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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Honorable Douglas M. Costle
Administrator
Environmental Protection Agency
Washington, D. C. 20460

Dear Mr. Costle:

I recently received a petition from six United States manufacturers of solid waste compactors, City Tank Corp., Dempster Dumpster Systems, Heil Company, Leach Company, Pak-Mor Mfg. Company and Peabody Galion Corp., requesting, pursuant to the Federal Reports Act (44 U.S.C. 3506), my review of the information collection plan and forms as specified in EPA's final rule for Truck-Mounted Solid Waste Compactors: Noise Emission Standards, effective October 1, 1980. (44 F.R. 56524, October 1, 1979.) The petitioners specifically petitioned and requested:

- "A. That the Director of the Office of Management and Budget invoke his vested authority and determine whether or not the collection of information by the Environmental Protection Agency, as specified in 44 F.R. 56524 et seq. is necessary for the proper performance of the functions of the agency or for any other proper purpose; and
- B. Pending such a determination, declare the Environmental Protection Agency's aforesaid standard unenforceable, being in violation of 44 U.S.C. §3509."

It is the petitioners' position that

"the information collection plan and implementing form specified by EPA under its Noise Emission Standard for garbage compactors are neither necessary nor proper. Furthermore, such a plan, including the one specified form and the failure of the plan to provide an adequate number of forms for the plan, are unlawful, as they have never been submitted to the Director of OMB for review as required by 44 U.S.C. 3509."

(A copy of the petition is enclosed.)

From a preliminary review of the petition and the final regulations it appears that EPA should have submitted the regulations to OMB for review pursuant to the Federal Reports Act.

Therefore, in responding to the petition, I see the following two alternatives: (1) EPA should submit the regulations to OMB for review and suspend enforcement until OMB has either cleared the regulations or determined that they are not subject to such clearance; or (2) OMB will entertain the petition. Under the first alternative, with your assistance, OMB will expedite the clearance review. I would appreciate your views with respect to which of the aforementioned alternatives you prefer we pursue.

Sincerely,

James T. McIntyre, Jr.
Director

Enclosure

IN THE UNITED STATES EXECUTIVE BRANCH
THE OFFICE OF MANAGEMENT AND BUDGET

In re: Request for Review of the)
Plan and Forms for the)
Collection of Information)
by the Environmental)
Protection Agency, Final) Attention:
Order Effective Oct. 1,)
1980, "Truck-Mounted Solid) Director of the Office of
Waste Compactors: Noise) Management and Budget
Emission Standards")
44 F.R. 56524)
)
)
By: Certain Solid Waste)
Compactor Manufacturers)
as Parties Having a Sub-)
stantial Interest)
)
)
Date: September 26, 1980)

REQUEST FOR REVIEW
44 U.S.C. §3506

Now come the six largest United States manufacturers of solid waste compactors, namely: City Tank Corp., Dempster Dumpster Systems, Heil Company, Leach Company, Pak-Mor Mfg. Company and Peabody Galion Corp., by their undersigned counsel and pursuant to the authority vested in the Director at 44 U.S.C. §3506, hereby petition and request:

- A. That the Director of the Office of Management and Budget invoke his vested authority and determine whether or not the collection of information by the Environmental Protection Agency, as specified in 44 F.R. 56524 et seq. is necessary for the proper performance of the functions of the agency or for any other proper purpose; and
- B. Pending such a determination, declare the Environmental Protection Agency's aforesaid standard unenforceable, being in violation of 44 U.S.C. §3509.

It is respectfully submitted that the information collection plan and implementing form specified by EPA under its Noise Emission Standard for garbage compactors are neither necessary nor proper. Furthermore, such a plan, including the one specified form and the failure of the plan to provide an adequate number of forms for the plan, are unlawful, as they have never been submitted to the Director of OMB for review as required by 44 U.S.C. §3509.

STATEMENT IN SUPPORT OF REQUEST

Attached as Exhibit A is the complex and burdensome Noise Emission Standard of the EPA for garbage compactors now set to go into effect on October 1, 1980. Sections 205.203; 205.205; 205.207 and 205.208, in addition to setting forth an unnecessarily complex technological scheme, mandate from the compactor manufacturers an improper and unnecessary data and information collection plan. The six compactor manufacturing companies represented here are unquestionably parties having a substantial interest within the meaning of 44 U.S.C. §3506.

Despite the enormous complexity of the data collection requested, the EPA has seen fit to suggest only one form for use by the compactor manufacturers (see pg. 56545, TABLE I). EPA leaves the form in which the rest of the enormous data collection must be submitted under the plan up to each manufacturer to determine, under penalty of non-compliance and possible fine if he is wrong.

EPA has indicated that neither the form in TABLE I nor the data collection plan itself was ever submitted by EPA to the Director of OMB for review. EPA has indicated, further, that the one form listed in TABLE I is only a suggested form, and that no other forms are specified for the express purpose of attempting to avoid review by OMB of the standard, pursuant to 44 U.S.C. §3509.

Exhibit B is a brief synopsis of just some of the numerous types of data collection required under the plan. It shows in simple fashion the unnecessary and improper nature of the plan and the egregious lack of due process imposed on the compactor manufacturers by failure to specify sufficient forms for collection. It is apparent from any reasonable study of the plan that EPA is willfully seeking to avoid the statutory review specified in 44 U.S.C. §3509.


Attached as Exhibit C is a summary of the ineffectiveness of the plan to reduce the noise level of garbage collection, the egregious and admittedly double-digit inflationary impact upon the cost of garbage trucks, and the potential economic threat to the steel and auto industry. In short, the plan, even if possible to carry out, fails to achieve its intended purpose, is enormously and unnecessarily

burdensome in its record keeping and data collection requirements, and will have, if allowed to go into effect on October 1, 1980, a severe economic impact on a very troubled economy.

In view of the provisions of 44 U.S.C. §3509, it is clear that EPA is unlawfully acting when it attempts to promulgate its standard on October 1, 1980. Neither its information collection plan nor forms (or lack thereof) were ever submitted to OMB for review under 44 U.S.C. §3509. This request is, therefore, proper and its grant is respectfully solicited.

Respectfully submitted,

CITY TANK CORPORATION
DEMPSTER-DUMPSTER SYSTEMS
THE HEIL COMPANY
LEACH COMPANY
PAK-MOR MFG. COMPANY
PEABODY GALION CORPORATION



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