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HAZARDOUS WASTE INFORMATION PROJECT
Association of New Jersey Environmental Commissions
Izaak Walton League of America
U.S. Environmental Protection Agency

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ASSOCIATION of NEW JERSEY ENVIRONMENTAL COMMISSIONS

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Chairman: Frank Dodd

PREFACE

The Major Hazardous Waste Facilities Siting Act is the first act that provides for the siting and construction of hazardous waste facilities. Under it, facilities will be developed in appropriate areas within New Jersey. This manual provides a description of the act in layman's terms, of how the public can participate and of concerns about the act. Its purpose is to encourage citizen participation in the siting process so that facilities are sited in a climate of cooperation.

This manual has been produced as part of the Hazardous Waste Information Project funded by the Izaak Walton League of America with a pass-through grant from the U.S. Environmental Protection Agency. The Hazardous Waste Information Project has been educating the public on hazardous waste issues across the nation. In New Jersey, the program concentrates on the siting of hazardous waste facilities.

Jennifer Howell and Anthony San Filippo
November, 1981

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A MESSAGE FROM THE HAZARDOUS WASTE
FACILITIES SITING COMMISSION

In order for the Commission to be successful in implementing the provisions of the Hazardous Waste Facilities Siting Act (Formerly S-1300), it is important that the citizens of New Jersey be properly informed. Before the citizens can fully understand the work of this Commission, they need to understand the hazardous waste management process delineated in S-1300. This booklet will provide sufficient background to these ends and will serve as an excellent reference for those who wish to contribute to the siting effort. The Commission is therefore formally adopting this booklet as part of its public information program.

It is absolutely necessary for the Commission to establish an equitable process leading to the siting of hazardous waste facilities. This can be ensured, at least in part, through the extensive public information and public participation programs that the Commission is presently developing. The Commission recognizes the important role of public input in the development of this process.

The members of the Hazardous Waste Facilities Siting Commission:

Mr. Frank Dodd - Chairman
Ms. Ann Auerbach - New Jersey League of Women Voters
Mr. Steven Capestro - Middlesex County Board of Freeholders
Dr. Roy Gottesman - Tenneco Chemical Corporation
Mayor John Heinz - Egg Harbor Township
Mr. Thomas Leane - Jersey City Redevelopment Agency
Mr. Gordon Millspaugh - New Jersey Conservation Foundation
Mr. George Polzer - Witco Chemical Corporation
Dr. Maxwell Weiss - Bell Laboratories

The member of the Hazardous Waste Advisory Council:

Dr. John Liskowitz, Chairman - New Jersey Institute of Technology
Mr. William Bobsein - CIBA/Geigy Corporation
Mr. James Butler - New Jersey Fireman's Mutual Benevolent Association
Ms. Patricia Dagnall - East Winsdor Township Health Department
Mr. Robert Gregory - Rollins Environmental Services
Dr. Thomas Hellman - Allied Chemical Corporation
Ms. Lois Hoffmann - New Jersey League of Women Voters
Ms. Cynthia Jacobson - Association of New Jersey Environmental Commissions
Mr. John Maier - Gloucester County Freeholder
Ms. Katherine Montague - Environmental Research Foundation
Mr. Gary Szalc, P.E. - Old Bridge Township

Special Note: Due to the fact that full Commission was not appointed until April 27, 1982, the deadlines for the implementation of the Siting Act illustrated on page four of this booklet are not accurate. However, the general order of events is still applicable.

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INTRODUCTION

New Jersey faces a serious dilemma: an increasing volume of hazardous waste in a densely populated state without the proper facilities for its treatment and disposal.

To address the problem, Governor Brendan Byrne signed the Major Hazardous Waste Facilities Siting Act into law on September 10, 1981. Formerly Senate Bill 1300 (Senate Committee Substitute), the act became Chapter 279, Public Law of 1981. This is the first law in New Jersey providing for the development of needed hazardous waste treatment disposal facilities.

Hazardous waste disposal is one of New Jersey's most critical environmental and public health problems. Improper disposal and illegal dumping of hazardous waste can lead to contamination of drinking water supplies, risk of explosion and fire, contamination of the food chain (crops, milk, fish, fowl) and public and worker exposure through inhalation, ingestion, and direct contact with wastes. The need for soundly designed treatment and disposal facilities sited in appropriate areas is evident.

New Jersey's economy is in large part based on industries that generate hazardous waste as part of their manufacturing process. In 1980, generators disposed of over 862,109 tons of hazardous waste: 542,109 tons were sent to off-site, commercial disposal facilities while at least another 320,000 tons were treated or stored at the plant where they were produced. These figures do not include the hazardous waste that is dumped at sea or illegally disposed. Nor do they include the waste at over 300 abandoned sites awaiting proper final treatment. The actual amount of waste that must be dealt with thus expands tremendously.

Moreover, the amount of hazardous waste generated is increasing, due to:

1. a rise in the number of products whose manufacture generates hazardous by-products.
2. the implementation of regulations which will outlaw current dangerous storage and disposal practices.

While the amount of hazardous waste is increasing, the number of facilities where it can be treated safely has been decreasing. Kin-Buc landfill, the largest reception point for chemical wastes on the eastern seaboard, was closed in 1976 because of its extreme health and safety threats. Other facilities were closed for the same reason. In 1979, approximately twenty facilities were in operation; today only a handful are left.

The lack of appropriate facilities to which generators can send their waste may cause further safety hazards by encouraging temporary storage on-site, illegal dumping, long-distance transport, and other short-term solutions. If public health and environment are to be protected, the necessary facilities must be sited.

Citizen opposition to the construction of any hazardous waste disposal facilities in or near their communities has been a major obstacle to the development of new facilities. While everyone wants hazardous waste managed safely, hardly anyone wishes it to be managed near them. Fears based on the past, improper practices as well as legitimate concerns regarding the public health and environmental impacts of new facilities have given rise to much of this opposition.

The Major Hazardous Waste Facilities Siting Act provides a mechanism to site and construct major, off-site commercial hazardous waste treatment and disposal facilities. It forms two bodies, a commission and an advisory council, who will analyze New Jersey's hazardous waste treatment needs and choose sites. The New Jersey Department of Environmental Protection will then regulate construction and monitoring of major disposal facilities. The act grants the commission the power of eminent domain to be used under prescribed circumstances for purchasing properties on which to site facilities.

The act employs four phases to develop needed major facilities:

Planning: analysis of how many and what type of facilities are needed based on a survey of waste produced and existing facilities. Includes procedures to minimize the amount of waste treated, stored, or disposed of in New Jersey.

Siting: development of criteria for choosing sites, finding locations that meet those criteria, and testing their suitability.

Licensing: application process for the design, construction, and operation of specific facilities.

Regulating: procedures for monitoring facilities during operation and after closure to assure compliance with state and federal regulations as well as protection of public health and safety.

The act provides for extensive public participation throughout each of the four phases. The act requires a public information program, public meetings and hearings on both site selection and facility design. The municipality where a site is proposed will receive a grant to determine if the site is suitable. If it passes that test and an applicant proposes a facility for that site, the municipality receives another grant to analyze the design and construction of the facility and the fitness of the operator. Once a facility is operating, the municipality will receive funds to monitor it and may petition to close it.

The act calls for a partnership of public and private responsibility. The commission, a public body, develops the plan and chooses possible sites. After a municipal review process, a private industry applies to construct a facility on a designated site. The municipality and the public will be involved throughout and able to negotiate to protect their interests.

The need for the best possible management, treatment, and disposal of hazardous waste is immediate. The Major Hazardous Waste Facilities Siting Act is the first step in achieving that goal. However, the act does not address the generation and transportation of hazardous waste and the construction of waste-generating factories or smaller treatment and disposal facilities. Their safety will depend on industry concern, the local planning process, and enforcement of federal and other state regulations.

The success of the Major Hazardous Waste Facilities Siting Act will depend on the effort of the commission, the advisory council, and the DEP, the enforcement of the act, and the willingness of the public to participate in the process in a positive rather than adversary role. No one wants a hazardous waste facility in his or her town. However, we all recognize the desperate need to build them somewhere to stop the indiscriminate dumping or improper storage which often leads to water, air, and land contamination. The public has a responsibility to see that hazardous waste facilities are sited and that it is done properly. Taking advantage of the extensive public participation required and encouraged by the act will be a major step towards the solution of the hazardous waste problem.

THE IMPLEMENTATION PROCESS OF S - 1300

DEADLINES ARE FROM THE EFFECTIVE DATE OF THE ACT EXCEPT WHERE NOTED, AND REFLECT THE MAXIMUM DEADLINES ALLOWABLE UNDER THE ACT.

deadline	60 DAYS	90 DAYS	6 MONTHS	8 MONTHS	9 MONTHS	10 MONTHS	1 YEAR	1 1/2 YEARS	2 YEARS	APPROX. 26 MOS.	30 DAYS AFTER HEARING	30 DAYS AFTER RECS.	10 DAYS AFTER COMMISSION DECISION
PROVISION													
Commission	NOMINATIONS												
Council	NOMINATIONS												
Plan		PUBLIC INFORMATION PROGRAM	PROPOSED PLAN	PUBLIC HEARINGS			PLAN ADOPTED						
Siting Criteria			PRELIMINARY CRITERIA	PUBLIC MEETINGS	REVISED CRITERIA	PUBLIC HEARINGS	FINAL CRITERIA						
Site(s) Establishment								SITES PROPOSED GRANTS DISTRIBUTED	SITE SUITABILITY STUDY	ADJUDI- CATORY HEARINGS	A.L. JUDGE RECOMMENDS	SITE DECISION	GOVERNOR'S APPROVAL

THE APPLICATION PROCESS FOR A REGISTRATION STATEMENT AND ENGINEERING DESIGN

DEADLINES NOTED ARE THE MAXIMUM ALLOWED UNDER THE ACT

Registration Statement and Engineering Design	PRIOR TO SUBMITTAL OF APPLICATION		APPLICATION SUBMITTED	AFTER SUBMITTAL OF APPLICATION				
	90 DAYS	30 DAYS		6 MONTHS	14 MONTHS	APPROX. 16 MONTHS	30 DAYS AFTER HEARING	60 DAYS AFTER A.L.J. RECS.
	PRELIMINARY DOCUMENTS 1. LETTER OF INTENT 2. DISCLOSURE STATEMENT 3. A BRIEF DESCRIPTION OF NATURE OF THE FACILITY.	REVIEW OF PRELIMINARY DOCUMENTS		MUNICIPAL REVIEW	DEP REJECTS OR GRANTS TENTATIVE APPROVAL	ADJUDICATORY HEARING	A.L. JUDGE RECOMMENDS	FINAL DEP DECISION

The Major Hazardous Waste Facilities Siting Act

DEFINITIONS

The Major Hazardous Waste Facilities Siting Act defines hazardous waste as any waste or combinations 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 US Environmental Protection Agency. Hazardous waste does not include radioactive waste.

Under the act, a hazardous waste facility is an 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. A major hazardous waste facility is a commercial hazardous waste facility which has a total capacity to treat, store, or dispose of more than 250,000 gallons of hazardous waste or its equivalent as determined by the DEP. A major facility which is engaged in recycling or rerefining any hazardous wastes which are or contain gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium, or copper is not considered a major facility under this act.

An existing major hazardous waste facility is defined as one legally in operation or under construction prior to the effective date of this act.

A commercial facility is one 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.

The Major Hazardous Waste Facilities Siting Act regulates only the development of new major, commercial hazardous waste facilities or the expansion of over fifty percent of existing facilities.

THE PLANNING PHASE

THE HAZARDOUS WASTE FACILITIES SITING COMMISSION

The Hazardous Waste Facilities Act establishes a Hazardous Waste Facilities Siting Commission in the executive branch of state government. While it is allocated within the Department of Environmental Protection (DEP), the commission is independent of DEP control.

The nine members of the commission are appointed by the governor, with the advice and consent of the senate, for a three year term. Provisions are made for the members of the commission first appointed in order to stagger their terms (Sec. 4). Members serve without compensation, but may be reimbursed for actual expenses incurred in the performance of their duties.

The composition of the commission is designed to provide a variety of perspectives. Three members are county or municipal elected or appointed officials, three are employed by an industrial firm and three are representatives of environmental or public interest organizations.

Two additional members will be appointed when the commission reviews the recommendation of an administrative law judge regarding the siting of a facility. One will be appointed by the governing board of the county where the proposed major hazardous waste facility is located, the other by the governing body of the affected municipality. (If a site encompasses more than one municipality or county, each affected area may appoint a member.)

The principal duties of the commission are to:

1. Review the criteria for the siting of new major hazardous waste facilities that will be proposed by DEP in consultation with the Hazardous Waste Advisory Council.
2. Prepare, in consultation with the Hazardous Waste Advisory Council, a Major Hazardous Waste Facilities Plan for New Jersey.
3. 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.
4. Prepare a public information program and hold public meetings and hearings in the state on any matter related to the siting, licensing, construction, operation or closure of major hazardous waste facilities.
5. Adopt rules and regulations for exemptions.
6. Prepare a public information program.

The commission must submit the minutes of each meeting to the governor for his approval. No action taken at the meeting by the commission shall have effect until ten days after the minutes have been delivered unless the governor approves them earlier. If, in the ten day period, the governor vetoes any action taken by the commission at that meeting, the action will be void.

Each year, the commission must submit an annual report of its activities to the governor and legislature. Each report must include a complete operating and financial statement covering its operation during the past year.

The commission, through DEP, is appropriated \$300,000. This money is to be used for the preparation and adoption of the plan, for the proposal and adoption of sites for new major waste facilities, and to otherwise aid in the implementation of the act.

THE HAZARDOUS WASTE ADVISORY COUNCIL

The establishment of the Hazardous Waste Advisory Council provides for public participation at the decision-making level of the siting process. It consists of thirteen members appointed by the governor with the advice and consent of the senate. The term of membership is three years with provisions being made to stagger the terms. Members will serve without compensation, but may be reimbursed for actual expenses incurred in the performance of their duties.

The breakdown of membership is as follows:

1. Three members recommended by environmental or public interest organizations.
2. Two recommended by municipal elected and appointed officials.
3. Two recommended by county elected and appointed officials.
4. One recommended by community organizations.
5. One recommended by firefighters.
6. One recommended by industries which use on-site hazardous waste facilities.
7. One recommended by industries which use major hazardous waste facilities.
8. One recommended by hazardous waste transporters.
9. One recommended by major hazardous waste facility operators.

The recommendations must be made to the governor within sixty days of the effective date of the act, September 10, 1981, in the case of the initial appointment. With later appointments, recommendations must be made to the governor within sixty days of the date of the expiration of the term of office of any member or the occurrence of any vacancy. If no recommendations for a particular category of membership are made within the allotted timespan, the governor may appoint someone who he believes is representative of the category involved.

The responsibilities of the council are as follows:

1. Advise the commission concerning the preparation and adoption of the plan, the proposal and adoption by the commission of all sites for major hazardous waste facilities, and the implementation of the public information program.
2. Advise DEP concerning the preparation and adoption of criteria for the siting of new major hazardous waste facilities.
3. Make recommendations for DEP action on applications for the approval of registration statements and engineering designs for new major hazardous waste facilities.
4. Review all matters submitted to it by the commission or the DEP and state a position on the matter within sixty days.

\$50,000 is appropriated to the council, through DEP, for the performance of the above responsibilities. In addition, the council has the power to:

1. Review any matter relating to the siting, licensing, construction, operation, or closure of major hazardous waste facilities and make any recommendations to the commission and to the DEP.
2. Hold public meetings and hearings on any matter related to the siting, licensing, construction, operation or closure of major hazardous waste facilities.
3. Utilize the services of employees of any state, county, or municipal department, board, commission or agency as may be required and made available for such purposes.

The council is involved with every decision to be made regarding the siting of major hazardous waste facilities, either directly or indirectly.

THE MAJOR HAZARDOUS WASTE FACILITIES PLAN

The commission, in consultation with the council, must prepare and adopt a Major Hazardous Waste Facilities Plan for New Jersey. Such a plan should coordinate the handling of hazardous waste in the state.

The plan is to include:

1. An inventory and appraisal including the identity, location and life expectancy of all hazardous waste facilities as well as the identity of everyone engaging in hazardous waste collection, treatment, storage, or disposal in New Jersey.
2. A current inventory of the sources, composition, and quantity of the hazardous waste generated within the state.
3. Projections of the amounts and composition of hazardous waste to be generated in New Jersey in each of the next three years.
4. A determination of the number and type of new major hazardous waste facilities needed to treat, store, or dispose of hazardous wastes in the state.
5. An analysis of the ability of all existing facilities to meet current and proposed state and federal environmental, health, and safety standards.
6. An analysis of transportation routes and costs from hazardous waste generators to existing or available sites suitable for major hazardous waste facilities.
7. Procedures to encourage codisposal of solid and hazardous waste, source reduction, materials recovery, energy recovery, waste exchanging, and recycling and to discourage all inappropriate disposal techniques. Procedures to minimize the amount of hazardous waste to be treated, stored or disposed of in New Jersey.
8. A regional analysis of existing and necessary major hazardous waste facilities and recommended procedures for coordinating major hazardous waste facilities planning on a regional basis.

The commission must revise and update the plan at least every three years.

TIMETABLE FOR THE PREPARATION OF THE PLAN

The following is a timetable for the preparation of the plan.

PUBLIC INFORMATION PROGRAM 90 DAYS

The commission, in consultation with DEP and the council, must 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, DEP, and council pursuant to this act.
4. The necessity of and opportunities for public participation as provided in the act.

PROPOSED PLAN
6 MONTHS

The commission must prepare and make available to all interested persons a proposed plan.

PUBLIC HEARINGS
8 MONTHS

The commission must conduct public hearings on the proposed plan in several geographic areas of the state. Notice of these hearings must be published at least thirty days in advance in at least two newspapers circulating in the specific area where the hearing will be held.

ADOPTION OF PLAN
1 YEAR

The commission must consider any comments made at the public hearings, make any necessary or appropriate revisions to the proposed plan, and adopt the plan.

THE SITING PHASE

SITING CRITERIA

Having decided that new major hazardous waste facilities are necessary for the safety of the state, criteria for choosing their location must be developed. Under the Siting Act, DEP, in consultation with the council, must prepare, adopt, and transmit siting criteria to the commission within a year of the effective date of the act.

DEP must develop siting criteria that would "prevent any significant adverse environmental impact resulting from the location or operation of a major hazardous waste facility." Such impacts include any significant degradation of the surface or ground waters of the state.

The criteria must prohibit the location or operation of any new major hazardous waste facility, at a minimum, within:

1. 2,000 feet of any structures routinely occupied by anyone for more than twelve hours per day, or by anyone under the age of eighteen

for more than two hours per day. 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 if it can show that this location would not present a substantial danger to the health, welfare, and safety of the occupants.

2. Any flood hazard area delineated pursuant to Flood Hazard Areas (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 one foot of the surface, unless the seasonal high water table can be lowered to more than one foot below the surface by permanent drainage measures approved by DEP.
5. Any area within a twenty mile radius of a nuclear power plant at which spent nuclear fuel rods are stored on-site.

The above are minimum conditions that the DEP must include as siting criteria. DEP will determine additional standards as the criteria formulating process dictates.

TIMETABLE FOR SITING CRITERIA

The timetable for the proposal and adoption of criteria for the siting of new major hazardous waste facilities is similar to that for the plan. Deadlines noted are from the effective date of the act.

PRELIMINARY SITING CRITERIA 6 MONTHS

DEP must prepare and make available to all interested persons preliminary siting criteria.

PUBLIC MEETINGS 8 MONTHS

DEP must conduct public meetings on the preliminary criteria in the several geographic areas of the state. Notice of these meetings must be published in at least two newspapers circulating in the area where the meeting will be held. In addition, notice of these meetings must be sent at least thirty days in advance to every municipal clerk and environmental commission within the area.

REVISION OF CRITERIA 9 MONTHS

DEP must consider and evaluate any comments made at the public meetings, make any necessary or appropriate revisions, and schedule a public hearing on the revised criteria. Notice of this hearing must be published at least thirty days in advance in at least four newspapers of general circulation in the state.

PUBLIC HEARING

10 MONTHS

DEP must conduct the hearing on the revised criteria.

ADOPTION OF CRITERIA

1 YEAR

DEP must consider and evaluate any comments made at the public hearing, make necessary or appropriate changes to the revised criteria, and adopt and send to the commission final criteria for the siting of new major hazardous waste facilities.

DESIGNATING SITES

After the adoption of siting criteria and of the plan, the commission, in consultation with the council, will propose site designations for the number and type of new major hazardous waste facilities determined to be necessary in the plan. The timetable for implementation and opportunities for public participation are outlined below. Dates in the headings are dated from the adoption of the act and reflect the maximum lengths of time allowable.

SITE PROPOSALS AND GRANT DISTRIBUTIONS

18 MONTHS OR 6 MONTHS

Within six months of the receipt of the criteria from DEP the commission will:

1. Propose sites for new major hazardous waste facilities.
1. 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 county board of health.
3. Provide the governing body of the affected municipality with a grant to conduct a site suitability study of the proposed site. \$100,000 is appropriated, through DEP, to the commission for these grants.

SITE SUITABILITY STUDY

6 MONTHS

Within six months of the receipt of the grant, the governing body of the municipality must complete and send the site suitability study to the commission.

ADJUDICATORY HEARING
45 DAYS

An adjudicatory hearing concerning the proposed site must be conducted by an administrative law judge within forty-five days of the receipt of the site suitability study by the commission. The municipality will be a party of interest to the hearing and will have the right to present testimony and cross-examine witnesses.

Intervention in the hearing by any other person is as provided by the Administrative Procedures Act (P.L. 1968, c. 410). In general, those whose rights are directly affected are entitled to intervene, i.e., present testimony and cross-examine witnesses. Those with a significant interest in the outcome of the case may "participate" in a friend of the court capacity: argue orally, file a statement or brief, or both.

The law does not set a time limit for the length of the adjudicatory hearing.

JUDGE'S RECOMMENDATIONS
30 DAYS

Within thirty days of the close of the hearing, the administrative law judge must make recommendations for action on the proposed site to the commission. To recommend a site as suitable, the judge must have found clear and convincing evidence that locating a major hazardous waste facility there "will not constitute a substantial detriment to the public health, safety and welfare of the affected municipality."

When the commission receives the judge's recommendations, two additional members must be appointed to the commission: one by the governing body of the county of the proposed site and one by the governing body of the affected municipality. In the event that the site is located in more than one municipality or county, additional members will be appointed. (However, there will be only two additional votes).

COMMISSION'S ACTION
30 DAYS

Within thirty days of its receipt, the commission must affirm, conditionally affirm, or reject the judge's recommendation and adopt or withdraw the proposed site. The commission's decision must be based upon the potential for significant impairment of the environment or public health. The decision, for purposes of the Administrative Procedures Act, will be considered the final agency action and will be subject only to judicial review as provided in the Rules of Court. Failure to act on the recommendations will constitute commission affirmation of them.

ADDITIONAL OR ALTERNATE SITES

The commission may designate alternate or additional sites for new major hazardous waste facilities other than those established in the plan at the request of any hazardous waste industry. The requestor must prove the suitability of the site using the same procedure for establishing a new site.

THE POWER OF EMINENT DOMAIN

To obtain the best possible sites and transportation routes for the handling of hazardous waste in regard to geographical, geological, engineering and other considerations, is crucial. To aid in this effort, the Siting Act permits the commission to acquire, by the power of eminent domain, any land or other property that it determines is reasonably necessary for a major hazardous waste facility. That land can then be leased, sold, or in some other way, conveyed to a hazardous waste industry. The commission may also acquire land or other property for the relocation or reconstruction of highways.

Public lands or parkways are subject to this power of eminent domain. This provision also establishes the commission's power to obtain easements, benefits, or restrictions upon abutting property needed for the purposes of the act.

In order to employ the power of eminent domain, the commission must meet certain requirements. The commission must have chosen the site on which the facility would be constructed in the manner proscribed by the act. An agreement must exist between the commission and the hazardous waste industry that the industry will provide the needed compensation for land acquired by the commission. The industry must have tried to obtain the needed land from the owner "in good faith bargaining". Finally, the hazardous waste industry must have DEP approval for the registration statement and engineering design of the proposed facility. Only after these four conditions are met may the commission employ its land acquisition and conveyance powers.

WITHDRAWAL OR REPEAL OF FACILITY SITE

The commission may repeal or withdraw a new major hazardous waste facility site at the request of the governing body of any affected municipality or upon its own motion. The commission must rule that such action is consistent with the purposes and provisions of the act.

THE LICENSING PHASE

REGISTRATION STATEMENT AND ENGINEERING DESIGN APPROVAL

The Siting Act requires the following application process when a company plans to construct a major hazardous waste treatment facility.

As of September 10, 1981, no one can begin construction of any major hazardous waste facility before obtaining the approval of DEP for a registration statement and engineering design. A registration statement is the operating license for a major hazardous waste facility, while the engineering design is the specifications and parameters for the construction and operation of a facility. DEP will review these items in consultation with the council. The review process is conducted in the following manner.

LETTER OF INTENT
90 DAYS

At least ninety days prior to filing an application for registration and engineering design approval, the applicant must submit to the DEP and the governing body of the affected municipality a letter stating his intention to apply for registration and engineering design approval, a disclosure* statement, and a brief description of the nature of the proposed facility.

*(A disclosure statement identifies all persons holding more than 10% of any business involved, directly or in a support role, with the construction and/or operation of a new major hazardous waste facility.)

REVIEW OF LETTER OF INTENT
60 DAYS

Within sixty days of the receipt of a letter of intent, the DEP in consultation with the governing body of the affected municipality and the council, must arrive at a decision, based on the disclosure statement and the attorney general's report, regarding the competency of the applicant in the treatment, storage, or disposal of hazardous wastes. DEP will inform the applicant if sufficient competency has been shown to warrant the submission of an application for registration and engineering design approval.

The DEP must send by certified mail a complete copy of any application to the governing body, board of health, planning board, and environmental commission of the affected municipality.

MUNICIPAL REVIEW
6 MONTHS

Within six months of receiving the complete application, the affected municipality must conduct a review, including site plan review, conducted in the manner provided by the Municipal Land Use Law (MLUL) (P.L. 1975, c.291), of the proposed facility and operator. Site plan review, under the MLUL, requires a public hearing on the application. The cost of the review may not exceed \$15,000 per application and must be borne by the applicant. In preparing this review, the affected municipality may request and receive any reasonable and relevant information from the applicant or DEP.

DEP DECISION
8 MONTHS

Within eight months of the receipt of a complete application, DEP will reject or grant tentative approval to the application. The tentative approval will establish design and operating conditions for the proposed major hazardous waste facility, requirements for the monitoring of the facility, and any other conditions required under state rules and regulations. All tentative approvals must be sent to the applicant and to the affected municipality.

With tentative approval, DEP must include a fact sheet setting forth the principle facts and the significant factual, legal, methodological, and policy questions considered in granting the tentative approval. The fact sheet must include:

1. A description of the type of facility or activity proposed.
2. The types and quantities of wastes which are proposed to be treated, stored, or disposed of at the proposed facility.
3. A brief summary of the basis for the conditions of the tentative approval.
4. The environmental and health impact statement.
5. A summary as to how the impact statement demonstrates that the proposed facility would not create a significant adverse impact on the public health or environment.
6. In the event that the tentative approval is contrary to the findings of the municipal review of the application, the DEP's reasons for the rejection of those findings.

ADJUDICATORY HEARING 45 DAYS

Within forty-five days of the granting of tentative approval, an adjudicatory hearing on the proposed facility and operator must be conducted by an administrative law judge. The affected municipality will be a party of interest to such a hearing and has the right to present testimony and cross-examine the witnesses. Intervention in the hearing by other persons is as provided in the Administrative Procedures Act. The law sets no time limit on the length of the adjudicatory hearing.

DEP FINAL ACTION 60 DAYS

Within sixty days of the receipt of the administrative law judge's recommendations, DEP will affirm, conditionally affirm or reject the recommendations and grant final approval or deny the application for a registration statement and engineering design. The approval or denial is to be 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 Court. If the DEP fails to act upon the recommendations of the administrative law judge, the failure will constitute departmental affirmation of the recommendation.

EXEMPTIONS

The DEP may, upon the request of an owner or operator and after a public hearing, exempt a major hazardous waste facility below a certain size or of a particular type from being considered a major hazardous waste facility and therefore from registration statement and engineering design approval. An exemption must be consistent with the eligibility standards contained in rules and regulations adopted by the commission.

FACILITY CONSTRUCTION

Once approval is granted, the owner or operator may construct and operate the facility independently of local zoning ordinances. The facility does not have to be submitted to or approved by a county or municipal governing body,

zoning or planning board, or other agency, subject to the other provisions of the act. A facility, however, must be constructed in compliance with the state Uniform Construction Code Act (P.L. 1975, c. 217). DEP will conduct inspections during construction under the supervision of the State Uniform Construction Code Office.

EXPANSION OF EXISTING FACILITIES

DEP may not approve a registration statement or engineering design for any new major hazardous waste facility before the adoption of the siting criteria. However, DEP may grant amendments to registration statements or engineering designs filed under section 5 of P.L. 1970, c.39 (c. 13:1E-5) for the expansion of existing major hazardous waste facilities prior to criteria adoption. If the expansion is more than fifty percent of the capacity of the facility as of the effective date of the act, the expansion must be approved under the full process. This will also apply after the adoption of siting criteria.

FACILITY DESIGN REQUIREMENTS

The Major Hazardous Waste Facilities Siting Act requires that all new major hazardous waste facilities are:

1. Totally or partially constructed above existing grade;
2. Physically accessible to inspection personnel;
3. Designed to allow 99.9% extraction of all hazardous waste stored or disposed of at the facility;
4. Designed to prevent any significant adverse impact on the environment or public health.

Registration statements and engineering designs which do not meet the requirements of conditions (1) and (2) may be approved by the DEP only if: all alternatives to the proposed facility design are technologically or economically impracticable; all hazardous waste to be treated, stored or disposed of in the proposed facility can be effectively monitored; the requirements of (3) and (4) will not be violated; and that approval is consistent with the purpose and provisions of the act.

THE REGULATING PHASE

Ultimately, a site will have been selected and a major hazardous waste facility built. The question for the citizen then becomes, "What safety monitoring will take place?" and "What are the paths for participation at this stage?"

The Major Hazardous Waste Facilities Siting Act establishes several procedures for monitoring hazardous waste facilities at the local level. The local or county board of health and the DEP must both conduct weekly inspections. The DEP and the local or county board of health have the right to enter any major hazardous waste facility at any time. The law appropriates \$50,000 to DEP to conduct training programs for these local officials.

If the board of health discovers violations during its weekly inspection, it may institute court action in order to restrain the violation and any other relief the court considers proper. One-half of any penalties resulting from such discoveries will go to the board which conducted the investigation. The same rule applies to individuals who supply information which assists in the arrest and conviction of anyone for the illegal treatment, storage, or disposal of hazardous waste. Facilities can be closed for failing to comply with the laws and regulations on hazardous wastes.

CONSERVATORSHIP

The commission may establish a conservatorship for a facility instead of a closure. A conservator is an appointee who takes possession and control of all the property and business of the registrant relating to the major hazardous waste facility; the conservator operates the business. The commission can institute a conservatorship if the DEP revokes a facility's registration or if DEP suspends a facility's registration for more than one hundred twenty days.

The governing body of a municipality or county in which a facility is located may petition a court to impose a conservatorship if the facility is posing a substantial threat to the health, safety, and welfare of the residents. Thirty days prior written notice of the intended court petition must be given to the commission. If the commission fails to act to the satisfaction of the affected municipality or county within the thirty day period, the action may be filed. The court will then determine if a conservatorship should be imposed on the facility.

FINANCIAL RESPONSIBILITY

The Siting Act addresses the financial consequences resulting from the presence of a major hazardous waste facility in a municipality and county.

DEP must require the owner or operator to provide evidence of financial responsibility for the duration of the operations of the facility. The owner or operator must also establish a mechanism to defray closing costs and post-closure monitoring expenses for the length of time DEP considers proper. Escrow accounts, performance bonds, or other measures may be employed to fulfill this requirement. DEP will assume post-closure monitoring thirty years after the closure of a facility.

Liability

The act provides that the owner or operator of a facility will be held jointly and severally strictly liable for all direct and indirect damages resulting from the operation or closure of a facility without regard to fault. The injured party does not have to prove negligence on the part of the operator, only that something happened and the party was damaged. Liability covers any personal or medical expenses resulting from such damages. The owner is also liable for the cleanup and removal of any discharge of a hazardous substance, as defined in Section 3 of the Spill Compensation and Control Act (P.L. 1976, c.141), which occurs at the facility. Liability is subject only to the monetary limits and defenses provided in Section 8 of that act.

Property Tax

As regards local property taxes, the municipality will assess and tax a hazardous waste facility in the same manner as other real property. This provision is to apply even in cases where the facility was constructed on land formerly exempt from local real property taxes, such as public agency property.

Municipal Services

The act provides for the cost of municipal services resulting from a facility. Each year, five percent of the gross receipts from all charges for treatment, storage, or disposal of hazardous wastes must be paid to the municipality where the facility is located. Specifically, the money is to be appropriated as follows: extra police and fire protection costs; local facility inspection programs, provided they are conducted in accordance with the act; road construction or repair costs necessitated by the transportation of hazardous waste through the municipality to the facility; other expenses directly related to the impact of the facility on the municipality.

In the event that the municipality believes that the five percent collected is insufficient in covering the additional costs posed by a facility, the municipality may petition the commission to increase the tax. An owner or operator may go through the same process if they desire a reduction of the five percent charged.

RATE REGULATIONS FOR HAZARDOUS WASTE DISPOSAL FACILITIES

The Siting Act states that nothing in it will authorize the commission or DEP to impose any restrictions or regulations upon the rates charged by a facility for the treatment, storage, or disposal of hazardous waste. This same prohibition applies to the Board of Public Utilities and other state and local governmental bodies.

Within five years of the effective date of the act, the commission, in consultation with DEP and the council, is to prepare a report for the governor and the legislature on the need for state rate regulation of major hazardous waste facilities. This same report is to include the need for state construction and operation of major hazardous waste facilities and for the state operation of a hazardous waste exchange. The act provides, however, that nothing in it authorizes the commission or the DEP to construct or operate a facility.

CONCLUSION

The object of the Major Hazardous Waste Facilities Siting Act is twofold. One is to protect the public health and the environment by establishing sites for the proper treatment, storage, or disposal of hazardous waste. The second is to maintain a proper balance between competing state and local interests. As public participation is essential in achieving these objectives, the provisions in the act for participation must be "liberally construed" to maximize this participation.

2

Public Participation in The Siting Act

Public participation will be a deciding factor in the success of the Major Hazardous Waste Facilities Siting Act. Public opposition has been a major cause in stopping the construction of new hazardous waste facilities. The act seeks to prevent this in the future through a complex siting process and the use of eminent domain. Facilities will be sited and built despite public opposition. However, the drafters of the act carefully included the public throughout the siting process and provided a mechanism to answer the public's fears. If New Jersey is to have safe and acceptable hazardous waste facilities, citizens must become involved in choosing what sites we need, where they should be developed, and what safety measures must be provided. The act includes the public in these decisions. The public must choose to participate.

The Major Hazardous Waste Facilities Siting Act provides for three types of public participation: a public information program, public meetings and hearings, and municipal participation in the siting process.

PUBLIC INFORMATION PROGRAM

Section 10d requires that the commission, in consultation with the advisory council and the Department of Environmental Protection (DEP), establish a public information program. This program must address the nature and dimension of the hazardous waste problem, the need for siting of hazardous waste facilities, the responsibilities of the commission, council and DEP as well as the necessity and opportunities for public participation in the act. The commission will announce any avenues for public information other than those outlined in the act at this time.

PUBLIC MEETINGS AND HEARINGS

The majority of public input in the siting process will occur during the public meetings and hearings required. A public hearing is required for comments on:

- The Preliminary DEP Siting Criteria
- The Final DEP Siting Criteria
- The Hazardous Waste Facilities Plan
- Exemptions from the Registration and Engineering Design requirements
- If required by other laws involved in the process such as the Municipal Land Use Law during site plan review.

Hearings and meetings on the siting criteria and the plan will be held in several locations throughout New Jersey. Notice must be published at least thirty days in advance in at least two newspapers (four newspapers for the revised criteria). In addition, for the public meeting on the preliminary siting criteria, the DEP must notify every municipal clerk and environmental commission in each meeting's specified geographic area.

Public participation on the siting criteria is one of the most important points of public involvement. At this time, the DEP will be developing guidelines for the commission to base specific decisions on where to site hazardous waste facilities. The siting criteria will define the type of area in which hazardous waste facilities should be put. If members of the public feel, for example, that a facility should not be sited near a school or in certain soil types, this is the point to speak up, not once a specific site is chosen.

The plan will determine how many and what types of facilities are needed in New Jersey as well as methods to reduce the generation of hazardous waste. Again, public comment will play an important role in such decisions as whether to build incinerators or landfills.

Both the commission and the council may hold additional public meetings or hearings whenever they feel it necessary. No doubt both bodies will hold public meetings throughout the complete siting process.

Both the commission and the council are subject to the Open Public Meetings Law (P.L. 1975, c.231) commonly known as the Sunshine Act. Both their meetings and their minutes are open to the public unless they meet the requirements for closed session (Sec. 12(5)).

MUNICIPAL REVIEW PROCESS

The third avenue for public participation is the municipal review process. When the commission proposes a site, it must notify the governing body, board of health, planning board, and environmental commission of the affected municipality by certified mail. The commission will provide the affected municipality with a grant to conduct a site suitability study of the proposed site. Citizens with concerns about the suitability of the site should contact their governing body to find out who will be in charge of the municipal study. Specific questions and issues should then be addressed to that person or body. The environmental commission, if existing, or a citizens advisory board, could act as liaison between the citizens and the consulting firm hired to do the study.

Forty-five days after the municipality sends its study to the commission, an adjudicatory hearing will be held. An adjudicatory hearing affords "interested parties the opportunity to present their positions" and determines the rights, duties, privileges, benefits, or other legal relations of specific parties. The administrative law judge (the hearing officer) will review testimony to determine if locating a facility on the proposed site will not constitute a substantial detriment to the public health, safety, and welfare of the municipality.

The municipality is a party of interest to the adjudicatory hearing and has the right to present testimony and cross-examine witnesses. Other individuals or organizations may apply to the judge to intervene if they can show they are directly affected by the outcome of the hearing and their interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the hearing.

Any person or organization with a significant interest in the outcome of the hearing may also apply to "participate." Participation is the right to argue orally, to file a statement or brief, or both. The judge must decide whether the participant's interest is likely to add constructively to the case without causing undue delay or confusion.

Citizens in the municipality or neighboring towns with concerns about the suitability of the site should voice them to the municipality's attorney or file for the right to intervene or participate.

The adjudicatory hearing is conducted as a public hearing although it is more structured and allows the parties of interest to cross-examine the witnesses. The record is open to the public unless otherwise ordered by the judge for good cause shown. Anyone may obtain a copy of the transcripts for a fee (a \$100 deposit is required). The exact rules for the conduct of adjudicatory hearings is published in the July 10, 1980 New Jersey Register (12NJR 362-376).

Thirty days from the close of the hearing, the administrative law judge must make recommendations for action to the commission. When the commission considers the judge's recommendations, the affected municipality and the county each may appoint a member to the commission. The commission has thirty days to affirm, conditionally affirm, or reject the recommendations of the judge and adopt or withdraw the proposed site. If it objects to commission decisions, the municipality may appeal to the Appellate Division of the Superior Court. The testimony from the adjudicatory hearing will be used as the record.

If the site is accepted and a facility developer applies to build on that site, the DEP must send a complete copy of the application to the governing body, board of health, planning board, and environmental commission of the affected municipality. The municipality then has six months to conduct 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).

The Municipal Land Use Law requires the municipality to hold a public hearing on the application. Notice must be sent to the local newspaper and to property owners within 200 feet. Any maps and documents for which approval is sought must be on file at the municipal office and available for public inspection at least ten days before the hearing. Again, both the meetings, the minutes, and the application must be open or available to the public unless they meet the requirements for closed session.

During the municipal review, the municipality may negotiate with the applicant on the facility design, mitigation or monitoring measures, and compensation. For example, the municipality could require thicker landfill liners, emergency spill containment capability, buffer zones, monitoring wells, an access road, etc. As with any site plan, the municipality and the public should make sure that their questions are answered and the best design for the particular site is chosen. The municipality then submits its review to the DEP, which has the power to reject or grant tentative approval of the application.

Within forty-five days of DEP's positive decision, a second adjudicatory hearing is held on the proposed facility and operator to determine 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 municipality. As in the earlier hearing, the affected municipality is a party of interest with the right to present testimony and cross-examine witnesses. Citizens with concerns about the facility should discuss them with the municipality's attorney and/or file to intervene or participate.

Thirty days after the close of the hearing, the administrative law judge must make recommendations to the DEP which in turn has an additional sixty days to affirm, conditionally affirm, or reject the decision of the judge and grant final approval or deny the application. At this point, the municipality or the applicant may appeal DEP's decision in court with the proceedings of the hearing used as the record.

POST-CONSTRUCTION MONITORING

The act requires both the local board of health and the DEP to conduct weekly inspections of the facility. If a citizen suspects that a violation of state and/or federal regulations has occurred, he or she should contact either or both of those two bodies immediately. Anyone who supplies any information which results in the arrest and conviction of any other person for the illegal treatment, storage, or disposal of hazardous waste will be awarded one-half of any penalty collected.

CONCLUSION

Siting hazardous waste facilities is one of New Jersey's most controversial issues. Everyone is afraid of possible health and safety threats and loss of property values caused by facilities. Yet, we are equally frightened by the results of no facilities: illegal dumping and improper storage of toxics resulting in accidents like Chemical Control. Industry and EPA believe that the new facilities can be designed safely with a minimum of risk. If we are concerned about the truth of this belief, we must monitor the siting process, provide suggestions and requirements, and do our utmost to make this a reality.

The Major Hazardous Waste Facilities Siting Act goes beyond the usual scope of public participation. Instead of just public hearings and comments, the act provides the means for the public to be involved actively throughout the decision-making process. The municipality of a proposed facility has two opportunities to thoroughly review the site, the facility, and its operator and to present its views and expert witnesses in a court hearing on why a facility should or should not be built. The municipality has ample opportunity to ensure that a safe, acceptable facility is built and maintained.

The law is not perfect and it does not address all the hazardous waste issues. Many of its shortcomings, however, can be overcome through careful public scrutiny and involvement. The act offers many ways and opportunities to participate.

3

Exemptions and Concerns in The Siting Act

Often, when a law such as the Major Hazardous Waste Facilities Act is passed, people assume that the problem at hand has been solved. However, the act is only one step towards securing the safe management of hazardous wastes in New Jersey. The primary emphasis of the act is on major hazardous waste facilities and certain important aspects of hazardous waste management are not included. Segments of the act itself are subject to question. Public awareness of these concerns is important to the implementation of the act and the future safety of New Jersey residents.

WHAT IS COVERED BY THE ACT

The law covers only major hazardous waste facilities. These are facilities that:

- (1) have a total capacity to treat, store, or dispose of more than 250,000 gallons of hazardous waste or the equivalent of that, as determined by DEP;
- (2) accept hazardous waste from more than one generator for storage, treatment, or disposal at a site other than where the waste was generated;
- (3) do not handle exempted substances.

WHAT IS NOT COVERED BY THE ACT

The law does not cover facilities that might otherwise be classified as major, if they:

- (1) have a lower capacity,
- (2) accept waste from only one generator;
- (3) are located on the site of generation, or deal with exempted substances.

Facilities exempt under this act are governed by existing federal, state, and local regulations such as the federal Resource Conservation and Recovery Act and the Clean Water Act, the state Municipal Land Use Law and DEP regulations, and local zoning ordinances. The facilities are not, however, governed by a coordinated set of procedures for planning, siting, licensing, regulations and public participation as established in the act for major facilities.

One example of this lack of coordination is evident in the siting of exempt facilities. In the case of major facilities, a commission selects sites from a state-wide inventory of the sites best suited for that particular type of facility. Established siting criteria, public involvement, impact statements, hearings, investigations, and other steps are required before the final approval of the site. No such start-to-finish process governs the siting of an exempt major facility. Private individuals select the site from the available land in the locality. The selection and final approval are essentially local decisions and not part of a state-process attempting to secure the safest sites possible.

The Siting Act does not cover certain facilities even though they handle more than 250,000 gallons of hazardous waste. If a facility accepts waste from only one generator or if it handles waste at the same location at which it is generated, the facility is outside the act's jurisdiction.

Existing facilities that seek to expand their capacity by fifty percent or less are also not regulated by the act. An expansion of ten or twenty percent in some facilities would result in a large increase in the quantity of waste handled. The increase may exceed 250,000 gallons, normally placing it in the category of a major facility. Yet, since it is an expansion, it would not be subject to the act's coordinated system of safeguards.

An additional concern arises when the "expansion clause" is combined with another of the act's provisions. According to Section 12e, the DEP, at the request of an owner or operator and after a public hearing, may exempt certain major facilities from the licensing phase of the act. The drafters of the act believed that some facilities, such as one that collects and treats used automotive oil, may warrant exemption from some of the strict safeguards incorporated in the act. The concern arises if an exempted facility seeks to expand its capacity by fifty percent or less to include the handling of more dangerous substances. If approved, the entire facility would have been established outside of the coordinated and public processes called for by the act.

AREAS OF CONCERN WITHIN THE ACT

DEFINITION OF 250,000 GALLONS

Section 31. A principal factor in the classification of a facility as "major" is that it have a total capacity to treat, store or dispose of more than 250,000 gallons of hazardous waste or the equivalent of that, as determined by DEP. The absence of a clearly defined time span (i.e., per day, per year) within which the 250,000 gallons must be handled in order to qualify has caused confusion. This definition needs to be clarified.

WITHDRAWALS OF SITES

Section 4j. The governor is given the power to veto the minutes of the Hazardous Waste Facilities Siting Commission, thus making the commission's decisions void. The control of the governor over the commission (part of the executive branch) is normal procedure and makes the commission responsible to executive direction. However, the governor could veto a site-selection if that site were located in a politically influential area. Such a siting is possible as geographical data suggests that several potential sites are near localities that wield considerable political influence. The effort at the selection of a site through a rational process thus may be defeated.

Section 11c. The commission is given the power to withdraw at its own discretion any site adopted for a new "major" facility. Again, this could lead to withdrawal of a suitable site for expediency or political favoritism. On the other hand, the commission's power to withdraw sites will make it possible for unused sites to be removed from the hazardous waste planning process under the act and allow local planning to proceed accordingly.

CODISPOSAL OF WASTES

Section 10b. The act mandates that the Major Hazardous Waste Facilities Plan will include procedures to encourage the codisposal of solid and hazardous wastes. Codisposal can be extremely dangerous and unnecessary, resulting in explosions, groundwater contamination and other unwanted effects. New technology may be both safe and economically desirable. However, care must be exercised to prevent the use of unsafe methods of codisposal.

SECURE LANDFILLS

Section 13. The act attempts to discourage the construction of secure landfills for the storage of hazardous wastes. Landfills in some cases may be justified, as in storing ash after waste incineration: A considerable body of evidence indicates that no landfill can be constructed to contain "raw" toxic wastes for the duration of their toxicity which may be for thousands of years. (Arsenic, for example, never loses its toxicity.)

Two restrictions on the construction of secure landfills are contained in the act in recognition of this evidence. The act states that waste must be effectively monitored and that approval will be granted only if all alternatives to the proposed facility design are technologically or economically impracticable. Impracticable has different meanings depending on the political climate at any given time. A situation could arise where the most expedient and least expensive management option is a landfill, even if it is not the best possible choice. Any proposal for a secure landfill should receive close scrutiny by the public.

COMMERCIAL STATUS OF ON-SITE FACILITIES

New Jersey has on-site facilities with sufficient capacity to qualify as major facilities if they handled waste from off-site sources. Some of these facilities may want to convert to commercial operations; a ruling is pending to determine if they will be governed by the act. As these are major facilities in all but name, the public should carefully review any decision not to place on-site operations under the jurisdiction of the act.

COST OF SITE SUITABILITY STUDIES

Section 11a(1d). The governing body of a municipality selected as a "proposed site" must conduct a site suitability study under a grant from the commission. A total of \$100,000.00 is appropriated in the act for these grants. This sum may be insufficient for conducting several site suitability studies and additional monies may be impossible to obtain. The result could be cursory studies rather than thorough studies necessitated by the nature of the facilities involved.

COST OF REVIEWS OF FACILITIES AND OPERATORS

Section 12b(4). The affected municipality is required to conduct a review of the proposed facility and operator, including a site plan review conducted as provided by the Municipal Land Use Law. The applicant is to bear the cost of the municipal review which is not to exceed \$15,000.00. The municipality may be unable to have a thorough review conducted with the funds provided. If additional funds can be obtained and how a proper study can be conducted with insufficient funds are two questions raised by concerned individuals.

PUBLIC PARTICIPATION IN ADJUDICATORY HEARINGS

Sections 11a(3) and 12b(7). The public is not an automatic participant in the act's adjudicatory hearings. The affected municipality is granted party of interest status while citizens-at-large are not. Direct intervention or participation by other persons is at the discretion of the presiding administrative law judge. It is hoped that the municipality will adequately represent their citizens. The public should be aware of the application procedures for party of interest status and the other paths of participation available to them.

TERMS AND DEFINITIONS

Adjudicate: To settle in the exercise of judicial authority. To determine finally.

Adjudicatory hearing: A proceeding before an administrative agency in which the rights and duties of particular persons are adjudicated after notice and opportunity to be heard.

Administrative Law Judge: One who presides at an administrative hearing with power to administer oaths, take testimony, rule on questions of evidence, and make agency determinations of fact. Formerly called "hearing officer" or "hearing examiner".

Administrative Procedures Act (Chapter 410, P.L. 1968): outlines the procedures for the formulation and promulgation of rules and regulations by the various departments of the New Jersey State government.

The act requires that each agency 1) adopt as a rule a description of its organization stating among other things the methods whereby the public may obtain information or make submissions or requests; 2) adopt rules of practice including a description of all required forms and instructions used by the agency; and 3) make available for public inspection all final orders, decisions and opinions.

The act outlines steps to be followed in adoption or amendment or repeal of rules except where provided otherwise in a specific statute. These steps include 1) give at least twenty days notice of intended action including the manner, place and time when the public may present their views. These notices shall be published in the New Jersey Register and 2) afford all interested persons reasonable opportunity to submit data, views or arguments orally or in writing. The agencies are directed in this act, to consider fully all written and oral submissions respecting the proposed rule. Exceptions to the above procedures are occasions when there is imminent peril to the public health or safety. Proceedings to contest any rule on the ground of noncompliance with these procedural requirements must be commenced within one year of effective date of the rule.

Contested cases are defined in this law as actions in which statutory or constitutional requirements call for an opportunity for an agency hearing. Procedures for such hearings are outlined in Section 14 b-9 of the Act.

DEP: New Jersey Department of Environmental Protection.

Disclosure statement: a statement submitted to the department by an applicant that includes: 1) the name and address of all officers, directors, or partners of the business concern seeking a registration and engineering design approval. Further, all persons or business concerns holding more than 10 percent of the equity in or debt liability of that business concern; 2) the names and addresses of all officers, directors, or partners of any business concern disclosed in the statement. Further, the names and addresses of all persons holding more than ten percent of the equity; 3) the name and address of any company which collects, treats, stores or disposes of hazardous waste in which the business concern seeking a registration and engineering design approval holds an equity interest; 4) a description of

the experience and credentials in, including past or present licenses for, the collection, treatment, storage or disposal of hazardous waste possessed by the key employees, officers, directors, or partners of the business concern seeking a registration and engineering design approval; 5) a listing and explanation of any notices, administrative orders or license revocations issued by any state or federal authority since January 1, 1976 which indicate a violation of any law or rule and regulation relating to the collection, treatment, storage or disposal of hazardous waste by the business concern seeking a registration and engineering design approval or by any key employee, officer, director or partner; 6) a listing and explanation of any judgement of liability or conviction which was rendered, pursuant to any state or federal statute or local ordinance concerning the collection, treatment, storage or disposal of hazardous waste, against the business concern seeking a registration and engineering design approval or against any key employee, officer, director or partner; 7) any other information the DEP may require that relates to the competency or reliability of the applicant.

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

Environmental and health impact statement: a statement of likely environmental and public health impacts resulting from the construction and operation of a major hazardous waste facility. It will include: 1) an inventory of existing environmental conditions at the site; 2) a project description; 3) an assessment of the impact of the project on the environment and on public health; 4) a listing of unavoidable environmental and public health impacts; 5) steps to be taken to minimize environmental and public health impacts during construction and operation.

Hazardous waste: any waste or combination of wastes which pose a present or potential threat to human health, living organisms or the environment. This will include but not be 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.

Hazardous waste facility: 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. 1) Major hazardous waste facility: 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 DEP. Any facility which would be considered a major hazardous waste facility solely as the result of the recycling or rerefining of any hazardous wastes composed of or containing gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium or copper will not be considered a major hazardous waste facility for the purposes of the act. 2) Existing major hazardous waste facility: any major hazardous waste facility which

accepts hazardous waste from more than one generator for storage, treatment or disposal at a site other than the site at which the hazardous waste was generated.

Hazardous waste industry: any industry which operates a hazardous waste facility or which proposes to construct or operate a facility.

Owner or operator: includes, in addition to the usual meanings, every owner of record of any interest in land on which a major hazardous waste facility is or has been located. Further, any person or corporation which owns a majority interest in any other corporation which owns or operates any major hazardous waste facility.

Registration statement or registration: the operating license, approved by the DEP, for a major hazardous waste facility. "Registrant" is the person to whom such approval was granted.

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All the above publications are available at the ANJEC Resource Center.