

v. 3 Chapter 6

The State of New Jersey
Hazardous Waste Facilities
Siting Process

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FORM 1: GENERAL SITING DESCRIPTION

Name: Richard J. Gimello, Executive Director
Telephone Number: (609) 292-1459
Address: NJ Hazardous Waste Facilities
Siting Commission
28 West State Street, Room 614
Trenton, NJ 08625

1. Does your state have a formal hazardous waste management facility siting process in addition to the RCRA permitting process?

Yes

- 1a. If yes, what are the titles of the legislative authorities and when were they enacted?

The Major Hazardous Waste Facilities Siting Act (S-1300), N.J.S.A. 13:1E-49 et. seq., was signed into law on September 10, 1981 (copy attached). It is the first law in New Jersey that provides for the development of needed hazardous waste treatment, storage and disposal facilities. The Act establishes a mechanism, for the rational siting of new major commercial facilities which are defined as "any commercial hazardous waste facility which has a total capacity to treat, store or dispose of more than 250,000 gallons of hazardous waste, or the equivalent thereof, as determined by the department..." This mechanism provides for the siting, design, construction, operation and use of environmentally acceptable major hazardous waste facilities.

2. Does your state have a siting agency that is distinct from the RCRA regulatory agency?

Yes.

- 2a. What are the titles of the legislative authorities and when were they enacted?

The Major Hazardous Waste Facilities Siting Act (S-1300), N.J.S.A. 13:1E-49 et. seq., established the New Jersey Hazardous Waste Facilities Siting Commission in 1981.

The New Jersey Hazardous Waste Siting Commission (Commission), a nine member volunteer body, is distinct from the New Jersey Department of Environmental Protection (NJDEP) which has been authorized for the basic program RCRA by the USEPA and is the sole state agency responsible for the implementation of RCRA. The principal duties of

the Commission include preparing a hazardous waste facilities plan, proposing and/or adopting site designations for new, major commercial facilities based on the adopted siting criteria, establishing a comprehensive public participation program, and holding public meetings and hearings in the state on any matter related to the siting, licensing, construction, operation, or closure of major hazardous waste facilities. The Commission is also charged with administering the process for the five percent gross receipts tax, which is five percent from all charges for the treatment, storage, or disposal of hazardous waste paid to the municipality where a facility is located.

3. **Describe the procedure used to review facility applications, select site, review permits, and provide public comment.**

The siting process is in addition to the existing federal and state regulations, such as RCRA Part B permitting which is administered by NJDEP. The siting process precedes the RCRA process; therefore, owner/operators of new, major commercial facilities are not allowed to apply for a RCRA permit unless they are first approved through the siting process. The siting process provides detailed information regarding site suitability and involves the community in site evaluation.

The Siting Act requires that a Hazardous Waste Facilities Plan be prepared; it is an analysis of how many and what types of facilities are needed. The Plan must include a current inventory of sources, composition, and the quantity of hazardous waste generated within the State, and projections of the amounts and composition of hazardous waste to be generated in each of the following three years. More importantly, the Plan determines the number and type of new, major hazardous waste facilities needed to treat, store, or dispose of hazardous wastes in the State. Therefore, the selection and approval of sites is based strictly on a documented need for new, major commercial hazardous waste facilities.

The Act establishes three separate mechanisms for the selection and approval of sites. One is Commission-directed wherein the Commission may search and locate sites that meet the siting criteria, which are location standards for new, major commercial facilities. The second allows interested companies that feel they have a location that conforms to all siting criteria to submit an application to the Commission for site designation. In addition to these two mechanisms, the Act also allows for the expansion of existing commercial hazardous waste management facilities. A proposed expansion at an existing commercial hazardous waste facility of greater than 50 percent of current capacity must conform to the permitting and engineering requirements of the Siting Act and with NJDEP regulations. Expansions of less than 50 percent, however, are not covered by the Siting Act and are the sole responsibility of the NJDEP.

Once the Commission conducts a site search and formally designates a site, the Commission must then transmit written notice of the proposed site, by certified mail, to the governing body, board of health, planning board, and environmental commission of the affected municipality, and to the governing body and board of health of the affected county. Local and regional officials then have 45 days from the notification date to organize a review committee. The committee will be the major contact between the local authorities and the Commission and will serve to coordinate the preparation of the Municipal Site Suitability Study (MSSS) and to administer the Commission's grant to the municipality for the preparation of the MSSS.

Six months are budgeted for the completion of the MSSS, which consists of a review of the site-specific documents regarding the conformance of the site to the siting criteria. It gives municipal and county officials the opportunity to verify or dispute the accuracy and completeness of the data collected by the Commission and its consultants.

Once completed, the MSSS is sent to the Commission, and an adjudicatory hearing is scheduled within the next 45 days. The hearing on the proposed site will be conducted by an administrative law judge, and the municipality will be a party of interest to the hearing and will have the right to testimony and to cross-examine witnesses. No time limit is set for the length of the hearing.

Once the hearing has ended, the administrative law judge has 30 days to make recommendations to the Commission for action on the proposed site. To recommend a site as suitable, the judge must find clear and convincing evidence that the location of the facility "will not constitute a substantial detriment to the public health, safety, and welfare of the affected municipality."

Once the Commission receives the judge's recommendations, two additional members must be appointed to the Commission, one each from the relevant county and the municipality. Within 30 days of its receipt, the expanded Commission must affirm, conditionally affirm, or reject the judge's recommendation and adopt or withdraw the proposal. The Commission's decision will be considered the final agency action and will be subject only to judicial review as provided by law.

Sites proposed by private firms are treated in a similar matter. Under this "alternative or additional" site proposal option, companies interested in treating, storing or disposing of hazardous waste that have a location that they believe conforms to all siting criteria, may file an application with the Commission. An application for site designation is an extensive report filed by an industrial requestor that describes the proposed site and its surroundings, and the site characteristics relative to the siting criteria. The application must

also discuss aspects of the proposed facility design, and the amount and types of wastes to be treated. It must show that the site meets the siting criteria and meet the needs outlined in the Hazardous Waste Facilities Plan.

Once the Commission receives the applicant's formal letter of intent, it must notify the relevant municipalities and county. The Commission reviews the initial application for completeness, and compares the information to the broadly exclusionary siting criteria. The Commission may request additional information from the applicant if sections of the application are incomplete.

The Commission prepares its own Site Evaluation Report (SER) to address any remaining criteria and to verify conclusions reached in the application. The SER is used by the Commission as a decision tool to aid in determining the suitability of the proposed site by comparing it to the siting criteria. It is to be a review and advisory document for the Commission that assists in the decision about whether to process the application and whether supplemental information is required to verify the accuracy of the applicant's statements.

Once the application is judged complete, the Commission has 90 days to either deny the request for designation because the site fails to meet the siting criteria (or does not meet the state's capacity needs as determined by the Plan), or accept the application for further review. If the Commission should decide to consider the proposal further, it must notify the affected municipalities and county. At this time, funds will be provided to the municipality to conduct an MSSS. The Commission intentionally requires separate site analyses by the applicant, the Commission, and the municipality to ensure correct field measurements and valid site conclusions. The results of the SER will be available to the local review committee before it completes the MSSS.

In addition to the SER and the MSSS, the Commission may be directed by the requestor to prepare an Environmental and Health Impact Statement (EHIS) concerning the proposed site. Although the EHIS, which is reviewed by the NJDEP, is normally required during the licensing phase, the requestor may choose to have it prepared by the Commission at this point in an effort to streamline the siting and licensing phases of the process. The requestor must pay the cost of the preparation of the EHIS.

The schedule for completing the MSSS, conducting an adjudicatory hearing, and Commission review of the judge's recommendations is identical to the schedule for Commission-directed sites.

The expansion of existing commercial hazardous waste management facilities is another option specified in the Siting Act. A proposed expansion at an existing commercial facility of greater than 50 percent of current capacity must conform to the permitting and engineering requirements of the Siting Act and with NJDEP regulations.

By legislative design, site evaluations of major expansions to existing facilities are treated differently than new sites. Since the site already exists, the siting criteria, which were designed to evaluate new sites, are not applied as absolutes to facility expansions. The NJDEP and the Commission have some discretion in determining how expanded facilities meet the siting criteria. For example, engineering solutions, operating conditions or a combination of both, can be employed at such sites to meet the intent of the siting criteria.

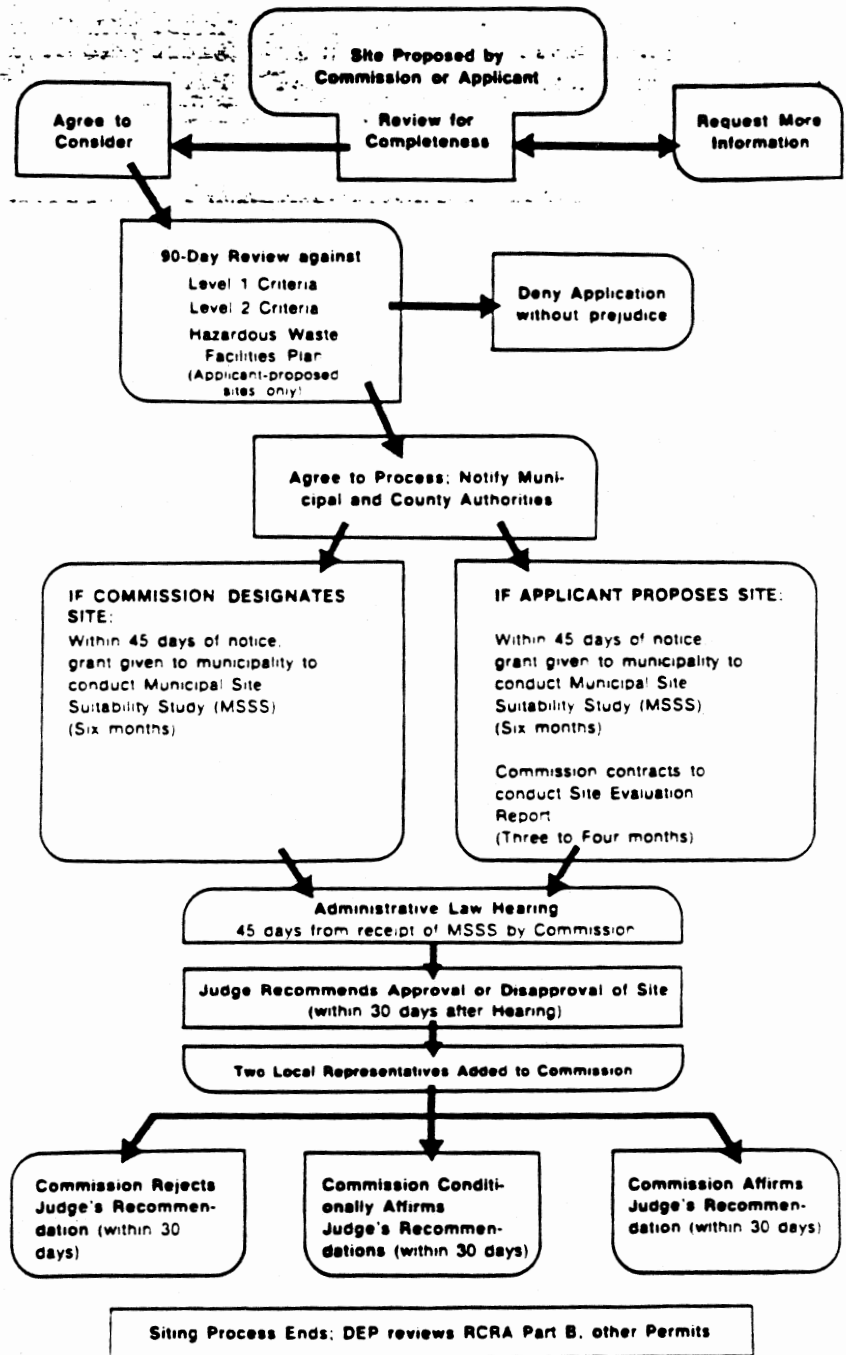
The evaluation of any proposal for expansion of greater than 50 percent at an existing facility requires the preparation of an EHIS, which is prepared by the Commission at the applicant's expense. The EHIS must include a discussion of the possible adverse environmental impacts of the proposed expansion under normal and worst operating conditions. Although the minimum outline of the EHIS is set in regulations, the Commission has broadened the outline to include a comparison of the expansion against the siting criteria. Once completed, the EHIS is submitted to the NJDEP as part of the permit application.

The Act authorizes a specific application process, which exceeds the RCRA permit requirements, when a company plans to construct a major hazardous waste facility, either at a Commission-directed site or a company proposed site, including expansions of existing facilities. First, the applicant must submit to the NJDEP and the governing board of the affected municipality a letter of intent and a brief description of the nature of the proposed facility 90 days prior to filing an application for registration and design approval. Then, the NJDEP will send the application to the governing body of the affected municipality.

Within six months of receiving the complete application, the affected municipality must conduct a review of the proposed facility and operator, including a site plan review at the applicant's expense. It is anticipated that within eight months of the receipt of a complete application, the NJDEP will reject or grant tentative approval of the application, hold a public hearing regarding the application and within 45 days of the granting of tentative approval, an adjudicatory hearing on the proposed facility and operator must be conducted by an administrative law judge. With 60 days of receipt of the judge's recommendations, the NJDEP will affirm, conditionally affirm, or reject the recommendations and grant final approval or deny the application for a registration statement and engineering design. This decision is considered the final agency action for the purpose of the Administrative Procedures Act and will be subject only to judicial review as provided in the Rules of the Court.

3a. See attached flowchart.

Site Designation Process



4. **Please describe the outcome of siting applications since 1986.**

At its November 28, 1988 meeting, the Commission adopted by resolution the Millstone Township site as a location for the construction of a new hazardous waste incinerator. The Commission believes that this new site will provide a safe and necessary location for a new, major commercial hazardous waste incinerator. In accordance with the provisions of the Siting Act, the Commission formally issued the grant to the township in July, 1989, so that officials may initiate the preparation of the MSSS.

In addition to the further investigation of the Millstone Township site, the Commission is also in the process of evaluation industrial firms that have submitted applications with the intent to provide a site for a hazardous waste facility. In October, 1988, the Commission received an application for site designation from GAF Chemicals Corporation, Linden, New Jersey. The Commission hired a consultant to prepare a Site Evaluation Report (SER) for use as a decision tool to aid the Commission in determining the suitability of the proposed site by comparing it to the siting criteria. The Commission received the SER in June, 1989, which documented that a sizeable portion of the site meets the siting criteria and that the proposed facility is needed in New Jersey. The Commission approved the application for further consideration on June 20, 1989, and awarded the City of Linden grant monies to complete a site suitability study.

At present, the Commission is also evaluating the expansion of an existing facility at the E.I. DuPont de Nemours Co., Inc., Chambers Works Plant, in Deepwater, New Jersey, proposed in June, 1987. The DuPont proposal consists of the construction and operation of a 35,000 ton per year hazardous waste incinerator and the expansion of the existing landfill to handle residues generated by the wastewater treatment plant and the incinerator. The Commission has retained a consultant to prepare an EHIS at DuPont's expense. The Commission received and approved the EHIS in September, 1989. The EHIS was submitted to NJDEP on September 28, 1989, thus initiating the RCRA permit process.

5. **Basic laws and rules affecting the siting or expansion of new facilities.**

5a. **Do local governments in your state have the authority to approve RCRA permits?**

No.

5b. **Do local governments in your state have the power to prohibit facility siting by the use of zoning ordinance?**

No.

- 5c. Does your state have the power to override local zoning authority and/or preempt local zoning powers?

Yes. N.J.S.A. 13:1E-63.

- 5d. Does your state have the power to override and/or preempt any other local authorities that could prohibit or restrict capacity development?

Yes. N.J.S.A. 13:1E-63.

- 5e. Are there state restrictions on the size or number of new or expanded facilities?

Yes. If the companies go through the siting process they must follow the specification in the Plan. Not sure of restriction if a company proposes expansion of less than 50 percent.

- 5f. Does the state allow facilities to be built that have greater capacity than that needed to treat in-state waste?

New Jersey's Hazardous Waste Facilities Plan addresses the need for facilities to meet this State's projected capacity demand.

An owner/operator selected to construct the facility must show commitment to accepting New Jersey's waste first and foremost.

The Plan does include a reasonable level of imports by allocating some existing capacity based on 1987's level of imports.

6. Laws and regulations that affect interstate transportation of hazardous waste.

- 6a. Does your state assess a fee on the generation of hazardous waste?

No.

- 6b. Does your state assess a fee for the treatment or disposal of hazardous waste?

No.

- 6c. Does your state have the power to establish differential fees on waste that is imported for treatment and/or disposal?

No.

- 6d. Are limits placed on the size of the differential fee?

No.

6e. Do local or county governments have the power to establish differential fees on waste that is treated and/or disposed of in their jurisdiction?

No.

FORM II: CAPACITY DEVELOPMENT PLANS

Names of Respondent: Richard J. Gimello, Executive Director
Telephone Number: (609) 292-1459
Address: NJ Hazardous Waste Facilities
Siting Commission
28 West State Street, Room 614
Trenton, NJ 08625

1. **How much new commercial facility capacity will be needed to meet the shortfall anticipated for hazardous waste management capacity?**

According to the Chapter 5 projections, the State of New Jersey will have shortfalls ranging from 10,704 tons to 11,747 tons for metals recovery; 26,031 tons to 41,809 tons for incineration; 7,055 tons - 9,595 tons for sludge treatment and 123,000 tons to 137,000 tons for land disposal. However, these numbers represent only New Jersey's demand. It has been this state's planning policy to include some imports in its demand to reflect the true nature of the free market.

2. **How does your State intend to develop new in-state capacity to address these shortfalls?**

☒ By siting new facilities
☒ Through the expansion of existing facilities
☐ Both
☒ Other, please explain Perhaps through Regional or Interstate agreements regarding landfilling and sludge treatment

3. **If you intend to meet new capacity needs by increasing waste exports beyond the 1987 levels, please explain why.**

The only management category which will increase in exports is land disposal. This is due to the fact that New Jersey does not currently have a commercial land disposal facility and that the large number of cleanups are driving our projections for land disposal.

- 3a. **Are you participating in a multi-state hazardous waste management planning effort?**

Yes.

- 3b. **Please list the participating states.**

The 13 States in USEPA Regions I, II, and III (except New York).

4. **Does your state have siting criteria?**

Yes. See Attached Subchapter 13.

5. Are any of the following methods used in your state to select sites or encourage site development?

☒ State selection of specific sites
☐ State purchase of specific site (or condemnation, if necessary)
☒ State inventory of suitable sites
☒ Private nomination of site
☐ Local nomination of site
☐ Permit fast tracking
☐ Other, please list: expansion of existing commercial facilities

6. How is the public allowed to participate in the siting process in order to affect the siting decisions?

☒ Adjudicatory public hearings
☒ Informational public hearings
☒ Local advisory committee
☒ Local representatives on siting board
(Once the administrative law judge makes a final recommendation, two additional members from the relevant communities must then be appointed to the Commission.)
☐ Other, please explain:

7. Is financial assistance provided to the local community to allow it to review the siting application and conduct an environmental or health assessment?

Yes.

- 7a. If yes, who supplies the funds?

☐ State (for the completion of the Municipal Site Suitability Study (MSSS). Does not apply to expansions.
☒ Siting Applicant (for the completion of an EHIS-funding is given to the Commission. Applicant must give site plan review grant to municipality. Included in this is review of full application, which includes the preparation of an EHIS).

- 7b. What is the maximum amount of funding a community may receive?

The Siting Act originally granted \$100,000 for the preparation of a Municipal Site Suitability Study. The Commission chose to divide this amount between two potential designated sites. Therefore, the Commission is providing funding in the amount of \$50,000 for each municipality to gather evidence for what is assumed to be an opposing viewpoint to the Commission's designation. Recently, legislation was introduced that would provide a municipality a total of \$200,000 to conduct a site suitability study within its borders. This bill (A-4080) passed the Assembly and has been sent to the Senate for vote. In addition, during the licensing phase of the siting process, the applicant must provide funding, not to exceed \$15,000 per application, to the aforementioned municipality to conduct a site plan review, in accordance with the Municipal Land Use Law.

7c. Are there any restrictions on the use of the funds?

Yes. The municipal grant must be used to assess the suitability of the site in relation to the siting criteria. The Commission will not fund studies that do not address the criteria or the site. In particular, attorney fees are not covered under the grant.

8. Does your state use negotiation in its siting process?

Not specifically, in relation to local negotiation prior to site selection; however, the 5% gross receipts tax process does allow the affected municipality's officials to negotiate with the facility's owner the actual percentage of the tax and the manner in which the monies can be utilized.

9. Are dispute resolution procedures used in your State to settle differences on siting issues?

Two hearings, conducted by the Office of Administrative Law are built in as part of the siting process. The affected municipality is a party of interest to these hearings and have the right to present testimony and to cross-examine witnesses.

10. Is compensation to host communities used in your State?

Yes. The Siting Act maintains that each year, five percent of the gross receipts tax from all charges for the treatment, storage, or disposal of hazardous wastes must be paid to the municipality where a major facility, either existing or new, is located to help cover the costs of municipal services resulting from the facility. The Act also requires the host municipality to appropriate monies generated from the tax for extra police and fire protection costs, local facility inspection programs, and "other expenses directly related to the impact of the major hazardous waste facility on the municipality," (N.J.S.A. 13:1E-80(c)(4)). If the municipality should determine that the five percent tax collected is insufficient to cover the additional costs posed by a facility, the municipality may petition the Commission to increase the percentage. The Act also appropriates \$50,000 to the NJDEP to conduct facility training programs for local officials. This includes the training of local or county health personnel to conduct weekly inspection of the new facility required pursuant to the Act.

10a. Who is responsible for providing the compensation?

- ☒ The site developer (5% Gross Receipts Tax)
- ☒ The State (\$50,000--training programs)
- ☐ Other, please explain_____

10b. What type of compensation is used?

- ☒ Cash Payments
- ☒ Fees based on waste management activities
- ☐ Insurance
- ☒ Emergency training and equipment
- ☐ Operating concessions
- ☐ Other, please list:

11. Is your State authorized to build and/or operate a hazardous waste management facility?

No, but N.J.S.A. 13:1E-86 requires the Commission to prepare a report detailing the findings of the Commission with respect to the need, if any, for State construction and operation of major hazardous waste facilities.

Form III: MILESTONES AND STATE REVIEW

Name of Respondent: Richard J. Gimello, Executive Director

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Siting Commission
28 West State Street, Room 614
Trenton, NJ 08625

1. Schedule of Capacity Development Milestone

Major Hazardous Waste Facilities Siting Act signed into law September 10, 1981.

Development of siting criteria by the NJDEP under the guidance of the Hazardous Waste Advisory Council. Public meetings held on the proposed criteria at five locations in New Jersey in June, 1982. Council revised proposed criteria and held formal public hearings in February and March, 1983. Final Criteria adopted on September 13, 1983 (N.J.A.C. 7:26-13).

Hazardous Waste Facilities Plan, required by the Act, to determine the number and type of new major hazardous waste facilities needed to treat, store, or dispose of hazardous wastes in the State, released in March, 1985. An update to the Plan is scheduled to be released in late 1989.

Commission secures the services of Rogers, Golden and Halpern (RGH) to assist in the search for suitable sites, March 26, 1985.

Consultant announces 14 potential sites--four land emplacement sites and seven incinerator sites, February 14, 1986.

Eleven of 14 potential sites eliminated for failure to meet certain siting criteria (see attached list of reasons each site was dropped). The Tinton Falls Township site was eliminated due to existing County plans for a solid waste facility; the Act prohibits the Commission from using the power of eminent domain "for the acquisition of any land which has been specifically designated as a site for a solid waste disposal facility by any solid waste management district in any solid waste plan or amendment thereto approved by the department...", N.J.S.A. 13:1E-81(d).

The Edison Township site was eliminated because it was determined not to be in the best interest of the State. The remaining site in Millstone Township was designated as a potential location for the construction of a hazardous waste incinerator.

<u>SITE NAME/TYPE OF FACILITY</u>	<u>DATE DROPPED</u>	<u>REASON</u>
Bedminster/Land Emplacement	2/24/87	Downward vertical gradient flow of ground water.
Burlington/Incinerator	5/24/88	Violation of depth to ground water criterion.
East Greenwich/ Land Emplacement	6/03/87	Insufficient depth to water; ground water travel time in upper most saturated unit exceeds criteria.
Edison/Incinerator	11/29/88	Not in the public interest of the entire State.
Franklin/Incinerator	8/07/86	Downward flow of ground water in the uppermost saturated unit.
Hillsborough/Land Emplacement	6/03/87	Downward flow of ground water in the uppermost saturated.
Maurice River/Land Emplacement	4/21/87	Irreplaceable habitat for the bald eagle.
Millstone/Incinerator	11/29/88	Site <u>adopted</u> as a potential location for the construction of a new, major hazardous waste facility.
South Brunswick/Incinerator	8/7/86	Downward flow of ground water in the uppermost saturated unit.

SITE NAME/TYPE OF FACILITY

DATE DROPPED

REASON

Tewksbury-Readington/
Incinerator

6/30/87

Downward flow of
ground water in the
uppermost saturated
unit.

Tinton Falls/Incinerator

7/26/88

Site already included
in Monmouth County
District Solid Waste
Management Plan.
Commission unable to
acquire site through
eminent domain.

The site search for a land emplacement facility is currently being evaluated. The Commission site search consultants, RGH, have been granted an additional work clause to reevaluate the siting criteria as they apply to siting a land emplacement facility. This report was submitted to the Commission in June, 1989. The Commission also maintains a design contract with the New Jersey Institute of Technology's (NJIT) Center for Research in Hazardous and Toxic Substances to examine and propose above ground land emplacement facility criteria for safe operation. NJIT has assembled a panel of national experts who have reviewed existing information on above ground facilities in light of current and anticipated state and federal regulations. The Commission will need to assess the impacts of the land bans prior to a new site search. The Commission is currently discussing how to search for a land emplacement facility.

Specific Milestones
Commission Selected Sites

Potential incinerator site in Millstone Township designated 11/29/88.

Grant to municipality for MSSS preparation awarded 7/89.

Adjudicatory hearing scheduled within 45 days of receipt of MSSS.

No time limit set for adjudicatory hearing.

After hearing ends, judge has 30 days to make recommendation to Commission.

Once judge has made final recommendation, two additional members, one each from the affected community and county, are added to the Commission.

Within 30 days of receipt of judge's final recommendation, expanded Commission must affirm, conditionally affirm, or reject the judge's recommendations to adopt or withdraw the proposal.

If proposal adopted, interested owner/operator firm(s) is instructed by the Commission to enter the NJDEP permitting process.

Company Proposed Sites

GAF Chemicals Corporation, Linden, New Jersey, submits letter of intent to construct a hazardous waste incinerator with capacity of 40,000 tons per year, 9/16/88.

Commission receives application for site designation from GAF, 10/28/88.

Commission retains consultant to prepare Site Evaluation Report (SER), 11/29/88.

Commission proposes for designation of the GAF proposed site, 6/20/89, and awards grant to the City of Linden to complete a Municipal Site Suitability Study (MSSS).

Commission may also be requested by GAF to prepare an Environmental and Health Impact Statement (EHIS) in an effort to streamline the siting and licensing phases of the process.

Once MSSS is complete, an adjudicatory hearing is scheduled within 45 days.

Administrative hearing process same as outlined in above section on Commission selected sites.

If after the OAL hearing, the proposal is adopted, GAF instructed to obtain RCRA permit from the NJDEP.

Expansion of Existing Facilities

E.I. DuPont de Nemours and Company, Inc. notified the Commission of its intent to expand their existing facility in Deepwater, New Jersey, June, 1987. This proposal is for the construction of a 35,000 tons per year hazardous waste incinerator---17,500 tons of this amount for commercial purposes, the remainder for captive purposes. In addition, DuPont's existing landfill would be expanded from 750,000 cubic yards to a capacity of 1.2 million cubic yards. An additional 25-acre landfill has also been proposed. The landfill expansion will handle residues generated by the wastewater treatment plant and the incinerator.

Since expansion is to be greater than 50 percent (determined by NJDEP, 8/11/87), Commission retains consultant to prepare an Environmental and Health Impact Statement at the company's expense, 1/26/88.

Consultant's contract voided due to the determination of a conflict of interest, 5/25/88.

New consultant retained, 7/26/88.

Commission received draft EHIS in July, 1989.

Draft EHIS issued for public comments, September, 1989.

Final draft EHIS completed September 26, 1989. It was submitted to the NJDEP as part of the RCRA permit application on September 28, 1989.

According to the 1985 Siting Plan, New Jersey requires rotary kiln incineration capacity of 50,000 to 75,00 tons per year. In order to obtain this necessary capacity, a new incinerator must be constructed in addition to the expansion of the DuPont facility. If the DuPont expansion is accomplished, the Commission acknowledges that only one site, either in Millstone Township or at the GAF Chemicals Corporation's facility, or perhaps a new site if it enters the process, is needed for the construction of a new hazardous waste incinerator.

The Commission also must address the issue of land emplacement capacity. Originally, the Commission's site search consultants had located four potential sites for a land emplacement facility; however, three of the sites were dropped due to the fact that they did not meet the hydrogeologic siting criteria, and the fourth site was determined to be an irreplaceable habitat for the bald eagle. The Commission now realizes that the siting criteria must be reevaluated in relation to the siting of a land emplacement facility. RGH completed this task and submitted its report to the Commission in June, 1989.

The Commission is currently working with the New Jersey Institute of Technology's (NJIT) Center for Research in Hazardous and Toxic Substances to examine and propose above ground land emplacement facility criteria necessary for safe operation. NJIT has assembled a panel of national experts who have reviewed existing information on above ground facilities in light of current and anticipated state and federal regulations. The group recently toured an above ground facility in the southern part of the United States, and is currently evaluating earthen structures versus concrete "warehouse" facilities. The panel's report is due in the Fall of 1989, which is anticipated to result in recommendations to the Commission for New Jersey's above ground facility design.

Emergency Plans if Anticipated Capacity Milestones Are Not Met

At this time, the Commission does not anticipate problems with the siting of a new hazardous waste incinerator. As part of a regional planning effort (see Form 2, Question 3b), the State of New Jersey is exploring other landfill options in the region and is examining interstate agreements with other facilities in other regions. If the Commission should enter into such an agreement, the size of the planned incinerator would have to be evaluated.

SUBCHAPTER 13. SITING CRITERIA FOR NEW MAJOR COMMERCIAL HAZARDOUS WASTE FACILITIES:

7:26-13.1 SCOPE AND AUTHORITY

Subchapter 13 of this chapter (N.J.A.C. 7:26-13); adopted pursuant to the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq., and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., establishes the Department of Environmental Protection's criteria for the siting of new major commercial hazardous waste facilities. These criteria, adopted after consultation with the Hazardous Waste Advisory Council, shall be the minimum standards for siting of new major commercial hazardous waste facilities by the Hazardous Waste Facilities Siting Commission and the Department.

7:26-13.2 CONSTRUCTION

(a) N.J.A.C. 7:26-13 shall be liberally construed to permit the Department to discharge its statutory functions pursuant to N.J.S.A. 13:1E-49 et seq.

(b) The Commissioner may amend, repeal or rescind this subchapter from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:26-13.3 PURPOSE OF THE REGULATIONS

(a) The purpose of N.J.A.C. 7:26-13 is to establish criteria for the siting of any new major commercial hazardous waste facility which shall prevent any significant threat to human health or the environment. When used in siting new major commercial hazardous waste facilities, the criteria shall:

1. PROTECT THE RESIDENTS OF THE STATE;
2. ENSURE STRUCTURAL STABILITY OF THE NEW MAJOR COMMERCIAL HAZARDOUS WASTE FACILITY;
3. PROTECT SURFACE WATER;
4. PROTECT GROUND WATER;
5. PROVIDE FOR THE SAFE TRANSPORTATION OF HAZARDOUS WASTE TO NEW MAJOR COMMERCIAL HAZARDOUS WASTE FACILITIES;
6. PROTECT ENVIRONMENTALLY SENSITIVE AREAS; AND
7. PROTECT AIR QUALITY.

7:26-13.4 APPLICABILITY

(a) N.J.A.C. 7:26-13 shall apply to:

1. The commission in the development of the major hazardous waste facilities plan and the siting of new major commercial hazardous waste facilities; and

2. The Department and the Council in the review of environmental and health impact statements, registration statements, and engineering designs for new major commercial hazardous waste facilities submitted by applicants.

"Groundwater" means that water below the ground, the static pressure of which is equal to or greater than the prevailing atmospheric pressure; that water present in the saturated zone of an aquifer.

"Hazardous waste" means, for the purpose of N.J.A.C. 7:26-13, any waste or combination of wastes which pose a present or potential threat to human health, living organisms or the environment including, but not limited to, waste material that is toxic, carcinogenic, corrosive, irritating, sensitizing, biologically infectious, explosive or flammable, and any waste so designated by the United States Environmental Protection Agency or as more specifically defined in N.J.A.C. 7:26-8. Hazardous waste does not include radioactive waste.

"Hazardous waste facility" means any area, plant or other facility for the treatment, storage or disposal of hazardous waste, including loading and transportation facilities or equipment used in connection with the processing of hazardous wastes.

"Impoundment facility" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

"Land emplacement facility" means a controlled facility for the permanent disposal of hazardous waste into or onto the land and which is designed and operated to contain waste so that any migration of pollutants shall not create a health hazard. Such facilities include but are not limited to secure landfills, landfarms, and above-ground, perpetual storage facilities.

"100-year flood event" means a flood of such severity that it would statistically occur only once every hundred years, although it may occur in any year.

"Hydrologic barrier" means a feature which restricts the movement of groundwater across it, such as a fault, groundwater divide, confining bed, discharge area, drainage divide, etc. It is characterized by different directions of groundwater flow or by a difference in the level of groundwater on opposite sides.

"Major hazardous waste facility" means any commercial hazardous waste facility which has a total capacity to treat, store or dispose of more than 25,000 gallons of hazardous waste, or the equivalent thereof, as determined by the Department, except that any hazardous waste facility which would otherwise be considered a major hazardous waste facility pursuant to these regulations solely as the result of recycling or rerefining of any hazardous wastes which are or contain gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium or copper shall not be considered a major hazardous waste facility for the purposes of this subchapter.

"Mean sea level" means the plane about which the tide oscillates; the average height of the sea for all stages of the tide. At any particular

"Water supply well" means a well or well field completely or partially supplying potable water for human consumption or for irrigation of crops intended for direct human consumption.

"Water table" means the upper surface of ground water, or that level below which the soil is saturated with water in a formation that is not confined by an overlying impermeable formation.

"Waters of the State" means the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction.

"Well field" means a group of water supply wells for which the Department has issued one water supply allocation permit.

7:26-13.7 PROTECTION OF THE POPULATION OF THE STATE

(a) For the purpose of protecting the population of the State:

1. No land emplacement or impoundment type of new major commercial hazardous waste facility shall be sited within 2,000 feet of any structure which is routinely occupied by the same person or persons more than 12 hours per day, or by the same person or persons under the age of 18 for more than two hours per day;

2. No new major commercial hazardous waste facility other than land emplacement or impoundment type facilities shall be sited within one-half mile of any structure which is routinely occupied by the same person or persons more than 12 hours per day, or by the same person or persons under the age of 18 for more than two hours per day; and

3. No new major commercial hazardous waste facility shall be sited in any area within a 20-mile radius of a nuclear fission plant at which spent nuclear fuel rods are stored on-site.

4. The measurement of distances required in (a) 1 and 2 above shall be taken from structures which are legally occupied, in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. and any ordinance adopted by the municipality pursuant thereto, six months prior to the Commission's formally proposing to designate the site.

(b) No new major commercial hazardous waste facility shall be sited in any area so as to cause an unreasonable risk of harm to the health, safety, and welfare of the population. In determining whether such risk would be presented, the department and the commission shall take into consideration, at every step of the siting process, the following factors:

1. The density of population in proximity to the facility;
2. The size and type of the facility;
3. The type of waste expected to be present at the facility;

7:26-13.9 PROTECTION OF SURFACE WATER

(a) For the purpose of protecting surface water, no new major commercial hazardous waste facility shall be sited within:

1. The upstream portion of the watershed draining to an on-stream reservoir;
2. Those watershed areas that drain directly into an off-stream reservoir;
3. The watersheds for waters classified by the Department as FW-1, or FW-2 Trout Production Waters in the Surface Water Quality Standards, N.J.A.C. 7:9-4.

7:26-13.10 PROTECTION OF ENVIRONMENTALLY SENSITIVE AREAS

(a) For the purpose of protecting environmentally sensitive areas, no new major commercial hazardous waste facility shall be sited in or on:

1. Wetland areas inundated by surface or ground water with a frequency to support, under normal circumstances, a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction;

2. Areas where the placement of the facility would adversely affect a habitat of an endangered or threatened wildlife or vegetative species as defined by the New Jersey Endangered and Non-Game Species Conservation Act, N.J.S.A. 23:2A-1 et seq., or the Federal Endangered Species Act of 1973, P.L. 93-205, unless a habitat adequate to assure the survival of the species within the region surrounding or on the site is preserved.

- i. These areas preserved as habitats shall be appropriately managed in accordance with a plan approved by the Endangered and Non-Game Species Project within the Division of Fish, Game and Wildlife.

3. Areas designated as wild, scenic, recreational, or developed recreational rivers, pursuant to the National Wild and Scenic Rivers Act, 16 U.S.C.A. 1271 et seq., or the New Jersey Wild and Scenic River Act, N.J.S.A. 13:8-45 et seq.;

4. Lands in municipally approved farmland preservation programs or on lands which have been dedicated to agricultural use by the purchase of their development rights pursuant to the provisions of the "Agriculture Retention and Development Act," P.L. 1983, c. 33 or equivalent independent county/municipal programs, provided that such designation and dedication was officially adopted by municipal ordinance and the development rights have been purchased at least six months prior to the Commission's proposing the site or an applicant submitting to the Department and the municipality a letter stating the intention to apply for registration and engineering design approval;

5. The Pinelands Area as established by N.J.S.A. 13:18A-11a of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq.

in the uppermost saturated unit will rise to within five feet of the bottom of the containment structure; and,

iv. In the case of wholly aboveground facilities, in areas where, prior to facility construction, the depth to the seasonally high water table in the uppermost saturated unit will rise to within one foot of the ground surface.

7:26-13.13 PROTECTION OF AIR QUALITY

(a) For the purpose of protecting the air quality of the state:

1. No new major commercial hazardous waste facility shall be sited in a nonattainment area unless the facility demonstrates the emission offsets will be obtained prior to operation, pursuant to the requirements of the Department's air pollution control regulation entitled, "Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality in Nonattainment Areas", N.J.S.A. 7:27-18 et seq., subject to the following more stringent requirements:

i. The annual significant emission increase for volatile organic substances shall be 10 tons per year.

ii. The annual significant emission increase for total suspended particulate matter shall be 25 tons per year.

iii. The minimum offset ratio as required by Table 2 in N.J.A.C. 7:27-18.4(b) for volatile organic substances (VOS) shall be at least 2:1 and the offsets shall be obtained at a distance not to exceed 50 miles from the proposed new facility; and

iv. The minimum offset ratio as required by Table 2 in N.J.A.C. 7:27-18.4(b) for total suspended particulate matter (TSP) is as follows:

Distance of TSP Offsets from Facility (miles)	Minimum Offset Ratio
0-0.5	1.0:1
0.5-1.0	1.5:1
1.0-2.0	2.0:1

STATE OF NEW JERSEY

MAJOR HAZARDOUS WASTE
FACILITIES SITING ACT

13:1E-42.2

CONSERVATION AND DEVELOPMENT

13:1E-42.2 Assessment for inspection of major hazardous waste facility: schedule

The Department of Environmental Protection is hereby authorized to make an assessment against any ~~solid waste disposal~~ major hazardous waste facility that handles or disposes of hazardous ~~or special~~ wastes in an amount sufficient to cover the costs of the inspections required pursuant to section 1 of this act (C. 13:1E-42.1). Any such assessment shall be charged and collected in accordance with a fee schedule adopted by the department as a rule and regulation pursuant to the provisions of the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.).

L.1979, c. 186, § 2, eff. Sept. 6, 1979. Amended by L.1981, c. 279, § 46, eff. Sept. 10, 1981.

13:1E-43. Legislative findings and declarations

Library References

Navigable Waters ~~¶~~35.
C.J.S. Navigable Waters § 11.

13:1E-44. Definitions

Library References

Navigable Waters ~~¶~~35.
C.J.S. Navigable Waters § 11.

13:1E-45. District solid waste management plans; sludge; inventory and plans for disposal

Library References

Navigable Waters ~~¶~~35.
C.J.S. Navigable Waters § 11.

13:1E-46. Statewide solid waste management plan; sludge management strategy; directions to solid waste management district by department

Library References

Health and Environment ~~¶~~28.

C.J.S. Health and Environment §§ 91, 93, 94,
96 to 113, 126, 127, 130, 131, 134 to 138, 140
to 153.

13:1E-47. Disposal of sludge in solid waste management district

Library References

Health and Environment ~~¶~~28.

C.J.S. Health and Environment §§ 91, 93, 94,
96 to 113, 126, 127, 130, 131, 134 to 138, 140
to 153.

13:1E-48. Pursuit and coordination of federal, state or private aid

Library References

Health and Environment ~~¶~~28.

C.J.S. Health and Environment §§ 91, 93, 94,
96 to 113, 126, 127, 130, 131, 134 to 138, 140
to 153.

13:1E-49. Short title

Sections 1 through 43 inclusive of this act¹ shall be known and may be cited as the "Major Hazardous Waste Facilities Siting Act."

L.1981, c. 279, § 1, eff. Sept. 10, 1981.

¹ Sections 13:1E-49 to 13:1E-91.

- g. "Department" means the Department of Environmental Protection;
- h. (Deleted by amendment, P.L.1983, c. 392)
- i. "Engineering design" means the specifications and parameters approved by the department for the construction and operation of a major hazardous waste facility;
- j. "Environmental and health impact statement" means a statement of likely environmental and public health impacts resulting from the construction and operation of a major hazardous waste facility, and includes an inventory of existing environmental conditions at the site, a project description, an assessment of the impact of the project on the environment and on public health, a listing of unavoidable environmental and public health impacts, and steps to be taken to minimize environmental and public health impacts during construction and operation;
- k. "Hazardous waste" means any waste or combination of wastes which poses a present or potential threat to human health, living organisms or the environment including but not limited to, waste material that is toxic, carcinogenic, corrosive, irritating, sensitizing, biologically infectious, explosive or flammable, and any waste so designated by the United States Environmental Protection Agency. Hazardous waste does not include radioactive waste;
- l. "Hazardous waste facility" means any area, plant or other facility for the treatment, storage or disposal of hazardous waste, including loading and transportation facilities or equipment used in connection with the processing of hazardous wastes; "major hazardous waste facility" means any commercial hazardous waste facility which has a total capacity to treat, store or dispose of more than 250,000 gallons of hazardous waste, or the equivalent thereof, as determined by the department, except that any facility which would otherwise be considered a major hazardous waste facility pursuant to this subsection solely as the result of the recycling or rerefining of any hazardous wastes which are or contain gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium or copper shall not be considered a major hazardous waste facility for the purposes of this act; "existing major hazardous waste facility" means any major hazardous waste facility which was legally in operation or upon which construction had legally commenced prior to the effective date of this act; "new major hazardous waste facility" means any major hazardous waste facility other than an existing major hazardous waste facility; "commercial hazardous waste facility" means any hazardous waste facility which accepts hazardous waste from more than one generator for storage, treatment or disposal at a site other than the site where the hazardous waste was generated;
- m. "Hazardous waste industry" means any industry which operates a hazardous waste facility or which proposes to construct or operate a hazardous waste facility;
- n. "Owner or operator" means and includes, in addition to the usual meanings thereof, every owner of record of any interest in land whereon a major hazardous waste facility is or has been located, and any person or corporation which owns a majority interest in any other corporation which is the owner or operator of any major hazardous waste facility;
- o. "Plan" means the Major Hazardous Waste Facilities Plan adopted by the commission pursuant to section 10 of this act;⁴
- p. "Registration statement" or "registration" means the operating license, approved by the department, for a major hazardous waste facility; "registrant" means the person to whom such approval was granted.

L.1981, c. 279, § 3, eff. Sept. 10, 1981. Amended by L.1983, c. 392, § 11.

¹ Section 13:1E-52.

² Section 13:1E-54.

³ Section 13:1E-57.

⁴ Section 13:1E-54.

The 1983 amendment deleted the definition of "Disclosure statement" in subsec. h.
Effective date of L.1983, c. 392, see note under § 13:1E-12a.

Library References

Words and Phrases (Perm.Ed.)

Last additions in text indicated by underline:

State. At all times thereafter, the commission members shall maintain the bonds in full force. The commission shall pay the cost of the bonds.

i. The members of the commission shall serve without compensation, but the commission may, within the limits of funds appropriated or otherwise made available therefor, reimburse members for actual expenses necessarily incurred in the discharge of their official duties.

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

L.1981, c. 279, § 4, eff. Sept. 10, 1981.

¹ Section 13:1E-59.

Law Review Commentaries

Hazardous waste facility siting. Lewis Gold-
shore (1981) 108 N.J.L.J. 453.

13:1E-53. Powers

The commission shall have the following powers:

a. To adopt bylaws for the regulation of its affairs and the conduct of its business;

b. To adopt and have a seal and to alter the same at its pleasure;

c. To sue and be sued;

d. To enter into contracts upon such terms and conditions as the commission shall determine to be reasonable, and to pay or compromise any claim arising therefrom;

e. To call to its assistance and avail itself of the services of such employees of any State, county or municipal department, board, commission or agency as may be required and made available for such purposes;

f. To contract for and to accept any gifts or grants or loans of funds or financial or other aid in any form from the United States of America or any agency, instrumentality or political subdivision thereof, or from any other source and to comply, subject to the provisions of the act, with terms and conditions thereof;

g. To employ an executive director, consulting engineers, architects, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the commission to carry out the purposes of this act, and to fix and pay their compensation from funds available to the commission therefor, all without regard to the provisions of Title 11, Civil Service, of the Revised Statutes;

h. To hold public meetings or hearings within this State on any matter related to the need for, or the siting of, major hazardous waste facilities;

i. To do and perform any acts and things authorized by this act under, through or by means of its own officers, agents and employees, or by contract with any person;

j. To adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.) rules and regulations establishing eligibility standards to be utilized by the department in granting exemptions pursuant to subsection e. of section 12 of this act.¹

L.1981, c. 279, § 5, eff. Sept. 10, 1981.

¹ Section 13:1E-60.

Last additions in text indicated by underline:

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

L.1981, c. 279, § 7, eff. Sept. 10, 1981.

13:1E-54. Powers

The council may:

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

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

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

L.1981, c. 279, § 8, eff. Sept. 10, 1981.

13:1E-57. Criteria for siting of new major hazardous waste facilities: preparation and adoption

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

(1) 2,000 feet of any structure which is routinely occupied by the same person or persons more than 12 hours per day, or by the same person or persons under the age of 18 for more than 2 hours per day, except that the commission may permit the location of a major hazardous waste facility less than 2,000 feet, but in no case less than 1,500 feet, from such structures upon showing that such a location would not present a substantial danger to the health, welfare, and safety of the persons occupying or inhabiting such structures;

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

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

(4) Any area where the seasonal high water table rises to within 1 foot of the surface, unless the seasonal high water table can be lowered to more than 1 foot below the surface by permanent drainage measures approved by the department; and

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

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

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

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

Last additions in text indicated by underline:

Notice of these hearings shall be published at least 30 days in advance thereof in at least two newspapers circulating in the specific geographic area where the hearing will be held:

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

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

- (1) The nature and dimension of the hazardous waste problem;
- (2) The need for the proper and expeditious siting of new major hazardous waste facilities;
- (3) The respective responsibilities of the commission, department and council pursuant to this act; and
- (4) The necessity and opportunities for public participation as provided herein.

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

L.1981, c. 279, § 10, eff. Sept. 10, 1981.

13:1E-59. Site designations: proposal and adoption

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

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

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

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

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

(4) Within 30 days of the close of such hearing, the administrative law judge shall transmit his recommendations for action on the proposed site to the commission. The judge shall not favorably recommend the proposed site as suitable for a major hazardous waste facility unless he finds clear and convincing evidence that locating a major hazardous waste facility on the proposed site will not constitute a substantial detriment to the public health, safety and welfare of the affected municipality; and

(5) Within 30 days of the receipt thereof, the commission shall affirm, conditionally affirm or reject the recommendations of the administrative law judge and adopt or withdraw the proposed site. Such action by the commission shall be based upon the potential for significant impairment of the environment or the public health, shall be considered to be final agency action thereon for the purposes of the "Administrative

Last additions in text indicated by underline:

applications for registration and engineering design approval for new major hazardous waste facilities shall be conducted in the following manner:

(1) Not less than 90 days prior to filing an application for registration and engineering design approval, the applicant shall submit to the department and the governing body of the affected municipality a letter of intent to apply for registration and engineering design approval, a disclosure statement, and a brief description of the nature of the proposed facility;

(2) (Deleted by amendment, P.L.1983, c. 392)

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

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

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

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

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

(8) Within 30 days of the close of such hearing, the administrative law judge shall transmit his recommendations for action on the application to the department. The judge shall not recommend approval of an application unless he finds clear and convincing evidence that the disclosure statement and application for a registration statement establish that the owner and operator of the proposed facility possess sufficient financial resources to construct, operate, and guarantee maintenance and closure of the facility, and that the facility will not constitute a substantial detriment to the public health, safety and welfare of the affected municipality; and

(9) Within 60 days of the receipt thereof, the department shall affirm, conditionally affirm or reject the recommendations of the administrative law judge and grant final approval to or deny the application. Such approval or denial of an application by the department shall be considered to be final agency action thereon for the purposes of the "Administrative Procedure Act," and shall be subject only to judicial review as provided in the Rules of Court.

Last additions in text indicated by underline:

13:1E-62. Joint and severally strict liability of owners and operators

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

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

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

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

L.1981, c. 279, § 14, eff. Sept. 10, 1981.

13:1E-63. Construction and operation: inapplicability of local government approval or zoning ordinance; compliance with state law; inspections

The owner or operator of any major hazardous waste facility which has received departmental approval of the registration statement and engineering design for the such facility may construct and operate that facility without regard to any local zoning ordinance, and the use shall not be required to be submitted to or approved by any county or municipal governing body, zoning or planning board or other agency, except as otherwise expressly provided herein. All major hazardous waste facilities shall be constructed in compliance with the "State Uniform Construction Code Act," P.L.1975, c. 217 (C. 52:27D-119 et seq.). The department shall conduct inspections during construction under the supervision of the State Uniform Construction Code Office.

L.1981, c. 279, § 15, eff. Sept. 10, 1981.

Law Review Commentaries

Hazardous waste facility siting. Lewis Gold-shore (1981) 108 N.J.L.J. 433.

13:1E-64. Weekly inspections by local health board or department; violations; injunction or other relief; disposition of penalties

a. The local board of health or county health department, as the case may be, shall conduct weekly inspections of major hazardous waste facilities in order to determine compliance with the provisions of the registration statement or engineering design for the facility and of all relevant Federal or State laws or any rule and regulation adopted pursuant thereto. These inspections shall be conducted by the appropriate health or code enforcement official, as the case may be, shall commence with the commencement of construction of such facility, and shall continue for 30 years following the closure thereof. Prior to the commencement of operation of any major hazardous waste facility, the department, in conjunction with the Department of Health, shall provide for the training of local or county health personnel to conduct the inspections required pursuant to this section.

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

Last additions in text indicated by underline:

the property and business of the registrant relating to the major hazardous waste facility.

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

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

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

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

L.1981, c. 279, § 21, eff. Sept. 10, 1981.

13:1E-70. Conservator: powers and duties

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

b. Subject to the general supervision of the commission and pursuant to any specific order it may deem appropriate, a conservator shall have power to:

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

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

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

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

(5) Hire, fire and discipline employees;

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

c. Except during the pendency of a suspension or during the pendency of any appeal from any action or event set forth in section 21 of this act¹ which precipitated

Last additions in text indicated by underline.

subdivision thereof and of those allowances set forth in section 23 of this act,¹ shall be paid by the conservator to the former or suspended registrant.

L.1981, c. 279, § 26, eff. Sept. 10, 1981.

¹ Section 13:1E-71.

13:1E-75. Conservator; subjection to laws, rules and regulations and conditions and restrictions in statement or design

A conservator appointed pursuant to section 21 of this act¹ shall at all times be subject to the provisions of any relevant law, or any rule or regulation promulgated pursuant thereto, as well as any condition or restriction in the registration statement or engineering design for the particular major hazardous waste facility.

L.1981, c. 279, § 27, eff. Sept. 10, 1981.

¹ Section 13:1E-46.

13:1E-76. Discontinuation of conservatorship action; disposition of securities issued by former or suspended registrant; inapplicability to powers of conservator

a. The commission shall direct the discontinuation of any conservatorship action instituted pursuant to section 21 of this act¹ when the conservator has, pursuant to section 22 of this act² and with the prior approval of the commission, consummated the sale, assignment, conveyance or other disposition in bulk of all the property of the former registrant relating to the major hazardous waste facility.

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

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

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

L.1981, c. 279, § 28, eff. Sept. 10, 1981.

¹ Section 13:1E-49.

² Section 13:1E-70.

13:1E-77. Reports of conservator; availability and distribution; publication

A conservator appointed and constituted pursuant to section 21 of this act¹ shall file with the commission such reports with regard to the administration of the conservatorship in such form and at such intervals as the commission shall prescribe. The reports shall be available for examination and inspection by any creditor or party in interest and, in addition, the commission may direct that copies of the reports be mailed to such creditors or other parties in interest as it may designate and that summaries of the reports be published in such newspapers of general circulation as it may designate.

L.1981, c. 279, § 29, eff. Sept. 10, 1981.

¹ Section 13:1E-49.

13:1E-78. Creditor or party in interest aggrieved by alleged breach of fiduciary obligation; review

Any creditor or party in interest aggrieved by any alleged breach of a fiduciary obligation of a conservator in the discharge of his duties shall be entitled, upon request, to a review thereof in accordance with regulations to be promulgated by the commission.

L.1981, c. 279, § 30, eff. Sept. 10, 1981.

Last additions in text indicated by underline.

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

L.1981, c. 279, § 32, eff. Sept. 10, 1981.

13:1E-81. Eminent domain

a. In addition to the other powers conferred by this act, the commission may acquire, in the name of the State, by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, by the exercise of the power of eminent domain as hereinafter provided, and to lease, sell, or otherwise convey, as hereinafter provided, to hazardous waste industries, any land and other property which it may determine is reasonably necessary for a major hazardous waste facility or for the relocation or reconstruction of any highway by the commission and any and all rights, title, interest or option in that land and other property, including public lands, highways or parkways, owned by or in which the State or any county, municipality, or other political subdivision of the State has any right, title or interest, or parts thereof or rights therein and any fee simple absolute or any lesser interest in private property, and any fee simple absolute in, easements upon, or the benefit of restrictions upon, abutting property for the purposes of this act.

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

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

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

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

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

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

d. Nothing in this section shall authorize the exercise of the power of eminent domain for the acquisition of any land which has been specifically designated as a site for a solid waste disposal facility by any solid waste management district in any solid waste plan or amendment thereto approved by the department pursuant to the provisions of the "Solid Waste Management Act," P.L.1970, c. 39 (C. 13:1E-1 et seq.), unless the prior approval of the affected solid waste management district shall have been obtained by the commission.

L.1981, c. 279, § 33, eff. Sept. 10, 1981.

Law Review Commentaries

Hazardous waste facility siting. *Levin Goldshore* (1981) 108 N.J.L.J. 451.

13:1E-82. Conflict of interest of member, officer, employee or agent of commission

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

b. Any commission action taken or approval granted in violation of this section is voidable.

Last additions in text indicated by underlining.

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

L.1981, c. 279, § 39, eff. Sept. 10, 1981.

¹ Section 13:1E-57.

² Section 13:1E-60.

13:1E-88. Commission or department; prohibited acts; prohibition of regulation of rates, fees or charges by certain governmental agencies

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

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

c. The provisions of any law to the contrary notwithstanding, neither the Board of Public Utilities nor any other State, county or municipal department, board, commission or agency shall exercise any power to restrict or regulate any rate, fee or charge imposed or collected for the treatment, storage or disposal of hazardous waste at any major hazardous waste facility.

L.1981, c. 279, § 40, eff. Sept. 10, 1981.

Law Review Commentaries

Hazardous waste facility siting. *Lewis Goldstone* (1981) 108 N.J.L.J. 453.

13:1E-89. Precedence of act over laws, rules and regulations in conflict or inconsistent with act

It is the intent of the Legislature that, except as otherwise specifically provided in this act, in the event of any conflict or inconsistency in the provisions of this act and any other acts pertaining to matters herein established or provided for or in any rules and regulations adopted under this act and under any other acts, to the extent of such conflict or inconsistency, the provisions of this act and the rules and regulations adopted hereunder shall be enforced and the provisions of such other acts and rules and regulations adopted thereunder shall be of no effect.

L.1981, c. 279, § 41, eff. Sept. 10, 1981.

13:1E-90. Severability

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

L.1981, c. 279, § 42, eff. Sept. 10, 1981.

13:1E-91. Liberal construction of act

The object, design and purpose of this act being the protection of the environment and public health through the proper treatment, storage or disposal of hazardous waste generated in this State, and the maintenance of a proper balance, as provided herein, between competing State and local interests, this act shall be liberally construed.

L.1981, c. 279, § 43, eff. Sept. 10, 1981.

Last additions in text indicated by underlining.

7:26-13A.1

SUBCHAPTER 13A. HAZARDOUS WASTE FACILITIES
SITING COMMISSION: POLICIES
AND PROCEDURES

7:26-13A.1 Scope and authority

Unless otherwise provided by statute, Subchapter 13A of this Chapter (N.J.A.C. 7:26-13A) adopted pursuant to the Major Hazardous Waste Facilities Siting Act, N.J.S.A. 13:1E-49 et seq., and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., establishes the Hazardous Waste Facilities Siting Commission's policies and procedures applicable to the siting of new major commercial hazardous waste facilities and to the conduct of other business which comes before the Commission.

7:26-13A.2 Construction

(a) N.J.A.C. 7:26-13A shall be liberally construed to permit the Hazardous Waste Facilities Siting Commission to discharge its statutory functions pursuant to N.J.S.A. 13:1E-49 et seq.

(b) The Hazardous Waste Facilities Siting Commission may amend, repeal or rescind this subchapter from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

7:26-13A.3 Purpose

The purpose of N.J.A.C. 7:26-13A is to provide the public with information as to the policies and procedures adopted by the Hazardous Waste Facilities Siting Commission in regard to the siting of new major commercial hazardous waste facilities and in regard to the discharge of other duties of the Commission.

7:26-13A.4 Severability

If any section, subsection, provision, clause, or portion of N.J.A.C. 7:26-13A is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the subchapter shall not be affected thereby.

7:26-13A.5 Definitions

The following words and terms, when used in N.J.A.C. 7:26-13A shall have the following meanings, unless the context clearly indicates otherwise. Where words and terms are used which are not defined herein, the definitions of those words and terms will be the same as the definitions found in the Department of Environmental Protection rules, N.J.A.C. 7:26-13.

"Alternate or additional site" means a site for a facility which is proposed and adopted by the commission at the request of a hazardous waste industry, pursuant to N.J.S.A. 13:1E-59b.

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

"Application" means the application for a registration statement and engineering design for a major hazardous waste facility.

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

1. The full name, business address and social security number of the applicant, or, if the applicant is a business concern, of any officers, directors, partners, or key employees thereof and all persons or business concerns holding any equity in or debt liability of that business concern, or, if the business concern is a publicly traded corporation, all persons or business concerns holding more than five percent of the equity in or debt liability of that business concern, except that where the debt liability is held by a chartered lending institution, the applicant need only supply the name and business address of the lending institution;

2. The full name, business address and social security number of all officers, directors, or partners of any business concern disclosed in the statement and the names and addresses of all persons holding any equity in or the debt liability of any business concern so disclosed, or, if the business concern is a publicly traded corporation, all persons or business concerns holding more than five percent of the equity in or debt liability of that business concern, except that where the debt liability is held by a chartered lending institution, the applicant need only supply the name and business address of the lending institution;

3. The full name and business address of any company which collects, transports, treats, stores or disposes of solid waste or hazardous waste in which the applicant holds an equity interest;

4. A description of the experience and credentials in, including any past or present licenses for, the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste possessed by the applicant, or, if the applicant is a business concern, by the key employees, officers, directors, or partners thereof;

5. A listing and explanation of any notices of violation or prosecution, administrative orders or license revocations issued by any State or Federal authority, in the 10 years immediately preceding the filing of the application, which are pending or have resulted in a finding or a settlement of a violation of any law or rule and regulation relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by the applicant, or if the applicant is a business concern, by any key employee, officer, director, or partner thereof;

6. A listing and explanation of any judgment of liability or conviction which was rendered, pursuant to any State or federal statute or local ordinance, against the applicant, or, if the applicant is a business concern, against any key employee, officer, director, or partner thereof, except for any violation of Title 39 of the Revised Statutes;

7. A listing of all labor unions and trade and business associations in which the applicant was a member or with which the applicant had a collective bargaining agreement during the 10 years preceding the date of the filing of the application;

8. A listing of any agencies outside of New Jersey which had regulatory responsibility over the applicant in connection with his collection, transportation, treatment, storage or disposal of solid waste or hazardous waste;

9. Any other information the Attorney General or the department may require that relates to the competency, reliability or good character of the applicant.

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

"Environmental and health impact statement" means a statement of likely environmental and public health impacts resulting from the construction and operation of a major hazardous waste facility, and includes an inventory of existing environmental conditions at the site, a project description, an assessment of the impact of the project on the environment and on public health, a listing of unavoidable environmental and public health impacts, and steps to be taken to minimize environmental and public health impacts during construction and operation.

"Key employee" means any person employed by the applicant or the licensee in a supervisory capacity or empowered to make discretionary decisions with respect to the solid waste or hazardous waste operations of the business concern but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage or disposal of solid or hazardous waste.

"Plan" means the Major Hazardous Waste Facilities Plan adopted by the commission pursuant to N.J.S.A. 13:1E-58.

"Registration statement" or "registration" means the operating license approved by the department, for a major hazardous waste facility; "registrant" means the person to whom such approval was granted.

"Respondent" means, for the purposes of this subchapter, the party, or parties, to a dispute regarding payment of the gross receipts tax which is not the petitioning party.

"Site suitability study" means a study conducted to determine whether a proposed site is suitable for a particular type and size major hazardous waste facility when the siting criteria, N.J.A.C. 7:26-13, are applied to that site.

7:26-13A.6 Procedure for designating a facility site at the request of any hazardous waste industry pursuant to N.J.S.A. 13:1E-59

(a) The commission may, after adoption of the Siting Criteria for New Major Commercial Hazardous Waste Facilities, N.J.A.C. 7:26-13, by the department, and the adoption of a Major Hazardous Waste Facilities Plan by the commission, accept for consideration proposals for alternate or additional site designations at the request of any hazardous waste industry.

1. The requester shall have the burden of proof concerning suitability of the site in the proceedings provided for in this section.

(b) The requester shall submit a written request for the site designation, a letter of intent to apply for registration and engineering design approval and description of the nature of the proposed facility, and a disclosure statement on a form to be supplied by the commission.

1. The form may be obtained from and shall be mailed, by certified mail, to the commission at CN 406, Trenton, New Jersey 08625 and to the governing body of the affected municipality or municipalities and county.

2. The commission shall acknowledge receipt of the request and disclosure statement and, at its discretion, require the requester to supplement the form with additional information which the commission reasonably deems necessary.

(c) Within 90 days of the receipt of a completed request for site designation, letter of intent and disclosure statement, the commission shall either:

1. Deny the request in writing, without prejudice, upon a determination by the commission that the proposed site does not comply with the siting criteria and/or the proposed facility is not of the number and type determined to be necessary in the plan; or

2. Transmit notice of the accepted request, by certified mail, to the requester, the governing body, board of health, planning board and environmental commission of the affected municipality or municipalities and to the governing body and any county health department of the affected county;

3. Forward the letter of intent to the department;

4. Forward the disclosure statement to the Office of the Attorney General; and

5. Publish, in a newspaper of general circulation in the affected jurisdiction, notice of the accepted request.

(d) As soon as is practicable, but no later than 45 days after providing notice as required in (c)2. above, the governing body of the affected municipality or municipalities shall be offered a grant for conducting suitability studies for the proposed facility site from the commission, in an amount to be determined by the commission.

(e) Upon receiving notice of transmittal of the request as required in (c)2 above, the requester may, at its discretion, submit a Part A and Part B hazardous waste facility permit application in accordance with N.J.A.C. 7:26-12.1 and 12.2 and a fee in accordance with N.J.A.C. 7:26-4A to the Department. The requester may also, at its discretion, authorize the Commission to prepare at the requester's expense, an environmental and health impact statement, which meets the requirements of N.J.A.C. 7:26-12.2, concerning the proposed site. Should the Commission arrange for preparation of the environmental and health impact statement by contract with a consultant, the requester shall be afforded the opportunity to:

1. Consult with the commission and the department in the preparation of a request for proposals; and

2. Recommend consultants to be provided with a request for proposals.

(f) In no way shall the commission's preparation of an environmental and health impact statement be construed as an endorsement of the proposed site and/or facility by the commission or the department.

(g) Within six months of the receipt of a grant, as provided for in (d) above, the governing body of the affected municipality or municipalities shall complete and transmit to the commission the site suitability studies on the proposed site.

1. Upon receipt of the site suitability studies, or upon the completion of the time period for such studies, whichever is sooner, the commission shall publish, in a newspaper of general circulation in the affected jurisdiction, a notice of the scheduling of an adjudicatory hearing to consider the proposed site.

(h) Within 45 days of the receipt by the commission of the site suitability studies, or upon completion of the time period for such studies,

whichever is sooner, an adjudicatory hearing concerning the proposed site shall be conducted by an administrative law judge.

1. The affected municipality or municipalities and the requester shall be parties of interest to the adjudicatory hearing, and shall have the right to present testimony and cross-examine witnesses.

2. Intervention in the adjudicatory hearing by any other person shall be as provided in N.J.A.C. 1:1-12.

3. Within 30 days of the close of the adjudicatory hearing, the administrative law judge shall transmit his initial decision including recommendations for action on the proposed site to the commission.

(i) Within 30 days of the receipt of the administrative law judge's recommendations, the commission, whose membership shall be expanded for this purpose as provided for in N.J.S.A. 13:1E-52c, shall affirm, conditionally affirm or reject the recommendations. Such action by the commission shall:

1. Be based upon the potential for significant impairment of the environment or the public health; and

2. Be considered to be final agency action thereon for the purposes of the Administrative Procedure Act and shall be subject only to judicial review in the Appellate Division of the Superior Court pursuant to R.2-1.

3. If the commission fails to act upon the recommendations of the administrative law judge within 30 days, as required in this subsection, the failure shall constitute commission affirmance of those recommendations in accordance with the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1-1.

(j) If the requester's proposed site is adopted by the Commission, the requester, if it has not previously exercised its discretion to do so, shall:

1. Authorize the commission to prepare an environmental and health impact statement as provided for in (e) above;

2. Thereafter be considered an applicant and be bound by the procedures for the review of all applications for registration and engineering design approval for new major hazardous waste facilities as set forth in N.J.S.A. 13:1E-60 and the applicable rules of the Department; and

3. Submit a Part A and Part B hazardous waste facility permit application in accordance with N.J.A.C. 7:26-12.1 and 12.2 and a fee in accordance with N.J.A.C. 7:26-4A to the Department.

(k) Any amendment to a major commercial hazardous waste facility's permit or engineering design which would result in an increase of 50 percent or more of the capacity of that facility shall be reviewed and approved by the Department according to the procedure in N.J.S.A. 13:1E-60 and any applicable rules pursuant thereto.

(l) The commission may, upon its own motion or at the request of the governing body of any affected municipality, repeal or withdraw any

adopted site for a facility if, in the discretion of the commission, such action is consistent with the purposes and provisions of the Act.

7:26-13A.7 (Reserved)

7:26-13A.8 Procedure for resolving disputes regarding payment of the gross receipts tax

(a) To resolve a controversy or dispute regarding the payment of the five percent gross receipts tax pursuant to N.J.S.A. 13:1E-80, an interested person shall initiate a proceeding before the commission by:

1. Obtaining a form petition at the address given in (a)3. below from the commission.

2. Completing the petition, including a sworn statement as to its truth;

3. Filing the original petition with the commission in person at 28 West State Street, Room 614, Trenton, New Jersey 08625, or by mail to CN-406, Trenton, New Jersey 08625; and

4. At the time of filing, providing to the commission proof of service of a copy of the petition on the respondent or respondents.

(b) Within 30 days after service of the petition upon them, the respondent or respondents shall file an answer with the commission together with proof of service of a copy thereof upon the petitioner.

1. The answer shall state in short and plain terms the respondent's defenses to each claim asserted and shall admit or deny the allegation of the petition.

2. A respondent may not generally deny all the allegations, but shall make denials as specific denials which meet the substance of designated allegations or paragraphs of the petition.

3. Allegations in any answer setting forth an affirmative defense shall be taken as denied.

4. The time for filing an answer with the commission may be extended beyond 30 days upon written request to the commission.

(c) After an answer has been filed or the time for doing so has expired, the commission may summon counsel for the parties to appear at a conference for the following purposes:

1. Eliminate or simplify issues;

2. Obtain admissions of fact or of documents that will avoid unnecessary proof;

3. Arrive at an agreement of facts; and

4. Come to an amicable resolution of the controversy without requiring a hearing.

(d) In order to resolve the controversy at a settlement conference, the commission may require the parties to:

1. Submit written statements, verified by oath, as to the facts involved in the controversy; and
2. Submit certified copies of all documents necessary to a full understanding of the issues.

(e) For failure to appear at a settlement conference or to participate therein or to take action required by the commission, the commission in its discretion may make such order with respect to the continued prosecution of the matter or an objection thereto, as it deems just and proper.

(f) In the event that the parties and the commission are unable to resolve the controversy at a settlement conference, as referred to in (c) above, the commission shall refer the matter to the Office of Administrative Law as a contested case for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq., and N.J.A.C. 17:1-1.

1. Upon receipt of the initial decision from the Office of Administrative Law, the commission shall affirm, reject or modify the decision within 45 days.

2. The commission's decision shall be considered to be the final agency action from which any party may take an appeal to the Appellate Division of the Superior Court.

SUBCHAPTER 16. SOLID AND HAZARDOUS WASTE LICENSING AND REVOCATION— DISCLOSURE STATEMENTS AND INTEGRITY REVIEW

7:26-16.1 Scope and authority

(a) This subchapter 16 implements P.L. 1983, c.392 (N.J.S.A. 13:1E-126 et seq.), and the public policy declared therein to preclude from participation in the solid and hazardous waste industries persons with known criminal records, habits, or associations, and to exclude or remove from positions of authority or responsibility in those industries any person known to be so deficient in reliability, expertise or competence that his or her participation would create or enhance the danger of unsound, unfair or illegal practices, methods or activities in the business of those industries.

(b) This subchapter applies to any proceeding involving the issuance, approval, termination or revocation of any approved registration or equivalent authorization to operate a solid or hazardous waste business in New Jersey, including any temporary operating authorization, hazardous waste hauler license, or hazardous waste facility permit.

7:26-16.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Applicant" means any person seeking a license.

"Application" means the forms and accompanying documents filed in connection with the applicant's request for a license.

"Broker" means any person, not registered with the Department, who for compensation (e.g., a commission or fee) arranges for the transportation or disposal of solid waste or hazardous waste, other than waste generated by that person.

"Business concern" means any corporation, association, firm, partnership, trust or other form of commercial organization.