

A Broken Promise Reversing 35 Years of Progress

BY H. LANIER HICKMAN

In the mid-1960s, the MSW management method of choice in the US was the open dump. In many instances, these open dumps also practiced open burning dumped solid waste into surface and ground waters, fed pigs on the garbage, and were viewed by the American public as the symbol of the "garbage man." A few good men (Wes Gilbertson and Ralph Black, to name but two) knew that there were better ways to manage garbage. They were able to convince enough skeptical members of Congress that the US could do a better job if there was a national focus. Congress enacted the Solid Waste Disposal Act of 1965 and charged the Surgeon General of the US to get America moving toward better MSW management practices.

This act empowered the Surgeon General to conduct research and development, help states to get solid waste programs started, and provide technical assistance to improve practices. The new federal solid waste program, housed in the US Public Health Service, addressed a number of issues, the most important being the elimination of the open burning dump.

To encourage improvement in landfilling, the feds launched "Mission 5000" to eliminate 5,000 open dumps and replace them with sanitary landfills. Progress was good, but the feds lacked the muscle to move things along more quickly. With the passage of RCRA in the 1970s, the feds were given authority to write guidelines for improved landfill practices. While not enforceable by the feds, those guidelines were enforceable in the federal court system by citizens, states, etc. Guidelines are, however, just that and progress remained slow. Along came the 1980s and RCRA was amended. Among those amendments was federal authority to issue criteria that could be enforced by the federal government

The message here is clear. Congress was disappointed in the glacial progress made from 1965 to 1985 on the elimination of improper landfill practices, and thus gave to the federal government (for the first time) enforcement authority in MSW management. The eventual issuance by EPA of the MSW disposal facility criteria set a very high benchmark for future landfills in the US. Inherent in those criteria was a promise to the American public and Congress that improper siting design, and operation of landfills was over. The criteria made many promises, perhaps the most important being the financial assurance provisions.

The financial assurance provisions promised the American public that there would be money to fix any failure that would occur at any landfill in the US. This is perhaps the boldest environmental statement ever made by a US industry. Name another industry that has made a guarantee to a "zero" discharge policy and put their money where their

mouths were. In my opinion, the financial assurance provisions were what finally changed the traditional "garbage man" into a professional MSW manager.

Alas however, the ink had barely dried on these provisions before EPA, local governments, and the private sector set about inventing the "big lie". There are many suggested ways to provide financial assurance--insurance, letters of credit, net worth, and trust funds are the most frequently mentioned. However, the only one that puts the money on the table is a trust fund dedicated to a specific site for remediation. Nevertheless, EPA, lacking a national commitment to advance improved MSW management, listened to whining local governments and greedy private companies and then selected net worth as the financial assurance measure of choice.

Hence, the "big lie"! While telling the American public that our industry can be trusted, and that there will always be money to fix a landfill failure, our industry and EPA have gutted this provision of the landfill criteria. To pledge net worth is like listening to a yellow-shoed con artist sell you snake oil to cure all of your illnesses. Net worth is worth exactly zero at the bank.

Indeed, local governments will always be around, but will the money? Not a chance. They will not take money away from welfare, education, or police/fire protection to deal with an open dump. Nor can the public be trusted to approve bonds. So where will the money come from? Guess!

And the private sector? What is their net worth? It is tied up in holes in the ground and rusting, dirty collection trucks. Neither of which has the net worth to do anything. Will a company always be around? And what company will be held accountable? A six-level subsidiary that will disappear when that hole in the ground is filled? Or has that company disappeared through a series of acquisitions and mergers that has created a spaghetti stream of letters for company names? So where will the money come from? Guess!

So the promise is broken. Thirty-five years of progress has been erased. Yes, we are doing a much better job in siting, design, and operations. We have some of the finest landfills in the world. Without real financial assurance, however, they are ticking time bombs that will again demonstrate to the American public that we are still just a bunch of garbage men and women too. Sad isn't it?

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