

13:1E-42.1 et al.

LEGISLATIVE HISTORY CHECKLIST

NJSA: 13:1E-42.1 et al. ("Major Hazardous Waste Facilities Siting Act"--creates corporation)

LAWS OF: 1981 **CHAPTER** 279

BILL NO: S1300

Sponsor(s): Dodd and others

Date Introduced: June 9, 1980

Committee: Assembly: Agriculture and Environment
Senate: Revenue, Finance and Appropriations; Energy and Environment

Amended during passage: Yes Senate Committee Substitute (OCR) enacted.

Date of Passage: **Assembly:** June 25, 1981
Senate: January 26, 1981

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Following statements are attached if available:

Sponsor statements: Yes

Committee statement: **Assembly** No
Senate Yes 1-12-81 and 1-22-81

Fiscal Note: No

Veto Message: No

Message on Signing: Yes

Following were printed:

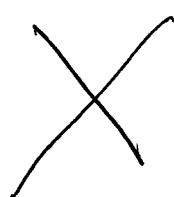
Reports: Yes

Hearings: Yes

974.90 New Jersey. Legislature. Senate. Committee on Energy and Environment.
P777 Public hearing, held 10-27-80, 11-6-80 and 12-17-80. Trenton, 1980.
1980k

(OVER)

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Report, referred to in sponsors' statement:

974.90 . New Jersey. Hazardous Waste Advisory Commission.
P777 Report . . . January, 1980. Trenton, 1980.
1980

Report, referred to on p2, v.II, of public hearing

974.90 Booz, Allen and Hamilton, Inc.
P777 Hazardous waste management capacity development in the Delaware
1980a River basin and New Jersey: a program strategy, prepared for the
Delaware River Basin Commission and the New Jersey Department of
Environmental Protection. April 8, 1980. Bethesda, Maryland, 1980.

See also:

974.90 New Jersey. Department of Environmental Protection. Hazardous waste
P777 Hazardous waste management in New Jersey . . . March, 1980.
1980j Trenton, 1980.

[OFFICIAL COPY REPRINT]
 SENATE COMMITTEE SUBSTITUTE FOR
 SENATE, No. 1300

STATE OF NEW JERSEY

ADOPTED JANUARY 13, 1981

AN ACT concerning major hazardous waste facilities, amending the title of "An Act concerning the inspection of certain solid waste disposal facilities and supplementing the 'Solid Waste Management Act,' approved May 6, 1970 (P. L. 1970, c. 39, C. 13:1E-1 et seq.), as said short title was amended by P. L. 1975, c. 326," so that the same shall read "An act concerning the inspection of major hazardous waste facilities and supplementing the 'Solid Waste Management Act,' approved May 6, 1970 (P. L. 1970, c. 39, C. 13:1E-1 et seq.), as said short title was amended by P. L. 1975, c. 326," amending the body of said act, supplementing Title 13 of the Revised Statutes, and making an appropriation.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
 2 *of New Jersey:*

1 1. Sections 1 through 43 inclusive of this act shall be known and
 2 may be cited as the "Major Hazardous Waste Facilities Siting Act."

1 2. The Legislature finds and declares that the proper treatment,
 2 storage or disposal of hazardous waste generated in this State is
 3 today the exception, rather than the rule; that the improper treat-
 4 ment, storage or disposal of hazardous waste results in substantial
 5 impairment of the environment and the public health; that insuring
 6 the proper treatment, storage or disposal of hazardous waste is a
 7 public purpose in the best interests of all citizens of this State;
 8 and that the only way to accomplish this purpose is to provide for
 9 the siting, design, construction, operation and use of environ-
 10 mentally acceptable major hazardous waste facilities.

10A **The Legislature further finds and declares that certain environ-*
 10B *mentally sensitive areas must be preserved and therefore excluded*
 10C *from consideration as sites for any major hazardous waste facilities*
 10D *because the risk of irreversible ecological damage, despite the*
 10E *application of sound engineering practices, is too great to be*
 10F *tolerated.**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

11 The Legislature further finds and declares that the choice of
12 hazardous waste disposal sites is now made, all too frequently,
13 on an indiscriminate and illegal basis; that it is necessary to
14 establish a mechanism for the rational siting of hazardous waste
15 facilities; that the informed participation of the public and of
16 elected and appointed officials at all levels of government is essen-
17 tial to establish this mechanism; that the proper siting, design,
18 construction, operation and use of major hazardous waste facilities
19 must be provided in a timely fashion; that these facilities should be
20 totally or partially constructed above existing grade and physically
21 accessible to inspection personnel, unless such construction is tech-
22 nologically or economically impracticable and the hazardous waste
23 to be treated, stored or disposed of therein can be effectively
24 monitored; and that major hazardous waste facilities should be
25 privately operated and subject to strict governmental regulation,
26 all as hereinafter provided.

1 3. As used in this act:

2 a. "Applicant" means the applicant for a registration statement
3 and engineering design for a major hazardous waste facility;

4 b. "Application" means the application for a registration state-
5 ment and engineering design for a major hazardous waste facility;

6 c. "Commission" means the Hazardous Waste Facilities Siting
7 Commission established by section 4 of this act;

8 d. "Commissioner" means the Commissioner of Environmental
9 Protection;

10 e. "Council" means the Hazardous Waste Advisory Council
11 established by section 6 of this act;

12 f. "Criteria" means the criteria for the siting of new major
13 hazardous waste facilities adopted by the department pursuant to
14 section 9 of this act;

15 g. "Department" means the Department of Environmental
16 Protection;

17 h. "Disclosure statement" means a statement submitted to the
18 department by an applicant, which statement shall include:

19 (1) The names and addresses of all officers, directors, or part-
20 ners of the business concern seeking a registration and engineering
21 design approval and all persons or business concerns holding more
22 than 10% of the equity in or debt liability of that business concern;

23 (2) The names and addresses of all officers, directors, or partners
24 of any business concern disclosed in the statement and the names
25 and addresses of all persons holding more than 10% of the equity in
26 or the debt liability of any business concern so disclosed;

27 (3) The name and address of any company which collects, treats,
28 stores or disposes of hazardous waste in which the business concern
29 seeking a registration and engineering design approval holds an
30 equity interest;

31 (4) A description of the experience and credentials in, including
32 any past or present licenses for, the collection, treatment, storage
33 or disposal of hazardous waste possessed by the key employees,
34 officers, directors, or partners of the business concern seeking a
35 registration and engineering design approval;

36 (5) A listing and explanation of any notices, administrative
37 orders or license revocations issued by any state or federal au-
38 thority since January 1, 1976 which indicate a violation of any
39 law or rule and regulation relating to the collection, treatment,
40 storage or disposal of hazardous waste by the business concern
41 seeking a registration and engineering design approval or by
42 any key employee, officer, director, or partner thereof;

43 (6) A listing and explanation of any judgment of liability or
44 conviction which was rendered, pursuant to any state or federal
45 statute or local ordinance concerning the collection, treatment,
46 storage or disposal of hazardous waste, against the business con-
47 cern seeking a registration and engineering design approval or
48 against any key employee, officer, director, or partner thereof; and

49 (7) Any other information the department may require that
50 relates to the competency or reliability of the applicant.

51 i. "Engineering design" means the specifications and parameters
52 approved by the department for the construction and operation of
53 a major hazardous waste facility;

54 j. "Environmental and health impact statement" means a state-
55 ment of likely environmental and public health impacts resulting
56 from the construction and operation of a major hazardous waste
57 facility, and includes an inventory of existing environmental condi-
58 tions at the site, a project description, an assessment of the impact
59 of the project on the environment and on public health, a listing of
60 unavoidable environmental and public health impacts, and steps
61 to be taken to minimize environmental and public health impacts
62 during construction and operation;

63 k. "Hazardous waste" means any waste or combination of wastes
64 which pose a present or potential threat to human health, living
65 organisms or the environment including, but not limited to, waste
66 material that is toxic, carcinogenic, corrosive, irritating, sensitizing,
67 biologically infectious, explosive or flammable, and any waste so
68 designated by the United States Environmental Protection Agency.
69 Hazardous waste does not include radioactive waste;

70 1. "Hazardous waste facility" means any area, plant or other
71 facility for the treatment, storage or disposal of hazardous waste,
72 including loading and transportation facilities or equipment used
73 in connection with the processing of hazardous wastes; "major
74 hazardous waste facility" means any commercial hazardous waste
75 facility which has a total capacity to treat, store or dispose of
76 more than 250,000 gallons of hazardous waste, or the equivalent
77 thereof, as determined by the department, except that any facility
78 which would otherwise be considered a major hazardous waste
79 facility pursuant to this subsection solely as the result of the re-
80 cycling or rerefining of any hazardous wastes which are or contain
81 gold, silver, osmium, platinum, palladium, iridium, rhodium,
82 ruthenium or copper shall not be considered a major hazardous
83 waste facility for the purposes of this act; "existing major hazard-
84 ous waste facility" means any major hazardous waste facility which
85 was legally in operation or upon which construction had legally
86 commenced prior to the effective date of this act; "new major
87 hazardous waste facility" means any major hazardous waste facility
88 other than an existing major hazardous waste facility; "commercial
89 hazardous waste facility" means any hazardous waste facility which
90 accepts hazardous waste from more than one generator for storage,
91 treatment or disposal at a site other than the site where the hazard-
92 ous waste was generated;

93 m. "Hazardous waste industry" means any industry which oper-
94 ates a hazardous waste facility or which proposes to construct
95 or operate a hazardous waste facility;

96 n. "Owner or operator" means and includes, in addition to the
97 usual meanings thereof, every owner of record of any interest in
98 land whereon a major hazardous waste facility is or has been
99 located, and any person or corporation which owns a majority
100 interest in any other corporation which is the owner or operator
101 of any major hazardous waste facility;

102 o. "Plan" means the Major Hazardous Waste Facilities Plan
103 adopted by the commission pursuant to section 10 of this act;

104 p. "Registration statement" or "registration" means the operat-
105 ing license, approved by the department, for a major hazardous
106 waste facility; "registrant" means the person to whom such ap-
107 proval was granted.

1 4. a. There is established in the Executive Branch of the State
2 Government a public body corporate and politic, with corporate
3 succession, to be known as the Hazardous Waste Facilities Siting
4 Commission. For the purpose of complying with the provisions
5 of Article V, Section IV, paragraph 1 of the New Jersey Constitu-

6 tion, the commission is allocated within the Department of Environ-
7 mental Protection, but, notwithstanding that allocation, the com-
8 mission shall be independent of any supervision or control by the
9 department or by the commissioner or any officer or employee
10 thereof. The commission shall constitute an instrumentality of
11 the State exercising public and essential governmental functions,
12 and the exercise by the commission of the powers conferred by this
13 or any other act shall be deemed and held to be an essential govern-
14 mental function of the State.

15 b. The commission shall consist of nine members, except as other-
16 wise provided in subsection c. of this section. Three of these
17 members shall be county or municipal elected or appointed officials
18 at the time of their appointment, three shall be employed by an
19 industrial firm, and three shall be representatives of environmental
20 or public interest organizations. Each of these members shall be
21 appointed by the Governor, with the advice and consent of the
22 Senate, for a term of 3 years, provided that of the members of the
23 commission first appointed by the Governor, three shall serve for
24 terms of 1 year, three for terms of 2 years, and three for terms of
25 3 years, so that one member from each of the three categories of
26 membership shall be appointed to serve for a term of each such
27 duration. Each of these members shall hold office for the term of
28 his appointment and until his successor shall have been appointed
29 and qualified. A member shall be eligible for reappointment. Any
30 vacancy in the membership occurring other than by expiration of
31 term shall be filled in the same manner as the original appointment,
32 but for the unexpired term only.

33 c. Whenever the commission considers the recommendations of
34 an administrative law judge pursuant to subsection a. of section 11
35 hereof, two additional voting members shall be appointed to the
36 commission. One of the additional members shall be appointed by
37 the governing body of the county wherein the proposed major
38 hazardous waste facility site is located, and the other shall be
39 appointed by the governing body of the municipality wherein such
40 site is located. In the event that such site is located in more than
41 one county or municipality, each of the affected county and municipi-
42 pal governing bodies shall appoint an additional member of the
43 commission, except that all of such county appointments shall share
44 a single vote, and all of such municipal appointments shall share
45 a single vote.

46 d. Each member may be removed from office by the appointing
47 authority, for cause and after opportunity for a hearing, and may
48 be suspended by the appointing authority pending the completion

49 of the hearing. Each member who shall miss three consecutive
50 meetings of the commission without being excused for good cause
51 by the chairman shall be deemed to have vacated his office.

52 e. Each member of the commission shall, before entering upon
53 his duties, take and subscribe an oath to perform the duties of his
54 office faithfully, impartially, and justly to the best of his ability.
55 A record of these oaths shall be filed in the office of the Secretary
56 of State.

57 f. The members of the commission shall elect from among their
58 number a chairman, who shall schedule, convene and chair com-
59 mission meetings, and a vice-chairman, who shall act as chairman
60 in his absence. The members of the commission shall appoint an
61 executive director, who shall be the chief administrative officer and
62 secretary of the commission. The executive officer shall serve at
63 the pleasure of the commission, and shall be a person qualified by
64 training and experience to perform the duties of his office.

65 g. The powers of the commission shall be vested in the members
66 thereof in office, and a majority of the total authorized membership
67 of the commission shall be required to exercise its powers at any
68 meeting thereof.

69 h. Each member of the commission shall execute a bond to be con-
70 ditioned upon the faithful performance of his duties in such form
71 and amount as may be prescribed by the State Treasurer. The
72 bonds shall be filed in the Office of the Secretary of State. At all
73 times thereafter, the commission members shall maintain the bonds
74 in full force. The commission shall pay the cost of the bonds.

75 i. The members of the commission shall serve without compen-
76 sation, but the commission may, within the limits of funds appro-
77 priated or otherwise made available therefor, reimburse members
78 for actual expenses necessarily incurred in the discharge of their
79 official duties.

80 j. A true copy of the minutes of every meeting of the commission
81 shall be prepared and forthwith delivered by and under the certifi-
82 cation of the secretary thereof to the Governor. No action taken
83 at the meeting by the commission shall have effect until 10 days,
84 Saturdays, Sundays, and public holidays excepted, after the copy
85 of the minutes shall have been so delivered, unless during the
86 10-day period, the Governor shall approve the minutes, in which
87 case the action shall become effective upon that approval. If, in
88 the 10-day period, the Governor returns the copy of the minutes
89 with a veto of any action taken by the commission at that meeting,
90 the action shall be of no effect.

- 1 5. The commission shall have the following powers:
- 2 a. To adopt bylaws for the regulation of its affairs and the
3 conduct of its business;
- 4 b. To adopt and have a seal and to alter the same at its pleasure;
- 5 c. To sue and be sued;
- 6 d. To enter into contracts upon such terms and conditions as the
7 commission shall determine to be reasonable, and to pay or com-
8 promise any claim arising therefrom;
- 9 e. To call to its assistance and avail itself of the services of such
10 employees of any State, county or municipal department, board,
11 commission or agency as may be required and made available for
12 such purposes;
- 13 f. To contract for and to accept any gifts or grants or loans of
14 funds or financial or other aid in any form from the United States
15 of America or any agency, instrumentality or political subdivision
16 thereof, or from any other source and to comply, subject to the
17 provisions of the act, with terms and conditions thereof;
- 18 g. To employ an executive director, consulting engineers, archi-
19 tects, attorneys, real estate counselors, appraisers, and such other
20 consultants and employees as may be required in the judgment of
21 the commission to carry out the purposes of this act, and to fix
22 and pay their compensation from funds available to the commission
23 therefor, all without regard to the provisions of Title 11, Civil
24 Service, of the Revised Statutes;
- 25 h. To hold public meetings or hearings within this State on any
26 matter related to the need for, or the siting of, major hazardous
27 waste facilities;
- 28 i. To do and perform any acts and things authorized by this
29 act under, through or by means of its own officers, agents and em-
30 ployees, or by contracts with any person.
- 31 j. To adopt, pursuant to the "Administrative Procedure Act,"
32 P. L. 1968, c. 410 (C. 52:14B-1 et seq.) rules and regulations
33 establishing eligibility standards to be utilized by the department
34 in granting exemptions pursuant to subsection e. of section 12 of
35 this act.
- 1 6. a. There is established in the department a Hazardous Waste
2 Advisory Council which shall consist of 13 members appointed
3 by the Governor with the advice and consent of the Senate. Each
4 of these members shall be appointed for a term of 3 years, provided
5 that of the members of the council first appointed by the Governor,
6 four shall serve for terms of 1 year, five shall serve for terms of
7 2 years, and four shall serve for terms of 3 years. Of these members,
8 three shall be appointed from persons recommended by recognized

9 environmental or public interest organizations; two from persons
10 recommended by recognized organizations of municipal elected and
11 appointed officials; two from persons recommended by recognized
12 organizations of county elected and appointed officials; one from
13 persons recommended by recognized community organizations; one
14 from persons recommended by recognized organizations of fire-
15 fighters; one from persons recommended by recognized organiza-
16 tions of industries which utilize onsite facilities for the treatment,
17 storage or disposal of hazardous waste; one from persons recom-
18 mended by recognized organizations of industries which utilize
19 major hazardous waste facilities for the treatment, storage or dis-
20 posal of hazardous waste; one from persons recommended by
21 recognized organizations of persons licensed by the department
22 to transport hazardous waste, or by individual licensed hazardous
23 waste transporters; and one from persons recommended by recog-
24 nized organizations of persons licensed by the department to
25 operate major hazardous waste facilities, or by individual licensed
26 major hazardous waste facility operators. In the event that no
27 recommendations for a particular category of membership are
28 made to the Governor within 60 days of the effective date of this
29 act, in the case of the initial appointments, or within 60 days of
30 the date of the expiration of the term of office of any member or
31 the occurrence of any vacancy, in the case of subsequent appoint-
32 ments, the Governor shall appoint as a member or members for
33 that category of membership such person or persons whom he
34 believes shall be representative thereof.

35 b. A majority of the membership of the council shall constitute a
36 quorum for the transaction of council business. Action may be
37 taken and motions and resolutions adopted by the council at any
38 meeting thereof by the affirmative vote of a majority of the full
39 membership of the council.

40 c. The council shall meet regularly as it may determine, and
41 shall also meet at the call of the chairman of the commission or the
42 commissioner.

43 d. The council shall appoint a chairman from among its members
44 and such other officers as may be necessary. The council may,
45 within the limits of any funds appropriated or otherwise made
46 available to it for this purpose, appoint such staff or hire such
47 experts as it may require.

48 e. Members of the council shall serve without compensation, but
49 the council may, within the limits of funds appropriated or other-
50 wise made available for such purposes, reimburse its members for
51 necessary expenses incurred in the discharge of their official duties.

1 7. The council shall:

2 a. Advise the commission concerning the preparation and adop-
3 tion of the plan, the proposal and adoption, by the commission, of
4 all sites for major hazardous waste facilities, and the implementa-
5 tion of the public information program;

6 b. Advise the department concerning the preparation and adop-
7 tion of criteria for the siting of new major hazardous waste
8 facilities and make recommendations for departmental action on
9 applications for the approval of registration statements and engi-
10 neering designs for new major hazardous waste facilities; and

11 c. Review all matters submitted to it by the commission or the
12 department and state its position on the matter within 60 days of
13 the submission thereof.

1 8. The council may:

2 a. Review any matter relating to the siting, licensing, construc-
3 tion, operation or closure of major hazardous waste facilities and to
4 transmit such recommendations thereon to the commission or to
5 the department as it may deem appropriate;

6 b. Hold public meetings or hearings within this State on any
7 matter related to the siting, licensing, construction, operation or
8 closure of major hazardous waste facilities; and

9 c. Call to its assistance and avail itself of the services of such
10 employees of any State, county or municipal department, board,
11 commission or agency as may be required and made available
12 for such purposes.

1 9. a. The department shall, within 1 year of the effective date
2 of this act and in consultation with the council, prepare, adopt and
3 transmit to the commission criteria for the siting of new major
4 hazardous waste facilities. Such criteria shall be designed to
5 prevent any significant adverse environmental impact resulting
6 from the location or operation of a major hazardous waste facility,
7 including any significant degradation of the surface or ground
8 waters of this State, and shall prohibit the location or operation
9 of any new major hazardous waste facility*, *at a minimum,** within:

10 (1) **[500 yards]* *2,000 feet** of any structure which is rou-
11 tinely occupied by the same person or persons more than 12 hours
12 per day, or by the same person or persons under the age of 18 for
13 more than 2 hours per day*, *except that the commission may permit*
13A *the location of a major hazardous waste facility less than 2,000 feet,*
13B *but in no case less than 1,500 feet, from such structures upon show-*
13C *ing that such a location would not present a substantial danger to*
13D *the health, welfare, and safety of the persons occupying or inhabit-*
13E *ing such structures* ;*

14 (2) Any flood hazard area delineated pursuant to P. L. 1962,
15 c. 19 (C. 58:16A-50 et seq.):

16 (3) Any wetlands designated pursuant to P. L. 1970, c. 272
17 (C. 13:9A-1 et seq.); ***[and]***

18 (4) Any area where the seasonal high water table rises to within
19 1 foot of the surface, unless the seasonal high water table can be
20 lowered to more than 1 foot below the surface by permanent drain-
21 age measures approved by the department***[.]*** *; and*

21A **(5) Any area within a 20 mile radius of a nuclear fission power*
21B *plant at which spent nuclear fuel rods are stored on-site.**

22 b. The provisions of the "Administrative Procedure Act," P. L.
23 1968, c. 410 (C. 52:14B-1 et seq.), or any other law to the contrary
24 notwithstanding, the department shall prepare and adopt criteria
25 for the siting of new major hazardous waste facilities as follows:

26 (1) Within 6 months of the effective date of this act, the depart-
27 ment shall prepare and make available to all interested persons
28 preliminary criteria for the siting of new major hazardous waste
29 facilities;

30 (2) Within 8 months of the effective date of this act, the depart-
31 ment shall conduct public meetings on the preliminary criteria in
32 the several geographic areas of this State. Notice of these meetings
33 shall be published, at least 30 days in advance thereof, in at least
34 two newspapers circulating in the specific geographic area where
35 the meeting will be held. Notice of these meetings shall also be
36 transmitted, at least 30 days in advance thereof, to every municipal
37 clerk and environmental commission within the specified geographic
38 area where the meeting will be held.

39 (3) Within 9 months of the effective date of this act, the depart-
40 ment shall consider and evaluate any comments made at the public
41 meetings, make such revisions to the preliminary criteria as it
42 deems necessary or appropriate, and schedule a public hearing on
43 the revised criteria. Notice of this hearing shall be published, at
44 least 30 days in advance thereof, in at least four newspapers of
45 general circulation in this State;

46 (4) Within 10 months of the effective date of this act, the depart-
47 ment shall conduct the public hearing on the revised criteria; and

48 (5) Within 1 year of the effective date of this act, the depart-
49 ment shall consider and evaluate any comments made at the public
50 hearing, make such changes to the revised criteria as it deems
51 necessary or appropriate, and adopt and transmit to the commis-
52 sion final criteria for the siting of new major hazardous waste
53 facilities.

1 10. a. The commission shall prepare and adopt, in consultation
2 with the council and within 1 year of the effective date of this act,
3 a Major Hazardous Waste Facilities Plan. This plan shall be
4 revised and updated every 3 years, or more frequently when, in
5 the discretion of the commission, changes in existing hazardous
6 waste facilities, the amount or type of hazardous waste generated
7 in this State, or technological advances so require.

8 b. The plan shall include, but need not be limited to:

9 (1) An inventory and appraisal, including the identity, location
10 and life expectancy, of all hazardous waste facilities located within
11 the State, and the identity of every person engaging in hazardous
12 waste collection, treatment, storage or disposal within the State;

13 (2) A current inventory of the sources, composition and quan-
14 tity of the hazardous waste generated within the State;

15 (3) Projections of the amounts and composition of hazardous
16 waste to be generated within the State in each of the next 3 years;

17 (4) A determination of the number and type of new major
18 hazardous waste facilities needed to treat, store or dispose of
19 hazardous waste in this State;

20 (5) An analysis of the ability of all existing facilities to meet
21 current and proposed State and Federal environmental, health
22 and safety standards and their performance in meeting these
23 standards;

24 (6) An analysis of transportation routes and transportation costs
25 from hazardous waste generators to existing or available suitable
26 sites for major hazardous waste facilities;

27 (7) Procedures to encourage codisposal of solid and hazardous
28 waste, source reduction, materials recovery, energy recovery,
29 waste exchanging and recycling and to discourage all inappropriate
30 disposal techniques, and to minimize the amount of hazardous waste
31 to be treated, stored or disposed of in this State; and

32 (8) A regional analysis of existing and necessary major haz-
33 ardous waste facilities and recommended procedures for coordi-
34 nating major hazardous waste facilities planning on a regional
35 basis.

36 c. The provisions of the "Administrative Procedure Act," P. L.
37 1968, c. 410 (C. 52:14E-1 et seq.), or any other law to the contrary
38 notwithstanding, the commission shall prepare and adopt the plan
39 as follows:

40 (1) Within 6 months of the effective date of this act, the com-
41 mission shall prepare and make available to all interested persons
42 a proposed plan;

43 (2) Within 8 months of the effective date of this act, the com-
44 mission shall conduct public hearings in the several geographic
45 areas of the State on the proposed plan. Notice of these hearings
46 shall be published at least 30 days in advance thereof in at least
47 two newspapers circulating in the specific geographic area where
48 the hearing will be held; and

49 (3) Within 1 year of the effective date of this act, the commission
50 shall consider any comments made at the public hearings, make
51 such revisions to the proposed plan as it deems necessary or appro-
52 priate, and adopt the plan.

53 d. Within 90 days of the effective date of this act, the commission
54 shall, in consultation with the department and the council, establish
55 a public information program which addresses:

56 (1) The nature and dimension of the hazardous waste problem;

57 (2) The need for the proper and expeditious siting of new major
58 hazardous waste facilities;

59 (3) The respective responsibilities of the commission, depart-
60 ment and council pursuant to this act; and

61 (4) The necessity and opportunities for public participation as
62 provided herein.

63 e. In preparing or revising the plan pursuant to this section, the
64 commission may direct that the department provide or prepare
65 any data or other information which the commission deems neces-
66 sary for the performance of its responsibilities pursuant to this act.

1 11. a. The commission shall, in consultation with the council,
2 propose and adopt site designations for the number and type of
3 new major hazardous waste facilities determined to be necessary
4 in the plan.

5 The provisions of the "Administrative Procedure Act," P. L.
6 1968, c. 410 (C. 52:14B-1 et seq.) or any other law to the contrary
7 notwithstanding, these sites shall be proposed and adopted in the
8 following manner:

9 (1) Within 18 months of the effective date of this act, or within
10 6 months of the receipt of the criteria from the department, which-
11 ever is sooner, the commission shall propose sites for new major
12 hazardous waste facilities, transmit written notice thereof, by
13 certified mail, to the governing body, board of health, planning
14 board and environmental commission of the affected municipality,
15 and provide the governing body with a grant, pursuant to the
16 provisions of subsection d. of this section, to conduct a site suit-
17 ability study of the proposed site. In the event that a site is located
18 in a county wherein has been established a county health depart-
19 ment, such notice shall also be transmitted thereto;

20 (2) Within 6 months of the receipt of a grant from the commis-
21 sion, the governing body of the affected municipality shall complete
22 and transmit to the commission the site suitability study on the
23 proposed site;

24 (3) Within 45 days of the receipt by the commission of the
25 municipal site suitability study, an adjudicatory hearing concern-
26 ing the proposed site shall be conducted by an administrative law
27 judge. The affected municipality shall be a party of interest to
28 such hearing, and shall have the right to present testimony and
29 cross-examine witnesses. Intervention in this hearing by any other
30 person shall be as provided by the "Administrative Procedure Act;"

31 (4) Within 30 days of the close of such hearing, the administra-
32 tive law judge shall transmit his recommendations for action on
33 the proposed site to the commission*. *The judge shall not favorably*
33A *recommend the proposed site as suitable for a major hazardous*
33B *waste facility unless he finds clear and convincing evidence that*
33C *locating a major hazardous waste facility on the proposed site will*
33D *not constitute a substantial detriment to the public health, safety*
33E *and welfare of the effected municipality**; and,

34 (5) Within 30 days of the receipt thereof, the commission shall
35 affirm, conditionally affirm or reject the recommendations of the
36 administrative law judge and adopt or withdraw the proposed
37 site. Such action by the commission shall be based upon the
38 potential for significant impairment of the environment or the
39 public health, shall be considered to be final agency action thereon
40 for the purposes of the "Administrative Procedure Act" and shall
41 be subject only to judicial review as provided in the Rules of Court.

42 If the commission fails to act upon the recommendations of the
43 administrative law judge as required in this subsection, the failure
44 shall constitute commission affirmance of those recommendations.

45 b. The commission may designate alternate or additional sites for
46 new major hazardous waste facilities, at the request of any hazard-
47 ous waste industry, and the requestor shall have the burden of
48 proof concerning the suitability of the site in proceedings conducted
49 pursuant to subsection a. of this section.

50 c. The commission may, upon its own motion or at the request
51 of the governing body of any affected municipality, repeal or with-
52 draw any adopted site for a new major hazardous waste facility
53 if, in the discretion of the commission, such action is consistent
54 with the purposes and provisions of this act.

55 d. The commission may make grants to municipalities for con-
56 ducting site suitability studies of proposed sites for major hazard-
57 ous waste facilities, pursuant to this section, from any State,

58 Federal or other funds which may be appropriated or otherwise
59 made available to it for this purpose.

60 e. In the event that any site proposed by the commission pursu-
61 ant to this section is located in more than one municipality, the
62 notices required herein shall be transmitted to each affected muni-
63 cipality or agency thereof, the grant awarded for the municipal
64 site suitability study shall be made to all of the affected muni-
65 cipalities, the site suitability study shall be conducted jointly by all
66 of the affected municipalities, and all of the affected municipalities
67 shall be considered a single party for the purposes of the adjudi-
68 catory hearing held pursuant to this section.

1 12. a. No person shall commence construction of any major
2 hazardous waste facility on or after the effective date of this
3 act unless that person shall have obtained the approval of the
4 department for the registration statement and engineering design
5 for such facility prior to construction thereof.

6 b. The department shall review all applications for registration
7 statements and engineering designs for new major hazardous
8 waste facilities in consultation with the council. The review shall
9 include the consideration of a disclosure statement, which shall be
10 filed by the applicant; the review of an investigative report, based
11 in part upon that statement, which report shall be prepared by the
12 Attorney General; and the evaluation of an environmental and
13 health impact statement, which statement shall be prepared by the
14 commission at the applicant's expense.

15 In addition to all other standards and conditions pertaining to
16 an application for registration and engineering design approval,
17 no such approval shall be granted by the department for a new
18 major hazardous waste facility unless the department finds that:

19 (1) The applicant, in its prior performance record in the treat-
20 ment, storage or disposal of hazardous waste, exhibits sufficient
21 reliability, expertise, and competency to operate a major hazard-
22 ous waste facility given the potential for harm to human health
23 and the environment which could result from the irresponsible
24 operation of the proposed facility. In no case may approval be
25 granted to the applicant if any person shown to be a party to the
26 application by the disclosure statement has been convicted of a
27 crime for any act or omission related to the collection, treatment,
28 storage or disposal of hazardous waste in this or any other juris-
29 diction within 10 years of the date on which the application was
30 filed;

31 (2) The environmental and health impact statement shows that
32 the location and design of the proposed facility will pose no

33 significant threat to human health or to the environment if properly
34 managed in accordance with all relevant Federal and State laws
35 and all rules and regulations adopted pursuant thereto; and

36 (3) The proposed facility would be operated by the proposed
37 operator on a site designated by the commission for that particular
38 type of major hazardous waste facility.

39 c. The provisions of the "Administrative Procedure Act," P. L.
40 1968, c. 410 (C. 52:14B-1 et seq.), or any other law to the contrary
41 notwithstanding, the review of all applications for registration
42 and engineering design approval for new major hazardous waste
43 facilities shall be conducted in the following manner:

44 (1) Not less than 90 days prior to filing an application for regis-
45 tration and engineering design approval, the applicant shall submit
46 to the department and the governing body of the affected munici-
47 pality a letter of intent to apply for registration and engineering
48 design approval, a disclosure statement, and a brief description
49 of the nature of the proposed facility;

50 (2) Within 60 days of the receipt of a letter of intent, the depart-
51 ment, in consultation with the governing body of the affected
52 municipality and the council, shall inform the applicant whether
53 the disclosure statement shows sufficient indicia of competency
54 and reliability in the treatment, storage or disposal of hazardous
55 waste management to warrant the submission of an application for
56 registration and engineering design approval. Such indicia shall
57 include the character of the applicant and the applicant's history
58 of compliance with or violation of all relevant laws, rules, and
59 regulations concerning hazardous waste management in this State
60 or elsewhere.

61 (3) The department shall transmit, by certified mail, a complete
62 copy of any application submitted pursuant to this subsection to
63 the governing body, board of health, planning board and environ-
64 mental commission of the affected municipality;

65 (4) Within 6 months of the receipt of such notice, the affected
66 municipality shall conduct and transmit to the department a review
67 of the proposed facility and operator, including a site plan review
68 conducted in the manner provided by the "Municipal Land Use
69 Law," P. L. 1975, c. 291 (C. 40:55D-1 et seq.). The cost of the
70 municipal review shall be borne by the applicant, except that such
71 cost shall not exceed \$15,000.00 per application. In preparing this
72 review, the affected municipality may request and receive any
73 reasonable and relevant information from the applicant or the
73A department;

74 (5) Within 8 months of the receipt of a complete application,
75 the department shall reject the application or grant tentative
76 approval thereof, which tentative approval shall establish design
77 and operating conditions for the proposed major hazardous waste
78 facility, requirements for the monitoring thereof, and any other
79 conditions required under State rules and regulations.

80 (6) All tentative approvals of applications granted pursuant to
81 this subsection shall be transmitted to the applicant and to the
82 affected municipality and shall be accompanied by a fact sheet
83 setting forth the principal facts and the significant factual, legal,
84 methodological, and policy questions considered in granting the
85 tentative approval. The fact sheet shall include a description of
86 the type of facility or activity which is the subject of the tentative
87 approval; the type and quantities of wastes which are proposed
88 to be treated, stored, or disposed of at the proposed facility; a
89 brief summary of the basis for the conditions of the tentative
90 approval; the environmental and health impact statement prepared
91 for the proposed facility and a summary as to how the statement
92 demonstrates that the proposed facility, subject to such conditions
93 as may have been imposed, would not create a significant adverse
94 impact upon the public health or the environment, and, in the event
95 that the granting of the tentative approval is contrary to the
96 findings of the municipal review of the application, the depart-
97 ment's reasons for the rejection of those findings.

98 (7) Within 45 days of the granting of a tentative approval of an
99 application, an adjudicatory hearing on the proposed facility and
100 operator shall be conducted by an administrative law judge. The
101 affected municipality shall be a party of interest to such hearing,
102 and shall have the right to present testimony and cross-examine
103 witnesses. Intervention in this hearing by any other person shall
104 be as provided in the "Administrative Procedure Act;"

105 (8) Within 30 days of the close of such hearing, the administra-
106 tive law judge shall transmit his recommendations for action on
107 the application to the department*. *The judge shall not recommend*
107A *approval of an application unless he finds clear and convincing*
107B *evidence that the disclosure statement and application for a regis-*
107C *tration statement establish that the owner and operator of the*
107D *proposed facility possess sufficient financial resources to construct,*
107E *operate, and guarantee maintenance and closure of the facility, and*
107F *that the facility will not constitute a substantial detriment to the*
107G *public health, safety and welfare of the affected municipality**; and

108 (9) Within 60 days of the receipt thereof, the department shall
109 affirm, conditionally affirm or reject the recommendations of the

110 administrative law judge and grant final approval to or deny the
111 application. Such approval or denial of an application by the
112 department shall be considered to be final agency action thereon
113 for the purposes of the "Administrative Procedure Act." and shall
114 be subject only to judicial review as provided in the Rules of Court.

115 If the department fails to act upon the recommendations of the
116 administrative law judge as required by this subsection, the failure
117 shall constitute departmental affirmance of the recommendations.

118 d. The department may charge and collect, in accordance with a
119 fee schedule adopted as a rule and regulation pursuant to the
120 "Administrative Procedure Act," such reasonable fees as may be
121 necessary to cover the costs of reviewing applications pursuant to
122 this section.

123 e. The department may, upon request of an owner or operator
124 and after public hearing, exempt a major hazardous waste facility
125 below a certain size or of a particular type from being considered a
126 major hazardous waste facility for the purposes of this section,
127 provided that such exemption is consistent with the eligibility
128 standards contained in rules and regulations adopted by the com-
129 mission.

130 f. In the event that any application reviewed by the department
131 pursuant to this section is for a registration statement and engi-
132 neering design approval for a proposed major hazardous waste
133 facility on a site located in more than one municipality, the notices
134 required herein shall be transmitted to each affected municipality
135 or agency thereof, the municipal review of the proposed facility
136 and operator shall be conducted jointly by all of the affected
137 municipalities, and all of the affected municipalities shall be con-
138 sidered a single party for the purposes of the adjudicatory hearing
139 held pursuant to this section.

1 13 a. The provisions of any other law to the contrary notwith-
2 standing, all new major hazardous waste facilities shall be:

3 (1) Totally or partially constructed above existing grade;

4 (2) Physically accessible to inspection personnel;

5 (3) Designed to allow 99.9% extraction of all hazardous waste
6 stored or disposed of therein; and

7 (4) Designed to prevent any significant adverse impact on the
8 environment or public health.

9 b. Registration statements and engineering designs for secure
10 landfills or other facilities which do not meet the requirements of
11 criteria (1) or (2) of subsection a. of this section may be approved
12 by the department only upon a finding that:

13 (1) All alternatives to the proposed facility design are techno-
14 logically or economically impracticable;

15 (2) All hazardous waste to be treated, stored or disposed of in
16 the proposed facility can be effectively monitored;

17 (3) The requirements of criteria (3) and (4) of subsection a.
18 of this section will not be violated; and

19 (4) Such approval is consistent with the purposes and provisions
20 of this act.

1 14. a. Every owner or operator of a major hazardous waste
2 facility shall be jointly and severally strictly liable, without regard
3 to fault, for:

4 (1) All direct and indirect damages, no matter by whom sus-
5 tained, proximately resulting from the operations or closure of
6 the facility, including any personal injuries or medical expenses
7 incurred as a result thereof; and

8 (2) The cleanup and removal of any discharge of a hazardous
9 substance, as defined in section 3 of P. L. 1976, c. 141 (C.
10 58:10-23.11b), which occurs at the facility;

11 b. The liability imposed pursuant to this section shall be subject
12 only to the monetary limits and defenses provided in section 8
13 of P. L. 1976, c. 141 (C. 58:10-23.11g).

1 15. The owner or operator of any major hazardous waste facility
2 which has received departmental approval of the registration state-
3 ment and engineering design for the such facility may construct
4 and operate that facility without regard to any local zoning ordi-
5 nance, and the use shall not be required to be submitted to or
6 approved by any county or municipal governing body, zoning or
7 planning board or other agency, except as otherwise expressly
8 provided herein. **All major hazardous waste facilities shall be*
9 *constructed in compliance with the "State Uniform Construction*
10 *Code Act," P. L. 1975, c. 217 (C. 52:27D-119 et seq.). The depart-*
11 *ment shall conduct inspections during construction under the super-*
12 *vision of the State Uniform Construction Code Office.**

1 16. a. The local board of health or county health department,
2 as the case may be, shall conduct weekly inspections of major
3 hazardous waste facilities in order to determine compliance with
4 the provisions of the registration statement or engineering design
5 for the facility and of all relevant Federal or State laws or any
6 rule and regulation adopted pursuant thereto. These inspections
7 shall be conducted by the appropriate health or code enforcement
8 official, as the case may be, shall commence with the commencement
9 of construction of such facility, and shall continue for 30 years

10 following the closure thereof. **Prior to the commencement of*
10A *operation of any major hazardous waste facility, the department, in*
10B *conjunction with the Department of Health, shall provide for the*
10C *training of local or county health personnel to conduct the inspec-*
10D *tions required pursuant to this section.**

11 b. In the event that any municipal or county inspection of a
12 major hazardous waste facility discloses a violation of any law
13 or rule and regulation adopted pursuant thereto, the local board
14 of health or the county health department, as the case may be,
15 may institute an action in a court of competent jurisdiction for
16 injunctive relief to restrain the violation and for such other
17 relief as the court shall deem proper. The court may proceed in
18 such action in a summary manner. Neither the institution of such
19-20 action nor any of the proceedings therein shall relieve any party
21 to the proceedings from other fines or penalties prescribed by
22 law for the violation. One-half of any penalty imposed upon the
23 owner or operator of a major hazardous waste facility as the result
24 of a violation disclosed in any municipal or county inspection
25 thereof shall, the provisions of any law to the contrary notwith-
26 standing, be awarded to the local board of health or county health
27 department, as the case may be, which conducted the inspection.

28 c. The department, in consultation with the commission, shall
29 conduct or cause to be conducted a training program for municipal
30 or county officials performing inspections of major hazardous waste
31 facilities pursuant to this section.

1 17. The department and the local board of health, or the county
2 health department, as the case may, shall have the right to enter any
3 major hazardous waste facility at any time in order to determine
4 compliance with the registration statement and engineering design,
5 and with the provisions of all applicable laws or rules and regula-
6 tions adopted pursuant thereto.

1 18. Subsequent to the effective date of this act, any major
2 hazardous waste facility which fails to comply with the provisions
3 of any Federal or State law, or of any rule and regulation adopted
4 pursuant thereto shall be subject to enforcement and closure actions
5 in the manner provided by law.

1 19. a. Any person who supplies any information which proxi-
2 mately results in the arrest and conviction of any other person
3 for the illegal treatment, storage or disposal of hazardous waste
4 shall be awarded one-half of any penalty collected as a result
5 thereof.

6 b. The Attorney General shall adopt, pursuant to the "Adminis-
7 trative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.),
8 such rules and regulations as are necessary to implement this
9 section.

1 20. The department shall require that the owner or operator
2 of every major hazardous waste facility provide evidence of
3 financial responsibility for the duration of the operations of the
4 facility and establish a mechanism to defray closing costs and
5 post-closure monitoring expenses for such period of time as may be
6 deemed necessary by the department, whether by escrow accounts,
7 performance bonds or otherwise. Post-closure monitoring of major
8 hazardous waste facilities shall be assumed by the department 30
9 years subsequent to the closure of a particular facility.

1 21. a. Notwithstanding any other provision of this act or any
2 other law to the contrary:

3 (1) Upon the revocation by the department of a registration; or

4 (2) Upon, in the discretion of the commission, the suspension
5 by the department of a registration for a period of in excess of
6 120 days, and notwithstanding the pendency of any appeal there-
7 from, the commission shall appoint and constitute a conservator
8 to, among other things, take over and into his possession and
9 control all the property and business of the registrant relating
10 to the major hazardous waste facility.

11 b. The commission may proceed in a conservatorship action in
12 a summary manner or otherwise and shall have the power to
13 appoint and remove one or more conservators and to enjoin the
14 former or suspended registrant from exercising any of its privi-
15 leges, from collecting or receiving any debts and from paying
16 out, selling, assigning or transferring any of its property to other
17 than a conservator, except as the commission may otherwise
18 order. The commission shall have such further powers as shall
19 be appropriate for the fulfillment of the purposes of this act.

20 c. Every conservator shall, before assuming his duties, execute
21 and file a bond for the faithful performance of his duties payable
22 to the commission in the office of the commission with such surety
23 and in such form as the commission shall approve and in such
24 amount as the commission shall prescribe.

25 d. When more than one conservator is appointed pursuant to
26 this section, the provisions of this act applicable to one conservator
27 shall be applicable to all; the debts and property of the former
28 or suspended registrant may be collected and received by any of
29 them; and the powers and rights conferred upon them shall be
30 exercised by a majority of them.

31 *e. *The governing body of a municipality or county in which there*
32 *is located a major hazardous waste facility is authorized to petition*
33 *a court of competent jurisdiction to impose a conservatorship on a*
34 *facility which is causing a substantial threat to the health, safety,*
35 *and welfare of the residents of such a municipality or county.*
36 *Except in the event of an emergency, such an action shall not be*
37 *taken unless 30 days written notice shall have been given to the*
38 *commission, which notice shall indicate the intention of the affected*
39 *municipality or county to request this action and state the reasons*
40 *therefor. If the commission fails to act to the satisfaction of the*
41 *affected municipality or county within the 30 day period, the con-*
42 *servatorship action may be filed and the court shall determine*
43 *whether a conservatorship should be imposed on the facility.**

1 22. a. Upon his appointment, the conservator shall become
2 vested with the title of all the property of the former or suspended
3 registrant relating to the major hazardous waste facility, subject
4 to any and all valid liens, claims, and encumbrances. The con-
5 servator shall have the duty to conserve and preserve the assets
6 so acquired to the end that such assets shall continue to be
7 operated on a sound and businesslike basis.

8 b. Subject to the general supervision of the commission and
9 pursuant to any specific order it may deem appropriate, a conser-
10 vator shall have power to:

11 (1) Take into his possession all the property of the former or
12 suspended registrant relating to the major hazardous waste facil-
13 ity, including its books, records and papers;

14 (2) Institute and defend actions by or on behalf of the former
15 or suspended registrant;

16 (3) Settle or compromise with any debtor or creditor of the
17 former or suspended registrant, including any taxing authority;

18 (4) Continue the business of the former or suspended registrant
19 and to that end enter into contracts, borrow money and pledge,
20 mortgage or otherwise encumber the property of the former or
21 suspended registrant as security for the repayment of the con-
22 servator's loans; except that such power shall be subject to any
23 provisions and restrictions in any existing credit documents;

24 (5) Hire, fire and discipline employees;

25 (6) Reach agreements with the department for the cleanup or
26 removal of any discharge of a hazardous substance, or make any
27 payment for any direct or indirect damage claim pursuant to the
28 provisions of P. L. 1976, c. 141 (C. 58:10-23.11 et seq.).

29 c. Except during the pendency of a suspension or during the
30 pendency of any appeal from any action or event set forth in

31 section 21 of this act which precipitated the conservatorship or
32 in instances in which the commission finds that the interests of
33 justice so require, the conservator, subject to the prior approval
34 of and in accordance with such terms and conditions as may be
35 prescribed by the commission and after appropriate prior con-
36 sultation with the former registrant as to the reasonableness of
37 such terms and conditions, shall endeavor to and be authorized to
38 sell, assign, convey or otherwise dispose of in bulk, subject to any
39 and all valid liens, claims, and encumbrances, all the property
40 of a former registrant relating to the major hazardous waste
41 facility only upon prior written notice to all creditors and other
42 parties in interest and only to such persons who shall qualify
43 as a major hazardous waste facility owner or operator pursuant
44 to the provisions of this act and any rules and regulations
45 adopted pursuant hereto. Prior to any such sale, the former
46 registrant shall be granted, upon request, a summary review by
47 the commission of such proposed sale.

48 d. The commission may direct that the conservator, for an
49 indefinite period of time, retain the property and continue the
50 business of the former or suspended registrant relating to the
51 major hazardous waste facility. During such period of time or
52 any period of operation by the conservator, he shall pay when
53 due, without in any way being personally liable, all secured
54 obligations and shall not be immune from foreclosure or other
55 legal proceedings to collect the secured debt, nor with respect
56 thereto shall the conservator have any legal rights, claims, or
57 defenses other than those which would have been available to
58 the former or suspended registrant.

1 23. In any proceeding pursuant to section 21 of this act, the
2 commission shall allow a reasonable compensation for the services,
3 costs and expenses in the conservatorship action of the conser-
4 vator, the attorney for the conservator, the appraiser, the auc-
5 tioneer, the accountant and such other persons as the commission
6 may appoint in connection with the conservatorship action.

1 24. As an incident of its prior approval pursuant to subsection
2 c. of section 22 of this act of the sale, assignment, conveyance or
3 other disposition in bulk of all property of the former registrant
4 relating to the major hazardous waste facility, the commission
5 may, in its discretion, require that the purchaser thereof assume
6 in a form and substance acceptable to the commission all of the
7 outstanding debts of the former registrant that arose from or
8 were based upon the operation of major hazardous waste facility.

1 25. No payment of net earnings during the period of the con-
2 servatorship may be made by the conservator without the prior
3 approval of the commission, which may, in its discretion, direct
4 that all or any part of same be paid either to the suspended or
5 former registrant or to the Spill Compensation Fund pursuant to
6 the "Spill Compensation and Control Act," P. L. 1976, c. 141
7 (C. 58:10-23.11 et seq.).

1 26. Following any sale, assignment, conveyance or other dispo-
2 sition in bulk of all the property subject to the conservatorship,
3 the net proceeds therefrom, if any, after payment of all obligations
4 owing to the State of New Jersey and any political subdivision
5 thereof and of those allowances set forth in section 23 of this act,
6 shall be paid by the conservator to the former or suspended regis-
7 trant.

1 27. A conservator appointed pursuant to section 21 of this act
2 shall at all times be subject to the provisions of any relevant law
3 or any rule or regulation promulgated pursuant thereto, as well
4 as any condition or restriction in the registration statement or
5 engineering design for the particular major hazardous waste fa-
6 cility.

1 28. a. The commission shall direct the discontinuation of any
2 conservatorship action instituted pursuant to section 21 of this
3 act when the conservator has, pursuant to section 22 of this act
4 and with the prior approval of the commission, consummated the
5 sale, assignment, conveyance or other disposition in bulk of all the
6 property of the former registrant relating to the major hazardous
7 waste facility.

8 b. The commission may direct the discontinuation of any such
9 conservatorship action when it determines that for any reason
10 the cause for which action was instituted no longer exists.

11 c. Upon the discontinuation of the conservatorship action and
12 with the approval of the commission, the conservator shall take
13 such steps as may be necessary in order to effect an orderly trans-
14 fer of the property of the former or suspended registrant.

15 d. The sale, assignment, transfer, pledge or other disposition of
16 the securities issued by a former or suspended registrant during
17 the pendency of a conservatorship action instituted pursuant to
18 this act shall neither divest, have the effect of divesting, nor other-
19 wise affect the powers conferred upon a conservator by this act.

1 29. A conservator appointed and constituted pursuant to sec-
2 tion 21 of this act shall file with the commission such reports with
3 regard to the administration of the conservatorship in such form

4 and at such intervals as the commission shall prescribe. The re-
5 ports shall be available for examination and inspection by any
6 creditor or party in interest and, in addition, the commission may
7 direct that copies of the reports be mailed to such creditors or
8 other parties in interest as it may designate and that summaries
9 of the reports be published in such newspapers of general circu-
10 lation as it may designate.

1 30. Any creditor or party in interest aggrieved by any alleged
2 breach of a fiduciary obligation of a conservator in the discharge
3 of his duties shall be entitled, upon request, to a review thereof
4 in accordance with regulations to be promulgated by the commis-
5 sion.

1 31. The Attorney General shall investigate and report to the
2 commission with regard to the qualifications of each person who
3 is proposed as a candidate to serve as a conservator pursuant to
4 this act.

1 32. a. All major hazardous waste facilities shall, for the pur-
2 poses of local property taxation, be assessed and taxed in the same
3 manner as other real property.

4 In the event that a major hazardous waste facility is constructed
5 or operated on a site which is exempt from local property taxation
6 by virtue of the ownership thereof by any public agency, the owner
7 or operator of the facility shall, the provisions of any law, rule,
8 regulation, ordinance, resolution or contract to the contrary not-
9 withstanding, annually pay to the affected municipality a sum
10 equal to the amount which would annually be due if the land on
11 which the facility is located and any improvements thereto were
12 assessed and taxed as real property subject to local property taxa-
13 tion. Such payments shall be made to the chief fiscal officer of the
14 affected municipality by December 31 of each year.

15 b. Subsequent to the effective date of this act, the owner or
16 operator of every major hazardous waste facility shall, on or be-
17 fore January 25 of each year, file with the chief fiscal officer of
18 the municipality wherein the facility is located a statement, verified
19 by oath, showing the gross receipts from all charges imposed dur-
20 ing the preceding calendar year upon any person for the treatment,
21 storage or disposal of hazardous waste at the facility, and shall
22 at the same time pay to the chief fiscal officer a sum equal to 5%
23 of those receipts.

24 c. All moneys received by any municipality pursuant to this
25 section shall be appropriated and utilized for the following pur-
26 poses:

27 (1) Extra police or fire costs, whether for salaries, equipment,
28 or administrative expenses, which were necessitated by the opera-
29 tions of the major hazardous waste facility;

30 (2) Any local inspection program costs incurred by the local
31 board of health or the county health department, as the case may
32 be, provided that the program is performed pursuant to the pro-
33 visions of this act and any rule or regulation promulgated pursuant
34 thereto;

35 (3) Road construction or repair costs necessitated by the trans-
36 portation of hazardous waste through the municipality to the major
37 hazardous waste facility; and

38 (4) Other expenses directly related to the impact of the major
39 hazardous waste facility on the municipality.

40 Any appropriation made for an expenditure covered under this
41 subsection shall, for the purposes of P. L. 1976, c. 68 (C. 40A:4-45.1
42 et seq.), be considered as an expenditure mandated by State law.

43 d. Any municipality in which a major hazardous waste facility is
44 located may petition the commission for approval to collect an
45 amount in excess of the amount prescribed in subsection b. of this
46 section. The commission, after affording the affected owner or
47 operator with notice of such petition and an opportunity to be
48 heard thereon, may grant the petition, but only if the commission
49 is satisfied that such grant is warranted by the expenses imposed
50 upon the municipality as a result of the operation of the major
51 hazardous waste facility.

52 e. The commission may, upon the petition of the affected owner
53 or operator or upon its own motion, direct that the amount to be
54 paid pursuant to subsection b. of this section be reduced to a lower
55 percentage if, after affording the affected municipality notice of
56 such petition or commission intent to decrease such amount and
57 an opportunity to be heard thereon, the commission finds that such
58 lower amount is sufficient to cover the expenses imposed upon the
59 municipality as a result of the operation of the major hazardous
60 waste facility.

61 f. Any commission action taken pursuant to subsection d. or e.
62 of this section shall be considered to be final agency action thereon
63 for the purposes of the "Administrative Procedure Act," P. L. 1968,
64 c. 410 (C. 52:14B-1 et seq.), and shall be subject only to judicial
65 review as provided in the Rules of Court.

1 33. a. In addition, to the other powers conferred by this act,
2 the commission may acquire, in the name of the State, by purchase
3 or otherwise, on such terms and conditions and in such manner

4 as it may deem proper, by the exercise of the power of eminent
5 domain as herein after provided, and to lease, sell, or otherwise
6 convey, as hereinafter provided, to hazardous waste industries,
7 any land and other property which it may determine is reasonably
8 necessary for a major hazardous waste facility or for the relocation
9 or reconstruction of any highway by the commission and any and all
10 rights, title, interest or option in that land and other property,
11 including public lands, highways or parkways, owned by or in which
12 the State or any county, municipality, or other political subdivision
13 of the State has any right, title or interest, or parts thereof or
14 rights therein and any fee simple absolute or any lesser interest
15 in private property, and any fee simple absolute in, easements
16 upon, or the benefit or restrictions upon, abutting property for
17 the purposes of this act.

18 b. Notwithstanding its land acquisition and conveyance powers
19 provided in subsection a., the commission shall not implement
20 those powers with respect to any land or interest therein unless:

21 (1) The site on which the facility would be constructed has
22 been adopted by the commission pursuant to the provisions of
23 this act;

24 (2) An agreement has been entered into between the commission
25 and the hazardous waste industry whereby compensation for the
26 land or any interest therein acquired by the commission will be
27 provided by the hazardous waste industry;

28 (3) The hazardous waste industry has sought to obtain the
29 land or any interest therein from the owner thereof in good faith
30 bargaining; and

31 (4) The hazardous waste industry has already obtained the
32 approval of the department for the registration statement and
33 engineering design for the major hazardous waste facility to be
34 constructed on the land.

35 c. Upon the exercise of the power of eminent domain by the
36 commission, the compensation to be paid thereunder shall be
37 ascertained and paid in the manner provided in the "Eminent
38 Domain Act of 1971," P. L. 1971, c. 361 (C. 20:3-1 et seq.), and
39 the commission may file with the clerk of the Superior Court a
40 declaration of taking in the manner provided in that act.

41 d. Nothing in this section shall authorize the exercise of the
42 power of eminent domain for the acquisition of any land which
43 has been specifically designated as a site for a solid waste disposal
44 facility by any solid waste management district in any solid waste
45 plan or amendment thereto approved by the department pursuant

46 to the provisions of the "Solid Waste Management Act," P. L.
47 1970, c. 39 (C. 13:1E-1 et seq.), unless the prior approval of the
48 affected solid waste management district shall have been obtained
49 by the commission.

1 34. a. No member, officer, employee, or agent of the commission
2 shall take any official action on any matter in which he has a
3 direct or indirect financial interest.

4 b. Any commission action taken or approval granted in viola-
5 tion of this section is voidable;

6 c. Any person who knowingly violates any provision of this
7 section shall forfeit his office or employment and is guilty of a
8 crime of the fourth degree.

1 35. The State Auditor shall conduct an annual audit of the
2 commission's activities pursuant to the provisions of chapter 24
3 of Title 52 of the Revised Statutes.

1 36. On or before March 31 in each year the commission shall
2 make an annual report of its activities for the preceding calendar
3 year to the Governor and to the Legislature. Each report shall
4 set forth a complete operating and financial statement covering
5 its operations during the year.

1 37. The commission and the department shall, pursuant to the
2 provisions of the "Administrative Procedure Act," P. L. 1968,
3 c. 410 (C. 52:14B-1 et seq.), adopt such rules and regulations as
4 may be necessary for the performance of their respective respon-
5 sibilities pursuant to this act.

1 38. Within 5 years of the effective date of this act, the com-
2 mission, in consultation with the department and the council, shall
3 prepare and transmit to the Governor and the Legislature a report
4 detailing the findings of the commission with respect to the need,
5 if any, for State construction and operation of major hazardous
6 waste facilities, the need, if any, for the State operation of a
7 hazardous waste exchange, as well as the need, if any, for State
8 rate regulation of major hazardous waste facilities.

1 39. a. Prior to the adoption, pursuant to section 9 of this act,
2 of the criteria for the siting of new major hazardous waste
3 facilities, no registration statement or engineering design for any
4 new major hazardous waste facility shall be approved by the
5 department. Amendments to registration statements or engineer-
6 ing designs filed under section 5 of P. L. 1970, c. 39 (C. 13:1E-5)
7 for the expansion of existing major hazardous waste facilities may
8 be granted by the department prior to such adoption, provided
9 that, if the expansion would result in an increase of more than 50%

10 of the capacity of the facility as of the effective date of this act,
11 the review and approval of the application for such amendments
12 shall be conducted in the manner provided in section 12 of this act.

13 b. Subsequent to the adoption, pursuant to section 9 of this act,
14 of the criteria for the siting of new major hazardous waste
15 facilities, the review and approval by the department of all
16 amendments to registration statements or engineering designs
17 which would result in an increase of more than 50% of the capa-
18 city of any major hazardous waste facility shall be conducted in
19 the manner provided in section 12 of this act.

1 40. a. Nothing in this act shall authorize the commission or the
2 department to construct or operate any major hazardous waste
3 facility.

4 b. Nothing in this act shall authorize the commission or the
5 department to impose any restrictions or regulations upon any
6 rate, fee or charge imposed or collected for the treatment, storage
7 or disposal of hazardous waste at any major hazardous waste
8 facility.

9 c. The provisions of any law to the contrary notwithstanding,
10 neither the Board of Public Utilities nor any other State, county
11 or municipal department, board, commission or agency shall exer-
12 cise any power to restrict or regulate any rate, fee or charge im-
13 posed or collected for the treatment, storage or disposal of hazard-
14 ous waste at any major hazardous waste facility.

1 41. It is the intent of the Legislature that, except as otherwise
2 specifically provided in this act, in the event of any conflict or
3 inconsistency in the provisions of this act and any other acts per-
4 taining to matters herein established or provided for or in any
5 rules and regulations adopted under this act and under any other
6 acts, to the extent of such conflict or inconsistency, the provisions
7 of this act and the rules and regulations adopted hereunder shall
8 be enforced and the provisions of such other acts and rules and
9 regulations adopted thereunder shall be of no effect.

1 42. If any section, part, phrase, or provision of this act or the
2 application thereof to any person be adjudged invalid by any court
3 of competent jurisdiction, such judgment shall be confined in its
4 operation to the section, part, phrase, provision, or application
5 directly involved in the controversy in which the judgment shall
6 have been rendered and it shall not affect or impair the validity
7 of the remainder of this act or the application thereof to other
8 persons.

1 43. The object, design and purpose of this act being the protec-
2 tion of the environment and public health through the proper
3 treatment, storage or disposal of hazardous waste generated in
4 this State, **and the maintenance of a proper balance, as provided*
5 *herein, between competing State and local interests,** this act shall
6 be liberally construed.

1 44. The title of P. L. 1979, c. 186 is amended to read as follows:
2 AN ACT concerning the inspection of [certain solid waste disposal
3 facilities] *major hazardous waste facilities* and supplementing the
4 "Solid Waste Management Act," approved May 6, 1970 (P. L. 1970,
5 c. 39, C. 13:1E-1 et seq.), as said short title was amended by P. L.
6 1975, c. 326.

1 45. Section 1 of P. L. 1979, c. 186 (C. 13:1E-42.1) is amended
2 to read as follows:

3 1. The Department of Environmental Protection shall conduct
4 a complete inspection, at least weekly, of each [solid waste disposal
5 facility that handles or disposes of hazardous or special wastes]
6 *major hazardous waste facility*. For the purposes of this act, haz-
7 ardous [or special wastes] *waste* means any waste or combination
8 of wastes which pose a present or potential threat to human health,
9 living organisms or the environment including, but not limited to,
10 waste material that is toxic, carcinogenic, corrosive, irritating,
11 sensitizing, [radioactive,] biologically infectious, explosive or flam-
12 mable, and any wastes so designated by the [Occupational Safety
13 and Health Administration, the United States Department of
14 Transportation, and the] United States Environmental Protection
15 Agency. *Major hazardous waste facility means any commercial*
16 *hazardous waste facility which has a total capacity to treat, store*
17 *or dispose of more than 250,000 gallons of hazardous waste, or the*
18 *equivalent thereof, as determined by the department, except that*
19 *any facility which would otherwise be considered a major hazard-*
20 *ous waste facility pursuant to this section solely as the result of the*
21 *recycling or rerefining of any hazardous wastes which are or con-*
22 *tain gold, silver, osmium, platinum, palladium, iridium, rhodium,*
23 *ruthenium or copper shall not be considered a major hazardous*
24 *waste facility for the purposes of this act.*

1 46. Section 2 of P. L. 1979, c. 186 (C. 13:1E-42.2) is amended
2 to read as follows:

3 2. The Department of Environmental Protection is hereby au-
4 thorized to make an assessment against any [solid waste disposal]
5 *major hazardous waste facility* that handles or disposes of hazard-
6 ous [or special] wastes in an amount sufficient to cover the costs

7 of the inspections required pursuant to section 1 of this act
8 (C. 13:1E-42.1). Any such assessment shall be charged and col-
9 lected in accordance with a fee schedule adopted by the department
10 as a rule and regulation pursuant to the provisions of the "Admin-
11 istrative Procedure Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.)

1 47. There is appropriated to the Department of Environmental
2 Protection the sum of \$500,000.00, to be utilized as follows:

3 a. \$300,000.00 to the commission for the preparation and adop-
4 tion of the plan, for the proposal and adoption of sites for new
5 major waste facilities, and to otherwise implement this act;

6 b. \$100,000.00 to the commission for grants to municipalities for
7 the review of proposed major hazardous waste facility sites pur-
8 suant to section 11 of this act;

9 c. \$50,000.00 to the department to conduct training programs
10 for local officials pursuant to section 16 of this act; and

11 d. \$50,000.00 to the council for the performance of its responsi-
12 bilities pursuant to section 7 hereof.

1 48. This act shall take effect immediately.

5 to the effect that the bank or banking institutions as hereinbefore
6 described shall faithfully keep and pay over to the order of or upon
7 the warrant of the authority or its authorized agent all such funds
8 as may be deposited with it by the corporation and agreed interest
9 thereon, at such times or upon such demands as may be agreed
10 with the corporation or in lieu of the sureties, deposit with the
11 corporation or its authorized agent or any trustee therefor or for
12 the holders of any bonds, as collateral, such securities as the
13 corporation may approve. The deposits of the corporation may be
14 evidenced by a depository collateral agreement in such form and
15 upon such terms and conditions as may be agreed upon by the
16 corporation and the bank or banking institutions.

1 44. The foregoing sections of this act shall be deemed to provide
2 a complete method for the doing of things authorized thereby and
3 shall be regarded as not in conflict with, or as restrictive of, powers
4 conferred by any other laws, and the provisions of this act shall be
5 complete authority for the issuance of bonds by the corporation and
6 the provisions of any other laws shall not apply to the issuance of
7 those bonds.

1 45. There is appropriated to the corporation from the General
2 State Fund the sum of \$500,000.00 and to the department from the
3 New Jersey Spill Compensation Fund the sum of \$500,000.00 for
4 the purpose of carrying out their functions and duties pursuant to
5 this act.

1 46. This act shall take effect immediately.

STATEMENT

This bill implements the recommendations of the Governor's Hazardous Waste Advisory Commission concerning the construction and operation of hazardous waste treatment and disposal facilities. It creates a Hazardous Waste Facilities Corporation. The corporation is empowered to act as a planning and siting agency for the location of needed new hazardous waste facilities within the State. The corporation is allocated within the Department of Environmental Protection. New hazardous waste facilities are subject to the rules and regulations of the department. The department is provided additional regulatory powers and approval powers over certain activities of the corporation. The corporation and the department are directed to work together to assure the construction of enough environmentally adequate hazardous waste facilities to treat the waste generated within the State.

Extensive public participation procedures are built into every step of the act. Public hearings are to be held on the State Hazardous Waste Facilities Plan and on each site delineated therein and on every application for a site certificate. The corporation is further directed to respond in writing to the points made at the public hearings.

The corporation is directed to require all hazardous waste facilities to provide adequate mechanisms to assure post-closure protection at the facility site.

The corporation is also authorized to construct and operate hazardous waste treatment facilities, but only if a. the private sector fails to respond to build and operate the necessary facilities, as indicated in the State Hazardous Waste Facilities Plan; b. the corporation holds a public hearing after it issues findings of fact detailing its inability to find a private sector developer; and c. it, then, reports to the Legislature its intention to construct and operate facilities on its own. It is authorized to sell revenue bonds to finance the construction of any such facilities. It is authorized to charge service fees to finance the operations of the facilities and the debt service on the bonds.

SENATE ENERGY AND ENVIRONMENT COMMITTEE

STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1300

STATE OF NEW JERSEY

DATED: JANUARY 12, 1981

The Senate Committee Substitute for Senate Bill No. 1300, the "Hazardous Waste Facilities Corporation Act," represents a comprehensive revision of the bill as it was originally introduced on June 9, 1980. This revision was accomplished following a series of public meetings and public hearings which commenced in June of 1980 and ended in January of 1981. In addition to the general public comments presented at these meetings and hearings, the committee received the recommendations of an informal task force which included representatives of environmental and public interest organizations; municipal and county officials; industries which generate hazardous waste; industries which operate facilities to treat, store or dispose of hazardous waste; the Department of Environmental Protection; and the Department of the Public Advocate. Based upon these comments and recommendations, the committee developed an outline of the consensus for a revision of Senate Bill No. 1300. This outline was the subject of additional public hearings and meetings, as was a proposed committee substitute based upon the outline. Final consideration of changes in this proposed substitute occurred on January 12, 1981, and the committee now favorably reports Senate Committee Substitute for Senate Bill No. 1300.

Senate Committee Substitute for Senate Bill No. 1300 is based upon the premise that it is in the public interest to provide for the expeditious location, operation and use of a sufficient number of modern, environmentally acceptable facilities to treat, store or dispose of hazardous waste generated in this State, that this process must be accomplished through the cooperative efforts of State and local governments with ample opportunity for public participation, and that these facilities can best be operated by the private sector and subject to strict governmental regulation.

At the outset, it is important to take note of the intended scope of Senate Committee Substitute for Senate Bill No. 1300. *It is the intention of the committee that this bill be the mechanism for the siting of new major hazardous waste facilities.* Other hazardous waste facilities will continue to be sited pursuant to the provisions of the "Solid Waste

Management Act" (P. L. 1970, c. 39), relevant federal statutes, and rules and regulations adopted thereunder.

The definition of major hazardous facility has two principal components: capacity of the facility and the source of the hazardous waste which is treated, stored or disposed of there. In terms of capacity, a major facility is one which has the ability, determined by reference to the registration statement, engineering design or physical layout, to treat, store or dispose of more than 250,000 gallons of hazardous waste (or the equivalent) *at any one time*. This 250,000 gallon figure, then, would exclude facilities such as gas stations and small used oil recycling centers (which would otherwise be considered hazardous waste facilities) but include all facilities above this threshold. Any facilities which had capacity in excess of this threshold must still be commercial facilities, however, in order to be considered major hazardous waste facilities. Because Senate Committee Substitute for Senate Bill No. 1300 is concerned with the siting of facilities, it is not concerned with on-site facilities (which by definition, are already sited), unless these facilities are, or become, commercial, i.e., unless such a facility now, or in the future, accepts hazardous waste from other, off-site generators.

With respect to the major hazardous waste facilities which are covered by Senate Committee Substitute for Senate Bill No. 1300 the process created hereunder would be as follows:

Section 4 establishes the Hazardous Waste Facilities Siting Commission in, but not of, the Department of Environmental Protection. The commission would consist of members (three industrial representatives, three local officials and three environmental or citizen representatives) appointed by the Governor with the advice and consent of the Senate. Whenever the commission acts on the adoption of a specific hazardous waste site, its membership would be temporarily expanded by two (one member appointed by the affected county and one member appointed by the affected municipality). The commission would elect a chairman and vice-chairman and appoint an executive director, and its minutes would be subject to gubernatorial veto.

Section 6 establishes a Hazardous Waste Advisory Council consisting of 13 members representing industry, local government officials, environmentalists and community groups. Members of this council will be nominated by the relevant organizations, appointed by the Governor and subject to the advice and consent of the Senate. Section 7 provides that the council will advise both the Hazardous Waste Facilities Siting Commission and the Department of Environmental Protection in the performance of their respective responsibilities pursuant to Senate Committee Substitute for Senate Bill No. 1300.

Section 9 directs the Department of Environmental Protection to adopt criteria for the siting of new major hazardous waste facilities, and includes areas which should be excluded from consideration: flood plains, residential areas, wetlands, and high water table areas. In developing siting criteria, the department would: prepare and publish preliminary criteria within 6 months; conduct public meetings in different geographic areas of the State within 8 months; consider the comments made at these hearings, revise the criteria and schedule public hearings thereon within 9 months; hold the public hearings within 10 months; and consider the hearing comments, and revise and adopt the criteria within 1 year.

Section 10 directs the commission to prepare and adopt the Major Hazardous Waste Facilities Plan. This plan will include a determination of the number and type of major hazardous waste facilities needed to treat, store or dispose of hazardous waste generated in this State. In developing the plan, the commission would: prepare and publish a proposed plan within 6 months; conduct public hearings in the different geographic areas of the State within 8 months; and consider the comments made at these hearings and revise and adopt the plan within 1 year. Section 10 also directs the commission to establish a public information program within 90 days. This program would address: the nature and dimension of the hazardous waste problem; the need for new, environmentally-safe facilities; the respective roles of the commission, the council and the department; and the opportunities for, and necessity of, public participation in the Senate Committee Substitute for Senate Bill No. 1300 process.

Section 11 directs the commission, subsequent to the adoption of the siting criteria and the plan, to designate suitable sites for the number and type of hazardous waste facilities determined to be necessary by the plan. In making these designations the commission would: propose sites, notify the affected municipalities and provide those municipalities with grants to conduct site suitability studies, all within 18 months, or 6 months of the adoption of siting criteria, whichever is sooner; require the completion of municipal site suitability studies within 6 months of the receipt of a grant therefor; provide for the holding of an administrative hearing on each proposed site (with the affected municipality a party of interest) within 45 days of the receipt of a municipal site suitability study; receive the recommendations of the administrative law judge who conducted the hearing within 30 days of the close thereof; and affirm, conditionally affirm or reject that recommendation within 30 days of the receipts thereof.

Section 12 concerns the licensing of major hazardous waste facilities by the department. Specifically, this section requires that: applicants

for registration statements and engineering design approvals for proposed major hazardous waste facilities exhibit sufficient reliability, expertise and competency, as evidenced by an investigation of a disclosure statement filed by the applicant; the environmental and health impact statement on the proposed facility indicates no significant threat to human health or the environment as a result of the operation thereof; and that the facility would be operated on a site approved by the commission.

Section 12 also provides that the review of these applications be conducted by requiring that: the applicant file a notice of intent with the department and the affected municipality, and file a disclosure statement with the department, not less than 90 days prior to filing an application; the department review the disclosure statement and inform the applicant whether he appears sufficiently competent to file an application, within 60 days of the receipt of a letter of intent; the affected municipality conduct a review of the proposed facility and operator within 6 months of the receipt of an application filed with the department (up to \$15,000.00 of the cost of this municipal study would be borne by the applicant); the department reject or grant tentative approval of an application within 8 months of the receipt thereof; an administrative law judge conduct an administrative hearing on each tentative approval within 45 days of the granting thereof (with the affected municipality a party of interest); the administrative law judge transmit his recommendations to the department within 30 days of the close of the hearing; and the department affirm, conditionally affirm or reject that recommendation within 60 days of the receipt thereof.

Section 13 requires that all new major hazardous waste facilities be totally or partially constructed above existing grade, be physically accessible to inspection personnel, and designed to allow 99.9% extraction of all hazardous waste stored or disposed of therein. Facilities which would not be above grade or physically accessible could be approved only if the department finds that all alternatives are technologically or economically impracticable, and that all hazardous waste to be treated, stored or disposed of in the proposed facility could be effectively monitored.

Section 14 imposes strict liability, jointly and severally, upon every owner or operator of a major hazardous waste facility.

Section 15 authorizes the owner or operator of a major hazardous waste facility sited and licensed pursuant to this bill to construct and operate that facility without regard to local zoning.

Section 16 requires local boards of health, or county health departments, to conduct weekly inspections of major hazardous waste facilities. These local inspectors would be trained by the department, and

one-half of any penalty imposed as a result of these inspections would be awarded to the local agency which conducted the inspection.

Section 19 establishes a "bounty system" whereby any person supplying information resulting in the conviction of illegal dumpers of hazardous waste would be awarded one-half of any penalty collected as a result thereof.

Section 20 requires that owners or operators of major hazardous waste facilities provide evidence of financial responsibility and establish escrow accounts or other means of insuring proper closure and post-closure monitoring. This monitoring (but not the liability) would be assumed by the department 30 years subsequent to the closure of a particular facility.

Sections 21 through 31 provide for the appointment, by the commission, of a conservator for poorly-run major hazardous waste facilities. These sections are modeled after existing statutory provisions applicable to casinos and are, in the opinion of the committee, particularly relevant and necessary in this instance to prevent the recurrence of past life-threatening disasters occasioned by the poor management of such facilities.

Section 32 specifies that major hazardous waste facilities be subject to local property taxation and to an annual tax of 5% of the gross receipts of the facility. This 5% tax would be paid to the host municipality, would be used for local police, fire, inspection and road repair costs, and could be increased or decreased by the commission, as necessary. Existing major hazardous waste facilities (in addition to new facilities) would be liable for this tax as of the effective date of Senate Committee Substitute for Senate Bill No. 1300, for whatever portion of the tax year remaining subsequent to that date.

Section 33 authorizes the commission to utilize the power of eminent domain to acquire sites for needed major hazardous waste facilities, provided that: the site has already been approved and the operator licensed; good faith negotiations have proved fruitless; and that the proposed facility operator would buy or lease the site from the commission.

Section 39 prohibits the department from granting final approval to registration statements and engineering designs for new major hazardous waste facilities prior to the adoption of the siting criteria for these facilities. To provide otherwise would, in the opinion of the committee, preclude public confidence in the ability of government to site and regulate these facilities. This section does, however, provide for the limited expansion of existing facilities during this interim, and the committee believes that this expansion would provide sufficient capacity to treat, store or dispose of hazardous waste until facilities constructed

under the Senate Committee Substitute for Senate Bill No. 1300 process are brought on-line. Subsequent to the adoption of siting criteria, expansions of more than 50% of capacity would be treated as new facilities for the purpose of the licensing procedure.

Section 43 appropriates \$500,000.00 to the department, \$300,000.00 of which would be used by the commission to plan and adopt major hazardous waste facility sites, \$100,000.00 of which would be used by the commission for grants to municipalities for site suitability studies, \$50,000.00 of which would be used by the department to train local inspectors of major hazardous waste facilities, and \$50,000.00 of which would be used by the council in performing its role of advising both the commission and the department.

The committee offers this substitute as the collective effort of the many individuals and organizations participating in the process of the revision of Senate Bill No. 1300.

SENATE REVENUE, FINANCE AND
APPROPRIATIONS COMMITTEE

STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1300

STATE OF NEW JERSEY

DATED: JANUARY 22, 1981

The Senate Committee Substitute for Senate Bill No. 1300 establishes a mechanism for the siting of hazardous waste facilities. The bill establishes a 9 member Hazardous Waste Facilities Siting Commission appointed by the Governor. Three members shall be county or municipal government officials, three shall be employed by an industrial firm and three shall be representative of environmental or public interest organizations.

A major responsibility of the commission is to prepare and adopt a comprehensive Major Hazardous Waste Facilities Plan, which is to be revised and updated at least once every 3 years.

Another commission responsibility is to propose sites for new major hazardous waste facilities. The proposed site will be evaluated by the affected municipality with funding for the evaluation provided by a State grant. Once the site evaluation is complete, an adjudicatory hearing shall be held before an administrative law judge. The judge's decision must then be affirmed or rejected by the commission. The commission's decision is subject to judicial review.

The bill also imposes a 5% gross receipts tax on all major hazardous waste facilities. The money is to be paid to the chief fiscal officer of the municipality for extra police or fire costs which were necessitated by the operation of the facility; inspection programs; road construction or repair costs necessitated by the transportation of hazardous waste through the municipality and other expenses related directly to the impact of the facility on the municipality.

The bill appropriates \$500,000.00 to be used as follows:

- \$300,000.00 for the preparation and adoption of the plan, for the proposal of sites, and to otherwise implement the act.
- \$100,000.00 for grants to municipalities to evaluate proposed major hazardous facility sites.
- \$50,000.00 to conduct training courses for municipal inspectors.
- \$50,000.00 to the advisory council for the performance of its responsibilities.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

SEPTEMBER 10, 1981

KATHRYN FORSYTH

Governor Brendan Byrne today signed the "Major Hazardous Waste Siting Facilities Act" at a public ceremony in his office in the State House.

The bill, S-1300, was sponsored by Senator Frank Dodd (D-Essex).

The measure establishes a nine-member Hazardous Waste Facilities Siting Commission, to be appointed by the Governor, with the advice and consent of the Senate consisting of three county or municipal government officials, three people employed by an industrial firm and three representatives of environmental or public interest organizations. Members will serve for three years but the initial appointees will be designated staggered terms.

The Commission is empowered to employ an executive director and a staff. The Governor will have veto power over the minutes of the Commission meetings.

The bill sets out the following site description and authorization procedures and timetable.

Within one year, after public hearings, the Commission will adopt a plan analyzing the extent of the hazardous waste problem in New Jersey and recommending possible solutions. Concurrently, also after public hearings, the Department of Environmental Protection will adopt siting criteria for new major hazardous waste facilities.

Six months after the adoption of the plan and the criteria, the Commission will propose site designations for waste facilities, and each municipality with a designated site within its borders then has six additional months to complete (with State assistance) a site suitability study.

Then an Administrative Law Judge will conduct an adjudicatory hearing on the site and make a recommendation to the Commission.

Under the provisions of the bill, the Judge cannot recommend the site unless he finds "clear and convincing evidence" that it will not constitute a substantial detriment to public health, safety or welfare.

- more -

Within 30 days of receiving the Judge's recommendation, the Commission must adopt or withdraw the site designation. To make that decision, the Commission will add two voting members appointed by the affected municipal governing body and the affected governing body.

Each specific facility must be approved by DEP after similar procedures involving municipal review and administrative law hearings.

In addition to local property taxes or in lieu of payments, each facility must also pay a 5 percent on its gross receipts to the municipality in which it is located to cover the additional governmental costs incurred by its presence.

The bill also imposes strict liability on facility owners for damages or clean-up costs.

Local or county health officials will inspect the facilities on a regular basis in order to determine compliance with the provisions of the registration statement, engineering design of the facility and all relevant federal and state statutes.

The Governor will appoint a 13-member Hazardous Waste Advisory Council consisting of representatives from environmental or public interest groups, county government, municipal government, community organizations, fire fighters, organizations of companies that use the facilities, organizations of companies that transport hazardous waste and organizations of companies that operate the facilities.

The bill appropriates \$500,000 to be used as follows:

- \$300,000 to prepare and adopt the plan, propose the sites and otherwise implement the act;
- \$100,000 for grants to municipalities to evaluate the proposed sites;
- \$50,000 to conduct training courses for municipal inspectors; and
- \$50,000 to the advisory council for the performance of its duties.

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