

### **Landfill Financial Responsibility: Whose Interests Are we Protecting Now?**

I'm like a phonograph player with its needle stuck in the same groove, and I don't like it. I promised myself I was going to talk about something other than landfill financial responsibility—the opportunity, for instance, to reap the multiple benefits of greenhouse gas reduction and energy recovery if congress and the administration were to focus attention on landfill-gas-to energy--but here I am again wondering what it is I don't understand about EPA's latest effort to protect the public's health-and-safety interests. For those who may have skipped reading your April 10<sup>th</sup> issue of the Federal Register, let me tell you what you missed. The document contained EPA's "Financial Assurance Mechanisms for Corporate Owners and Operators of Municipal Solid Waste Landfill Facilities Action: Final rule," spelling out what amounts to a relaxation of the rules and mechanisms for guaranteeing that the public doesn't get stuck with a Superfund bill. In it EPA develops its rationale for the action, taking just pride in reducing costs involved in the issuance of third-party assurance instruments by an estimated \$68 million per year. Pegging the total potential liability for closure and post-closure care costs at \$6.8 billion—you may feel a twitch in your gizzards given the cost of prior environmental restoration projects—the agency adds a few novel twists to the notion of "assurance." These appear to allow larger landfill-owners to substitute creative accounting practices for rock-ribbed guarantees that real reserves will be there if ever needed. Those with a strong sense of humor will appreciate the timing of EPA's high regard for accounting ethics given revelations of the very recent past. Skeptics may feel that EPA seems more concerned with the welfare of wealthy landfill owners than for the public's well being. And some cynics, no doubt, will suggest that the public's well being was never that much of an issue in the first place.

### **What's at Stake?**

There are, however, bigger issues than who's getting a competitive advantage or whether saving \$68 million in a \$40 billion per year industry is worth a 25-page treatise in the Federal Register, the most obvious being the public's welfare. Many of us believed that the primary—if not the sole--purpose of Subtitle D was the protection of the public from the environmental consequences of municipal landfills. Employing a two-pronged attack, it sought (1) to reduce the risk of contaminant migration from the site, and (2) to provide the financial wherewithal to cover long-term contingencies in the event the containment efforts failed. There is no doubt in my mind that today's multiple-lined landfill is a strong step in the right direction. While questions remain as to the wisdom of inert vs. bioreactive landfills, it seems reasonable to conclude that the desired operational ends are achievable without having to go back to square one.

It's the financial responsibility issue with which we—and by we I mean public and private alike—seem to have the most difficulty. What does it matter whether Company A gets a better deal than Company B, when neither firm—along with their public-sector contemporaries--are offered enough loopholes for an army of elephants to march through? Indeed, unlike the Subtitle D-compliant landfill it seeks to bolster, financial responsibility is about as impermeable as Swiss cheese—something in the neighborhood of 10<sup>+9</sup>. I suspect. In this, along with a great many other burdens of our overextended lifestyle, we seem hell-bent at all levels to passing down the costs of proper stewardship to our heirs.

But even those with the rosiest-colored glasses no longer are able to place the piper-paying vision on the far side of the horizon, which leads to a second issue—lost opportunity for developing better alternatives to wholesale landfilling. Consider this carefully: As strong as the sentiment is against WTE, it is less a factor in the cost-effectiveness equation than the economic disadvantage it (or virtually any other alternative waste management strategy) is at so long as we are able to ignore the full, long-term costs of landfilling. As a consequence we do not see the development and maturation of alternatives taking place, nor will we until such time as we change the experiment. When Subtitle D was proposed, it seemed that EPA was in the vanguard of such thinking, but now one has to wonder. When we allow a government agency to believe that politics is a valid part of its mission statement, we're asking for trouble. Playing "high, wide, and handsome" with the future allows us to compound the consequences of our short-sightedness on a daily basis.