. Guerrero can be reached at (202) 512-8210.

Robert P. Murphy
General Counsel

Enclosure

cc: Thomas E. Kelly, Director
Office of Regulatory Management and Information
Environmental Protection Agency

ANALYSIS UNDER 5 U.S.C. §§ 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY
THE ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"FINANCIAL ASSURANCE MECHANISMS FOR LOCAL GOVERNMENT OWNERS
AND OPERATORS OF MUNICIPAL SOLID WASTE LANDFILL FACILITIES"
(RIN: 2050-AD04)

(i) Cost-benefit analysis

EPA, in compliance with Executive Order No. 12866, performed a cost and benefit analysis and estimates that the final rule will save local government owners and operators \$105.1 million annually. This estimate is based on EPA's belief that 91 percent of all local government owners and operators will be able to use the test for at least some of their Section D obligations and 54 percent of all local governments will be able to use the test for all of their obligations.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607 and 609

Because the final rule is deregulatory in nature, the Secretary has certified that the rule will not have a significant economic impact on a substantial number of small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

Since the rule does not impose a federal intergovernmental or private sector mandate, as defined in the Unfunded Mandates Reform Act of 1995, sections 202, 204, and 205 of the Act are inapplicable. While the rule does affect small governments, EPA has determined that section 203 of the Act does not apply because the rule provides regulatory flexibility for small governments and does not impose additional regulatory requirements. The rule results from requests from local governments and follows substantial input and participation from such local governments in the rule's development.

(iv) Other relevant information or requirements under Acts and Executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The rule was promulgated using the notice and comment procedures of 5 U.S.C. § 553. The proposed rule was published on December 27, 1993 (58 Fed. Reg. 68353) and solicited comments from the public. Forty comments were received and

the preamble to the final rule discusses the comments and changes made to the final rule as a result of the comments including extending the time allowed to obtain audited financial statements from 90 to 180 days.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Office of Management and Budget has approved the information collection requirements of the rule under the provisions of the Paperwork Reduction Act and has assigned OMB Control No. 2050-0122. The proposed rule (58 Fed. Reg. 68364) requested comments regarding the information collection requirements be sent to the EPA and OMB.

Statutory authorization for the rule

The final rule was promulgated under the authority of sections 1008, 4004 and 4010 of the Resource Conservation and Recovery Act, as amended. 42 U.S.C. §§ 6907, 6944, and 6949a.

Executive Order No. 12866

The final rule was determined by OMB to be an economically significant regulatory action under the Executive Order. The Office of Information and Regulatory Affairs of OMB approved the final rule on September 30, 1996, as complying with the requirements of the Order based on the information supplied by the EPA, including a planned regulatory action document describing the reason for the rule and an assessment of the costs and budgetary impact of the rule.

In its submission, EPA did not identify any other statute or executive order imposing procedural requirements relevant to the final rule.