

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 168
SENATE BILL 324

AN ACT TO PROVIDE FOR THE MANAGEMENT OF HAZARDOUS WASTE IN NORTH CAROLINA, TO REORGANIZE THE NORTH CAROLINA HAZARDOUS WASTE TREATMENT COMMISSION AS THE NORTH CAROLINA HAZARDOUS 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.

"Hazardous Waste Management Commission.

"§ 130B-1. Title; applicability.

(a) This Chapter shall be known and may be cited as the 'North Carolina Hazardous 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 hazardous waste facilities established pursuant to this Chapter.

"§ 130B-2. Definitions.

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

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

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

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

(3) 'Commission' means the North Carolina Hazardous Waste Management Commission established pursuant to this Chapter or any successor thereto.

(4) 'Department' means the Department of Human Resources.

"§ 130B-3. Legislative findings.

The General Assembly of North Carolina hereby finds that the safe management of hazardous waste, and particularly the timely establishment of adequate facilities for the

treatment and disposal of hazardous waste, is one of the most urgent problems facing North Carolina. The safe management of hazardous waste is essential to protect public health and safety and the environment and to continued economic growth. Consequently, cooperation and coordination among the private sector, the general public, the State, and local governments to assure the prevention of unnecessary waste and the establishment of a comprehensive and integrated system of adequate treatment and disposal facilities are essential.

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

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

The General Assembly further finds that while the foregoing findings, which were articulated in similar form in legislation enacted in 1981 and 1984, continue to hold true, circumstances have changed since that time which require adjustments in the State's hazardous waste management policy. Specifically, the General Assembly finds that the most practical approach to hazardous waste management, including compliance with the CERCLA/SARA capacity assurance requirements, is through a regional approach. The General Assembly finds that the development of a full range of comprehensive hazardous waste treatment and disposal facilities in this and every state is neither environmentally nor economically sound. The General Assembly finds that minimization, and wherever possible elimination, of hazardous waste generation, and hazardous waste reduction, recycling, and on-site treatment are preferable to off-site treatment and disposal.

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

"§ 130B-4. Purpose.

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

It is also the purpose of the General Assembly through powers granted to the Governor's Waste Management Board to limit the extent to which units of local government may regulate the management of hazardous waste by means of local acts, laws, resolutions, ordinances, rules, or regulations, including but not limited to those relating to taxes and fees, local land use including zoning and other restrictions on the use of property, building codes, fire protection, civil defense, preparation for and response to emergencies, and public health.

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

- (1) The legitimate concerns of nearby residents and affected municipalities can be expressed in a public forum, negotiated and, if need be, arbitrated with the Commission in a fair manner and reduced to a written document that is legally binding; and
- (2) Environmentally sound and economically viable hazardous waste facilities will be established.

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

(a) No hazardous waste facility shall be established pursuant to this Chapter unless the Governor determines that such facility is essential and is in the best interests of the State. Such determination shall be based on a periodic review of current and projected hazardous waste generation from all sources within the State, the current and

projected effect of efforts to minimize and reduce the generation of hazardous waste, the potential for further reductions in the generation of hazardous waste, current and projected availability and adequacy of facilities for the management of hazardous waste within and outside the State, whether and to what extent private enterprise will provide needed hazardous waste facilities, capacity assurance requirements under CERCLA/SARA, the extent to which agreements can be negotiated for the management of hazardous waste outside the State, and the extent to which the State should obligate itself to provide facilities for the management of hazardous waste generated outside the State. The Governor shall take into consideration the comprehensive waste management plan developed pursuant to G.S. 130A-294(i) in making any determination under this subsection. Such determination shall be made in writing and shall specify the functions, technologies, and design capacities of the hazardous waste facility to be established.

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

- (1) Authorize the establishment of the facility as provided in subsection (a) of this section;
- (2) Approve and modify as necessary a schedule for selection of the preferred and alternate sites for the facility;
- (3) Approve and modify as necessary a schedule for the development of the facility; and
- (4) Approve the technology and design capacity of each component of the facility.

(c) The Governor is authorized to enter into interstate agreements for the management of hazardous waste. Such agreements shall provide for access to suitable facilities for management of hazardous waste; encourage reductions in the volume or quantity and toxicity of hazardous waste; distribute the costs, benefits, and obligations of hazardous waste management equitably among the party states; and provide for protection of human health and the environment in a manner that is both ecologically and economically sound. In negotiating such agreements, the Governor may request such assistance as he deems appropriate from the Attorney General, the Solid Waste Management Division of the Department, the Governor's Waste Management Board, and the Commission. The Governor shall submit any such agreement to the General Assembly for its approval, and no such agreement shall be effective until approved by the General Assembly.

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

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

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

- (2) The Commission shall continue until its existence shall be terminated by law. Upon the termination of the existence of the Commission, all of its rights and properties shall pass to and be vested in the State.
- (3) The Department of Commerce and the Department of Administration shall provide such technical, clerical, and other support services and personnel as the Commission may require in the performance of its functions. The Commission shall reimburse the Departments for such services from its revenues or from other funding sources.

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

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

- (1) The Governor shall appoint five members.
- (2) The General Assembly shall appoint four members in accordance with G.S. 120-121, two upon recommendation of the Speaker of the House of Representatives and two upon recommendation of the President Pro Tempore of the Senate.
- (3) Successors shall be appointed by the appointing authority making the original appointment.
- (4) Vacancies in appointments shall be filled for the unexpired term. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.
- (5) Members of the Commission shall include persons with expertise in the technical, legal, financial, and other aspects of hazardous waste management and shall represent, insofar as practicable, the diverse interests and geographic regions of the State. Not more than three members of the Commission may be persons who derive any significant portion of their income from persons who generate or transport hazardous waste or who operate hazardous waste facilities. For purposes of this subdivision, faculty members and health care professionals employed by a nonprofit institution and employees of any governmental entity shall not be regarded as deriving a significant portion of their income from a generator or transporter of hazardous waste or from a hazardous waste facility operator by reason of such employment. The Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate shall consult with one another to insure that the requirements of this subdivision are met. Each appointing authority shall require adequate disclosure of potential conflicts of interest by members of the Commission.

(d) Terms.

- (1) All appointments made by the Governor, other than initial appointments, shall be for a term of four years. The Governor shall have the power to remove, in accordance with G.S. 143B-13, any member appointed by the Governor.
- (2) All appointments made by the General Assembly, other than initial appointments, shall be for a term of two years. The General Assembly shall have the power to remove, in accordance with G.S. 143B-13, any member appointed by the General Assembly.
- (3) Terms shall expire on 30 June as provided by this subsection, except that members of the Commission shall serve until their successors are appointed and duly qualified as provided by G.S. 128-7.
- (4) Of the initial appointments made by the Governor, one term shall expire 30 June 1990, one term shall expire 30 June 1991, one term shall expire 30 June 1992, and two terms shall expire 30 June 1993. Successors shall be appointed to serve four-year terms.
- (5) Of the initial appointments made by the General Assembly on recommendation of the Speaker of the House of Representatives, one term shall expire 30 June 1991, and one term shall expire 30 June 1992. Of the initial appointments made by the General Assembly on recommendation of the President Pro Tempore of the Senate, one term shall expire 30 June 1991, and one term shall expire 30 June 1992.

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

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

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

- (1) The Commission shall appoint an Executive Director, who shall report to the Commission and serve at its pleasure. The Executive Director shall be the chief administrative officer of the Commission. The Commission shall set, subject to consultation with the Advisory Budget Commission, and pay the compensation of the Executive Director.

- (2) The Executive Director shall be assisted by such senior professional staff members as may be necessary to carry out the provisions of this Chapter, who shall be appointed by the Commission on nomination of the Executive Director. The Commission shall set, subject to consultation with the Advisory Budget Commission, and pay the compensation of the staff members it appoints.
- (3) In addition, the Executive Director shall be assisted by such other employees as may be needed to carry out the provisions of this Chapter. The staff complement shall be established by the Commission on recommendation of the Executive Director. Such other employees shall be appointed by the Commission upon the recommendation of the Executive Director and shall be compensated by the Commission pursuant to the provisions of Chapter 126 of the General Statutes.

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

- (a) To carry out the purposes of this Chapter, the Commission:
 - (1) Shall (i) with the assistance of the Board and the Solid Waste Management Division of the Department, periodically review current and projected hazardous waste generation from all sources within the State, the current and projected effect of efforts to minimize and reduce the generation of hazardous waste, the potential for further reductions in the generation of hazardous waste, current and projected availability and adequacy of facilities for the management of hazardous waste within and outside the State, whether and to what extent private enterprise will provide needed hazardous waste facilities, and capacity assurance requirements under CERCLA/SARA, (ii) determine whether additional facilities for the management of hazardous waste may be needed in this State, and (iii) make appropriate recommendations to the Governor and the General Assembly;
 - (2) Shall, at the request of the Governor and under his direction, assist with the negotiation of interstate agreements for the management of hazardous waste;
 - (3) Shall determine the sequence of tasks required to be accomplished in order to site, design, finance, construct, and place into operation each authorized hazardous waste facility, determine the time likely to be required to accomplish those tasks, develop a proposed schedule for the development of each such facility and submit such schedule to the Governor for approval, and estimate the resources required to accomplish those tasks and submit such estimate to the Governor and the General Assembly;
 - (4) Shall site, design, finance, construct, and operate authorized hazardous waste facilities;

- (5) Shall adopt, consistent with the rules of the Commission for Health Services and pursuant to Chapter 150B of the General Statutes, rules specifying the criteria and procedures for evaluating alternative locations for, and siting of, hazardous waste facilities;
- (6) May employ consultants and contractors to provide services including site selection, design, construction, operation, closure, and perpetual care of hazardous waste facilities, necessary, desirable, or convenient to carry out the purposes of this Chapter, and to fix and pay their compensation;
- (7) May acquire by deed, purchase, lease, contract, gift, devise, condemnation, or otherwise, any real or personal property, structures, rights-of-way, franchises, easements, and other interests in land which is necessary and convenient for the construction or operation of hazardous waste facilities, upon such terms and conditions as it deems advisable, hold, mortgage, pledge, or otherwise encumber the same, and lease, sell, convey, or otherwise dispose of the same in such manner as may be necessary or desirable to carry out the purposes of this Chapter;
- (8) May exercise the powers of a body corporate, including the power to sue and be sued, and may adopt and use a common seal and alter the same as may be deemed expedient;
- (9) May make all necessary contracts and arrangements with other officials or agencies in this State and other states, including compact commissions, for any of the purposes of this Chapter;
- (10) Shall establish an office or offices for the transaction of its business at such place or places as, in the opinion of the Commission, shall be advisable or necessary in carrying out the purposes of this Chapter;
- (11) May create and operate any divisions it deems necessary or useful;
- (12) Shall pay all costs of the formation and organization of the Commission, and incident to its administration and operation, and may pay all other costs necessary in carrying out the purposes of this Chapter;
- (13) May develop and implement schedules of fees and other charges, including user charges, penalties, and surcharges applicable to hazardous waste facilities operated by the Commission;
- (14) Shall make recommendations to the Governor as to the technology, design capacity, operational features, and post-closure requirements of authorized hazardous waste facilities, and shall implement such recommendations upon approval by the Governor;
- (15) Shall pay, or assure that permittees and operators pay, all applicable taxes and fees;
- (16) May apply for, accept, and expend loans and grants of money from any federal or State agency or any political subdivision thereof, from a compact commission, or from any other public or private source for

any of the purposes authorized by this Chapter, and to give any evidences of indebtedness as may be required. Except as may hereafter be authorized by the General Assembly, no indebtedness of any kind incurred or created by the Commission shall constitute an indebtedness of the State or any of its political subdivisions, and no such indebtedness shall involve or be secured by the faith, credit, or taxing power of the State or any of its political subdivisions. At no time may the total outstanding indebtedness of the Commission, excluding bond indebtedness, exceed a total of five hundred thousand dollars (\$500,000) without prior approval of the Governor, after receiving the advice of the Advisory Budget Commission;

- (17) May issue revenue bonds from time to time pursuant to The State and Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, and such bonds may be sold at public or private sale pursuant to G.S. 159-123;
- (18) Shall, if it elects to issue bonds, select and retain, subject to approval of the Local Government Commission, financial consultants, underwriters, and bond attorneys to assist with the issuance of such bonds and to pay for services rendered;
- (19) May pledge revenues from hazardous waste facilities to the benefit of bondholders, or for other purposes necessary to secure financing;
- (20) Shall make such plans, surveys, studies, and investigations as may be necessary or desirable with respect to the acquisition, development, and use of real property and the design, construction, operation, closure, and long-term care of hazardous waste facilities;
- (21) Shall receive all field data, charts, maps, tracings, laboratory test data, soil and rock samples, and such other records as the Commission deems appropriate, collected or produced by its employees, contractors, or consultants pursuant to siting, operating, or closing of hazardous waste facilities. All such data and materials shall become the property of the State and shall not be disposed of except in accordance with G.S. 132-3 except that soil and rock samples may be subjected to tests and reduced in volume for purposes of storage in a manner approved by the Commission. The Commission may enter into agreements with other State agencies for the purpose of storage and preservation of data and materials;
- (22) May procure and keep in force adequate insurance or otherwise provide for the indemnification of itself and its members, officers, agents, employees, and the general public against loss or liability resulting from any act or omission by or on behalf of the Commission, and for the protection of its property, provided that procurement of insurance by the Commission shall not be deemed a waiver of any immunity from liability otherwise available under any provision of law;

- (23) May adopt bylaws for the regulation of its affairs and the conduct of its business;
- (24) May adopt rules, in accordance with the provisions of Chapter 150B of the General Statutes, with respect to any of its powers and duties; and
- (25) May do anything else necessary to carry out the purposes of this Chapter not otherwise prohibited by law.

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

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

- (1) Article 3 of Chapter 143 (Purchases and Contracts);
- (2) Article 3C of Chapter 143 (Contracts to Obtain Consultant Services);
- (3) Article 3D of Chapter 143 (Procurement of Architectural and Engineering Services);
- (4) Article 8 of Chapter 143 (Public Contracts);
- (5) Article 8B of Chapter 143 (State Building Commission);
- (6) G.S. 143-341 (Powers and Duties of the Department of Administration);
- (7) Chapter 146 (State Lands); and
- (8) Article 2 of Chapter 150B shall not apply to contractor selection or technology selection pursuant to G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of Chapter 150B shall not apply to final decisions regarding site selection, contractor selection or technology selection pursuant to G.S. 130B-11, 130B-13, and 130B-14.

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

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

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

environment. The Commission shall be considered a State agency for purposes of the North Carolina Environmental Policy Act, G.S. 113A-1 et seq. To the extent that an application for a permit for a hazardous waste facility and the review thereof provides the functional equivalent of the statement required by G.S. 113A-4(2), a separate statement under G.S. 113A-4(2) is not required.

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

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

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

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

"§ 130B-11. Site selection.

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

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

- (1) Hydrological and geological factors, including flood plains, depth to water table, groundwater travel time, soil pH, soil cation exchange capacity, soil composition and permeability, cavernous bedrock, 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.

(c) In addition to any other site selection criteria adopted by the Commission, the following criteria shall apply to the selection of sites for hazardous waste treatment facilities:

- (1) A site shall be accessible to the Interstate Highway System by a highway having not less than two travel lanes in each direction (four-lane highway).
- (2) In evaluating potential sites, the Commission shall give preference to those sites which minimize the travel distance between the site and the Interstate Highway System.
- (3) A site shall not be located in or on wetlands, existing State or national parks or forests, existing historical sites, and existing wildlife refuges.
- (4) A site shall not be located in or on land on which a fish hatchery is located, Indian reservations, or federal military reservations.

(c1) With respect to any potential site located in a county interested in volunteering to host a facility, the site selection criteria set out in subdivisions (1) and (2) of subsection (c) of this section are discretionary with the Commission in that they may be waived as provided in subsection (a) of this section.

(d) The Commission shall develop a proposed schedule for evaluation and selection of the preferred and alternate sites for each authorized hazardous waste facility. The proposed site selection schedule shall provide for public education regarding the proposed facility and for public involvement in the site selection process. The Commission shall submit proposed site selection schedules to the Governor for approval.

(e) The Commission shall select suitable sites for evaluation and shall select the preferred site for each hazardous waste facility in accordance with a site selection schedule adopted by the Commission. Upon selection of a preferred site the Commission shall begin proceedings to purchase or if necessary, condemn property for

the site under the State's power of eminent domain. The procedure for condemnation by the Commission shall be as set out in Article 9 of Chapter 136 of the General Statutes, except that the Commission shall have the same rights, powers, duties, and responsibilities as are set out for the Department of Transportation. The General Assembly finds that the protection of public health, safety, and welfare, including protection of the environment, requires that facilities for the management of hazardous waste be established. The acquisition of real property for the management of hazardous waste is therefore declared to be for the use and benefit of the public, and to serve a public purpose. Fee simple title to real property shall be vested in the Commission. The Commission may substitute an alternate site for the preferred site in the event that it is determined that any permit or license necessary for the construction or operation of the proposed facility cannot be obtained if the facility is located at the preferred site.

(f) The Commission may request information and assistance from any State agency which has data or expertise which would assist the Commission in the identification of sites for hazardous waste facilities, provided that no agency which has authority to issue any license or permit required for the construction or operation of the facility shall participate in the site selection process in any way that would result in an actual or apparent conflict of interest.

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

"§ 130B-12. Annexation prohibited.

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

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

(a) The Commission shall actively seek qualified private contractors to construct and operate authorized hazardous waste facilities. A contractor may both construct and operate a facility.

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

(c) The Commission shall enter into and enforce an agreement with each contractor for each hazardous waste facility which shall incorporate such terms and conditions as the Commission determines are necessary and consistent with the purposes of this Chapter. Such agreement shall contain adequate assurances of contractor performance through the use of bonds, insurance, and shall require substantial compliance with all applicable federal and State law, including statutes,

regulations, and rules. The Commission shall provide for an independent annual audit of the collection of all fees and other charges.

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

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

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

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

(a) The Commission shall, with the assistance of other State agencies or private consultants it deems appropriate, recommend to the Governor the technology and design capacity of each component of each hazardous waste facility to be operated pursuant to this Chapter. Upon approval of technologies and design capacities by the Governor, the Commission shall prepare, or direct the operator to prepare subject to approval by the Commission, detailed designs and specifications, operating procedures, safety plans, closure plans and other plans necessary for hazardous waste facilities operated pursuant to this Chapter.

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

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

"§ 130B-15. Facility closure; post-closure control.

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

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

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

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

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

"§ 130B-16. Fees.

(a) It is the intent of the General Assembly that all costs associated with the development of hazardous waste facilities pursuant to this Chapter be borne by the waste generators served by such facilities. The General Assembly recognizes that the extent to which costs can be passed to hazardous waste generators is determined in part by market forces, since hazardous waste facilities must operate in a competitive market. In establishing and revising schedules of fees, the Commission shall seek to secure the greatest possible revenue for the State and units of local government consistent with environmentally safe and economically sound facility operation. In establishing and revising schedules of fees, the Commission may seek to encourage reductions in the volume or quantity and toxicity of hazardous waste. For facilities which it operates, the Commission shall establish, and revise as necessary, schedules of fees and other charges, including user charges, penalties, and surcharges. For facilities which are operated by private enterprise pursuant to this Chapter, the Commission shall establish, and revise as necessary, schedules of franchise fees. The terms and conditions under which facilities are operated by private enterprise pursuant to this Chapter shall be governed by appropriate contracts between the Commission and the private operators. Such contracts shall provide for the payment of franchise fees and for the periodic adjustment thereof.

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

- (1) Establishment and operation of the Commission;
- (2) Reimbursement of State agencies for costs incurred on behalf of the Commission or in support of its activities, including the costs of any services performed pursuant to G.S. 130B-15;
- (3) Establishment and administration of the Long-Term Care Fund under G.S. 130B-17;
- (4) Repayment to the State with interest at rates which are equal to those set by the State Treasurer with respect to savings certificates and certificates of deposit, at the varying rates applicable for the period between expenditures and repayment, of all funds expended from the General Fund to develop hazardous waste facilities pursuant to this Chapter;
- (5) Funding of the State's share of the costs associated with any interstate agreement or compact for hazardous waste management to which the State may become a party;

- (6) Compensation of contractors and consultants employed by the Commission;
- (7) Other expenses incurred by the Commission, the State or its agencies in furtherance of the purposes of this Chapter; and
- (8) Compensation of any property owner for any loss in value of property directly resulting from the siting or operation of a hazardous waste facility.

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

- (1) Funding of a portion of the State's share of the costs for remediation of inactive hazardous sites under Part 3 of Article 9 of Chapter 130A of the General Statutes and under CERCLA/SARA; and
- (2) Funding of a portion of the cost of the Pollution Prevention Pays Program, the waste minimization program administered by the Technical Assistance and Support Unit of the Solid Waste Management Division of the Department, other programs which foster multimedia waste prevention, reduction, reuse, and recycling, and programs which provide assistance to small quantity generators.

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

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

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

"§ 130B-17. Long-Term Care Fund.

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

- (1) Administration of the Fund;
- (2) Emergency response and decontamination at facilities operated by the Commission; or

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

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

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

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

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

(a) Hazardous waste facilities or portions of such facilities which are owned by the Commission shall be exempt from ad valorem property taxes; provided however, that the Commission shall, in lieu of such property taxes pay to any governmental body authorized to levy such property taxes the amount that would be assessed as taxes on real and personal property of such facilities if such facilities were otherwise subject to valuation and assessment by local taxing unit. In addition, the Commission shall reimburse the county, city, or other local taxing unit for the loss of ad valorem property tax revenues from any property located on any parcel or tract that abuts the property upon which such facilities are located and which is shown to have diminished in value as the direct result of the siting and operation of such facilities. Such payments in lieu of taxes shall be due and shall bear interest if unpaid, as in the case of taxes on other property. Payments in lieu of taxes made hereunder shall be treated in the same manner as taxes for purposes of all procedural and substantive provisions of law. Administrative buildings, associated land, and other real and personal property owned by the Commission and not located at a hazardous waste facility shall be exempt from property taxes as provided in G.S. 105-278.1.

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

(c) The Commission shall collect and deposit with the State Treasurer, on behalf of local governments where hazardous waste facilities are located pursuant to this Chapter, a tax on the gross receipts of each such facility in the amount of two and one-

half percent (2.5%) of the gross receipts of such facility per annum, to be distributed to local governments as the General Assembly shall provide. The Commission shall develop and recommend to the General Assembly a proposed revenue package and revenue distribution formula which the General Assembly shall consider in providing for distribution of this tax and such other revenues as may be collected.

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

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

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

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

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

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

- (1) Collect information on site suitability;
- (2) Monitor the site evaluation and site selection process;
- (3) Conduct socioeconomic and environmental assessments of the proposed facility;
- (4) Participate in any meetings, hearings, or other events related to the site selection process;
- (5) Study the cost and benefits of the facility being located at the site under consideration; and
- (6) Reimburse members for their expenses as provided in subsection (a) of this section.

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

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

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

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

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

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

(b) The preferred site local advisory committee may:

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

(c) An applicant for a permit to operate a hazardous waste facility pursuant to this Chapter shall pay a one-time local application fee of one hundred thousand dollars

(\$100,000) to the Board. The Board shall distribute not less than sixty-five thousand dollars (\$65,000) of the local application fee to the county or counties where the site of the proposed facility is located. If the site lies in more than one county, the local application fee will be distributed to the counties in which the site is located in equal amounts. If the board of commissioners appoints a preferred site local advisory committee the local application fee shall be used to support the work of the committee.

(d) A preferred site local advisory committee may also be appointed as provided by this section by the board of commissioners of any county whenever the board of commissioners determines that the county may be affected by the siting of a hazardous waste facility in another county. If a preferred site local advisory committee is appointed pursuant to this subsection, the committee may apply to the Board for a portion of the local application fee to support the work of the committee. The Board may allocate up to twenty-five thousand dollars (\$25,000) to each preferred site local advisory committee appointed pursuant to this subsection, provided that the maximum amount that the Board may allocate to all preferred site local advisory committees appointed pursuant to this subsection for a particular site is thirty-five thousand dollars (\$35,000). The Board shall base allocations under this subsection on the likelihood that the proposed hazardous waste facility will have a significant effect in the county, taking distance to the facility and other factors into account. Decisions of the Board regarding allocations under this subsection are final. Any portion of the local application fee which is not allocated by the Board under this subsection shall be distributed by the Board to the county or counties where the site of the proposed facility is located as provided in subsection (c) of this section.

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

"§ 130B-21. Negotiation, mediation, and arbitration.

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

- (1) The need for the facility;
- (2) Any proposal to reduce the duties of the Commission under this Chapter or under any permit or license issued for the facility;
- (3) Any proposal to reduce the duties of the Commission for Health Services or the Department, or to make less stringent any rule of the Commission for Health Services;
- (4) Any proposal to reduce the duties of the Board;
- (5) Any act or decision of the Governor pursuant to G.S. 130B-5; or
- (6) Any decision of the Commission regarding site selection, contractor selection, or technology pursuant to G.S. 130B-11, 130B-13, and 130B-14.

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

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

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

- (1) Compensation to any local government for substantial economic impacts which are a direct result of the siting and operation of a hazardous waste facility and for which adequate compensation is not otherwise provided;
- (2) Reimbursement of reasonable costs incurred by the local government relating to negotiation, mediation and arbitration activities under this section;
- (3) Screening, fencing, and other matters related to the appearance of a facility;
- (4) Operational concerns other than design capacity and regulatory issues;
- (5) Traffic flows and patterns which result from the operation of a facility;
- (6) Uses of the site where a facility is located after the facility is closed;
- (7) The applicability or nonapplicability of any local ordinance;
- (8) Emergency response capabilities, including training and resources;
- (9) Access to facility records and monitoring data; and
- (10) Ongoing health surveys of persons living in the area around the facility.

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

- (1) Those issues excluded from negotiation under subsection (a) of this section;
 - (2) Any issue relating to the imposition by the General Assembly of a tax, or the imposition of a fee not authorized by this Chapter; and
 - (3) Any issue requiring an appropriation by the General Assembly.
- (f) The Board shall serve as the arbitrator of any issue submitted for arbitration under this section.

"§ 130B-22. Inter-Agency Committee on Hazardous Waste.

(a) To assist the Commission in the performance of its responsibilities under this Chapter and to advise the General Assembly, there is created the Inter-Agency Committee on Hazardous Waste (herein called the 'Committee'). The members shall be: the Chairman of the Board; the Chairman of the Board's Technical Committee on Hazardous Waste; the Director of the Solid Waste Management Division of the Department or his designee; the Chief of the Hazardous Waste Management Section of the Solid Waste Management Division or his designee; one additional representative of the Solid Waste Management Division with expertise in CERCLA/SARA capacity assurance requirements appointed by the Director of the Division, the Chairman of the Commission or his designee; one additional member of the Commission appointed by the Chairman of the Commission; the Executive Director of the Commission; the Director of the Pollution Prevention Pays Program; four representatives of the Department of Natural Resources and Community Development with expertise in geology, groundwater, water quality, and air quality; the representative of the Attorney General's office who provides legal services to the Commission; and a representative of the Attorney General's office who provides legal services to the Solid Waste Management Division designated by the Director of the Solid Waste Management Division with the approval of the Attorney General. The Chairman of the Board shall serve as the Chairman of the Committee, and the Board shall provide professional and clerical support to the Committee.

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

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

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

"§ 130B-23. Volunteer host counties.

(a) A county which wishes to volunteer to host a hazardous waste facility to be operated pursuant to this Chapter may propose to do so by the adoption of a resolution by a majority vote of the board of commissioners. The Commission shall determine the adequacy of any proposal to voluntarily host a hazardous waste facility and must accept such proposal before any funds which may be appropriated for the benefit of volunteer host counties may be disbursed. Once a proposal to volunteer to host a hazardous waste

facility has been accepted by the Commission, the resolution making such proposal may not be rescinded by the board of commissioners.

(b) A board of commissioners shall hold a minimum of two public hearings regarding any proposal to volunteer to host a hazardous waste facility pursuant to this Chapter. The last such hearing shall be held not less than 30 days following the first such hearing. Notice of each hearing shall be given as provided in G.S. 143-318.12(b)(2)."

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

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

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

(d) Current and former members of the Hazardous Waste Treatment Commission may be appointed as members of the Hazardous Waste Management Commission. In making initial appointments to the Hazardous Waste Management Commission, the appointing authorities shall consider the experience gained by those persons who are members of the Hazardous Waste Treatment Commission at the time this act becomes effective in light of the requirements of G.S. 130B-6(c)(5) regarding expertise in hazardous waste management. Persons appointed as members of the Hazardous Waste Management Commission who have served on the Hazardous Waste Treatment Commission shall be eligible to serve and to be reappointed notwithstanding any limitation on length of service in effect prior to repeal of G.S. 143B-470.3.

(e) Subsections (a) and (b) of this section shall be effective on the day the North Carolina Hazardous Waste Management Commission begins operation.

Sec. 3. G.S. 20-111(c)(9) reads as rewritten:

"(9) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences or from garbage dumpsters shall, when operating for those purposes, be exempt from the light-traffic road limitation as provided by G.S. 20-118(b)(4). This exemption shall not apply to vehicles transporting hazardous waste as defined in G.S. ~~130A-290(4)~~, 130A-290, spent nuclear fuel regulated

under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14)."

Sec. 4. G.S. 20-111(c)(10) reads as rewritten:

"(10) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters shall, when operating for those purposes, be allowed a single axle weight not to exceed 23,500 pounds on the steering axle on vehicles equipped with a boom, or on the rear axle on vehicles loaded from the rear. This exemption shall not apply to vehicles transporting hazardous waste as defined in G.S. ~~130A-290(4)~~, 130A-290, spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14)."

Sec. 5. G.S. 105-164.14(c) reads as rewritten:

"(c) Upon receipt of timely applications for refund, the Secretary of Revenue shall make refunds annually to all governmental entities, as hereinafter defined, of sales and use tax paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(c), by said governmental entities on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by such governmental entities on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired which is owned or leased by such governmental entities shall be construed as sales or use tax liability incurred on direct purchases by such governmental entities, and such entities may obtain refunds of such taxes indirectly paid. The refund provisions contained in this subsection shall not apply to any governmental entities not specifically named herein. In order to receive the refund herein provided for, governmental entities shall file a written request for said refund within six months of the close of the fiscal year of the governmental entities seeking said refund, and such request for refund shall be substantiated by such records, receipts and information as the Secretary may require. No refunds shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may otherwise require. The term 'governmental entities,' for the purposes of this subsection, shall mean all counties, incorporated cities and towns, water and sewer authorities created and existing under the provisions of Chapter 162A of the General Statutes, lake authorities created by a board of county commissioners pursuant to an act of the General Assembly, sanitary districts, regional councils of governments created pursuant to G.S. 160A-470, area mental health, mental retardation, and substance abuse authorities (other than single-county area authorities) established pursuant to Article 4 of Chapter 122C of the General Statutes, district health departments, regional planning and economic development commissions created pursuant to G.S. 158-14, regional economic development commissions created pursuant to G.S. 158-8, regional planning commissions created pursuant to G.S. 153A-391, metropolitan sewerage districts and metropolitan water districts in this State, the North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General

Statutes, and the North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes."

Sec. 6. G.S. 105-275 is amended by adding a new subsection to read:

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

Sec. 7. Chapter 113 of the General Statutes is amended by adding a new section to read:

"§ 113-8.01. Pollution Prevention Pays Programs.

There is established within the Department a non-regulatory technical assistance program to be known as the Pollution Prevention Pays Program. The purpose of this program is to encourage voluntary waste and pollution reduction efforts through research and by providing information, technical assistance, and matching grants to businesses and industries interested in establishing or enhancing activities to prevent, reduce, or recycle waste. The Pollution Prevention Pays Program shall coordinate its activities with the appropriate regulatory agencies and with the Governor's Waste Management Board."

Sec. 8. G.S. 120-123 is amended by adding a new subsection to read:

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

Sec. 9. G.S. 126-5(c1) reads as rewritten:

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

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

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

Sec. 10. G.S. 130-166.21D is repealed.

Sec. 11. G.S. 130A-290 reads as rewritten:

"§ 130A-290. Definitions.

The following definitions shall apply throughout this Article:

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

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

~~security precautions for facility personnel, inspectors and invited or permitted members of the community.~~

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

accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include:

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

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

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

- (21)(28) 'Solid waste management' means purposeful, systematic control of the generation, storage, collection, transport, separation, treatment, processing, recycling, recovery and disposal of solid waste.
- (22)(29) 'Solid waste management facility' means land, personnel and equipment used in the management of solid waste.
- (23)(30) 'Storage' means the containment of solid waste, either on a temporary basis or for a period of years, in a manner which does not constitute disposal.
- (24)(31) 'Treatment' means any method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of any ~~solid-hazardous~~ waste so as to neutralize ~~the-such~~ waste or so as to render ~~the-such~~ waste nonhazardous, safer for transport, amenable for recovery, amenable for storage or reduced in volume. ~~The term 'Treatment'~~ includes any activity or processing designed to change the physical form or chemical composition of ~~solid-hazardous~~ waste so as to render it nonhazardous.
- (25)(32) 'Unit of local government' means a county, city, town or incorporated village."

Sec. 12. G.S. 130A-292 reads as rewritten:

"§ 130A-292. Conveyance of land used for commercial hazardous waste landfill disposal facility to the State.

(a) No land may be used for a commercial hazardous waste ~~landfill-disposal~~ facility until fee simple title to the land has been conveyed to this State. In consideration for the conveyance, the State shall enter into a lease agreement with the grantor for a term equal to the estimated life of the facility in which the State will be the lessor and the grantor the lessee. The lease agreement shall specify that for an annual rent of fifty dollars (\$50.00), the lessee shall be allowed to use the land for the development and operation of a hazardous waste ~~landfill-disposal~~ facility. The lease agreement shall provide that the lessor or any person authorized by the lessor shall at all times have the right to enter without a search warrant or permission of the lessee upon any and all parts of the premises for monitoring, inspection and all other purposes necessary to carry out the provisions of this Article. The lessee shall remain fully liable for all damages, losses, personal injury or property damage which may result or arise out of the lessee's operation of the facility, and for compliance with regulatory requirements concerning insurance, bonding for closure and post-closure costs, monitoring and other financial or health and safety requirements as required by applicable law and rules. The State, as lessor, shall be immune from liability except as otherwise provided by statute. The lease shall be transferable with the written consent of the lessor and the consent will not be unreasonably withheld. In the case of a transfer of the lease, the transferee shall be subject to all terms and conditions that the State deems necessary to ensure compliance with applicable laws and rules. If the lessee or any successor in interest fails in any material respect to comply with any applicable law, rule or permit condition, or with any term or condition of the lease, the State may terminate the lease after giving the

lessee written notice specifically describing the failure to comply and upon providing the lessee a reasonable time to comply. If the lessee does not effect compliance within the reasonable time allowed, the State may reenter and take possession of the premises.

(b) Notwithstanding the termination of the lease by either the lessee or the lessor for any reason, the lessee shall remain liable for, and be obligated to perform, all acts necessary or required by law, rule, permit condition or the lease for the permanent closure of the site until the site has either been permanently closed or until a substituted operator has been secured and has assumed the obligations of the lessee.

(c) In the event of changes in laws or rules applicable to the facility which make continued operation by the lessee impossible or economically infeasible, the lessee shall have the right to terminate the lease upon giving the State reasonable notice of not less than six months, in which case the lessor shall have the right to secure a substitute lessee and operator.

(d) In the event of termination of the lease by the lessor as provided in subsection (a) of this section, or by the lessee as provided in subsection (c) of this section, the lessee shall be paid the fair market value of any improvements made to the leased premises less the costs to the lessor resulting from termination of the lease and securing a substitute lessee and operator. However, the lessor shall have no obligation to secure a substitute lessee or operator and may require the lessee to permanently close the facility."

Sec. 13. G.S. 130A-293 reads as rewritten:

"§ 130A-293. Local ordinances prohibiting hazardous waste facilities invalid; petition to preempt local ordinance.

(a) Notwithstanding any authority granted to counties, municipalities, or other local authorities to adopt local ~~ordinances, ordinances~~ (including but not limited to those imposing taxes, fees, ~~charges, or charges~~ or regulating health, environment, ~~and or~~ land use), any local ordinance which prohibits or has the effect of prohibiting the establishment or operation of a hazardous waste facility which the Governor's Waste Management Board (~~herein called 'Board' hereinafter 'the Board'~~) has preempted pursuant to subsections (b) through ~~(g)-(f)~~ of this section, shall be invalid ~~only~~ to the extent necessary to effectuate the purposes of this Chapter ~~and Part 11A of Article 10 of Chapter 143B or Chapter 130B~~ of the General Statutes. For the purpose of this section, the Board shall include, in addition to the members enumerated in G.S. 143B-216.12(a), two members appointed by the ~~local governing body~~ board of commissioners of the county in which the facility is or is to be located. If the facility is or is to be located in more than one county, or if the facility is or is to be located within the boundaries of a city, the governing body of each city and county in which any portion of the facility is or is to be located shall have one appointment. Failure of a local governing body to make an appointment within 30 days after receipt of written notice from the Board to do so shall be deemed a vacancy in an unexpired term and shall be filled by appointment ~~of a majority of the Board members, by the Board.~~ The terms of the members appointed by ~~the~~ local governing ~~body~~ bodies shall end upon the final determination of the Board under this section, and such members shall serve as members of the Board only for the ~~purposes~~ purpose of this section.

(b) When a hazardous waste facility would be prevented from construction or operation by a county, municipal, or other local ordinance(s), the operator of the proposed facility or the North Carolina Hazardous Waste Treatment-Management Commission established pursuant to Chapter 130B of the General Statutes (hereinafter 'the Commission') may petition the Board to review the matter. After receipt of a petition, the Board shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the establishment and operation of the facility.

(c) When a petition described in subsection (b) of this section has been filed with the Board, the Board shall hold a public hearing to consider the petition. Such hearing shall be held in the affected locality within 60 days after receipt of the petition by the Board. The Board shall give notice of the public hearing by:

- (1) Publication in a newspaper or newspapers having general circulation in the county or counties where the facility is or is to be located or operated, once a week for three consecutive weeks, the first notice appearing at least 30 days prior to the scheduled date of the hearing; and
- (2) First class mail to persons who have requested such notice. The Board shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. ~~Service by mail is complete upon placing the notice, enclosed in a wrapper addressed to the person to be served with sufficient postage prepaid and addressed to the party at his designated address.~~ Notice by mail shall be complete upon deposit of a copy of the notice in a post-paid wrapper addressed to the person to be notified at the address which appears on the mailing list maintained by the Board, in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Any interested ~~persons~~ person may appear before the Board at the hearing to offer testimony. In addition to testimony before the Board, any interested ~~persons~~ person may submit written evidence to the Board for its consideration. At least 20 days ~~will~~ shall be allowed for receipt of written comment following the hearing.

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

- (1) That there is a local ordinance which would prohibit or have the effect of prohibiting the establishment or operation of a hazardous waste facility;
- (2) That the proposed facility is needed in order to establish adequate capability ~~for the management of hazardous waste generated in this State to meet the current or projected hazardous waste management needs of this State or to comply with the terms of any interstate agreement for the management of hazardous waste to which the State~~

is a party and therefore serves the ~~interest~~interests of the citizens of the State as a whole;

- (3) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance(s);
- (4) That local citizens and elected officials have had adequate opportunity to participate in the siting process; and
- (5) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility operator or ~~Treatment~~the Commission has taken or consented to take ~~any~~ reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with ~~and [any]~~any applicable local ordinance(s).

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

(e) The decision of the Board shall be final unless a party to the action shall, pursuant to Article 4 of Chapter 150B of the General Statutes as modified by G.S. 7A-29 and this section, ~~file~~files a written appeal within 30 days of the date of such decision. The record on appeal shall consist of all materials and information submitted to or considered by the Board, the Board's written decision, a complete transcript of the hearing, all written material presented to the Board regarding the ~~site location and location of the facility~~, the specific findings required ~~in~~by subsection ~~(d)~~, ~~(d)~~ of this section, and any minority positions on the ~~recommendation and~~ specific findings required ~~in this subsection~~by subsection (d) of this section. The scope of judicial review shall be that the court may affirm the decision of the Board, or may remand the matter for further proceedings, or may reverse or modify the decision if the substantial rights of the parties may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error ~~or~~of law; or
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or G.S. 150B-30 in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become part of the record, the reasons for such reversal or modification.

(f) In computing any period of time prescribed or allowed by this procedure, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply.

(g) ~~The provisions of this section shall not apply to the siting of a hazardous waste landfill facility until the rules for the operation applicable to a hazardous waste landfill have been adopted by the appropriate State agencies."~~

Sec. 14. G.S. 104E-6.2 reads as rewritten:

"§ 104E-6.2. Local ordinances prohibiting low-level radioactive waste facilities invalid; petition to preempt local ordinance.

(a) Notwithstanding any authority ~~heretofore~~ granted to counties, municipalities, or other local authorities to adopt local ~~ordinances, ordinances~~ (including but not limited to those imposing taxes, fees, ~~charges, or charges~~ or regulating health, environment, ~~and~~ or land use), any local ordinance which prohibits or has the effect of prohibiting the establishment or operation of a low-level radioactive waste facility which the Governor's Waste Management Board (~~herein called 'Board'~~ hereinafter 'the Board') has preempted pursuant to ~~the procedures in~~ subsections (b) through (f) of this section, shall be invalid ~~from 26 June 1981, but only~~ to the extent necessary to effectuate the purposes of this Chapter ~~and or~~ Chapter 104G of the General Statutes. For the purpose of this section, the Board shall include, in addition to the members enumerated in G.S. 143B-216.12(a), two members appointed by the ~~governing body~~ board of commissioners of the county in which the facility is or is to be located. If the facility is or is to be located in more than one county, or if the ~~proposed site is~~ facility is or is to be located within the boundaries of a city, the governing body of each city and county in which any portion of the facility is or is to be located shall have one appointment. Failure of a local governing body to make an appointment within 30 days after receipt of written notice from the Board to do so shall be deemed a vacancy in an unexpired term and shall be filled by appointment ~~of a majority of the Board members.~~ by the Board. The terms of members appointed by local governing bodies shall end upon the final determination of the Board under this section, and such members shall serve as members of the Board only for the ~~purposes~~ purpose of this section.

(b) When a low-level radioactive waste facility would be prevented from construction or operation by a county, municipal, or other local ordinance(s), the ~~North Carolina Low Level Radioactive Waste Management Authority established pursuant to Chapter 104G of the General Statutes (herein called 'Authority') or~~ operator of the proposed facility or the North Carolina Low-Level Radioactive Waste Management Authority established pursuant to Chapter 104G of the General Statutes (hereinafter 'the Authority') may petition the Board to review the matter. After receipt of a petition, the Board shall hold a hearing in accordance with the procedures in subsection (c) of this section and shall determine whether or to what extent to preempt the local ordinance to allow for the establishment and operation of the facility.

(c) When a petition described in subsection (b) of this section has been filed with the Board, the Board shall hold a public hearing to consider the petition. Such hearing shall be held in the affected locality within 60 days after receipt of the petition by the Board. The Board shall give notice of the public hearing by:

- (1) Publication in a newspaper or newspapers having general circulation in the county or counties where the facility is or is to be located or operated, once a week for three consecutive weeks, the first notice

appearing at least 30 days prior to the scheduled date of the hearing;
and

- (2) First class mail to persons who have requested such notice. The Board shall maintain a mailing list of persons who request notice in advance of the hearing pursuant to this section. ~~Service by mail is complete upon placing the notice, enclosed in a wrapper addressed to the party to be served at his designated address with sufficient postage prepaid.~~ Notice by mail shall be complete upon deposit of a copy of the notice in a post-paid wrapper addressed to the person to be notified at the address which appears on the mailing list maintained by the Board, in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Any interested ~~persons~~ person may appear before the Board at the hearing to offer testimony. In addition to testimony before the Board, any interested person may submit written evidence to the Board for its consideration. At least 20 days ~~will~~ shall be allowed for receipt of written comment following the hearing.

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

- (1) That there is a local ordinance which would prohibit or have the effect of prohibiting the establishment or operation of a low-level radioactive waste facility;
- (2) That the proposed facility is needed in order to establish adequate capability ~~for the management of low-level radioactive waste to meet the current or projected low-level radioactive waste management needs of this State or to comply with the terms of any interstate agreement for the management of low-level radioactive waste to which the State is a party~~ and therefore serves the ~~interest~~ interests of the citizens of the State as a whole;
- (3) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies or that all State and federal permit requirements have been satisfied and that the permits or approvals have been denied or withheld only because of the local ordinance(s);
- (4) That local citizens and elected officials have had adequate opportunity to participate in the siting process; and
- (5) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality and that the facility ~~operator, or Authority, operator or the Authority~~ has taken or consented to take ~~any~~ reasonable measures to avoid or manage foreseeable risks and to comply to the maximum feasible extent with any applicable local ~~ordinances~~ ordinance(s).

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

(e) The decision of the Board shall be final unless a party to the action shall, pursuant to Article 4 of Chapter 150B of the General Statutes as modified by G.S. 7A-29 and this section, files a written appeal within 30 days of the date of such decision. The record on appeal shall consist of all materials and information submitted to or considered by the Board, the Board's written decision, a complete transcript of the hearing, all written material presented to the Board regarding the site location and location of the facility, the specific findings required in by subsection (d), (d) of this section, and any minority positions on the recommendation and the specific findings required in this subsection. by subsection (d) of this section. The scope of judicial review shall be that the court may affirm the decision of the Board, or may remand the matter for further proceedings, or may reverse or modify the decision if the substantial rights of the parties may have been prejudiced because the agency findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional provisions; or
- (2) In excess of the statutory authority or jurisdiction of the agency; or
- (3) Made upon unlawful procedure; or
- (4) Affected by other error ~~or~~ of law; or
- (5) Unsupported by substantial evidence admissible under G.S. 150B-29(a) or G.S. 150B-30 in view of the entire record as submitted; or
- (6) Arbitrary or capricious.

If the court reverses or modifies the decision of the agency, the judge shall set out in writing, which writing shall become part of the record, the reasons for such reversal or modification.

(f) In computing any period of time prescribed or allowed by this procedure, the provisions of Rule 6(a) of the Rules of Civil Procedure, G.S. 1A-1, shall apply."

Sec. 15. G.S. 130A-294(a)(6) reads as rewritten:

"(6) The Department is authorized to charge and collect fees from operators of hazardous waste landfill disposal facilities. The fees shall be used to establish a fund sufficient for each individual facility to defray the anticipated costs to the State for monitoring and care of the facility after the termination of the period during which the facility operator is required by applicable State and federal statutes, regulations or rules to remain responsible for post-closure monitoring and care. In establishing the fees, consideration shall be given to the size of the facility, the nature of the hazardous waste and the projected life of the facility."

Sec. 16. G.S. 130A-294(c) reads as rewritten:

"(c) The Commission shall adopt and the Department shall enforce rules concerning the management of hazardous waste. These rules shall establish a complete

and integrated regulatory scheme in the area of hazardous waste management and shall provide for:

- (1) Establishing criteria for hazardous waste, identifying the characteristics of hazardous waste and listing particular hazardous waste;
- (1a) Establishing criteria for hazardous constituents, identifying the characteristics of hazardous constituents and listing particular hazardous constituents;
- (2) Record-keeping and reporting by generators and transporters of hazardous waste and owners and operators of hazardous waste facilities;
- (3) Proper labeling of hazardous waste containers;
- (4) Use of appropriate containers for hazardous waste;
- (5) A manifest system to assure that all hazardous waste is designated for treatment, storage or disposal at a hazardous waste facility to which a permit has been issued;
- (6) Proper transportation of hazardous waste;
- (7) Treatment, storage and disposal standards of performance and techniques to be used by hazardous waste facilities;
- (8) Location, design, ownership and construction of hazardous waste facilities; provided, however, that no hazardous waste ~~landfill-disposal~~ facility or polychlorinated biphenyl ~~landfill-disposal~~ facility shall be located within 25 miles of any other hazardous waste ~~landfill-disposal~~ facility or polychlorinated biphenyl ~~landfill-disposal~~ facility;
- (9) Plans to minimize unanticipated damage from treatment, storage or disposal of hazardous waste; and a plan or plans providing for the establishment and/or operation of one or more hazardous waste facilities in the absence of adequate approved hazardous waste facilities established or operated by any person within the State;
- (10) Proper maintenance and operation of hazardous waste facilities, including requirements for ownership by any person or the State, financial responsibility (including requirements for sufficient availability of funds for facility closure and post-closure monitoring and corrective measures through the use of a letter of credit, insurance, surety, trust agreement, financial test, or financial test and corporate guarantee), training of personnel, continuity of operation and procedures for establishing and maintaining hazardous waste facilities;
- (11) Monitoring by owners or operators of hazardous waste facilities;
- (12) Inspection or copying of records required to be kept;
- (13) Obtaining and analyzing hazardous waste samples and samples of hazardous waste containers and labels from generators and transporters and from owners and operators of hazardous waste facilities;

- (14) A permit system governing the establishment and operation of hazardous waste facilities; ~~and~~
- (15) Additional requirements as necessary for the effective management of hazardous ~~waste.~~ waste;
- (16) The operator of the hazardous waste ~~landfill-disposal~~ facility shall maintain adequate insurance to cover foreseeable claims arising from the operation of the facility. The Board shall determine what constitutes an adequate amount of ~~insurance.~~ insurance;
- (17) The bottom of a hazardous waste ~~landfill-disposal~~ facility shall be at least 10 feet above the seasonal high water table and more when necessary to protect the public health and the ~~environment.~~ environment; and
- (18) The operator of a hazardous waste ~~landfill-disposal~~ facility shall make monthly reports to the Governor's Waste Management Board and to the board of county commissioners of the county in which the facility is located on the kinds and amounts of hazardous wastes in the facility."

Sec. 17. G.S. 130A-294(e) reads as rewritten:

"(e) ~~The rules adopted under this section shall be no less stringent than the most recent regulations adopted under the federal act and may be amended. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.~~"

Sec. 18. G.S. 130A-294(f) reads as rewritten:

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

~~Within 180 days after receiving a complete application for a permit or for an amendment to an existing permit for a comprehensive hazardous waste treatment facility, the Department shall approve or disapprove the application. In acting upon the application, the Department shall consider land use, zoning, buffer zones, utility~~

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

Sec. 19. G.S. 130A-294(g) reads as rewritten:

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

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

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

- (1) Hydrological and geological factors, including flood plains, depth to water table, groundwater travel time, soil pH, soil cation exchange capacity, soil composition and permeability, cavernous bedrock, 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. 20. G.S. 130A-294(h) reads as rewritten:

"(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) 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 disposal facility.~~
- (3) Any hazardous waste ~~landfill disposal~~ 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 disposal~~ facility or polychlorinated biphenyl ~~landfill disposal~~ facility shall be located within 25 miles of any other hazardous waste ~~landfill disposal~~ facility or polychlorinated biphenyl ~~landfill disposal~~ 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 within 25 miles of a comprehensive hazardous waste treatment facility as defined in G.S. 130A-290(1).~~

- (6) ~~The following will not be disposed of in a hazardous waste landfill or long-term retrievable storage-disposal facility: ignitables as defined in the Federal Act, RCRA, polyhalogenated biphenyls of 50 ppm or greater concentration, and free liquids whether or not containerized.~~
- (7) ~~The underground storage of either a hazardous waste landfill or long-term storage facility—~~Facilities for disposal or long-term storage of hazardous waste shall have at a minimum the following: a leachate collection and removal system above an artificial impervious liner of at least 30 mils in thickness, a minimum of five feet of clay or clay-like liner with a maximum permeability of 1.0×10^{-7} centimeters per second (cm/sec) below said artificial liner, and a leachate detection system immediately below the clay or clay-like liner.
- (8) Hazardous waste shall not be stored at a hazardous waste treatment facility for over 90 days prior to treatment or disposal.
- (9) The Commission shall consider any hazardous waste treatment process proposed to it, if the process lessens treatment cost or improves treatment over then current methods or standards required by the Commission."

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

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

- (1) ~~To monitor and regulate all generators of more than 100 kilograms per month of hazardous waste; and~~
- (2) ~~To locate, catalogue and monitor all existing hazardous waste impoundments and surface impoundments, including inactive hazardous waste disposal sites and "orphan dumps", including those owned or operated by units of State and local government, and shall submit to the General Assembly by February 1, 1985, a plan to bring all of these under legal requirements in effect on February 1, 1985, including a timetable for compliance. This plan shall include recordation of each of these sites in the office of the Register of Deeds in the county where it is located.~~The Department, in consultation with the Governor's Waste Management Board and the Division of Environmental Management of the Department of Natural Resources and Community Development, shall develop a comprehensive hazardous waste management plan for the State. This plan shall be completed by 1 July 1990 and shall be revised at two-year intervals thereafter."

Sec. 22. G.S. 130A-294 is amended by adding a new subsection to read:

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

Sec. 23. G.S. 130A-294.1(p) reads as rewritten:

"(p) The Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the hazardous waste management program. The report shall include, but is not limited to, beginning fund balance, fees collected under this section, anticipated revenue from all sources, total expenditures (by activities and categories) for the hazardous waste management program, ending fund balance, any recommended adjustments in the annual and tonnage fees which may be necessary to assure the continued availability of funds sufficient to pay the State's share of the cost of the hazardous waste management program, and any other information requested by the General Assembly. In recommending adjustments in annual and tonnage fees, the Department may propose fees for hazardous waste generators, and for hazardous waste treatment facilities which treat waste generated on-site, which are designed to encourage reductions in the volume or quantity and toxicity of hazardous waste."

Sec. 24. G.S. 130A-295 reads as rewritten:

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

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

- (1) Any hazardous waste facility constructed or operated by the applicant, or any parent or subsidiary corporation if the applicant is a corporation, has been operated in accordance, with sound waste management practices and in substantial compliance with federal and state laws, regulations and rules; and
- (2) The applicant, or any parent or subsidiary corporation if the applicant is a corporation, is financially qualified to operate the proposed hazardous waste facility.

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

~~owned. Nothing herein shall be construed to limit in any way funds which might be available to local government from other sources. An applicant for a permit for a hazardous waste facility shall satisfy the Department that he has met the requirements of subsection (a) of this section before the Department is required to otherwise review the application. In order to continue to hold a permit under this Chapter, a permittee must remain financially qualified and must provide any information requested by the Department to demonstrate that he continues to be financially qualified.~~

~~(c) Although no one is required to use a comprehensive hazardous waste treatment facility, use by North Carolina industry shall be encouraged. Nothing in this act shall be construed to prevent any hazardous waste or other waste generated or located in North Carolina from being removed from the State for disposal, treatment or storage. No permit for any new commercial hazardous waste treatment, storage, or disposal facility shall be issued or become effective, and no permit for a commercial hazardous waste treatment, storage, or disposal facility shall be modified until the applicant has satisfied the Department that such facility is needed to meet the current or projected hazardous waste management needs of this State or to comply with the terms of any interstate agreement for the management of hazardous waste to which the State is a party. The Commission shall adopt rules to implement this subsection."~~

Sec. 25. G.S. 130A-298 reads as rewritten:

"§ 130A-298. Hazardous waste fund.

A nonreverting hazardous waste fund is established within the Department which shall be available to defray the cost to the State for monitoring and care of hazardous waste ~~landfill~~ disposal facilities after the termination of the period during which the facility operator is required by applicable State and federal statutes, rules or regulations to remain responsible for post-closure monitoring and care. The establishment of this fund shall in no way be construed to relieve or reduce the liability of facility operators or any persons for damages caused by the facility. The fund shall be maintained by fees collected pursuant to the provisions of G.S. 130A-294(a)(6)."

Sec. 26. G.S. 130A-299 reads as rewritten:

"§ 130A-299. Single agency designation.

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

Sec. 27. G.S. 130A-308 reads as rewritten:

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

Standards adopted under G.S. 130A-294(c) shall require, and a permit issued after November 8, 1984, shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at a treatment, storage, or disposal facility seeking a permit under G.S. 130A-294(c), regardless of the time at which waste was placed in such unit. Permits issued under G.S. 130A-294(c) which implement Section 3005 of ~~the Federal Act RCRA~~ (42 U.S.C. § 6925) shall contain schedules of compliance for such corrective action (where such corrective action cannot be completed prior to issuance of the permit) and assurances of financial responsibility for completing such corrective action. Notwithstanding any other provision of this section,

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

Sec. 28. G.S. 130A-309 reads as rewritten:

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

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

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

Pending adoption of such rules, the Department shall issue corrective action orders for facilities referred to in (1) and (2), on a case-by-case basis, consistent with the purposes of this section. Notwithstanding any other provision of this section, this section shall apply only to units, facilities, and permits that are covered by Section 3004(v) of ~~the Federal Act RCRA~~ (42 U.S.C. ~~Section § 6924~~(v)). Notwithstanding the foregoing, corrective action authorized elsewhere in this Chapter shall not be limited by this section."

Sec. 29. G.S. 143-215.1 is amended by adding a new subsection to read:

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

Sec. 30. G.S. 143-215.108 is amended by adding a new subsection to read:

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

Sec. 31. G.S. 143B-216.11 reads as rewritten:

"§ 143B-216.11. Definitions.

Unless the context otherwise requires, the following definitions shall apply to this Part:

- (1) 'Board' means the Governor's Waste Management Board.
- (2) 'Hazardous waste' has the same meaning as in G.S. ~~130A-290(4)~~.
130A-290.
- (3) 'Hazardous waste facility' ~~means a facility as defined~~ has the same meaning as in G.S. 130A-290(5). ~~130A-290.~~
- (4) 'Hazardous waste landfill facility' ~~means a facility as defined~~ has the same meaning as in G.S. 130A-290(7). ~~130A-290.~~
- (5) 'Hazardous waste management' has the same meaning as ~~defined in~~ G.S. ~~130A-290(8)~~. 130A-290.
- (6) 'Low-level radioactive waste' has the same meaning as in G.S. ~~104E-5(9a)~~. 104E-5.
- (7) 'Low-level radioactive waste facility' ~~means a facility as defined~~ has the same meaning as in G.S. 104E-5(9b). ~~104E-5.~~
- (8) 'Low-level radioactive waste landfill disposal facility' ~~means a facility as defined~~ has the same meaning as in G.S. 104E-5(9c). ~~104E-5.~~
- (9) 'Low-level radioactive waste management' means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of low-level radioactive waste."

Sec. 32. G.S. 143B-216.13 reads as rewritten:

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

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

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

- (4) The Board shall promote research and development and disseminate information on state-of-the-art means of handling and disposing of hazardous waste and low-level radioactive waste. The Board is authorized to establish a waste information exchange for the State.
- (5) The Board shall promote public education and public involvement in the decision making process for the siting and permitting of proposed waste management facilities.
- (6) ~~The Board shall periodically evaluate and assess the type and number of hazardous waste facilities, hazardous waste landfill facilities, low-level radioactive waste facilities and low level radioactive waste landfill facilities in existence, under construction or planned in the State and multi-State region and promote the development of additional facilities particularly retrievable aboveground storage facilities if existing or planned facilities are deemed inadequate or unavailable.~~ The Board, in conjunction with the Solid Waste Management Division of the Department, shall assist the North Carolina Hazardous Waste Management Commission with the periodic review required by G.S. 130B-7(a)(1)(i).
- (6a) The Board shall annually report to the Governor, the General Assembly, and the Environmental Review Commission on the effectiveness of the waste reduction programs in the State and shall make recommendations on ways to improve such programs.
- (7) ~~The Board shall prepare and file jointly with both the Governor and the General Assembly an annual report describing the Board's activities and setting forth its recommendations for administrative or regulatory action required to improve the State's comprehensive waste management system or remedy noted defects in the system.~~ improvements in the waste management system in the State. A special report shall be filed in January of 1983 which shall include an evaluation on the possible need to organize State agencies more efficiently to improve overall performance of waste management functions. The report should give consideration to the advantages and disadvantages of consolidating or centralizing administration of programs that are now in separate agencies.
~~The Board shall provide a report to the General Assembly by February 1, 1985, to include:~~
- a. ~~An analysis of the size, type and number of hazardous waste facilities needed in North Carolina and a plan to meet these needs;~~
 - b. ~~An analysis of the system of collection of hazardous waste in North Carolina, recommendations as to how that system might be improved and a plan to implement these recommendations;~~
~~and~~

- e. ~~An analysis of the cost incurred by local government because of the presence of a hazardous waste facility, a hazardous waste landfill facility or a comprehensive hazardous waste treatment facility.~~
- (8) The Board shall each year recommend to the Governor a recipient for a 'Governor's Award of Excellence' which the Governor shall award for outstanding achievement by an industry or company in the area of hazardous waste or low-level radioactive waste management.
- (9) The Board shall, at the request of the Governor and under his direction, assist with the negotiation of interstate agreements for the management of hazardous waste. ~~promote and participate in discussion with other states concerning development of regional hazardous waste and low level radioactive waste management agreements.~~
- (10) The Board shall assist localities in which facilities are proposed in collecting and receiving information relating to the suitability of the proposed site. At the request of a local government in which facilities are proposed, the Board shall direct the appropriate agencies of State government to develop such relevant data as that locality shall reasonably request.
- (11) Repealed by Session Laws 1987 (Reg. Sess., 1988), c. 1082, s. 14.1.
- (12) The Board shall, in accordance with the procedures set forth in G.S. 160A-211.1 and G.S. 153A-152.1, review upon appeal specific privilege license tax rates which localities may apply to waste management facilities in their jurisdiction.
- (13) The Board may insure its members against personal liability for any actions they might take pursuant to the exercise of the functions and powers of the Board.
- (14) The Board may adopt, modify, or revoke any rules necessary to carry out the functions and powers as set forth in this Part.
- (15) The Board shall have any and all powers necessary or incidental to the exercise of the functions and powers enumerated herein.
- (16) The Board shall study the development of retrievable, aboveground storage facilities for hazardous wastes.
- (17) ~~The Board shall certify comprehensive hazardous waste treatment facilities which meet the criteria prescribed in G.S. 130A-290(1).~~"

Sec. 33. G.S. 150B-1(d) reads as rewritten:

- "(d) (1) The following are specifically exempted from the provisions of this Chapter:
 - a. ~~the~~ The Administrative Rules Review ~~Commission,~~ Commission;
 - b. ~~the~~ The Employment Security ~~Commission,~~ Commission;
 - c. ~~the~~ The Industrial ~~Commission,~~ Commission;

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

Sec. 34. G.S. 153A-152.1 reads as rewritten:

"(a) Counties in which hazardous waste facilities as defined in G.S. ~~130A-290(5)~~ 130A-290 or low-level radioactive waste facilities as defined in G.S. 104E-5(9b) are located may levy an annual privilege license tax on persons or firms operating such facilities only in accordance with this section."

Sec. 35. G.S. 160A-211.1 reads as rewritten:

"(a) Cities in which hazardous waste facilities as defined in G.S. ~~130A-290(5)~~ 130A-290 or low-level radioactive waste facilities as defined in G.S. 104E-5(9b) are located may levy an annual privilege license tax on persons or firms operating such facilities only in accordance with this section."

Sec. 36. G.S. 104G-6(14) reads as rewritten:

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

Sec. 37. G.S. 159-81(3) reads as rewritten:

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

- a. Water systems or facilities, including all plants, works, instrumentalities and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.
- b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage.
- c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses, where gas systems shall include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such gas systems may be located either within the State or without.
- d. Systems, facilities and equipment for the collection, treatment, or disposal of solid waste.
- e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.

- f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.
- g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.
- h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.
- i. Hospitals and other health-related facilities.
- j. Public auditoriums, gymnasiums, stadiums, and convention centers.
- k. Recreational facilities.
- l. In addition to the foregoing, in the case of the State of North Carolina, low-level radioactive waste facilities developed pursuant to Chapter 104G of the General Statutes, hazardous waste facilities developed pursuant to Chapter 130B of the General Statutes, and any other project authorized by the General Assembly.
- m. ~~(For applicability see note below)~~ [For applicability, see note below.] Economic development projects, including the acquisition and development of industrial parks, the acquisition and resale of land suitable for industrial or commercial purposes, and the construction and lease or sale of shell buildings in order to provide employment opportunities for citizens of the municipality.
- ~~(n)~~n. Facilities for the use of any agency or agencies of the government of the United States of America.

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

Sec. 38. G.S. 159-81(4) reads as rewritten:

"(4) 'Revenues' include all moneys received by the State or a municipality from, in connection with, or as a result of its ownership or operation of a revenue bond project or a utility or public service enterprise facility or system of which a revenue bond project is a part, including (to the extent deemed advisable by the State or a municipality) moneys received from the United States of America, the State of North Carolina, or any agency of either, pursuant to an agreement with the State or a municipality, as the case may be, pertaining to the project. 'Revenues' also include all moneys received by, or on behalf of, the

North Carolina Low-Level Radioactive Waste Management Authority in connection with its financing of a low-level radioactive waste facility and all money received by, or on behalf of, the North Carolina Hazardous Waste Management Commission in connection with its financing of a hazardous waste facility."

Sec. 39. G.S. 159-83(a)(5) reads as rewritten:

"(5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, and to issue its revenue bonds or bond anticipation notes therefor, in the name of the State or a municipality, as the case may be, but no encumbrance, mortgage, or other pledge or real property of the State or a municipality may be created in any manner. Notwithstanding the foregoing, the North Carolina Low-Level Radioactive Waste Management Authority may create an encumbrance, mortgage, or other pledge of real property of the Authority in connection with its financing of a low-level radioactive waste facility and the North Carolina Hazardous Waste Management Commission may create an encumbrance, mortgage, or other pledge of real property of the Commission in connection with its financing of a hazardous waste facility."

Sec. 40. G.S. 159-83 is amended by adding a new subsection to read:

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

Sec. 41. G.S. 159-85 is amended by adding a new subsection to read:

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

Sec. 42. G.S. 159-88 is amended by adding a new subsection to read:

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

Sec. 43. G.S. 159-94 reads as rewritten:

"§ 159-94. Limited liability.

(a) Revenue bonds shall be special obligations of the State or the municipality issuing them. The principal of and interest on revenue bonds shall not be payable from the general funds of the State or the municipality, as the case may be, nor shall they constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of its property or upon any of its income, receipts, or revenues, except the funds which are pledged under the bond order authorizing the bonds. Neither the credit nor the taxing power of the State or the municipality, as the case may be, are pledged for the payment of the principal or interest of revenue bonds, and no holder of revenue bonds has the right to compel the exercise of the taxing power by the State or the municipality, as the case may be, or the forfeiture of any of its property in connection with any default thereon. Every revenue bond shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the State or the municipality, as the case may be, is not obligated to pay the principal or interest except from such revenues.

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

Sec. 44. G.S. 159-96 reads as rewritten:

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

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

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

(c) The provisions of subsection (b) of this section shall not apply to the financing of any revenue bond project by the North Carolina Low-Level Radioactive

Waste Management Authority or by the North Carolina Hazardous Waste Management Commission."

Sec. 45. (a) The Environmental Management Commission shall develop and adopt ambient air quality standards for toxic pollutants and shall develop a program to meet such standards by 1 July 1990.

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

Sec. 46. (a) The Hazardous Waste Management Commission shall submit monthly written reports as to its operation, activities, and progress to the Environmental Review Commission beginning on the first day of the month following the date this act becomes effective. The Hazardous Waste Management Commission shall lend assistance to and work in cooperation with the Environmental Review Commission in the discharge by the Environmental Review Commission of its powers and duties to exercise legislative oversight with respect to hazardous waste management.

(b) In addition to its general powers and duties, the Environmental Review Commission shall have the following powers and duties with respect to hazardous waste management:

- (1) To study the current and projected need for hazardous waste treatment, storage, and disposal capacity in the State in light of anticipated generation of hazardous waste and alternatives for hazardous waste treatment and disposal;
- (2) To evaluate the potential for the development of additional hazardous waste treatment, storage, and disposal capacity by the private sector;
- (3) To study the necessity for and scope of hazardous waste treatment, storage, and disposal facilities which are sited, owned, or operated by the State;
- (4) To review progress in securing a volunteer county to host a hazardous waste treatment facility;
- (5) To study incentives and compensation for the community which hosts, either voluntarily or involuntarily, a hazardous waste treatment facility, including any additional incentives and compensation which may be needed, whether there should be differential compensation for a volunteer county, options for use of funds by local governments, distribution of compensation among local governments, and methods of providing flexibility in the development of an incentives and compensation package for a particular local community;
- (6) To review progress in developing interstate agreements for the treatment, storage, and disposal of hazardous waste;
- (7) To assist in the development of cooperative, comprehensive regional approach to hazardous waste treatment and disposal;
- (8) To examine criteria and procedures for the selection of sites for hazardous waste treatment, storage, and disposal facilities which are

adopted by the Hazardous Waste Management Commission and determine whether any modification is needed;

- (9) To analyze existing State law governing the Hazardous Waste Management Commission and determine whether any changes are needed;
- (10) To study the capacity assurance requirement under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. 9601 **et seq.**, as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended as it relates to the continued eligibility of North Carolina for remedial actions under Superfund;
- (11) To study alternatives available to the State for dealing with hazardous waste and the ramifications of those alternatives; and
- (12) To receive and evaluate reports of every State agency, board, and commission which has any power or duty with respect to hazardous waste management.

Sec. 47. (a) The provisions of G.S. 130B-2(b) shall apply to this section.

(b) It is the intent of the General Assembly that an aggressive program to minimize or reduce the volume and quantity or toxicity of hazardous waste and other pollutants, including the emission of air contaminants, be implemented. The Department shall collect and analyze information so as to establish the data base necessary to plan, implement, and evaluate hazardous waste reduction programs and to assist the General Assembly in the development of policy regarding waste reduction.

(c) All information received pursuant to G.S. 130A-294(k), G.S. 143-215.1(g) and G.S. 143-215.108(c) shall be transmitted to the Solid Waste Management Division of the Department for review and analysis. The Solid Waste Management Division shall consider this information in the development of the comprehensive hazardous waste management plan required by G.S. 130A-294(i) and shall prepare a report on the feasibility of incorporating waste reduction requirements into existing solid and hazardous waste permitting processes. The Solid Waste Management Division shall report to the Environmental Review Commission as to progress in implementing this section on a quarterly basis beginning 1 January 1990.

Sec. 48. Notwithstanding the provisions of G.S. 143-215(c), G.S. 143-215.107(a)(7), and G.S. 143-215.107(f), the Environmental Management Commission may adopt rules applicable to any facility which is sited or operated pursuant to Chapter 130B of the General Statutes which incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

Sec. 49. The provisions of this act are severable, and if any provision of this act is held invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of the act which can be given effect without the invalid provision.

Sec. 50. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1989.