

## SWANA TECHNICAL POLICY

### T-3.2

#### The Development of Regulations Related to Solid Waste Management

##### I. Background

Solid waste management is essentially the domain of state/provincial/local governments and the solid waste management service industry. Federal involvement in the United States and Canada has traditionally been to establish a base level of regulatory standards (such as Subtitle D in the U.S.) that states or provinces must maintain within their more geographic specific regulations.

Solid waste management is divided principally into two parts: regulations and operations. State/provincial governments are, for the most part, the regulators. Local government, their contractors, and private industry are the operators.

This policy is primarily aimed at what state/provincial governments in the United States and Canada should focus on when developing, implementing, enforcing and reviewing solid waste management regulations.

Due to the lesser or limited roll of the federal level of government in both Canada and the United States, there is diversity in the requirements of the state/provincial solid waste regulatory programs. For example, there can be different requirements for landfill design, recycling and composting in each state/province. Although they comply with the federal and state/provincial regulations, local municipalities (city/region/county) may also provide differing options for waste management services provided to their taxpayers.

This wide variety of solid waste management programs and structures can result in a number of less-than-optimal systems, for example, they may:

- have a tendency to operate at levels that result in systems which don't adequately protect public health and environmental quality;
- be under-funded due to budget constraints and the lack of political priority, causing them to be inadequate and dysfunctional;
- cause the public to be confused and have negative attitudes toward municipal solid waste management; or
- continue dependence upon improperly sited, designed and operated disposal facilities.

A major cause of these improper practices can be attributed to the lack of well-established regulatory programs, which help create consistency and a level playing field. SWANA supports the need for strong and clear regulations that lead to optimal solid waste management systems and that protect human health and the environment.

## II. Discussion

The range of activities that comprise a robust solid waste management program include:

- Regulations and enforcement
- Training and education
- Technical assistance and support
- Research and development
- Financial assistance
- Ownership/operation of facilities

Details of each of these activities are presented below.

### A. Regulation and Enforcement

It is absolutely essential that we have regulations if solid waste management systems are to adequately protect public health and the environment, with climate protection, resource conservation and hazardous waste management being priorities. Strong, intelligently developed regulations that are enforced equally and fairly with all who own and/or operate these systems are imperative. The enforcement of regulations should not differentiate between local government or private sector ownership. They should be enforced through monitoring, inspection and appropriate regulatory action through orders, or in the court system, if necessary.

Regulatory programs need to be comprehensive in nature and must include siting and design, permitting of facilities and continued oversight of operations through frequently planned and unplanned inspections. Although local governments should retain the right to determine land use and design of their programs, the federal government and states/provinces should have guidelines or requirements that must be met or accommodated. Through the conditions and enforcement of a permit, a regulatory agency can assure the success of its regulations and the ultimate goal of protecting public health and the environment.

Regulations must be based upon established and applicable research and technologies that can be universally applied and not on "experimental" concepts, although innovation should not be stifled by regulations. Further, regulations must be written so they can be interpreted uniformly by the regulator and the regulated community. Regulations should be developed with the input of those who will be the focus of the regulation and, in the case of federal regulations, they should be created in conjunction with state/provincial governments. A phased approach to the implementation of new regulations is also preferred, with possible refinement of them as real-world lessons are learned. This is especially important for municipalities that may require financial support to maintain compliance.

The lack of strong state/provincial regulatory efforts could lead to a much stronger federal role, either by mandating that the states/provinces take action or by imposing federal regulations. As mentioned earlier, any lack of uniformity between state and provincial requirements reinforces the case for national standards to which state/provincial

governments could then write regulations.

#### B. Training and Education

Regulations should be accompanied by a well advertised and available training/education program. Therefore, as part of the implementation of a new regulation, information/training sessions should be advertised and provided to those affected prior to implementation. The regulating agency could partner with other organizations, such as SWANA, to deliver or assist in delivering this introductory and/or compliance training. Ongoing training is also recommended.

#### C. Technical Assistance and Support

Technical assistance and support is closely associated with training and education. However, it differs in that it is a program that is often site specific and, therefore, more of a one-on-one program effort.

Consequently, technical assistance and support is a useful activity, but not one that can assure broad compliance. Therefore, the significance of this activity within a program is less effective than regulation enforcement or training and education.

State/provincial governments, in their roles as primary solid waste management regulators, should develop the technical assistance and support programs.

#### D. Research and Development

States and provinces should ensure any regulations are based on the latest research and developed in consultation with subject matter experts, including those that could be affected by the proposed regulation. As such, the development of any new regulation or modification of an existing one, should include thorough research and development. Again, associations, such as SWANA, could possibly assist. Also, states/provinces might band together to support research to fit their respective needs. Colleges/universities and industry may also be able to assist.

#### E. Financial Assistance

An adequate level of funding should always be incorporated into the development of any new regulation or the modification of an existing one. Funding, including donations in kind, could be sourced from other levels of government, industry and colleges/universities, for example. Financial resources should cover all aspects of implementing or modifying a regulation, including research and development, input from interested parties, implementation (including education, training and support), enforcement, review and modification. The regulator should be aware that financial assistance could affect decisions both positively and negatively, for example, if financial assistance is available only for certain programs or systems, decisions could be made based solely on this and not what may be

best for protecting public health and the environment; alternatively, financial assistance could be used to support regulations by driving decisions towards the intended outcome(s) of the regulations.

#### F. Ownership/Operations of Facilities

As few, if any, federal or state/provincial governments own or operate solid waste management systems, the role of ensuring the implementation and operation of these systems usually falls to local governments, often in conjunction with the private sector. Further, involvement by federal and/or state/provincial governments in operating systems and facilities may conflict with their responsibility to properly enforce regulations. Therefore, to avoid any potential enforcement conflicts, it is generally best to not have a regulating level of government owning or operating solid waste management systems.

### III. Position

In summary, SWANA supports well-researched, fact-based and financially viable regulations, with positive support in the form of training, education and technical assistance for the regulated community. While a comprehensive solid waste management system that incorporates all available technology is ideal, this is usually not economically feasible. Therefore, investments in solid waste management programs must be prioritized, with those that meet corresponding regulations being the first priority. It is imperative that regulations support the protection of public health and the environment. Only after those needs have been met should other activities be considered.

The most essential elements of comprehensive solid waste management regulations are:

1. Investments of both time and resources on all aspects of the regulatory program, not just on a particular portion;
2. Well-researched requirements, including consultation with those that will be affected by the proposed regulations but also including other stakeholders or experts that could provide valuable input;
3. Regulations governing waste management facilities should ensure siting & design requirements protect public health and the environment;
4. Well-defined, realistic and clear requirements, which can be equitably enforced;
5. Well-defined implementation strategies, including education and training, which clearly describes compliance requirements and how the regulatory program will be implemented and enforced;
6. Well-defined requirements for facility permits and a well thought out approach to the receipt and processing of permit applications;
7. A system of ongoing technical assistance and support for those affected by the regulations;

8. A program of regular and consistent monitoring and inspection of all regulated facilities and practices;
9. Prioritization of enforcement strategies to deal with more severe cases first, recognizing that not all facilities and practices represent the same degree of environmental and public health risk;
10. Equitable enforcement of the regulations regardless of the ownership or operational responsibility and for similar facilities and practices;
11. A willingness to seek judicial remedies to enforce compliance as necessary; and
12. A system of periodic reviews of the regulation(s), including those affected and other stakeholders, and modifications to the regulations, if warranted.

While over-regulation can be counter-productive, solid waste management programs without regulatory leverage have been ineffective in improving industry practices.

SWANA supports effective, efficient, equitable and economical regulations for the management of solid wastes, which assure the protection of public health and the environment, now and into the future. SWANA is committed to working with all regulators to develop the regulatory programs necessary to accomplish this goal.