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CHAPTER 115A

WASTE MANAGEMENT

CITATION, PURPOSE, AND DEFINITIONS

115A.01 CITATION.

Sections 115A.01 to 115A.72 shall be known as the waste management act of 1980.

History: *1980 c 564 art 1 s 1*

115A.02 LEGISLATIVE DECLARATION OF POLICY; PURPOSES.

It is the goal of sections 115A.01 to 115A.72 to improve waste management in the state to serve the following purposes:

(a) Reduction in waste generated;

(b) Separation and recovery of materials and energy from waste;

(c) Reduction in indiscriminate dependence on disposal of waste;

(d) Coordination of solid waste management among political subdivisions;

(e) Orderly and deliberate development and financial security of waste facilities including disposal facilities.

History: *1980 c 564 art 1 s 2*

115A.03 DEFINITIONS.

Subdivision 1. For the purposes of sections 115A.01 to 115A.72, the terms defined in this section have the meanings given them, unless the context requires otherwise.

Subd. 2. "Agency" means the pollution control agency.

Subd. 3. "Board" means the waste management board established in section 115A.04.

Subd. 4. "Cities" means statutory and home rule charter cities and towns authorized to plan under sections 462.351 to 462.364.

Subd. 5. "Collection" means the aggregation of waste from the place at which it is generated and includes all activities up to the time the waste is delivered to a waste facility.

Subd. 6. "Commercial waste facility" means a waste facility established and permitted to sell waste processing or disposal services to generators other than the owner and operator of the facility.

Subd. 7. "Construction debris" means waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition of buildings and roads.

Subd. 8. "Development region" means a region designated pursuant to sections 462.381 to 462.397.

Subd. 9. "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including ground waters.

Subd. 10. "Disposal facility" means a waste facility permitted by the agency that is designed or operated for the purpose of disposing of waste on or in the land.

Subd. 11. "Generation" means the act or process of producing waste.

Subd. 12. "Generator" means any person who generates waste.

Subd. 13. "Hazardous waste" has the meaning given it in section 116.06, subdivision 13.

Subd. 14. "Intrinsic hazard" of a waste means the propensity of the waste to migrate in the environment, and thereby to become exposed to the public, and the significance of the harm or damage likely to result from exposure of natural resources or the public to the waste, as a result of such inherent or induced attributes of the waste as its chemical and physical stability, solubility, bioconcentratability, toxicity, flammability, and corrosivity.

Subd. 15. "Intrinsic suitability" of a land area or site means that, based on existing data on the inherent and natural attributes, physical features, and location of the land area or site, there is no known reason why the waste facility proposed to be located in the area or site cannot reasonably be expected to qualify for permits in accordance with agency rules. Agency certification of intrinsic suitability shall be based on data submitted to the agency by the proposing entity and data included by the hearing examiner in the record of any public hearing on recommended certification, and applied against criteria in agency rules and any additional criteria developed by the agency in effect at the time the proposing entity submits the site for certification.

Subd. 16. "Legislative commission on waste management" or "legislative commission" means the commission established in section 115A.14.

Subd. 17. "Local government unit" means cities, towns, and counties.

Subd. 18. "Metropolitan area" has the meaning given it in section 473.121.

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Subd. 19. "Metropolitan council" means the council established in chapter 473.

Subd. 20. "Metropolitan waste control commission" or "waste control commission" means the waste control commission established in chapter 473.

Subd. 21. "Mixed municipal solid waste" means garbage, refuse, and other solid waste from residential, commercial, industrial, and community activities which is generated and collected in aggregate, but does not include auto hulks, street sweepings, ash, construction debris, mining waste, sludges, tree and agricultural wastes, tires, and other materials collected, processed, and disposed of as separate waste streams.

Subd. 22. "Natural resources" has the meaning given it in chapter 116B.

Subd. 23. "Person" has the meaning given it in section 116.06, but does not include the board.

Subd. 24. "Political subdivision" means any municipal corporation, governmental subdivision of the state, local government unit, special district, or local or regional board, commission, or authority authorized by law to plan or provide for waste management.

Subd. 25. "Processing" means the treatment of waste after collection and before disposal. Processing includes but is not limited to reduction, storage, separation, exchange, resource recovery, physical, chemical, or biological modification, and transfer from one waste facility to another.

Subd. 26. "Regional development commission" means a commission established pursuant to sections 462.381 to 462.397.

Subd. 27. "Resource recovery" means the reclamation for sale or reuse of materials, substances, energy, or other products contained within or derived from waste.

Subd. 28. "Resource recovery facility" means a waste facility established and used primarily for resource recovery.

Subd. 29. "Sewage sludge" means the solids and associated liquids in municipal wastewater which are encountered and concentrated by a municipal wastewater treatment plant. Sewage sludge does not include incinerator residues and grit, scum, or screenings removed from other solids during treatment.

Subd. 30. "Sewage sludge disposal facility" means property owned or leased by a political subdivision and used for interim or final disposal or land spreading of sewage sludge.

Subd. 31. "Solid waste" has the meaning given it in section 116.06, subdivision 10.

Subd. 32. "Solid waste management district" or "waste district" means a geographic area extending into two or more counties in which the management of solid waste is vested in a special district established pursuant to sections 115A.62 to 115A.72.

Subd. 33. "Transfer station" means an intermediate waste facility in which waste collected from any source is temporarily deposited to await transportation to another waste facility.

Subd. 34. "Waste" means solid waste, sewage sludge, and hazardous waste.

Subd. 35. "Waste facility" means all property, real or personal, including negative and positive easements and water and air rights, which is or may be needed or useful for the processing or disposal of waste, except property for the collection of the waste and property used primarily for the manufacture of scrap metal or paper. Waste facility includes but is not limited to transfer stations, processing facilities, and disposal sites and facilities.

Subd. 36. "Waste management" means activities which are intended to affect or control the generation of waste and activities which provide for or control the collection, processing and disposal of waste.

History: *1980 c 564 art 1 s 3; 1981 c 352 s 1,2*

MANAGEMENT BOARD; LEGISLATIVE COMMISSION GOVERNMENT RESOURCE RECOVERY PROGRAM

115A.04 WASTE MANAGEMENT BOARD; CREATION.

There is created in the executive branch a waste management board.

History: *1980 c 564 art 2 s 1*

115A.05 BOARD MEMBERSHIP.

Subdivision 1. **General.** The board shall be composed of nine permanent members. Temporary members shall be added pursuant to subdivision 3.

Subd. 2. **Permanent members.** Eight of the permanent members of the board shall be appointed by the governor, with the advice and consent of the senate, to represent diverse areas and interests within the state. One member shall be appointed from each congressional district in accordance with boundaries existing on January 1, 1980. The term of office and compensation of the eight members thus appointed, and the manner of removal and filling of vacancies, shall be as provided in section 15.0575, except that the initial term of all members shall be four years and the rate of compensation shall be $50 per day spent on board activities. The ninth permanent member of the board shall be the chairperson who shall be appointed by the governor with the advice and consent of the senate. The chairperson shall serve at the pleasure of the governor for a term coterminous with that of the governor, except that the initial term of the chairperson shall be four years. The chairperson shall be the executive and operating officer of the board and shall determine the time and place of meetings, preside at meetings, appoint all board officers and hire and supervise all employees subject to the approval of the board, carry out the policy decisions of the board, and perform all other duties and functions assigned to him by the board or by law. No permanent member of the board shall hold other elected or appointed public office.

Subd. 3. **Temporary members.** For the purposes of each project review conducted by the board under sections 115A.18 to 115A.30 and 115A.32 to 115A.39 and for the purpose of preparing and adopting the hazardous waste management plan under section 115A.11 and making decisions on the elements of the certification of need for disposal required under sections 115A.18 to 115A.30, six local representatives shall be added to the board as temporary voting members, as provided in sections 115A.22, subdivision 4, and 115A.34. The provisions of section 15.0575, subdivisions 3 and 4 relating to compensation, removal, and vacancy shall apply to temporary members except that the rate of compensation shall be $50 per day spent on board activities and that appointments by the governor to fill vacancies shall take effect in the same manner as the original appointment.

History: *1980 c 564 art 2 s 2; 1981 c 352 s 3*

115A.06 POWERS OF THE BOARD.

Subdivision 1. **General.** The board shall have the powers and duties prescribed by sections 115A.01 to 115A.72 and all powers necessary or convenient to discharge its duties.

Subd. 2. **Rules.** Unless otherwise provided, the board shall promulgate rules in accordance with chapter 15 to govern its activities and implement sections 115A.01 to 115A.72.

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Subd. 3. **Actions.** The board may sue and be sued.

Subd. 4. **Acquisition of sites for hazardous waste facilities.** The board may direct the commissioner of administration to acquire by purchase, lease, condemnation, gift, or grant, any permanent or temporary right, title, and interest in and to real property, including positive and negative easements and water, air, and development rights, for sites and buffer areas surrounding sites for hazardous waste facilities approved by the board pursuant to sections 115A.18 to 115A.30 and 115A.32 to 115A.39. The board may also direct the commissioner of administration to acquire by purchase, lease, gift or grant, development rights for sites and buffer areas surrounding sites for all or part of the period that the development moratorium imposed by section 115A.21, subdivision 3, is in effect. Money for the acquisition of any real property and interest in real property pursuant to this subdivision shall come from the issuance of state waste management bonds in accordance with sections 115A.57 to 115A.59. The property shall be leased to the owner and operator of the hazardous waste facility located thereon at a rate sufficient to pay debt service on the bonds which provided funds used to acquire the property and to evaluate the eligibility of the property for inclusion in the inventory under section 115A.09 or candidacy under sections 115A.18 to 115A.30. Any local government unit and the commissioners of transportation, natural resources, and administration may convey or allow the use of any property for such sites and areas, subject to the rights of the holders of any bonds issued with respect thereto, with or without compensation and without an election or approval by any other government agency. Land owned by the state may be exchanged for land not owned by the state for the purpose of providing a site and buffer area for a commercial hazardous waste facility, in accordance with the provisions of section 94.341 to 94.347 and other law. The commissioner of administration may hold the property for the purposes for which it was acquired, and may lease, rent, or dispose of the property so far as not needed for such purposes, upon the terms and in the manner the commissioner deems advisable. The right to acquire lands and property rights by condemnation shall be exercised in accordance with chapter 117. The commissioner of administration may take possession of any property for which condemnation proceedings have been commenced at any time after the issuance of a court order appointing commissioners for its condemnation. Where the property is acquired through eminent domain proceedings, the land owner's compensation shall be the fair market value of the property. Where the property is acquired by means other than through eminent domain proceedings, as by direct purchase or gift, the land owner's compensation shall be determined by the agreement of the parties involved. An award of compensation in a condemnation proceeding shall not be increased or decreased by reason of any increase or decrease in the value of the property caused by its designation in the inventory of preferred areas under section 115A.09 or as a candidate site under sections 115A.18 to 115A.30 or its selection as a site or buffer area.

Subd. 5. **Right of access.** Whenever the board or the chairperson acting on behalf of the board deems it necessary to the accomplishment of its purposes, the board or any member, employee, or agent thereof, when authorized by it or the chairperson, may enter upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations, provided that the entrance and activity is undertaken after reasonable notice and during normal business hours and provided that compensation is made for any damages to the property caused by the entrance and activity. The board may pay a reasonable estimate of the damages it believes will be caused by the entrance and activity before entering any property.

Subd. 6. **Gifts and grants.** The board, or the chairperson or commissioner of administration on behalf of the board, may apply for and accept gifts, loans, or other property from the United States, the state, or any person for any of the purposes of the board, may enter into any agreement required in connection therewith, and may hold, use, and dispose of the money or property in accordance with the terms of the gift, grant, loan or agreement.

Subd. 7. **Property exempt from taxation.** Any real or personal property owned, used, or occupied by the board or the commissioner of administration for any purpose referred to in sections 115A.01 to 115A.72 is declared to be acquired, owned, used, and occupied for public and governmental purposes, and shall be exempt from taxation by the state or any political subdivision of or other governmental unit of or within the state, provided that those properties shall be subject to special assessments levied for a local improvement in amounts proportionate to and not exceeding the special benefit received by the properties from the improvement. No possible use of the properties in any manner different from their use for hazardous waste management at the time shall be considered in determining the special benefit received by the properties.

Subd. 8. **Contracts.** The board or the chairperson acting on behalf of the board may enter into any contract necessary or proper for the exercise of its powers or the accomplishment of its purposes.

Subd. 9. **Joint powers.** The board or the chairperson acting on behalf of the board may act under the provisions of section 471.59, or any other law providing for joint or cooperative action.

Subd. 10. **Research.** The board or the chairperson acting on behalf of the board may conduct research studies and programs, collect and analyze data, prepare reports, maps, charts, and tables, and order all necessary hearings and investigations in connection with its work and may advise and assist other government units on planning matters within the scope of its powers, duties, and objectives.

Subd. 11. **Employees; contracts for services.** The board through its chairperson may employ persons and contract for services to perform research, engineering, legal, or other services necessary to carry out its functions.

Subd. 12. **Insurance** The board through its chairperson may require any employee to obtain and file with it an individual bond or fidelity insurance policy. It may procure insurance in amounts it deems necessary to insure against liability of the board and employees or both, for personal injury or death and property damage or destruction, with the force and effect stated in chapter 466, and against risks of damage to or destruction of any of its property as it deems necessary.

Subd. 13. **Private and non-public data.** Any data held by the board which consists of trade secret information as defined by section 13.37, subdivision 1, clause (b), or sales information, shall be classified as private or non-public data as defined in section 13.02, subdivisions 9 and 12. When data is classified private or non-public pursuant to this subdivision the board may:

(a) Use the data to compile and publish analyses or summaries and to carry out its statutory responsibilities in a manner which does not identify the subject of the data; or

(b) Disclose the data when it is obligated to disclose it to comply with federal law or regulation but only to the extent required by the federal law or regulation.

The subject of data classified as private or non-public pursuant to this subdivision may authorize the disclosure of some or all of that data by the board.

History: *1980 c 564 art 2 s 3; 1981 c 311 s 39; 1981 c 352 s 4-6; 1982 c 545 s 24; 1982 c 569 s 1,2*

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115A.07 DUTIES OF THE BOARD; GENERAL.

Subdivision 1. **Interagency coordination.** The chairperson of the board shall inform the commissioner of energy, planning and development of the board's activities in accordance with section 116J.47. The chairperson shall keep the agency informed of the board's activities, solicit the advice and recommendations of the agency, and coordinate its work with the regulatory and enforcement activities of the agency.

Subd. 2. **Biennial report.** Before November 15 of each even-numbered year the board through its chairperson shall prepare and submit to the legislative commission a report of the board's operations and activities pursuant to sections 115A.01 to 115A.72 and any recommendations for legislative action. The report shall include a proposed work plan for the following biennium.

History: *1980 c 564 art 2 s 4; 1981 c 356 s 119,248*

115A.071 DUTIES OF THE BOARD; SOLID WASTE MANAGEMENT; DESIGNATIONS OF RESOURCE RECOVERY FACILITIES.

Subdivision 1. **Approval of designation proposals.** The board shall review and approve or disapprove proposals to designate resource recovery facilities under sections 115A.70 and 400.162. The board may attach conditions to its approval. In approving or disapproving a designation the board shall only determine whether the proposal conforms to the requirements of section 115A.70 or section 400.162, whether the designation will further the state policies and purposes expressed in section 115A.02, and whether the designation is based upon a plan approved pursuant to subdivision 2 and an adequate evaluation of the standards expressed in section 115A.46, subdivision 3.

Subd. 2. **Plan required.** Before reviewing a proposed designation, the board shall require the completion or, if necessary, revision of a comprehensive solid waste management plan which in the board's judgment conforms to the requirements of section 115A.46.

Subd. 3. **Board supervision.** The board shall require regular reports on any designation approved pursuant to this section and section 473.827, shall periodically evaluate whether the designation as implemented has accomplished its purposes and whether the designation is in the public interest and in furtherance of the state policies and purposes expressed in section 115A.02, and shall report periodically to the legislature on its conclusions and recommendations.

History: *1982 c 569 s 3*

115A.08 DUTIES OF THE BOARD; HAZARDOUS WASTE MANAGEMENT REPORTS.

Subdivision 1. **Report on liability and long-term care.** By January 1, 1981, the board through its chairperson shall report and make recommendations to the legislative commission on the management and financing of liability and post-closure monitoring and care for hazardous waste facilities in the state. The commissioner of energy, planning and development, in consultation with the chairperson of the board, shall conduct background research and shall report to the board by July 1, 1980, on the subject of the report required by this subdivision and on additional research needed to complete the report and recommendations.

Subd. 2. **Report on private investment in hazardous waste management.** By January 1, 1981, the board through its chairperson shall report and make recommendations to the legislative commission on alternative state strategies to promote and secure private investment in hazardous waste management services, technologies, and facilities. The report at least shall evaluate: (a) strategies to promote and secure investments by generators in waste reduction, separation, pretreatment,

and recovery; (b) strategies to secure generator assistance in the establishment and financing of hazardous waste facilities either directly through joint investment or indirectly through taxation; (c) strategies to protect the public against business failure by owners and operators of hazardous waste facilities; (d) strategies to promote and secure investment by the private waste management industry in hazardous waste facilities in the state. The report shall recommend priorities, objectives, and appropriate legislation for promoting and securing private investment in hazardous waste management. The commissioner of energy, planning and development, in consultation with the chairperson of the board, shall conduct background research and shall report to the board by July 1, 1980, on the subject of the report required by this subdivision and on additional research needed to complete the report and recommendations.

Subd. 3. **Report on interstate cooperation.** By January 1, 1981, the board through its chairperson shall report and make recommendations to the legislative commission on actions to develop interstate cooperation in hazardous waste planning and management. The report shall make recommendations on uniformity of state laws, regulations, and enforcement and on coordination of decisions on facility development and use. The commissioner of energy, planning and development, in consultation with the chairperson of the board, shall conduct background research and shall report to the board by July 1, 1980, on the report required by this subdivision and on additional research needed to complete the report and recommendations.

Subd. 4. **Report on hazardous waste management; draft management plan and certification of need.** By August 15, 1982, the board through its chairperson shall report to the legislative commission on hazardous waste management. The report shall include at least:

(a) an evaluation of alternative disposal facilities, disposal facility technologies, and disposal facility design and operating specifications and an explanation of the preliminary design and operating specifications for disposal facilities selected for consideration under section 115A.23;

(b) an evaluation of prospects, strategies, and methods for developing commercial hazardous waste disposal facilities of various types, sizes, and functions;

(c) an evaluation of all feasible and prudent alternatives to disposal, including waste reduction, separation, pretreatment, processing, and resource recovery, and the potential of the alternatives to reduce the need for and practice of disposal;

(d) an evaluation of feasible and prudent disposal abatement objectives, along with a description of hazardous waste management methods and technologies, private and government actions, facilities and services, development schedules, revenue-raising measures, and levels of public and private expenditure and effort necessary to the achievement of those objectives.

The report shall analyze the environmental, social, and economic effects of the alternatives and methods by which unavoidable adverse effects could be mitigated. The report shall include a draft hazardous waste management plan, based on the analysis in the report and proposed for adoption pursuant to section 115A.11, and a draft certificate or certificates of need proposed for issuance under section 115A.24.

Subd. 5. **Report on mitigation of local effects of hazardous waste facilities.** By August 15, 1982, the board through its chairperson shall report and make recommendations to the legislative commission on methods of mitigating and compensating for the local risks, costs, and other adverse effects of various types of hazardous waste facilities and on methods of financing mitigation and compensation measures. The methods of mitigating and compensating to be considered shall include but not be limited to the following: payment outside of levy limitations in lieu of taxes for all property taken off the tax rolls; preference in

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Subd. 5a. **Report on assurance of security of hazardous waste facilities.** With the report required by subdivision 5, the board through its chairperson shall report and make recommendations to the legislative commission on methods of assuring the security of commercial hazardous waste facilities. The report and recommendations shall be based on the need to assure: effective monitoring and enforcement during operation; effective containment, control, and corrective action in any emergency situation; financial responsibility of the owner and operator throughout the operating life of the facility, using performance bonds, insurance, escrow accounts, or other means; proper closure; financial responsibility after closure; and perpetual post-closure monitoring and maintenance. The report shall include recommendations on the source of funds, including operator contributions, fee surcharges, taxes, and other sources; the amount of funds; effective protection and guarantee of funds; administration; regulatory and permit requirements; the role of local authorities; and other similar matters.

Subd. 6. **Preparation of hazardous waste reports; procedures; public involvement.** By January 1, 1981, the board through its chairperson shall submit a proposed scope of work and work program for the hazardous waste reports required by subdivisions 4 and 5 to the legislative commission for review. During the preparation of the proposed scope of work and work plan and the reports, the board and the chairperson on behalf of the board shall encourage public debate and discussion of the issues relating to the reports. The board and the chairperson on behalf of the board shall meet with local officials and sponsor at least one public meeting in areas of the state affected by the inventory of preferred processing facility areas prepared pursuant to section 115A.09. The board and the chairperson on behalf of the board shall follow the procedures set out in section 115A.22, for consulting with citizens in areas affected by the selection of candidate sites for disposal facilities. To assist it in preparing the reports required by subdivisions 4 and 5, the board through its chairperson shall make grants to each local project review committee established for a candidate site for disposal identified under sections 115A.18 to 115A.30. The grants may be used by the committee to employ staff, pay administrative expenses, or contract with affected units of government or qualified consultants. The board and the chairperson on behalf of the board shall request recommendations from the private waste management industry, the board's advisory councils, affected regional development commissions, and the metropolitan council and shall consult with them on the board's intended disposition of the recommendations. The reports of the board shall summarize the comments received and the board's response to the comments.

History: *1980 c 564 art 2 s 5; 1981 c 352 s 7-9; 1981 c 356 s 248; 1982 c 569 s 4*

115A.09 DUTIES OF THE BOARD; INVENTORY OF PREFERRED AREAS FOR HAZARDOUS WASTE PROCESSING FACILITIES.

Subdivision 1. **Board responsibility.** By January 1, 1982, the board shall prepare an inventory of preferred areas of up to ten square miles in size for commercial hazardous waste processing facilities. No preferred area may extend into more than one statutory or home rule charter city or town, but the board may propose adjoining preferred areas in adjacent cities and towns. The inventory shall include at least three areas for each of the following categories of processing

facilities: (a) a commercial chemical processing facility for hazardous waste, (b) a commercial incineration facility for hazardous waste, and (c) a commercial transfer and storage facility for hazardous waste.

Subd. 2. **Evaluation of areas.** The board shall not be required to promulgate rules pursuant to chapter 15 to govern its evaluation and selection of areas under this section. The board and the chairperson on behalf of the board shall evaluate the areas in consultation with the board's advisory councils, the affected counties and regions, generators of hazardous waste, and prospective facility developers. The evaluation shall consider at least the consistency of areas with state and federal regulations, local land use and land use controls, the protection of agriculture and natural resources, existing and future development patterns, transportation and other services appropriate to the hazardous waste facilities, the quality of other potential areas, and the location of hazardous waste generators. The agency shall prepare a report on the suitability of each proposed area for the use intended.

Subd. 3. **Procedures.** The board shall propose the inventory of areas by August 1, 1981 by publication in the state register and newspapers of general circulation in the state and by mail to each regional development commission or metropolitan council, and local government unit containing a proposed area. The publications and mailing shall include notice of hearings on the board's proposal. The hearings shall be conducted by the state office of administrative hearings in a manner determined by the hearing examiner to be consistent with the completion of the proceedings and the examiner's report in the time allowed by this section. At the hearing, any local government unit in which an area is proposed for inclusion in the inventory may propose an alternative area or areas within its jurisdiction. The hearing shall afford all interested persons an opportunity to testify and present evidence on the subject of the hearing. The subject of the hearing shall be limited to information submitted by the board and additional information on the proposed area or alternative areas which is relevant to the board's decision on the areas to be included in the inventory. The rulemaking and contested case procedures of chapter 14 shall not apply to this hearing. The hearing examiner may consolidate hearings. The report of the hearing examiner shall contain findings of fact, conclusions, and recommendations on the subject of the hearing. When any area in the inventory becomes unavailable as a hazardous waste facility site, the inventory shall be amended, in the manner of its original adoption, provided, however, that during the period when the inventory is being amended any other area in the inventory may be reviewed and approved under sections 115A.32 to 115A.39. No action of the board shall be held invalid by reason of the board's failure to notify any of the entities listed in this subdivision.

Subd. 4. **Grants; technical assistance.** To assist counties participating in the inventory required by this section, the board through its chairperson may make grants to the counties to be used to employ staff, pay administrative expenses, or contract with qualified consultants. The board through its chairperson shall ensure the delivery to the counties of technical information and assistance by appropriate state agencies.

History: *1980 c 564 art 2 s 6; 1980 c 615 s 60; 1981 c 352 s 10; 1982 c 424 s 130*

115A.10 DUTIES OF THE BOARD; HAZARDOUS WASTE FACILITIES; ENCOURAGEMENT OF PRIVATE ENTERPRISE.

The board and the chairperson on behalf of the board shall encourage the development and operation of hazardous waste facilities by private enterprise to the extent practicable and consistent with the purposes of sections 115A.01 to 115A.72 and the board's hazardous waste management plan adopted pursuant to

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section 115A.11. In preparing the reports under section 115A.08 and the inventory of processing facility sites under section 115A.09, in adopting the management plan, and in its actions and decisions under sections 115A.18 to 115A.30 and 115A.32 to 115A.39, the board and the chairperson on behalf of the board shall solicit the active participation of private waste management firms and shall so conduct its activities as to encourage private permit applications for facilities needed in the state. The board shall promulgate rules for accepting, evaluating, and selecting applications for permits for the construction and operation of facilities at sites preferred or selected by the board pursuant to section 115A.09 or sections 115A.18 to 115A.30. The rules shall include standards and procedures for making determinations on the minimum qualifications, including technical competence and financial capability, of permit applicants. The rules shall include standards and procedures for soliciting and accepting bids or permit applications and for selecting developers and operators of hazardous waste disposal facilities at sites chosen by the board pursuant to sections 115A.18 to 115A.30, which shall include a preference for qualified permit applicants who control a site chosen by the board.

History: *1980 c 564 art 2 s 7*

115A.11 HAZARDOUS WASTE MANAGEMENT PLAN.

Subdivision 1. **Contents.** By December 15, 1982, the board shall adopt a hazardous waste management plan. In developing and implementing the plan, the highest priority of the board shall be placed upon alternatives to land disposal of hazardous wastes including: technologies to modify industrial processes or introduce new processes which will reduce or eliminate hazardous waste generation; recycling, re-use, and recovery methods to reduce or eliminate hazardous waste disposal; and conversion and treatment technologies to reduce the degree of environmental risk from hazardous waste. The board shall also consider technologies for retrievable storage of hazardous wastes for later recycling, re-use, recovery, conversion, or treatment.

The plan shall include at least the following elements:

(a) an estimate of the types and volumes of hazardous waste which will be generated in the state through the year 2000;

(b) specific and quantifiable objectives for reducing to the greatest feasible and prudent extent the need for and practice of disposal, through waste reduction, pretreatment, retrievable storage, processing, and resource recovery;

(c) a description of the minimum disposal capacity and capability needed to be developed within the state for use through the year 2000, based on the achievement of the objectives under clause (b).

The plan shall provide for the orderly development of hazardous waste management sites and facilities to protect the health and safety of rural and urban communities. In preparing the plan the board shall consider its impact upon agriculture and natural resources.

The plan shall require the establishment in the state of at least one commercial retrievable storage or disposal facility and encourage the establishment of at least one facility for the recycling, re-use, recovery, conversion, treatment, or storage of hazardous waste. The board may make the implementation of elements of the plan contingent on actions of the legislature which have been recommended in the reports submitted pursuant to section 115A.08.

Subd. 2. **Procedure.** The plan shall be based upon the reports prepared pursuant to section 115A.08. The plan shall not be subject to the rule-making or contested case provisions of chapter 14. Following the submission of the report on hazardous management required under section 115A.08, subdivision 4, the

board shall hold a public hearing on the draft plan and draft certificate or certificates of need contained in the report. Notices of the draft plan and the draft certificate or certificates and notice of the hearing shall be published in the state register and newspapers of general circulation in the state. The hearing shall be ordered by the chairperson of the board and shall be conducted by the state office of administrative hearings in a manner consistent with the completion of the proceedings in the time allowed by this section. A majority of the permanent members of the board shall attend the hearing. In connection with the hearing, the chairperson of the board shall provide copies of the studies and reports on which the draft plan and certification of need are based and shall make an affirmative presentation showing the need for and reasonableness of the draft plan and certification of need. Following the hearing, the board shall revise the plan and the certificate or certificates of need as it deems appropriate, shall make a written response to the testimony received at the hearing explaining its disposition of any recommendations made with respect to the plan and certification, and shall finally adopt a plan in accordance with this section and issue a certificate or certificates of need in accordance with section 115A.24.

History: *1980 c 564 art 2 s 8; 1980 c 615 s 60; 1981 c 352 s 11; 1982 c 424 s 130; 1982 c 569 s 5*

115A.12 ADVISORY COUNCILS.

Subdivision 1. **Solid and hazardous waste management.** The chairperson of the board shall establish a solid waste management advisory council and a hazardous waste management planning council broadly representative of the geographic areas and interests of the state. The councils shall have not less than nine nor more than 18 members each. The membership of the solid waste council shall consist of one-third citizen representatives, one-third representatives from local government units, and one-third representatives from private solid waste management firms. The solid waste council shall contain at least one member experienced in each of the following areas: state and municipal finance; solid waste collection, processing, and disposal; and solid waste reduction and resource recovery. The membership of the hazardous waste advisory council shall consist of one-third citizen representatives, one-third representatives from local government units, and one-third representatives of hazardous waste generators and private hazardous waste management firms. The chairpersons of the advisory councils shall be appointed by the chairperson of the board. The chairperson of the board shall provide administrative and staff services for the advisory councils. The advisory councils shall have such duties as are assigned by law or the chairperson of the board. The solid waste advisory council shall make recommendations to the board on its solid waste management activities. The hazardous waste advisory council shall make recommendations to the board on its activities under sections 115A.08, 115A.09, 115A.10, and 115A.11, and sections 115A.20, 115A.21 115A.23, and 115A.24. Members of the advisory councils shall serve without compensation but shall be reimbursed for their reasonable expenses as determined by the chairperson of the board.

Subd. 2. **Technical advisory council.** The chairperson of the board shall establish an interagency technical advisory council to advise the board and the chairperson on matters the board, through its chairperson, deems necessary. The members of the council shall be the commissioner of health; the commissioner of agriculture; the commissioner of natural resources; the director of the pollution control agency; the commissioner of energy, planning and development; other heads of agency the chairperson of the board deems necessary; or their designees. The council shall meet at the call of the chairperson of the board who shall serve as chairperson of the council. The members, collectively and individually shall

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History: *1980 c 564 art 2 s 9; 1981 c 356 s 120*

115A.13 BOARD; EXPIRATION.

The board shall cease to exist on June 30, 1987.

History: *1980 c 564 art 2 s 10*

115A.14 LEGISLATIVE COMMISSION ON WASTE MANAGEMENT.

Subdivision 1. **Creation, membership, vacancies.** There is created in the legislative branch a legislative commission on waste management. The commission shall consist of ten members appointed as follows:

(1) Five members of the senate to be appointed by the subcommittee on committees and to serve until their successors are appointed;

(2) Five members of the house to be appointed by the speaker and to serve until their successors are appointed;

(3) Vacancies occurring on the commission shall not affect the authority of the remaining members of the commission to carry out the functions thereof, and such vacancies shall be filled in the same manner as the original positions.

Subd. 2. **Staff.** The commission is authorized, without regard to the civil service laws and regulations, to appoint and fix the compensation of such additional legal and other personnel and consultants as may be necessary to enable it to carry out its functions, or to contract for services to supply necessary data, except that any state employees subject to the civil service laws and regulations who may be assigned to the commission shall retain civil service status without interruption or loss of status or privilege. The staff shall be hired and supervised for the commission by the executive director of the legislative commission on Minnesota resources.

Subd. 3. **Data from state agencies; availability.** The commission may request information from any state officer or agency in order to assist it in carrying out its duties and such officer or agency is authorized and directed to promptly furnish any data required, subject to applicable requirements or restrictions imposed by chapter 13 and section 15.17.

Subd. 4. **Powers and duties.** The commission shall review the biennial report of the board. The commission shall oversee the activities of the board under sections 115A.01 to 115A.72 and the activities of the agency under sections 115A.42 to 115A.46 and 115A.49 to 115A.54, and direct such changes or additions in the work plan of the board and agency as it deems fit. The commission may conduct public hearings and otherwise secure data and expressions of opinion. The commission shall make such recommendations as it deems proper to assist the legislature in formulating legislation. Any data or information compiled by the commission shall be made available to any standing or interim committee of the legislature upon request of the chairperson of the respective committee.

Subd. 5. **Study.** The commission shall study alternative methods of insuring that an adequate supply of solid waste will be available to resource recovery facilities and report to the appropriate policy committees of the house of representatives and senate before January 1, 1982. The commission shall, at a minimum, consider the relative merits of the required use provisions described in sections 115A.70, 400.162, and 473.827, and other mechanisms designed to facilitate resource recovery by raising costs of landfill alternatives or lowering costs of disposal at resource recovery facilities.

Subd. 6. **Expiration.** The provisions of this section shall expire on June 30, 1987.

History: *1980 c 564 art 2 s 11; 1981 c 311 s 39; 1982 c 545 s 24*

115A.15 STATE GOVERNMENT RESOURCE RECOVERY.

Subdivision 1. **Establishment of program.** There is established within state government a resource recovery program to promote the reduction of waste generated by state agencies, the separation and recovery of recyclable and reuseable commodities, the procurement of recyclable commodities and commodities containing recycled materials, and the uniform disposition of recovered materials and surplus property. The program shall be administered by the commissioner of administration.

Subd. 1a. **Definitions.** For the purposes of this section, the following terms have the meanings given them.

(a) "Recyclable commodities" means materials, pieces of equipment, and parts which are not reusable but which contain recoverable resources.

(b) "Reusable commodities" means materials, pieces of equipment, parts, and used supplies which can be reused for their original purpose in their existing condition.

Subd. 2. **Duties of commissioner.** The commissioner of administration shall develop policies to reduce the volume of waste generated by state agencies. The commissioner shall develop and institute procedures for the separation, collection, and storage of used commodities wherever feasible in state agencies and shall establish policies for the reuse, sale, or disposition of recovered materials and surplus property. The commissioner shall promote and publicize the waste reduction and waste separation and recovery procedures on an ongoing basis to all state employees. The commissioner shall issue guidelines for the procurement of recyclable commodities and commodities containing recycled materials that include definitions of recycled materials, the percentage of recycled materials to be contained in each commodity and performance specifications. To the extent practicable, the guidelines shall be written so as to give preference to recyclable commodities and commodities containing recycled materials. The commissioner shall inform state agencies whenever recycled commodities are available for purchase. The commissioner shall investigate opportunities for the inclusion of and may include local governments and regional agencies in administrative state programs to reduce waste, and to separate and recover recyclable and reusable commodities.

Subd. 3. **Powers of commissioner.** The commissioner of administration shall have such powers as are necessary to implement and operate the program. All state agencies shall comply with the policies, guidelines, and procedures established by the commissioner pursuant to this section. The commissioner shall have the power to issue orders to compel compliance.

Subd. 4. **Staff.** The commissioner of administration shall employ an administrator to manage the resource recovery program and other staff and consultants as are necessary to carry out the program.

Subd. 5. **Reports.** By January 1 of each odd-numbered year, the commissioner of administration shall submit a report to the governor and to the legislative commission summarizing past activities and proposed goals of the program for the following biennium. By July 1 of each even-numbered year director of the pollution control agency and the commissioner of energy, planning and development shall submit recommendations to the commissioner regarding the operation of the program.

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Subd. 6. **Resource recovery revolving account.** Upon the certification of the commissioner of administration, the commissioner of finance shall establish an account in the general services revolving fund, effective June 30, 1980, for the operation of the state government resource recovery program. The revolving account shall consist of all funds appropriated by the state for the program, all revenues resulting from the sale of recyclable and reusable commodities made available for sale as a result of the resource recovery program and all reimbursements to the commissioner of his expenses incurred in developing and administering resource recovery systems for state agencies, local governments, and regional agencies. The account may be used for all activities associated with the program including payment of administrative and operating costs.

History: *1980 c 564 art 2 s 12; 1981 c 356 s 121; 1982 c 569 s 6-8*

COMMERCIAL HAZARDOUS WASTE DISPOSAL FACILITIES

115A.18 LEGISLATIVE FINDINGS; PURPOSE.

The legislature finds that proper management of hazardous waste generated in the state is needed to conserve and protect the natural resources in the state and the health, safety, and welfare of its citizens, that the establishment of safe disposal facilities is necessary to properly manage the waste, that this cannot be accomplished solely by the activities of private persons and political subdivisions acting alone or jointly, and that therefore it is necessary to provide a procedure for making final determinations on the locations, sizes, types, and functions of such facilities.

History: *1980 c 564 art 3 s 1*

115A.19 PROCEDURE NOT EXCLUSIVE.

Except as provided in Minnesota Statutes 1980, Section 115A.21, Subdivision 1, the procedure established by sections 115A.18 to 115A.30 for the permitting of hazardous waste disposal facilities shall not preclude the issuance of permits by the agency pursuant to section 116.07 for disposal facilities at sites not reviewed under sections 115A.18 to 115A.30.

History: *1980 c 564 art 3 s 2; 1981 c 352 s 12*

115A.20 EVALUATION OF SITES.

The board shall not be required to promulgate rules pursuant to chapter 14 to govern its evaluation and selection of sites for commercial disposal facilities under sections 115A.18 to 115A.30, nor shall the agency be required to promulgate rules pursuant to chapter 14 on criteria and standards to govern its certification of intrinsic suitability of sites for commercial disposal facilities under sections 115A.18 to 115A.30. In evaluating and selecting sites for disposal facilities, the board shall consider at least the following factors:

(a) economic feasibility, including proximity to concentrations of generators of the types of hazardous wastes likely to be proposed and permitted for disposal;

(b) intrinsic suitability of the sites;

(c) federal and state pollution control and environmental protection rules;

(d) the risk and effect for local residents, units of government, and the local public health, safety, and welfare, including such dangers as an accidental release of wastes during transportation to a facility or at a facility, water, air, and land pollution, and fire or explosion;

(e) the consistency of a facility with, and its effect on, existing and planned local land use and development; local laws, ordinances, and permits; and local public facilities and services;

(f) the adverse effects of a facility at the site on agriculture and natural resources and opportunities to mitigate or eliminate such adverse effects by stipulations, conditions, and requirements respecting the design and operation of a disposal facility at the proposed site.

No land shall be excluded from consideration except land determined by the agency to be intrinsically unsuitable for the use intended.

History: *1980 c 564 art 3 s 3; 1981 c 352 s 13; 1982 c 424 s 130*

115A.21 CANDIDATE SITES.

Subdivision 1. **Selection.** By March 15, 1982, the board shall select six locations in the state, no more than one site per county, as candidate sites for commercial disposal facilities for hazardous waste. No location shall be selected as a candidate site unless the agency certifies its intrinsic suitability for the use intended. The board shall consult with the agency and the private waste management industry in selecting candidate sites. Any sites proposed in applications for permits for disposal facilities being reviewed by the agency may be included by the board as candidate sites, provided the agency certifies the intrinsic suitability of the sites. The agency shall suspend its review of any permit application being reviewed by the board for inclusion as a candidate site until the site is eliminated from consideration as a candidate site.

Subd. 2. **Procedure.** As soon as practicable, the board through its chairperson shall publish a request soliciting proposals and permit applications for hazardous waste disposal facilities from potential developers and operators of such facilities. Notice of the request shall be published in the state register and newspapers of general circulation in the state and shall be transmitted to all regional development commissions the metropolitan council, and all counties in the state. The board may select conceptual design and operating specifications for a variety of hazardous waste disposal facilities in sufficient detail and extent in the judgment of the board to assist the evaluation of sites and the selection of candidate sites. By November 1, 1980, the board through its chairperson shall notify each regional development commission, or the metropolitan council, and each local government unit within whose jurisdiction the board intends to search for candidate sites. The notification shall explain the selection of the jurisdiction as a search area; shall summarize any conceptual specifications and the evaluation factors, criteria, standards, and procedures the board intends to use in selecting candidate sites; and shall describe the relationship of the candidate site selection process to the other review procedures under sections 115A.18 to 115A.30 and the hazardous waste reports and plans required under sections 115A.04 to 115A.15. The notification shall request recommendations and suggestions from each such commission, the metropolitan council, and local government unit on the criteria, standards, and procedures the board should use in selecting candidate sites within the time allowed. The board through its chairperson shall make a written response to any recommendations, explaining its disposition of the recommendations. The board shall provide to the agency data relating to the intrinsic suitability of the sites to be proposed as candidate sites as soon as available but no later than November 1, 1981. By November 15, 1981, the board shall propose at least six locations as candidate sites, and the director of the agency shall issue a notice indicating which of those sites the director recommends be certified as intrinsically suitable. The board through its chairperson and the director shall publish notice of hearings on the board's proposal and the director's recommendations. Notice shall be published in the state register and newspapers of general

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circulation in the state and shall be sent by mail to all regional development commissions, or the metropolitan council, and to local government units containing a proposed candidate site. The hearings shall be conducted by the state office of administrative hearings in a manner consistent with the completion of the proceedings and the hearing examiner's report to the agency and board in the time allowed by this section. The hearing shall afford all interested persons an opportunity to testify and present evidence on the subject of the hearing. The subject of the hearing shall be limited to information submitted by the board and additional information on the proposed sites which is relevant to the board's decision on candidate sites and the agency's decision on intrinsic suitability. The rulemaking and contested case procedures of chapter 14 shall not apply to this hearing. The hearing examiner may consolidate hearings. The report of the hearing examiner shall contain findings of fact, conclusions, and recommendations on the subject of the hearing. The agency shall make a final determination as to the intrinsic suitability of each proposed site and shall certify sites accordingly by March 1, 1982. No action of the board or agency shall be held invalid by reason of the board's or agency's failure to notify any of the entities listed in this subdivision.

Subd. 3. **Moratorium.** In order to permit the comparative evaluation of sites and the participation of affected localities in decisions about the use of sites, a moratorium is hereby imposed as provided in this subdivision on all development within each proposed or candidate site identified pursuant to this section and on a buffer area identified by the board surrounding and at least equal in area to the site. The moratorium on candidate sites and buffer areas shall extend until the board chooses a final candidate site or final candidate sites pursuant to this article. The moratorium on the final sites and buffer areas shall extend until six months following final action of the board pursuant to sections 115A.18 to 115A.30. No development shall be allowed to occur within a proposed site or buffer area during the period of the moratorium without the approval of the board. No land use control of any political subdivision shall permit development which has not been approved by the board, nor shall any political subdivision sanction or approve any subdivision, permit, license, or other authorization which would allow development to occur which has not been approved by the board. The board shall not approve actions which would jeopardize the availability of a candidate site for use as a hazardous waste facility. The board may establish guidelines for reviewing requests for approval under this subdivision. The guidelines shall not be subject to the rule-making provisions of chapter 14. Requests for approval shall be submitted in writing to the chairperson of the board and shall be deemed to be approved by the board unless the chairperson otherwise notifies the submitter in writing within 15 days.

History: *1980 c 564 art 3 s 4; 1981 c 352 s 14-16; 1982 c 424 s 130; 1982 c 569 s 9*

115A.22 PARTICIPATION BY AFFECTED LOCALITIES.

Subdivision 1. **General.** In order systematically to involve those who would be affected most directly by disposal facilities in all decisions leading to their establishment, the board's decisions on reports referred to in subdivision 7, the preliminary specifications under section 115A.23, and the certification of need required under section 115A.24 shall not be made until after the establishment of local project review committees for each candidate site, with representation on the board, pursuant to this section.

Subd. 2. **Establishment of local project review committees.** A local project review committee shall be established for each location selected as a candidate site. The local committee shall exist, and its members shall serve, so long as the

location for which the committee was formed is a candidate site or, for the site or sites finally chosen, until the commencement of the operation of the facility at that site.

Subd. 3. **Membership on local committees.** By April 15, 1982, the governor shall appoint the chairperson and members of each local project review committee, ensuring a balanced representation of all parties with a legitimate and direct interest in the outcome of the project review. The governor shall consult particularly with affected local units of government before selecting members. Members may be added to the local committee from time to time by the governor.

Subd. 4. **Appointment of temporary board members.** By May 15, 1982, each local committee shall select a temporary board member to be added to the board for the purposes of the reports, certifications, and review conducted under sections 115A.18 to 115A.30. If a local committee fails to appoint a temporary board member within 45 days after the appointment of the committee the governor shall appoint a temporary board member to represent the committee on the board. Temporary board members may be members of the local project review committee, and they shall be residents of the county where the candidate site is located. Temporary board members shall serve for terms lasting until the board has taken final action pursuant to section 115A.28 and, in the case of members representing the site or sites finally chosen for the facility, until the commencement of the operation of the facility at that site.

Subd. 5. **Duties of local committees.** During the review, the local project review committee shall: inform affected local communities, government units, and residents of the proposed land containment and disposal facilities and of the planning and environmental review process relating to the proposed facilities; solicit and record local attitudes and concerns respecting the proposed facilities and represent and communicate such attitudes and concerns to the board, the legislative commission, the environmental quality board, the agency, and other units and agencies of government; and act as a forum for the exchange of local attitudes and concerns and the development, where possible, of local consensus.

Subd. 6. **Technical assistance; grants.** To assist local project review committees to participate in the certification of need and the review process, the board through its chairperson shall make grants to the committees to be used to employ staff, pay administrative expenses, or contract with qualified consultants. The board through its chairperson shall ensure the delivery to the committees of technical information and assistance by appropriate state agencies.

Subd. 7. **Hazardous waste management reports.** The chairperson and the board shall prepare and submit the hazardous waste management reports required by section 115A.08, subdivisions 4 and 5, in consultation with the local project review committees. The chairperson and the board shall request recommendations from the local committees and shall consult with the committees on the board's intended disposition of the recommendations. The reports of the board shall summarize the recommendations of the committees and the board's response to the recommendations. Before submitting the reports, the board shall hold at least one public meeting in each county in which a candidate site is located. A majority of the permanent members shall be present at each meeting. Notice of the meeting shall be published in a newspaper or newspapers of general circulation in the area for two successive weeks ending at least 15 days before the date of the meeting. The notice shall describe the proposed facilities, the proposed location, the purpose of the board's report to the legislature, and the subsequent and related activities of the board.

History: *1980 c 564 art 3 s 5; 1981 c 352 s 17,18*

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115A.23 DISPOSAL FACILITIES; PRELIMINARY DESIGN AND OPERATING SPECIFICATIONS.

By August 15, 1982, the board shall select, for further study and consideration, design and operating specifications for a variety of disposal facilities for hazardous waste in sufficient detail and extent in the judgment of the agency to allow the agency to begin preparing an environmental impact statement on the alternative facilities at each of the candidate sites pursuant to section 115A.25. The preliminary design and operating specifications shall not be final and shall not preclude the consideration of other specifications nor foreclose the subsequent addition by the board of other disposal facility alternatives.

History: *1980 c 564 art 3 s 6; 1981 c 352 s 19*

115A.24 CERTIFICATION OF NEED.

Subdivision 1. **Certificate.** Except as provided in subdivision 2, by December 15, 1982, on the basis of and consistent with its hazardous waste management plan adopted under section 115A.11, the board shall issue a certificate or certificates of need for disposal facilities for hazardous wastes in the state. The certificate or certificates shall indicate the types and volumes of waste for which disposal facilities are and will be needed through the year 2000 and the number, types, sizes, general design and operating specifications, and function or use of the disposal facilities needed in the state. The board shall certify need only to the extent that the board has determined that there are no feasible and prudent alternatives including waste reduction, separation, pretreatment, processing, and resource recovery which would minimize adverse impact upon natural resources, provided that the board shall require the establishment of at least one commercial disposal facility in the state. Economic considerations alone shall not justify certification nor the rejection of alternatives. Alternatives that are speculative and conjectural shall not be deemed to be feasible and prudent. The board shall consider all technologies being developed in other countries as well as in the United States when it considers the alternatives to hazardous waste disposal. The certificate or certificates shall not be subject to the provisions of chapter 14 but shall be the final determination required on the matters decided by the certificate or certificates and shall have the force and effect of law. The certificate or certificates shall not be amended for five years. The board and the permitting agencies, in reviewing and selecting sites, completing environmental impact statements, and issuing approvals and permits for waste disposal facilities described in the certificate or certificates of need, shall not reconsider matters determined in the certification. The board and the permitting agencies shall be required to make a final decision approving the establishment of facilities consistent with the certification. The board and the permitting agencies shall be required to make a final decision approving the establishment of at least one commercial disposal facility for hazardous waste in the state.

Subd. 2. **Condition.** No certificate or certificates of need for disposal facilities for hazardous waste shall be issued by the board pursuant to subdivision 1 unless legislation is enacted to:

(a) Define the liability of owners and operators of disposal facilities and generators and other persons responsible for the disposal of hazardous waste;

(b) Provide the appropriate units of state or local government with the capability to clean up disposal sites or take other action to mitigate an imminent or substantial danger to public health or welfare or the environment from the disposal of hazardous waste; and

(c) Provide for the payment of the state's share of costs incurred pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of

1980. Public Law 96-510, as amended, as required by that act as a match to federal moneys.

Subd. 3. **Radioactive waste.** The board's certificate of need shall not allow the use of a facility for disposal of radioactive waste, as defined by section 116C.71, subdivision 6.

History: *1980 c 564 art 3 s 7; 1981 c 352 s 20; 1982 c 424 s 130; 1982 c 569 s 10,11*

115A.25 AGENCY; ENVIRONMENTAL REVIEW PROCEDURES.

Subdivision 1. **Environmental impact statement.** An environmental impact statement meeting the requirements of chapter 116D shall be completed by the agency on disposal facilities at each candidate site. The statement shall be finally accepted or rejected within 120 days following the issuance of a certificate or certificates of need under section 115A.24.

Subd. 2. **Public disclosure.** Before commencing preparation of the environmental impact statement, the agency shall issue a document summarizing and making full disclosure of the intended objectives and contents of the environmental impact statement and the environmental review. Announcement of the disclosure shall be published in the state register. The disclosure shall:

(a) identify the candidate sites;

(b) summarize preliminary design and operating specifications and indicate where and when the specifications are available for inspection;

(c) describe as fully as possible the object of the review, including the significant actions, issues, alternatives, types of impacts, and compensation and mitigation measures expected to be addressed in the statement; the depth of the analysis expected; and subjects which the statement will not address in depth because they have been disposed of previously or because they are believed to be insignificant or remote and speculative;

(d) identify, by reference and brief summary, any related planning activities and environmental reviews which have been, are being, or will be conducted, and the substantive, chronological, and procedural relationship between the proposed review and the other activities and reviews;

(e) identify the membership and address of the local project review committees and the names of the local representatives on the board;

(f) summarize the comments and suggestions received from the public pursuant to subdivision 3 and the agency's response.

Subd. 3. **Public participation procedures.** The public disclosure document shall be issued following diligent effort to involve the public in determining the objective and contents of the environmental impact statement. At least one public meeting shall be held in each county with a candidate site. The advice of the board, facility developers, state agencies, the local project review committees, and local units of government shall be actively solicited. The agency may engage the state hearing examiner to conduct meetings and make recommendations concerning the review. Each local project review committee shall present to the agency a written report summarizing local concerns and attitudes about the proposed action and the specific issues which the local communities and residents wish to see addressed in the environmental review.

History: *1980 c 564 art 3 s 8*

115A.26 AGENCIES; PERMIT CONDITIONS.

Within 60 days following determination of adequacy of the final environmental impact statement, and after consulting with the board, facility developers,

affected local government units, and the local project review committees, each permitting state agency shall issue a notice of intent to issue permits, indicating the terms, conditions, and requirements of agency approval for all permits needed at each candidate site for the establishment of the facilities described in the board's certification of need. The agency decisions shall be consistent with the establishment of facilities in accordance with the certification of need.

History: *1980 c 564 art 3 s 9; 1981 c 352 s 21*

115A.27 HEARINGS.

Subdivision 1. **Agency hearings.** Any person objecting to a notice of intent to issue permits shall have 30 days in which to request a hearing. The hearing shall be ordered by the commissioner or director of the agency involved and shall be conducted by the state office of administrative hearings in the manner provided for contested cases in chapter 14. The hearing examiner may consolidate hearings on agency notices as he deems appropriate. The hearing shall be held in the county where the candidate site is located. A majority of the permanent members of the board shall be present at the agency hearing. The proceeding shall be completed and the examiner's report submitted to the permitting agency within 90 days following the issuance of the agency's notice of intent. Within 60 days following the hearing examiner's report and after consulting with the board, facility developers, affected local government units, and the local project review committee, the permitting agency shall revise its notice of intent as it deems appropriate and shall reissue the notice.

Subd. 2. **Board hearings.** Within 90 days following the issuance of agency notice of intent under section 115A.26, the board shall conduct a hearing in each county containing a candidate site, for the purpose of receiving testimony on the sites and facilities to be established. The hearings shall be ordered by the chairperson of the board and shall be conducted concurrently with any agency hearing regarding the site held pursuant to subdivision 1. The subject of the board hearing shall not extend to matters previously decided in the board's certificate of need. The hearing shall be conducted for the board by the state office of administrative hearings in a manner determined by the hearing examiner to be consistent with the completion of the proceedings in the time allowed. The proceedings shall not be deemed a contested case under chapter 14. A majority of the permanent members of the board shall be present at the hearing.

History: *1980 c 564 art 3 s 10; 1980 c 615 s 60; 1982 c 424 s 130*

115A.28 FINAL ACTION.

Subdivision 1. **Decision of board.** Within 60 days following final agency decisions on permits pursuant to sections 115A.26 and 115A.27, subdivision 1, and after consulting with private facility developers, the agency, affected local government units, and the local project review committees, the board shall finally select the site or sites for the facilities and shall submit or cause to be submitted final permit applications. If the chairperson of the board determines that an agency notice of intent has been substantially revised following hearings held pursuant to section 115A.27, subdivision 1, the chairperson shall order a public hearing to receive further testimony on the sites and facilities to be established. The proceeding shall be conducted as provided in section 115A.27, subdivision 2, except that hearings shall not be separately held in the affected counties and the issues relating to all agency notices shall be considered at one hearing. The board's decision and final permit applications shall embody all terms, conditions, and requirements of the permitting agencies, provided that the board may: (a) finally resolve any conflicts between state agencies regarding permit terms, conditions, and requirements, and (b) require more stringent terms, conditions, and

requirements respecting the facility as may be consistent with the certification of need and the agency rules and permit conditions. The board's resolution of conflicts under clause (a) shall be in favor of the more stringent terms, conditions, and requirements. The board's decision and the permit applications shall provide for the establishment of facilities consistent with the board's certification of need.

Subd. 2. **Board's decision paramount.** The board's decision under subdivision 1 shall be final and shall supersede and preempt requirements of state agencies and political subdivisions and the requirements of sections 473H.02 to 473H.17; except that a facility established pursuant to the decision shall be subject to those terms, conditions, and requirements of permitting agencies embodied in the board's decision and any requirements imposed pursuant to subdivision 3. The permitting agencies shall issue permits within 60 days following and in accordance with the board's final decision, and all permits shall conform to the terms, conditions, and requirements of the board's decision. No charter provision, ordinance, regulation, permit, or other requirement of any state agency or political subdivision shall prevent or restrict the establishment, operation, expansion, continuance, or closure of a facility in accordance with the final decision of the board and permits issued pursuant thereto.

Subd. 3. **Local requirements.** A political subdivision may impose reasonable requirements respecting the construction, inspection, operation, monitoring, and maintenance of a facility. Any such requirements shall be subject to review by the agency to determine their reasonableness and consistency with the establishment and use of a facility in accordance with the final decision of the board and permits issued pursuant thereto. The agency may approve, disapprove, suspend, modify, or reverse any such requirements. The decision of the agency shall be final.

History: *1980 c 564 art 3 s 11; 1981 c 352 s 22*

115A.29 RECONCILIATION AND INTERVENTION PROCEDURES.

Subdivision 1. **Reports to legislative commission.** At least 30 days before making final decisions on final site selection and permit application under section 115A.28, the board through its chairperson may report to the legislative commission describing permit conditions or requirements being considered which are not within the existing authority of the agency or the board or which would require legislation or public financial assistance. The report shall not raise issues previously decided by the board's certification of need. In any such report the chairperson of the board may request intervention in the review pursuant to subdivisions 2 and 3.

Subd. 2. **Pre-intervention assessment.** If the legislative commission determines that intervention might be warranted under the terms of subdivision 1, the commission may suspend the review process for up to 60 days to allow a pre-intervention assessment. The pre-intervention assessment shall be conducted by an independent, impartial, and qualified public intervenor appointed by the commission with the advice and consent of the parties to the dispute. The intervenor shall report to the commission. The report shall include:

(a) an assessment of whether the dispute is ripe for mediation and whether the parties are willing to mediate;

(b) an assessment of whether, within the terms of subdivision 1, substantive issues exist which were not decided by the certification of need and which cannot be resolved effectively through normal administrative and judicial procedures;

(c) a preliminary definition of the facts and issues in dispute and actions and decisions being considered;

(d) a description of the diverse parties having a legitimate and direct interest in the outcome of the dispute.

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Subd. 3. **Suspension of review process; intervention proceeding.** Following the report of the intervenor, the legislative commission may suspend the review process for an additional period not to exceed 90 days for an intervention proceeding. The intervention proceeding shall not consider issues previously decided by the board's certification of need. The intervenor shall be in charge of the intervention proceeding and may call for such participation and establish such procedures as he deems necessary and appropriate to facilitate agreement. The intervenor shall keep the chairperson of the legislative commission informed on the progress of the intervention proceeding, particularly with respect to agreements or proposed agreements which may require action or decisions not within the authority of the agency or board, legislative action, or public financial assistance. The intervenor shall make recommendations to the commission respecting any such agreements or proposed agreements. The commission may make recommendations to the intervenor respecting any such agreement or proposed agreement. If the commission approves of an agreement, or a decision based upon an agreement, which requires action or decisions not within the authority of the agency or board, legislative action, or public financial assistance, the commission shall cause the matter and recommendations to be submitted to the legislature for consideration.

History: *1980 c 564 art 3 s 12*

115A.30 JUDICIAL REVIEW.

Any civil action maintained by or against the agency or board under sections 115A.18 to 115A.30 shall be brought in the county where the board is located and shall take precedence over all other matters of a civil nature and be expedited to the maximum extent possible. Any person aggrieved by a final decision of the board authorizing facilities under sections 115A.18 to 115A.30 may appeal therefrom within 30 days as provided in chapter 14. No civil action shall be maintained pursuant to section 116B.03 with respect to conduct taken by a person pursuant to any environmental quality standard, limitation, regulation, rule, order, license, stipulation agreement or permit issued by the board under sections 115A.18 to 115A.30. Notwithstanding any provision of chapter 116B to the contrary, in any action brought under that chapter with respect to any decision or conduct undertaken by any person or the board or agency pursuant to sections 115A.18 to 115A.30 after the period for appeal under this section has lapsed, the plaintiff shall have the burden of proving that the evidence required under section 116B.10 was not reasonably available within the time provided for appeal. The trial court shall, upon motion of any prevailing non-governmental party, award costs, disbursements, reasonable attorney's fees, and reasonable expert witness fees, if the court finds the action hereunder was commenced or defended in bad faith or was frivolous.

History: *1980 c 564 art 3 s 13; 1982 c 424 s 130*

ADMINISTRATIVE PROVISIONS

115A.32 RULES.

The board shall promulgate rules pursuant to chapter 14 to govern its activities under sections 115A.32 to 115A.39.

History: *1980 c 564 art 4 s 1; 1982 c 424 s 130*

115A.33 ELIGIBILITY; REQUEST FOR REVIEW.

The following persons shall be eligible to request supplementary review by the board pursuant to sections 115A.32 to 115A.39: (a) a generator of sewage sludge within the state who has been issued permits by the agency for a facility to dispose

of sewage sludge or solid waste resulting from sewage treatment; (b) a political subdivision which has been issued permits by the agency, or a political subdivision acting on behalf of a person who has been issued permits by the agency, for a solid waste facility which is no larger than 250 acres, not including any proposed buffer area, and located outside the metropolitan area; (c) a generator of hazardous waste within the state who has been issued permits by the agency for a hazardous waste facility to be owned and operated by the generator, on property owned by the generator, and to be used by the generator for managing the hazardous wastes produced by the generator only; (d) a person who has been issued permits by the agency for a commercial hazardous waste processing facility at a site included in the board's inventory of preferred sites for such facilities adopted pursuant to section 115A.09; (e) a person who has been issued permits by the agency for a disposal facility for the nonhazardous sludge, ash, or other solid waste generated by a permitted hazardous waste processing facility operated by the person. The metropolitan waste control commission shall not be eligible to request review under clause (a) for a sewage sludge disposal facility. The metropolitan waste control commission shall not be eligible to request review under clause (a) for a solid waste facility with a proposed permitted life of longer than four years. The board may require completion of a plan conforming to the requirements of section 115A.46, before granting review under clause (b). A request for supplementary review shall show that the required permits for the facility have been issued by the agency and that a political subdivision has refused to approve the establishment or operation of the facility.

History: *1980 c 564 art 4 s 2; 1981 c 352 s 23*

115A.34 APPOINTMENT OF TEMPORARY BOARD MEMBERS.

Within 45 days of the submission of a request determined by the board to satisfy the requirements for review under sections 115A.32 to 115A.39, temporary board members shall be added to the board for the purpose of the supplementary review. Three members shall be selected by the governing body of the city or town in which the chairperson of the waste management board determines the facility would be principally located, and three members shall be selected by the governing body of the county in which the chairperson of the waste management board determines the proposed facility would be principally located. If the proposed facility is located in unorganized territory, all six members shall be selected by the governing board of the county. Temporary members shall be residents of the county in which the proposed facility would be located and shall be selected to represent broadly the local interests that would be directly affected by the proposed facility. At least one member appointed by the city or town shall live within one mile of the proposed facility, and at least one member appointed by the county shall be a resident of a city or town in which the proposed facility would be located. If the appointing authority fails to appoint temporary board members in the period allowed, the governor shall appoint the temporary members to represent the local interests in accordance with this section. Temporary board members shall serve for terms lasting until the board has taken final action on the facility.

History: *1980 c 564 art 4 s 3; 1981 c 352 s 24*

115A.35 REVIEW PROCEDURE.

The board shall meet to commence the supplementary review within 90 days of the submission of a request determined by the board to satisfy the requirements for review under this section. At the meeting commencing the review the chairperson shall recommend and the board establish a scope and procedure, in accordance with the rules of the board, for review and final decision on the

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History: *1980 c 564 art 4 s 4; 1980 c 615 s 60; 1982 c 424 s 130*

115A.36 SCOPE AND CONTENT OF REVIEW.

In its review and final decision on the proposed facility, the board shall consider at least the following matters:

(a) the risk and effect of the proposed facility on local residents, units of government, and the local public health, safety, and welfare, including such dangers as an accidental release of wastes during transportation to the facility, water, air, and land pollution, and fire or explosion where appropriate, and the degree to which the risk or effect may be alleviated;

(b) the consistency of the proposed facility with, and its effect on, existing and planned local land use and development; local laws, ordinances, and permits; and local public facilities and services;

(c) the adverse effects of the facility on agriculture and natural resources and opportunities to mitigate or eliminate the adverse effects by additional stipulations, conditions, and requirements respecting the proposed facility at the proposed site;

(d) the need for the proposed facility, especially its contribution to abating solid and hazardous waste disposal, the availability of alternative sites, and opportunities to mitigate or eliminate need by additional and alternative waste management strategies or actions of a significantly different nature;

(e) whether, in the case of solid waste resource recovery facilities, the applicant has considered the feasible and prudent waste processing alternatives for accomplishing the purposes of the proposed project and has compared and evaluated the costs of the alternatives, including capital and operating costs, and the effects of the alternatives on the cost to generators.

History: *1980 c 564 art 4 s 5*

115A.37 FINAL DECISION OF BOARD.

Subdivision 1. **Approval or disapproval.** In its final decision on the proposed facility, the board may either approve or disapprove the proposed facility at the proposed site. The board's approval shall embody all terms, conditions, and requirements of the permitting agencies, provided that the board may: (a) finally resolve any conflicts between state agencies regarding permit terms, conditions, and requirements, and (b) require more stringent permit terms, conditions, and requirements respecting the design, construction, operation, inspection, monitoring, and maintenance of the proposed facility at the proposed site. The board's

resolution of conflicts under clause (a) shall be in favor of the more stringent terms, conditions, and requirements.

Subd. 2. **Decision paramount.** The decision of the board to approve a facility shall be final and shall supersede and preempt requirements of state agencies and political subdivisions and the requirements of sections 473H.02 to 473H.17; except that the facility shall be subject to those terms, conditions, and requirements of permitting agencies embodied in the board's approval and any requirements imposed pursuant to subdivision 3. The permitting agencies shall issue or amend the permits for the facility within 60 days following and in accordance with the final decision of the board, and all permits shall conform to the terms, conditions, and requirements of the board's decision. No charter provision, ordinance, regulation, permit, or other requirement of any state agency or political subdivision shall prevent or restrict the establishment, operation, expansion, continuance, or closure of the facility in accordance with the final decision of the board and permits issued pursuant thereto.

Subd. 3. **Local requirements.** A political subdivision may impose reasonable requirements respecting the construction, inspection, operation, monitoring, and maintenance of a facility. Any such requirements shall be subject to review by the agency to determine their reasonableness and consistency with the establishment and use of a facility in accordance with the final decision of the board and permits issued pursuant thereto. The agency may approve, disapprove, suspend, modify, or reverse any such requirements. The decision of the agency shall be final.

History: *1980 c 564 art 4 s 6; 1981 c 352 s 25*

115A.38 RECONCILIATION PROCEDURES.

Subdivision 1. **Reports to legislative commission.** At least 30 days before making a final decision under section 115A.37 in a review brought pursuant to section 115A.33, clause (d), the board through its chairperson may report to the legislative commission describing permit conditions or requirements being considered which are not within the existing authority of the agency or the board or which would require legislation or public financial assistance. In any such report the chairperson of the board may request intervention in the review pursuant to subdivisions 2 and 3.

Subd. 2. **Pre-intervention assessment.** If the legislative commission determines that intervention might be warranted under the terms of subdivision 1, the commission may suspend the review process for up to 60 days to allow a pre-intervention assessment. The pre-intervention assessment shall be conducted by an independent, impartial, and qualified public intervenor appointed by the commission with the advice and consent of the parties to the dispute. The intervenor shall report to the commission. The report shall include:

(a) an assessment of whether the dispute is ripe for mediation and whether the parties are willing to mediate;

(b) an assessment of whether, within the terms of subdivision 1, substantive issues exist which cannot be resolved effectively through normal administrative and judicial procedures;

(c) a preliminary definition of the facts and issues in dispute and actions and decisions being considered;

(d) a description of the diverse parties having a legitimate and direct interest in the outcome of the dispute.

Subd. 3. **Suspension of review process; intervention proceeding.** Following the report of the intervenor, the legislative commission may suspend the review process for an additional period not to exceed 90 days for an intervention

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History: *1980 c 564 art 4 s 7*

115A.39 JUDICIAL REVIEW.

Judicial review with respect to conduct or decisions in supplementary reviews brought pursuant to section 115A.33, clauses (c) or (d), shall be as provided in section 115A.30.

History: *1980 c 564 art 4 s 8*

SOLID WASTE MANAGEMENT PLANNING ASSISTANCE PROGRAM

115A.42 ESTABLISHMENT AND ADMINISTRATION.

There is established a planning assistance program to provide technical and financial assistance to political subdivisions of the state for the purposes of encouraging and improving regional and local solid waste management planning activities and efforts and of furthering the state policies and purposes expressed in section 115A.02. The program shall be administered by the agency pursuant to rules promulgated under chapter 14, except in the metropolitan area where the program shall be administered by the metropolitan council pursuant to chapter 473. The agency and the metropolitan council shall ensure conformance with federal requirements and programs established pursuant to the Resource Conservation and Recovery Act of 1976 and amendments thereto.

History: *1980 c 564 art 5 s 1; 1982 c 424 s 130; 1982 c 569 s 12*

115A.43 ELIGIBLE RECIPIENTS.

Political subdivisions shall be eligible for assistance under the program.

History: *1980 c 564 art 5 s 2*

115A.44 FINANCIAL ASSISTANCE.

Eligible recipients may receive grants for up to 50 percent of the cost of the planning activity, except that planning by a regional development commission and joint planning by two or more contiguous counties or political subdivisions located in two or more contiguous counties may receive grants for up to 100 percent of the cost of the planning activity. Financial assistance provided under the program may be used to employ staff, contract with other units of government or qualified consultants, and pay such other planning expenses as the agency or metropolitan council may allow.

History: *1980 c 564 art 5 s 3*

115A.45 TECHNICAL ASSISTANCE.

The agency and metropolitan council shall provide for technical assistance for eligible recipients. The agency and metropolitan council shall provide model plans for regional and local solid waste management. The agency and metropolitan council may contract for the delivery of technical assistance by a regional development commission, any state or federal agency, or private consultants. The agency shall prepare and publish an inventory of sources of technical assistance for solid waste planning, including studies, publications, agencies, and persons available.

History: *1980 c 564 art 5 s 4*

115A.46 REQUIREMENTS.

Subdivision 1. **General.** Plans shall address the state policies and purposes expressed in section 115A.02. Plans for the location, establishment, operation, maintenance, and post-closure use of facilities and facility sites, for ordinances, and for licensing, permit, and enforcement activities shall be consistent with the rules adopted by the agency pursuant to chapter 116. Plans shall address the resolution of conflicting, duplicative, or overlapping local management efforts. Plans shall address the establishment of joint powers management programs or waste management districts where appropriate. Plans proposing a designation of resource recovery facilities pursuant to sections 115A.70 and 400.162 shall be submitted to the waste management board for review and approval or disapproval. The review shall be based on whether the plans conform to the requirements of this section. The board may require revision of a plan as a condition of its approval. Plans shall address other matters as the rules of the agency may require consistent with the purposes of sections 115A.42 to 115A.46. Political subdivisions preparing plans under sections 115A.42 to 115A.46 shall consult with persons presently providing solid waste collection, processing, and disposal services. Plans prepared by local units of government in the metropolitan area shall conform to the requirements of chapter 473.

Subd. 2. **Contents.** The plans shall describe existing collection, processing, and disposal systems, including schedules of rates and charges, financing methods, environmental acceptability, and opportunities for improvements in the systems. The plans shall include an estimate of the land disposal capacity in acre-feet which will be needed through the year 2000, on the basis of current and projected waste generation practices. The plans shall contain an assessment of opportunities to reduce the need for land disposal through waste reduction and resource recovery, the alternative degrees of reduction achievable, and a comparison of the costs of alternatives, including capital and operating costs, and the effects of the alternatives on the cost to generators and on persons currently providing solid waste collection, processing, and disposal services. The plans shall, to the extent practicable and consistent with the achievement of other public policies and purposes, encourage ownership and operation of solid waste facilities by private industry. For solid waste facilities owned or operated by public agencies or supported primarily by public funds or obligations issued by a public agency, the plans shall include criteria and standards to protect comparable private and public facilities already existing in the area from displacement unless the displacement is required in order to achieve the waste management objectives identified in the plan. The plans shall establish a siting procedure and development program to assure the orderly location, development, and financing of new or expanded solid waste facilities and services sufficient for a prospective ten-year period, including estimated costs and implementation schedules, proposed procedures for operation and maintenance, estimated annual costs and gross revenues, and proposals for the use of facilities after they are no longer needed or usable. The plans shall describe

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existing and proposed county and municipal ordinances and license and permit requirements relating to solid waste management and shall describe existing and proposed regulation and enforcement procedures.

Subd. 3. **Plans for designation of resource recovery facilities.** A plan proposing designation of resource recovery facilities pursuant to sections 115A.70 and 400.162 shall evaluate the benefits of the proposal, including the public purposes achieved by the conservation and recovery of resources, the furtherance of local and any district or regional waste management plans and policies, and the furtherance of the state policies and purposes expressed in section 115A.02, and also the costs of the proposal, including not only the direct capital and operating costs of the facility but also any indirect costs and adverse long-term effects of the designation. In particular the plan shall evaluate:

(a) whether the required use will result in the recovery of resources or energy from materials which would otherwise be wasted;

(b) whether the required use will lessen the demand for and use of land disposal;

(c) whether the required use is necessary for the financial support of the facility;

(d) whether less restrictive methods for ensuring an adequate solid waste supply are available;

(e) all other feasible and prudent waste processing alternatives for accomplishing the purposes of the proposed designation, the direct and indirect costs of the alternatives, including capital and operating costs, and the effects of the alternatives on the cost to generators.

History: *1980 c 564 art 5 s 5; 1982 c 569 s 13*

SOLID WASTE MANAGEMENT DEMONSTRATION PROGRAM

115A.49 ESTABLISHMENT; PURPOSES AND PRIORITIES.

There is established a solid waste management demonstration program to encourage and assist cities, counties, and solid waste management districts in the development and implementation of solid waste management projects of potential state wide application or significance and to transfer the knowledge and experience gained from such projects to other communities in the state. The program shall be administered so as to demonstrate the application of feasible and prudent alternatives to disposal, including waste reduction; waste separation by generators, collectors, and other persons; and waste processing. The program shall be administered by the agency and the board in accordance with the requirements of sections 115A.49 to 115A.54 and rules promulgated by the agency and the board pursuant to chapter 14. In administering the program, the agency and the board shall give priority to areas where natural geologic and soil conditions are unsuitable for land disposal of solid waste and areas where the capacity of existing solid waste disposal facilities is determined by the agency or the board to be less than five years. In areas outside the metropolitan area, the agency and the board shall also give priority to projects serving more than one local government unit.

History: *1980 c 564 art 6 s 1; 1982 c 424 s 130*

115A.50 ELIGIBLE RECIPIENTS.

Eligible recipients for assistance under the program shall be limited to cities, counties, and solid waste management districts established pursuant to sections 115A.62 to 115A.72. Eligible recipients may apply for assistance under sections 115A.52 and 115A.53 on behalf of other persons.

History: *1980 c 564 art 6 s 2*

115A.51 APPLICATION REQUIREMENTS.

Applications for assistance under the program shall demonstrate: (a) that the project is conceptually and technically feasible; (b) that affected political subdivisions are committed to implement the project, to provide necessary local financing, and to accept and exercise the government powers necessary to the project; (c) that operating revenues from the project, considering the availability and security of sources of solid waste and of markets for recovered resources, together with any proposed federal, state, or local financial assistance, will be sufficient to pay all costs over the projected life of the project; (d) that the applicant has evaluated the feasible and prudent alternatives to disposal and has compared and evaluated the costs of the alternatives, including capital and operating costs, and the effects of the alternatives on the cost to generators. The agency or the board may require completion of a comprehensive solid waste management plan conforming to the requirements of section 115A.46, before accepting an application.

History: *1980 c 564 art 6 s 3*

115A.52 TECHNICAL ASSISTANCE FOR DEMONSTRATION PROJECTS.

The agency and the board shall ensure the delivery of the technical assistance necessary for proper implementation of each demonstration project funded under the program. The agency and the board may contract for the delivery of technical assistance by any state or federal agency, a regional development commission, the metropolitan council, or private consultants and may use program funds to reimburse the agency, commission, council, or consultants. The agency and the board shall prepare and publish an inventory of sources of technical assistance, including studies, publications, agencies, and persons available. The agency and the board shall ensure statewide benefit from projects assisted under the demonstration program by developing exchange and training programs for local officials and employees and by using the experience gained in demonstration projects to provide technical assistance and education for other solid waste management projects in the state.

History: *1980 c 564 art 6 s 4*

115A.53 WASTE REDUCTION AND SEPARATION PROJECTS.

The agency shall provide technical assistance and grants to projects which demonstrate waste reduction; waste separation by generators, collectors, and other persons; and collection systems for separated waste. Activities eligible for assistance under this section include legal, financial, economic, educational, marketing, social, governmental, and administrative activities related to the implementation of the project. Preliminary planning and development, feasibility study, and conceptual design costs shall also be eligible activities, but no more than 20 percent of program funds shall be used to fund those activities. The rules of the agency shall prescribe the level or levels of local funding required for grants under this section.

History: *1980 c 564 art 6 s 5*

115A.54 WASTE PROCESSING FACILITIES

Subdivision 1. **Purposes; public interest; declaration of policy.** The legislature finds that the establishment of waste processing facilities and transfer stations serving such facilities is needed to manage properly the solid waste generated in the state and to conserve and protect the natural resources in the state and the health, safety, and welfare of its citizens; that opportunities to establish the facilities and transfer stations are not being fully realized by individual political subdivisions or by agreements among subdivisions; and that therefore it is necessary to provide capital assistance to stimulate and encourage the acquisition and betterment of the facilities and transfer stations.

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Subd. 2. **Administration; assurance of funds.** The board shall provide technical and financial assistance for the acquisition and betterment of the facilities and transfer stations from revenues derived from the issuance of bonds authorized by section 115A.58. Of money appropriated for the purposes of the demonstration program, at least 70 percent shall be distributed as loans, and the remainder shall be distributed as grants. An individual project may receive assistance totaling up to 100 percent of the capital cost of the project and grants up to 50 percent of the capital cost of the project. No grant or loan shall be disbursed to any recipient until the board has determined the total estimated capital cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

Subd. 3. **Obligations of recipient.** No grant or loan for any project shall be disbursed until the governing body of the recipient has made an irrevocable undertaking, by resolution, to use all funds made available exclusively for the capital cost of the project and to pay any additional amount by which the cost of the project exceeds the estimate by appropriation to the construction fund of additional funds or proceeds of additional bonds of the recipient. The resolution shall also indicate that any subsequent withdrawal of allocated or additional funds of the recipient will impair the obligation of contract between the state of Minnesota, the recipient, and the bondholders. The resolution shall pledge payment to the debt service account of all revenues of the project to the extent that they exceed costs and shall also obligate the recipient to levy a tax sufficient to make timely payments under the loan agreement, if a deficiency occurs in the amount of user charges, taxes, special assessments, or other moneys pledged for payment under the loan agreement. Each loan made to a recipient shall be secured by resolutions adopted by the board and the governing body of the recipient, obligating the recipient to repay the loan to the state treasurer in annual installments including both principal and interest. Installments shall be in an amount sufficient to pay the principal amount within the period required by the board. The interest on the loan shall be calculated on the declining balance at a rate not less than the average annual interest rate on the state bonds of the issue from which proceeds of the loan were made. The resolution shall obligate the recipient to provide money for the repayment from user charges, taxes, special assessments or any other funds available to it.

History: *1980 c 564 art 6 s 6; 1981 c 352 s 26*

STATE WASTE MANAGEMENT BONDS

115A.57 WASTE MANAGEMENT FUND.

Subdivision 1. **Creation; receipts.** The commissioner of finance shall maintain a Minnesota state waste management fund. The fund shall receive the proceeds of state bonds and other money appropriated to the fund and disburse money for the acquisition of real property and interests in real property for hazardous waste facility sites and surrounding buffer areas, as authorized by section 115A.06, subdivision 4, and money to be granted or loaned to political subdivisions pursuant to the waste processing facility capital assistance program created by section 115A.54. The commissioner of finance and state treasurer shall deposit in the fund as received (a) all proceeds of Minnesota state waste management bonds, except accrued interest and premiums received upon the sale of the bonds; (b) all other money appropriated by law for purposes stated in sections 115A.57 to 115A.59, and (c) all money granted to the state for those purposes by the federal government or any agency thereof. All the receipts are annually

appropriated for the purposes of the fund, and shall remain available until expended.

Subd. 2. **Disbursements.** Disbursements from the fund shall be made at the times and in the amounts authorized by the board in accordance with applicable state laws and the board's rules.

History: *1980 c 564 art 7 s 1*

115A.58 MINNESOTA STATE WASTE MANAGEMENT BONDS.

Subdivision 1. **Authority to issue bonds.** The commissioner of finance shall sell bonds of the state of Minnesota for the prompt and full payment of which, together with interest, the full faith, credit, and taxing powers of the state are irrevocably pledged. Bonds shall be sold only upon request of the board and in the amount as may otherwise be authorized by this or a subsequently enacted law which authorizes the sale of additional bonds and the deposit of the proceeds in the state waste management fund. Any authorized amount of bonds in this law or any subsequently enacted law authorizing the issuance of bonds for the purposes of the state waste management fund, together with this section, constitute complete authority for the issue. The bonds shall not be subject to restrictions or limitations contained in any other law.

Subd. 2. **Issuance of bonds.** Upon request by the board and upon authorization as provided in subdivision 1, the commissioner of finance shall sell Minnesota state waste management bonds. The bonds shall be in the aggregate amount requested, and sold upon sealed bids upon the notice, at the price, in the form and denominations, bearing interest at the rate or rates, maturing in the amounts and on the dates (without option of prepayment or subject to prepayment upon the notice and at the times and prices), payable at the bank or banks within or outside the state (with provisions for registration, conversion, and exchange and for the issuance of notes in anticipation of the sale or delivery of definitive bonds), and in accordance with any further provisions as the commissioner of finance shall determine. The sale is subject to the approval of the attorney general, but not subject to the provisions of sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.57 to 14.62. The bonds shall be executed by the commissioner of finance and attested by the state treasurer under their official seals. The signatures of the officers on the bonds and any interest coupons and their seals may be printed, lithographed, engraved, or stamped thereon, except that each bond shall be authenticated by the manual signature on its face of one of the officers or of an officer of a bank designated by them as authenticating agent. The commissioner of finance shall ascertain and certify to the purchasers of the bonds the performance and existence of all acts, conditions, and things necessary to make them valid and binding general obligations of the state of Minnesota, subject to the approval of the attorney general.

Subd. 3. **Expenses.** All expenses incidental to the sale, printing, execution, and delivery of bonds pursuant to this section, including but not limited to actual and necessary travel and subsistence expenses of state officers and employees for these purposes, and any expenses of litigation relating to the validity of the bonds, shall be paid from the waste management fund, and the amounts necessary are appropriated from that fund.

Subd. 4. **Debt service account in the state waste management fund.** The commissioner of finance shall maintain in the Minnesota state waste management fund a separate account to be called the state waste management debt service account. It shall record receipts of premium and accrued interest, loan repayments, project revenue or other money transferred to the fund and income from the investment of the money and record any disbursements to pay the principal and interest on waste management bonds. Income from investment shall be

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credited to the account in each fiscal year. The amount credited shall be equal to the average return that year on all funds invested by the state treasurer, as determined by the treasurer, times the average balance in the account that year.

Subd. 5. **Appropriations to debt service account; appropriation from account to pay debt service.** The premium and accrued interest received on each issue of Minnesota state waste management bonds, and all payments received in repayment of loans and other revenues received are appropriated to the debt service account. All income from the investment of the Minnesota state waste management fund is appropriated to the debt service account. In order to reduce the amount of taxes otherwise required to be levied, there is also appropriated to the debt service account from any funds available in the general fund on November 1 in each year, a sum of money sufficient in amount, when added to the balance then on hand, to pay all principal and interest on Minnesota waste management bonds due and to become due before July 1 in the second ensuing year. So much of the debt service account of the state waste management fund as is necessary to pay principal and interest on waste management bonds is annually appropriated from the debt service account for the payment of principal and interest of the waste management bonds. All funds appropriated by this subdivision shall be available in the debt service account prior to any levy of the tax in any year required by the Minnesota Constitution, Article XI, Section 7.

Subd. 6. **Security.** On or before December 1 in each year the state auditor shall levy on all taxable property within the state whatever tax may be necessary to produce an amount sufficient, with all money currently credited to the debt service account, to pay the entire amount of principal and interest currently due and the principal and interest to become due before July 1 in the second year thereafter on Minnesota waste management bonds. This tax shall be levied upon all real property used for the purposes of a homestead, as well as other taxable property, notwithstanding the provisions of section 273.13, subdivisions 6 and 7, and shall be subject to no limitation of rate or amount until all the bonds and interest thereon are fully paid. The proceeds of this tax are appropriated to the debt service account. The principal of and interest on the bonds are payable from the proceeds of this tax.

History: *1980 c 564 art 7 s 2; 1982 c 424 s 130*

115A.59 BOND AUTHORIZATION AND APPROPRIATION OF PROCEEDS.

The commissioner of finance is authorized, upon request of the board, to sell Minnesota state waste management bonds in the amount of up to $8,800,000 for the purpose of the waste processing facility capital assistance program under section 115A.54, and in the amount of up to $6,200,000 for the purpose of acquiring real property and interests in real property for hazardous waste facility sites and buffer areas as authorized by section 115A.06, subdivision 4. The bonds shall be sold in the manner and upon the conditions prescribed in section 115A.58, and in the Minnesota Constitution, Article XI, Sections 4 to 7. The proceeds of the bonds, except as provided in section 115A.58, subdivision 5, are appropriated to the Minnesota state waste management fund. The amount of bonds issued pursuant to this authorization shall not exceed at any time the amount needed to produce a balance in the waste management fund equal to the aggregate amount of the loans and grants then approved and not previously disbursed, plus the amount of the loans and grants to be approved in the current and the following fiscal year, as estimated by the board.

History: *1980 c 564 art 7 s 3*

SOLID WASTE MANAGEMENT DISTRICTS

115A.62 PURPOSE; PUBLIC INTEREST; DECLARATION OF POLICY.

The legislature finds that the development of integrated and coordinated solid waste management systems is needed to manage properly the solid waste generated in the state, to conserve and protect the natural resources in the state and the health, safety, and welfare of its citizens, and to further the state policies and purposes expressed in section 115A.02; that this need cannot always be met solely by the activities of individual political subdivisions or by agreements among subdivisions; and that therefore it is necessary to establish a procedure for the creation of solid waste management districts having the powers and performing the functions prescribed in sections 115A.62 to 115A.72.

History: *1980 c 564 art 8 s 1; 1982 c 569 s 14*

115A.63 SOLID WASTE MANAGEMENT DISTRICTS.

Subdivision 1. **Legal status.** Solid waste management districts established pursuant to sections 115A.62 to 115A.72 shall be public corporations and political subdivisions of the state.

Subd. 2. **Establishment by board.** The board may establish waste districts as public corporations and political subdivisions of the state, define the powers of such districts in accordance with sections 115A.62 to 115A.72, define and alter the boundaries of the districts as provided in section 115A.64, and terminate districts as provided in section 115A.66. The board shall promulgate rules pursuant to chapter 14 governing the establishment, alteration, and termination of districts.

Subd. 3. **Restrictions.** No waste district shall be established within the boundaries of the Western Lake Superior Sanitary District established by Laws 1971, Chapter 478, as amended. No waste district shall be established wholly within one county. The board shall not establish a waste district within or extending into the metropolitan area, nor define or alter the powers or boundaries of a district, without the approval of the metropolitan council. The council shall not approve a district unless the articles of incorporation of the district require that the district will have the same procedural and substantive responsibilities, duties, and relationship to the metropolitan agencies as a metropolitan county. The board shall not establish a district unless the petitioners demonstrate that they are unable to fulfill the purposes of a district through joint action under section 471.59. The board shall require the completion of a comprehensive solid waste management plan conforming to the requirements of section 115A.46, by petitioners seeking to establish a district.

History: *1980 c 564 art 8 s 2; 1982 c 424 s 130*

115A.64 PROCEDURE FOR ESTABLISHMENT AND ALTERATION.

Subdivision 1. **Local petition.** Waste districts shall be established and their powers and boundaries defined or altered by the board only after petition requesting the action jointly submitted by the governing bodies of petitioners comprising at least one-half of the counties partly or wholly within the district. A petition for alteration shall include a resolution by the board of directors of the district approving the alteration.

Subd. 2. **Petition contents.** A petition requesting establishment or alteration of a waste district shall contain the information the board may require, including at least the following:

(a) the name of the proposed district;

(b) a description of the territory and political subdivisions within and the boundaries of the proposed district or alteration thereto, along with a map showing the district or alteration.

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(c) resolutions of support for the district, as proposed to the board, from the governing body of each of the petitioning counties;

(d) a statement of the reason, necessity, and purpose for the district, plus a general description of the solid waste management improvements and facilities contemplated for the district showing how its activities will accomplish the purpose of the district and the purposes for waste resource districts stated in sections 115A.62 to 115A.72;

(e) articles of incorporation stating the powers of the district consistent with sections 115A.62 to 115A.72, including a statement of powers proposed pursuant to sections 115A.70 and 115A.71.

After the petition has been filed, no petitioner may withdraw from it except with the written consent of all other petitioners filed with the board.

Subd. 3. **Local review and comment.** At least 60 days before submitting the petition to the board, the petitioners shall publish notice of the petition in newspapers of general circulation in the proposed district and shall cause a copy of the petition to be served upon the agency, the governing body of each political subdivision which is wholly or partly within the proposed district or is affected by the proposed alteration and each regional development commission affected by the proposed district or alteration. Each entity receiving service shall have 60 days within which to comment to the petitioners on the petition and the proposed district or alteration. Proof of service, along with any comments received, shall be attached to the petition when it is submitted to the board.

Subd. 4. **Review procedures.** Upon receipt of the petition, the chairperson of the board shall determine whether the petition conforms in form and substance to the requirements of law and rule. If the petition does not conform to the requirements, the chairperson shall return it immediately to the petitioners with a statement describing the deficiencies and the amendments necessary to rectify them. If the petition does conform to the requirements, and if comments have been received objecting to the establishment or alteration of the district as proposed, the chairperson shall request the office of administrative hearings to conduct a hearing on the petition. The hearing shall be conducted in the proposed district in the manner provided in chapter 14 for contested cases. If no comments have been received objecting to the establishment of the district as proposed, the board may proceed to grant or deny the petition without the necessity of conducting a contested case hearing. If the petition conforms to the requirements of law and rule, the chairperson shall also immediately submit the petition to the solid waste and the technical advisory councils of the board for review and recommendation and shall forward the petition to the director of the agency, who shall prepare and submit to the board a report containing recommendations on the disposition of the petition. The director's report shall contain at least the director's findings and conclusions on whether the proposed boundaries, purposes, powers, and management plans of the district or alteration thereto serve the purposes of waste resource districts, are appropriately related to the waste generation, collection, processing, and disposal patterns in the area, and are generally consistent with the purposes of the agency's regulatory program.

Subd. 5. **Corrections allowed.** No petition submitted by the requisite number of counties shall be void or dismissed on account of defects exposed in the hearing documents or report. The board shall permit the petition to be amended in form and substance to conform to the facts by correcting any errors in the description of the territory or any other defects.

Subd. 6. **Board order.** After considering the reports of the hearing examiner, if a contested case hearing has been held, and the recommendations of the advisory councils director of the agency, the board shall make a final decision on the petition. If the board finds and determines that the establishment or altera-

tion of a district as proposed in the petition would not be in the public interest and would not serve the purposes of sections 115A.62 to 115A.72, it shall give notice to the petitioners of its intent to deny the petition. If a contested case hearing has not been held, the petitioners may request a hearing within 30 days of the notice of intent to deny the petition. The request shall be granted. Following the hearing and the report of the hearing examiner, the board shall make a final decision on the petition and mail a copy of its decision to the governing body of each affected political subdivision. If the board finds and determines that the establishment or alteration of a district as proposed in the petition would be in the public interest and would serve the purposes of sections 115A.62 to 115A.72, it shall, by order, establish the district, define its boundaries, and give it a corporate name by which, in all proceedings, it shall thereafter be known. The order shall include articles of incorporation stating the powers of the district and the location of its registered office. Upon the filing of a certified copy of the order of the board with the secretary of state, the district shall become a political subdivision of the state and a public corporation, with the authority, power, and duties prescribed in sections 115A.62 to 115A.72 and the order of the board. At the time of filing, a copy of the order shall be mailed by the board to the governing body of each political subdivision wholly or partly within the district or affected by the alteration of the district.

History: *1980 c 564 art 8 s 3; 1980 c 615 s 60; 1982 c 424 s 130*

115A.65 PERPETUAL EXISTENCE.

A waste district created under the provisions of sections 115A.62 to 115A.72 shall have perpetual existence to the extent necessary to perform all acts necessary and proper for carrying out and exercising the powers and duties expressly given in it. A district shall not be terminated except pursuant to section 115A.66.

History: *1980 c 564 art 8 s 4*

115A.66 TERMINATION.

Subdivision 1. **Petition.** Proceedings for the termination of a district shall be initiated by the filing of a petition with the board. The petition shall be submitted by the governing bodies of not less than one-half of the counties which are wholly or partly in the district. The petition shall state that the existence of the district is no longer in the public interest. The petitioners shall publish notice of the petition in newspapers of general circulation in the district and shall cause to be served upon each political subdivision wholly or partly within the district a copy of the petition, and proof of service shall be attached to the petition filed with the board.

Subd. 2. **Bond; payment of costs.** If the petition is dismissed or denied, the petitioners shall be required to pay all costs and expenses of the proceeding for termination. At the time of filing the petition a bond shall be filed by the petitioners with the board in such sum as the board determines to be necessary to ensure payment of costs.

Subd. 3. **Hearing; decision.** If objection is made to the board against the petition for termination, a contested case hearing on the petition shall be held in the waste district pursuant to chapter 14. If the board determines that the termination of the district as proposed in the petition would not be in the public interest, the board shall give notice to the petitioner of its intent to deny the petition. If a contested case hearing has not been held, the petitioner may request a hearing within 30 days of the notice of intent to deny the petition. The request shall be granted. Following the hearing and the report of the hearing examiner, the board shall make a final decision on the petition. If the petition is dismissed

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all costs of the proceeding shall be assessed against the petitioner. If the board determines that the existence of the district is no longer in the public interest, the board shall by its findings and order terminate the district. Upon the filing of a certified copy of the findings and order with the secretary of state the district shall cease to be a public corporation and a political subdivision of the state.

Subd. 4. **Limitation.** The board shall not entertain a petition for termination of a district within five years from the date of the formation of the district nor shall the board entertain a petition for termination of the same district more often than once in five years.

History: *1980 c 564 art 8 s 5; 1982 c 424 s 130*

115A.67 ORGANIZATION OF DISTRICT.

The governing body of each county wholly or partly within the district shall appoint two persons to serve on the first board of directors of the district. The first chairperson of the board of directors shall be appointed by the chairperson of the waste management board and shall be a local elected official within the district. The first chairperson shall serve for a term of two years. Thereafter the chairperson shall be elected from outside the board of directors by majority vote of the board of directors. The first meeting of the board of directors shall be held at the call of the chairperson, after notice, for the purpose of proposing the bylaws, electing officers and for any other business that comes before the meeting. The bylaws of the district, and amendments thereto, shall be adopted by a majority vote of the board of directors unless the certificate of incorporation requires a greater vote. The bylaws shall state:

(a) the manner and time of calling regular meetings of the representatives and the board of directors, not less than once annually;

(b) the title, manner of selection, and term of office of officers of the district;

(c) the term of office of members of the board of directors, the manner of their removal, and the manner of filling vacancies on the board of directors;

(d) the powers and duties of the board of directors consistent with the order and articles of incorporation establishing the district;

(e) the definition of a quorum for meetings of the board of directors, which shall be not less than a majority of the members;

(f) the compensation and reimbursement for expenses for members of the board of directors, which shall not exceed that provided for in section 15.0575, subdivision 3; and

(g) such other provisions for regulating the affairs of the district as the board of directors shall determine to be necessary.

History: *1980 c 564 art 8 s 6*

115A.68 REGISTERED OFFICE.

Every district shall maintain an office in this state to be known as its registered office. When a district desires to change the location of its registered office, it shall file with the secretary of state, the board, and the director of the agency, a certificate stating the new location by city, town, or other community and the effective date of change. When the certificate has been duly filed, the board of directors may make the change without any further action.

History: *1980 c 564 art 8 s 7*

115A.69 POWERS.

Subdivision 1. **General.** A district shall have all powers necessary or convenient to perform its duties, including the powers provided in this section.

Subd. 2. **Actions.** The district may sue and be sued, and shall be a public body within the meaning of chapter 562.

Subd. 3. **Acquisition of property.** The district may acquire by purchase, lease, condemnation, gift, or grant, any right, title, and interest in and to real or personal property deemed necessary for the exercise of its powers or the accomplishment of its purposes, including positive and negative easements and water and air rights. Any local government unit and the commissioners of transportation, natural resources, and administration may convey to or permit the use of any property or facilities by the district, subject to the rights of the holders of any bonds issued with respect thereto, with or without compensation and without an election or approval by any other government agency. The district may hold the property for its purposes, and may lease or rent the property so far as not needed for its purposes, upon the terms and in the manner as it deems advisable. The right to acquire lands and property rights by condemnation shall be exercised in accordance with chapter 117. The district may take possession of any property for which condemnation proceedings have been commenced at any time after the issuance of a court order appointing commissioners for its condemnation.

Subd. 4. **Right of entry.** Whenever the district deems it necessary to the accomplishment of its purposes, the district or any member, employee, or agent thereof, when authorized by it, may enter upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations, provided that the entrance and activity is undertaken after reasonable notice and during normal business hours and provided that compensation is made for any damage to the property caused by the entrance and activity.

Subd. 5. **Gifts and grants.** The district may apply for and accept gifts, loans, or other property from the United States, the state, or any person for any of its purposes, may enter into any agreement required in connection therewith, and may hold, use, and dispose of the money or property in accordance with the terms of the gift, grant, loan or agreement.

Subd. 6. **Property exempt from taxation.** Any real or personal property owned, used, or occupied by the district for any authorized purpose is declared to be acquired, owned, used and occupied for public and governmental purposes, and shall be exempted from taxation by the state or any political subdivision of the state, provided that those properties shall be subject to special assessments levied by a political subdivision for a local improvement in amounts proportionate to and not exceeding the special benefit received by the properties from the improvement. No possible use of the properties in any manner different from their use for solid waste management at the time shall be considered in determining the special benefit received by the properties. All bonds, certificates of indebtedness or other obligations of the district shall be exempted from taxation by the state or any political subdivision of the state. Interest on the obligations of the district shall be exempted from taxation in the same manner provided for interest on obligations qualifying under section 290.08, subdivision 7.

Subd. 7. **Facilities and services.** The district may construct, equip, develop, enlarge, improve, and operate solid waste facilities and services as it deems necessary and may negotiate contracts for the use of public or private facilities and services. The district shall contract with private persons for the construction, maintenance, and operation of facilities and services where the facilities and services are adequate and available for use and competitive with other means of providing the same service.

Subd. 8. **Rates; charges.** The district may establish and collect rates and charges for the facilities and services provided by the district and may negotiate and collect rates and charges for facilities and services contracted for by the district. The board of directors of the district may agree with the holders of

district obligations which are secured by revenues of the district as to the maximum or minimum amounts which the district shall charge and collect for services provided by the district. Before establishing or raising any rates and charges the board of directors shall hold a public hearing regarding the proposed rates and charges. Notice of the hearing shall be published at least once in a legal newspaper of general circulation throughout the area affected by the rates and charges. Publication shall be no more than 45 days and no less than 15 days prior to the date of the hearing.

Subd. 9. **Disposition of property.** The district may sell or otherwise dispose of any real or personal property acquired by it which is no longer required for accomplishment of its purposes. The property shall be sold in the manner provided by section 458.196, insofar as practical. The district shall give notice of sale which it deems appropriate. When the district determines that any property which has been acquired from a government unit without compensation is no longer required, the district shall transfer it to the government unit.

Subd. 10. **Disposition of products and energy.** The district may use, sell, or otherwise dispose of all of the products and energy produced by its facilities. Section 471.345 shall not apply to the sale of products and energy. The district shall give particular consideration to the needs of purchasers in this state and shall actively promote sales to such purchasers so long as this can be done at prices and under conditions that meet constitutional requirements and that are consistent with the district's object of being financially self supporting to the greatest extent possible.

Subd. 11. **Contracts.** The district may enter into any contract necessary or proper for the exercise of its powers or the accomplishment of its purposes.

Subd. 12. **Joint powers.** The district may act under the provisions of section 471.59, or any other law providing for joint or cooperative action between government units.

Subd. 13. **Research.** The district may conduct research studies and programs, collect and analyze data, prepare reports, maps, charts, and tables, and conduct all necessary hearings and investigations in connection with its work and may advise and assist other government units on planning matters within the scope of its powers, duties, and objectives.

Subd. 14. **Employees; contracts for services.** The district may employ persons or firms and contract for services to perform engineering, legal or other services necessary to carry out its functions.

Subd. 15. **Insurance.** The district may require any employee to obtain and file with it an individual bond or fidelity insurance policy. It may procure insurance in amounts it deems necessary to insure against liability of the board of directors and employees or both, for personal injury or death and property damage or destruction, with the force and effect stated in chapter 466, and against risks of damage to or destruction of any of its facilities, equipment, or other property as it deems necessary.

Subd. 16. **Review of projects.** The district may require that persons shall not acquire, construct, alter, reconstruct or operate a solid waste facility within the district without prior consultation with and approval of the district.

History: 1980 c 564 art 8 s 8; 1982 c 569 s 15

115A.70 DESIGNATION OF RESOURCE RECOVERY FACILITIES; REQUIRED USE.

Subdivision 1. **Purpose.** In order to accomplish the objectives of a waste management district, to further the state policies and purposes expressed in section 115A.02, and to advance the public purposes served by resource recovery, the

legislature finds and declares that it may be necessary to authorize a district to require that all or any portion of the solid waste that is generated within its boundaries or any service area thereof and is deposited within the state be taken for processing to a resource recovery facility or a transfer station serving a facility designated by the district.

Subd. 2. **Standards.** Any district designation shall be based upon a plan prepared and approved in conformance with section 115A.46, shall be authorized in the articles of incorporation of the district, and shall be submitted pursuant to section 115A.071 for review and approval or disapproval by the waste management board.

Subd. 3. **Exemption.** The district shall not designate and require use of facilities for materials which are being separated from solid waste and recovered for reuse or recycling by the generator, by a private person under contract with the generator or by a licensed solid waste collector. The district shall not designate and require use of facilities for materials which are being delivered to another resource recovery facility unless the district finds and determines that the required use is consistent with criteria and standards concerning displacement of existing facilities and with the evaluation of resource recovery designation which are required in the solid waste management plan of the district.

Subd. 4. **Procedure.** The district shall proceed as follows when designating and requiring use of facilities:

(a) The district shall notify those persons whom the district has determined should use the facilities. Notification to political subdivisions, landfill operators, and licensed solid waste collectors shall be in writing. All other persons shall be notified at least by publication in a legal newspaper or newspapers having general circulation in the area. The notification shall specify types and quantities of solid wastes, plans for use of the solid wastes, the point of delivery of the solid wastes, and the fee to be charged. During a period of 90 days following the notification, the district shall negotiate with the persons within the areas to be served in order to develop contractual agreements on the terms of required use of the designated facilities.

(b) If contracts have not been made at the end of the 90 day period, or if persons subject to the required use have not made arrangements sufficient to justify exemption under subdivision 3, the district shall hold a public hearing to take testimony on the required use of the designated facilities. The hearing shall be preceded by the notice required under clause (a).

(c) If contracts have not been made within 30 days after the public hearing, or if persons subject to the required use have not made arrangements sufficient to justify exemption under subdivision 3, the district may order any person identified in the notice of the district to use the designated facilities, starting at a specified date which shall be at least 30 days after the order has been issued.

No designation shall be invalid by reason of the district's failure to provide written notice to any of the entities listed in this subdivision.

Subd. 5. **Service guarantee.** The district shall not arbitrarily terminate, suspend, or curtail services provided to any person required pursuant to this section to use designated facilities without the consent of the person or without just cause.

Subd. 6. **Termination.** Use required under contract or order pursuant to this section may be terminated by a person upon an adequate showing to the district that the solid waste has value and that arrangements have been made by the person sufficient to justify exemption under subdivision 3, unless the district determines that the requirement must be continued to assure delivery of waste necessary to the financial support of the district facilities.

History: *1980 c 564 art 8 s 9; 1982 c 569 s 16-18*

115A.71 BONDING POWERS.

Subdivision 1. **General.** A district may exercise the bonding powers provided in this section to the extent the powers are authorized by the order of the waste management board establishing the district and by its articles of incorporation.

Subd. 2. **Debt.** The district's bonds shall be sold, issued, and secured in the manner provided in chapter 475 for revenue bonds and the district shall have the same powers and duties as a municipality and its governing body in issuing revenue bonds under that chapter. No election shall be required. The bonds may be sold at any price and at public or private sale as determined by the district and shall not be subject to any limitation as to rate.

Subd. 3. **Revenue bonds.** A district may borrow money and incur indebtedness by issuing bonds and obligations which are payable solely:

(a) from revenues, income, receipts, and profits derived by the district from its operation and management of solid waste facilities;

(b) from the proceeds of warrants, notes, revenue bonds, debentures, or other evidences of indebtedness issued and sold by the district which are payable solely from such revenues, income, receipts, and profits;

(c) from federal or state grants, gifts, or other moneys received by the district which are available therefor.

Every issue of revenue bonds by the district shall be payable out of any funds or revenues from any facility of the district, subject only to agreements with the holders of particular bonds or notes pledging particular revenues or funds. If any facility of the district is funded in whole or in part by Minnesota waste management bonds issued under sections 115A.57 to 115A.59, the state bonds shall take priority. The district may provide for priorities of liens in the revenues between the holders of district obligations issued at different times or under different resolutions. The district may provide for the refunding of any district obligation through the issuance of other district obligations entitled to rights and priorities similar in all respects to those held by the obligations that are refunded.

History: *1980 c 564 art 8 s 10*

115A.72 AUDIT.

The board of directors, at the close of each year's business, shall cause an audit of the books, records and financial affairs of the district to be made by a certified public accountant or the state auditor. Copies of a written report of the audit, certified to by the auditors, shall be placed and kept on file at the principal place of business of the district and shall be filed with the secretary of state and the board.

History: *1980 c 564 art 8 s 11*

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER
POUCH O, JUNEAU, ALASKA 99811

Telephone:(907)
Address:
465-2600

April 17, 1984

Mr. Jim Palmer
Legislative Aide to
Senator Bettye Fahrenkamp
Pouch V
Juneau, AK 99811

Dear Mr. Palmer:

Enclosed, please find our April 13 revision to the fiscal note for CSSB 503 originally submitted April 12 to your office at your request. Please note we have decreased the note by one staff person and reduced the estimated support costs to what we consider a bare minimum. In addition, we have deleted the major capital item, related to performing environmental, social and economic evaluations necessary to justify a hazardous waste management facility and obtain public support for a specific site.

A portion of the capital funds request will be used to establish criteria for evaluating the impacts of a hazardous waste management facility and making preliminary determinations of the types and potential locations of one or more facilities. I understand that Senator Fahrenkamp will support the addition of funds in the FY 86 and 87 budgets necessary to complete the analyses of two to five specific sites, estimated to range from 0.5 to 2 million dollars per potential site.

Sincerely,

Christopher Noah
Deputy Commissioner

CN/SWH/ne

enclosures

cc: Steve Kaddish
Billie Trent

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: April 13, 1984

REQUEST
Bill/Resolution No.: CSSB 503
Title: Hazardous Waste...

Sponsor: Senate Resources
Requestor: Sen. Fahrenkamp & Fischer
Date of Request: April 12, 1984

FISCAL DETAIL
Agency Affected: Environmental Conservation
Program Category Affected: NRMEC

BRU, Program or Subprogram(s) Affected:
Environmental Quality Management
Air & Solid Waste Management

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING		6-months				
100 PERSONAL SERVICES		65.9	131.7	131.7		
200 TRAVEL		16.0	16.0	16.0		
300 CONTRACTUAL		8.4	16.8	16.8		
400 SUPPLIES		2.0	4.0	4.0		
500 EQUIPMENT		13.6	3.2	3.2		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING		105.9	171.7	171.7		
CAPITAL		480.0	--	--		
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		585.9	171.7	171.7		
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		3.0	3.0	3.0		
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Stanley W. Hungerford
Phone: 465-2666
Division: Environmental Quality
Date: April 13, 1984

Approved by Commissioner: [signature]
Date:
Agency: Environmental Conservation
Deputy Commissioner

Distribution (by Agency preparing fiscal note):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impactad Agency(ies)

12/1/83

ANALYSIS of FISCAL NOTE
CSSB 503 AMENDED
April 13, 1984

A. Details of the costs for recommending the site and type of state owned/sponsored hazardous waste management facility.

Assumptions:

a) The project will take six to seven years to complete through contracts managed by the Department of Environmental Conservation.

b) In the first year, develop the specific details of siting criteria, the appropriate types of facilities to be evaluated based on industries regulated and types of waste, and five or more general areas for evaluation.

In the second and third years, identify five potential sites, the type(s) of facility to be located at each, and begin physical evaluations of the sites. (75.0 each year)

c) In the next three to four years, conduct detailed evaluations of the five sites, including such parameters as meteorology, geology, hydrology, access, and socioeconomic factors. The cost could range from 500.0 to 2 million per site - an average of 1.25 million is estimated to justify each site to the public. Excess funds would be reserved for the design of the facility after approval of the site by the governor and legislature. (To be included in a fiscal note in 1986 audit cycle.)

d) In the sixth/seventh year conduct the public review of at least two sites. (50.0)

e) Prepare recommendation for the governor and legislature.

f) No inflation of costs or salaries.

Staffing Needs:

1	Environmental Engineer	(Range 19)	50.0 plus support costs
1	Administrative Assistant	(Range 12)	31.7 plus support costs

B. Details of the costs for a collection and transportation service for disposal of hazardous wastes from small quantity generators and households.

Assumptions:

a) The project will be for at least three and one half years.

b) There will be "cleanups" in four or more cities per year. (85.0 per year)

c) No inflation of transportation or disposal costs.

d) An agressive program of technical assistance to the small quantity generator to assure conformance to RCRA (Applicable Federal Hazardous Waste regulations)

e) A comprehensive public information campaign each year to maximize legal collection and disposal of hazardous wastes.

f) Analysis of the types, quantities and sources of hazardous wastes to provide information for the state hazardous waste facility siting project.

g) Site for the collection activity and security will be provided by local government.

Staffing needs:

1 Environmental Engineer III (Range 19) 50.0 plus support costs

C. Details of the estimated support costs for four positions.

	1st year	2nd & 3rd years
Travel Costs:		
Moving costs -- of the 2 Environmental Engineer IIIs: the department has found that the specialized expertise required cannot be found in Alaska.	12.0	--
Travel in support of project work (technical assistance and public information)	3.0	12.0
Travel to meet with contractors, local governments, public meetings	1.0	4.0
Contractual Costs:		
Office costs (5.6 per person -- telephone, xerox, janitor)	8.4	16.8
Supplies:		
Replace expendable laboratory, safety materials	--	2.0
Office	2.0	2.0
Equipment:		
Office equipment (desks, chairs, word processor)	5.1	--
Safety equipment and replacements	8.5	3.2

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

OFFICE OF THE COMMISSIONER

Telephone:(907) 465-2600
Address: Pouch O
Juneau, Ak 99811

October 5, 1983

The Honorable Joe Josephson
The Honorable Vic Fischer
Chairman, and Vice-Chairman
Committee on Health, Education
& Social Services

Dear Senators Josephson and Fischer:

This letter is to clarify some of the information presented at your committee hearing held in Anchorage on Friday September 30, 1983 regarding the developing hazardous waste program in Alaska, and the application of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) and its "Superfund" monies in this state. Regarding CERCLA, it is true that the State has declined to nominate a Superfund site, but this was a deliberate, decision based on relevant specific facts from Alaska and federal law.

CERCLA, and "Superfund" grants, deal with inactive industrial hazardous waste disposal sites. The population at risk, immediate safety considerations (fires and explosions) ground water, and surface water contamination are among the criteria used to designate inoperative sites to receive remedial attention. The system of ranking the nation's abandoned hazardous waste sites provides little or no assurance for cleanup protection for public health and the environment in situations where there is a low population density close to the site. At the present time we do not have data in our files on any abandoned hazardous waste sites in Alaska which meet the EPA's hazard ranking system. In other words, we have no "Superfund" sites.

Your Committee was informed at the hearing that EPA offered one site cleanup per state, regardless of its position on the national priority list (developed by computing a score using the EPA's hazard ranking system.)

The state investigated the possibility of receiving Superfund monies for several potential small remote sites (i.e. abandoned fuel drums in tundra areas) but this proved fruitless. My department also explored the possibility of nominating an abandoned military waste site. Superfund monies also cannot be spent on remedial action at a federal facility.

Given these factors, it would be highly unlikely to obtain Superfund money for any known Alaska site. Of the 14,000 sites identified in the U.S. the EPA has formed a list of 418 and appropriated monies for the cleanup of only about 100 sites. We are unaware of any site in Alaska which warrants the cleanup procedurs according to the "Superfund". The few sites which

conceivably are candidates for "Superfund" treatment are too small and too remote to invite the onerous federal administrative controls which are attached to "Superfund" money. We can, and will, make a concerted effort to clean up these remote sites without unnecessary delay or redtape.

Even under the old criteria, an industrialized state like Wisconsin did not submit a potential Superfund site due the unlikely receipt of EPA Superfund money. In addition, no sites have been proposed from the District of Columbia, Hawaii, Nebraska, Nevada, and the Virgin Islands.

My department has not abandoned the issue. We have requested federal grant monies to investigate a list of 93 uncontrolled hazardous waste sites in Alaska (taken from the total of 14,000 identified sites in the U.S.) In a majority of the cases the information is sketchy, anecdotal or incomplete not allowing for any calculated activity. ADEC has submitted a grant program to obtain monies under Section 3012 of the Resource Conservation and Recovery Act (RCRA) to conduct preliminary assessments and site inspections. If the grant is awarded the Department intends to examine the list and establish priorities. In the event sufficient site specific data is meeting EPA's Superfund criteria is garnered, an Alaska Superfund site will be nominated. Also to be considered in any site nomination is the fact that 10% of Superfund cleanup costs will be borne by the State (in the case of privately owned sites) and 50% of the cost for any municipal or state operated facility.

In addition to the grant application to investigate potential abandoned hazardous wastes sites, the Department is seeking money from EPA Region X to aid in assessing any environmental or public health hazards existing at a special waste site in the Kenai Borough (Sterling landfill). In summary, the Department continues to be concerned with hazardous waste sites and will take a close, hard look to see if the nomination of Superfund site is warranted; We have not "closed a window".

I also wish to clarify some current misinformation regarding the development of a hazardous waste management program in this state. It is true that recently I recommended that the state not adopt the hazardous waste regulations at this time and not to apply to EPA for "interim authorization" of RCRA responsibilities in Alaska. However, this action does not reflect a lack of commitment toward this program. The basic timetable remains the same. See the enclosed copy of a letter dated September 26 to Mr. Ron Kreizenbeck of EPA's Alaska Operations Office.

I am also enclosing a copy of remarks which I am making this week in a meeting with members of the Alaska Center for the Environment. As you can see, the the general effort has not abated simply because the regulations are not being adopted at this time. The complexity of the regulations demands a more deliberate approach, I full expect the regulations to be in place in Alaska in July or August of 1984. I believe the educational seminars planned this winter should take place before attempting to enforce a program such as this.

Finally, I hope you will also take note of the fact that this program will require additional funding by the state. Without a commitment form the legislature, it will be difficult to implement and effectively administer a state hazardous waste program.

I hope I have adequately addressed some of the concerns which have recently surfaced. Please contact me if you have any further concerns or questions regarding this program.

Sincerely,

Richard A. Neve'
Commissioner

cc: Senator Pappy Moss
Senator Paul Fischer
Senator Rick Halford

A Gold Streak Freight Lines Inc., employee straps transformers laden with toxic materi

Toxic wastes unl at port

Times

1/15/83

by E.W. Piper
Times Writer

More than 4,000 gallons of materials contaminated by toxic polychlorinated biphenyls (PCB) were unloaded Friday from a barge at the Port of Anchorage, then transported on flat-bed trucks to a storage site at Elmendorf Air Force Base.

The materials came from Air Force installations in western Alaska. They included contaminated soil, clean-up material and transformer oils from Shemya, Nikoski and other sites, said Master Sgt. Bill Bruu, an Air Force spokesman. Contamination ranged from 50 parts per million (ppm), the lowest level designated by federal officials, to more than 500 ppm, the most toxic concentration.

There were no reports of spills or leaks, although workers, along with state and federal officials, were sensitive about the handling of the chemicals. PCBs have been linked to ailments as simple as skin irritations and as deadly as cancer.

According to Bruu, the full cargo included:

- From Shemya — Twelve 55-gallon drums of solid contaminants; 27 drums of soil; 5 drums of oils.
- From Nikoski — 1,690 gallons of PCB liquids.

Six hundred gallons of uncontaminated oil from other sites and 43 empty transformers, 10 of which had been filled with PCB lubricating oils, were also on board.

One longshoreman working for North Star Terminal and Stevedore Co. walked off the job rather than unload the barge, according to Pat Boettger, president of

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Federal regulations say a truck must be marked on the sides and rear as carrying PCBs, according to the Environmental Protection Agency office in Juneau.

Donna Coor, one of the owners of Gold Streak Freight Lines, said she did not put placards on the trucks because she called the state Department of Environmental Conservation and was told there was no regulation calling for any special markings.

The episode illustrated the confusion over regulation of hazardous waste in Alaska. Although the state is developing regulations, it currently has none in effect; federal regulations come from several different agencies.

A DEC inspector came to the site in mid-morning after a phone call from a group of truck driv-

See Toxic, page C-2

Plan would notify comm of hazardous waste ro

by E. W. Piper
Times Writer

Sen. Joe Josephson, D-Anchorage, plans to introduce legislation that would require anyone who ships or transports hazardous wastes to notify the community through which the material is scheduled to pass.

"We need to have some kind of system so that the public can be informed of this kind of thing," said Josephson, whose idea has been in the planning stages since Anchorage began its debate about the fate of polychlorinated biphenyls (PCB) generated within the municipality.

When contacted Friday, Josephson did not know that the Air Force was transporting drums of PCB-contaminated material from the Port of Anchorage to Elmendorf Air Force Base, a route that brought the trucks through part of his district.

His proposed legislation will provide, he says, a way for the public to be informed of similar instances of "potential exposure."

Josephson said that although Anchorage is a community of people who show a willingness to get involved in government, its citizens cannot be aware of everything. Referring to the sudden disclosure this summer that the city intended to burn low-level PCB-laced oil in its incinerator, Josephson said, "Even here in

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SEN. JOE JOSEPHSON
Backs 'right to know'

Anc. Daily News 10-8-83

Anchorage Daily News 10/8/83 Ed. Board

Waste problems demand action

Serious concern properly flows from the decision of the state Department of Environmental Conservation (DEC) not to adopt interim authority to regulate hazardous wastes in Alaska. What state Sen. Vic Fischer called "an outrageous decision" means another year's delay — albeit amid promises of good intent — before state regulations covering hazardous materials in Alaska will reach the books. Those promises are not enough.

Sen. Fischer and others spoke out at a recent public hearing on hazardous waste issues held in Anchorage. There were charges — later denied — that the Sheffield administration had spiked the interim regulations at the request of the oil industry. Whatever the reasons, the hearing revealed a history of indifference demonstrated by DEC budget cuts, bureaucratic hesitation and, finally, failure to adopt the interim regulations. Alaskans should accept that indifference no longer.

For decades American communities large and small unknowingly planted hazardous waste time-bombs in their soil structures and water tables — bombs that have been exploding with tragic results in places like Love Canal and Times Beach, Mo. Just how much damage has already been done, and how it can be dealt with, will be a painful public concern for some time to come.

Alaska, meanwhile, has been blessed with a certain safety in its isolation and small population. Environmental booby-traps have been set here — notably PCB-laced oils in military and other electrical transformers all over the state — but they are, thankfully, relatively few and far between. Yet as surely as more people bring more traffic congestion, Alaska's safety margin from hazardous waste contamination is shrinking as the amenities and effluents of modern civilization permeate the north.

There will be no excuse, however, if we should plant hazardous waste time-bombs in Alaska. We have been forewarned by sad experience elsewhere; we must be forearmed by prudent regulation right here.

DEC Commissioner Richard Neve came to Anchorage Thursday to defend the interim regulation decision, explaining his department's increased inspection program — "doing more with less (money)," he said — and promising current policing action along with administrative vigor in adopting final regulatory authority next year. It was essentially a series of verbal promises, with no word on what will be done about the knotty issue of regulating petroleum drilling muds.

"We need a little better PR," said the commissioner in defending the decision not to act on interim regulatory authority. But he is wrong about that. What we need is an effective program of hazardous waste regulation and enforcement — not promises and delay. We do not have those regulations today, but we do have a fast-growing state in which hazardous waste dangers are burgeoning. Commissioner Neve's department has had more than two years to develop a hazardous waste program. The coming year must bring performance.

PRESENTATION BY

RICHARD A NEVE'
COMMISSIONER

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

DEALING WITH HAZARDOUS WASTE IN ALASKA: PROBLEMS AND PROGRESS

I APPRECIATE THE OPPORTUNITY TO TALK WITH YOU TODAY REGARDING MY DEPARTMENT'S ATTEMPTS TO OBTAIN FEDERAL AUTHORIZATION TO MANAGE HAZARDOUS WASTES IN ALASKA. THIS IS A VERY TIMELY TOPIC. AS YOU MAY HAVE NOTICED, THERE HAVE BEEN SEVERAL RECENT NEWS ARTICLES ON HAZARDOUS WASTE MANAGEMENT AND THE INVOLVEMENT OF MY DEPARTMENT. IT CONTINUES TO BE A TIMELY ISSUE IN THIS STATE AS WELL AS THE REST OF THE COUNTRY.

FIRST, LET ME GIVE YOU A LITTLE BACKGROUND ON THE ISSUES. ALASKA STEPPED INTO THE HAZARDOUS WASTE ARENA IN 1981 WHEN THE LEGISLATURE PASSED A BILL REQUIRING DEC TO DEVELOP HAZARDOUS WASTE REGULATIONS AND A HAZARDOUS WASTE PROGRAM FOR ALASKA. WE WERE DIRECTED BY THAT LEGISLATION TO ADOPT REGULATIONS WHICH WERE "CONSISTENT WITH AND SUBSTANTIALLY EQUIVALENT TO THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT OF 1976," REFERRED TO AS "RCRA".

THE FEDERAL RCRA REGULATIONS HAVE BEEN IN FORCE FOR THREE YEARS AND HAVE RESULTED IN MINOR PROGRESS NATIONWIDE. OUR LEGISLATIVE MANDATE, COUPLED WITH OUR BELIEF THAT THE RCRA REGULATIONS WERE INADEQUATE FOR ALASKA, GAVE US AN ENORMOUS UNDERTAKING TO ACCOMPLISH. AS WE BEGAN DEVELOPING A HAZARDOUS WASTE PROGRAM FOR ALASKA, WE DISCOVERED A NUMBER OF MAJOR FLAWS IN RCRA.

THE MAIN PROBLEMS WITH THE RCRA STANDARDS ARE:

1. THEY ARE WRITTEN MAINLY FOR STATES WITH HUGE INDUSTRIAL COMPLEXES (AND THEY ARE CONSIDERED TO BE MINIMUM STANDARDS EVEN THERE); 2. THAT NO NEW WASTES HAVE BEEN LISTED IN THREE YEARS, INCLUDING DIOXIN, 3. THIS LISTING APPROACH DOES NOT CALCULATE THE DEGREE OF RISK. 4. THAT THERE ARE TOO MANY EXCLUSIONS AND EXEMPTIONS; AND 5. RCRA, A PRODUCT OF MANY COMPROMISES AS IT IS, IS INCREASINGLY VIEWED BY THOSE INVOLVED WITH THESE ISSUES AS NEEDING IMPROVEMENT. A RECENT STUDY BY THE CONGRESSIONAL OFFICE OF TECHNOLOGY ASSESSMENT HAS STATED THAT CONCLUSION TO CONGRESS.

LATE IN 1981, WE HIRED AN ATTORNEY TO ASSIST IN DRAFTING THE REGULATIONS. WE ALSO BROUGHT ON BOARD A FEDERAL EMPLOYEE CONTRACTED FROM EPA WITH SPECIALIZED KNOWLEDGE AND EXPERTISE WITH THE RCRA REQUIREMENTS. AT THE SAME TIME, WE FORMED THE HAZARDOUS WASTE ADVISORY WORK GROUP, COMPRISED OF TEN MEMBERS. FIVE MEMBERS WERE SELECTED FROM THE PRIVATE SECTOR AND THE MILITARY WHO WOULD BE AFFECTED BY THE REGULATIONS, AS WELL AS FIVE REPRESENTATIVES OF STATE AND ENVIRONMENTAL ORGANIZATIONS. MEMBERSHIP OF THE BODY INCLUDED THE ASSOCIATION OF GENERAL CONTRACTORS, THE ALASKA OIL AND GAS ASSOCIATION, THE ALASKAN AIR COMMAND, ALASKA CENTER FOR THE ENVIRONMENT, SIERRA CLUB, LEAGUE OF WOMEN VOTERS, ALASKA FEDERATION OF NATIVES, ALASKA TRUCKERS ASSOCIATION, ALASKA PUBLIC HEALTH ASSOCIATION, AND THE MUNICIPALITY OF ANCHORAGE.

THE REGULATIONS AS NOW PROPOSED WERE DEVELOPED IN LARGE PART FROM THE ADVISORY WORK GROUP COMMENTS ON THE FEDERAL STANDARDS, THE REGS WENT TO PUBLIC HEARINGS

STATEWIDE IN MAY OF THIS YEAR. WIDESPREAD SUPPORT WAS EXPRESSED FOR AN ADEQUATELY FUNDED AND STAFFED HAZARDOUS WASTE PROGRAM IN ALASKA. EVEN THE OIL COMPANIES EXPRESSED A GENERALLY FAVORABLE RESPONSE, THOUGH THE MOST CRITICAL COMMENTS CAME FROM THAT QUARTER, PARTICULARLY WITH RESPECT TO DRILLING MUDS.

OUR REGULATIONS SHOULD NOT BE DESCRIBED AS RADICAL, BUT THEY DO GO BEYOND RCRA. AMONG OTHER THINGS THEY INCLUDE ONE CRITERION WHICH IS A FUNDAMENTAL FLAW IN RCRA, NAMELY ACUTE TOXICITY. OUR REGULATIONS CREATE A BROADER AND MORE REALISTIC CONCER OF HAZARDOUS WASTE. IN ADDITION, THEY EMBODY A TRUE DEGREE-OF-HAZARD APPROACH PIONEERED BY WASHINGTON STATE. RCRA, UNFORTUNATELY IS A YES-NO, ON-OFF SYSTEM. EITHER A WASTE IS INOCUOUS OR IT IS HAZARDOUS. IT MAKES NO ATTEMPT AT MANAGING WASTE ACCORDING TO THE DEGREE OF RISK PRESENTED. THIS ON THE OTHER HAND IS PRECISELY THE APPROACH WHICH WE HAVE CHOSEN AND WHICH IS MUCH MORE SENSIBLE FOR ALASKA.

IN ADDITION, THE REGULATIONS WE ARE DEVELOPING ARE MORE DIRECT AND SUPERIOR TO RCRA IN THE FOLLOWING WAYS: 1. THEY REQUIRE BUSINESS TO KNOW THEIR WASTES. BY THE END OF THIS DECADE, SUCCESSFUL INDUSTRIAL FIRMS WILL KNOW AS MUCH ABOUT THEIR WASTES AS THEY DO ABOUT THEIR PRODUCTS.

2. THEY ENCOURAGE RECYCLING AND MORE EFFICIENT USE OF CHEMICALS. THIS MAKES GOOD ENVIRONMENTAL AND ECONOMIC SENSE.

3. THEY REQUIRE HAZARDOUS WASTE MANAGERS TO ANTICIPATE FIRES AND SPILLS AND DEVELOP COMPREHENSIVE WRITTEN PLANS TO ASSIST THIS REQUIREMENT.

4. THEY SET A BASIC THRESHOLD LEVEL (400 LBS) WHICH IS MORE REALISTIC FOR THE ALASKA SETTING.

5. THEY SAVE CLEANUP COSTS BY AVOIDING FUTURE DISASTERS SUCH AS THAT AT LOVE CANAL.

THIS DIVERGENT APPROACH FROM RCRA, WHILE MERITORIOUS, IS NEVERTHELESS COMPLEX. WE ARE ATTEMPTING TO SIMPLIFY RCRA AS MUCH AS WE CAN BUT WE ARE ALSO ADDING TO IT. IN ADDITION TO THE TOXICITY CRITERION WE ARE INCLUDING CARCINOGENICITY AND PERSISTENCE. THE CONCEPT OF MODERATE RISK WASTE IS NOT INCLUDED IN RCRA, SO WE MUST DEVELOP SEPARATE STANDARDS FOR MODERATE RISK WASTE DISPOSAL FACILITIES. THE PRECISE ECONOMIC IMPACT OF THE REGULATION IS UNCLEAR AND MUST BE IDENTIFIED. OUR FINAL REGULATIONS WILL IMPACT MORE BUSINESSES THAN ARE PRESENTLY AFFECTED BY RCRA IN THIS STATE. I FEEL WE HAVE AN OBLIGATION TO EDUCATE THESE BUSINESS IN PARTICULAR BEFORE WE PUT THE REGULATIONS ON THE BOOKS.

FOR THESE REASONS AMONG OTHERS, I RECOMMENDED TO THE GOVERNOR ON SEPT. 22ND THAT THE REGULATIONS BE BRIEFLY POSTPONED. THIS ENTAILED A RECOMMENDATION AS WELL NOT TO APPLY TO THE FEDERAL GOVERNMENT FOR INTERIM AUTHORIZATION TO CARRY OUT EPA'S RCRA RESPONSIBILITIES IN THIS STATE.

BUT I WISH TO EMPHATICALLY MAKE CLEAR THAT THIS ACTION DOES NOT CHANGE OUR COMMITMENT TO A HAZARDOUS WASTE PROGRAM, NOR SHOULD IT BE SEEN AS SUCH. I AM COMMITTED AS IS THE GOVERNOR TO THE ESTABLISHMENT OF A TRULY ADEQUATE PROGRAM FOR ALASKA.

GIVEN THE REGS COMPLEXITY, I BELIEVE THAT WE NEED A BIT MORE TIME FOR INDUSTRY AND THE PUBLIC TO BE EDUCATED. TO THIS END, I HAVE DIRECTED MY

STAFF TO PLAN INSTRUCTIONAL SEMINARS TO TAKE PLACE THIS WINTER IN ANCHORAGE AND FAIRBANKS TO TEACH THOSE WHO WILL BE REGULATED. I HAVE ALSO DIRECTED PREPARATION OF A BOOKLET OR MANUAL WHICH EXPLAINS THE PROGRAM AND THE REGULATIONS. I AM ALSO REQUESTING MY STAFF TO FURTHER DEVELOP THE ECONOMIC IMPACT OF THE PROPOSED REGULATIONS. THESE THINGS ARE NECESSARY, I BELIEVE, BEFORE THE REGULATIONS ARE ADOPTED AND ENFORCED.

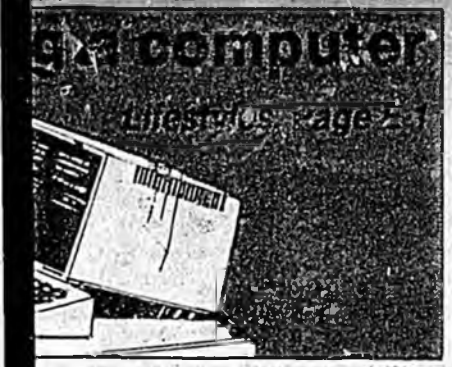
EVEN AS WE PROCEED, RCRA CONTINUES IN FULL FORCE AND EFFECT. EVEN WITHOUT INTERIM AUTHORIZATION, WE ARE INCREASING THE ENFORCEMENT OF RCRA REQUIREMENTS THROUGH THE INSPECTION OF REGULATED FACILITIES. WE WILL ALSO BE DRAFTING A PERMIT FOR EPA TO ISSUE UNDER THE TERMS OF OUR COOPERATIVE AGREEMENT WITH THAT AGENCY. IN GENERAL, OUR HAZARDOUS WASTE PROGRAM EFFORT RE CONTINUING TO EXPAND. UNDER THE TERMS OF OUR COOPERATIVE AGREEMENT WITH EPA WE ARE DOING MORE THINGS THIS YEAR THAN THE YEAR BEFORE. NEXT YEAR WE WILL BE EXPANDING OUR ROLE EVEN MORE. EVENTUALLY WE WILL ASSUME FINAL AUTHORIZATION FOR HAZARDOUS WASTES IN ALASKA.

RECENTLY WE HAVE BEEN CRITICIZED BY SOME AS PROCEEDING TOO QUICKLY, AND NOW, BY OTHERS, AS PROCEEDING TOO SLOWLY. I BELIEVE THAT NEITHER IS THE CASE. I CAN PROMISE YOU WILL HAVE GOOD, SOUND HAZARADOUS WASTE REGULATIONS BEFORE NEXT SUMMER IS OVER. THE FINAL REGULATIONS WILL NOT BE SUBSTANTIALLY DIFFERENT THAN THE DRAFT WHICH WAS FORMALLY PRESENTED FOR PUBLIC COMMENT. BUT A SYSTEM AS COMPLEX AS THIS TAKES TIME. THE DRAFTING PROCESS IS MORE DIFFICULT, AND THE EDUCATIONAL PROCESS ON THE IMPACT HAS BARELY BEGUN.

FINALLY, I WISH TO TOUCH UPON AN ITEM WHICH IS PART OF THE DEVELOPMENT OF A COMPREHENSIVE HAZARDOUS WASTE PROGRAM IN ALASKA. ULTIMATELY, THERE MUST BE THE DEVELOPMENT OF SUITABLE DISPOSAL OPTIONS IN THIS STATE.

THIS MEANS A DISPOSAL FACILITY, OR AT THE VERY LEAST, COLLECTION STATIONS AS RECOMMENDED BY ONE OF OUR CONSULTANTS. THE DEVELOPMENT OF A DISPOSAL OPTION OR OPTIONS IS FARTHER FROM REALIZATION THAN THE REGULATIONS. IN COMING MONTHS WE WILL INCREASE OUR EFFORTS AT IDENTIFYING AND DEVELOPING DISPOSAL OPTIONS. I PROMISE NOT TO ALLOW THIS ISSUE TO BE JOINED TO THE REGULATIONS IN SUCH A MANNER AS TO DELAY THEM FURTHER. THE REGULATIONS ARE NECESSARY EVEN WITHOUT AN IN-STATE DISPOSAL OPTION FOR RCRA WASTE.

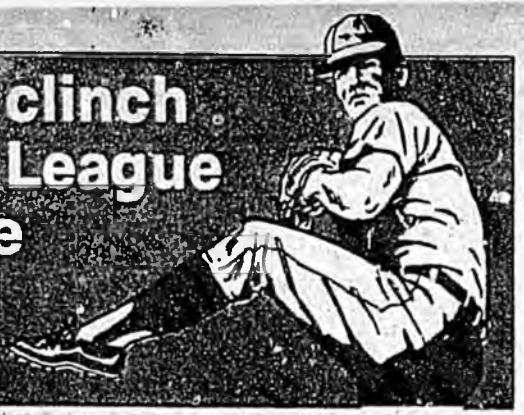
IN SUMMARY, THERE IS NO ABATEMENT OF OUR COMMITTMENT TO A PROPER HAZARDOUS WASTE PROGRAM. IN THESE DAYS OF DECLINING REVENUES WE ARE FORCED TO PROCEED A BIT MORE DELIBERATELY. I HOPE THAT ALL OF YOU HERE CAN APPRECIATE THIS REALITY. I HOPE WE CAN CONTINUE THE COOPERATION IN THE FUTURE WHICH HAS HELPED US COME AS FAR AS WE HAVE.



Bills for those long-distance calls may be going down

Metro, Page B-4

Dodgers clinch National League West title



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nchorage Daily News

60+2

ANCHORAGE, ALASKA, SATURDAY, OCTOBER 1, 1983

PRICE 25 CENTS

Fischer: Sheffield decision 'atrocious'

Interim rules on hazardous wastes killed

By RICHARD MAUER
Daily News reporter

State Sen. Vic Fischer lashed out Friday at a decision by the Sheffield administration to forgo adoption of interim rules on the use and disposal of hazardous wastes.

"It's an atrocious decision. Coming at this time, it seems doubly irresponsible," said Fischer, an Anchorage Democrat.

His comments came during a hearing in Anchorage of the Senate Health, Education and Social Services Committee, which also learned that the state twice turned down offers of federal "Superfund" money to clean up abandoned hazardous waste sites.

Ronald Kreizenbeck, director of the Alaska Operations Office of the U.S. Environmental Protection Agency, said the Superfund money was offered in the fall of 1982 and again last spring under federal policy that allowed each state to participate in the program.

"In both cases, the state declined to nominate a site," Kreizenbeck said. "There are two windows, and they're both closed."

Committee Chairman Joe Josephson sounded incredulous. "We left money on the table that someone else has gotten?" he asked.

The money, which in other areas has amounted to more than $1 million a site, is no longer available, Kreizenbeck said. Though officials have identified scores of abandoned toxic waste sites in Alaska, the state now stands little chance of getting Superfund money. It would have to compete with sites in places like New Jersey, New York and Missouri, where the dangers threaten far more people than they do in Alaska, Kreizenbeck said.

The Senate hearing Friday was called by Josephson, D-Anchorage. While Josephson intended to look into a plan by the Anchorage municipality to test the burning of PCBs in a sewer sludge incinerator at Point Woronzof — now delayed till at least next

See Back Page, FISCHER

Anchorage Daily News/Fran Durner

Zoo gets an addition

Maggie, a 1-year-old orphaned African elephant, arrived Friday at the Anchorage Zoo, but don't plan on seeing her until Wednesday when zoo officials have scheduled Maggie's debut. The elephant was donated to the zoo by Allen and Dorothea Lovejoy of Anchorage.

tributes and memories.

And Rep. Jerry Patterson, D-Calif., on March 7 announced in the record that the Gahr High School Band of Cerritos, Calif., was going to

to members.

Those three measures, which Glickman said would save more than $1.68 million, have in the past died in committee.

Fischer criticizes Sheffield administration for hazardous wastes decision

Continued from Page A-1

spring — the focus shifted to statewide plans by the Alaska Department of Environmental Conservation to control hazardous wastes.

The department's commissioner, Richard Neve, said earlier this week that the state will not adopt interim hazardous waste rules, which, in their draft form, were stricter in some cases than rules now enforced by the U.S. Environmental Protection Agency.

It was Neve's decision that led to Fischer's anger and to a charge by a former legislative aide that the Sheffield administration was bending to the will of the oil and gas lobby.

The former aide, Terrie Gottstein, said a "paper trail" of government documents and leaked correspondence point to the conclusion that "when the oil industry says 'Jump!' the governor says, 'How high?' "

Gottstein, who worked for Senate President Jay Kerttula when legislation authorizing a hazardous waste program in Alaska passed both state houses in 1981, testified at the hearing that as late as July, the Department of Environmental Conservation has demonstrated its intention to adopt the rules.

That intent, she said, was shown in its request to the EPA for a three-month extension of the July 26 deadline for submission of the regulations. The EPA granted the extension in an announcement published Aug. 5 in the Federal Register.

Then, in a letter to Gov. Bill Sheffield dated Sept. 12, which Gottstein presented to the commitee, the president and executive director of the Alaska Oil and Gas Association requested a meeting with the governor and his Cabinet officials to discuss the regulations. The two association officials said in their letter that the regulations would cost the oil and gas industry "greater than $100 million" a year and have a severe impact on petroleum production operations.

"Shortly after he received this letter, all of a sudden there's an announcment from the DEC that they would not provide interim regulations," Gottstein said. "The timing is just too close to be coincidence."

Pete Spivey, the governor's press secretary, said later that Gottstein's analysis "isn't accurate." Dropping the rules was Neve's decision, not Sheffield's, and was made because the regulations weren't ready for submission, Spivey said. A draft letter to the EPA saying the interim rules would be dropped was mistakenly written in Sheffield's name, Spivey said.

Neve was skeptical of the industry's claims that it would cost $100 million to follow the regulations, Spivey said.

Two department officials testified at the hearing that Neve still planned to issue final hazardous waste regulations. But while those regulations are expected to be completed next year, the department won't be able to enforce them until the 1986 fiscal year, they said. In the meantime, federal regulations will govern hazardous waste in Alaska, they said.

Sen. H. Pappy Moss, D-Delta Junction, another committee member, accused the department of dragging its "cotton-picking feet."

"We've had since January of 1982 to do it," Moss said. "We have no regulations."

The purpose of the interim rules, the committee was told, was to enable the state to spend a year or two testing them out in conjunction with the EPA. Once the regulations proved their worth, the EPA would leave enforcement entirely to the state.

Hohman loses appeal over bribery conviction but may take case higher

Continued from Page A-1

missed on some technicality," he said. "We want another trial, a fair trial."

The Alaska Supreme Court may review a Court of Appeals decision if it chooses, but is not required to. The Supreme Court has been

recently, according to Robert Bacon, clerk of the appeals courts.

If necessary, and if Hohman agrees, Share said he will take the appeal for a new trial into the federal court system after exhausting state court options.

Chief Prosecutor Dan Hickey said the state would move

the state appeal process, which he estimated would take from 75 to 90 days.

Hickey said the issues raised in the appeal were "relatively straightforward" and were not likely to engage the interest of either the Alaska Supreme Court or the U.S. Supreme Court.

"The man received a full,

peal," Hickey said.

The state charged that Hohman agreed to accept money to use his influence to obtain an appropriation to purchase the planes and that he attempted to bribe state Rep. Russ Meekins of Anchorage to assist him in getting the money.

A Superior Court jury in Juneau convicted Hohman on Christmas Eve 1981, and Serdahely sentenced him to three years in prison and a $10,000 fine on each count, with the prison terms to run concurrently.

After he was sentenced on March 5, 1982, Hohman was expelled from the Senate by a vote of 15-4.

Section Analysis Continued

Section 3. Temporary Collection of Hazardous Waste.

This section institutionalizes in statute a very successful pilot program currently offered by DEC, known as "Hazardous Waste Clean-ups". Temporary collection and transfer operations will be held for small quantity and household generators of hazardous waste four times a year.

Section 4. Hazardous Waste Management Facilities and Sites.

This section outlines the criteria and public comment procedures DEC should use to determine hazardous waste management sites and facilities in Alaska. Recommendations to the Governor and Legislature should be submitted not later than July 1, 1987. Final sites and facilities should be determined two years later.

Section 5 - 8. Penalties for Violations.

These sections include the technical amendments needed to satisfy federal requirements to obtain final authorization of the hazardous waste program.

Section 9. Definitions.

This section defines certain terms found in the legislation.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M April 18, 1984

SUBJECT: Sectional analysis of CSSB 503(Resources)

TO: Senator Bettye Fahrenkamp
Chairman, Senate Resources Committee

FROM: Edward H. Hein EH
Legislative Counsel

Section 1 rewrites the statute dealing with hazardous waste regulations. It provides that the Department of Environmental Conservation must adopt and enforce federal hazardous waste regulations adopted by the Environmental Protection Agency under the Resource Conservation and Recovery Act of 1976. The department has until July 1, 1986 to adopt additional regulations that would take effect a year later. Mining waste and various wastes associated with oil and gas drilling operations would not be covered by the regulations. The department is directed to take the steps necessary to get EPA approval for a state hazardous waste management program. Regulations would cover only hazardous waste generated in amounts of 220 pounds per month or greater, and "acute hazardous waste" in amounts of 2.2 pounds per month or greater. These quantity limits are stricter than federal requirements, but if federal limits were to be made stricter than state limits, the department would be required to extend coverage to match the federal requirements. The department, of course, could establish stricter standards at any time.

Section 2 requires that anyone transporting hazardous waste in the state must first send a copy of a manifest to the department. The department then must send a copy of the manifest to all state and local public safety agencies in areas through which the waste will be transported.

Section 3 requires the department to set up temporary collection points four times a year to receive hazardous wastes from "small quantity generators" and from "household generators" as those terms are defined by the EPA.

Section 4 requires the department to pick sites for hazardous waste management facilities. These would include dumping sites as well as facilities for storage or treatment of hazardous waste. The section lists specific criteria to guide the department in its selections. These criteria are to be expanded upon in regulations adopted by the department not later than July 1, 1986. Those regulations also must set out application procedures for private parties who wish to run hazardous waste facilities. The department is authorized to approve private facilities if they are consistent with the requirements established for all facilities under the bill. Public hearings must be held in each election district where a facility is proposed to be located. The department has to report back to the legislature and the governor with a preliminary findings by July 1, 1987, and final site selections by July 1, 1989.

Sections 5 - 7 work together to establish separate civil penalties for hazardous waste violations of $500 to $100,000 for a violation, with an additional fine of up to $10,000 per day if the violation continues. Punitive fines may be imposed if necessary to deter further violations.

Section 8 sets out separate criminal penalties of up to $10,000 per day and up to one year imprisonment. These penalties are made applicable to organizations as well as individuals.

Section 9 defines certain terms added by the bill.

Section 10 provides an immediate effective date.

NOTE: the bill title could be amended back to the existing title, "An Act relating to hazardous waste; and providing for an effective date" since provisions dealing with penalties for violations of AS 46.03 not related to hazardous waste are no longer being changed by the bill, as they would have been by previous drafts of this committee substitute.

EHH:ojb
J6/056

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITAL
JUNEAU, ALASKA 99811
(907) 465-3834
(907) 465-3835

Senate

Committee on Resources

SENATE RESOURCES COMMITTEE
LETTER OF INTENT
FOR
CSSB 503 (Resources)

It is the intent of the Legislature that the Department of Environmental Conservation obtain from the United States Environmental Protection Agency authorization to administer and enforce a hazardous waste program in Alaska. The Department should focus its efforts so that the state's final application for full management control be complete by July 1, 1986.

To this end and with respect to the mandate to be codified at AS 46.03.299 (a)(2), the Department is instructed to adopt regulations relating to the management of hazardous waste that exhibit the characteristics of toxicity, persistence, or carcinogenicity and other characteristics of hazardous waste as identified by EPA. The department shall evaluate the most appropriate mechanism by which to identify a waste characteristic of toxicity, persistence or carcinogenicity and other characteristic as identified as hazardous by EPA. This evaluation must include the methods described in the proposed state regulations dated October 26, 1983 that identify hazardous wastes by the characteristics mentioned above. Regulations developed under AS 46.299(a)(2) must incorporate the results of this analysis.

The regulations ultimately adopted by the state are to take effect three years from this bill's enactment, July 1, 1987. The department is to develop and implement a program to educate those effected by this legislation about the requirements of this act during the third year.

In order to gain experience managing a hazardous waste program, the department should assume through cooperative agreement with EPA as much active control as feasible of the currently operating hazardous waste program. The assumption of these duties by the department should begin immediately.

The exceptions for mining waste and waste associated with oil and gas production as defined should be effective until the completion of the studies indicated in the legislation. After each study has been completed and the findings of these studies and proposed federal regulations have been considered by the department, the department may terminate the exemption or promulgate amendments to the state's hazardous waste regulations.

Alaska State Legislature

BETTYE FAHRENKAMP, Chairman
ROBERT H. ZIEGLER, SR., Vice Chairman
DICK ELIASON
PAUL FISCHER
VIC FISCHER
BOB MULCAHY
ARLISS STURGULEWSKI

POUCH V
STATE CAPITAL
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Senate

Committee on Resources

MINUTES

April 19, 1984 — Beltz Room
11:03 am — Room 211, Capitol

MEMBERS PRESENT

Senator Fahrenkamp, Chairman
Senator Ziegler, Vice Chairman
Senator Eliason
Senator Paul Fischer
Senator Mulcahy
Senator Sturgulewski

CALENDAR

SB 503, An Act relating to hazardous waste; changing penalties for environmental pollution violations.

SB 503

Jim Palmer, Aide to Senator Fahrenkamp, reported that the committee substitute for SB 503 was drafted after meetings with representatives of interested groups, including: environmental groups, oil and gas industry, labor unions, the Governor's office, the Department of Environmental Conservation, and the Alaska General Contractors. He reviewed the highlights of the bill and the proposed letter of intent which outline how the Department of Environmental Conservation will implement the hazardous waste program.

Jay Nelson, Alaska Environmental Lobby, spoke in support of the bill and urged that the Department of Environmental Conservation adopt the "degree of hazard" approach when prolmugating regulations.

Senator Mulcahy moved CSSB 503 and the letter of intent for CSSB 503 from committee with individual recommendations. There was no objection.

The meeting adjourned at 11:25 am.

SAB 505

ALASKA

0 20 40 80 120 160 MILES

HAZARDOUS WASTE

- ✓ KNOWN HAZARDOUS SITES
- X HAZARDOUS SITES THAT HAVE BEEN CLEANED
- ✲ HAZARDOUS SITES PROPOSED TO BE CLEANED, OR THAT ARE BEING CLEANED
- ? UNKNOWN SUBSTANCES REPORTED, CLEAN-UP STATUS UNKNOWN

MINERALS

URANIUM
- MINE (INACTIVE)
- PROSPECT AREA

PETROLEUM
- PETROLEUM FIELD
- PRODUCING OIL FIELD
- OIL SHALE - BEARING STRATA

COAL
- UNDERGROUND MINE (INACTIVE)
- OPEN-PIT MINE
- COAL BASIN

PLANTS
- REFINERY
- TOPPING
- AMMONIA AND UREA PLANT
- LIQUEFIED NATURAL GAS PLANT

ANADYR GULF
CHUKOTSK PENINSULA
BERING STRAIT
SEWARD PENINSULA
NORTON SOUND
KOBUK
NOATAK
KOYUKUK
YUKON
KUSKOKWIM
ALEUTIAN ISLANDS
ALEUTIAN ISLANDS NATIONAL WILDLIFE REFUGE
ANDREANOF ISLANDS
UNIMAK I.
CANADA
U.S.S.R.

Compiled By;

Alaska Center for the Environment

TELEPHONE
(907) 479-6281

ARTHUR LYLE ROBSON
3568 GERAGHTY STREET
FAIRBANKS, ALASKA 99701

ATTORNEY FOR
U/A LOCAL 375
& ITS MEMBERS

March 13, 1984

Bettye Fahrenkamp, Chairman
Alaska State Legislature
Senate, Committee on Resources
Pouch V
Juneau, Alaska 99811

Re: CS for SB 503

Dear Bettye:

I have read the bill you sent me on the 9th. The drafting here is a bit dubious. I suspect that the person who drafted it collected the various suggestions, found a logical place for them in the statutes, and then just cranked out all suggestions in serial order. I suggest that there may be a conflict between reckless endangerment and knowing violation; one being a felony and the other a misdemeanor. There may be a way around this and such things are often defended on the basis of giving prosecutorial discretion. I, however, prefer clear drafting in the first place.

Under the duties of the department, it seems foolish in civil and criminal investigations to go through the whole problem of having the department make a determination and then to stop everything for thirty days for public hearings to see if the public wants the department to enforce the law. This probably emasculates the whole process.

In adopting the federal hazardous waste laws, a provision that the department may not adopt regulations makes it impossible to tailor these to Alaska. I realize that this prevents watering down, but I just don't think that everything which is, or appears to be, the gospel in the lower 48 is applicable here.

There is a conflict between the amendment of certain sections and then the immediately following repeal and different enactment of same. This seems a little foolish.

The same seems to apply to the 299(b) situation.

With respect to the gathering centers, I think we are getting into some very heavy costs. Since even polluted fuel is a hazardous waste, we are going to have to have one or more operations that will be about as expensive to run as a nuclear plant.

In the notice to local governments and communities section, I suggest that the fire department and health authorities would be logical to notify.

I have some doubts about misdemeanors and civil penalties running in the $10,000 to $25,000 range. I don't say that this is impossible. I do say that there is a lot of arguing going to be done over whether this is valid.

Beyond that, the ideas and concepts are good. It seems a little bit rigid to start out with the best possible regulation system when Alaska has been the most unregulated area in the world. (What do we do with the nuclear waste from Ft. Greely?) There is, of course, something to be said for starting at the top. Overall, I expect that the cost features are going to kill a good deal of this, but the concept is a good one and it should be pushed.

I suggest contacting Steve Kadish on Vic Fischer's staff in Anchorage, Larry Weiss at the Alaska Health Project in Anchorage, and Mick Hotrum and Dick Currington who are professional safety people employed by unions. They will probably each be able to give you a lot of good input along these lines.

Sincerely,

ARTHUR LYLE ROBSON, Attorney
for U.A. Local 375 and Its Members

ALR:CLM
c.c. Steve Kadish
Senate Committee on State Affairs
1024 W. 6th Avenue, Suite 204 C
Anchorage, Alaska 99501

Larry Weiss
Alaska Health Project
417 West 8th Avenue
P.O. Box 10-1037
Anchorage, Alaska 99510

Mick Hotrum
c/o Laborers Union Local 942
315 Barnette
Fairbanks, Alaska 99701

Dick Currington
c/o Teamsters Union Local 959
751 Old Richardson Hwy.
Fairbanks, Alaska 99701

STATE OF ALASKA
DEPARTMENT OF LABOR

BILL SHEFFIELD, GOVERNOR

BOX 1149
JUNEAU, ALASKA 99802
PHONE: (907) 465-4856

March 19, 1984

The Honorable Bettye Fahrenkamp
Chairman
Senate Committee on Resources
Pouch V
Juneau, Alaska 99811

Dear Senator Fahrenkamp:

I appreciate the opportunity to review and comment on the proposed committee substitute for Senate Bill 503, "An Act Relating to Hazardous Waste."

One of the Department of Labor's goals is to protect the worker from occupational injury and illness and, therefore, our main concern with hazardous waste is to provide protection to the worker who works at a dump site where hazardous waste is discharged and stored and to provide protection to the worker who transports hazardous wastes to the site. Senate Bill 503, therefore, is for the most part outside the jurisdiction of the department.

However, I believe that it is important for the State to take a more aggressive role in managing and controlling hazardous waste. The federal Environmental Protection Agency's (EPA) resources in this area are being directed at the huge hazardous waste sites that have been allowed to contaminate various areas in the Lower 48. Although there are some nazardous waste sites in Alaska, these sites are minor problems in comparison. For example, EPA's Superfund project to clean up major hazardous waste sites does not include a single Alaska site. It is, therefore, important that the State and local governments and communities control the disposal of hazardous waste in order to assure that a "Love Canal" never occurs in Alaska.

The work draft of the committee substitute appears to contain duplications. There are two section 46.03.298s, lines 8 through 29 on page 2 and line 1 through 3 on page 3. Both section 46.03.298s contain the requirement that the department (DEC) adopt by reference regulations adopted by the federal government under 42 U.S.C. 6921-6934 but one of the sections, lines 15-19, page 2, prohibits adoption of regulations more stringent than federal regulations while the other, lines 26-28, page 2, allows adoption of "other" regulation for the management of hazardous waste. These sections appear, therefore, to be contradictory. Also, Section 46.03.299 (b) is repeated, once on page 3 line 11 through page 4 line 6, and again on page 3 line 23 through page 5 line 25. Again, althougn most of the provisions are identical, there are differences.

07-GGLH

MAR 2 2 1984

From an occupational safety and health standpoint, I am most interested in knowing where these sites are located so that we can provide protection to workers employed at these sites and provide education and training to owners and employers at these sites. I am, therefore, glad to note that Section 46.030.309 (2), line 22-24 of page 6 requires notification to State and local public safety agencies. I would like to see this language made more specific as far as my agency is concerned. I propose the following amendment:

(2) The State Department of Labor's Occupational Safety and Health Section, and other state and local public safety agencies with jurisdiction over the site at which the waste is to be stored or disposed of.

Again I appreciate the opportunity to comment on this important legislation and if I can be of further assistance, please let me know.

Sincerely,

Richard Arab, Deputy Director
Division of Labor Standards
and Safety

Senator Vic Fischer

Alaska State Legislature
1024 W. 6th Avenue, Suite 204C
Anchorage, Alaska 99501 (907) 278-3654
During Session • Pouch V • Juneau, Alaska 99811 (907) 465-4954

MEMORANDUM

TO: Senator Fahrenkamp, Chair
Senate Resources Committee

FROM: Senator Vic Fischer

DATE: March 26, 1984

In the mail today I received The Toxic Crisis: What the States Should Do, a report prepared by the Conference on Alternative State and Local Policies.

In case you did not receive a copy as well, I am attaching a copy of the table of contents and the three chapters relating to waste disposal. The information included seems very pertinent to current discussions on hazardous waste and also includes some recent references. I thought that these sections might be helpful to the work group that will be meeting on SB 503.

THE TOXICS CRISIS:

WHAT THE STATES SHOULD DO

Jeffrey Tryens, Editor

Conference on Alternative State and Local Policies
2000 Florida Avenue, NW
Washington, DC 20009
(202) 387-6030

1983

Table of Contents

THE TOXICS CRISIS: WHAT THE STATES SHOULD DO

Source Reduction

by Ken Geiser

BACKGROUND

At the close of World War II the United States produced about one billion pounds of hazardous wastes per year.[1]

Today, estimates range as high as 275 million tons of hazardous waste generated per year [2] -- more than one ton of waste for every man, woman and child in the country. Only a small percentage of this waste is disposed of properly.

Monitoring and regulating this vast amount of waste has created enormous problems for public officials at all levels of government. The "cradle-to-grave" manifest system mandated by federal legislation has been years in development and only recently begun. State agencies are often overwhelmed by permit requests and various licensing reviews for waste treatment operations.

All hazardous waste cannot be avoided, but 20 to 80 percent of the total hazardous wastestream could be reduced through a series of processes known as source reduction. This includes a range of public and private policies that involve changes in industrial production products and processes.

Wastes with the most potential recycling value include: solvents, alkalis, concentrated acids, oils, combustible materials, and those with high concentrations of recoverable metals.

A 1976 report prepared by Arthur D. Little estimated that six million tons of industrial waste could be recycled each year with a total value of $300 million.[3]

Source reduction is not new or untried. The Piedmont Waste Exchange operated by the University of North Carolina and the privately run Atlantic Coast Exchange provide waste exchanges services to much of South Carolina, North Carolina and Virginia.

The 3M Corporation began a company wide source reduction program in 1975 to reduce pollution and disposal costs. Within five years the corporation had eliminated the equivalent of 75,000 tons of air pollutants, 1,325 tons of water pollutants, 500 million gallons of polluted waste water and 2,900 tons of sludge per year, resulting in an estimated annual cost savings of $2.4 million. Other companies such as Union Carbide and Republic Steel have also developed successful programs.

THE PROBLEM

Market conditions set an encouraging climate for source reduction. The price of raw materials for industrial production continues to increase and, with increasingly tight state and federal regulations, the cost of disposal of wastes continues to rise. Companies caught in the middle can often benefit handsomely from source reduction changes.

However, source reduction still is not fully accepted, either in industrial practice or in public policy debates. This slowness can generally be attributed to three factors: 1) lack of comprehensive planning to encourage source reduction; 2) lack of institutions to assist industries wanting to treat their toxic by-products; and 3) an absence of capital for process and product changes.

Source reduction is a multi-faceted and complex set of activities. In some cases source reduction means simple housekeeping improvements that result in less spillage and mixing of chemicals. In other cases less toxic materials are substituted for more toxic materials. Recycling technologies permit chemicals to be reclaimed and reused, resulting in less waste. Further processes detoxify or reduce the hazard of materials by on-site treatment before substances are discharged as waste. Finally, in some cases firms can exchange wastes with other firms for further use in other industrial processes.

Because source reduction is so important to the health and well-being of the general public, states must take a much more active role than they have in the past to encourage it. Today few states have anything approaching a comprehensive source reduction plan for substantially reducing industrial waste streams.

Planning must include identifying ways to target, prioritize and monitor source reduction activities. Because source reduction can ultimately profit industrial producers, states should work closely with industry representatives and trade associations and consider firm-initiated source reduction plans.

Comprehensive planning must also address the often encumbering and inconsistent regulations which exist in many states concerning source reduction such as on-site treatment and waste exchanges. State regulations to control hazardous waste disposal are often contradictory, contrary to, or silent

on source reduction. For instance, Massachusetts' regulations for hazardous waste are stricter for firms doing on-site recycling than for shipping offsite.

Besides comprehensive plans for source reduction, states must also have institutions to facilitate the transition to a conservation oriented toxics strategy. Firms often do not have access to trade journals, consultants and industrial process engineers to inform them of the latest technologies and assist them in developing and assessing alternatives. This is particularly true of smaller firms, which, coincidentally, are exempted from most hazardous waste laws because they are "small generators."

Yet these small generators are often the worst violators of environmental regulations, the most difficult to enforce compliance upon and the least financially capable of investing in new industrial processes.

Even if firms know of waste reducing technologies and want to make process and product changes, they are often hindered by their limited access to capital necessary to purchase new equipment or institute production changes. States can provide a wide variety of financial assistance to firms, including subsidies and tax incentives. Because tax incentives typically reduce state revenues or shift revenue generation to income taxes, such policies should be among the last tried.

Source reduction is ideally suited to state level policy interventions. States may encourage source reduction directly by requiring source reduction plans, providing technical assistance or setting up research and demonstration projects. States may also advance source reduction more indirectly through interventions in the private market.

Such interventions may either affect production costs through tax incentives and fee structures or through easing the availability of capital. In either case it is particularly important that local officials and local citizen groups be incorporated as active elements in carrying out state policies. Those at the local level have the most incentive to press for source reduction and the best capacity to monitor local programs.

WHAT STATES CAN DO

Develop Comprehensive Source Reduction Plans

° States should either mandate that all firms prepare and submit comprehensive source reduction plans or require that firms seeking licenses, renewals, tax exemptions or changes in fee structure prepare such plans. California has gone a step in this direction by requiring firms that dispose of any of a list of substances determined to be recyclable to explain, in detail, why these substances are disposed of rather than recycled.

° States should develop comprehensive source reduction plans that lay out timetables for the phase out of certain waste disposal techniques in favor of source reduction. Local officials or local citizen bodies might be empowered to oversee and enforce compliance.

° States should review and revise existing regulations to encourage source reduction. States may streamline licensing or exempt some source reduction improvements from particular reviews in order to reduce the complexity of compliance with comprehensive source reduction plans.

° States should ban certain kinds of waste disposal in order to force companies to seek alternatives. New York has banned the landfilling of "environmentally persistent and highly mobile chemical wastes." (See Chapter Fourteen, Land Disposal.)

Encourage Institutional Development

° States should develop or encourage private or trade association sponsored waste exchanges, whereby some firms' wastes become valuable feed stock for other firms' production operations. Iowa has operated a state waste exchange since 1976 while Georgia has shifted the waste exchange to trade association sponsorship.

° States should develop or encourage research and development programs on source reduction either in state departments, universities or private councils. Illinois has a special hazardous waste research fund administered by the state.

° States should develop special small business assistance programs that provide technical assistance agents similar to state sponsored agricultural extension agents. Such pollution abatement assistance agents might work out of local colleges and universities providing special individualized attention to the industrial changes of local small business.

° States should develop special technical assistance divisions in their commerce departments or encourage trade association sponsorship to advance technology transfer or financial analysis programs. Legislation to do this has been introduced in New York and Massachusetts.

° States should build, lease or finance the construction of public resource recovery or treatment facilities at or near large generators. Mississippi provides bond financing to permit municipalities to build or acquire such facilities.

Create Financial Incentives for Source Reduction

° States should structure fees for hazardous waste treatment and disposal to encourage waste reduction. States which impose fees for permits, licenses or renewals should set variable fee schedules that encourage source reduction. Maine has a three-tier fee structure that is lower for resource recovery activity.

States which levy a tax on hazardous waste generators by volume of waste should graduate the tax to encourage source reduction. Kentucky assesses generators one half as much for on-site treatment as for off-site treatment and disposal. Florida exempts facilities from the excise tax which render waste non-hazardous.

° States should consider providing tax incentives to encourage the purchase of machinery and equipment to process or treat hazardous waste. Both Wisconsin and North Carolina exempt such equipment from business property tax while Michigan uses a special tax schedule for assessing such improvements.

Minnesota offers a five percent tax credit on equipment used to recycle hazardous wastes. Oregon offers a tax credit if the treatment produces energy or substances with real market value. Accelerated depreciation on source reduction equipment is used by North Carolina. Amortization over 60 months is authorized on air, sewage and waste treatment equipment.

° States should consider providing loans or loan guarantees to reduce hazardous wastes where private capital is not easily available. Direct loans can be made through new or existing industrial revenue bonds targeted to source reduction. North Carolina, Florida and Illinois authorize the issuance of new bonds for construction of recovery facilities. The Georgia Hazardous Waste Management Authority may underwrite source reduction project costs through the issuance of general obligation bonds. Or states can provide loan guarantees to lower the risk of commercial lenders offering financing for source reduction equipment.

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NATIONAL SOLID WASTE MANAGEMENT ASSOCIATION, 1120 Connecticut Ave. N.W., Washington, D.C. 20036, (202) 659-4613.

RESOURCES FOR THE FUTURE, 1755 Massachusetts Ave., N.W., Washington, D.C. 20036, (202) 328-5000.

Hazardous Waste Regulation

by David Lennett

BACKGROUND

Improperly managed hazardous waste has seriously contaminated drinking water supplies; forced the evacuation of hundreds of people in a number of places; and has killed wildlife, destroyed recreational areas and damaged food supplies.

In addition to these direct losses, the cost of cleaning up contamination resulting from improper waste management is very high. Recent estimates indicate the cost of remedial action needed to address the problems caused by bad past practices may reach $40 billion.[1]

It is much cheaper and easier to manage hazardous waste correctly in the first instance rather than rely upon cleanup to address the mistakes at some later date. Destroying the waste through treatment may cost several hundred dollars more per ton than landfilling, but the price of cleaning up the waste after it leaks from the landfill may be two thousand dollars per ton. In addition, detecting and cleansing contaminated groundwater is not an easy job because the water is underground and thus not available for ready scanning, sampling and analysis.

Thus, a program which strictly regulates hazardous waste management is essential if the mistakes of the past are to be avoided. Unfortunately, hazardous waste is still a major problem despite the passage of federal legislation in 1976 designed to establish a national hazardous waste regulatory program.

The federal legislation enacted in October of 1976 -- the Resource Conservation and Recovery Act (RCRA) -- required federal EPA to issue hazardous waste regulations by April of 1978. However, the first important set of regulations was not issued until early 1980, and even today not all the necessary regulations have been issued. For example, there are no regulations covering underground storage tanks, the injection of hazardous wastes above underground sources of drinking water, and the burning of hazardous waste in industrial boilers.

The record of EPA in this area has been extremely disappointing. This poor performance has placed additional pressures on the states to fill the regulatory gaps; a difficult task to perform due to resource shortfalls and interstate competition for industry siting. As a result, the quality of state programs varies widely, offering little consistency in the protection of human health and the environment.

THE PROBLEM

The inadequacies of the federal government's hazardous waste management efforts arise in a variety of ways, including the failure to identify many toxic wastes for regulation, loopholes in the regulations which allow wastes and facilities to escape regulation, and the failure to require best available technology to minimize environmental contamination.

Many wastes which are hazardous are not yet regulated because EPA hasn't identified them for regulation or has exempted them from regulation. EPA has not identified a new waste for regulation since July of 1980. The existing list of wastes does not include over half of the waste streams generated from the production of carcinogens identified by EPA's Carcinogen Assessment Group. Many wastes from the production of pesticides are also not yet listed.

Even if the Agency has identified a waste stream as hazardous, loopholes in the regulations may allow the waste to escape controls. For example, wastes produced in a quantity of less than 2200 lbs/mo need not be managed at a licensed hazardous waste facility but instead may be sent to a regular garbage dump. EPA has also exempted from regulation over 100 waste streams from particular factories or plants based on faulty or incomplete data. EPA did not examine all the components of these waste streams before exempting them and, in many cases, relied upon a chemical procedure (known as the extraction procedure) which is scientifically inadequate for the job.

EPA's regulations governing land disposal facilities (i.e., landfills, surface impoundments) have many serious problems. Briefly, some of the more serious are that air emissions are not regulated, new facilities are only required to install one liner instead of two, existing facilities are not required to have any liner and may be located in the water table, and contamination beyond the boundary of the facility need not be cleaned up.

RCRA anticipates that the states will be running the regulatory program in lieu of EPA once EPA determines that a state program is at least equivalent to the federal regulations. States are free to issue more stringent regulations than EPA's. Thus, some states have filled some of the regulatory gaps left by EPA. However, a significant number of states just copy the federal regulations, because state law prevents their regulations from being more stringent than the federal requirements, or because they lack the resources or the inclination to improve upon the federal program. As many as sixteen states have laws which prevent them from improving upon the federal program.

WHAT STATES SHOULD DO

Strengthen Regulatory Programs

° States should repeal any state legislation which prevents the state from regulating hazardous waste more stringently than EPA.

° States should develop and enforce a comprehensive hazardous waste regulatory program funded by an industry fee system. Several states, including Ohio, Louisiana and California, fund their regulatory programs using industry fees.

° States should increase the type and quantities of wastes they regulate by listing additional wastes as hazardous and closing the exemption for "small" generators. At least thirteen states have lowered the metric ton per month waste exemption. Several states, including California, Rhode Island, and Louisiana, have eliminated the exemption completely.

° States should minimize the use of land disposal by restricting the type of wastes that can be placed in or on the land. (See Chapter Fourteen, "Land Disposal.")

° States should develop regulations governing landfills, surface impoundments, and other land disposal facilities that will protect the public health instead of simply adopting EPA's inadequate regulations. Pennsylvania, for example, requires that existing surface impoundments be lined. EPA exempts these impoundments from liner requirements and thus requires no barrier between the waste and groundwater supplies.

Improve Procedures for Identifying Hazardous Waste

° States should identify all components of their waste streams. This will enable the state to identify additional wastes for regulation, estimate long-term waste handling needs within the state, and develop a regulatory approach which directs wastes away from land disposal. Minnesota's Hazardous Waste Management Board is currently performing this task.

° States should improve current extraction procedure tests for identifying toxic wastes. California utilizes a more aggressive chemical procedure to identify toxic wastes than does EPA.

° States should tighten procedures for exempting wastes from specific industrial facilities by requiring an examination of all the constituents in the waste before deciding whether the waste should be regulated.

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Land Disposal

by Peter Deibler

BACKGROUND

Land disposal remains the cheapest and most popular method of disposing of hazardous waste in this country despite the adverse publicity and public outcry that has been generated by such environmental disasters as New York's Love Canal and California's Stringfellow Acid Pits.

Recently the U.S Environmental Protection Agency increased its estimate of the amount of regulated hazardous waste generated each year by fourfold to 165 million tons per year. Forty percent of that waste is land disposed, either in landfills, surface impoundments or deep wells.[1] While estimates vary there is little doubt that a higher percentage of the large quantities of hazardous waste, not regulated by EPA, is disposed of in or on land.

Congress recognized the need for comprehensive control over the handling and management of hazardous wastes with the passage of the Resource Conservation and Recovery Act (RCRA) in 1976 and the Comprehensive Environmental Response, Compensation and Liability Act (Superfund) in 1980. Yet, EPA has done little to discourage continued reliance on cheap land disposal.

Even with the recent introduction of tougher design and operation standards for these facilities, the available evidence demonstrates that all land disposal facilities will eventually leak. For example, in Wilsonville, Illinois a landfill permitted in 1976 and declared by the EPA to be one of the most secure in the nation was closed by court order in 1981 after severe leaking had occurred.[2] And two of four recently constructed, "secure" chemical landfills in New Jersey were found to be leaking.[3] Other evidence shows that clay soil liners designed to contain wastes can leak 1000 times for quickly than expected.[4]

And land disposal can result in serious air quality problems. Studies by the California Air Resources Board indicate that hydrocarbon emissions from land disposal facilities may be related to the generation of photochemical smog and that these facilities emit significant levels of toxic and carcinogenic compounds.[5]

The EPA itself stated in 1981: "Unfortunately at the present time, it is not technologically and institutionally possible to contain wastes and constituents forever or for the long time periods that may be necessary to allow adequate degradation to be achieved. Consequently, the regulation of hazardous waste land disposal must proceed from the assumption that migration of hazardous wastes and their constituents and by-products from a land disposal facility will inevitably occur."[6]

THE PROBLEM

Alternative technologies provide a viable waste management option for hazardous wastes. For instance, using a broad menu of technologies it is technically feasible to recycle, treat or destroy up to 75% of the hazardous wastes that are now land disposed in California.[7] And use of these technologies is increasing steadily. But recycling, treatment and destruction technologies cannot usually compete with less expensive expensive land disposal without government action to encourage the use of more advanced technologies.

Three major problems must be addressed: 1) the cost of alternative technologies must be made competitive with land disposal; 2) a more comprehensive approach is necessary; and 3) public participation in planning must be increased. Most alternatives use well known chemical, biological and physical principles and are in common use in many other industrialized nations, particularly where land is scarce and the cost of land disposal prohibitive. The relatively low initial cost of land disposal in the United States is a Faustian bargain, however. Although inexpensive in the short-term, the high probability of eventual contamination suggests the true cost of the technology which are not adequately reflected in today's marketplace.

Proponents of land disposal, including many waste generators, argue that newer, more expensive, "state-of-the-art" land disposal facilities operated according to EPA land disposal regulations will ensure long-term containment of wastes. But the groundwater safeguards in those regulations react to contamination once it has occurred rather than attempting to prevent the leakage. Once again, available evidence demonstrates that even these facilities will leak in the future, causing contamination and creating expensive clean-up problems.

In order to determine which toxics to ban from land disposal, most states will have to develop a much more comprehensive approach to managing hazardous waste disposal which recognizes that the potential health effects associated with exposure to hazardous wastes, whether through contact with contaminated soil, the breathing of air emissions, or the drinking of contaminated water, can only rarely be clearly linked to a given exposure of substance. Acute, or short-term, effects frequently resemble the symptoms associated with a variety of diseases. The longer-term chronic effects such as cancer and mutated genes may not be manifested for several decades, or even several generations, by which time any attempt to prove that the health effect is related to that original exposure is meaningless. As a result of these unavoidable uncertainties in assessing health effects, the best governmental posture is one of caution.

We already know many of the deficiencies of land disposal practices. Why continue to rely on land disposal when other options are available?

Nationwide it is becoming politically impossible to site new land disposal facilities. But as a few states are demonstrating, the public is willing to accept the siting of alternative technology facilities once the range of options is clearly understood.

Contrary to common misconception on the part of many industry and government representatives, local citizens are capable of distinguishing between land disposal and recycling, treatment or incineration facilities. In one instance in California, a state-sponsored attempt to locate potential sites for new landfills in seven southern California counties has resulted in widespread opposition with hundreds of citizens voicing their opinions in town meetings. During the same time period, several alternative recycling and treatment facilities were sited and began successful permitting processes in the same seven counties.

Acceptance of alternative facilities requires education of both the media and the public, as well as an essential development of trust between the facility builder, the surrounding community and state and local officials. Successful siting and permitting involves an unusual degree of government coordination and a willingness on the part of the builder to be entirely forthright and honest in dealing with the community.

Effective hazardous waste regulation enforcement and treatment requires that the "front-line" communities have a major say in how laws are administered. The role of the expert, who can rarely offer decisive results, must be combined with sympathy for the trauma and anguish felt by citizens who experience the fear of possible exposure to hazardous substances.

The burden is on state and local governments to present the case for alternative technologies in a way the layperson can understand. The states, in designing hazardous waste programs, may correct these deficiencies by acting to restrict the use of land disposal for those wastes that pose the greatest risk to public health and the environment when disposed in or onto the land, and to encourage the use of alternative technologies for recycling, treating and destroying hazardous wastes.

Although a number of states, including New York, Wisconsin, Minnesota, Illinois, North Carolina and Washington are considering or encouraging the use of alternative technologies, California has the only comprehensive restriction program.