

T-3.2
SWANA TECHNICAL POLICY

**THE ROLE OF STATE/PROVINCIAL GOVERNMENT IN
MUNICIPAL SOLID WASTE MANAGEMENT**

I. BACKGROUND

Municipal solid waste management is essentially the domain of state/provincial/local governments and the municipal solid waste management service industry. Federal involvement has for the most part not been active for a number of years in the U.S. and was always limited in Canada. Municipal solid waste management is divided principally into two parts, regulations and operations. State/provincial governments are, for the most part, the regulator, and local government and their contractors the operators. This discussion will focus on the regulatory role of state/provincial government in municipal solid waste management. Other possible roles for state/provincial government will also be reviewed. This discussion is predicated upon two fundamental premises: (1) the quality of operations and (2) the systems selected are directly related to the quality of regulations in effect and the manner in which those regulations are written, interpreted and enforced.

There is a wide diversity in the quality of state/provincial municipal solid waste regulatory programs. In the U.S., this quality is greatly affected by the demands by the federal government for major state government investments to establish hazardous waste management regulatory programs. In Canada, this quality is greatly affected by a continuing diminishment of federal attention and the strong decentralized form of government. Further, the historical source for state/provincial solid waste management programs (health agencies) tends to lead to a somewhat non-involved regulatory attitude towards local government.

This wide diversity of state/provincial municipal solid waste management programs results in a number of improper practices by local government and industry:

- a tendency to operate at levels which result in systems which affect public health and environmental quality;
- under-capitalized systems which are often inadequate and unable to do the job;
- under-salaried and unqualified personnel operating the systems;
- political indifference to the need to properly fund and operate systems;
- negative public attitudes toward municipal solid waste management;
- financial disincentives to utilize improved or more costly alternatives;

- a continued dependence upon improperly sited, designed and operated land disposal facilities.

This policy position paper presents arguments to support the premise that the major cause of these improper practices can be largely attributed to the lack of well-established regulatory programs. If this is the case, then SWANA will support steps that will help support and direct state/provincial investments into program efforts that will assure that state/provincial regulatory programs are what they should be. SWANA fully supports strong state/provincial municipal solid waste programs and will work with interested parties to assist such programs.

II. DISCUSSION

What is the range of activities that can be a part of a state/provincial municipal solid waste management program? What are the program activities that are best done at the state/provincial level? What is the role of the federal government that would influence the shape and form of state/provincial municipal solid waste management programs? What should be the fundamental regulatory/enforcement posture of state/provincial municipal solid waste management programs? How should these programs be funded? What should local government and the private sector do to assure that there are effective state/provincial municipal solid waste management programs? Can local government and the private sector agree upon what are effective state/provincial programs?

Activities that can be part of state/provincial programs include:

- regulations and enforcement
- training and education
- technical assistance
- research and development
- financial assistance
- ownership/operation of facilities

The significance of each of these activities is discussed below.

A. Regulation and Enforcement

It is absolutely essential that we have regulations if systems are to adequately protect public health and environmental quality. An entire treatise could be written about what are good regulations and what constitutes acceptable enforcement. From the viewpoint of local government owned/operated systems or local government contracted systems; strong, intelligently developed regulations for municipal solid waste management systems enforced equally and fairly against all who own and/or operate such systems makes considerable sense. The enforcement of regulations should not differentiate between local government/private sector ownership; but should be enforced through surveillance and inspection and necessary regulatory action in the court system for non-compliance.

Regulatory programs need to be comprehensive in nature and must include siting involvement, permitting of facilities and continued surveillance through frequently planned and unplanned inspections. Current programs appear to be weak in all three of these areas resulting in varying degrees of regulatory effectiveness. Many agencies are reluctant to become involved in siting, arguing that siting is the sole right of local government. Local government should retain the rights regarding the determination of land use. It is doubtful, however, that siting in the future will be successful without a state/provincial program presence. Permitting of facilities is the key to long-term success of a regulatory program. Through the permit, the conditions of the permit, and the surveillance of compliance with permit conditions, a regulatory agency can assure the success of its regulations.

Siting, permitting and surveillance are three of the regulatory functions that are the end results of established regulations. Through the establishment of regulations, a state/provincial program can achieve the purposes of public health and environmental quality protection. The regulations must be based upon established and applicable technologies that can be universally used and not "experimental" concepts. Further, the regulations must be written so they can be interpreted uniformly by the regulator and the regulatee. Hopefully, regulatory programs will develop their regulations with those to be regulated as a partner in their development.

Current federal investment in municipal solid waste enforcement does not exist. In the U.S., legislation exists which could be a basis for future federal involvement. In the absence of strong state effort within the decade, we can fully expect to see a much stronger federal role. The same solution may not apply to Canada. Provincial government is much stronger than Canadian federal government. However, ineffective responses to regulating municipal solid waste management systems could result in federal action. Some uniformity between states and provinces argues to some degree for national standards to which state/provincial governments could write regulations. The problem is, can federal government involvement be limited to national standards without further federal enforcement? The jury is still out on this question. In the meantime, there is time for state/provincial government to act to develop effective regulatory programs.

B. Training and Location

The U.S. and Canadian federal governments have a proud tradition of involvement in training and education. That effort, however, may have detracted from state/provincial investment in such efforts. There does seem, however, a need for joint efforts in such activities, but little can be expected from either federal government. Consequently, it must fall to state/provincial programs to identify their basic training needs and then go about seeing that those needs are met. There is little doubt that the people who own and operate municipal solid waste management systems need accessibility to training. The ability of organizations like SWANA to deliver enough training to assure adequately trained people is limited due to lack of funds and a lack of requirements for training. SWANA has taken a strong position in favor of operator certification. Such certification is predicated upon state regulation requiring certification and training and continuing education. Obviously, therefore, the need for training can be enhanced by state/provincial efforts in this area. It makes sense for states/provinces to support the regulatory program with training to enable operators to operate systems to meet established regulations.

C. Technical Assistance

Technical assistance is closely attuned to training and education. It differs in that it is a program that is often site specific and, therefore, is a one-on-one program effort.

Consequently, technical assistance is a useful state/provincial program activity, but not one that can assure broad municipal solid waste management system compliance with regulations or good practices. Therefore, the significance of this activity within a state/provincial program is less effective than regulation and enforcement or training and education.

The U.S. municipal solid waste program in the past was deeply involved in technical assistance. That program is gone and will never be recreated. No such program ever really existed in Canada, and will not appear in the future. Consequently, while there is a role for federal government, it will not happen. State/provincial government, therefore, must develop those technical assistance efforts that they believe will fulfill their program needs.

D. Research and Development

Research and development is expensive, long term and badly needed. The ability for a state/provincial program to carry out such activity is limited. Although funding from state/provincial government to research institutions can and is done, it seems unlikely that the results can have widespread application. The needs for municipal solid waste management research are far greater than the specific needs for an individual state/province and, consequently other organizations need to be encouraged to pursue such efforts. States/provinces might band together to fund and support research to fit many needs, but the character of these governments tend to prevent such cooperation. Certainly, federal support of research and development should be encouraged. In addition, the private sector which currently is investing little in research and development needs to take a much more responsible role in this area. It also seems reasonable that if there are greater demands for improved practices and systems, the market place should respond to some degree. Therefore, the significance of state/provincial support of research and development seems limited in creating the need for new systems and practices for municipal solid waste management through regulation and enforcement.

E. Financial Assistance

Some states and provinces provide financial assistance to local government. This assistance for the most part focuses on planning for municipal solid waste management. Such assistance usually provides the same degree of non-progress as any other funding mechanism that supports planning and not implementation. Consequently, utilizing planning financial assistance seems to fail to bring about improved practices and systems. Further, such funding favors local government involvement over business planning by the private sector and consequently may skew decisions relative to the selection of best options in municipal solid waste management for local government and industry. Financial assistance also has the potential effect of purchasing decisions because the money is there, rather than because the decision makes the best sense economically. Consequently, financial assistance fails to create the opportunity where new and improved practices and systems can compete economically. The results, therefore, are non-achievement of

the intended purpose of public health and environmental quality protection through the use of advanced, effective, economically sound practices and systems. Federal government financial assistance is accompanied by federal determination of what should be done locally, even if the funds pass through state/provincial hands. For solid waste management, it seems to make little sense to have such assistance.

F. Ownership/Operations of Facilities

Few state/provincial programs own or operate municipal solid waste management systems. Through various mechanisms some state/provincial agencies have equity involvement in systems. However, they are not operating partners and should not be so.

The role of local government is to protect public health and that role dictates active involvement in the ownership/operation/management of municipal solid waste management systems. Further, involvement by state/provincial government in selecting systems and facilities may negate the ability to adequately enforce regulations. There are proven instances where this can be avoided, but it takes special authorities and districts which are essentially not organisms of state government. It seems inadvisable, therefore, to have state government own/operate municipal solid waste management systems.

III. POSITION

In summary, therefore, SWANA has presented arguments in support of significant state/provincial investments in regulations and enforcement with positive support in the form of training, education and technical assistance. These investments would be spent to develop and operate aggressive and balanced regulatory programs. Other roles that would draw away from these efforts seems not only inadvisable but misdirected. In the best of all worlds, it would be nice to do everything, but the North American economy is not going to allow that. Therefore, investments must be directed where the maximum results can be achieved. The investments, therefore, must go first to regulation and enforcement. Only after those needs have been met should other activities be considered.

What does SWANA consider constitutes an acceptable regulatory and enforcement state/provincial program. Certainly the regulations should address all aspects of municipal solid waste management. The results of improper hazardous waste management practices argues very persuasively for cradle-to-grave control. Further, all municipal solid waste management systems essentially handle the same types of municipal solid waste and, therefore, all systems should have to meet the same regulations. Finally, poor operations by government or the private sector can and will result in the same degree of threat to public health and environmental quality degradation. Consequently, the enforcement of regulations has to be the same for all systems regardless of ownership.

One could argue forever regarding what should be included in a comprehensive state/provincial solid waste management system. While technical assistance, training, education, financial assistance and planning may be very important elements of such a program, the most essential element is a very aggressive and balanced regulatory program. We have tried many non-regulatory

ways to guide the improvement of solid waste management practices and all have fallen short of being effective. State/provincial solid waste management programs that are without regulatory clout are ineffective in improving practices. Recurring problems with public non-acceptance of disposal as an important part of solid waste management is directly attributable to the ineffective efforts of our state/provincial regulatory programs.

We need and must have strong, aggressive and involved state/provincial regulatory programs. Strong, aggressive and involved state/provincial regulatory programs are ones with the following essential elements.

A. Elements

1. Well defined regulations with clear authority to enforce those regulations in both the civil and criminal courts.
2. Well defined implementation strategies which clearly describe how the regulatory program will be implemented.
3. Well defined requirements for permits for all facilities and an intelligent approach to the receipt and processing of permit applications.
4. A program of surveillance of all facilities and practices regulated which is constant and ever present.
5. A willingness to go to court to get compliance.

A balanced state/provincial regulatory program is one with the following essential elements:

B. Elements

1. Investments on all aspects of the regulatory program, not just on a particular portion.
2. Prioritization of enforcement strategies to deal with more severe cases first, thereby recognizing that all facilities do not necessarily represent the same degree of environmental and public health threat.
3. Equal enforcement of the regulations regardless of the ownership of operational responsibility.
4. Equal enforcement for similar facilities and practices.

At the present time such comprehensive regulatory programs do not exist in many states or provinces. This should not be construed as an indictment of the lack of commitment or effort on the part of state/provincial government. Rather, it is an indictment of the solid waste management profession that we have not seen to the development of such programs. We need such programs if we are to be effective, efficient and economic in the management of solid wastes.

We need such programs if we are to assure the public that facilities and practices installed today will not be environmental and public health burdens in the future. It seems unlikely that such programs will occur unless we see that they are formed. SWANA is committed to working with existing state/provincial programs to develop the regulatory programs needed.

1985. Approved by the Executive Committee on August

Durwood S. Curling
International Secretary

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