

GENERAL ASSEMBLY OF NORTH CAROLINA

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Environment & Natural Resources
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Short Title: Haz. Waste Management.

(Public)

Sponsors:

Referred to:

February 28, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE MANAGEMENT OF HAZARDOUS WASTE IN NORTH CAROLINA, TO CREATE THE NORTH CAROLINA INDUSTRIAL WASTE MANAGEMENT COMMISSION, TO ABOLISH THE NORTH CAROLINA HAZARDOUS WASTE TREATMENT COMMISSION AND TRANSFER ITS FUNCTIONS, POWERS, AND DUTIES TO THE NORTH CAROLINA INDUSTRIAL WASTE MANAGEMENT COMMISSION, TO AMEND VARIOUS STATUTES RELATING TO THE MANAGEMENT OF HAZARDOUS WASTE, AND TO MAKE CONFORMING CHANGES TO OTHER STATUTES.

The General Assembly of North Carolina enacts:

Section 1. A new Chapter is added to the General Statutes to read:

“CHAPTER 130B.

“INDUSTRIAL WASTE MANAGEMENT COMMISSION.

“§ 130B-1. Title; applicability.

(a) This Chapter shall be known and may be cited as the ‘North Carolina Industrial Waste Management Commission Act of 1989’.

(b) The provisions of this Chapter shall not be construed to apply to any hazardous waste facility other than authorized hazardous waste facilities established pursuant to this Chapter.

“§ 130B-2. Definitions.

1 (a) Unless a different meaning is required by the context, the definitions set out
2 in G.S. 130A-290 shall apply throughout this Chapter.

3 (b) Unless a different meaning is required by the context, the following
4 definitions shall apply throughout this Chapter:

5 (1) 'Authorized hazardous waste facility' means a hazardous waste facility
6 approved by the Governor as provided in G.S. 130B-5(a).

7 (2) 'Board' means the Governor's Waste Management Board established
8 pursuant to Part 27 of Article 3 of Chapter 143B of the General
9 Statutes.

10 (3) 'Commission' means the North Carolina Industrial Waste Management
11 Commission established pursuant to this Chapter, its governing board,
12 or any successor thereto.

13 **"§ 130B-3. Legislative findings.**

14 The General Assembly of North Carolina hereby finds that the safe management of
15 hazardous waste, and particularly the timely establishment of adequate facilities for the
16 treatment and disposal of hazardous waste, is one of the most urgent problems facing
17 North Carolina. The safe management of hazardous waste is essential to continued
18 economic growth and to protect public health and safety and the environment.
19 Consequently, cooperation and coordination among the private sector, the general
20 public, the State, and local governments to assure the prevention of unnecessary waste
21 and the establishment of a comprehensive and integrated system of adequate treatment
22 and disposal facilities are essential.

23 The General Assembly of North Carolina finds that prevention, recycling,
24 detoxification, and reduction of hazardous wastes should be encouraged and promoted.
25 These alternatives reduce the quantity and toxicity of hazardous waste requiring
26 treatment or disposal and thus lessen the risk posed by hazardous waste to human health
27 and the environment. When these alternatives are not technologically or economically
28 feasible, retrievable storage may be preferable to other means of disposal until
29 appropriate methods for recycling or detoxification of the stored wastes are found.

30 Hazardous waste should be treated to the full extent technologically and
31 economically feasible prior to long-term storage or disposal in North Carolina.
32 Disposal of the residual or ash of treated hazardous waste should occur only when its
33 toxicity is reduced to the point that there would be no significant risk to public health
34 and safety or to the environment in the event of leakage from the disposal facility.
35 Hazardous waste that cannot be detoxified, stabilized, or destroyed so as to present no
36 significant risk to the public health or safety or to the environment should be placed in
37 retrievable storage until satisfactory treatment processes become available. Hazardous
38 waste in retrievable storage should be detoxified as soon as it is determined that it is
39 technologically possible to do so at a reasonable cost. Hazardous waste disposal
40 facilities and polychlorinated biphenyl landfill facilities should be detoxified as soon as
41 it is technologically and economically feasible to do so.

42 The General Assembly further finds that while the foregoing findings, which were
43 articulated in similar form in legislation enacted in 1981 and 1984, continue to hold
44 true, circumstances have changed since that time which require adjustments in the

1 State's hazardous waste management policy. Specifically, the General Assembly finds
2 that the most practical approach to hazardous waste management, including compliance
3 with the CERCLA/SARA capacity assurance requirements, is through a regional
4 approach. The General Assembly finds that the development of a full range of
5 comprehensive hazardous waste treatment and disposal facilities in this and every state
6 is neither environmentally nor economically sound. The General Assembly finds that
7 minimization, and wherever possible elimination, of hazardous waste generation, and
8 hazardous waste reduction, recycling, and on-site treatment are preferable to off-site
9 treatment and disposal.

10 The General Assembly of North Carolina finds that local governments have an
11 important role in promoting public health and safety, encouraging planned and orderly
12 land use development, and in providing services to meet the needs of educational and
13 health institutions, business, and industry. The General Assembly of North Carolina
14 further finds that the reasonable concerns and reasonable decisions of local authorities
15 should be considered in the siting, permitting and operation of hazardous waste
16 facilities.

17 **"§ 130B-4. Purpose.**

18 It is the purpose of this Chapter to provide for the siting, construction, and operation
19 of hazardous waste facilities to the end that hazardous waste may be treated or disposed
20 of in the most cost-effective manner, while protecting public health and safety and the
21 environment. It is the purpose of this Chapter to promote a regional approach to
22 hazardous waste management. It is the purpose of this Chapter to provide a mechanism
23 to assess the need for hazardous waste treatment and disposal in this State and in the
24 region, to determine the scope and capacity of hazardous waste facilities needed in this
25 State in order that North Carolina is in a position to assume its fair share in the
26 management of hazardous waste so that the benefits and burdens of hazardous waste
27 management are equitably shared by all states, and to cause to come into existence such
28 facilities as are needed. It is the purpose of this Chapter to promote interstate
29 agreements for the management of hazardous waste which will assure access to
30 hazardous waste facilities on a regional basis. It is the purpose of this Chapter to
31 encourage the development of hazardous waste facilities which are needed in this State
32 through the efforts of private enterprise. It is the purpose of this Chapter to create a
33 commission to assist private enterprise with the development of needed hazardous waste
34 facilities through the performance of those tasks which private enterprise is unable or
35 unwilling to undertake or accomplish. It is the purpose of this Chapter to authorize the
36 Commission to site, design, finance, construct, operate, oversee, acquire, hold, sell,
37 lease, or convey needed hazardous waste facilities to the extent that private enterprise
38 fails to provide such facilities.

39 It is also the purpose of the General Assembly through powers granted to the
40 Governor's Waste Management Board to limit the extent to which units of local
41 government may regulate the management of hazardous waste by means of local acts,
42 laws, resolutions, ordinances, rules, or regulations, including but not limited to those
43 relating to taxes and fees, local land use including zoning and other restrictions on the

1 use of property, building codes, fire protection, civil defense, preparation for and
2 response to emergencies, and public health.

3 Furthermore, it is the purpose of this Chapter to establish an effective and
4 comprehensive policy of negotiation and arbitration between the Commission or other
5 applicant for a permit to operate a hazardous waste facility pursuant to this Chapter and
6 a committee representing the affected local government(s) to assure that:

7 (1) The legitimate concerns of nearby residents and affected
8 municipalities can be expressed in a public forum, negotiated and, if
9 need be, arbitrated with the Commission in a fair manner and reduced
10 to a written document that is legally binding; and

11 (2) Environmentally sound and economically viable hazardous waste
12 facilities will be established.

13 **"§ 130B-5. Powers and duties of the Governor.**

14 (a) No hazardous waste facility shall be established pursuant to this Chapter
15 unless the Governor determines that such facility is essential and is in the best interests
16 of the State. Such determination shall be based on a periodic review of current and
17 projected hazardous waste generation from all sources within the State, the current and
18 projected effect of efforts to minimize and reduce the generation of hazardous waste, the
19 potential for further reductions in the generation of hazardous waste, current and
20 projected availability and adequacy of facilities for the management of hazardous waste
21 within and outside the State, whether and to what extent private enterprise will provide
22 needed hazardous waste facilities, capacity assurance requirements under
23 CERCLA/SARA, the extent to which agreements can be negotiated for the management
24 of hazardous waste outside the State, and the extent to which the State should obligate
25 itself to provide facilities for the management of hazardous waste generated outside the
26 State. The Governor shall take into consideration the comprehensive waste
27 management plan developed by the Board pursuant to G.S. 143B-216.13(6b) in making
28 any determination under this subsection. Such determination shall be made in writing
29 and shall specify the functions, technologies, and design capacities of the hazardous
30 waste facility to be established.

31 (b) With respect to each hazardous waste facility to be established pursuant to
32 this Chapter the Governor shall:

33 (1) Authorize the establishment of the facility as provided in subsection
34 (a) of this section;

35 (2) Approve and modify as necessary a schedule for selection of the
36 preferred and alternate sites for the facility;

37 (3) Approve and modify as necessary a schedule for the development of
38 the facility; and

39 (4) Approve the technology and design capacity of each component of the
40 facility.

41 (c) The Governor is authorized to enter into interstate agreements for the
42 management of hazardous waste. Such agreements should not result in an overall
43 hazardous waste management burden in this State greater than that which would result
44 if no hazardous wastes were imported into or exported from the State. The Governor

1 shall submit any such agreement to the General Assembly for its approval, and no such
2 agreement shall be effective until approved by the General Assembly.

3 **"§ 130B-6. Organization and administration of the Commission.**

4 (a) Creation. – The North Carolina Industrial Waste Management Commission is
5 hereby created as follows:

6 (1) The Commission shall be located within the Department of
7 Commerce. The Commission shall exercise all of its powers
8 independently of the Secretary of Commerce and, notwithstanding any
9 other provision of law, shall be subject to the direction and supervision
10 of the Secretary of Commerce only with respect to the management
11 functions of coordinating and reporting.

12 (2) The Commission shall continue until its existence shall be terminated
13 by law. Upon the termination of the existence of the Commission, all
14 of its rights and properties shall pass to and be vested in the State.

15 (3) The Department of Commerce and the Department of Administration
16 shall provide such technical, clerical, and other support services and
17 personnel as the Commission may require in the performance of its
18 functions. The Commission shall reimburse the Departments for such
19 services from its revenues or from other funding sources.

20 (b) Membership. – The Commission shall be governed by a board composed of
21 nine members. Members of the General Assembly, the Board, the Commission for
22 Health Services, and members or employees of any State or federal agency, board, or
23 commission which exercises regulatory authority with respect to any activity of the
24 Commission shall be ineligible for appointment to membership on the Commission.

25 (c) Appointments. – Appointments to the Commission shall be made as follows:

26 (1) The Governor shall appoint five members.

27 (2) The General Assembly shall appoint four members in accordance with
28 G.S. 120-121, two upon recommendation of the Speaker of the House
29 of Representatives and two upon recommendation of the President Pro
30 Tempore of the Senate.

31 (3) Successors shall be appointed by the appointing authority making the
32 original appointment.

33 (4) Vacancies in appointments shall be filled for the unexpired term.
34 Vacancies in appointments made by the General Assembly shall be
35 filled in accordance with G.S. 120-122.

36 (5) Members of the Commission shall include persons with expertise in
37 the technical, legal, and financial aspects of hazardous waste
38 management and shall represent, insofar as practicable, the diverse
39 interests and geographic regions of the State. At least six of the
40 members of the Commission shall be persons who do not derive any
41 significant portion of their income from persons who generate or
42 transport hazardous waste or who operate hazardous waste facilities.
43 The Governor, the Speaker of the House of Representatives, and the
44 President Pro Tempore of the Senate shall consult with one another to

1 insure that the requirements of this subdivision are met. Each
2 appointing authority shall require adequate disclosure of potential
3 conflicts of interest by members of the Commission.

4 (d) Terms.

5 (1) All appointments made by the Governor, other than initial
6 appointments, shall be for a term of four years. The Governor shall
7 have the power to remove, in accordance with G.S. 143B-13, any
8 member appointed by the Governor.

9 (2) All appointments made by the General Assembly, other than initial
10 appointments, shall be for a term of two years. The General Assembly
11 shall have the power to remove, in accordance with G.S. 143B-13, any
12 member appointed by the General Assembly.

13 (3) Terms shall expire on 30 June as provided by this subsection, except
14 that members of the Commission shall serve until their successors are
15 appointed and duly qualified as provided by G.S. 128-7.

16 (4) Of the initial appointments made by the Governor, one term shall
17 expire 30 June 1990, one term shall expire 30 June 1991, one term
18 shall expire 30 June 1992, and two terms shall expire 30 June 1993.
19 Successors shall be appointed to serve four-year terms.

20 (5) Of the initial appointments made by the General Assembly on
21 recommendation of the Speaker of the House of Representatives, one
22 term shall expire 30 June 1991 and one term shall expire 30 June 1992.
23 Of the initial appointments made by the General Assembly on
24 recommendation of the President Pro Tempore of the Senate, one term
25 shall expire 30 June 1991 and one term shall expire 30 June 1992.

26 (e) Officers. – The Governor shall appoint from the members of the Commission
27 the Chairman and Vice-Chairman of the Commission. The Executive Director of the
28 Commission shall serve as Secretary of the Commission.

29 (f) Meetings. – The Commission shall meet at least quarterly at such time and at
30 any place within the State as the Commission may provide. The Commission shall meet
31 upon the call of its Chairman or a majority of its members. A majority of its members
32 shall constitute a quorum for the transaction of business. Members of the Commission
33 who are State employees shall be reimbursed for their expenses in accordance with G.S.
34 138-6. Members of the Commission who are not State employees shall be reimbursed
35 for their expenses in accordance with G.S. 138-5 except that the per diem rate as
36 defined in G.S. 138-5(a)(1) shall be one hundred fifty dollars (\$150.00) per day of
37 service.

38 (g) Executive Director and Staff. – The Commission shall be assisted by an
39 Executive Director and staff who shall be subject to provisions of law applicable to
40 State employees generally, including Chapters 126 and 135 of the General Statutes,
41 except as such provisions are modified by this Chapter.

42 (1) The Commission shall appoint an Executive Director, who shall report
43 to the Commission and serve at its pleasure. The Executive Director
44 shall be the chief administrative officer of the Commission. The

1 Commission shall set, subject to consultation with the Advisory
2 Budget Commission, and pay the compensation of the Executive
3 Director.

4 (2) The Executive Director shall be assisted by such senior professional
5 staff members as may be necessary to carry out the provisions of this
6 Chapter, who shall be appointed by the Commission on nomination of
7 the Executive Director. The Commission shall set, subject to
8 consultation with the Advisory Budget Commission, and pay the
9 compensation of the staff members it appoints.

10 (3) In addition, the Executive Director shall be assisted by such other
11 employees as may be needed to carry out the provisions of this
12 Chapter. The staff complement shall be established by the
13 Commission on recommendation of the Executive Director. Such
14 other employees shall be appointed by the Commission upon the
15 recommendation of the Executive Director and shall be compensated
16 by the Commission pursuant to the provisions of Chapter 126 of the
17 General Statutes.

18 **"§ 130B-7. Powers and duties of the Commission.**

19 (a) To carry out the purposes of this Chapter, the Commission:

20 (1) Shall (i) with the assistance of the Board and the Solid Waste
21 Management Section of the Division of Health Services of the
22 Department of Human Resources, periodically review current and
23 projected hazardous waste generation from all sources within the State,
24 the current and projected effect of efforts to minimize and reduce the
25 generation of hazardous waste, the potential for further reductions in
26 the generation of hazardous waste, current and projected availability
27 and adequacy of facilities for the management of hazardous waste
28 within and outside the State, whether and to what extent private
29 enterprise will provide needed hazardous waste facilities, and capacity
30 assurance requirements under CERCLA/SARA, (ii) determine whether
31 additional facilities for the management of hazardous waste may be
32 needed in this State, and (iii) make appropriate recommendations to
33 the Governor and the General Assembly;

34 (2) Shall, at the request of the Governor and under his direction, assist
35 with the negotiation of interstate agreements for the management of
36 hazardous waste;

37 (3) Shall determine the sequence of tasks required to be accomplished in
38 order to site, design, finance, construct, and place into operation each
39 authorized hazardous waste facility, determine the time likely to be
40 required to accomplish those tasks, develop a proposed schedule for
41 the development of each such facility and submit such schedule to the
42 Governor for approval, and estimate the resources required to
43 accomplish those tasks and submit such estimate to the Governor and
44 the General Assembly;

- 1 (4) Shall site, design, finance, construct, and operate authorized hazardous
2 waste facilities;
- 3 (5) Shall adopt, consistent with the rules of the Commission for Health
4 Services and pursuant to Chapter 150B of the General Statutes, rules
5 specifying the criteria and procedures for evaluating alternative
6 locations for, and siting of, hazardous waste facilities;
- 7 (6) May employ consultants and contractors to provide services including
8 site selection, design, construction, operation, closure, and perpetual
9 care of hazardous waste facilities, necessary, desirable, or convenient
10 to carry out the purposes of this Chapter, and to fix and pay their
11 compensation;
- 12 (7) May acquire by deed, purchase, lease, contract, gift, devise,
13 condemnation, or otherwise, any real or personal property, structures,
14 rights-of-way, franchises, easements, and other interests in land which
15 is necessary and convenient for the construction or operation of
16 hazardous waste facilities, upon such terms and conditions as it deems
17 advisable, hold, mortgage, pledge, or otherwise encumber the same,
18 and lease, sell, convey, or otherwise dispose of the same in such
19 manner as may be necessary or desirable to carry out the purposes of
20 this Chapter;
- 21 (8) May exercise the powers of a body corporate, including the power to
22 sue and be sued, and may adopt and use a common seal and alter the
23 same as may be deemed expedient;
- 24 (9) May make all necessary contracts and arrangements with other
25 officials or agencies in this State and other states, including compact
26 commissions, for any of the purposes of this Chapter;
- 27 (10) Shall establish an office or offices for the transaction of its business at
28 such place or places as, in the opinion of the Commission, shall be
29 advisable or necessary in carrying out the purposes of this Chapter;
- 30 (11) May create and operate any divisions it deems necessary or useful;
- 31 (12) Shall pay all costs of the formation and organization of the
32 Commission, and incident to its administration and operation, and may
33 pay all other costs necessary in carrying out the purposes of this
34 Chapter;
- 35 (13) May develop and implement schedules of fees and other charges,
36 including user charges, penalties, and surcharges applicable to
37 hazardous waste facilities operated by the Commission;
- 38 (14) Shall make recommendations to the Governor as to the technology,
39 design capacity, operational features, and post-closure requirements of
40 hazardous waste facilities, and shall implement such recommendations
41 upon approval by the Governor;
- 42 (15) Shall pay, or assure that permittees and operators pay, all applicable
43 taxes and fees;

- 1 (16) May apply for, accept, and expend loans and grants of money from
2 any federal or State agency or any political subdivision thereof, from a
3 compact commission, or from any other public or private source for
4 any of the purposes authorized by this Chapter, and to give any
5 evidences of indebtedness as may be required. Except as may
6 hereafter be authorized by the General Assembly, no indebtedness of
7 any kind incurred or created by the Commission shall constitute an
8 indebtedness of the State or any of its political subdivisions, and no
9 such indebtedness shall involve or be secured by the faith, credit, or
10 taxing power of the State or any of its political subdivisions. At no
11 time may the total outstanding indebtedness of the Commission,
12 excluding bond indebtedness, exceed a total of five hundred thousand
13 dollars (\$500,000) without prior approval of the Governor, after
14 receiving the advice of the Advisory Budget Commission;
- 15 (17) May issue revenue bonds from time to time pursuant to The State and
16 Local Government Revenue Bond Act, Article 5 of Chapter 159 of the
17 General Statutes, and such bonds may be sold at public or private sale
18 pursuant to G.S. 159-123;
- 19 (18) Shall, if it elects to issue bonds, select and retain, subject to approval
20 of the Local Government Commission, financial consultants,
21 underwriters, and bond attorneys to assist with the issuance of such
22 bonds and to pay for services rendered;
- 23 (19) May pledge revenues from hazardous waste facilities to the benefit of
24 bondholders, or for other purposes necessary to secure financing;
- 25 (20) Shall make such plans, surveys, studies, and investigations as may be
26 necessary or desirable with respect to the acquisition, development,
27 and use of real property and the design, construction, operation,
28 closure, and long-term care of hazardous waste facilities;
- 29 (21) Shall receive all field data, charts, maps, tracings, laboratory test data,
30 soil and rock samples, and such other records as the Commission
31 deems appropriate, collected or produced by its employees,
32 contractors, or consultants pursuant to siting, operating, or closing of
33 hazardous waste facilities. All such data and materials shall become
34 the property of the State and shall not be disposed of except in
35 accordance with G.S. 132-3 except that soil and rock samples may be
36 subjected to tests and reduced in volume for purposes of storage in a
37 manner approved by the Commission. The Commission may enter
38 into agreements with other State agencies for the purpose of storage
39 and preservation of data and materials;
- 40 (22) May procure and keep in force adequate insurance or otherwise
41 provide for the indemnification of itself and its members, officers,
42 agents, employees, and the general public against loss or liability
43 resulting from any act or omission by or on behalf of the Commission,
44 and for the protection of its property, provided that procurement of

1 insurance by the Commission shall not be deemed a waiver of any
2 immunity from liability otherwise available under any provision of
3 law;

4 (23) May adopt bylaws for the regulation of its affairs and the conduct of its
5 business and prescribe rules, regulations and policies in connection
6 with the performance of its functions and duties; and

7 (24) May do anything else necessary to carry out the purposes of this
8 Chapter not otherwise prohibited by law.

9 **"§ 130B-8. Commission may exempt itself from certain laws.**

10 (a) Neither the Commission nor any contractor performing services on behalf of
11 the Commission shall be subject to the following provisions of the General Statutes:

12 (1) Article 3 of Chapter 143 (Purchases and Contracts);

13 (2) Article 3C of Chapter 143 (Contracts to Obtain Consultant Services);

14 (3) Article 3D of Chapter 143 (Procurement of Architectural and
15 Engineering Services);

16 (4) Article 8 of Chapter 143 (Public Contracts);

17 (5) Article 8B of Chapter 143 (State Building Commission);

18 (6) G.S. 143-341 (Powers and duties of the Department of
19 Administration);

20 (7) Chapter 146 (State Lands); and

21 (8) Article 2 of Chapter 150B shall not apply to contractor selection or
22 technology selection pursuant to G.S. 130B-13 and G.S. 130B-14.
23 Articles 3 and 3A of Chapter 150B shall not apply to final decisions
24 regarding site selection, contractor selection or technology selection
25 pursuant to G.S. 130B-11, 130B-13, and 130B-14.

26 (b) Subdivisions (1) through (7) of subsection (a) of this section shall apply only
27 when the Commission determines that exemption from a particular provision of the
28 General Statutes is in the best interest of the State. Each such determination by the
29 Commission shall be set out in the official minutes of the Commission and shall state
30 with particularity (i) the provision or provisions of the General Statutes from which the
31 Commission exempts itself pursuant to this section, (ii) the action or activities covered
32 by such exemption, and (iii) the justification for such exemption, taking into account the
33 purposes of such provisions of the General Statutes and of this Chapter.

34 **"§ 130B-9. Compliance with laws and rules relating to hazardous waste**
35 **management and to protection of public health, safety, or the**
36 **environment.**

37 This Chapter shall not be construed as amending, repealing, or in any manner
38 abridging or interfering with any law or rule relating to the management of hazardous
39 waste or to protection of public health, safety, or the environment, nor shall the
40 provisions of this Chapter be construed as being applicable to or in any way affecting
41 the authority of State agencies and commissions to control hazardous waste or the
42 discharge of environmental pollutants and wastes into the air, soil, or waters of the
43 State. The Commission, its members, officers, employees, agents, contractors, and any
44 person who operates any hazardous waste facility pursuant to this Chapter shall comply

1 with all federal and State laws, including statutes, regulations, and rules, applicable to
2 hazardous waste management and to protection of public health, safety, and the
3 environment. The Commission shall be considered a State agency for purposes of the
4 North Carolina Environmental Policy Act, G.S. 113A-1 et seq.

5 **"§ 130B-10. Liability, defense, and legal representation.**

6 (a) The provisions of Article 31 of Chapter 143 (Tort Claims Against State
7 Departments and Agencies) shall apply to the Commission. No member, officer, or
8 employee of the Commission, while acting within the scope of their authority, shall be
9 subject to any personal liability or accountability by reason of any act or omission in
10 connection with the exercise of any power or performance of any duty, whether express
11 or implied, pursuant to this Chapter.

12 (b) The provisions of Article 31A of Chapter 143 of the General Statutes shall
13 apply to current or former members, officers, agents, or employees of the Commission.

14 (c) The Attorney General shall be the legal representative of the Commission and
15 shall provide legal advice and counsel to the Commission. The Commission and the
16 Department of Justice shall enter into an appropriate contract or make other mutually
17 satisfactory arrangements for legal services, including reimbursement of the Department
18 of Justice for any costs incurred other than routine or minor costs. The Commission
19 may employ or retain other legal counsel with the prior approval of the Attorney
20 General.

21 **"§ 130B-11. Site selection.**

22 (a) The Commission shall actively seek communities interested in hosting
23 hazardous waste facilities. The Commission shall give first priority to the evaluation of
24 potential sites located in communities interested in hosting a hazardous waste facility.
25 Potential sites shall meet all applicable hazardous waste facility permit requirements
26 and all minimum technical and other requirements established by the Commission for
27 facility siting. However, with respect to any potential site located in a county interested
28 in volunteering to host a facility, the Commission may waive any site selection criteria
29 only if such criteria relate solely to preferences in site location which are discretionary
30 with the Commission, if such waiver would not have a significant impact on the
31 economic viability of the facility, and if such waiver would not adversely affect public
32 health or safety or the environment.

33 (b) The Commission shall develop procedures and criteria for selecting sites for
34 hazardous waste facilities whenever it appears such facilities are needed. Site selection
35 procedures and criteria shall be specifically adapted to take into account the
36 technologies and design capacities of each hazardous waste facility which has been
37 approved by the Governor. Site selection procedures and criteria shall be developed
38 with, and provide for, public participation; shall be incorporated into rules; shall include
39 a written justification for each criterion; shall be consistent with all applicable federal
40 and State law, including statutes, regulations and rules; shall be developed and revised
41 in light of the best available scientific data; and shall be based on consideration of at
42 least the following factors:

- 43 (1) Hydrological and geological factors, including flood plains, depth to
44 water table, groundwater travel time, soil pH, soil cation exchange

- 1 capacity, soil composition and permeability, cavernous bedrock,
2 seismic activity, slope, mines, and climate;
- 3 (2) Environmental and public health factors, including air quality, quality
4 of surface and groundwater, and proximity to public water supply
5 watersheds;
- 6 (3) Natural and cultural resources, including wetlands, gamelands,
7 endangered species habitats, proximity to parks, forests, wilderness
8 areas, nature preserves, and historic sites;
- 9 (4) Local land uses;
- 10 (5) Transportation factors, including proximity to waste generators, route
11 safety, and method of transportation;
- 12 (6) Aesthetic factors, including the visibility, appearance, and noise level
13 of the facility;
- 14 (7) Availability and reliability of public utilities; and
- 15 (8) Availability of emergency response personnel and equipment.
- 16 (c) The Commission shall develop a proposed schedule for evaluation and
17 selection of the preferred and alternate sites for each hazardous waste facility which is
18 approved by the Governor. The proposed site selection schedule shall provide for
19 public education regarding the proposed facility and for public involvement in the site
20 selection process. The Commission shall submit proposed site selection schedules to
21 the Governor for approval.
- 22 (d) The Commission shall select suitable sites for evaluation and shall select the
23 preferred site for each authorized hazardous waste facility in accordance with the
24 approved site selection schedule. Upon selection of a preferred site the Commission
25 shall begin proceedings to purchase or if necessary, condemn property for the site under
26 the State's power of eminent domain. The procedure for condemnation by the
27 Commission shall be as set out in Article 9 of Chapter 136 of the General Statutes,
28 except that the Commission shall have the same rights, powers, duties, and
29 responsibilities as are set out for the Department of Transportation. The General
30 Assembly finds that the protection of public health, safety, and welfare, including
31 protection of the environment, requires that facilities for the management of hazardous
32 waste be established. The acquisition of real property for the management of hazardous
33 waste is therefore declared to be for the use and benefit of the public, and to serve a
34 public purpose. Fee simple title to real property shall be vested in the Commission.
35 The Commission may substitute an alternate site for the preferred site in the event that it
36 is determined that any permit or license necessary for the construction or operation of
37 the proposed facility cannot be obtained if the facility is located at the preferred site.
- 38 (e) The Commission may request information and assistance from any State
39 agency which has data or expertise which would assist the Commission in the
40 identification of sites for hazardous waste facilities, provided that no agency which has
41 authority to issue any license or permit required for the construction or operation of the
42 facility shall participate in the site selection process in any way that would result in an
43 actual or apparent conflict of interest.

1 (f) The Commission may in its discretion contract for the services of
2 independent, qualified consultants to assist in the development and implementation of
3 procedures and criteria for site screening and selection. Such consultants shall be
4 eligible to subsequently design, construct, or operate a hazardous waste facility on
5 behalf of the Commission.

6 **"§ 130B-12. Annexation prohibited.**

7 From the time a site is selected pursuant to G.S. 130B-11(d) or from the time a
8 county, by resolution of the board of county commissioners, proposes a specific site or
9 area for a hazardous waste facility, notwithstanding the provisions of Article 4A of
10 Chapter 160A, no city may annex the site or area except upon a valid petition signed by
11 the Commission. If a previously selected site or area is abandoned, then it shall once
12 again be subject to annexation in accordance with Article 4A of Chapter 160A.

13 **"§ 130B-13. Facility construction and operation.**

14 (a) The Commission shall actively seek qualified private contractors to construct
15 and operate hazardous waste facilities which have been authorized by the Governor. A
16 contractor may both construct and operate a facility.

17 (b) The Commission shall select and employ qualified contractors to construct
18 and operate each authorized hazardous waste facility, or shall construct the facility itself
19 and/or designate itself as the operator.

20 (c) The Commission shall enter into and enforce an agreement with each
21 contractor for each authorized hazardous waste facility which shall incorporate such
22 terms and conditions as the Commission determines are necessary and consistent with
23 the purposes of this Chapter. Such agreement shall contain adequate assurances of
24 contractor performance through the use of bonds, insurance, and shall require
25 substantial compliance with all applicable federal and State law, including statutes,
26 regulations, and rules. The Commission shall provide for an independent annual audit
27 of the collection of all fees and other charges.

28 (d) The Commission may, in its discretion, seek the advice and assistance of
29 other State agencies or private consultants in selecting contractors.

30 (e) The Commission may suspend or terminate its agreement with any contractor
31 for a hazardous waste facility for any breach thereof. In the event of suspension or
32 termination of an agreement, the Commission may select an interim or replacement
33 contractor, or may operate the facility itself, to ensure that the facility is properly
34 maintained and operated in compliance with all applicable federal and State laws,
35 including statutes, rules, and regulations.

36 (f) The Commission shall periodically review and amend its agreement with the
37 operating contractor of each hazardous waste facility to reflect necessary changes in
38 fees or other charges, new environmental requirements, additional bonding or insurance
39 requirements, or other alterations deemed necessary or appropriate.

40 **"§ 130B-14. Technology, design capacity, and license application.**

41 (a) The Commission shall, with the assistance of other State agencies or private
42 consultants it deems appropriate, recommend to the Governor the technology and design
43 capacity of each component of each hazardous waste facility to be operated pursuant to
44 this Chapter. Upon approval of technologies and design capacities by the Governor, the

1 Commission shall prepare, or direct the operator to prepare subject to approval by the
2 Commission, detailed designs and specifications, operating procedures, safety plans,
3 closure plans and other plans necessary for hazardous waste facilities operated pursuant
4 to this Chapter.

5 (b) Each operator of a hazardous waste facility established pursuant to this
6 Chapter shall, under the supervision of the Commission, prepare and submit
7 applications for all permits and licenses required for the facility to the appropriate
8 regulatory agencies.

9 (c) The Department of Human Resources is designated as the lead State agency
10 for overall coordination of the review of the application process and ensuring that
11 decisions by the affected State agencies are rendered in a timely manner.

12 **"§ 130B-15. Facility closure post-closure control.**

13 (a) The Commission shall enter into an agreement with the operator of each
14 hazardous waste facility established under this Chapter for the safe and proper closure
15 of the facility.

16 (b) The Commission shall, with the assistance of other State agencies and private
17 consultants it deems necessary, approve the operator's site closure plan. The approval
18 of the Commission under this section is in addition to the approval of the Department of
19 Human Resources in accordance with the rules and regulations of the Commission for
20 Health Services. The Commission may employ an independent contractor to do
21 anything necessary to properly close a hazardous waste facility and to ensure that the
22 site is stabilized.

23 (c) The Commission shall provide for such post-closure physical surveillance
24 and environmental monitoring of each hazardous waste facility or facility site operated
25 pursuant to this Chapter as may be required by the Department of Human Resources or
26 by agreement with the host community.

27 (d) The Commission shall reimburse, or assure that the operator reimburses,
28 appropriate State agencies for the costs of physical surveillance and environmental
29 monitoring or other post-closure services rendered.

30 (e) The Commission shall provide through its own personnel, private contractors,
31 cooperative agreement with other governmental agencies, or any combination thereof,
32 any active maintenance or remedial actions that may be required. Payment for the cost
33 thereof shall be made from the Long-Term Care Fund established pursuant to G.S.
34 130B-16.

35 **"§ 130B-16. Fees.**

36 (a) It is the intent of the General Assembly that all costs associated with the
37 development of hazardous waste facilities pursuant to this Chapter be borne by the
38 waste generators served by such facilities. The General Assembly recognizes that the
39 extent to which costs can be passed to hazardous waste generators is determined in part
40 by market forces, since hazardous waste facilities must operate in a competitive market.
41 In establishing and revising schedules of fees, the Commission shall seek to secure the
42 greatest possible revenue for the State and units of local government consistent with
43 environmentally safe and economically sound facility operation. In establishing and
44 revising schedules of fees, the Commission may seek to encourage reductions in the

1 volume or quantity and toxicity of hazardous waste. For facilities which it operates, the
2 Commission shall establish, and revise as necessary, schedules of fees and other
3 charges, including user charges, penalties, and surcharges. For facilities which are
4 operated by private enterprise pursuant to this Chapter, the Commission shall establish,
5 and revise as necessary, schedules of franchise fees. The terms and conditions under
6 which facilities are operated by private enterprise pursuant to this Chapter shall be
7 governed by appropriate contracts between the Commission and the private operators.
8 Such contracts shall provide for the payment of franchise fees and for the periodic
9 adjustment thereof.

10 (b) In establishing and revising schedules of fees, the Commission, shall
11 consider, and shall seek to recover to the maximum extent possible, the following costs:

- 12 (1) Establishment and operation of the Commission;
- 13 (2) Reimbursement of State agencies for costs incurred on behalf of the
14 Commission or in support of its activities, including the costs of any
15 services performed pursuant to G.S. 130B-15;
- 16 (3) Establishment and administration of the Long-Term Care Fund under
17 G.S. 130B-17;
- 18 (4) Compensation to the State and local government(s) as provided in G.S.
19 130B-18;
- 20 (5) Repayment to the State with interest at rates which are equal to the
21 lowest rates paid by or available to the State for the period between
22 expenditure and repayment, as calculated and certified by the State
23 Treasurer, of all funds expended from the General Fund to develop
24 hazardous waste facilities pursuant to this Chapter;
- 25 (6) Funding of the State's share of the costs associated with any interstate
26 agreement or compact for hazardous waste management to which the
27 State may become a party;
- 28 (7) Compensation of contractors and consultants employed by the
29 Commission;
- 30 (8) Other expenses incurred by the Commission, the State or its agencies
31 in furtherance of the purposes of this Chapter; and
- 32 (9) Compensation of any property owner for any loss in value of property
33 directly resulting from the siting or operation of a hazardous waste
34 facility.

35 (c) In the event that revenues exceed all costs set out in subsection (b) of this
36 section and all other costs and charges for which the Commission is liable, such excess
37 funds shall be paid into the General Fund. It is the intent of the General Assembly that
38 such excess funds be appropriated for the following purposes:

- 39 (1) Funding of a portion of the State's costs for remediation of inactive
40 hazardous sites under Part 3 of Article 9 of Chapter 130A of the
41 General Statutes; and
- 42 (2) Funding of a portion of the cost of the Pollution Prevention Pays
43 Program, other programs which foster multi-media waste prevention,

1 reduction, reuse, and recycling, and programs which provide
2 assistance to small quantity generators.

3 (d) The Commission shall prepare, on a quarterly basis, a detailed financial
4 statement showing its current fee schedules, income from all sources, indebtedness, and
5 expenses for the quarter and fiscal year to date. This statement, and any other
6 information regarding the operation or activities of the Commission which may be
7 requested, shall be submitted to the chairmen of the House and Senate committees on
8 Finance and Appropriations, the Joint Legislative Commission on Governmental
9 Operations, the Environmental Review Commission, the Research Division, and the
10 Fiscal Research Division of the General Assembly.

11 (e) An operator of a hazardous waste facility may serve as the collection agent
12 for the Commission, in which case, funds collected by the operator shall be transferred
13 to the Commission on a timely basis, and deposited with the State Treasurer, as directed
14 established by the Commission.

15 (f) All Commission accounts shall be audited pursuant to the provisions of
16 Article 5A of Chapter 147 of the General Statutes.

17 **"§ 130B-17. Long-Term Care Fund.**

18 (a) For hazardous waste facilities owned or operated by the Commission, there is
19 hereby established under the control and direction of the Commission a nonreverting
20 Long-Term Care Fund, to be administered by the State Treasurer, which may be used
21 for:

22 (1) Administration of the Fund;

23 (2) Emergency response and decontamination at facilities operated by the
24 Commission; or

25 (3) Post-closure physical surveillance, environmental monitoring,
26 maintenance, care, custody and remedial action at hazardous waste
27 facility site(s) operated by the Commission.

28 (b) The Long-Term Care Fund shall be treated as a special trust fund and shall be
29 credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-
30 69.3.

31 (c) In addition to any money that may be appropriated or otherwise made
32 available to it, the Fund may be maintained by fees and other charges including user
33 charges, penalties, surcharges, or other money paid to or recovered by or on behalf of
34 the Commission under the provisions of this Chapter. Fees and other charges shall at all
35 times be sufficient to build and maintain the Fund balance at a level determined by the
36 Commission, with the concurrence of the Commission for Health Services, to be
37 adequate for the purposes stated in this section.

38 (d) The establishment of this Fund shall in no way be construed to relieve or
39 reduce the liability of any facility operator, contractor, or other person for damages
40 resulting from the operation of a hazardous waste facility.

41 **"§ 130B-18. Taxes; other compensation to the State and local governments.**

42 (a) Hazardous waste facilities or portions of such facilities which are owned by
43 the Commission shall be exempt from ad valorem property taxes; provided however,
44 that the Commission shall, in lieu of such property taxes pay to any governmental body

1 authorized to levy such property taxes the amount that would be assessed as taxes on
2 real and personal property of such facilities if such facilities were otherwise subject to
3 valuation and assessment by local taxing unit. In addition, the Commission shall
4 reimburse the county, city, or other local taxing unit for the loss of ad valorem property
5 tax revenues from any property that abutts the property upon which such facilities are
6 located and which is shown to have diminished in value as the direct result of the siting
7 and operation of such facilities. Such payments in lieu of taxes shall be due and shall
8 bear interest if unpaid, as in the case of taxes on other property. Payments in lieu of
9 taxes made hereunder shall be treated in the same manner as taxes for purposes of all
10 procedural and substantive provisions of law. Administrative buildings, associated
11 land, and other real and personal property owned by the Commission and not located at
12 a hazardous waste facility shall be exempt from property taxes as provided in G.S. 105-
13 278.1.

14 (b) Except as authorized in G.S. 153A-152.1, G.S. 160A-211.1 and this Chapter,
15 no county, city, or other local taxing unit may impose any tax, fee, assessment, or levy
16 of any kind or description upon the Commission or the operator of a hazardous waste
17 facility or any portion thereof which is owned by the Commission. Any hazardous
18 waste facility or portion thereof which is separately taxable and which is not owned by
19 the Commission may be taxed on the same basis as any other property. To the extent
20 that any law, ordinance, or portion thereof is in conflict with this subsection, such law,
21 ordinance, or portion thereof is hereby invalidated.

22 (c) The Commission shall collect and deposit with the State Treasurer, on behalf
23 of local governments where hazardous waste facilities are located pursuant to this
24 Chapter, a tax on the gross receipts of each such facility in the amount of two and one-
25 half percent (2.5%) of the gross receipts of such facility per annum, to be distributed to
26 local governments as the General Assembly shall provide. The Commission shall
27 develop and recommend to the General Assembly a proposed revenue package and
28 revenue distribution formula which the General Assembly shall consider in providing
29 for distribution of this tax and such other revenues as may be collected.

30 **"§ 130B-19. Site designation review committees.**

31 (a) The board of commissioners of each county in which there is located a site
32 identified for evaluation pursuant to G.S. 130B-11(d) may appoint a site designation
33 review committee for a hazardous waste facility. The committee shall consist of 11
34 members representing, insofar as possible, local government, environmental, health,
35 engineering, business and industry, academic, public interest, and emergency response
36 groups. The committee shall elect a chairman, vice-chairman, and a secretary.
37 Vacancies shall be filled by the county board of commissioners using the same criteria
38 employed in the original appointment. Members shall be reimbursed by the committee
39 for reasonable and necessary expenses incurred in connection with their duties. The
40 county shall provide the committee with necessary support staff.

41 (b) The committee shall advise the county board of commissioners on matters
42 relating to the siting of a hazardous waste facility.

43 (c) All site designation review committees shall terminate upon the designation
44 of the preferred site by the Commission.

1 (d) Subject to appropriation by the General Assembly, the Board may provide
2 technical assistance grants of up to fifty thousand dollars (\$50,000) to each site
3 designation review committee. In the event that a proposed site is located in more than
4 one county, or that one or more site designation review committees are appointed
5 pursuant to subsection (h) of this section, the Board may provide technical grants to a
6 site designation review committee in each county, provided that the maximum amount
7 the Board may grant to all site designation review committees for a particular site is
8 seventy-five thousand dollars (\$75,000).

9 (e) Grant funds may be used by the committee to:

10 (1) Collect information on site suitability;

11 (2) Monitor the site evaluation and site selection process;

12 (3) Conduct socioeconomic and environmental assessments of the
13 proposed facility;

14 (4) Participate in any meetings, hearings, or other events related to the site
15 selection process;

16 (5) Study the cost and benefits of the facility being located at the site
17 under consideration; and

18 (6) Reimburse members for their expenses as provided in subsection (a) of
19 this section.

20 (f) Any reviews or studies funded with grant monies shall be completed prior to
21 the date set by the Commission for nomination of a preferred site.

22 (g) The Commission shall consider in its decision-making process
23 recommendations or other information of the site designation review committee as may
24 be transmitted to the Commission by the county board of commissioners.

25 (h) A site designation review committee may also be appointed as provided by
26 this section by the board of commissioners of any county whenever the board of
27 commissioners determines that the county may be affected by the siting of a hazardous
28 waste facility in another county.

29 (i) No grant funds shall be used for litigation expenses. Each site designation
30 review committee shall properly account for all funds. Unexpended funds shall revert
31 to the Board, and at the end of the biennium shall revert to the General Fund.

32 **"§ 130B-20. Preferred site local advisory committees.**

33 (a) Upon designation of a preferred site for a hazardous waste facility pursuant to
34 G.S. 130B-11(d) the board of commissioners of each county within whose jurisdiction
35 the site is located may appoint a preferred site local advisory committee. The
36 committee shall consist of 11 members representing insofar as possible local
37 government, environmental, health, engineering, business and industry, academic,
38 public interest, and emergency response groups. The committee shall elect a chairman,
39 vice-chairman, and a secretary. Vacancies shall be filled by the county board of
40 commissioners using the same criteria employed in the original appointment. Members
41 shall be reimbursed by the committee for reasonable and necessary expenses incurred in
42 connection with their duties. The county shall provide the committee with necessary
43 support staff.

44 (b) The preferred site local advisory committee may:

- 1 (1) Study the costs and benefits associated with the proposed facility;
- 2 (2) Review all permit and license applications and related documents
- 3 concerning the proposed facility;
- 4 (3) Hire program, technical, and legal consultants to assist in the review
- 5 process;
- 6 (4) Collect and review information required for issuance of a special or
- 7 conditional use zoning permit;
- 8 (5) Assess the potential local environmental and socioeconomic impacts
- 9 of the proposed facility;
- 10 (6) Promote public education, information, and participation in the
- 11 permitting process;
- 12 (7) Develop and propose agreements between the Commission, the
- 13 hazardous waste facility operator, local governments, and other
- 14 persons;
- 15 (8) Develop and present recommendations concerning permit conditions,
- 16 operational requirements, compensation, and incentives related to the
- 17 proposed facility;
- 18 (9) Hire a mediator to facilitate negotiations among the Commission, the
- 19 hazardous waste facility operator, local governments, and other
- 20 persons; and
- 21 (10) Reimburse committee members for reasonable and necessary
- 22 expenses.

23 (c) An applicant for a permit to operate a hazardous waste facility pursuant to
24 this Chapter shall pay a one-time local application fee of one hundred thousand dollars
25 (\$100,000) to the Board. The Board shall distribute not less than sixty-five thousand
26 dollars (\$65,000) of the local application fee to the county or counties where the site of
27 the proposed facility is located. If the site lies in more than one county, the local
28 application fee will be distributed to the counties in which the site is located in equal
29 amounts. If the board of commissioners appoints a preferred site local advisory
30 committee the local application fee shall be used to support the work of the committee.

31 (d) A preferred site local advisory committee may also be appointed as provided
32 by this section by the board of commissioners of any county whenever the board of
33 commissioners determines that the county may be affected by the siting of a hazardous
34 waste facility in another county. If a preferred site local advisory committee is
35 appointed pursuant to this subsection, the committee may apply to the Board for a
36 portion of the local application fee to support the work of the committee. The Board
37 may allocate up to twenty-five thousand dollars (\$25,000) to each preferred site local
38 advisory committee appointed pursuant to this subsection, provided that the maximum
39 amount that the Board may allocate to all preferred site local advisory committees
40 appointed pursuant to this subsection for a particular site is thirty-five thousand dollars
41 (\$35,000). The Board shall base allocations under this subsection on the likelihood that
42 the proposed hazardous waste facility will have a significant effect in the county, taking
43 distance to the facility and other factors into account. Decisions of the Board regarding
44 allocations under this subsection are final. Any portion of the local application fee

1 which is not allocated by the Board under this subsection shall be distributed by the
2 Board to the county or counties where the site of the proposed facility is located as
3 provided in subsection (c) of this section.

4 (e) Each preferred site local advisory committee shall properly account for all
5 funds. Any unexpended funds shall revert to the general fund of the county which
6 appointed the preferred site local advisory committee. No portion of the local
7 application fee shall be used to finance litigation expenses.

8 **"§ 130B-21. Management Oversight Advisory Committee.**

9 (a) Upon approval of a preferred site for the construction and operation of a
10 hazardous waste facility pursuant to G.S. 130B-11(d), the board of commissioners of
11 each county within whose jurisdiction the facility is to be located may appoint a
12 Management Oversight Advisory Committee. The Committee shall consist of 11
13 members representing insofar as possible local government, environmental, health,
14 engineering, business and industry, academic, public interest, and emergency response
15 groups. The Committee shall elect a chairman, vice-chairman, and a secretary.
16 Vacancies shall be filled by the county board of commissioners using the same criteria
17 employed in the original appointment. Members shall be reimbursed by the Committee
18 for reasonable and necessary expenses incurred in connection with their duties. The
19 county shall provide the Committee with necessary support staff.

20 (b) The Management Oversight Advisory Committee may:

- 21 (1) Hire program, technical, and legal consultants to assist in reviewing
22 the construction and all aspects of the management and operation of
23 the facility;
- 24 (2) Assess the potential local environmental and socioeconomic impacts
25 of the proposed facility;
- 26 (3) Promote public education, information, and participation in the
27 oversight process;
- 28 (4) Develop and present recommendations concerning the operation,
29 compensation, and incentives related to the proposed facility;
- 30 (5) Hire a mediator to facilitate negotiations among the Commission, the
31 hazardous waste facility operator, local governments, and other
32 persons; and
- 33 (6) Reimburse committee members for reasonable and necessary
34 expenses.

35 (c) If the board of commissioners appoints a Management Oversight Advisory
36 Committee a portion of the annual privilege license tax shall be used to support the
37 work of the Committee.

38 (d) Each Management Oversight Advisory Committee shall properly account for
39 all funds each year. Any unexpended funds shall revert to the general fund of the
40 county which appointed the management oversight advisory committee. No portion of
41 the annual fee shall be used to finance litigation expenses.

42 **"§ 130B-22. Negotiation, mediation, and arbitration.**

1 (a) Any local government in the county or counties where a hazardous waste
2 facility is proposed to be located pursuant to this Chapter may negotiate with the
3 Commission with respect to any issue relating to the facility except:

4 (1) The need for the facility;

5 (2) Any proposal to reduce the duties of the Commission under this
6 Chapter or under any permit or license issued for the facility;

7 (3) Any proposal to reduce the duties of the Commission for Health
8 Services or the Department of Human Resources, or to make less
9 stringent any rule of the Commission for Health Services;

10 (4) Any proposal to reduce the duties of the Board;

11 (5) Any act or decision of the Governor pursuant to G.S. 130B-5; or

12 (6) Any decision of the Commission regarding site selection, contractor
13 selection, or technology pursuant to G.S. 130B-11, 130B-13, and
14 130B-14.

15 (b) The Commission shall negotiate in good faith with any local government in
16 the county or counties where a hazardous waste facility is proposed to be located. A
17 local government may designate itself or any other person to negotiate on its behalf.

18 (c) Negotiations may be conducted with the assistance of a mediator if mediation
19 is requested by both the Commission and a local government. The function of the
20 mediator is to encourage a voluntary settlement of unresolved negotiable issues. The
21 Board shall provide the Commission and the local government with the names and
22 qualifications of persons willing to serve as mediators. If the Commission and a local
23 government cannot agree on the selection of a mediator, the Commission and the local
24 government may request the Board to appoint a mediator.

25 (d) If the Commission and a local government have not reached agreement on all
26 issues by negotiation within six months after selection of the preferred site pursuant to
27 G.S. 130B-11(d) the following issues may be submitted to arbitration pursuant to the
28 provisions of Article 45A of Chapter 1 of the General Statutes (Uniform Arbitration
29 Act):

30 (1) Compensation to any local government for substantial economic
31 impacts which are a direct result of the siting and operation of a
32 hazardous waste facility and for which adequate compensation is not
33 otherwise provided;

34 (2) Reimbursement of reasonable costs incurred by the local government
35 relating to negotiation, mediation and arbitration activities under this
36 section;

37 (3) Screening, fencing, and other matters related to the appearance of a
38 facility;

39 (4) Operational concerns other than design capacity and regulatory issues;

40 (5) Traffic flows and patterns which result from the operation of a facility;

41 (6) Uses of the site where a facility is located after the facility is closed;

42 (7) The applicability or nonapplicability of any local ordinance;

43 (8) Emergency response capabilities, including training and resources;

44 (9) Access to facility records and monitoring data; and

1 (10) Ongoing health surveys of persons living in the area around the
2 facility.

3 (e) In addition to those issues set out in subsection (d), upon petition to the Board
4 by a local government in the county or counties where a hazardous waste facility is
5 proposed to be located, any other issue may be submitted for arbitration except:

6 (1) Those issues excluded from negotiation under subsection (a) of this
7 section;

8 (2) Any issue relating to the imposition by the General Assembly of a tax,
9 or the imposition of a fee not authorized by this Chapter; and

10 (3) Any issue requiring an appropriation by the General Assembly.

11 (f) The Board shall serve as the arbitrator of any issue submitted for arbitration
12 under this section.

13 **"§ 130B-23. Inter-Agency Committee on Hazardous Waste.**

14 (a) To assist the Commission in the performance of its responsibilities under this
15 Chapter and to advise the General Assembly, there is created the Inter-Agency
16 Committee on Hazardous Waste (herein called the 'Committee'). The members shall
17 be: the Chairman of the Board; the Chairman of the Board's Technical Committee on
18 Hazardous Waste; the Chief of the Solid Waste Management Section of the Division of
19 Health Services of the Department of Human Resources or his designee; the Head of the
20 Hazardous Waste Management Branch of the Solid Waste Management Section or his
21 designee; one additional representative of the Solid Waste Management Section with
22 expertise in CERCLA/SARA capacity assurance requirements appointed by the Chief of
23 the Section, the Chairman of the Commission or his designee; one additional member of
24 the Commission appointed by the Chairman of the Commission; the Executive Director
25 of the Commission; the Director of the Pollution Prevention Pays Program; four
26 representatives of the Department of Natural Resources and Community Development
27 with expertise in geology, groundwater, water quality, and air quality; the representative
28 of the Attorney General's office who provides legal services to the Commission; and a
29 representative of the Attorney General's office who provides legal services to the Solid
30 Waste Management Section designated by the Chief of the Solid Waste Management
31 Section with the approval of the Attorney General. The Chairman of the Commission
32 shall serve as the Chairman of the Committee, and the Commission shall provide
33 professional and clerical support to the Committee.

34 (b) The purpose of the Committee is to share information and coordinate efforts
35 in the siting, design, financing, permitting, construction, and operation of hazardous
36 waste facilities.

37 (c) The Committee shall report to the Governor, the General Assembly, and the
38 Research and Fiscal Research Divisions of the General Assembly from time to time
39 regarding any changes in the present law it may deem appropriate to expedite siting,
40 design, financing, permitting, construction, and operation of hazardous waste facilities.
41 Such reports shall not be subject to review by the departments, agencies, boards, or
42 commissions from whose membership the Committee is drawn. Notwithstanding any
43 rule or resolution to the contrary, proposed legislation to implement any

1 recommendation made by the Committee may be introduced and considered during any
2 session of the General Assembly.

3 (d) Consistent with existing law, each department, agency, board, or commission
4 from whose membership the Committee is drawn shall be responsible for any expenses
5 incident to the participation of its members in the work of the Committee, including per
6 diem, travel, and subsistence, from funds otherwise appropriated to it."

7 Sec. 2. (a) Part 11A of Article 10 of Chapter 143B of the General Statutes is
8 repealed.

9 (b) The Hazardous Waste Treatment Commission as established by Part 11A
10 of Article 10 of Chapter 143B of the General Statutes is abolished. The Hazardous
11 Waste Treatment Commission's records, personnel, property, unexpended balances of
12 appropriations, allocations, and other funds, including the functions of budgeting and
13 purchasing, are transferred to the Industrial Waste Management Commission
14 established pursuant to this act. The rights and obligations of any contract to which the
15 Hazardous Waste Treatment Commission is a party are transferred to the Industrial
16 Waste Management Commission.

17 (c) Initial appointments pursuant to G.S. 130B-6(d) shall be made within 45
18 days of the date this act becomes effective. The North Carolina Industrial Waste
19 Management Commission shall begin operation upon the appointment of all of its
20 members, provided that the Commission shall begin operation 45 days after the date this
21 act becomes effective, notwithstanding the failure of any of the appointing authorities to
22 make appointments.

23 (d) Subsections (a) and (b) of this section shall be effective on the day the
24 North Carolina Industrial Waste Management Commission begins operation.

25 Sec. 3. G.S. 105-164.14(c) reads as rewritten:

26 "(c) Upon receipt of timely applications for refund, the Secretary of Revenue shall
27 make refunds annually to all governmental entities, as hereinafter defined, of sales and
28 use tax paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(c),
29 by said governmental entities on direct purchases of tangible personal property. Sales
30 and use tax liability indirectly incurred by such governmental entities on building
31 materials, supplies, fixtures and equipment which shall become a part of or annexed to
32 any building or structure being erected, altered or repaired which is owned or leased by
33 such governmental entities shall be construed as sales or use tax liability incurred on
34 direct purchases by such governmental entities, and such entities may obtain refunds of
35 such taxes indirectly paid. The refund provisions contained in this subsection shall not
36 apply to any governmental entities not specifically named herein. In order to receive the
37 refund herein provided for, governmental entities shall file a written request for said
38 refund within six months of the close of the fiscal year of the governmental entities
39 seeking said refund, and such request for refund shall be substantiated by such records,
40 receipts and information as the Secretary may require. No refunds shall be made on
41 applications not filed within the time allowed by this section and in such manner as the
42 Secretary may otherwise require. The term 'governmental entities,' for the purposes of
43 this subsection, shall mean all counties, incorporated cities and towns, water and sewer
44 authorities created and existing under the provisions of Chapter 162A of the General

1 Statutes, lake authorities created by a board of county commissioners pursuant to an act
2 of the General Assembly, sanitary districts, regional councils of governments created
3 pursuant to G.S. 160A-470, area mental health, mental retardation, and substance abuse
4 authorities (other than single-county area authorities) established pursuant to Article 4
5 of Chapter 122C of the General Statutes, district health departments, regional planning
6 and economic development commissions created pursuant to G.S. 158-14, regional
7 economic development commissions created pursuant to G.S. 158-8, regional planning
8 commissions created pursuant to G.S. 153A-391, metropolitan sewerage districts and
9 metropolitan water districts in this State, the North Carolina Low-Level Radioactive
10 Waste Management Authority created pursuant to Chapter 104G of the General
11 Statutes, and the North Carolina Industrial Waste Management Commission created
12 pursuant to Chapter 130B of the General Statutes."

13 Sec. 4. G.S. 105-275 is amended by adding a new subsection to read:

14 "(38) Real and personal property belonging to the North Carolina Industrial Waste
15 Management Commission created under Chapter 130B of the General Statutes."

16 Sec. 5. G.S. 120-123 is amended by adding a new subsection to read:

17 "(56) The North Carolina Industrial Waste Management Commission, as
18 established by G.S. 130B-6."

19 Sec. 6. G.S. 126-5(c1) reads as rewritten:

20 "(c1) Except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of
21 this Chapter shall not apply to:

- 22 (1) Constitutional officers of the State.
- 23 (2) Officers and employees of the Judicial Department.
- 24 (3) Officers and employees of the General Assembly.
- 25 (4) Members of boards, committees, commissions, councils, and advisory
26 councils compensated on a per diem basis.
- 27 (5) Officials or employees whose salaries are fixed by the General
28 Assembly, or by the Governor, or by the Governor and Council of
29 State, or by the Governor subject to the approval of the Council of
30 State.
- 31 (6) Employees of the Office of the Governor that the Governor, at any
32 time, in his discretion, exempts from the application of the provisions
33 of this Chapter by means of a letter to the State Personnel Director
34 designating these employees.
- 35 (7) Employees of the Office of the Lieutenant Governor, that the
36 Lieutenant Governor, at any time, in his discretion, exempts from the
37 application of the provisions of this Chapter by means of a letter to the
38 State Personnel Director designating these employees.
- 39 (8) Instructional and research staff, physicians, and dentists of The
40 University of North Carolina.
- 41 (9) Employees whose salaries are fixed under the authority vested in the
42 Board of Governors of The University of North Carolina by the
43 provisions of G.S. 116-11(4), 116-1(5) [116-11(5)], and 116-14.

- 1 (10) Employees of community colleges whose salaries are fixed in
2 accordance with the provisions of G.S. 115D-5 and G.S. 115D-20.
- 3 (11) North Carolina School of Science and Mathematics' employees whose
4 salaries are fixed in accordance with the provisions of G.S. 116-
5 235(c)(1) and G.S. 116-235(c)(2).
- 6 (12) Employees of the North Carolina Low-Level Radioactive Waste
7 Management Authority whose salaries are fixed pursuant to G.S.
8 104G-5(g)(1) and G.S. 104G-5(g)(2).
- 9 (13) Employees of the North Carolina Industrial Waste Management
10 Commission whose salaries are fixed pursuant to G.S. 130B-6(g)(1)
11 and G.S. 130B-6(g)(2)."

12 Sec. 7. G.S. 130A-290 reads as rewritten:

13 **"§ 130A-290. Definitions.**

14 The following definitions shall apply throughout this Article:

- 15 (1) ~~'Comprehensive hazardous waste treatment facility' means a facility~~
16 ~~designated as such by the Governor's Waste Management Board,~~
17 ~~meeting the following criteria:~~
- 18 a. ~~It is a commercial facility that accepts hazardous waste from the~~
19 ~~general public for treatment;~~
- 20 b. ~~It has the capacity and capability to treat and dispose of~~
21 ~~hazardous waste on at least an intrastate regional basis; and~~
- 22 e. ~~Its location will substantially facilitate treatment of hazardous~~
23 ~~waste for the State of North Carolina.~~
- 24 (1a) ~~'Disposal' means the discharge, deposit, injection, dumping, spilling,~~
25 ~~leaking or placing of any solid waste into or on any land so that the~~
26 ~~solid waste or any constituent part of the solid waste may enter the~~
27 ~~environment or be emitted into the air or discharged into any waters,~~
28 ~~including groundwaters.~~
- 29 (1) 'CERCLA/SARA' means the Comprehensive Environmental
30 Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-
31 510, 94 Stat. 2767, 42 U.S.C. § 9601 et seq., as amended, and the
32 Superfund Amendments and Reauthorization Act of 1986, Pub. L. No.
33 99-499, 100 Stat. 1613, as amended.
- 34 ~~(1b)~~(2) 'Commercial' when applied to a hazardous waste facility, means a
35 hazardous waste facility that accepts hazardous waste from the general
36 public or from another person for a fee.
- 37 (2) ~~'Federal act' means the Resource Conservation and Recovery Act of~~
38 ~~1976, P.L. 94-580, as amended.~~
- 39 (3) 'Disposal' means the discharge, deposit, injection, dumping, spilling,
40 leaking or placing of any solid waste into or on any land so that the
41 solid waste or any constituent part of the solid waste may enter the
42 environment or be emitted into the air or discharged into any waters,
43 including groundwaters.

- 1 ~~(3)~~(4) 'Garbage' means all putrescible wastes, including animal offal and
2 carcasses, and recognizable industrial by-products, but excluding
3 sewage and human waste.
- 4 ~~(4)~~(5) 'Hazardous waste' means a solid waste, or combination of solid
5 wastes, which because of its quantity, concentration or physical,
6 chemical or infectious characteristics may:
7 a. Cause or significantly contribute to an increase in mortality or
8 an increase in serious irreversible or incapacitating reversible
9 illness; or
10 b. Pose a substantial present or potential hazard to human health
11 or the environment when improperly treated, stored,
12 transported, disposed of or otherwise managed.
- 13 ~~(5)~~(6) 'Hazardous waste facility' means a facility for the ~~storage, collection,~~
14 storage, processing, treatment, recycling, ~~recovery~~ recovery, or disposal
15 of hazardous waste.
- 16 ~~(6)~~(7) 'Hazardous waste generation' means the act or process of producing
17 hazardous waste.
- 18 ~~(7)~~(8) 'Hazardous waste landfill facility' means any facility or any portion of
19 a facility for disposal of hazardous waste on or in land in accordance
20 with rules adopted under this Article.
- 21 ~~(7a)~~ 'Hazardous waste long term storage facility' means a facility as
22 defined in G.S. 143B-470.2(5).
- 23 ~~(7b)~~ 'Hazardous waste management program' means the program and
24 activities within the Department pursuant to Part 2 of this Article, for
25 hazardous waste management.
- 26 ~~(8)~~(9) 'Hazardous waste management' means the systematic control of
27 the collection, source separation, storage, transportation,
28 processing, treatment, recovery and disposal of hazardous
29 wastes.
- 30 ~~(8a)~~ 'Hazardous waste treatment facility' means a facility as defined in G.S.
31 143B-470.2(3).
- 32 (10) 'Hazardous waste management program' means the program
33 and activities within the Department pursuant to Part 2 of this
34 Article, for hazardous waste management.
- 35 ~~(8b)~~(11) 'Landfill' means a disposal facility or part of a disposal facility
36 where waste is placed in or on land and which is not a land treatment
37 facility, a surface impoundment, an injection well, a hazardous waste
38 long-term storage facility or a surface storage facility.
- 39 ~~(8c)~~ 'Long term retrievable storage' means ~~storage in closed containers in~~
40 ~~facilities (either above or below ground) with (i) adequate lights, (ii)~~
41 ~~impervious cement floors, (iii) strong visible shelves or platforms, (iv)~~
42 ~~passageways to allow inspection at any time, (v) adequate ventilation~~
43 ~~if underground or in closed buildings, (vi) protection from the weather,~~
44 ~~(vii) accessible to monitoring with signs on both individual containers~~

- 1 and sections of storage facilities, and ~~(viii)~~ adequate safety and
2 security precautions for facility personnel, inspectors and invited or
3 permitted members of the community.
- 4 ~~(9)~~(12) 'Manifest' means the form used for identifying the quantity,
5 composition and the origin, routing and destination of hazardous waste
6 during its transportation from the point of generation to the point of
7 disposal, treatment or storage.
- 8 ~~(10)~~(13) 'Natural resources' means all materials which have useful physical
9 or chemical properties which exist, unused, in nature.
- 10 ~~(11)~~(14) 'Open dump' means a solid waste disposal site which is not a
11 sanitary landfill.
- 12 ~~(12)~~(15) 'Person' means an individual, corporation, company, association,
13 partnership, unit of local government, State agency, federal agency or
14 other legal entity.
- 15 (16) 'RCRA' means the Resource Conservation and Recovery Act of 1976,
16 Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 **et seq.**, as amended.
- 17 ~~(13)~~(17) 'Recycling' means the process by which recovered resources are
18 transformed into new products so that the original products lose their
19 identity.
- 20 ~~(14)~~(18) 'Refuse' means all nonputrescible waste.
- 21 ~~(15)~~(19) 'Resource recovery' means the process of obtaining material or
22 energy resources from discarded solid waste which no longer has any
23 useful life in its present form and preparing the solid waste for
24 recycling.
- 25 ~~(15a)~~(20) 'Reuse' means a process by which resources are reused
26 or rendered usable.
- 27 ~~(16)~~(21) 'Sanitary landfill' means a facility for disposal of solid waste on
28 land in a sanitary manner in accordance with the rules concerning
29 sanitary landfills adopted under this Article.
- 30 ~~(16a)~~(22) 'Septage' means solid waste that is a fluid mixture of
31 untreated and partially treated sewage solids, liquids
32 and sludge of human or domestic origin which is
33 removed from a septic tank system.
- 34 ~~(16b)~~(23) 'Septage management firm' means a person engaged in
35 the business of pumping, transporting, storing, treating
36 or disposing septage. The term does not include public
37 or community sanitary sewage systems that treat or
38 dispose septage.
- 39 ~~(17)~~(24) 'Sludge' means any solid, semisolid or liquid waste
40 generated from a municipal, commercial, institutional
41 or industrial wastewater treatment plant, water supply
42 treatment plant or air pollution control facility, or any
43 other waste having similar characteristics and effects.

1 (18)(25)

2 ‘Solid waste’ means any hazardous or nonhazardous
3 garbage, refuse or sludge from a waste treatment plant,
4 water supply treatment plant or air pollution control
5 facility, domestic sewage and sludges generated by the
6 treatment thereof in sanitary sewage collection,
7 treatment and disposal systems, and other material that
8 is either discarded or is being accumulated, stored or
9 treated prior to being discarded, or has served its
10 original intended use and is generally discarded,
11 including solid, liquid, semisolid or contained gaseous
12 material resulting from industrial, institutional,
13 commercial and agricultural operations, and from
14 community activities. The term does not include:

- 14 a. Fecal waste from fowls and animals other than humans;
- 15 b. Solid or dissolved material in:
 - 16 1. Domestic sewage and sludges generated by treatment
17 thereof in sanitary sewage collection, treatment and
18 disposal systems which are designed to discharge
19 effluents to the surface waters;
 - 20 2. Irrigation return flows; and
 - 21 3. Wastewater discharges and the sludges incidental to and
22 generated by treatment which are point sources subject
23 to permits granted under Section 402 of the Federal
24 Water Pollution Control Act, as amended (P.L. 92-500),
25 and permits granted under G.S. 143-215.1 by the
26 Environmental Management Commission. However, any
27 sludges that meet the criteria for hazardous waste under
28 ~~the Federal Resource Conservation and Recovery Act (P.L.~~
29 ~~94-580), as amended, RCRA~~ shall also be a solid waste for
30 the purposes of this Article;
- 31 c. Oils and other liquid hydrocarbons controlled under Article
32 21A of Chapter 143 of the General Statutes. However, any oils
33 or other liquid hydrocarbons that meet the criteria for hazardous
34 waste under ~~the Federal Resource Conservation and Recovery Act~~
35 ~~(P.L. 94-580), as amended, RCRA~~ shall also be a solid waste for
36 the purposes of this Article;
- 37 d. Any source, special nuclear or byproduct material as defined by
38 the Atomic Energy Act of 1954, as amended (42 U.S.C. §
39 2011).
- 40 e. Mining refuse covered by the North Carolina Mining Act, G.S.
41 74-46 through 74-68 and regulated by the North Carolina
42 Mining Commission (as defined under G.S. 143B- 290).
43 However, any specific mining waste that meets the criteria for
44 hazardous waste under ~~the Federal Resource Conservation and~~

1 ~~Recovery Act (P.L. 94-580), as amended, RCRA~~ shall also be a
2 solid waste for the purposes of this Article.

3 ~~(19)~~(26) 'Solid waste disposal site' means any place at which
4 solid wastes are disposed of by incineration, sanitary
5 landfill or any other method.

6 ~~(20)~~(27) 'Solid waste generation' means the act or process of
7 producing solid waste.

8 ~~(21)~~(28) 'Solid waste management' means purposeful,
9 systematic control of the generation, storage,
10 collection, transport, separation, treatment, processing,
11 recycling, recovery and disposal of solid waste.

12 ~~(22)~~(29) 'Solid waste management facility' means land, personnel and
13 equipment used in the management of solid waste.

14 ~~(23)~~(30) 'Storage' means the containment of solid waste, either on a
15 temporary basis or for a period of years, in a manner which does not
16 constitute disposal.

17 ~~(24)~~(31) 'Treatment' means any method, technique or process, including
18 neutralization, designed to change the physical, chemical or biological
19 character or composition of any solid waste to neutralize the waste or
20 to render the waste nonhazardous, safer for transport, amenable for
21 recovery, amenable for storage or reduced in volume. The term
22 includes any activity or processing designed to change the physical
23 form or chemical composition of solid waste to render it
24 nonhazardous.

25 ~~(25)~~(32) 'Unit of local government' means a county, city, town or
26 incorporated village."

27 Sec. 8. G.S. 130A-293(b) reads as rewritten:

28 "(b) When a hazardous waste facility would be prevented from construction or
29 operation by a county, municipal, or other local ordinance(s), the operator of the facility
30 or the ~~Hazardous-Industrial Waste Treatment-Management~~ Commission may petition the
31 Board to review the matter. After receipt of a petition, the Board shall hold a hearing in
32 accordance with the procedures in subsection (c) of this section and shall determine
33 whether or to what extent to preempt the local ordinance to allow for the establishment
34 and operation of the facility."

35 Sec. 9. G.S. 130A-293(d) reads as rewritten:

36 "(d) The Board shall determine whether or to what extent to preempt the local
37 ordinance to allow for the establishment and operation of the facility no later than 60
38 days after conclusion of the hearing. The Board shall preempt a local ordinance only if
39 it makes all five of the following findings:

40 (1) That there is a local ordinance which would prohibit or have the effect
41 of prohibiting the establishment or operation of a hazardous waste
42 facility;

43 (2) That the proposed facility is needed in order to establish adequate
44 capability for the management of hazardous waste generated in this

- 1 State and therefore serves the interest of the citizens of the State as a
2 whole;
- 3 (3) That all legally required State and federal permits or approvals have
4 been issued by the appropriate State and federal agencies or that all
5 State and federal permit requirements have been satisfied and that the
6 permits or approvals have been denied or withheld only because of the
7 local ordinance(s);
- 8 (4) That local citizens and elected officials have had adequate opportunity
9 to participate in the siting process; and
- 10 (5) That the construction and operation of the facility will not pose an
11 unreasonable health or environmental risk to the surrounding locality
12 and that the facility operator or ~~Treatment~~Industrial Waste
13 Management Commission has taken or consented to take any
14 reasonable measures to avoid or manage foreseeable risks and to
15 comply to the maximum feasible extent with and applicable local
16 ordinance(s).

17 If the Board does not make all five findings set out above, the Board shall not preempt
18 the challenged local ordinance(s). The Board's decision shall be in writing and shall
19 identify the evidence submitted to the Board plus any additional evidence used in
20 arriving at the decision."

21 Sec. 10. G.S. 130A-294(e) reads as rewritten:

22 "(e) ~~The rules~~Rules adopted under this section shall be no less stringent than the
23 most recent regulations adopted under ~~the federal act RCRA~~and may be amended."

24 Sec. 11. G.S. 130A-294(f) reads as rewritten:

25 "(f) ~~Within five~~10 days of receiving an application for a permit or for an
26 amendment to an existing permit for a hazardous waste facility, the Department shall
27 notify the clerk ~~to of the county~~board of commissioners of the county or counties in
28 which the facility is proposed to be located or is located and, or, if the facility is
29 proposed to be located or is located within a city, the city clerk of the governing board
30 of the city, where the facility is proposed to be located, that the application has been filed,
31 and shall file a copy of the application with the clerk. Prior to the issuance of a permit
32 or an amendment of an existing permit ~~for a hazardous waste facility, the Department~~
33 Secretary or his designee shall issue public notice and conduct a public hearing in any the
34 county, or in one of the counties in which a the hazardous waste facility is proposed to
35 be located or is located. ~~Notice and public hearings shall be in accordance with the~~
36 ~~appropriate federal regulations adopted pursuant to the federal act and with Chapter 150B of~~
37 ~~the General Statutes.~~The Secretary or his designee shall give notice of the hearing, and
38 the public hearing shall be in accordance with applicable federal regulations adopted
39 pursuant to RCRA and with Chapter 150B of the General Statutes. Where the
40 provisions of the federal regulations and Chapter 150B of the General Statutes are
41 inconsistent, the federal regulations shall apply.

42 ~~Within 180 days after receiving a complete application for a permit or for an~~
43 ~~amendment to an existing permit for a comprehensive hazardous waste treatment~~
44 ~~facility, the Department shall approve or disapprove the application. In acting upon the~~

1 application, the Department shall consider land use, zoning, buffer zones, utility
2 availability, proximity to sources of waste, civil defense, fire safety, transportation and
3 access, existing road network, general considerations of the public's health and safety,
4 and any other objective factors reasonably related and relevant to the proper siting and
5 operation of the comprehensive hazardous waste treatment facility. The Department
6 may impose conditions in a permit in response to these factors. The Department's denial
7 of an application shall be in writing, shall state the reasons for the denial, and shall
8 inform the applicant of the right to appeal the denial."

9 Sec. 12. G.S. 130A-294(g) reads as rewritten:

10 "(g) ~~The Commission shall develop and adopt criteria and standards to be~~
11 ~~considered in location and permitting of a hazardous waste facility by January 31, 1985.~~
12 ~~The standards and criteria shall be developed through public participation, shall be~~
13 ~~enforced by the Department and shall include, in addition to all applicable State and~~
14 ~~federal rules and regulations, consideration of:~~

- 15 (1) ~~Acceptability within the community where the facility is to be located~~
16 ~~or steps which should be taken if community acceptance is not~~
17 ~~forthcoming;~~
- 18 (2) ~~Hydrological and geological factors such as flood plains, depth to~~
19 ~~water table, groundwater travel time, proximity to public water supply~~
20 ~~watersheds, soil pH, soil cation exchange capacity, soil composition~~
21 ~~and permeability, cavernous bedrock, seismic activity, slope, mines~~
22 ~~and climate;~~
- 23 (3) ~~Natural resources such as wetlands, endangered species habitats,~~
24 ~~proximity to parks, forests, wilderness areas and historical sites, and~~
25 ~~air quality;~~
- 26 (4) ~~Local land use whether residential, industrial, commercial,~~
27 ~~recreational, agricultural, and proximity to incompatible structures~~
28 ~~such as schools and airports;~~
- 29 (5) ~~Transportation factors, such as proximity to waste generators and to~~
30 ~~population, route safety and method of transportation; and~~
- 31 (6) ~~Aesthetic factors such as the visibility, appearance and noise level of~~
32 ~~the facility.~~

33 The Commission shall develop and adopt standards for permitting of hazardous
34 waste facilities. Such standards shall be developed with, and provide for, public
35 participation; shall be incorporated into rules; shall be consistent with all applicable
36 federal and State law, including statutes, regulations and rules; shall be developed and
37 revised in light of the best available scientific data; and shall be based on consideration
38 of at least the following factors:

- 39 (1) Hydrological and geological factors, including flood plains, depth to
40 water table, groundwater travel time, soil pH, soil cation exchange
41 capacity, soil composition and permeability, cavernous bedrock,
42 seismic activity, slope, mines, and climate;

- (2) Environmental and public health factors, including air quality, quality of surface and groundwater, and proximity to public water supply watersheds;
- (3) Natural and cultural resources, including wetlands, gamelands, endangered species habitats, proximity to parks, forests, wilderness areas, nature preserves, and historic sites;
- (4) Local land uses;
- (5) Transportation factors, including proximity to waste generators, route safety, and method of transportation;
- (6) Aesthetic factors, including the visibility, appearance, and noise level of the facility;
- (7) Availability and reliability of public utilities; and
- (8) Availability of emergency response personnel and equipment."

Sec. 13. G.S. 130A-294(h) is rewritten to read:

"(h) Rules adopted by the Commission shall be subject to the following requirements:

- (1) ~~No hazardous waste landfill shall be established until at least one comprehensive hazardous waste treatment facility is fully operational in North Carolina.~~
- (2) To the extent that it is technologically and economically feasible, hazardous Hazardous-waste shall be treated prior to disposal in North Carolina. Long term storage or disposal shall be used for the storage or disposal of the residual or ashes of hazardous waste which has been treated so the toxicity is low enough to present no significant health or safety hazard in the event of leakage from the facility. Hazardous waste that cannot be reduced, stabilized or destroyed to the extent which renders it sufficiently low in toxicity as to present no significant health or safety hazard in the event of leakage shall be stored in long term retrievable storage until such methods are found. Hazardous waste in long term retrievable storage shall be detoxified as soon as the Commission for Health Services determines based upon a preponderance of the evidence that the technology is available at a reasonable cost.—The Commission shall determine the extent of waste treatment required before hazardous waste can be disposed of in a hazardous waste landfill facility.
- (3) Any hazardous waste landfill facility hereafter constructed in this State shall meet, at the minimum, the standards of construction imposed by federal regulations adopted under the ~~Federal Act~~ RCRA at the time the permit is issued.
- (4) No hazardous waste landfill facility or polychlorinated biphenyl landfill facility shall be located within 25 miles of any other hazardous waste landfill facility or polychlorinated biphenyl landfill facility.
- (5) No hazardous waste landfill facility operated pursuant to Chapter 130B of the General Statutes shall be located within 25 miles of a ~~or~~ polychlorinated biphenyl landfill facility—facility. shall be permitted

1 within 25 miles of a comprehensive hazardous waste treatment facility as
2 defined in G.S. 130A-290(1).

3 (6) The following will not be disposed of in a hazardous waste landfill or
4 long-term retrievable storage: landfill: ignitables as defined in the
5 Federal Act, RCRA, polyhalogenated biphenyls of 50 ppm or greater
6 concentration, and free liquids whether or not containerized.

7 (7) The underground storage of either a hazardous waste landfill or long-
8 term storage facility shall have at a minimum the following: a leachate
9 collection and removal system above an artificial impervious liner of
10 at least 30 mils in thickness, a minimum of five feet of clay or clay-
11 like liner with a maximum permeability of 1.0×10^{-7} centimeters
12 per second (cm/sec) below said artificial liner, and a leachate detection
13 system immediately below the clay or clay-like liner.

14 (8) Hazardous waste shall not be stored at a hazardous waste treatment
15 facility for over 90 days prior to treatment or disposal.

16 (9) The Commission shall consider any hazardous waste treatment process
17 proposed to it, if the process lessens treatment cost or improves
18 treatment over then current methods or standards required by the
19 Commission."

20 Sec. 14. G.S.130A-294(i) reads as rewritten:

21 "(i) ~~The Department shall submit to the General Assembly by February 1, 1985,~~
22 ~~plans:~~

23 ~~(1) To monitor and regulate all generators of more than 100 kilograms per~~
24 ~~month of hazardous waste; and~~

25 ~~(2) To locate, catalogue and monitor all existing hazardous waste~~
26 ~~impoundments and surface impoundments, including inactive~~
27 ~~hazardous waste disposal sites and "orphan dumps", including those~~
28 ~~owned or operated by units of State and local government, and shall~~
29 ~~submit to the General Assembly by February 1, 1985, a plan to bring~~
30 ~~all of these under legal requirements in effect on February 1, 1985,~~
31 ~~including a timetable for compliance. This plan shall include~~
32 ~~recordation of each of these sites in the office of the Register of Deeds~~
33 ~~in the county where it is located."~~

34 Sec. 15. G.S. 130A-294 is amended by adding a new subsection to read:

35 "(k) Each person who generates hazardous waste who is required to pay a fee
36 under G.S. 130A-294.1, and each operator of a hazardous waste treatment facility which
37 treats waste generated on-site who is required to pay a fee under G.S. 130A-294.1, shall
38 submit to the Department at the time such fees are due, a written description of any
39 program to minimize or reduce the volume and quantity or toxicity of such waste."

40 Sec. 16. G.S. 130A-294.1(p) reads as rewritten:

41 "(p) The Department shall make an annual report to the General Assembly and its
42 Fiscal Research Division on the cost of the hazardous waste management program. The
43 report shall include, but is not limited to, beginning fund balance, fees collected under
44 this section, anticipated revenue from all sources, total expenditures (by activities and

1 categories) for the hazardous waste management program, ending fund balance, any
2 recommended adjustments in the annual and tonnage fees which may be necessary to
3 assure the continued availability of funds sufficient to pay the State's share of the cost of
4 the hazardous waste management program, and any other information requested by the
5 General Assembly. In recommending adjustments in annual and tonnage fees, the
6 Department may propose fees for hazardous waste generators, and for hazardous waste
7 treatment facilities which treat waste generated on-site, which are designed to encourage
8 reductions in the volume or quantity and toxicity of hazardous waste."

9 Sec. 17. G.S. 130A-295 reads as rewritten:

10 "**§ 130A-295. Additional requirements for hazardous waste facilities.**

11 (a) An applicant for a permit for a hazardous waste facility shall satisfy the
12 Department that:

13 (1) Any hazardous waste facility constructed or operated by the applicant,
14 or any parent or subsidiary corporation if the applicant is a
15 corporation, has been operated in accordance, with sound waste
16 management practices and in substantial compliance with federal and
17 state laws, regulations and rules; and

18 (2) The applicant, or any parent or subsidiary corporation if the applicant
19 is a corporation, is financially qualified to operate the proposed
20 hazardous waste facility.

21 (a1) An applicant for a permit for a hazardous waste facility shall satisfy the
22 Department that he has met the requirements of subsection (a) of this section before the
23 Department is required to otherwise review the application. In order to continue to hold
24 a permit under this Chapter, a permittee must remain financially qualified and must
25 provide any information requested by the Department to demonstrate that he continues
26 to be financially qualified.

27 ~~(b) The operator shall deposit in trust with the city or county government one~~
28 ~~half of one percent (0.05%) of the income of the comprehensive hazardous waste~~
29 ~~treatment facility, payable within 30 days of each calendar quarter, until the total shall~~
30 ~~equal an amount of two hundred fifty thousand dollars (\$250,000). As used herein,~~
31 ~~income means gross operating revenues less refunds, rebates and allowances. This fund~~
32 ~~shall be available to the city or county in which the comprehensive hazardous waste~~
33 ~~treatment facility is located for the purpose of defraying the cost of any cleanup which~~
34 ~~might be required at the comprehensive hazardous waste treatment facility. The city or~~
35 ~~county may, in its discretion, use up to fifty thousand dollars (\$50,000) of this total to~~
36 ~~establish an Emergency Response Team, trained and equipped to handle hazardous~~
37 ~~waste spills and to respond to accidents at hazardous waste treatment facilities.~~
38 ~~Financial records shall be subject to the audit of the local government for two years~~
39 ~~after any fee is paid. Any errors in the payment shall be corrected by credit or debit in~~
40 ~~the next payment or payments by the operator of the hazardous waste facility. If the~~
41 ~~North Carolina Hazardous Waste Treatment Commission owns and operates the facility,~~
42 ~~the North Carolina Hazardous Waste Treatment Commission, consistent with the~~
43 ~~resources available, shall compensate the local government for expenses incurred due to~~
44 ~~location of the facility. This compensation shall not exceed the amount of ad valorem~~

1 tax revenues the local government would have received if the facility were privately
2 owned. Nothing herein shall be construed to limit in any way funds which might be
3 available to local government from other sources.

4 (e) Although no one is required to use a comprehensive hazardous waste
5 treatment facility, use by North Carolina industry shall be encouraged. Nothing in this
6 act shall be construed to prevent any hazardous waste or other waste generated or
7 located in North Carolina from being removed from the State for disposal, treatment or
8 storage."

9 Sec. 18. G.S. 130A-299 reads as rewritten:

10 **"§130A-299. Single agency designation.**

11 The Department is designated as the single State agency for purposes of the federal
12 act RCRA or any State or federal legislation enacted to promote the proper management
13 of solid waste."

14 Sec. 19. G.S. 130A-308 reads as rewritten:

15 **"§130A-308. Continuing releases at permitted facilities.**

16 Standards adopted under G.S. 130A-294(c) shall require, and a permit issued after
17 November 8, 1984, shall require corrective action for all releases of hazardous waste or
18 constituents from any solid waste management unit at a treatment, storage, or disposal
19 facility seeking a permit under G.S. 130A-294(c), regardless of the time at which waste
20 was placed in such unit. Permits issued under G.S. 130A-294(c) which implement
21 Section 3005 of the Federal Act RCRA (42 U.S.C. § 6925) shall contain schedules of
22 compliance for such corrective action (where such corrective action cannot be
23 completed prior to issuance of the permit) and assurances of financial responsibility for
24 completing such corrective action. Notwithstanding any other provision of this section,
25 this section shall apply only to units, facilities, and permits that are covered by Section
26 3004(u) of the Federal Act RCRA (42 U.S.C. Section ~~§ 6924~~ (u)). Notwithstanding the
27 foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by
28 this section."

29 Sec. 20. G.S. 130A-309 reads as rewritten:

30 **"§130A-309. Corrective actions beyond facility boundary.**

31 Standards adopted under G.S. 130A-294(c) shall require that corrective action be
32 taken beyond the facility boundary where necessary to protect human health and the
33 environment unless the owner or operator of the facility concerned demonstrates to the
34 satisfaction of the Department that, despite the owner or operator's best efforts, the
35 owner or operator was unable to obtain the necessary permission to undertake such
36 action. Such standards shall take effect upon adoption and shall apply to:

- 37 (1) All facilities operating under permits issued under G.S. 130A-294(c);
38 and
39 (2) All landfills, surface impoundments, and waste pile units (including
40 any new units, replacements of existing units or lateral expansions of
41 existing units) which receive hazardous waste after July 26, 1982.

42 Pending adoption of such rules, the Department shall issue corrective action orders
43 for facilities referred to in (1) and (2), on a case-by-case basis, consistent with the
44 purposes of this section. Notwithstanding any other provision of this section, this

1 section shall apply only to units, facilities, and permits that are covered by Section
2 3004(v) of the Federal Act RCRA (42 U.S.C. Section § 6924(v)). Notwithstanding the
3 foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by
4 this section."

5 Sec. 21. G.S. 143-215.1 is amended by adding a new subsection to read:

6 "(g) Any person who is required to hold a permit under this section shall submit to
7 the Department a written description of his current and projected plans to reduce the
8 discharge of waste and pollutants under such permit by source reduction or recycling.
9 The written description shall accompany the payment of the annual permit fee. The
10 written description shall also accompany any application for a new permit, or for
11 modification of an existing permit, under this section. The written description required
12 by this subsection shall not be considered part of a permit application and shall not
13 serve as the basis for the denial of a permit or permit modification."

14 Sec. 22. G.S. 143-215.108 is amended by adding a new subsection to read:

15 "(c) Any person who is required to hold a permit under this section shall submit to
16 the Department a written description of his current and projected plans to reduce the
17 emission of air contaminants under such permit by source reduction or recycling. The
18 written description shall accompany the payment of the annual permit fee. The written
19 description shall also accompany any application for a new permit, or for modification
20 of an existing permit, under this section. The written description required by this
21 subsection shall not be considered part of a permit application and shall not serve as the
22 basis for the denial of a permit or permit modification."

23 Sec. 23. G.S. 143B-216.13 reads as rewritten:

24 "**§ 143B-216.13. Functions and powers of Board.**

25 The Board shall perform the functions and be empowered as follows:

- 26 (1) The Board shall periodically evaluate and assess the volume,
27 distribution, location, and physical and chemical characteristics of
28 hazardous waste and low-level radioactive waste generated or disposed
29 of in the State.
- 30 (2) The Board shall periodically review the State's comprehensive waste
31 management system and make recommendations to the Governor,
32 cognizant State agencies, and the General Assembly on ways to
33 improve waste management; reduce the amount of waste generated;
34 maximize resource recovery, reuse, and conservation; and minimize
35 the amount of hazardous waste and low-level radioactive waste which
36 must be disposed of.
- 37 (3) The Board shall study and make recommendations on policy issues
38 including but not limited to liability and financial responsibilities
39 within the waste management area. ~~On or before January 1, 1983, the~~
40 ~~Board shall prepare and present to the Governor and General Assembly a~~
41 ~~report concerning the desirability of establishing by statute a standard of~~
42 ~~strict liability for persons involved in storage, transportation, treatment, or~~
43 ~~disposal of hazardous or low-level radioactive waste in North Carolina.~~

- 1 (4) The Board shall promote research and development and disseminate
2 information on state-of-the-art means of handling and disposing of
3 hazardous waste and low-level radioactive waste. The Board is
4 authorized to establish a waste information exchange for the State.
- 5 (5) The Board shall promote public education and public involvement in
6 the decision making process for the siting and permitting of proposed
7 waste management facilities.
- 8 (6) ~~The Board shall periodically evaluate and assess the type and number
9 of hazardous waste facilities, hazardous waste landfill facilities, low-
10 level radioactive waste facilities and low level radioactive waste
11 landfill facilities in existence, under construction or planned in the
12 State and multi-State region and promote the development of
13 additional facilities particularly retrievable aboveground storage
14 facilities if existing or planned facilities are deemed inadequate or
15 unavailable. The Board, in conjunction with the Solid Waste
16 Management Section of the Division of Health Services of the
17 Department of Human Resources, shall assist the North Carolina
18 Industrial Waste Management Commission with the periodic review
19 required by G.S. 130B-7(a)(1)(i).~~
- 20 (6a) The Board shall annually report to the Governor and the General
21 Assembly on the effectiveness of the waste reduction programs in the
22 State and shall make recommendations on ways to improve such
23 programs.
- 24 (6b) The Board, in conjunction with the Solid Waste Management Section
25 of the Division of Health Services of the Department of Human
26 Resources, shall develop, with public participation, a comprehensive
27 hazardous waste management plan for the State. This plan shall be
28 completed by 1 July 1990 and shall be revised at two-year intervals
29 thereafter.
- 30 (7) ~~The Board shall prepare and file jointly with both the Governor and the
31 General Assembly an annual report describing the Board's activities
32 and setting forth its recommendations for administrative or regulatory
33 action required to improve the State's comprehensive waste management
34 system or remedy noted defects in the system. improvements in the waste
35 management system in the State. A special report shall be filed in
36 January of 1983 which shall include an evaluation on the possible need to
37 organize State agencies more efficiently to improve overall performance of
38 waste management functions. The report should give consideration to the
39 advantages and disadvantages of consolidating or centralizing administration
40 of programs that are now in separate agencies.~~
41 ~~The Board shall provide a report to the General Assembly by February
42 1, 1985, to include:~~
- 43 a. ~~An analysis of the size, type and number of hazardous waste
44 facilities needed in North Carolina and a plan to meet these
45 needs;~~

- 1 b. ~~An analysis of the system of collection of hazardous waste in~~
2 ~~North Carolina, recommendations as to how that system might~~
3 ~~be improved and a plan to implement these recommendations;~~
4 ~~and~~
5 e. ~~An analysis of the cost incurred by local government because of~~
6 ~~the presence of a hazardous waste facility, a hazardous waste~~
7 ~~landfill facility or a comprehensive hazardous waste treatment~~
8 ~~facility.~~
- 9 (8) The Board shall each year recommend to the Governor a recipient for
10 a 'Governor's Award of Excellence' which the Governor shall award
11 for outstanding achievement by an industry or company in the area of
12 hazardous waste or low-level radioactive waste management.
- 13 (9) The Board shall , at the request of the Governor and under his
14 direction, assist with the negotiation of interstate agreements for the
15 management of hazardous waste. ~~promote and participate in discussion~~
16 ~~with other states concerning development of regional hazardous waste and~~
17 ~~low-level radioactive waste management agreements.~~
- 18 (10) The Board shall assist localities in which facilities are proposed in
19 collecting and receiving information relating to the suitability of the
20 proposed site. At the request of a local government in which facilities
21 are proposed, the Board shall direct the appropriate agencies of State
22 government to develop such relevant data as that locality shall
23 reasonably request.
- 24 (11) Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1082, s. 14.1.
- 25 (12) The Board shall, in accordance with the procedures set forth in G.S.
26 160A-211.1 and G.S. 153A-152.1, review upon appeal specific
27 privilege license tax rates which localities may apply to waste
28 management facilities in their jurisdiction.
- 29 (13) The Board may insure its members against personal liability for any
30 actions they might take pursuant to the exercise of the functions and
31 powers of the Board.
- 32 (14) The Board may adopt, modify, or revoke any rules necessary to carry
33 out the functions and powers as set forth in this Part.
- 34 (15) The Board shall have any and all powers necessary or incidental to the
35 exercise of the functions and powers enumerated herein.
- 36 (16) The Board shall study the development of retrievable, aboveground
37 storage facilities for hazardous wastes.
- 38 (17) ~~The Board shall certify comprehensive hazardous waste treatment~~
39 ~~facilities which meet the criteria prescribed in G.S. 130A-290(1)."~~
- 40 Sec. 24. G.S. 150B-1(d) reads as rewritten:
41 "(d) (1) The following are specifically exempted from the provisions of this
42 Chapter:
43 a. the Administrative Rules Review Commission, Commission;
44 b. the Employment Security Commission, Commission;

- 1 c. ~~the~~ The Industrial Commission, Commission;
2 d. ~~the~~ The Occupational Safety and Health Review Board in all
3 actions that do not involve agricultural ~~employers,~~ employers;
4 and
5 e. ~~the~~ The Utilities Commission.
- 6 (2) The North Carolina National Guard is exempt from the provisions of
7 this Chapter in exercising its court-martial jurisdiction.
- 8 (3) The Department of Human Resources is exempt from this Chapter in
9 exercising its authority over the Camp Butner reservation granted in
10 Article 6 of Chapter 122C of the General Statutes.
- 11 (4) The Department of Correction is exempt from the provisions of this
12 Chapter, except for Article 5 of this Chapter and G.S. 150B-13 which
13 shall apply.
- 14 (5) Articles 2 and 3 of this Chapter shall not apply to the Department of
15 Revenue.
- 16 (6) Except as provided in Chapter 136 of the General Statutes, Articles 2
17 and 3 of this Chapter do not apply to the Department of
18 Transportation.
- 19 (7) Article 4 of this Chapter, governing judicial review of final
20 administrative decisions, shall apply to The University of North
21 Carolina and its constituent or affiliated boards, agencies, and
22 institutions, but The University of North Carolina and its constituent or
23 affiliated boards, agencies, and institutions are specifically exempted
24 from the remaining provisions of this Chapter.
- 25 (8) Article 4 of this Chapter shall not apply to the State Banking
26 Commission, the Commissioner of Banks, the Savings and Loan
27 Division of the Department of Commerce, and the Credit Union
28 Division of the Department of Commerce.
- 29 (9) Article 3 of this Chapter shall not apply to agencies governed by the
30 provisions of Article 3A of this Chapter, as set out in G.S. 150B-38(a).
- 31 (10) Articles 3 and 3A of this Chapter shall not apply to the Governor's
32 Waste Management Board in administering the provisions of G.S.
33 104E-6.2. and G.S. 130A-293.
- 34 (11) Article 2 of this Chapter shall not apply to the North Carolina Low-
35 Level Radioactive Waste Management Authority in administering the
36 provisions of G.S. 104G-10 and G.S. 104G-11. Articles 3 and 3A of
37 this Chapter shall not apply to the North Carolina Low-Level
38 Radioactive Waste Management Authority in administering the
39 provisions of G.S. 104G-9, 104G-10, and 104G-11.
- 40 (12) Article 2 of this Chapter shall not apply to the North Carolina
41 Industrial Waste Management Commission in administering the
42 provisions of G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of
43 this Chapter shall not apply to the North Carolina Industrial Waste

1 Management Commission in administering the provisions of G.S.
2 130B-11, 130B-13, and 130B-14."

3 Sec. 25. G.S. 104G-6(14) reads as rewritten:

4 "(14) May issue revenue bonds from time to time pursuant to The State and
5 Local Government Revenue Bond Act, Article 5 of Chapter 159 of the
6 ~~General Statutes; Statutes,~~ and such bonds may be sold at public or
7 private sale pursuant to G.S. 159-123;".

8 Sec. 26. G.S. 159-81(3) reads as rewritten:

9 "(3) 'Revenue bond project' means any undertaking for the acquisition,
10 construction, reconstruction, improvement, enlargement, betterment,
11 or extension of any one or combination of the following revenue-
12 producing utility or public service enterprise facilities or systems
13 owned or leased as lessee by the issuing unit:

14 a. Water systems or facilities, including all plants, works,
15 instrumentalities and properties used or useful in obtaining,
16 conserving, treating, and distributing water for domestic or
17 industrial use, irrigation, sanitation, fire protection, or any other
18 public or private use.

19 b. Sewage disposal systems or facilities, including all plants,
20 works, instrumentalities, and properties used or useful in the
21 collection, treatment, purification, or disposal of sewage.

22 c. Systems or facilities for the generation, production,
23 transmission, or distribution of gas (natural, artificial, or mixed)
24 or electric energy for lighting, heating, or power for public and
25 private uses, where gas systems shall include the purchase
26 and/or lease of natural gas fields and natural gas reserves and
27 the purchase of natural gas supplies, and where any parts of
28 such gas systems may be located either within the State or
29 without.

30 d. Systems, facilities and equipment for the collection, treatment,
31 or disposal of solid waste.

32 e. Public transportation systems, facilities, or equipment,
33 including but not limited to bus, truck, ferry, and railroad
34 terminals, depots, trackages, vehicles, and ferries, and mass
35 transit systems.

36 f. Public parking lots, areas, garages, and other vehicular parking
37 structures and facilities.

38 g. Aeronautical facilities, including but not limited to airports,
39 terminals, and hangars.

40 h. Marine facilities, including but not limited to marinas, basins,
41 docks, dry docks, piers, marine railways, wharves, harbors,
42 warehouses, and terminals.

43 i. Hospitals and other health-related facilities.

- 1 j. Public auditoriums, gymnasiums, stadiums, and convention
2 centers.
- 3 k. Recreational facilities.
- 4 l. In addition to the foregoing, in the case of the State of North
5 Carolina, low-level radioactive waste facilities developed
6 pursuant to Chapter 104G of the General Statutes, hazardous
7 waste facilities developed pursuant to Chapter 130B of the
8 General Statutes, and any other project authorized by the
9 General Assembly.
- 10 m. (~~For applicability see note below~~) [For applicability, see note
11 below.] Economic development projects, including the
12 acquisition and development of industrial parks, the acquisition
13 and resale of land suitable for industrial or commercial
14 purposes, and the construction and lease or sale of shell
15 buildings in order to provide employment opportunities for
16 citizens of the municipality.
- 17 ~~(n)~~n. Facilities for the use of any agency or agencies of the
18 government of the United States of America.

19 The cost of an undertaking may include all property, both real and personal and
20 improved and unimproved, plants, works, appurtenances, machinery, equipment,
21 easements, water rights, air rights, franchises, and licenses used or useful in connection
22 with any of the foregoing utilities and enterprises; the cost of demolishing or moving
23 structures from land acquired and the cost of acquiring any lands to which such
24 structures are to be moved; financing charges; the cost of plans, specifications, surveys,
25 and estimates of cost and revenues; administrative and legal expenses; and any other
26 expense necessary or incident to the project."

27 Sec. 27. G.S. 159-81(4) reads as rewritten:

28 "(4) 'Revenues' include all moneys received by the State or a municipality
29 from, in connection with, or as a result of its ownership or operation of
30 a revenue bond project or a utility or public service enterprise facility
31 or system of which a revenue bond project is a part, including (to the
32 extent deemed advisable by the State or a municipality) moneys
33 received from the United States of America, the State of North
34 Carolina, or any agency of either, pursuant to an agreement with the
35 State or a municipality, as the case may be, pertaining to the project.
36 'Revenues' also include all moneys received by, or on behalf of, the
37 North Carolina Low-Level Radioactive Waste Management Authority
38 in connection with its financing of a low-level radioactive waste
39 facility and all money received by, or on behalf of, the North Carolina
40 Industrial Waste Management Commission in connection with its
41 financing of a hazardous waste facility."

42 Sec. 28. G.S. 159-83(a)(5) reads as rewritten:

43 "(5) To borrow money for the purpose of acquiring, constructing,
44 reconstructing, extending, bettering, improving, or otherwise paying

1 the cost of revenue bond projects, and to issue its revenue bonds or
2 bond anticipation notes therefor, in the name of the State or a
3 municipality, as the case may be, but no encumbrance, mortgage, or
4 other pledge or real property of the State or a municipality may be
5 created in any manner. Notwithstanding the foregoing, the North
6 Carolina Low-Level Radioactive Waste Management Authority may
7 create an encumbrance, mortgage, or other pledge of real property of
8 the Authority in connection with its financing of a low-level
9 radioactive waste facility and the North Carolina Industrial Waste
10 Management Commission may create an encumbrance, mortgage, or
11 other pledge of real property of the Commission in connection with its
12 financing of a hazardous waste facility."

13 Sec. 29. G.S. 159-83 is amended by adding a new subsection to read:

14 "(e) In the case of the State of North Carolina, any action to be taken by the
15 Council of State pursuant to this section shall be taken (i) with respect to the issuance of
16 revenue bonds by the North Carolina Low-Level Radioactive Waste Management
17 Authority, by the governing board of the Authority and (ii) with respect to the issuance
18 of revenue bonds by the North Carolina Industrial Waste Management Commission, by
19 the governing board of the Commission, and not by the Council of State."

20 Sec. 30. G.S. 159-85 is amended by adding a new subsection to read:

21 "(d) In the case of the State of North Carolina, any action to be taken by the State
22 Treasurer pursuant to this section shall be taken (i) with respect to the issuance of
23 revenue bonds by the North Carolina Low-Level Radioactive Waste Management
24 Authority, by the governing board of the Authority and (ii) with respect to the issuance
25 of revenue bonds by the North Carolina Industrial Waste Management Commission, by
26 the governing board of the Commission, and not by the State Treasurer."

27 Sec. 31. G.S. 159-88 is amended by adding a new subsection to read:

28 "(d) In the case of the State of North Carolina, any action to be taken by the
29 Council of State pursuant to this section shall be taken (i) with respect to the issuance of
30 revenue bonds by the North Carolina Low-Level Radioactive Waste Management
31 Authority, by the governing board of the Authority and (ii) with respect to the issuance
32 of revenue bonds by the North Carolina Industrial Waste Management Commission, by
33 the governing board of the Commission, and not by the Council of State. Subsection (c)
34 of this section shall not apply to the issuance of revenue bonds by North Carolina Low-
35 Level Radioactive Waste Management Authority or by the North Carolina Industrial
36 Waste Management Commission."

37 Sec. 32. G.S. 159-94 reads as rewritten:

38 **"§ 159-94. Limited liability.**

39 (a) Revenue bonds shall be special obligations of the State or the municipality
40 issuing them. The principal of and interest on revenue bonds shall not be payable from
41 the general funds of the State or the municipality, as the case may be, nor shall they
42 constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its
43 property or upon any of its income, receipts, or revenues, except the funds which are
44 pledged under the bond order authorizing the bonds. Neither the credit nor the taxing

1 power of the State or the municipality, as the case may be, are pledged for the payment
2 of the principal or interest of revenue bonds, and no holder of revenue bonds has the
3 right to compel the exercise of the taxing power by the State or the municipality, as the
4 case may be, or the forfeiture of any of its property in connection with any default
5 thereon. Every revenue bond shall recite in substance that the principal of and interest
6 on the bond is payable solely from the revenues pledged to its payment and that the
7 State or the municipality, as the case may be, is not obligated to pay the principal or
8 interest except from such revenues.

9 (b) The provisions of this section relating to a legal or equitable pledge, charge,
10 lien, or encumbrance upon real property or the forfeiture thereof shall not apply to
11 revenue bonds issued by the North Carolina Low-Level Radioactive Waste
12 Management Authority or by the North Carolina Industrial Waste Management
13 Commission."

14 Sec. 33. G.S. 159-96 reads as rewritten:

15 "**§ 159-96. Limitation on extraterritorial operation of enterprises financed by**
16 **revenue bonds.**

17 (a) Each utility or public service enterprise listed in G.S. 159-81(3), if financed
18 wholly or partially by revenue bonds issued under this Article, shall be owned or
19 operated by the municipality for its own use and for the use of public and private
20 consumers residing within its corporate limits. A utility or public service enterprise
21 financed wholly or partially by revenue bonds, when operated primarily for the
22 municipality's own use and for users within its corporate limits, may be operated
23 incidentally for users outside its corporate limits. Provided, however, that revenue bonds
24 may be issued for the purpose of financing in whole or in part mass transit systems,
25 aeronautical facilities, marine facilities and systems, facilities and equipment for the
26 collection, treatment or disposal of solid waste, notwithstanding that such systems,
27 facilities or equipment may be operated for users outside the corporate limits of a
28 municipality where the municipality finds that the system, facilities or equipment so
29 financed would benefit the municipality.

30 (b) A revenue bond project financed wholly or partially by revenue bonds of the
31 State may be located either within or without the State and, when operated primarily for
32 the State's own use and for users within the State, may be operated incidentally for users
33 outside the State.

34 (c) The provisions of subsection (b) of this section shall not apply to the
35 financing of any revenue bond project by the North Carolina Low-Level Radioactive
36 Waste Management Authority or by the North Carolina Industrial Waste Management
37 Commission."

38 Sec. 34. (a) The Environmental Management Commission shall develop and
39 adopt ambient air quality standards for toxic pollutants and shall develop a program to
40 meet such standards by 1 July 1990.

41 (b) The Environmental Management Commission shall develop and adopt
42 emission standards for solid waste, hazardous waste, and medical waste incinerators by
43 1 July 1991.

1 Sec. 35. The provisions of this act are severable, and if any provision of this
2 act is held invalid by a court of competent jurisdiction, the invalidity shall not affect
3 other provisions of the act which can be given effect without the invalid provision.

4 Sec. 36. This act is effective upon ratification.