

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 86/2

2045 SSA ETHICS - HAZARDOUS MATERIALS... COMMITTEE 2045

Liquor license law questioned

by Al Campbell
for The Times

12 8-80

Palmer — The Palmer City Council will reconsider Tuesday a controversial liquor license application by a corporation whose officers include state Sen. Jalmar Kerttula.

Meanwhile, an organization representing 350 existing license holders is asking the Alcoholic Beverage Control Board to clarify new legislation under which so-called "public convenience" licenses may be granted even though a community may have more liquor outlets than the law allows, based on population.

Jim Thibodeau, executive director of Char, the Cabaret, Hotel and Restaurant Association, says the new status for license applicants "slipped through" the Legislature this year through the efforts of Republican Sen. Mike Coletta of Anchorage and Sen. Bill Ray, D-Juneau.

Generally, existing state liquor statutes allow the board to issue one license for every 1,500 people in the applicant's community. The city of Palmer, with about 2,200 people, is then entitled to two licenses. A third could only be issued after population here exceeds 3,000 people.

However, under grandfather rights, license holders who were in business before the population restrictions became law are allowed to keep, transfer or sell their licenses. Under grandfather provisions, there are already three liquor stores in Palmer.

The 1980 statutory amendment provides for new licenses to be issued in certain circumstances even though population limits have been passed if the applicant can demonstrate a public demand and "convenience" in the community.

Char's Thibodeau says Kerttula was not a sponsor of the amendment, although he was probably aware of it. Kerttula, his wife, Joyce, retailer Eldon Sandvik and realtor Harold Newcomb are officers of a corporation operating the Valley Fair Mall, where Mrs. Kerttula has applied for a liquor store license.

Kerttula, a veteran legislator, will be president of the Senate under an organization worked out last

month.

The ABC board routinely notified the Palmer City Council of the application and the controversy erupted here. Existing licensees, clergymen and people against drinking in general found themselves strange bedfellows in opposing the Valley Fair Mall license.

Churchmen such as the Rev. Glen Little of the First Baptist Church of Palmer flatly opposed any new licenses on the grounds that more liquor outlets were not in the public interest. Little stressed he was speaking for himself, not his congregation, although he said many of them probably felt the same way.

City Council members told The Anchorage Times they had been contacted by other church leaders who oppose the new license but did not wish to identify their congregations with any official protest.

For liquor dealers, the question is not temperance but economics. A new license can be issued for a \$1,000 fee to the state, but because of their limited number, those sold under grandfather rights are valued at up to \$90,000 in Palmer on the free market.

Says Herb Boyle of the Glass Bar and Liquor Store: "These licenses are an asset, bought and paid for. If they (the ABC board) start giving them away, they will become worthless."

While the board has the final decision on granting of licenses, board members have traditionally given considerable weight to the wishes of local governments in the involved communities.

The new law in fact stipulates that the board must deny the license if it is protested and the applicant cannot show that the local government acted in an "arbitrary, capricious or unreasonable manner" in protesting.

The board will consider the application in January, after receiving an indication of the city of Palmer position.

One public convenience license was granted this year to a Girdwood store, after the Anchorage Municipal Assembly did not protest its issuance. (See LIQUOR, page B-2)

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HAZARDOUS
MATERIALS
AND

WASTE
MANAGEMENT
COMMITTEE



The Council of State Governments

July 8, 1981

TO: CSG Suggested State Legislation Committee, Panel I

FROM: Dick Howard

Attached are sections of laws from several states addressing the questions of hazardous waste, siting and authority. I have been asked by Woody Kozloff, who chairs the special subcommittee that was created at the last meeting of the SSL Scope and Agenda meeting, to send it to you. As Mr. Kozloff will explain to you at the meeting of your panel, the subcommittee will recommend inclusion of these provisions as suggested approaches to dealing with this significant problem.

Enc.

cc: Senator Thomas A. Casey, SSL Committee Chairman, La.
Louis B. Kozloff, Chairman, Special Subcommittee on Hazardous Waste, Pa.
Representative Fred Brown, Alaska, Committee Member
Representative Manuel Fernandez, Louisiana, Committee Member
Steven B. Frakt, Senior Research Associate, N.J., Committee Member

1981 SUGGESTED STATE LEGISLATION

Hazardous Waste Site Approval

1. Siting Board
 - a. Michigan Hazardous Waste Management Act, 1979
Section 299.517
2. State Agency
 - a. Oregon Hazardous Waste Management Rules
Section 340-62-035
- * 3. Local Option
 - a. Illinois
Senate Bill 172, Amendment to Law and Environmental
Protection Act

Hazardous Waste Site Selection

1. State Initiative
 - a. Arizona Hazardous Waste Disposal Law,
Chap. 119, 1980
Senate Bill 1033
- * 2. Special Board
 - a. New York Industrial Hazardous Waste Management Act, Title 11
New York Public Authority Law, Title 12
3. Developer Approach
 - a. House Bill 1481, Maryland

*Not enclosed. Will be available at Niagara Falls meeting.

1981 SUGGESTED STATE LEGISLATION

Hazardous Waste Site Approval

1. Siting Board

a. Michigan Hazardous Waste Management Act, 1979
Site Approval Board

299.517 Site approval board; establishment; purpose; appointment, qualifications, and terms of members; duties of chairperson; quorum; legal action; meetings; staff. [M.S.A. 13.30(17)]

Sec. 17 (1) The site approval board shall be established to review and grant or deny final approval for each site construction permit application recommended for approval by the department. A separate board shall be established in each municipality in which a disposal facility is proposed to be located which is the subject of a construction permit application. The members of the board who serve in the permanent positions shall serve on each board created. The members of the board who serve in temporary positions shall be appointed as provided in subsection (2). The members in temporary positions shall serve until the construction permit application subject to their review is approved, or until the construction permit application is rejected and is no longer subject to their review.

(2) The site approval board shall consist of 5 permanent positions and 4 temporary positions as follows:

(a) Three permanent positions shall be held by representatives of this state, 1 each from the department of public health, the department of state police, and the department of natural resources. A representative of this state shall be appointed by each of the directors of the respective departments and a vacancy shall be filled as necessary by the appropriate director. A representative of the state shall not serve for more than 2 years.

(b) Two members shall be public members appointed by the governor, with the advice and consent of the senate, to fill permanent positions on the board. One public member shall be a geologist and 1 a chemical engineer. Each shall be on the faculty of a state institution of higher education. To assist the governor in the selection of the public members, the respective professional organizations and township or municipal associations may submit a list of candidates to the governor for his or her information. A vacancy shall be filled for the unexpired term in the same manner as the original appointments. The term of the public members shall be 3 years.

(c) Two temporary positions shall be filled by residents of the municipality in which the disposal facility is primarily proposed to be located. The 2 temporary position members shall be appointed by the governing body of the municipality in which the disposal facility is primarily proposed to be located.

(d) Two of the temporary positions shall be filled by residents of the county where the disposal facility is proposed to be located, 1 of whom shall be a resident of the municipality where the disposal facility is proposed to be located, and shall be appointed by the county board of commissioners.

(3) The member of the board from the department shall be chairperson of the board and shall notify the local governing body of the municipality and county government of a construction permit application filed with the department, and shall instruct the municipality or county to appoint the necessary representatives to the board.

(4) Five of the 9 members of the board shall constitute a quorum for the transaction of business of the board and the concurrence of 5 members of the board shall constitute a legal action of the board. All meetings of the board shall be conducted pursuant to Act No. 267 of the Public Acts of 1976, as amended, being sections 15 261 to 15 275 of the Michigan Compiled Laws.

(5) The director shall make staff available to assist the board in carrying out its responsibilities.

299.520 Notice; selection of temporary members; creation of site approval board; timetable; duties of board; comment and input; impact; final determination; considerations; concerns and objections; integration of local ordinances, permits, or requirements; seeking advice. [M.S.A. 13.30(20)]

Sec. 20. (1) If, within 75 days after receipt of a construction permit application, the director has not rejected the application, the director shall notify the chairperson of the board, who immediately shall notify the representatives of the state and the public members on the board. The chairperson also shall notify the county and the municipality in which the proposed disposal facility is to be located for their appointment of the temporary positions to the board. Within 45 days after the notification, the county and the municipality shall select the temporary members. The board shall be created at that time and notification of the creation of the board shall be made to the chairperson.

(2) If the director recommends approval of a construction permit application within 75 days after its receipt, the director, at the time of approval, shall notify the chairperson of the board who shall immediately notify the representatives of the state to the board and the public members. The chairperson also shall notify the county and the municipality in which the proposed disposal facility is to be located for their appointment of the temporary members of the board. Within 45 days after the notification, the county and the municipality shall select the temporary members. The board shall be created at that time and notification shall be made to the chairperson.

(3) Within 10 days after creation of the board, the board shall meet to review and establish a timetable for the consideration of a proposed disposal facility. The timetable for a final action of the board shall not exceed 120 days after the date the board convenes.

(4) The board shall:

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site, at its first meeting. The public notice shall:

(i) Contain a map indicating the location of the proposed disposal facility, a description of the proposed action, and the location where the application for a construction permit may be reviewed and where copies may be obtained.

(ii) Identify the time, place, and location for the public hearing held to receive public comment and input on the application for a construction permit.

(b) Publish the notice not less than 30 days before the date of the public hearing.

(5) Comment and input on the proposed disposal facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the board for 15 days after the public hearing date.

(6) The board shall deliberate the impact of the proposed disposal facility on the municipality in which it is to be located and make a final determination on the construction permit application.

(7) The board shall consider, at a minimum:

(a) The risk and impact of accident during the transportation of hazardous waste.

(b) The risk and impact of contamination of ground and surface water by leaching and runoff from the proposed disposal facility.

(c) The risk of fires or explosions from improper storage and disposal methods.

(d) The impact on the municipality where the proposed disposal facility is to be located in terms of the health, safety, cost, and consistency with local planning and existing development. The board also shall consider local ordinances, permits, or other requirements and their potential relationship to the proposed disposal facility.

(e) The nature of the probable environmental impact, including the specification of the predictable adverse effects on the following:

(i) The natural environment and ecology.

(ii) Public health and safety.

(iii) Scenic, historic, cultural, and recreational value.

(iv) Water and air quality, and wildlife.

(v) An evaluation of measures to mitigate adverse effects.

(8) The board also shall consider the concerns and objections submitted by the public. The board shall facilitate efforts to provide that the concerns and objections are mitigated by establishing additional stipulations specifically applicable to the disposal facility and operation at that site. The board also shall to the fullest extent practicable integrate by stipulation the provisions of the local ordinances, permits, or requirements.

(9) The board may seek the advice of any person in order to render a decision to approve or deny the construction permit application.

299.521 Approval or rejection of construction permit application; issuance or denial of construction permit; effect of local ordinance, permit requirement, or other requirement; reason for rejection; indicating changes. [M.S.A. 13.30(21)]

Sec. 21. (1) The board either shall approve or reject the construction permit application, and the director shall issue or deny the construction permit accordingly. The director also shall issue the permits described in the notice of intent under section 19(2). A local ordinance, permit requirement, or other requirement shall not prohibit the construction of a disposal facility.

(2) If the board rejects a construction permit application, the board shall state its reason in writing and indicate the necessary changes to make the application acceptable, if a new application is made.

State: MichiganEffective Date: 01/01/80Bill #'s or Chapter: HB 4380Sponsors: Rep. TombaulianTitle: Hazardous Waste Management Act

Scope of Law

I. Approach:

- o Nine member Site Approval Board to act on each site construction permit application recommended for approval by Department of Natural Resources. Board composed of 5 permanent members, including 3 state government representatives appointed by department directors and 2 State University faculty scientists appointed by Governor, and 4 temporary members, including 2 representatives of host county and 2 representatives of host municipality, appointed by their respective local governments.
- o Fourteen member Hazardous Waste Management Planning Committee, appointed by Governor and representing diverse geographical areas of state, to prepare in 2 years a state hazardous waste management plan. Plan to: provide geographic distribution of facilities, inventory general locations for future facilities, and explore state ownership of facilities. Department to adopt plan with advice of Commission of Natural Resources and the health Department Committee to review plan every 5 years.
- o Department to encourage local health departments to engage in administration of portions of waste program.

II. Override:

- o Site Approval Board shall review and grant final approval for each site construction permit application recommended by Department. The Board shall to the fullest extent practicable integrate by stipulation the provisions of local ordinances, permits, or requirements.
- o Department shall make final decision on operating license application. Local ordinances, permits, or other requirements shall not prohibit the operation of a licensed disposal facility.

III. Public Participation:

- o Each Site Approval Board contains representatives of host community.
- o Board to hold public hearing, following notice in newspaper, in host community.
- o HWM Planning Committee to hold three public hearings across state prior to submission of plan to Department.
- o Department to notify local governments in host community of permit applications as well as the Soil Erosion Agency, regional planning agency, and local newspapers.

- o Department to hold three public hearings across state prior to proposing formal rules or siting process and criteria to Legislature.

Financial Assurances:

- o Developer to provide bond or other surety to cover closure costs and 15 years of post-closure monitoring and maintenance costs.
- o Disposal Facility Trust Fund, containing \$20 - \$30,000,000, funded by surcharges on facilities, to cover state costs in long term care after assumption of site responsibilities.
- o Hazardous Waste Service Fund, containing \$1,000,000 in legislative appropriations, created to finance emergency actions taken by state.

Non-Financial Assurances:

- o Developer to include emergency contingency plans in application.
- o Developer to execute covenant restricting futures use of site without approval of Department.
- o Health Department may declare state of imminent and substantial hazard to health if suspects dangers in any facility operation. Empowers Department to undertake precautionary measures, including facility close-down, waste removal, environmental clean-up.
- o Developer to provide right of search and seizure without warrant, by officials of Department.
- o Department to issue operation permit after construction and prior to commencement of facility operations. Permit issued only after certification that construction met specifications approved in construction permit issued by Bard, and after formal inspection of facility by Department.

I. Incentives and Compensation:

- o Not specified in Act.

1981 SUGGESTED STATE LEGISLATION

Hazardous Waste Site Selection

1. State Agency Approval

a. Arizona Hazardous Waste Disposal Law, 1980, Chap 119

36-2801. Definitions

In this chapter, unless the context otherwise requires:

1. "Department" means the department of health services.

2. "Director" means the director of the department of health services.

3. "State hazardous waste disposal facility" means a hazardous waste disposal facility owned or operated by this state.

36-2802. Selection of site; public hearing

A. The director shall select a site for a state hazardous waste disposal facility for the disposal, storage, recovery and treatment of hazardous wastes.

B. A hazardous waste site selected by the director shall not be located within:

1. A one hundred year floodplain, as defined in §45-2341

2. An area so close to public roads, residences, public and private water wells and water supplies as to constitute a threat to human health or the environment

3. An area where up to one mile from the perimeter of the site the depth to groundwater level is less than one hundred fifty feet

4. An area where the surrounding land use for one square mile may impede the proper long-term maintenance of such site.

5. An area where the hydrology and geology is incompatible with such use.

6. An area where subsidence has occurred or is likely to occur.

C. Transportation distances and routings from areas within the state that are major sources of hazardous waste shall be a factor in determining site location.

D. The director shall hold public hearings prior to selecting a hazardous waste site.

36-2803. Recommendation of director; legislative approval

A. The director shall present to the

legislature his recommendation for a state hazardous waste disposal facility site. Such recommendation shall include an explanation of the basis on which the recommendation is made and written documentation supporting the appropriateness of the selected site, including comparison with other potential hazardous waste disposal facility sites.

B. Upon receipt of the recommendation of the director, the legislature may by concurrent resolution approve or disapprove the site selected by the director or may request that the director provide additional site recommendations.

and Senate Bill 1033

State of Arizona
Senate
Thirty-fifth Legislature
First Regular Session
1981

SENATE BILL 1033

AN ACT

RELATING TO PUBLIC HEALTH AND SAFETY; PRESCRIBING CERTAIN DEFINITIONS; PROVIDING FOR THE ACQUISITION OF A HAZARDOUS WASTE DISPOSAL SITE BY DIRECTOR; PROVIDING FOR A BUFFER ZONE AND EASEMENT FOR ACCESS; PRESCRIBING DUTIES OF DIRECTOR AND DEPARTMENT; PRESCRIBING CERTAIN CONFORMING CHANGES; PRESCRIBING CRITERIA TO BE CONSIDERED FOR FUTURE SITES; PRESCRIBING USES OF HAZARDOUS WASTE TRUST FUND; PROVIDING FOR RULES AND REGULATIONS; AMENDING SECTIONS 36-2801, 36-2802, 36-2804 AND 36-2805, ARIZONA REVISED STATUTES; REPEALING SECTION 36-2803, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 28, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-2806, AND MAKING APPROPRIATIONS.

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Legislative intent

3 Any purchase or other acquisition of lands currently retained by the
4 federal government authorized by the state of Arizona to accomplish the
5 purposes of this act shall not be construed as an abrogation or diminution
6 of any legal claims the state of Arizona has made upon such federal lands
7 pursuant to Laws 1980, chapter 33.

8 Sec. 2. Section 36-2801, Arizona Revised Statutes, is amended to
9 read:

10 36-2801. Definitions

11 In this chapter, unless the context otherwise requires:

12 1. "Department" means the department of health services.

13 2. "Director" means the director of the department of health
14 services.

15 3. "~~State~~ Hazardous waste disposal facility" means a hazardous
16 waste disposal facility ~~owned or operated~~ CONTRACTED FOR by this state.

17 4. "SITE" MEANS THAT PORTION OF REAL PROPERTY DESIGNATED IN SECTION
18 36-2802 OWNED BY THIS STATE WHEREON A HAZARDOUS WASTE DISPOSAL FACILITY IS
19 CONSTRUCTED.

20 Sec. 3. Section 36-2802, Arizona Revised Statutes, is amended to
21 read:

22 36-2802. Acquisition of site; powers and duties of director;
23 criteria applicable to future sites

24 A. The director shall ~~acquire~~ ACQUIRE CLEAR TITLE IN THE NAME OF THIS
25 STATE TO a site for a ~~state~~ hazardous waste disposal facility for the
26 disposal, storage, recovery and treatment of hazardous wastes CONSISTING
27 OF ONE SQUARE MILE LOCATED IN MARICOPA COUNTY WHICH LEGAL DESCRIPTION IS
28 SECTION 32, TOWNSHIP 4 SOUTH, RANGE 1 WEST, GILA AND SALT RIVER BASE AND
29 MERIDIAN.

1 B. THE DIRECTOR SHALL LEASE IN THE NAME OF THIS STATE A BUFFER ZONE
2 CONSISTING OF AT LEAST ONE-HALF MILE SURROUNDING THE SITE ACQUIRED
3 PURSUANT TO SUBSECTION A OF THIS SECTION.

4 C. THE DIRECTOR SHALL OBTAIN SUCH PUBLIC EASEMENTS AS ARE NECESSARY
5 FOR INGRESS OR EGRESS TO THE SITE ACQUIRED PURSUANT TO SUBSECTION A OF THIS
6 SECTION.

7 D. TO CARRY OUT THE PROVISIONS OF SUBSECTION A OF THIS SECTION, THE
8 DIRECTOR MAY OBTAIN LANDS BY PURCHASE, LEASE, LEASE-PURCHASE, GRANT,
9 CONDEMNATION OR OTHER LAWFUL MEANS.

10 ~~B.~~ E. WHEN A HAZARDOUS WASTE DISPOSAL FACILITY BECOMES
11 OPERATIONAL, ~~NO NEW FACILITY FOR THE PERMANENT DISPOSAL OF hazardous~~
12 ~~waste site selected by the director shall not~~ OPERATING AWAY FROM THE
13 SOURCE OF GENERATION OF THE WASTE MAY be located within:

14 1. A one hundred year floodplain, as defined in section 45-2341.
15 2. An area so close to public roads, residences, public and private
16 water wells and water supplies as to constitute a threat to human health or
17 the environment.

18 3. An area where up to one mile from the perimeter of the site the
19 depth to groundwater level is less than one hundred fifty feet.

20 4. An area where the surrounding land use for one square mile may
21 impede the proper long-term SITE maintenance. ~~of such site.~~

22 5. An area where the hydrology and geology ~~is~~ ARE incompatible with
23 such use.

24 6. An area where subsidence has occurred or is likely to occur.

25 ~~C. Transportation distances and routings from areas within the~~
26 ~~state that are major sources of hazardous waste shall be a factor in~~
27 ~~determining site location.~~

28 ~~D. The director shall hold public hearings prior to selecting a~~
29 ~~hazardous waste site.~~

30 Sec. 4. Repeal

31 Section 36-2803, Arizona Revised Statutes, is repealed.

32 Sec. 5. Section 36-2804, Arizona Revised Statutes, is amended to
33 read:

34 36-2804. Construction and operation of a site;
35 definition

36 A. ~~Upon selection of a hazardous waste site pursuant to section~~
37 ~~36-2803, subsection 3, the director may:~~

38 1. ~~Acquire, construct or operate a hazardous waste disposal site or~~
39 ~~hazardous waste disposal facility.~~

40 2. THE DIRECTOR SHALL contract for the acquisition, construction or
41 AND operation of a hazardous waste disposal site ~~or hazardous waste~~
42 ~~disposal facility.~~

43 ~~B. To carry out the provisions of subsection A, the director may~~
44 ~~obtain lands and facilities by purchase, lease, lease purchase, grant,~~
45 ~~condemnation or other lawful means.~~

46 ~~C.~~ B. For the purpose of identifying wastes to be disposed of at
47 the hazardous waste facility established pursuant to this article,
48 "hazardous waste" means a waste or combination of wastes which because of

1 Sec. 8. Appropriations; purposes; lapsing

2 A. The sum of one hundred sixty-seven thousand one hundred dollars
3 is appropriated from the state general fund to the department of health
4 services for additional studies, sampling, analysis and monitoring of the
5 hazardous waste disposal site.

6 B. The sum of two hundred fifty thousand dollars is appropriated
7 from the state general fund to the department of health services for the
8 acquisition of land for a hazardous waste disposal site pursuant to section
9 3 of this act.

10 C. The sum of two hundred thirteen thousand dollars is appropriated
11 from the state general fund to the department of health services for the
12 administrative expenses incurred by the department relating to the
13 hazardous waste disposal site acquired pursuant to section 3 of this act
14 for the thirty-six month period July 1, 1981 through June 30, 1984.

15 D. The appropriations made by this section are exempt from the
16 provisions of section 35-190, relating to lapsing of appropriations,
17 except that any amounts remaining unencumbered or unexpended on June 30,
18 1984, shall revert to the state general fund.

public health; hazardous
waste disposal
FISCAL NOTE INDICATED

COVER SHEET

S. B. 1033

(Reference to House engrossed Senate bill)

Page 1

Line 15, after the first quote struck "State"

Line 16, after "facility" struck "owned"; after "~~operated~~" inserted
"CONTRACTED FOR"

After line 16, inserted paragraph 4

Line 25, after "for a" struck "state"

Line 27, after "LOCATED" struck "AT THE RAINBOW VALLEY SITE"

Page 2

Line 10, after "A" struck "STATE"

Page 4

At beginning of line 5, struck "Rainbow Valley"

At beginning of line 9, struck "2" and inserted "3"

Line 13, after "section" struck "2" and inserted "3"

Amended title to conform

State: ArizonaEffective Date: 04/22/80Bill #'s or Chapter: Ch. 119, 1980
SB 1283Sponsors: Rep. Diane McCarthyTitle: Hazardous Waste Disposal Act

Scope of Law

I. Approach:

- o Department of Health Services to select, and recommend to Legislature, site for State Hazardous Waste Disposal Facility. Legislature to act on Department's recommendation through concurrent resolution
- o Department authorized to acquire, construct or operate disposal facilities, to contract for such operation, and to obtain lands by purchase, lease, lease-purchase, grant or condemnation.
- o Department prohibited from selecting sites located within specified environmental/ecological area.

II. Override:

- o Vote of Legislature preempts provisions of local law.

III. Public Participation:

- o Department to hold public hearings prior to selecting site.

IV. Financial Assurances:

- o Assurances not required of State facilities.
- o Department to establish Hazardous Waste Disposal Trust Fund, financed through fees levied upon users of State facilities. Fund to be utilized for facility operation, maintenance and perpetual care, to cover costs incurred in monitoring operation and environmental impacts of facilities, and to abate imminent and substantial threats to health and environment arising out of facility operation.

V. Non-Financial Assurances:

- o Not specified in Act.

VI. Incentives and Compensation:

- o Not specified in Act.

2. State Agency

a. Oregon Hazardous Waste Management Rules

Section 340-62-035

Hearings and Issuance or Denial of a Hazardous Waste Disposal Site License

340-62-035 (1) Upon receipt of an application, the Department shall cause copies of the application to be sent to affected state agencies, including the State Health Division, the Public Utility Commissioner, the State Fish and Wildlife Commission, and the Water Resources Director. ORS 459 570 provides that each agency shall respond by making a recommendation as to whether the license application should be granted. If the State Health Division recommends against granting the license, the Commission must deny the license.

(2) After determination that an application for a license is complete, the Department will notify the applicant of its intent to schedule a hearing or hearings and the timetable and procedures to be followed. The Commission shall conduct hearings at such other places as the Department considers suitable. At the hearing the applicant may present his application and the public may appear to be represented in

support of or in opposition of the application.

(3) Prior to holding hearings on the license application, the Commission shall cause notice to be given in the county or counties where the proposed disposal site is located, in a manner reasonably calculated to notify interested and affected persons of the license application.

(4) The Department shall make such investigation as it considers necessary and following public hearings make a recommendation to the Commission as to whether or not a license should be issued. The recommendations of the Department, including proposed license provisions and conditions if the Department recommends issuance of a license, shall be forwarded to the applicant, to members of the Commission and, at the discretion of the Department, to other interested persons for comment. All comments must be submitted in writing within fourteen (14) days after mailing of the Department's recommendations if such comments are to receive consideration prior to final action on the application.

(5) After fourteen (14) days have elapsed since the date of mailing of the Department's recommendations and after reviewing the Department's recommendations, the Commission shall decide whether to issue the license or not. It shall cause notice of its decision to be given to the applicant by certified mail at the address designated by him in his application.

(6) If the Commission refuses to issue a license, it shall afford the license applicant an opportunity for hearing after reasonable notice, served personally or by registered or certified mail. The notice shall contain:

(a) A statement of the party's right to a hearing or a statement of the time and place of the hearing.

(b) A statement of the authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted or charged.

State: OregonEffective Date: 10/3/79Bill #'s or Chapter: SB 76, amending Oregon
Statutes to include provisions
for hazardous waste managementSponsors: Department of
Environmental Quality

Scope of Law

I. Approach:

- o Act distinguishes waste disposal facilities from collection or treatment facilities to provide for more extensive review and regulation of disposal sites.
- o Department of Environmental Quality to administer waste program, recommend license approval to Environmental Quality Commission, and regulate the designation of sites in consultation with county planning commissions.
- o Department authorized to declassify wastes rendered non-hazardous upon recommendation of commission, assume ownership of land where wastes disposed in or upon, and can authorize emergency short-term storage anywhere in state.

II. Override:

- o Environmental Quality Commission must reject applications for disposal facility licences to which the State Health Division objects.

III. Public Participation:

- o Commission to hold public hearing in host county, with prior notice in local newspapers, before action on disposal facility applications. Commission to invite and encourage all interested parties to attend and participate.
- o Department to hold public hearing prior to acting on commission's recommendation to declassify wastes rendered non-hazardous.
- o Department to send copies of disposal facility applications to state health, safety, utility and resources commissioners.

IV. Financial Assurances:

- o Developer to post cash bond to ensure compliance with environmental requirements and to cover closure and post-closure monitoring and security costs.
- o Developer to maintain sufficient liability insurance to assure financial responsibility for environmental and human health and safety impacts during operation.
- o Annual license fees to be collected from developer to cover post-closure costs. When sum equals cash bond, bond may be returned.

V. Non-Financial Assurances:

- o License application to contain: personnel qualifications, including training and experience; description of emergency procedures, safety and security precautions.
- o Developer to restore site to original condition upon termination of operations.
- o Developer to provide access to Department monitoring and inspection personnel, to facilities, wastes and records.
- o Developers to deed to state all that portion of the disposal site in or upon which wastes are disposed.

VI. Incentives and Compensation:

- o Not specified in Act.

3. Local Option

a. Illinois Senate Bill 172, 1981

2. Special Board

- a. New York Industrial Hazardous Waste Management Act, Title 11
New York Public Authority Act, Title 12

TITLE 11—INDUSTRIAL SITING HAZARDOUS
WASTE FACILITIES

Sec.

27-1101. Definitions.

27-1103. Criteria for siting industrial hazardous waste treatment, storage and disposal facilities.

27-1105. Siting industrial hazardous waste facilities.

27-1107. Powers of municipalities.

§ 27-1101. Definitions

As used in this title, unless the context otherwise requires:

1. "Person" means any individual, public or private corporation, political subdivision, government agency, industry, partnership, association, firm, trust, estate or any other legal entity whatsoever.

2. "Corporation" means the New York state environmental facilities corporation.

3. "Board" means a facility siting board constituted pursuant to the provisions of section 27-1105 of this title.

4. "Industrial hazardous waste" shall mean an industrial waste or combination of wastes, which because of its quantity, concentration, or physical, chemical or infectious characteristics may:

a. Cause, or significantly contribute to an increase in serious irreversible, or incapacitating reversible illness; and/or

b. Pose a substantial present or potential hazard to human health or the environment and, therefore, must be segregated and excluded from the general municipal waste system and sewage collection and treatment process.

5. "Industrial hazardous waste treatment, storage and disposal facility" shall mean a specialized facility or site other than a sewage treatment for the purpose of treating, storing, compacting, recycling, exchanging, or disposing of industrial hazardous waste materials, including treatment, compacting, resource recovery or disposal plants, equipment and furnishings thereof used for the storage, treatment, compacting, composting, shredding, converting, utilization, processing, or final disposal of hazardous waste, including but not limited to mechanical, chemical or thermal processing systems, incinerators, sanitary landfills, other facilities for the storage, reduction or conversion of hazardous waste, including but not limited to transfer stations, baling facilities, railroad and maritime facilities, motor trucks or vehicles and equipments, furnishings, equipment and machinery deemed necessary thereto.

§ 27-1103. Criteria for siting industrial hazardous waste treatment, storage and disposal facilities

1. The commissioner shall, after investigation and opportunity for public comment, within one year from the effective date of this section, publish criteria for siting industrial hazardous waste treatment, storage and disposal facilities. Such siting criteria shall be designed to insure the maximum safety of the public from hazards associated with treatment, storage, and disposal of hazardous wastes. The commissioner shall also within one year from such effective date adopt criteria prescribing the form and content of applications for a certificate of environmental safety and public necessity to construct an industrial hazardous waste treatment, storage and disposal facility.

New York Title 11

2. The criteria issued pursuant to subdivision one of this section for the siting of industrial hazardous waste treatment, storage and disposal facilities shall take into account, among other factors:

- a. The density of population in areas neighboring such facility,
- b. The density of population in areas adjacent to delivery routes to such facility,
- c. The risk of accident during the transportation of hazardous wastes,
- d. The risk of contamination of ground and surface waters by leaching and runoff from such facility,
- e. The risk of fires or explosions from improper storage and disposal methods,
- f. The impact on the municipality where the facility is to be sited in terms of health, safety, cost and consistency with local planning, and
- g. The nature of the probable environmental impact, including specification of the predictable adverse effects on the natural environment and ecology, public health and safety, scenic, historic, cultural and recreational value, water and air quality, wildlife and an evaluation of measures to mitigate adverse effects.

3. The criteria issued by the commissioner pursuant to subdivision one of this section prescribing the form of an application for a certificate of environmental safety and public necessity to construct an industrial hazardous waste treatment, storage and disposal facility shall require the applicant to supply detailed information regarding:

- a. The location of the proposed facility,
- b. A description of the design and capacity of the facility,
- c. The expected sources of hazardous wastes for the facility, the proposed methods of transporting such wastes to and from the facility, and the routes which deliveries will traverse,
- d. The need for the facility,
- e. The environmental impacts of the proposed facility,
- f. A description of reasonable alternative locations for the proposed facility, and
- g. Such other information as the commissioner shall prescribe as to whether the proposed facility is necessary and compatible with the surrounding environment and with the health, safety and welfare of neighboring populations.

§ 27-1105. Siting industrial hazardous waste facilities

1. After the publication of siting criteria pursuant to subdivision one of section 27-1103 of this title but not later than one year from the effective date of this section, no person may commence construction or operation of a new industrial hazardous waste facility, hereinafter referred to as "facility", without having received a certificate of environmental safety and public necessity from the facility siting board as hereinafter provided. Applications for industrial hazardous waste facilities submitted to the department, and not denied, prior to the effective date of this act shall be exempt from the provisions of this section.

2. To obtain the certificate of environmental safety and public necessity required pursuant to subdivision one of this section, the following procedures shall be followed:

(a) An application must be submitted to the department in the form required pursuant to subdivisions one and three of section 27-1103 of this title.

(b) On or before fifteen calendar days after the receipt of such application, the department shall mail written notice to the applicant whether or not the application is complete. If the application is not complete, the provisions of paragraphs (c) and (d) of subdivision one of section 27-0109 of this chapter shall be applicable. If, or when, the application is complete, the department shall, concurrent with notification to the applicant, send the application and written notice to the office of the governor requesting that a facility siting board be constituted consistent with this subdivision.

(c) Immediately upon determining that an application is complete, the department shall cause a notice of application to be published in the next available environmental notice bulletin which shall be not later than ten calendar days after the date of such notice and shall provide notice to the chief executive officer of each municipality in which the pro-

posed project is located, and may direct the applicant to provide such reasonable notice and opportunity for comment to the public as the department deems appropriate. Such notice shall also be given to all property owners of record within three hundred feet of the subject facility. In addition, notice shall be published in at least two newspapers having a general circulation in the area in which the proposed activity is located, and in contiguous areas potentially affected by the proposed action.

(d) On or before fifteen calendar days after the receipt of such notification the governor shall constitute a facility siting board to be composed of the commissioners of transportation, environmental conservation, health and commerce, the secretary of state and three ad hoc members appointed by the governor, two of whom must be residents of the judicial district in which the facility is primarily proposed to be located. The term of the ad hoc members shall continue until a final determination has been made in the particular proceeding for which they were appointed. Five of the eight persons on the board shall constitute a quorum for the transaction of any business of the board, and the decision of five members of the board shall constitute action of the board. In addition to the requirements of the public officers law, no person shall be eligible to be an appointee of the governor to the board who holds another state or local office. The governor shall appoint the chairman of the board and the commissioner of environmental conservation shall make staff available to support the board in carrying out its responsibilities.

(e) On or before sixty calendar days after the facility siting board is constituted, the chairman of the board shall commence the conduct of an adjudicatory public hearing upon the application. Such hearing shall be preceded by public notice, in the same form and manner as provided in paragraph (c) of this subdivision, given not less than thirty days prior to such hearing.

(f) The board shall render a decision based upon the record either granting the application, denying it, or granting it upon such terms, conditions, limitations, or modifications thereof as the board may deem appropriate. The board shall deny an application to construct or operate a facility if residential areas and contiguous populations will be endangered, if construction or operation of such facility would be contrary to local zoning or land use regulations in force on the date of the application, or if it otherwise does not conform to the siting criteria established for such facility pursuant to section 27-1103 of this title or the board finds that the facility is not necessary, or is otherwise not in the public interest to be approved.

(g) The chairman of the facility siting board shall mail its decision to the applicant, to the department, and to all parties to the hearing on or before sixty calendar days after receipt by the board of a complete record, as that term is defined in paragraphs (a) through (e) of subdivision one of section 302 of the state administrative procedure act.

(h) The provisions of article 70 of this chapter shall apply to applications pursuant to this title, to the extent such provisions are not inconsistent herewith.

§ 27-1107. Powers of municipalities

Notwithstanding any other provision of law, no municipality may, except as expressly authorized by this article or the board, require any approval, consent, permit, certificate or other condition regarding the operation of a facility with respect to which a certificate hereunder has been granted: provided, however, that such municipality has received notice of the filing of the application therefor.

State: New YorkEffective Date: 09/01/78Bill #'s or Chapter: S-9557, A-12770, Ch. 639,
1978; "Industrial Hazardous
Waste Management Act"Sponsors: Sen. B.C. Smith
Speaker S. SteingutTitle: Title 11 - Industrial Siting Hazardous Waste Facilities

Scope of Law

I. Approach:

- o Certificates of environmental safety and public necessity required for operation of facilities issued by 8 member temporary siting board. Board composed of Secretary of State, 4 state commissioners, and 3 ad hoc, non-office holding members appointed by Governor, 2 of whom must reside in host judicial district. Applications submitted to Department of Environmental Conservation for analysis and technical review.
- o Department to promulgate siting criteria and application requirements, including mandate to include analysis of alternative sites.

II. Override:

- o Siting board must deny license if facility is contrary to local zoning or land use ordinances in effect on date of application.

III. Public Participation:

- o Local representatives sit on siting board.
- o Department to publish notice of application in environmental bulletin, 2 newspapers serving host community and contiguous areas, and notify chief executive officers of host communities, as well as property owners within 300 feet of proposed site. Department may require developer to publish similar notices and accept public comment.
- o Board to hold public hearing, following notice, prior to determination on issuance of certificate.
- o Board to notify all parties of hearing of decision on certificate.

IV. Financial Assurances:

- o Not specified in Act. Department to include in regulations.

V. Non-Financial Assurances:

- o Not specified in Act. Department to include in regulations.

VI. Incentives and Compensation:

- o Not specified in Act.

NOTE: The developer is not the only person who can acquire sites in New York State. The E.F.C. can also select sites.

"The EFC of New York is empowered to acquire interests in real property for the purpose of constituting and operating industrial hazardous waste treatment, storage and disposal facilities."

*New York Pub. Auth. Law, Title 12, New York State Environmental Facilities Corp, sec. 1285(c).

3. Developer Approach
 a. Maryland, House Bill 1481

HOUSE BILL No. 1481
 (01r3529)

Introduced by The Speaker and Environmental Matters 25
 Committee (Administration) 26

Read and Examined by Proofreader 28

 Proofreader. 30
 31

 Proofreader. 33
 34

Sealed with the Great Seal and presented to the Governor, 36

for his approval this _____ day of _____ 38

at _____ o'clock, _____ M. 40

APPROVED
 BY THE GOVERNOR
 Speaker. 42
 43

CHAPTER 528 _____ MAY 20 '80 46

AN ACT concerning 50

Hazardous Waste Facility Siting Program 53

FOR the purpose of creating a Hazardous Waste Facility 57
 Siting Board; providing for the membership, 58
 compensation, tenure, and voting requirements of the 59
 Board; defining certain terms; providing legislative 60
 purpose; providing certain powers, duties, and 61
 responsibilities of the Board; requiring certain 62
 reports prior to issuance of a certificate of public
 necessity of the siting of hazardous waste facilities 64
 by the Board; providing the procedures for application 65
 and effect and purpose of the certificate issued by the 66
 Board; providing that certain changes may not be made 67
 in a certified site or facility without Board approval; 68
 providing staff and funding for the Board; requiring 69
 that prior to a certain date and annually thereafter 70
 the Maryland Environmental Service must prepare an 71
 inventory of potential hazardous waste facility sites, 72
 in consultation with certain agencies and governing
 bodies; requiring certain governing bodies to prepare a 73
 certain list; providing that the Service may select
 certain sites if a condition is not met; requiring the 75

 EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
 [Brackets] indicate matter deleted from existing law.
 Underlining indicates amendments to bill.
 Strike---out indicates matter stricken by amendment.

(B) (1) THE BOARD CONSISTS OF SEVEN MEMBERS APPOINTED BY THE GOVERNOR WHO SHALL REPRESENT THE VARIOUS GEOGRAPHICAL AREAS OF THE STATE. NO MORE THAN ONE MEMBER OF THE BOARD SHALL BE A RESIDENT OF THE SAME COUNTY OR OF BALTIMORE CITY.

*Board
membership*

(2) OF THE SEVEN MEMBERS: 246

(I) TWO SHALL BE MEMBERS OF THE SCIENTIFIC COMMUNITY IN THE STATE, ONE OF WHOM SHALL BE A GEOLOGIST; 247
249

(II) TWO SHALL BE MEMBERS OF THE GENERAL PUBLIC WHO HAVE NO FINANCIAL INTEREST IN THE WASTE DISPOSAL INDUSTRY, AT LEAST ONE OF WHOM HAS HAD A DEMONSTRATED INVOLVEMENT IN ENVIRONMENTAL MATTERS; 250
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(III) ONE SHALL BE APPOINTED FROM A LIST OF THREE OR MORE PERSONS NOMINATED BY THE MARYLAND ASSOCIATION OF COUNTIES; 254
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(IV) ONE SHALL BE APPOINTED FROM A LIST OF THREE OR MORE PERSONS NOMINATED BY THE MARYLAND CHAMBER OF COMMERCE; AND 258
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(V) ONE SHALL BE APPOINTED FROM A LIST OF THREE OR MORE PERSONS NOMINATED BY THE MARYLAND MUNICIPAL LEAGUE. 262
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(C) BEFORE TAKING OFFICE, EACH APPOINTEE TO THE BOARD SHALL TAKE THE OATH REQUIRED BY ARTICLE I, § 9 OF THE STATE CONSTITUTION. 266
268
269

(D) (1) THE TERM OF A MEMBER IS 4 YEARS. 271

(2) THE TERMS OF THE INITIAL APPOINTEES EXPIRE AS FOLLOWS: THE MEMBERS ONE MEMBER REPRESENTING THE GENERAL PUBLIC AND ONE MEMBER REPRESENTING THE SCIENTIFIC COMMUNITY ON JANUARY 1, 1947; THE MEMBERS REPRESENTING THE SCIENTIFIC COMMUNITY ON JANUARY 1, 1947; 1947-1951, ONE MEMBER REPRESENTING THE GENERAL PUBLIC AND ONE MEMBER REPRESENTING THE SCIENTIFIC COMMUNITY ON JANUARY 1, 1951; AND THE REMAINING MEMBERS ON JANUARY 1, 1954-1953. 272
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(E) THE GOVERNOR SHALL APPOINT A CHAIRMAN FROM AMONG THE SEVEN MEMBERS. 279
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(F) AT THE END OF A TERM, A MEMBER CONTINUES TO SERVE UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES. 281
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(G) A MEMBER WHO IS APPOINTED AFTER A TERM HAS BEGUN SERVES ONLY THE REMAINDER OF THAT TERM AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIES. 285
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(H) A MEMBER MAY BE REMOVED BY THE APPOINTING AUTHORITY FOR INCOMPETENCY OR MISCONDUCT. 289
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(I) EACH MEMBER OF THE BOARD IS ENTITLED TO:	293
(1) COMPENSATION IN ACCORDANCE WITH THE STATE BUDGET; AND	294 295
(2) REIMBURSEMENT FOR EXPENSES UNDER THE STANDARD TRAVEL REGULATIONS, AS PROVIDED IN THE STATE BUDGET.	296 297 298
(J) THE AFFIRMATIVE VOTE OF A MAJORITY OF THE MEMBERS OF THE BOARD THEN SERVING IS NECESSARY FOR ANY DECISION OF THE BOARD.	299 300 302
3-704.	304
IN ADDITION TO THE POWERS SET FORTH ELSEWHERE IN THIS SUBTITLE, THE BOARD MAY ADOPT RULES AND REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE.	305 308 309
3-705.	311
(A) (1) THE BOARD SHALL ISSUE CERTIFICATES OF PUBLIC NECESSITY FOR THE SITING OF HAZARDOUS WASTE FACILITIES PURSUANT TO THE PROVISIONS OF THIS SUBTITLE.	314 315 317
(2) A CERTIFICATE UNDER THIS SUBTITLE IS NOT REQUIRED IF A SITE AND FACILITY ARE OTHERWISE AUTHORIZED BY LAW.	318 319 320
(3) A CERTIFICATE IS NOT REQUIRED FOR A FACILITY USED FOR RECEIPT, TRANSFER, RECOVERY, OR DISPOSAL OF NONHAZARDOUS RESIDENTIAL, COMMERCIAL, OR INDUSTRIAL WASTE.	321 322
(B) IN DECIDING WHETHER TO ISSUE A CERTIFICATE, THE BOARD SHALL CONSIDER BUT NOT BE LIMITED TO THE FOLLOWING:	324 326
(1) ENVIRONMENTAL, SOCIAL, TECHNICAL, AND ECONOMIC FACTORS AS THEY APPLY TO A PARTICULAR PROPOSED SITE; AND	327 329 330
(2) THE NEED FOR AND PROBLEMS ASSOCIATED WITH THE COMPREHENSIVE STATEWIDE DISPOSAL OF HAZARDOUS WASTE.	331 333
(C) THE DESIGN, CONSTRUCTION, AND OPERATION OF A FACILITY ON A SITE FOR WHICH A CERTIFICATE HAS BEEN ISSUED AND THE ASSOCIATED TRANSPORTATION OF HAZARDOUS WASTE TO AND FROM THE FACILITY, SHALL BE SUBJECT TO ALL ENVIRONMENTAL, HEALTH, AND SAFETY RESTRICTIONS THAT MAY BE IMPOSED BY STATE REGULATORY AGENCIES UNDER APPLICABLE LAW AND REGULATION.	334 336 337 338 339 341
(D) THE ISSUANCE OF A CERTIFICATE OF PUBLIC NECESSITY FOR A SITE EXEMPTS THE SITE, THE DESIGN, CONSTRUCTION, AND OPERATION OF THE FACILITIES ON THE SITE, AND THE TRANSPORTATION OF HAZARDOUS WASTE TO AND FROM THE FACILITIES ON THE SITE FROM ANY REGULATION, POLICY, LAW, OR ORDINANCE,	342 344 346 347

*CERTIFICATE
OF
PUBLIC
NECESSITY*

INCLUDING ZONING, OF ANY POLITICAL SUBDIVISION OF THIS STATE, AND FROM ANY STATE LAW OR REGULATION THAT REQUIRES APPROVAL OF ANY POLITICAL SUBDIVISION OF THIS STATE. 348
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(E) THE ISSUANCE OF A CERTIFICATE DOES NOT REQUIRE THE APPROVAL OF ANY COUNTY OR MUNICIPAL COUNCIL, BOARD, AUTHORITY, OR UNIT. ANY PLAN FOR MANAGEMENT OF LIQUID, SOLID, OR HAZARDOUS WASTE ADOPTED BY ANY SUBDIVISION OF THE STATE SHALL BE CONSISTENT WITH THE TERMS OF THE CERTIFICATE. 352
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(F) THE CERTIFICATE SHALL CONTAIN A STATEMENT OF THE PURPOSE FOR WHICH IT IS ISSUED AND A DESCRIPTION OF THE SITE AND PROPOSED FACILITY, AND SHALL INDICATE THE LOCATIONS ON THE SITE OF ALL FACILITIES, ALL BUFFER AND SECURITY AREAS, AND ALL AREAS TO BE USED FOR APPURTENANT FUNCTIONS. 359
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(G) A CERTIFICATE IS VALID ONLY FOR THE SITE AND FACILITY FOR WHICH IT IS ISSUED. 366
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(H) A PERSON MAY NOT MAKE ANY MATERIAL CHANGE THAT, AS TO A FACILITY OR THE USE OF A SITE, IS CONTRARY TO THE PURPOSE OR CONDITIONS FOR WHICH A CERTIFICATE WAS ISSUED, UNLESS: 368
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(1) THE PERSON FIRST SUBMITS THE PROPOSED CHANGE TO THE BOARD FOR RECONSIDERATION OF THE CERTIFICATE; AND 373
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(2) THE BOARD APPROVES THE CHANGE; AND 377

(3) AN APPLICATION FOR RECONSIDERATION SHALL BE MADE BY AN APPLICANT AND PROCESSED BY THE BOARD IN ACCORDANCE WITH THE SAME REQUIREMENTS, PROCEDURES, AND RESTRICTIONS THAT ARE APPLICABLE TO AN INITIAL APPLICATION FOR A CERTIFICATE UNDER THIS SUBTITLE. 378
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3-706. 384

(A) EACH APPLICATION FOR A CERTIFICATE SUBMITTED TO THE BOARD SHALL CONTAIN A REPORT WITH INFORMATION OF THE TYPE, QUALITY, AND DETAIL THAT WILL PERMIT ADEQUATE CONSIDERATION OF THE ENVIRONMENTAL, SOCIAL, TECHNICAL, AND ECONOMIC FACTORS INVOLVED IN THE ESTABLISHMENT AND OPERATION OF THE PROPOSED FACILITIES. THE APPLICANT SHALL MAKE THE REPORT AVAILABLE TO AFFECTED SUBDIVISIONS AND TO THE PUBLIC. 387
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(B) (1) ON RECEIPT OF THE APPLICATION FOR A CERTIFICATE THE BOARD SHALL FORWARD A COPY OF THAT APPLICATION TO THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE. THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL CONSIDER THE APPLICATION FOR A CERTIFICATE AS AN APPLICATION FOR THE FACILITY PERMIT THAT IS REQUIRED UNDER ARTICLE 43 OF THE ANNOTATED CODE. 395
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(2) ON RECEIPT OF ANY APPLICATION FOR A FACILITY PERMIT THAT IS REQUIRED UNDER ARTICLE 43 OF THE ANNOTATED CODE, THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE SHALL 404
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Application Procedure

<u>FORWARD A COPY OF THE FACILITY PERMIT APPLICATION TO THE BOARD.</u>	406 407
(C) (1) THE PORTION OF THE APPLICANT'S REPORT DEALING WITH ENVIRONMENTAL AND SOCIAL ASSESSMENTS SHALL CONTAIN, BUT NOT BE LIMITED TO:	408 409 410
(1) <u>THE POTENTIAL IMPACT OF THE METHOD AND ROUTE OF TRANSPORTATION OF HAZARDOUS WASTE TO THE SITE AND THE POTENTIAL IMPACT OF THE ESTABLISHMENT AND OPERATION OF THE PROPOSED FACILITY ON AIR AND WATER QUALITY, EXISTING LAND USE, TRANSPORTATION, AND NATURAL RESOURCES IN THE AREA AFFECTED BY PROPOSED FACILITIES;</u>	411 412 413 414 415 416
(II) A DESCRIPTION OF THE EXPECTED EFFECT OF THE FACILITY; AND	418 419
(III) RECOMMENDATIONS FOR MINIMIZING ANY ADVERSE IMPACT.	421 422
(2) THE PORTION OF THE APPLICANT'S REPORT DEALING WITH TECHNICAL AND ECONOMIC ASSESSMENTS SHALL CONTAIN, BUT NOT BE LIMITED TO:	423 424 425
(I) <u>DETAILED DESCRIPTIONS OF THE PROPOSED SITE AND FACILITY, INCLUDING SITE LOCATION AND BOUNDARIES AND FACILITY PURPOSE, TYPE, SIZE, CAPACITY, AND LOCATION ON THE SITE, AND ESTIMATES OF THE COST AND CHARGES TO BE MADE FOR MATERIAL ACCEPTED; AND</u>	427 428 429 430
(II) PROVISIONS FOR MANAGING THE SITE FOLLOWING CESSATION OF OPERATION OF THE FACILITY.	433 434
(D) ACCEPTANCE BY THE BOARD OF ANY APPLICATION FOR PROCESSING DOES NOT PRECLUDE THE BOARD FROM REQUIRING FURTHER INFORMATION FROM THE APPLICANT IF THE BOARD CONSIDERS THE ADDITIONAL INFORMATION NECESSARY FOR ADEQUATE CONSIDERATION OF THE APPLICATION.	435 436 437 438
(E) PRIOR TO MARCH 1, 1981, THE BOARD SHALL PRESENT AT PUBLIC HEARING, ADOPT, AND PUBLISH RULES DESCRIBING AND GOVERNING THE PROCEDURE FOR OBTAINING A CERTIFICATE. THE PROVISIONS OF THIS SECTION DO NOT EXEMPT THE BOARD FROM THE REQUIREMENTS OF ARTICLE 41, § 244 ET SEQ. OF THE CODE.	439 441 442 444 445
(F) (1) AT LEAST 90 DAYS PRIOR TO ISSUANCE OF A CERTIFICATE, THE BOARD SHALL SEEK THE ADVICE AND COMMENT OF THE FOLLOWING:	446 448 449
(1) THE SECRETARIES OF NATURAL RESOURCES, HEALTH AND MENTAL HYGIENE, ECONOMIC AND COMMUNITY DEVELOPMENT, STATE PLANNING, AND AGRICULTURE;	450 451 452
(II) THE COUNCIL ON TOXIC SUBSTANCES AND THE HAZARDOUS SUBSTANCES ADVISORY COUNCIL; AND	453 455

State: MarylandEffective Date: 01/01/80Bill #'s or Chapter: HB 1481, expanding Natural Resources Article to include new Subtitle 7Sponsors: Speaker, Environmental Matters CommitteeTitle: Hazardous Waste Facilities Siting Program

Scope of Law

I. Approach:

- o 7 member permanent siting board to issue certificates of public necessity required for facility permits. Board composed of 2 scientists, 2 members of the public with no financial interest in waste industries, and nominees of the Association of Counties, Chamber of Commerce, and Municipal League, appointed by Governor. Board to consider locating facilities near generation points, to avoid disproportionate siting in one area, and to ensure due consideration of alternatives to land disposal.
- o Maryland Environmental Service (MES) to develop waste management plan, including siting criteria and inventory of potential sites.
- o MES authorized to apply for certificates of public necessity, acquire designated sites, and utilize or operate facilities, subject to same procedures and regulations required of private developers.

II. Override:

- o Certificate of public necessity exempts facility from regulation by political subdivisions. Approval of facilities or sites by local governments not required.

III. Public Participation:

- o 2 members of public sit on siting board.
- o Developer to make permit applications available to public and host community officials.
- o Board to seek comment, prior to acting on applications, from state secretaries, councils on toxic and hazardous substances, host community government, governments of adjoining communities, and property owners within 1000 feet of proposed site.
- o Board to hold public hearing in host community.
- o Service to seek suggestions on potential sites from political subdivisions, and to seek their comments on proposed waste plan.
- o Records of facility inspections to be open to public.

VI. Financial Assurances:

- o Developer to provide bond or other sureties to cover costs of monitoring, maintaining, and closing facility, and post-closure security, and to ensure compliance with permit requirements.

V. Non-Financial Assurances:

- o Emergency contingency plans to be included in regulations.
- o Developer to restore site to original condition, to extent practicable.
- o Developer to provide access to site by Department and local health agency officials or representative of mayor.
- o Facilities to be inspected monthly. Landfill facilities to be inspected weekly.

VI. Incentives and Compensation:

- o Not specified in Act.

Medicaid, Reagan and the States: An Urgent Issue Heats Up

Cable Television: Should States Regulate It or Not?

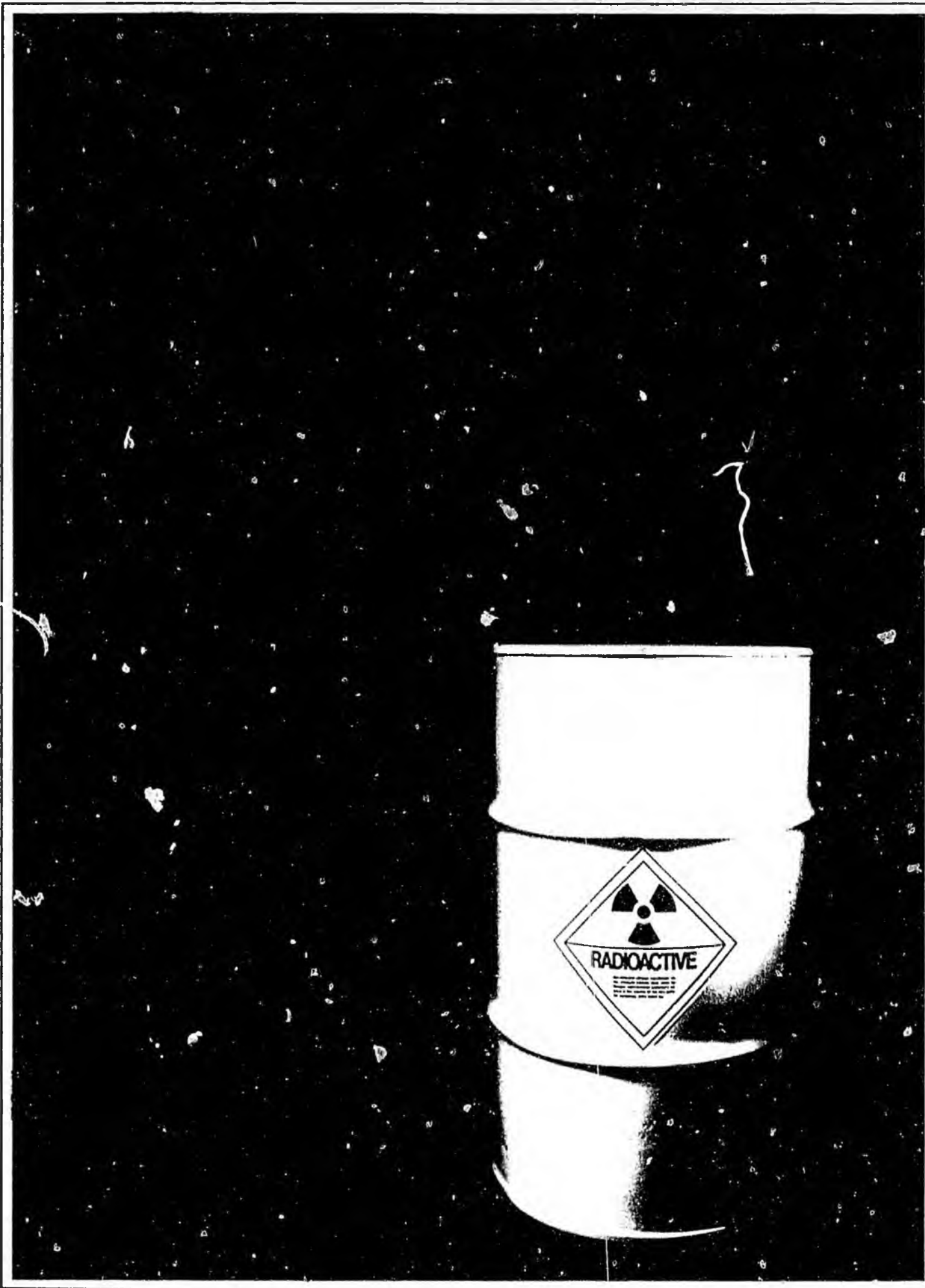
State Legislatures

June 1981
National Conference
of State Legislatures

Negotiable Junk

• **The
Politics of
Low-Level
Radioactive
Waste**





Federal law and an emerging state consensus point toward regional cooperation as the key to managing low-level waste. The states are beginning to meet the challenge, but they find a host of obstacles in their path—and they have no time to lose.

Time to Take Control:

Unlike most politically sensitive issues, the management of low-level radioactive waste is a problem that can be solved. Whether and how it will actually be solved depend, for now, on the states.

Under a federal law enacted last year, and under policies developed by national organizations of state legislators and governors, the states are taking steps toward regional cooperation in the siting of waste disposal facilities. If they succeed, they will address two problems at once: the immediate need for new disposal sites, and a long-term need for additional sites to handle steadily increasing amounts of low-level waste.

Success, however, will require that everyone involved "take ownership of the problem," in the words of

The States and Low-Level Radioactive Waste

Minnesota Representative Ken Nelson. The first step, he says, is to recognize openly the benefits we all derive from activities that produce

Gail Nelson

Low-Level Radioactive Waste

low-level radioactive wastes. The second is to accept responsibility for developing solutions that protect both public health and the environment.

The states have begun to "take ownership" during the last two years. Before 1979, low-level radioactive waste was generally handled by exporting it to a faraway state for disposal—the "out of state, out of mind" approach. Late in that year, however, two of the nation's three disposal sites were temporarily closed; that fact, combined with the increasing volume of low-level waste from commercial reactors, hospitals, universities, clinics and industries, nearly resulted in the cessation of important university, medical and industrial operations. Something had to be done.

In response, the states began to accept responsibility for managing low-level wastes generated within their borders, either by starting to develop their own sites or, more often, by opening discussions on interstate compacts. These were the approaches advocated by the National Conference of State Legislatures, the National Governors' Association, and the federal State Planning Council on Radioactive Waste Management. The three groups placed particular emphasis on regional efforts to handle low-level waste.

Their recommendations were given statutory force by the Low-Level Radioactive Waste Policy Act, which was passed in the final days of the 96th Congress. This law encourages the formation of interstate compacts for dealing with low-level radioactive waste. By 1986, in fact, a disposal site can refuse to accept wastes from a state that is not part of an interstate compact. Every state therefore confronts three choices: developing its own site; joining an interstate compact with other states in the region; or stopping the production of low-level radioactive waste.

The third option is the least desirable one, and in some cases is out of the question. Regardless of one's position on commercial nuclear power, significant quantities of low-level waste are generated by hospitals and clinics in therapeutic and diagnostic techniques, universities in research and teaching, and various kinds of industries. For a state to stop producing these wastes, it would have to forego the benefits arising from medical, research, and industrial uses. For many states, especially the 24 with operating commercial reactors, this option is unrealistic.

The remaining options are for a state to build its own disposal site or to join with other states to develop a regional site. These options need not be mutually exclusive; a state could decide to develop a site as well as join with other states at a later time. Either approach,

however, will force states to come to terms with the sensitive political issues of siting and maintaining a disposal facility.

State legislators will be especially involved with these decisions. If a state develops its own site, then the legislature will have to enact enabling legislation for the regulatory authorities to site, regulate, and close the facility. It will need to adopt financial provisions that will ensure long-term monitoring and, when necessary, remedial actions. If a state chooses to join a regional group, and if the mechanism for creating that group is an interstate compact, then the legislature must enact the compact. Such legislation will contain the same provisions that would be necessary to establish a single state site—but will also include sections creating an interstate commission and describing the rights and obligations of the member states.

The category of radioactive waste includes spent fuel from commercial reactors, defense wastes, uranium mine and mill tailings, and low-level wastes. Low-level waste is the catch-all category that includes anything from contaminated paper towels and protective clothing to machinery parts and sludges. Because the levels of radioactivity are low and the hazards considerably less than for other types of radioactive wastes, low-level waste can be safely disposed of by shallow land burial. Great care must be taken, however, to ensure that a site is hydrologically and geologically sound and that packaging and disposal practices conform to strict regulations. Federal and state regulations on packaging, transportation and disposal should ensure that these wastes are safely managed and disposed of.

Every state has three choices: It can develop its own site, join an interstate compact, or stop producing low-level radioactive waste.

The federal government was assigned the lead role in regulating radioactive materials. The U.S. Nuclear Regulatory Commission (NRC) issues regulations and licenses for people and institutions that possess and use radioactive materials.

In 1959, an amendment was added to the Atomic Energy Act that allowed the transfer of some regulatory authority to the states under the Agreement States Program. The choice was left to the states: If a state agreed to enforce regulations as stringent as the federal government's, then it received authority to regulate small quantities of certain radioactive materials. To date, 26 states have become agreement states. These states would be responsible for regulating a low-level disposal site within their boundaries. The three operating sites are located within agreement states and are directly regulated by the host states.

In the early 1970s, six commercial disposal sites were operating in the United States. These sites were privately operated, located on state or federal land, and regulated by the federal and state governments. The six sites were Maxey Flats, Kentucky; West Valley, New York; Sheffield, Illinois; Beatty, Nevada; Hanford, Washington; and Barnwell, South Carolina. By early 1979, three of these sites had closed. Maxey Flats and West Valley were closed after migration of radioactive elements away from the burial trenches was detected; although there was no immediate threat to public health and safety, public reaction ensured that the sites would not reopen. The licensed disposal trenches at Sheffield were filled in 1978, and the filled site was closed after an application to expand it met with stiff opposition.

The crunch of 1979 was felt for many reasons, both political and technical. With the volume of low-level waste increasing annually and with only three sites open in 1979, the three remaining host states (Nevada, South Carolina and Washington) were beginning to feel uncomfortable in their role as national disposal sites. Many other factors were at work on the national political scene: the post-Three Mile Island debate over nuclear power; the debate over hazardous chemical wastes, as exemplified by Love Canal; and the continuing problem of what to do with spent fuel from commercial reactors. All of these issues combined to produce intense public scrutiny of the low-level waste problem.

This scrutiny has led to a recognition that states should share the responsibility because all states, in varying degrees, benefit from the use of radioactive materials. The

lessons have been hard to learn—and have largely been forced by restrictions that the three host states have placed on the disposal sites. All three sites have imposed stricter regulations on packages accepted at the site. In addition, Governor Richard Riley of South Carolina announced in 1979 that the Barnwell site would reduce by 50 percent the amount of low-level waste that it would accept annually. Since Barnwell at one time accepted 85 percent of the nation's low-level waste, this restriction required immediate action by low-level waste generators.

Last year, voters in Washington State approved an initiative stating that by July 1, 1981, non-medical radioactive waste would not be accepted from states that had not entered into an interstate compact with Washington. This action is now being challenged in federal court on several grounds, including restriction of interstate commerce. This initiative led to passage of the first state statutes creating an interstate compact for low-level radioactive waste management. The current member states are Idaho and Washington; Oregon is considering legislation that would bring it into the compact.

The July 1, 1980, deadline set by Congress, and the clear nature of the problem, are forcing action in other states across the country.

The practical problems they confront—especially the issue of siting—have been faced many times before in controversies over sanitary landfills. The controversy is heightened in this case because of the nature of the waste material. "Just the word 'nuclear' makes low-level waste a difficult issue," notes Representative Mary Lou Muntz of Wisconsin.

State legislators will play a central role on this issue. . . . If a state chooses to join an interstate compact, the legislature must enact it.

Education programs that begin early in the process can help to allay some of these fears. Nevertheless, siting means choosing a piece of land, which means that some members of the nearby community will be directly affected, and very much concerned. Other issues that must be considered include regulation, financing, liability, public involvement, and perpetual care.

One of the first decisions for a state is whether to develop its own site or join a regional group. Economic considerations support regional solutions for most states. In 1979, the top 10 producing states accounted for more than 70 percent of all low-level waste volume. Most of the remaining states are fairly small generators. If these states developed their own sites, they would have to charge exorbitant rates to recover the large initial capital investments. Ultimately, the costs would be passed along to the consumer in the form of higher electrical and medical bills. States producing small volumes would probably not want to choose this approach.

Some states, however, do produce enough low-level waste to consider developing their own sites. Despite the likelihood of local opposition, this option is being considered by a few states.

One advantage of the approach is its flexibility, especially if a state retains the option of joining a regional group at a later time. A second is that a state with its own site would be assured of having a place to dispose of low-level waste and would be less vulnerable to the temporary closing of sites in other states. A third is that the state would have greater regulatory control of the site and greater ability to insure the continual availability of disposal capacity. And, of course, the state would no longer have to face the legal and institutional uncertainties of negotiating and enacting interstate agreements.

Some states do produce enough low-level waste to consider developing their own sites.

It may be, however, that the best reason for a state to have its own site is that it will be in a better bargaining position if it enters regional negotiations. For example, a state with a low-level disposal site could bargain with other states to accept its chemical waste. Revenues would also accrue to the host state and local government.

Of course, a state that decides to develop its own site will also confront problems. Some are long-term issues, such as how to monitor the site throughout its life and how to address problems that arise after the operator's lease has expired; others are of more immediate concern to state legislators. Local participation in siting is one of these. Another is whether or not the state will have ultimate veto authority over a local government, and, if so, what provisions for judicial review exist. There is no real precedent for these questions, because past siting decisions were not scrutinized as today's are. The sites in South Carolina, Nevada, and Washington are located in areas that have lived with the nuclear industry for years, and are near government facilities that have been involved with nuclear-power development since World War II. Resistance to such facilities was therefore low initially and remains low today.

North Carolina is one state that is considering legislation to establish its own site as well as to take part in discussions on an interstate compact.

"Since North Carolina is the fourth largest generator of low-level waste, we decided we had to treat and dispose of our own," according to State Representative Charles Holt. He was referring to recommendations by a state task force, in which he and Senator Russell Walker participated, which studied the problems of hazardous and low-level radioactive waste in North Carolina. As a result, he and Senator Walker have introduced legislation creating a Governor's Waste Management Board to implement the task force recommendations. The most controversial issues in these bills are provisions for state pre-emption of local zoning decisions and condemnation proceedings for land.

Texas has already enacted a bill (SB 480) that will strengthen the state's authority to regulate a low-level waste disposal site, establish a process for citizen participation, and exclude wastes generated in other states unless those states are members of an interstate compact or reciprocal agreement with Texas. A second bill (HB 1533), just passed in the final days of the legislative session, creates the Texas Low-Level Radioactive Waste Disposal Authority to establish and operate a disposal site for wastes generated within the state.



Among the difficult issues surrounding these bills is whether a state *can* exclude out-of-state waste. The courts have generally found such exclusion to be an unconstitutional restriction on interstate commerce. That interpretation may change, however, now that the Low-Level Waste Policy Act allows states that participate in an interstate compact to exclude non-compact states from their facility. The case before the federal court in Washington State should shed some light on this issue in the next month.

An interstate compact—the approach now favored by more states than any other—has several obvious advantages: It leads to fewer sites, safer operation, and lower cost for disposal and transportation. Still, there is no denying the problems inherent in an approach that requires several states to coordinate their efforts and obtain agreement on so complex an issue. It is difficult enough for one state to reach agreement; the problem may be expected to multiply exponentially as more states participate.

Once a state has decided to seek regional cooperation on this issue, however, an interstate compact is the obvious mechanism. The reason is simply that it provides needed stability. Other tools for interstate agreement and cooperation, such as parallel statutes and executive orders, would probably not sustain an agreement that demands so much long-term regulation. A compact can do so.

An interstate compact is a legal instrument that combines the attributes of a contract and a state statute. Each participating state would enact a compact much as it enacts any other piece of legislation. A compact can make

substantive or procedural law, confer rights and obligations on private persons and public agencies, establish an administrative agency and define its authority, and provide for the operation of public works. They are formal, binding agreements that represent a special commitment of the member states to a permanent or relatively long-range interstate undertaking. Compacts take precedence over ordinary state statutes and thus represent powerful constitutional tools for intergovernmental action. Once a commitment has been made, it is difficult for a specific state to unilaterally withdraw its participation. Compacts already in force deal with issues such as mass transit, pollution control, law enforcement, and energy conservation.

The U.S. Congress must give its consent to an interstate compact. It does so by passing an act or joint resolution that embodies the text of the compact. The Low-Level Radioactive Waste Policy Act states that a compact enacted by the states shall not be effective without congressional consent and that Congress can reconsider its consent at five-year intervals.

A major problem with interstate compacts is the length of time required to negotiate and enact them. Low-level waste disposal is the most sensitive issue yet considered as the subject of a compact. States entering a compact would have to agree on such politically sensitive issues as siting, authority of the member states and the host states, and establishing a commission with certain powers that would supersede authorities in the member states.

Also, the executive and legislative branches will have to work together closely on some very unpopular issues. In some states, especially those where party control is split, this may worsen their problems and prevent them from adopting the strongest possible stance in compact negotiations. Practically speaking, the ability of a state to resolve potential differences and present a unified front at interstate negotiations will depend on the relationship between legislative leadership and the governor's staff.

There are other complications. The mere fact that legislative sessions vary from state to state could delay the enactment of a compact for two years or more. The ability of a state to authorize and appropriate funds may also be linked to the legislative session. A state's decision to enter a compact rather than to proceed with its own site depends in a practical sense on timing—that is, on the extent to which other states in the region have seriously committed themselves to the possibility of becoming a regional site.

(continued on page 29)

Low-Level Waste

(continued from page 11)

Despite all these potential difficulties, some states are moving ahead with compact negotiations. Not surprisingly, the regions that already have disposal sites have led the way. The first region to begin talking seriously about compacts was the Northwest—spurred not so much by the relatively modest amount of low-level waste generated in the region, but by the voter initiative passed in Washington last November.

Legislators became involved at an early stage. Several legislators from the Northwest, including Speaker Ralph Olmstead of Idaho and Senator Sue Gould of Washington, attended NCSL's national meeting on low-level waste in Albuquerque, N.M., last summer. In Idaho, an informal working group was established, comprised of five legislators, the governor and his staff. It was agreed that the executive branch was responsible for negotiating interstate agreements, but legislators were involved in discussions throughout the drafting of the compact.

Pat Costello, assistant to Idaho Governor John Evans, was responsible for representing the governor and the legislature in discussions with other states. In Costello's view, "legislators have to be consulted; otherwise you may be in the position of agreeing to something in other states that won't pass in your own state." Idaho was the first state to pass the Northwestern interstate compact.

Identical legislation was introduced in Washington at Governor John Spellman's request. Although there were disagreements over details, the overriding need for a compact was generally conceded, according to Senator Gould, who sponsored the bill. The only other state in this region that will be able to enact a law this session is Oregon, where the bill has been introduced.

These states were fortunate: Their state officials were concerned about the issue—and they already had a site. With the major controversial issues already decided at least until the site is exhausted, they were able to enact a "bare-bones" compact. The harder issues that will emerge when a new site is needed will be worked out at a later time.

The South is also in good shape because of the site at Barnwell, South Carolina. Several meetings have already been held under the auspices of the Southern States Energy Board (SSEB),

and have involved primarily representatives of governors' offices and executive agencies. Three southern groups have been meeting. The group that has probably made most progress is made up of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia. This group has been discussing a preliminary working draft of a compact written by the SSEB. They have been able to reach some agreement on the legally binding rights and obligations of member states (for example, the obligation of each state to provide a site), and the regulatory power of a regional commission. The major issue left for discussion is the development and operation of a disposal site.

A second group of Southern and border states includes Kansas, Louisiana, Missouri, Oklahoma and Texas. Representative Bob Miller of Kansas has been instrumental in his state's discussions. He had also attended NCSL's Albuquerque meeting last summer, and was convinced that something had to be done. Immediately after his return to Kansas, he met with Governor John Carlin, who has since taken a leading role in contacting other governors in the region. Kansas established a more formal committee—the Kansas Policy and Technical Committee—than Idaho had. The governor chaired the committee; members included legislators from both houses, legislative staff, and executive agency representatives. The decisions made by the committee, where all members have an equal vote, have helped give Kansas a strong position in meetings with other states.

The other active area of the country is the Northeast. While the states that will be included in this region are not yet final, the most active states so far have been Maine, Connecticut, New Hampshire, Vermont, Massachusetts, and Rhode Island. Other states likely to be included in this region are New York, New Jersey, and Pennsylvania.

Representative Arnie Wight of New Hampshire has been especially active in getting the New England meetings under way. He considers it "absolutely essential" that legislators and the governor of each state work together on this issue at very early stages, so states can negotiate effectively and compacts can be enacted more quickly.

The upper Midwest states, despite an early start, have probably been the slowest to move so far. In early 1980, representatives from the governors' offices

in Indiana, Illinois, Michigan, Ohio, Minnesota, and Wisconsin met to discuss an interstate compact. Since last summer, however, no action has been taken and no state has stepped forward to take the lead in calling meetings to again take up the issue of forming an interstate compact.

In Wisconsin, Representative Mary Lou Munts and Senator Joseph Strohl have been actively encouraging cooperation between the Democratic legislature and the Republican governor. Initially, the legislature was concerned about the state becoming a repository for spent fuel from commercial reactors. When the low-level issue arose several months later, therefore, a core group of legislators was already immersed in the technical and institutional issues of radioactive waste. The governor and concerned legislators have been working together, although a regional grouping of Midwestern states has not been decided.

Many states are actually "taking ownership" of low-level waste management problems. Two trends are apparent: enacting legislation to establish a state site, and joining discussions about interstate compacts with other states. Early legislative involvement, at least by a few key legislators, is vital for those states interested in a regional solution. The model has been for governors and legislators to work together to establish unified policies for the state that allow the state to speak with one voice at interstate meetings.

States that have not yet faced the issues may, by 1986, find themselves with no way to dispose of low-level wastes safely. The consequences are serious. Given the complexities of the issue, states not already involved will need much lead time to work out the sensitive political issues.

Legislators can take a strong role in solving this problem—and will have to do so before 1986. The decisions made on this issue could become models for interstate agreements on a wide variety of topics and given the current trend toward giving more power back to the states, experience with low-level waste management could prove invaluable.



Gail Malson is research associate with NCSL's Low-Level Radioactive Waste Management Project. For further information on the project, see page 27.



Dateline

Washington

NATIONAL CONFERENCE OF STATE LEGISLATURES

MAY 18, 1981, VOL. VI NO. 7

In the News

Block grant proposals are wending their way through Congress and NCSL will serve as a clearinghouse to keep state legislators up-to-date on the status of the alternative consolidation plans.

(pages 4, 5)

A 9% federal Medicaid cap—rather than the Administration's 5%—has been approved by Senate Finance, but the panel also wants to reduce the minimum federal match from 50 to 40%.

(page 2)

State administration of small cities (CDBG), proposed by the White House, has been rejected in House subcommittee.

(page 5)

Legislators' Tax Home

State legislators' tax home legislation is still pending in the House Ways and Means Committee and no hearings have been scheduled. Chairman Dan Rostenkowski's (D-IL) staff has said that a tax matter would not be considered as an amendment to the general tax bill scheduled to be reported later this month unless it has had a public hearing. Legislators are urged to contact their House delegations to request that Ways and Means hold hearings on HR 2605 as soon as possible. NCSL contact: Bill Hagan, 202/624-5414.

House Substitute Cuts \$6.5 Billion From Administration's FY82 Spending Proposal

The Reagan Administration won a significant victory with the May 7 passage of the Gramm-Latta budget substitute for the House first budget resolution. Sixty-three Democrats joined all of the Republicans to adopt the proposal by a 253-176 vote. Senate budget adoption was expected at press time. Even with quick conference action, there was little expectation that the first concurrent resolution could be passed by May 15.

The resolution originally reported by the House Budget Committee (see *Dateline*, 4/27/81, p. 1) totaled \$2 billion over the Administration's plan, but reduced the deficit by \$20 billion by allowing for a smaller tax cut. With defense spending reduced by \$5 billion, the committee spread the added \$7 billion over a variety of domestic programs.

During House floor debate, however, members adopted a substitute floor amendment offered by Reps. Phil Gramm (D-Tx.) and Delbert Latta (R-Oh.). The so-called "Reagan Bipartisan Substitute" cut spending \$6.5 billion below the President's budget by eliminating funds for the Strategic Petroleum reserve (\$3 billion); saving on interest because of a smaller deficit (\$750 million); eliminating a contingency reserve designed to meet unforeseen circumstances (\$1.1 billion); saving more on Medicaid (\$100 million); cutting mass transit operating subsidies (\$130 million); saving administrative costs in education, training, employment and social services (\$130 million); and counting on settlement of oil pricing violations (\$1.5 billion).

Assuming higher GNP growth in

1981 for an added \$7.5 billion in 1982 revenues, the House substitute plan winds up with a \$15 billion lower deficit than the original Reagan budget after increasing spending for veterans' benefits (\$400 million), vocational education (\$15 million) and the Economic Development Administration (\$12 million).

The Senate measure would cut \$4 billion in domestic spending from the Reagan budget, but totals \$4 billion more than the White House proposal due to a higher assumption for interest rates (12% vs. 8.9%). Other Senate changes include a reduction in indexing of Social Security, SSI, disability, civil service and veterans' pensions (\$2.5 billion); shifting the annual cost-of-living increase in these programs from July 1 to October 1 (\$4.5 billion); and more funds for elementary and secondary education, direct student loans, CETA youth and rehabilitation programs (\$1.5 billion).

Strategic Petroleum Reserve funding was also dropped by the Senate. Congress will thus have to come up with a program to ensure private financing—possibly by issuing "oil bonds" or allowing borrowing from the government's synthetic fuels account. The House has already rejected combined public-private financing.

Conference action will be needed to resolve program differences and interest rate assumptions, the by setting targets for reconciliation instructions totaling \$37 billion to authorizing and appropriating committees. These panels will have one month to report legislation with sufficient savings. If the

(continued on page 2)

Greater State Role Likely in Hazardous Materials Transport



Rep. Arnie Wight

Panels in both the House and Senate are considering legislation that would give states responsibility for enforcing federal hazardous materials transportation regulations, but would not provide additional funds for the task. The House version does, however, include some "seed" money for the establishment of regional training centers, strongly supported by NCSL.

The House Energy and Commerce Subcommittee on Transportation has

agreed to an amendment offered by Rep. Norman Lent (R-N.Y.), on behalf of NCSL, authorizing the Department of Transportation (DOT) to provide 40 percent of first-year start-up costs and 25 percent of operating costs for the next two years. The regional centers, run either by the state or by private entities, would train state and local personnel in inspection, enforcement and emergency response techniques.

S 960, reported by the Senate Commerce Committee, calls for a DOT feasibility study of a national pre-notification system. In April 28 testimony before the panel, New Hampshire State Rep. Arnie Wight told members that states should be able to require pre-notification of hazardous materials shipments.

The Senate measure also asks DOT to encourage an expanded state role in enforcement of hazardous materials regulations and to study whether or not to extend federal regulations on the routing of radioactive wastes to all hazardous materials. Under the Hazardous Materials Transportation Act, which expired last year, federal regu-

lations were promulgated only in regard to high-level materials. Sen. Jack Danforth (R-Mo.) plans to offer a floor amendment to preempt state regulations on the routing of all hazardous materials.

Wight, reiterating earlier NCSL testimony (see *Dateline*, 3/23/81, p. 4), advised the Commerce panel that NCSL is prepared to encourage states to adopt regulations consistent with federal standards if there is "an adequate commitment of manpower and resources by the federal government." Otherwise, the legislator said, NCSL would have to oppose preemption of state laws and regulations.

NCSL contacts: Donna Wise, 202/624-5431; Fran Valluzzo, 202/624-5419.

Budget Assumptions Seen As Optimistic

(continued from page 1)

committees do not then hold to the budget ceilings, their bills will be held at the desk. This is a much stronger procedure than used in the past.

Except for the Senate's interest rate level, both chambers accepted the economic assumptions set by the President which many believe to be too optimistic. If Congressional Budget Office forecasts prove accurate, the Administration's deficit could be nearly \$10 billion higher than projected.

NCSL contacts: Tim Masanz, 202/624-5408; Gary Falle, 202/624-5416.



Kansas State Rep. J. Sanford Duncan testified April 23 as an expert witness on his state's use of the legislative veto.

Legislation Should Limit State Liability Without Infringing On Individual Rights

NCSL has called on the Congress to limit the scope of Sections 1983 and 1988 of the Civil Rights Act so that states and their political subdivisions are not so broadly exposed to civil liability.

Testifying May 7 before the Senate Subcommittee on the Constitution, Maryland State Sen. J. Joseph Curran Jr. said that legislation should be designed to limit the civil liability of states and localities without lessening the ability of individuals to use the law for civil rights enforcement.

Curran's statement was prompted largely by the Supreme Court's *Maine v. Thiboutot* decision (see *Dateline*, 8/4/80, p. 8) holding state and local governments liable for violation of any fed-



Sen. J. Joseph Curran, Jr.

eral law, whether or not an individual is deprived of constitutional, civil or equal protection rights. The decision also allowed recovery of attorney's fees.

Noting that the decision "has been viewed with alarm by elected officials," Curran suggested that Section 1983 be amended to apply only to constitutional rights, that a "good faith" defense be available in the case of suits for money damages, and that limits be considered on the award of attorney's fees.

NCSL contact: Karen Morgan, 202/624-7860.

State-Federal Hotline

NCSL's State-Federal Hotline will continue on a trial basis through the end of May, providing state legislators with a weekly update on federal issues likely to be of particular interest to NCSL members.

The number to call in Washington is 202/624-7861.

Industrial Development Bonds, June 4

"Rethinking Industrial Development Bonds: Alternatives for State Action" - June 4, Hall of the States, Washington, D.C. The program will review the current use of IDBs as a development tool, assess market impacts and forces, and look at other state options.

For further information, please contact Susanne Hiegel, 202/624-5418.

NCSL Annual Meeting, July 27-31

The opening plenary session of NCSL's Seventh Annual Meeting, to be held in Atlanta, Georgia, July 27-31, will focus on "The Future of Communications Technology," featuring a demonstration of video-teleconferencing from the Alaska Legislature. The keynote presentation will include discussion of the public policy implications of new communications techniques.

More than 40 concurrent meetings held on Wednesday and Thursday, July 29-30, will deal with a variety of topics ranging from reapportionment to controlling Medicaid costs.

For further information and reservation forms, which must be returned by July 6, please contact Bonnie Kulaas, 1125 Seventeenth St., Suite 1500, Denver, Colorado, 303/623-6600.

Senate Finance Increases Medicaid Cap, But Decreases Minimum Federal Match

A spending reduction package adopted May 5 by the Senate Finance Committee includes nearly \$1 billion more than the Administration request and increases the proposed Medicaid cap from 5 to 9 percent.

The \$10.4 billion plan, Finance Chairman Robert Dole's (R-Ks.) alternative to the White House proposal, would also reduce the minimum federal match for Medicaid from 50 to 40 percent, a move that would particularly hurt California, Connecticut, Illinois, Michigan, New Jersey and the District of Columbia. The committee defeated 13-2 an amendment by Sen. Bill Bradley (D-N.J.) that would have lessened the effect of changing the match. Other states adversely affected by the change include Alaska, Delaware, Hawaii, Maryland, Nevada, Washington and Wyoming.

Although details of other provisions are not firm, the Dole package assumes that states would be given flexibility to

more efficiently manage their Medicaid programs. Changes under consideration include: elimination of the freedom of choice provision and the requirement on reimbursement methods for hospitals and physicians; competitive bidding; and waiver authority on the 50/50 limitation on Medicare-Medicaid enrollees in HMOs. NCSL has strongly advocated the removal of federal requirements inhibiting cost-effective state management of Medicaid programs.

The Administration bill, expected later this month, may propose repeal of specific statutory requirements—as sought by NCSL—as well as giving the Secretary increased waiver authority. On two key issues—freedom of choice and reasonable cost requirements—the White House was leaning toward statutory repeal.

NCSL contacts: David Riemer, 202/624-5413; Kathy Brennan Wiggins, 202/624-5441.

Calendar

JUNE 1-3—CETA/Education Consortium Assembly, Hospitality House, Williamsburg, Virginia (Mary Lesler**)

JUNE 4—Rethinking Industrial Development Bonds: Alternatives for State Action, Hall of the States, Washington, D.C. (Susanne Hiegel**)

JUNE 18-19—Severance Taxation Seminar, Plaza Cosmopolitan, Denver, Colorado (Carl Tubbesing*)

JUNE 29-JULY 1—"Prisons Overcrowding: The Legislative Response," The Antlers, Colorado Springs, Colorado (Cathie Sample*)

JULY 27—Legislative Program Evaluation Workshop, Atlanta Hilton, Atlanta, Georgia (Vincent Brown*)

JULY 27-31—NCSL Annual Meeting, Atlanta Hilton, Atlanta, Georgia (Bonnie Kulaas*)

*Denver, 303/623-6600

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Dateline Washington

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Senate Ag Committee Rejects State Food Stamps "Workfare"

The Senate Agriculture Committee, led by Sen. Robert Dole (R-Ks.), has defeated a number of food stamp provisions supported both by the Administration and by committee Chairman Jesse Helms (R-N.C.), including a proposal to mandate state establishment of "workfare" programs. The food stamp spending cap remains unresolved.

The most significant defeat for the Administration came on a 14-3 vote

against reducing household benefits by the value of school lunches for those eligible under the School Lunch program. Also rejected was the Helms plan to reinstitute the purchase requirement.

While ignoring school lunches, the panel did decide to count money received for energy assistance as income in determining benefits. This is seen as a disincentive for states to provide added energy aid, since food stamp

benefits would be reduced \$3 for every \$10 of state or local assistance. The gross income level was set at 130 percent of poverty.

States are given the option of setting up workfare programs. They also can choose whether or not to use retrospective accounting and periodic reporting in FY82; after that, such procedures would be mandatory.

Mark-up in the House Agriculture Committee is expected to result in a bill that will win full NCSL approval. At press time, the panel had exempted federal, state and local energy assistance for use in determining benefit levels, decided to permit (not mandate) state workfare programs, and voted to allow state use of retrospective accounting and periodic reporting in FY82, with mandatory use in FY83. The committee would also mandate a Department of Agriculture study of such procedures as they relate to the Food Stamp program.

Although a House Agriculture subcommittee had already rejected the Administration's school lunch offset proposal and a funding cap, amendments on both issues were expected before mark-up was completed.

Floor action is not yet scheduled but state legislators are urged to contact their delegations to oppose likely floor amendments on: (1) the school lunch offset, (2) reinstatement of the purchase requirement and (3) counting state and local energy assistance payments in determining benefit levels.

NCSL contact: Joy Joanson Wilson, 202/624-5410.

House Spurns Administration Measure to Consolidate Older Americans Programs

The Administration's proposed three-year reauthorization of the Older Americans Act (S 1121) would consolidate social services, nutrition assistance and senior centers into a block to states, but the House Education and Labor Committee has already completed action to extend existing legislation until FY83.

Under the Administration plan, mandates requiring that half of state funding be spent on provision of access, legal and in-home services would be eliminated, as would the requirement that each state spend at least \$20,000 for a long-term care ombudsman program. The installation of security devices in the homes of elderly persons is also added as an eligible activity under the Act.

A similar measure (S 1086) introduced by Sen. Jeremiah Denton (R-AI), chairman of the Senate Subcom-

mittee on Aging, Family and Human Services, provides for a three-year extension of the Title V Community Services Employment program, rather than the one-year extension sought by the Administration. *NCSL favors Denton's three-year proposal.*

In approving extension of the existing legislation, the House Committee added amendments to:

- permit a 20 percent shift in funds between programs, rather than consolidating them;
- elevate the Commissioner on Aging to Assistant Secretary; and
- increase Community Services Employment authorizations from \$277 million to \$350 million.

Mark-up of the Senate legislation was expected at press time.

NCSL contact: Joy Joanson Wilson, 202/624-5410.

National Conference of State Legislatures

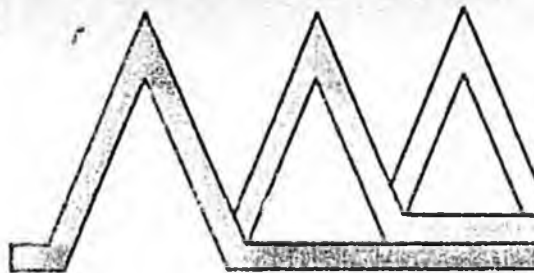
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Date: September 21, 1981

To: **Hazardous Materials Committee** Members

From: Leah Brumer, Committee Staff *Leah*

Subject: Committee Minutes from August 24-26, 1981 Meeting

Enclosed are the minutes from the Committee's Reno meeting. I have also attached copies of relevant resolutions passed by the full Conference.

The next Committee meeting will be held December 8 and 9, 1981, in Santa Fe, New Mexico. Please reserve these dates. An agenda and additional information will follow.

I look forward to seeing you in Santa Fe.

Composed of Legislators representing the following States:

Alaska • American Samoa • Arizona • California • Colorado • Commonwealth of the Northern Mariana Islands
Hawaii • Idaho • Montana • Nevada • New Mexico • Oregon • Utah • Washington • Wyoming

Hazardous Materials Committee Meeting Minutes

Western Conference Annual Meeting
Reno, Nevada

August 24, 1981
1:30 p.m. - 4:30 p.m.

The meeting was opened by Senator Lawrence E. Jacobsen (Nevada), Chair. He advised the committee that at the conclusion of the meetings, the pending resolution from last year's meeting would be acted on, and a Vice-Chair for the committee selected. The committee was to hear from a panel whose topic of discussion would be "Who Does What" in regulating hazardous materials. Some concerns to be addressed would be public awareness, economics, public land issues, care and maintenance (legislative role) and interstate cooperation and agreements (executive).

Panel

Robert Nelson, Director, Waste Management Project Office, Nevada Operations Office, U.S. Department of Energy (Las Vegas, Nevada) explained the Department's responsibilities (non-regulatory) and the commercial activities: low level hazardous waste disposal, research and development, sites-repository, test facilities, National Waste Terminal Storage Program (overseeing role of DOE) and state grants program.

Bruce W. Church, Director, Health Physics Division, Nevada Operations Office, U.S. Department of Energy (Las Vegas, Nevada), gave a briefing on the DOE's policy and criteria for shipping/packaging of low level radioactive material, and the emergency response procedures.

Dean Kunihiro, Regional State Liaison Officer, Nuclear Regulatory Commission, Region V (Walnut Creek, CA), gave a briefing and video presentation on the NRC's authority for hazardous materials.

Lawrence A. Wapensky, Chief, Hazardous Waste Facilities Section, U.S. Environmental Protection Agency, Region VIII, gave a presentation on the EPA's regulatory authority, which was established in the Resources Conservation Recovery Act.

There was a discussion period and the committee recessed.

After the recess, the committee was shown film from the Department of Transportation concerning the shipment of hazardous materials.

There was further discussion and Senator Jacobsen highlighted the following points for the members' consideration:

1. Communications - Who, What, When, Where.
2. State's Rights vs. Federal law-policy.
3. Responsibility.
4. Federal Grants (DOE) - Superfund (EPA).
5. Time Frames - NRC, DOE, EPA.
6. Chemical Hazardous Wastes - Review State Responsibility.
7. Definition of Hazardous and Radioactive Material.
8. Cooperative State efforts in Routes.
9. State/Local expertise in Hazardous and Radioactive Materials Management - Block Grants?
10. Statement of intent for direction of Hazardous Materials Committee.

Senator Jacobsen announced that he wished to select the Vice-Chair, as he would need to work closely with that individual. Motion was made to that effect and unanimously approved.

The meeting was adjourned.

Hazardous Materials Committee Meeting Minutes

Western Conference Annual Meeting
Reno, Nevada

August 25, 1981
9:00 a.m. - 12:00 noon

Senator Jacobsen, Chair, opened the meeting. He advised the members that the committee would consider two resolutions (Preemption and Training) at the end of the meeting. The committee was to hear from a panel whose topic of discussion would be the federal role in hazardous material incidents.

Panel

Jake Mackenzie, Director, Surveillance and Analysis Division, Region IX, U.S. Environmental Protection Agency, gave a presentation on the EPA's Superfund, which is for clean up of chemical waste and abandoned hazardous waste, and response in emergency situations.

Gerald R. Schimke, Project Specialist, Toxic and Hazardous Materials Project, California Office of Emergency Services, gave a presentation of effective state emergency response plans.

Richard L. Hanneman, Director, Government and Public Affairs, National Solid Wastes Management Association, gave a presentation on responding to environmental emergencies.

J. Vance Hughes, Chief, Policy and Legislation Section, Land and Natural Resources Division, U.S. Department of Justice, gave a presentation on the federal approach to liability and enforcements on hazardous materials clean-ups.

Committee Action

Senator Jacobsen moved that last year's Resolution No. 2 (Supplementary Agreement(s) for Regional Solutions to Problems of Low-Level hazardous waste) be sunsetted. There was an objection and a motion to revise the resolution to be ongoing. There being no objection, the committee recommendation was modification of the resolution.

Resolution No. 1 (Training) was before the committee. Motion was made to amend the resolution to give reference to the Department of Transportation and have it go to the Secretary of Transportation. There being no objection, the resolution was adopted with the amendment.

Resolution No. 2 (Pre-emption) was before the committee. The resolution was unanimously adopted.

Senator Jacobsen instructed the staff to draft a letter of policy/intent for direction of the committee through the coming year containing the points of interest from the previous meeting.

The Chair advised that he had chosen Representative Randy Phillips of Alaska to be Vice-Chair of the Hazardous Materials Committee. There was a nominating motion and Representative Phillips was unanimously voted Vice-Chair.

Senator Jacobsen announced that the next meeting of the committee would be in New Mexico with the Executive Committee.

There being no further business, the meeting was adjourned.



WESTERN CONFERENCE

THE COUNCIL OF STATE GOVERNMENTS

165 POST STREET, 5th FLOOR

SAN FRANCISCO, CALIFORNIA 94108

(415) 986-3760

RESOLUTION NO. 81-19:

FEDERAL PRE-EMPTION OF STATE LAWS AND REGULATIONS

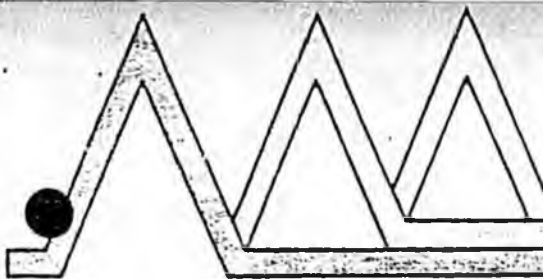
WHEREAS, serious issues of federalism are raised by federal pre-emption of state prerogatives in issues of transportation, resource utilization, and regulation thereof; and

WHEREAS, state government finds itself burdened with administering federal programs in times of declining resources;

NOW, THEREFORE, BE IT RESOLVED by the Western Conference of the Council of State Governments that the United States Congress and particularly the Senate Committee on Intergovernmental Relations hold hearings on the issue of pre-emption of state responsibility by the federal government.

Comprised of Legislators, representing the following States:

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RESOLUTION NO. 81-20 :

TRAINING FOR HAZARDOUS AND RADIOACTIVE MATERIAL EMERGENCY RESPONSE

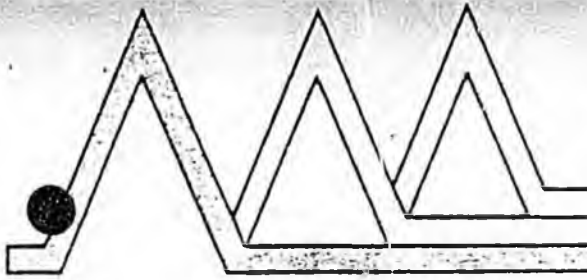
WHEREAS, the generation, transportation and disposal of hazardous materials poses grave threats to life, property and the environment; and

WHEREAS, lack of training for carriers, regulators, and emergency response persons has been determined to be the single greatest and most correctable problem in protecting the public from hazardous materials incidents;

NOW, THEREFORE, BE IT RESOLVED by the Western Conference of the Council of State Governments that the President of the United States and Congress be urged to require the United States Department of Transportation to establish two hazardous materials training centers, one in Federal Region IX and one in Federal Region X.

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(415) 966-3760

RESOLUTION NO. 81-21:

SUPERFUND MONIES FOR LOCAL TRAINING

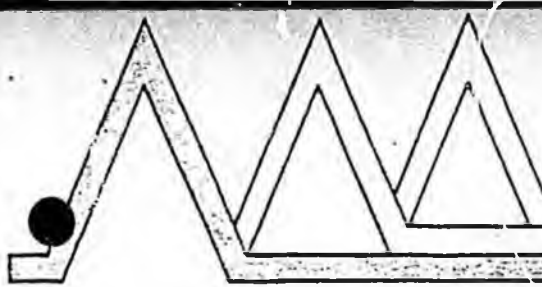
WHEREAS, the generation, transportation and disposal of hazardous materials poses grave threats to life, property and the environment; and

WHEREAS, lack of training for carriers, regulators, and emergency response persons has been determined to be the single greatest and most correctable problem in protecting the public from hazardous materials incidents;

NOW, THEREFORE, BE IT RESOLVED by the Western Conference of the Council of State Governments that the President of the United States and Congress be urged to allow superfund monies to be expended by state governments to provide local training for emergency response.

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(415) 986-3760

RESOLUTION NO. 81-22

SUPPLEMENTARY AGREEMENT(S) FOR
REGIONAL SOLUTIONS TO PROBLEMS OF HAZARDOUS,
CHEMICAL, TOXIC, AND RADIOACTIVE MATERIALS

WHEREAS, such activities as medical care, research, industrial processes, nuclear power production, and military work results in the production of hazardous, chemical, toxic and radioactive materials; and

WHEREAS, the need for safe hazardous, chemical, toxic and radioactive materials disposal will remain, and indeed is expected to grow in the years ahead; and

WHEREAS, the Western states realize that many of the activities within their borders which result in the production of hazardous, chemical, toxic and radioactive materials benefit their citizens; and

WHEREAS, the Western states wish to continue such benefits while realizing the responsibility each state has in seeing to the safe production, packaging, transportation and disposal of these materials; and

WHEREAS, the Western Conference of the Council of State Governments recognizes its responsibility to help prepare, maintain, and implement regional plans for carrying out the duties, powers or functions and to undertake responsibilities imposed or necessarily involved with regional participation pursuant to such cooperative programs of the federal government as are useful to the member states; and

WHEREAS, it is vitally important that the states, on a regional basis, take the initiative in exploring workable solutions to the disposal question; and

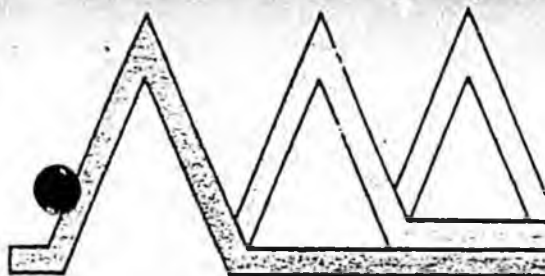
WHEREAS, it is imperative that states devise regional working relationships they deem appropriate without federal mandating or coercion;

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NOW, THEREFORE, BE IT RESOLVED that the Western Conference of the Council of State Governments recommends establishment, by executive agreement, of a supplementary agreement(s) to develop regional solutions to problems of hazardous, chemical, toxic and radioactive materials including the development and proposal of such interstate agreement or compact language as may be deemed appropriate, in consultation with the legislatures which must ultimately approve such an agreement or compact; and

BE IT FURTHER RESOLVED that the supplementary agreement be developed in full coordination with related dangerous material activities that may be carried on by the Western Conference of the Council of State Governments and other appropriate organizations.



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(415) 986-3760

RESOLUTION NO. 81-23

EXECUTIVE/LEGISLATIVE COOPERATION ON DEVELOPING AND APPROVING REGIONAL COMPACTS FOR HAZARDOUS WASTE DISPOSAL

WHEREAS, such activities as medical care, research, industrial processes, nuclear power production, and military work results in the production of hazardous wastes in each state; and

WHEREAS, the need for safe hazardous waste disposal will remain, and indeed is expected to grow in the years ahead; and

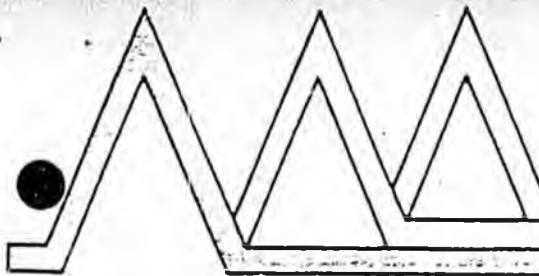
WHEREAS, the Western States wish to improve their capabilities with respect to the safe packaging, transportation and disposal of low-level hazardous waste; and

WHEREAS, hazardous wastes are generally defined as low level radioactive wastes and chemical wastes;

NOW, THEREFORE, BE IT RESOLVED that the Western Conference of the Council of State Governments strongly endorses state executive/legislative cooperation in developing and approving regional compacts for hazardous waste disposal.

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RESOLUTION NO. 81-24

INVENTORIES AND STANDARDS FOR DISPOSAL

WHEREAS, The federal mandate requires state participation in regional compacts for disposal of low-level radioactive wastes; and

WHEREAS, Participation by individual states in compacts must be approved by Congress; and

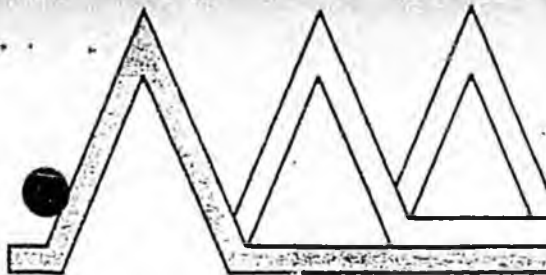
WHEREAS, No present state-by-state inventory of generators is available even though purchase of radioactive materials is a matter of record; and

WHEREAS, No criteria for construction of low-level radioactive disposal facilities have been developed at the federal level;

NOW, THEREFORE, BE IT RESOLVED by the Western Conference of the Council of State Governments that the Nuclear Regulatory Commission and the U.S. Department of Energy develop inventories indigenous to each state and develop and make standards and criteria for construction of disposal facilities available to the states prior to congressional action on any proposed regional compact.

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SAN FRANCISCO, CALIFORNIA 94108

(415) 966-3760

RESOLUTION NO. 81-25

BLOCK GRANTS

WHEREAS, states feel inferior in their relationships with the Federal Government in the field of hazardous waste management, the result being conflict and not cooperation; and

WHEREAS, given adequate technical expertise and equipment and improved training of personnel, the states can manage hazardous waste regulation in an effective manner; and

WHEREAS, the best regulation of hazardous waste will result from cooperation between the states and the Federal Government acting as equals;

NOW, THEREFORE, BE IT RESOLVED, by the Western Conference of the Council of State Governments that the Federal Government provide block grants to the states to improve management of hazardous waste programs, to acquire technical expertise and equipment and to train personnel so that a competent and technically sophisticated hazardous waste program can be developed by the states.

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WESTERN CONFERENCE

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SAN FRANCISCO, CALIFORNIA 94108

(415) 986-3760

October 14, 1981

To: Members, Hazardous Materials and Transportation Committees ←

From: Leah Brumer and Claudia Marseille, Committee Staff

Subject: Hazardous Materials Transportation Act, S. 960 and H.R. 3403

In late September or early October, the Senate will consider S. 960, the Hazardous Materials Transportation Act, sponsored by Senator Howard Cannon (D-Nev.), which would assist states and localities in preventing and responding to accidents involving the transportation of hazardous materials. (Transportation of radioactive waste is not covered in the bill). As now drafted, S. 960 does not preempt state and local laws regarding transportation of hazardous materials. Section 116 of the bill (see copy enclosed), however, would authorize the Secretary of Transportation to determine within 18 months whether it is necessary to issue regulations regarding the routing and transportation of hazardous waste materials.* The National Governors' Association, the National Conference of State Legislatures, and numerous other state and local associations that oppose preemptive federal standards for hazardous materials believe that Section 116 is intended to signal DOT that Congress would not object if the Secretary issued preemptive regulations for hazardous wastes.

Further, Senator John Danforth (R-Mo.) may propose an amendment to S. 960 that would specifically preempt state and local requirements for the transportation of hazardous materials (see draft enclosed), even if these requirements were more stringent than the federal law. Senator Danforth is the Chairman of the Surface Transportation Subcommittee that held hearings on S. 960, during which the trucking industry advocated federal preemption of state and local hazardous materials regulations. The rail and chemical industries also support preemption. Under the proposed Danforth Amendment, if DOT determined that the state requirement were consistent with the federal regulations, DOT could exempt that state from preemptive federal standards.

If you wish to comment on S. 960 or the proposed Danforth Amendment, please send your remarks to your own delegation; to Senator Cannon, 259 Russell Building, Washington, D.C. 20510; and to Senator Danforth, 460 Russell Building, Washington, D.C. 20510.

*As you know, DOT issued regulations on January 19 (see Federal Register p. 5298 to p. 5318), which preempted state and local radioactive waste regulations.

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Hazardous Materials and Transportation Committees
October 14, 1981
Page 2.

In a related development, Senator William Proxmire (D-Wis.) has drafted two amendments to S. 960 involving transportation of radioactive waste. One amendment (see Proxmire Amendment 1 attached) would overturn the DOT radioactive waste regulations issued in January 1981 by allowing states to require shippers to provide information about transports passing through their jurisdictions and by permitting states and localities to impose certain restrictions on the transportation of radioactive waste. The other amendment (See Proxmire Amendment 2 attached) would authorize the Secretary of Transportation to establish a panel to study and to make recommendations within two years on the appropriate local, state, and federal roles in hazardous materials routing, pre-notification, and emergency and enforcement activities. The 1981 regulations would be precluded from going into effect until that study is completed. If you wish to comment on these proposals, please send your remarks to your own delegation and to Senator Proxmire, 5241 Dirksen Building, Washington, D.C. 20510, with a copy to us as well.

In the House, on May 4, the House Commerce and House Public Works Committees approved H.R. 3403, the Hazardous Materials Transportation Act, which is similar to S. 960. Its sponsor is Representative James Florio (D-N.J.). As now drafted, the bill does not have a section comparable to Section 116 of the Senate version but a preemption amendment may be offered.

~~REQUEST FOR PROPOSALS~~

Battelle

I General Information for the Contractor

I-1 PURPOSE. This request for proposals (RFP) provides interested contractors with sufficient information to prepare and submit proposals on the State of Alaska's need for a review of regulatory practices relating to storage of toxic and hazardous materials.

I-2 ISSUING OFFICE. This RFP is issued for the State by the Department of Environmental Conservation. The Division of Environmental Quality Management, in Juneau, is the Issuing Office (Pouch O, Juneau, AK, 99811, 465-2636). The Issuing Office is the sole point of contact in the State for this RFP.

I-3 PROBLEM STATEMENT. A variety of studies related to petrochemical development in Alaska have been carried out over the past year. The public has expressed concern over the environmental problems associated with the use and production of hazardous materials. These concerns were raised at a series of public meetings on petrochemical issues which were held by the State during this past year.

There are many Federal statutes which regulate hazardous wastes and substances. These include the Resource Conservation and Recovery Act (RCRA), Toxic Substances Control Act, Department of Transportation regulations and the Clean Water Act. These and other laws seek to protect the public and the natural environment from dangerous materials which may be used or produced in industrial and commercial activities. In addition, the Department of Environmental Conservation was given the authority during the last session of the Legislature to develop a program to regulate the generation, transport and disposal of hazardous wastes in Alaska. This Department is preparing implementing programs and regulations under this authority.

However, these regulations are each designed to cover specific circumstances. While not all circumstances may need to be regulated, there may be areas where additional regulations would be prudent. For instance, some hazardous or toxic materials may be regulated only when they become wastes, but not while they are stored or transported for other industrial or commercial purposes. Also, not all hazardous or potentially hazardous materials may be subject to regulation during production or use.

The purpose of this project is to provide the State with a written evaluation of existing and proposed Federal and State regulations on the storage, transportation and handling of hazardous materials not classified as wastes.

Particular attention should be paid to on-site storage of materials used or generated during the manufacturing processes. This Department's concerns relate to protecting the public and the natural environment from dangerous materials. This does not categorically exclude direct manufacturing employee exposure problems, however that is not the emphasis of this project. The materials should be restricted to those associated with petrochemical development or other oil and gas related developments.

The objectives of this project are to:

- evaluate existing and proposed Federal and State laws and regulations,
- identify gaps in the regulatory structure,
- identify approaches used in other parts of the United States,
- identify the need for further actions or regulations within Alaska; and,
- if necessary, identify regulatory options for consideration by the State.

The results of this project will be used by the agency in their ongoing evaluation of Alaska's toxic and hazardous materials program. The contract will not exceed \$12,000 and it is proposed to last no longer than six months.

I-4. TYPE OF CONTRACT. It is proposed that, if a contract is entered into as a result of this RFP, it will be an environmental studies type 10 contract. Negotiations may be undertaken with those contractors whose proposals show them to be qualified, responsible and capable of performing the work. The contract that may be entered into will be that most advantageous to the State, price and other factors considered. The State reserves the right to consider proposals or modifications thereof received at any time before award is made, if such action be in the interest of the State.

I-5. REJECTION OF PROPOSALS. The State reserves the right to reject any and all proposals received as a result of this RFP, or to negotiate separately with any source whatsoever in any manner necessary to serve the best interests of the State. This RFP is made for information or planning purposes only. The State does not pay for the information solicited or obtained through this RFP.

Task 1 Evaluate current laws and regulations:

Identify laws and regulations to be evaluated; these are subject to Department of Environmental Conservation approval.

Restrict evaluation to those laws regarding manufacture, use, storage and transportation of hazardous materials. Hazardous wastes management should not be included in the evaluation.

EPA listings of hazardous and toxic materials should be used as guidelines; or, with Department approval, other listings that the contractor feels are appropriate. This listing is subject to Department approval. Pesticides and radioactive materials should not be included in the list.

A complete index and bibliography should be provided as part of the documentation.

Task 2 Identify regulatory gaps in the storage, handling and transportation of hazardous materials:

Document the gaps and the nature of the problem which could be expected to exist in Alaska regulatory structure.

Restrict evaluations to current developments, likely proposed developments and materials targeted in Task 1.

Task 3 Identify and evaluate approaches used in other states:

Identify states chosen for comparison. Justify their choice. This will be subject to Department approval.

Evaluate applicability of their approaches to Alaskan needs. Document all findings.

Task 4 Identify regulatory options should a need for other regulations be determined:

Document and justify need for all proposed actions, particularly as they relate to Alaskan needs.

Recommend a preferred approach and provide justification for that recommendation. Provide alternative approaches.

III-4 REPORTING REQUIREMENTS. The Contractor shall submit for review by the Project Officer the following required reports/materials in the quantities and the times listed:

- Monthly progress reports, with the monthly billings, detailing status of project to date by task and any problems. Progress reports should include a list of contacts made on each task. Five (5) copies of the monthly reports and two (2) of the monthly billings should be submitted each month.
- Draft final report within 4 months of contract effective date. Five copies are required.
- Final report within 6 months of contract effective date. Fifty copies of the final report are required.

III-5 STAFFING PLAN. For each of the tasks, the respondent should provide detailed information on the level of effort required and identification of staff working on the various tasks. The proposed staff should demonstrate experience in evaluating legal issues, familiarity with environmental regulations, familiarity with Alaskan issues, familiarity with the petrochemical analyses which have been underway, and their capability to review other state's regulatory structures. Resumes should be provided. Current commitments of proposed key personnel should be identified to assure availability. Past relevant experience on similar issues should be demonstrated for both the staff and the organization.

Project summaries of relevant experience should be brief and emphasize their relevance to the proposed project.

A contact person should be identified, giving name, phone number and address.

III-6 MANAGEMENT PLAN. A description of the management and conduct of this contract is required. It should contain general information on the organization and management processes of the firm and specific information on how this particular contract will be managed. Overall responsibility, daily contact person, allocation of staff time and fiscal responsibilities should be identified. Also, allocation of management, research and support services time should be identified.

III-7 COST PROPOSAL. A separately bound cost proposal should be provided. It should include: an official offer to undertake the proposed project at the quoted price, general financial and business information about the respondents, and a detailed explanation of the quoted price. The official offer should include a commitment to perform all financial

responsibilities relative to the performance of the proposed contract including submitting all vouchers, accounting for all funds, making all disbursements. The offer should be valid for at least 60 days.

The cost proposal should provide a breakdown of expenses by line item budget and task.

III-8 Contract manager and RFP contact is Deborah Kirk, Petrochemical Coordinator, State of Alaska Department of Environmental Conservation, Pouch 0, Juneau, Alaska, 99811.

DRAFT

ALASKA
HAZARDOUS WASTE PROGRAM

INTRODUCTION

In a report to Congress in 1973, the U. S. Environmental Protection Agency recommended passage of a federal law to regulate hazardous waste. Existing legislation was adequate to protect the air, surface waters, and oceans from improper disposal of hazardous waste, but there were no controls over its disposal on land. Moreover, the air and water pollution laws requiring industry to adopt acceptable treatment and disposal practices increased the amount of hazardous waste being disposed on the land.

Congress responded by including hazardous waste provisions in the Resource Conservation and Recovery Act (RCRA). The Alaska Department of Environmental Conservation is writing hazardous waste regulations incorporating many of these provisions, as well as addressing the specific needs and problems in Alaska.

What Is A Hazardous Waste?

The 1981 Alaska Statutes define hazardous waste as follows:

"Hazardous waste" means a waste or combination of wastes which, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may:

- a) cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating illness; or
- b) pose a substantial present or potential hazard to human health or the environment when improperly managed, treated, stored, transported, or disposed.

Some common hazardous wastes are acids, bases, heavy metals, industrial solvents, paint thinners, pesticides, and asbestos. Alaska also includes the management of PCBs in its hazardous waste program although they are not listed as hazardous wastes under RCRA.

A special category of hazardous waste is "acute" hazardous waste. These substances can be extremely dangerous even in very small quantities and require specific management considerations. Some common acute hazardous wastes are cyanides, strychnines, pesticides, and some rat poisons.

DRAFT
3/31/82

Who Generates Hazardous Waste?

Virtually every manufacturing operation may generate some potentially hazardous byproduct. Small businesses such as metal plating and electroplating, battery reclamation, dry cleaners, and welders, all produce hazardous waste. Some reuse these wastes, precluding the need for disposal. Petroleum development and processing, and military activities are major generators of hazardous waste in Alaska. Agricultural, medical, and research activities generate hazardous waste, such as pesticides, pathological and radioactive wastes.

A recent Department report indicates that approximately 8,000 tons of hazardous waste are produced annually in the state. About 500 tons per year are generated by the Alaska public and small commercial businesses. The industrial sector generates an estimated 3,900 tons per year, and the military produces nearly 4,000 tons per year.

Most of the hazardous waste generated, approximately 70%, comes from central Alaska, particularly Anchorage and Kenai, while 28% comes from the northern region, primarily Prudhoe Bay.

As population and economic diversification increase in Alaska, the amount of hazardous waste generated is expected to increase.

How is Hazardous Waste Disposed of?

Hazardous waste must be disposed of in specially designed facilities, called secure landfills, which are staffed, and equipped to prevent adverse effects on the environment and health. There are no approved facilities for hazardous waste disposal in Alaska. Generators of hazardous waste must take wastes out of the state for disposal. This is costly and the farther they must be transported the more opportunities there are for accidents.

To date two to four tons of Alaska's hazardous waste have reportedly been shipped to a special waste disposal facility in Oregon. This means that almost all of Alaska's hazardous waste remains in the state. Although some of it is being stored, reused or recycled, at least a portion of it may be disposed of improperly.

How Can Hazardous Waste Cause Problems?

Improper handling of hazardous waste can contaminate ground water and surface waters, pollute the air, burn or explode, cause poisoning through the food chain, or cause poisoning or injury through direct contact. Negligence in storage, transport, or disposal can result in damage to natural resources, loss of property, personal injury or illness, even death. Environmental damage and health problems caused by hazardous waste may not be evident for months, or in many cases, years after the initial incident. Thus proper handling must be ensured, through strict regulations and enforcement.

WHAT IS THE PROPOSED STATE OF ALASKA PROGRAM FOR HAZARDOUS WASTE MANAGEMENT?

The Department is responsible for the regulation, administration and enforcement of the hazardous waste program in Alaska. Its program activities will be closely coordinated with other agencies, particularly: 1) the U. S. Department of Transportation to regulate the transport of hazardous materials, 2) the State Troopers, to assist in cleanup and enforcement activities; and 3) local fire departments to assist in cleanup activities.

The goal of the hazardous waste program is the preservation of public health, environmental quality, and the conservation of resources through proper management of hazardous waste.

The objectives of the Department to accomplish that goal are to:

1. Provide information and assistance to minimize the amount of hazardous waste generated in Alaska.
2. Create a public information program to increase public awareness concerning hazardous waste.
3. Strengthen communication with industry and implement a technical assistance program by September 1982.
4. Monitor and track regulated hazardous waste activities by December 1982.
5. Establish an effective emergency response system for the prompt cleanup of discharges involving hazardous waste by December 1982.
6. Conduct a comprehensive inventory to locate regulated hazardous waste generators in the state and review the volume and characteristics of waste produced by January 1983.
7. Determine the need for a hazardous waste disposal facility in Alaska by September 1983, and, if needed, establish an effective disposal system by December 1986.
8. Train and certify transporters of hazardous waste in the State by December 1983.
9. Develop a system by which hazardous waste can be exchanged, recycled or reused in the state by December 1984.
10. Bring regulated generation, transportation, storage, treatment, and disposal activities into compliance under state regulations and standards by January 1986.

11. Locate and clean up all known abandoned hazardous waste disposal sites by December 1987.
12. Increase enforcement efforts on improper management of hazardous wastes which threaten the people and environment.

Who Would Be Regulated by the State's Hazardous Waste Program?

A. Generators of 1,000 kilograms per month or more of hazardous waste and one kilogram or more of acute hazardous waste must meet federal requirements. However, in Alaska there are a number of small businesses which also generate hazardous waste. Although they each produce waste in small quantities, improper disposal of these wastes could be dangerous. For this reason the Department proposes that small generators keep records of the type and amount of hazardous waste disposed of and the location of the disposal site. It is also proposed that all state regulated hazardous waste be deposited in a permitted solid waste landfill. Small generators would be defined as: 1) those which produce 100-999 kilogram per month or 1,000 kilograms or more per year of any combination of hazardous wastes, and 2) those which produce 100 grams per month or 1,000 grams or more per year of acute hazardous waste. Activities generating less than these amounts would still be required to meet general state requirements for the preservation of health and environmental quality.

B. Transporters of 100 kilograms of hazardous waste, or 100 grams of acute hazardous waste in a single load.

C. All Treatment Facilities.

D. Storage Facilities storing 1,000 kilograms or more for over 90 days.

E. All Disposal Facilities accepting wastes from generators described in "A" above.

Technical Assistance

The Department will assist industry, the military, and small businesses to minimize the amount of waste generated. They will also assist in the design, construction, and operation of facilities to prevent accidental discharges. The Department is also proposing to establish a waste exchange newsletter to promote recycling of potential hazardous waste.

The Department's philosophy on this and other programs is to emphasize information and technical assistance to enable compliance with state standards. Enforcement actions will be taken when these initial efforts to prevent or remedy a problem have failed.

Permitting, Certification, Identification Numbers.

All regulated hazardous waste activities (generation, transport, disposal, treatment, storage) must have a federal identification (ID) number. Small generators regulated only by the Department would be required to have a state ID number. The ID number would be assigned primarily to identify and record specific information about hazardous waste activities in the state.

Truck drivers transporting hazardous waste would be required to attend Department approved safety training course and receive certification. The course would then enable transporters to be more knowledgeable about the dangers and precautions associated with the wastes they are carrying and procedures to follow in the event of an accidental discharge.

Operators who store, treat, transport or dispose of regulated amounts of hazardous waste, in any amount, would be required to obtain a state permit. Generators would not be required to obtain a permit unless they also store, treat, transport, or dispose of hazardous waste.

Hazardous Waste Tracking and Reporting System

The federal government has developed a manifest system to identify and track waste from "cradle to grave". This system is designed to prevent improper management of wastes and identify problem areas. The manifest system is being adopted by the State of Alaska. Generators, transporters, storage, treatment, and disposal facilities will participate in the manifest program. This system will require the person who generates a regulated quantity of hazardous waste to complete the manifest form. This form will accompany the waste to final disposal. The final treatment or disposal facility operator will return copies of the manifest to the generator, to establish that the waste reached its proper destination, precluding improper disposal or storage.

A transporter, storage facility, treatment facility, or even a disposal facility can break the chain of improper hazardous waste management by refusing any waste not properly containerized or labeled or which is not accompanied by a properly completed manifest. Incidents should be immediately reported to the Department.

Generators will also be required to report to the Department the nonarrival of any waste sent to a designated disposal facility. The Department proposes that it be notified within 45 days for unreceived shipments to in-state facilities, and within 90 days for shipments made to out-of-state facilities.

Generators, transporters, and operators of storage, treatment, and disposal facilities will be required to keep accurate records of their activities and make these records available for inspection by the Department at all times. It is proposed that a yearly report would be required of generators producing over 100 kilograms per month of hazardous waste or 100 grams per month of acute hazardous waste. Transporters and operators of treatment, storage, or

disposal facilities would also be required to file this report. The report would consist primarily of a tabulation of information from the manifests used throughout the year. A quarterly report would be required for any hazardous waste disposal facility constructed and operated in Alaska. Report information would be used to analyze volumes and types of waste generated, identify problems, and ascertain future needs.

Emergency Response

When a spill of hazardous material occurs, it will be the responsibility of the persons or company handling it to assure that it is effectively cleaned up. The Department should be contacted immediately after an incident, and it is proposed that a written report be filed with the Department within seven days of the incident.

The Department is establishing an emergency response team composed of several regional office staff personnel and representatives in other concerned agencies, such as the Department of Transportation and the Environmental Protection Agency, who will be trained to quickly and effectively respond to all types of discharges of hazardous substances.

A toll-free number, Zenith 9300, the same used to report oil spills, is available in the event of an accidental discharge. Transporters, police, and fire departments will be trained to take immediate action to prevent further or more serious damage from a discharge until the response team can contain the incident and contact the appropriate cleanup company or responsible party.

PUBLIC INVOLVEMENT

The Alaska hazardous waste regulations are being written and the public will be actively involved in their review prior to adoption. Public hearings will be held and public documents, news articles, and newsletters will be written to explain the hazardous waste program, or to address specific issues of public concern. The Department will also coordinate its activities with other state, local, and federal agencies and environmental groups to make use of their expertise and to keep them informed of program plans.

A 10-15 person work group is proposed to assist in planning and decision-making, especially with regard to disposal facility siting and regulation development. The Department will ask industry, government agencies, environmental groups, and other interested organizations to select representatives to participate in this work group.

For further information about hazardous waste management or the state's hazardous waste management program, contact:

Hazardous Waste Management
Department of Environmental Conservation
Pouch 0
Juneau, Alaska 99811
(907) 465-2666

To report emergencies, problems or incidents call:

TOLL FREE NUMBER: Zenith 9300

Regional offices:

Southcentral Regional Office
437 E Street
Anchorage, Alaska 99501
(907) 274-2533

Northern Regional Office
P. O. Box 1601
Fairbanks, Alaska 99707
(907) 452-1714

Southeast Regional Office
P. O. Box 2420
Juneau, Alaska 99803
(907) 789-3151

LOW LEVEL RADIATION
Compact Groupings & States as of March 30, 1982

EXHIBIT NO. 1

<u>Midwest</u>	<u>Northwest</u>	<u>Central States</u>	<u>Rocky Mountain</u>	<u>Southeast</u>	<u>Mid-Atlantic</u>	<u>Northeast</u>	<u>Unaffiliated States</u>
Illinois	Alaska	Arkansas	Arizona	Alabama-i	Delaware	Connecticut	California
Indiana	Hawaii-i	Iowa*-i	Colorado-i	Florida-p	Kentucky*	Maine	Texas
Iowa*	Idaho-e	Kansas*-p	Nevada	Georgia-p	Maryland	Massachusetts	
Kansas*	Montana	Louisiana	New Mexico-i	Mississippi-i	North Carolina	New Hampshire	
Kentucky*	Oregon-e	Minnesota*	Wyoming*	North Carolina	Puerto Rico	New Jersey	
Michigan	Utah-e	Missouri*-i		South Carolina-i	Virgin Islands	New York	
Minnesota*	Washington-e	Nebraska*		Tennessee-i	Virginia*-p	Pennsylvania	
Missouri*	Wyoming*	North Dakota*		Virginia*-p	Washington, D.C.	Rhode Island	
Nebraska*		Oklahoma			West Virginia	Vermont	
North Dakota*							
Ohio							
South Dakota							
Virginia*							
Wisconsin							

KEY:

*States eligible for more than one region
 p-Passed both houses
 e-Enacted
 i-Introduced

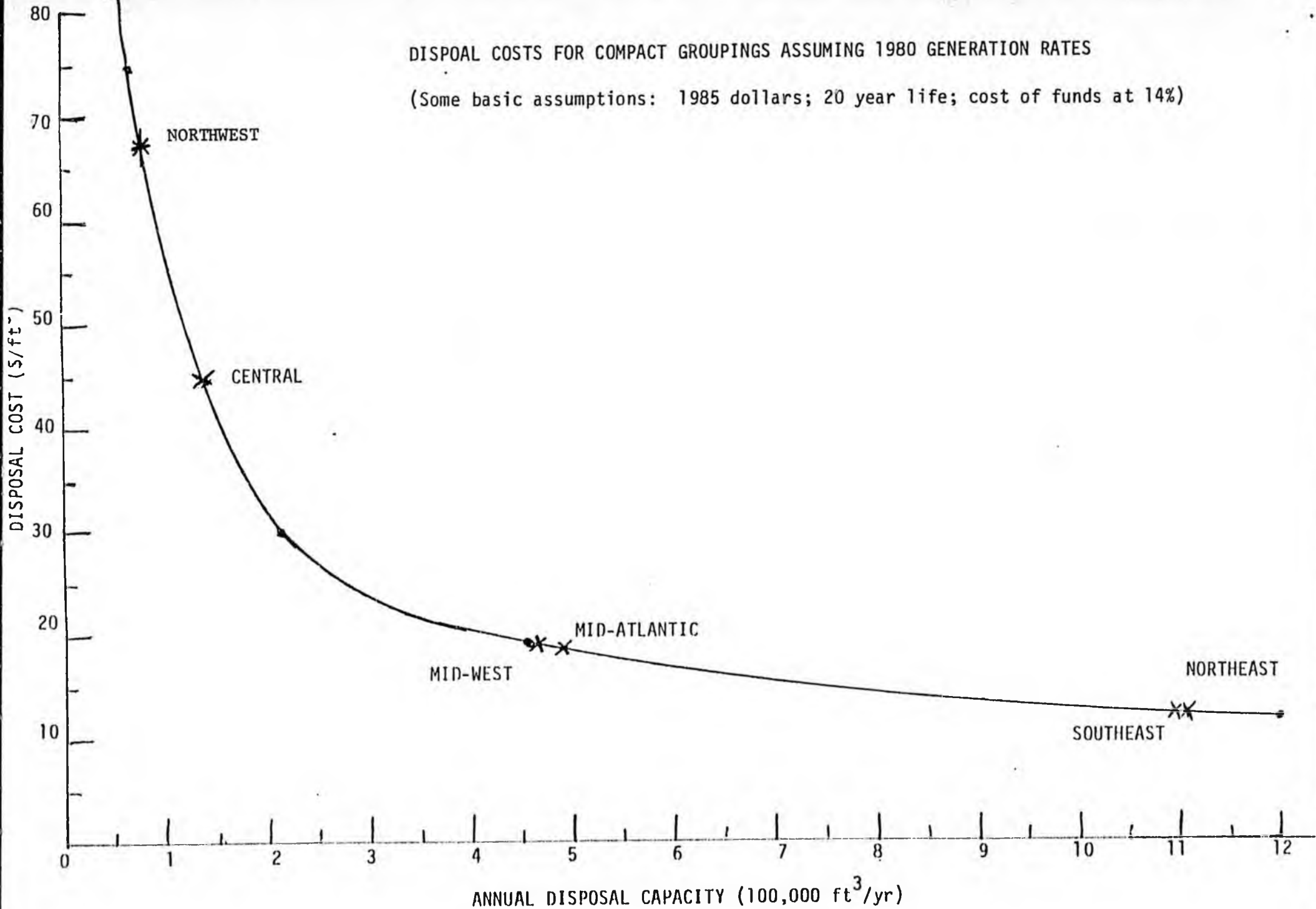
GENERATION RATE (1,000 ft³)

<u>COMPACT</u>	<u>STATES</u>	<u>1979</u>	<u>1980</u>	<u>1985</u>	<u>1990</u>	<u>1995</u>	<u>2000</u>
Rocky Mountain	AZ,CO,NV,NM	13	12	71	102	104	108
Northwest	AK,HI,ID,MT,OR,UT,WA,WY	78	78	146	269	276	300
Central	AR,IA,KS,LA,MN,MO,NB,ND,OK	137	143				
Mid-West	IL,IN,MI,OH,WI	367	464				
Mid-Atlantic	DE,DC,KY,MD,NC,VA,WV,PR,VI	387	499				
Southeast	AL,FL,GA,MS,SC,TN	593	1,097				
Northeast	CT,ME,MA,NH,RI,VT/NJ,NY,PA	1,043	1,110				
----- California	CA	153	61	173	187	200	216
Texas	TX	19	75				

ROCKY MOUNTAIN

DISPOAL COSTS FOR COMPACT GROUPINGS ASSUMING 1980 GENERATION RATES

(Some basic assumptions: 1985 dollars; 20 year life; cost of funds at 14%)



Fred Miller
Potomac Alliance
1743 Q Street, N.W.
Washington, D.C. 20009
(202) 232-3149

II

Calendar No. 123

97TH CONGRESS
1ST SESSION

S. 960

[Report No. 97-99]

To amend the Hazardous Materials Transportation Act to encourage a greater effort in the prevention and response to transportation incidents involving hazardous materials, to provide assistance to State and local governments in preventing and responding to such incidents, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 9 (legislative day, FEBRUARY 16), 1981

Mr. CANNON introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

MAY 15, 1981

Reported, under authority of the order of the Senate of May 13 (legislative day, April 27), 1981, by Mr. PACKWOOD, with an amendment and an amendment to the title

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the Hazardous Materials Transportation Act to encourage a greater effort in the prevention and response to transportation incidents involving hazardous materials, to provide assistance to State and local governments in preventing and responding to such incidents, and for other purposes.

1 REPORTING SYSTEM AND DATA CENTER

2 SEC. 5. Section 100(d) of the Hazardous Materials
3 Transportation Act (49 U.S.C. 1808(d)) is amended—

4 (1) by inserting "(1)" immediately before "The
5 Secretary";

6 (2) by redesignating paragraphs (1), (2), and (3) as
7 subparagraphs (A), (B), and (C), respectively; and

8 (3) by adding at the end thereof the following new
9 paragraph:

10 "~~(2)~~ Nothing in this subsection shall be construed
11 to limit the authority of the Secretary to enter into a
12 contract with a private entity for use of a supplemental
13 reporting system and data center operated and main-
14 tained by such entity."

15 CONFORMING AMENDMENTS

16 SEC. 6. Sections 110, 111, and 115 of the Hazardous
17 Materials Transportation Act (49 U.S.C. 1809, 1810, and
18 1812) are amended by striking "title" wherever it appears
19 and inserting in lieu thereof "subtitle" in each such place.
20 *That this Act may be cited as the "Hazardous Materials*
21 *Transportation Act Amendments of 1981".*

22 FINDINGS AND PURPOSE

23 SEC. 2. (a) *The Congress finds that—*

24 (1) *the transportation of hazardous materials can*
25 *create severe hazards to the public safety;*

1 (2) such transportation is nonetheless essential to
2 commerce;

3 (3) in the interest of uniformity, the Hazardous
4 Materials Transportation Act provides for the preemp-
5 tion of State and local governmental regulation of haz-
6 ardous materials transportation to the extent it is not
7 consistent with Federal requirements and regulations;

8 (4) despite this preemption, when serious hazard-
9 ous materials incidents occur, it is the State and local
10 governments which necessarily have the primary re-
11 sponsibility for emergency response; and

12 (5) increased coordination and greater consistency
13 between the Federal Government and State and local
14 governments would assist in the prevention of hazard-
15 ous materials transportation incidents and in the over-
16 all ability of State and local governments to respond to
17 such incidents.

18 (b) It is the purpose of this Act to—

19 (1) promote the public safety by providing for in-
20 creased coordination among the various levels of gov-
21 ernment;

22 (2) encourage and assist State and local govern-
23 ments to play a major role in the prevention of hazard-
24 ous materials transportation incidents; and

1 . . . edge necessary to assist Federal, State, and local agen-
2 cies, and private organizations in training personnel in
3 safe and proper methods for the transportation of haz-
4 ardous materials and for the response to hazardous ma-
5 terials incidents;

6 “(E) take all necessary measures to improve the
7 coordination and effectiveness of all Federal, State,
8 local, and private training programs, including, to the
9 extent practicable, the establishment or the encourage-
10 ment of the establishment of regional training centers;

11 “(F) promote the development of and planning
12 for, coordinated and effective emergency response pro-
13 grams at State, local and regional levels for incidents
14 involving the transportation of hazardous materials;
15 and

16 “(G) encourage and assist States and political
17 subdivisions thereof in developing and implementing
18 programs for the enforcement of Federal rules, regula-
19 tions, standards, and orders issued pursuant to this
20 title and of consistent State or local rules, regulations,
21 standards, and orders relating to the transportation of
22 hazardous materials.”; and

23 “(G) by adding at the end of the subsection the fol-
24 lowing new paragraph:

1 “(2) Nothing in this subsection shall be construed to
2 limit the authority of the Secretary to enter into a contract
3 with a private entity for use of a supplemental reporting
4 system and data center operated and maintained by such
5 entity.”

6 ROUTING AND PRENOTIFICATION

7 SEC. 4. The Hazardous Materials Transportation Act
8 is amended by adding at the end thereof the following new
9 section:

10 “ROUTING AND PRENOTIFICATION

11 “SEC. 116. (a) Within 18 months after the date of en-
12 actment of this section, the Secretary shall, in consultation
13 with State, local, and regional governments; appropriate
14 Federal agencies; and other interested persons, determine
15 whether it is necessary and proper to issue regulations in
16 accordance with the provisions of this section and pursuant to
17 section 105 of this title with respect to the routing of hazard-
18 ous materials being transported in commerce. As part of such
19 study, the Secretary shall further determine a means of as-
20 suring adequate participation by State, local, and regional
21 governments in selecting preferred routes for transportation of
22 hazardous materials within their respective jurisdictions.

23 “(b)(1) Within 12 months after the date of enactment of
24 this section, the Secretary shall submit a report to the Con-
25 gress with respect to the feasibility, cost, desirability of estab-

1 lishing, and the problems and potential burdens on commerce
2 of implementing a prenotification system or systems which
3 would inform State or local governments in advance of the
4 timing, nature, and routing of hazardous materials shipments
5 through their jurisdictions.

6 “(2) In preparing such report, the Secretary shall con-
7 sult with State, local, and regional governments and with
8 appropriate Federal agencies, and shall seek the advice of
9 various groups interested in the safety of the transportation of
10 hazardous materials, including shippers, carriers, and users
11 of hazardous materials and bulk package or container manu-
12 facturers; organizations which represent employees engaged
13 in the transportation of hazardous materials; citizens’ and
14 environmental groups; and private organizations concerned
15 with transportation safety or the provision of emergency serv-
16 ices in response to a major accident involving the transporta-
17 tion of hazardous materials.

18 “(c) In order to acquire information in accordance with
19 this section, the Secretary may establish one or more demon-
20 stration projects.”

21 AUTHORIZATION OF APPROPRIATIONS

22 SEC. 5. Section 115 of the Hazardous Materials Trans-
23 portation Act (49 U.S.C. 1812) is amended by adding the
24 following new sentence at the end thereof: “There are author-
25 ized to be appropriated to carry out the provisions of this title

1 not to exceed \$8,332,000 for the fiscal year ending Septem-
2 ber 30, 1982 (including not less than \$1,000,000 for the
3 purposes of carrying out the provisions of subparagraphs (F)
4 and (G) of section 109(d)(1) of this title), and not to exceed
5 \$8,332,000 for the fiscal year ending September 30, 1983
6 (including not less than \$1,250,000 for the purp. of car-
7 rying out the provisions of subparagraphs (F) and (G) of
8 section 109(d)(1) of this title).”.

Amend the title so as to read: “A bill to amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal years 1982 and 1983, to encourage a greater effort in the prevention and response to transportation incidents involving hazardous materials; to provide assistance to State, local, and regional governments in preventing and responding to such incidents; and for other purposes.”.

AMENDMENT NO. _____ Ex. _____ Calendar No. _____

Purpose: _____

IN THE SENATE OF THE UNITED STATES— 97th Cong., 1st Sess.

S. 960 _____

H.R. _____ (or Treaty _____) SHORT TITLE

(title) To amend the Hazardous Materials Transportation Act to encourage a greater effort in the prevention and response to transportation incidents involving hazardous materials, to provide assistance to State and local governments in preventing and responding to such incidents and for other purposes.

() Referred to the Committee on _____ and ordered to be printed

() Ordered to lie on the table and to be printed

INTENDED to be proposed by PENDING APPROVAL BY RAJFOSCH _____

Viz: At the end of the bill, add the following new sections:

1 NATIONAL UNIFORM STANDARDS

2 Sec. 6. Section 101 of the Hazardous Materials Trans-
3 portation Act (49 U.S.C. 1801) is amended by inserting the
4 following immediately before the period at the end thereof;
5 "and to assure that laws, rules, regulations, orders and
6 standards relating to hazardous materials transportation
7 shall be nationally uniform to the extent practicable".

8 GUIDANCE TO STATE AND LOCAL GOVERNMENTS

9 IN FEDERAL REGULATIONS

10 Sec. 7. Section 105 of the Hazardous Material Trans-
11 portation Act (49 U.S.C. 1804) is amended by adding at the
12 end thereof the following new subsection:

13

1 "(d) CONSISTENCY. -- In issuing regulations pursuant to
 2 subsection (a) of this section, the Secretary ^{may} ~~shall~~ provide
 3 guidance as to whether any existing or potential requirements
 4 of a State or political subdivision thereof would be ⁱⁿ⁻ ~~be~~ consis-
 5 tent with ^{Such} ~~nationally uniform requirements or~~ regulations under
 6 section 112 of this Act."

7 REVIEW OF STATE AND LOCAL REQUIREMENTS

8 Sec. 8. Section 112 of the Hazardous Materials Transpor-
 9 tation Act (49 U.S.C. 1811) is amended by striking subsections
 10 (a) and (b), redesignating subsection (c) as subsection (e),
 11 and inserting the following new subsections:

12 "(a) GENERAL. -- Any requirement of a State or politi-
 13 cal subdivision thereof is preempted if it is determined under
 14 subsection (b) of this section to be inconsistent with any
 15 requirement set forth in this title or in a regulation issued
 16 under this title and not waived under subsection (c) of this
 17 section.

18 "(b) CONSISTENCY REVIEW. -- Any person affected by a
 19 requirement of a State or political subdivision thereof dealing
 20 with the transportation of hazardous materials may petition
 21 the Secretary, in accordance with procedures to be prescribed
 22 by regulation, for a review of that requirement. Upon re-
 23 ceiving a petition, and after affording interested parties
 24 notice and opportunity to comment, the Secretary shall deter-
 25 mine whether the requirement of such State or political sub-

1 division thereof is inconsistent with any requirement set forth
2 in this title, or in a regulation issued under this title. In
3 making such determination, the Secretary shall consider:

4 "(1) whether compliance with both the requirement under
5 review and the requirements of this title or the regulations
6 issued thereunder is possible;

7 "(2) whether the requirement under review conflicts with
8 the need for nationally uniform requirements, including, but not
9 limited to, whether the same subject matter is already covered
10 by Federal regulation;

11 "(3) whether the requirement under review creates an
12 undue burden on interstate commerce; and

13 "(4) the extent to which the requirement under review
14 is otherwise an obstacle to the accomplishment and execution
15 of this title or the regulations issued thereunder. *of the purpose*

16 "(c) WAIVER. -- In accordance with procedures to be
17 prescribed by regulation, the Secretary may, upon petition of
18 the State or political subdivision affected, waive preemption
19 of a requirement determined to be inconsistent under subsection
20 (b) of this section if he determines, after affording interested
21 parties notice and opportunity to comment, that the requirement
22 addresses a unique and compelling local concern of such mag-
23 nitude as to outweigh the considerations upon which the deter-
24 mination of inconsistency was based. The waiver shall remain
25 in effect until such time as the Secretary determines that
26 the basis for the waiver no longer exists.