

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 704
SENATE BILL 443

AN ACT TO PROVIDE FOR THE MANAGEMENT OF HAZARDOUS AND LOW-LEVEL
RADIOACTIVE WASTE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Short title. This act may be referred to as the Waste Management Act of 1981.

Sec. 2. Purpose. The purpose of this act is to provide for a comprehensive system for management of hazardous and low-level radioactive waste in North Carolina as reflected in the 1981 Report of the Governor's Task Force on Waste Management.

Sec. 3. Creation of Governor's Waste Management Board. Chapter 143B of the General Statutes as it appears in Volume 3C of the General Statutes and the Cumulative Supplement thereto is amended by adding a new Part to read:

"Part 27.

"Governor's Waste Management Board.

§ 143B-216.10. Declaration of findings. — (a) The General Assembly of North Carolina hereby finds and declares that the safe management of hazardous wastes and low-level radioactive wastes, and particularly the timely establishment of adequate facilities for the disposal and management of hazardous wastes and low-level radioactive wastes is one of the most urgent problems facing North Carolina. The safe management and disposal of these wastes are essential to continued economic growth and to protection of the public health and safety. When improperly handled, these wastes pose a threat to the water, land, and air resources of the State, as well as to the health and safety of its citizens. Consequently, cooperation and coordination among the private sector, the general public and State and local agencies to assure the prevention of unnecessary waste and the establishment of adequate treatment and disposal facilities are essential. The General Assembly further finds that cooperation and coordination among the private sector, the general public and State regulatory agencies will be advanced by the creation of a Governor's Waste Management Board.

(b) It is the intent of the General Assembly by enactment of the Waste Management Act of 1981 to prescribe a uniform system for the management of hazardous waste and low-level radioactive waste and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of hazardous waste and low-level radioactive waste by means of special, local, or private acts or resolutions, ordinances, property restrictions, zoning regulations or otherwise. To this end, all provisions of special, local or private acts or resolutions are repealed which (1) prohibit the transportation, treatment, storage, or disposal of hazardous or low-level radioactive waste within any county, city, or other political subdivision; (2) prohibit the siting of a hazardous waste facility or a low-level radioactive waste facility within any county, city, or other political subdivision; (3) place any restriction or condition not placed by this act or by General Statutes Chapter 130, Article 13B or Chapter 104E upon the transportation, treatment, storage or disposal of hazardous or low-level radioactive waste, or upon the siting of a hazardous waste facility or low-level radioactive waste facility within any county, city, or other political subdivision; or (4) in any manner are in conflict or inconsistent with the provisions of this act or General Statutes Chapter

130, Article 13B or Chapter 104E. No special, local or private acts or resolutions enacted or taking effect hereafter may be construed to modify, amend or repeal any portion of the Waste Management Act of 1981 unless it expressly provides for such by specific references to the appropriate section of this act. Further to this end, all provisions of local ordinances, including those regulating land use, adopted by counties, municipalities, or other local authorities are invalidated which (1) prohibit or have the effect of prohibiting the establishment or operation of a hazardous waste facility or a hazardous waste landfill facility approved by the Governor pursuant to G.S. 130-166.17B; or (2) prohibit or have the effect of prohibiting the establishment or operation of a low-level radioactive waste facility or a low level radioactive waste landfill facility approved by the Governor pursuant to G.S. 104E-6.2.

(c) The General Assembly of North Carolina hereby finds and declares that prevention, recycling, detoxification, and reduction of hazardous wastes should be encouraged and promoted. These are alternatives which ultimately remove such wastes' hazards to human health and the environment. When these alternatives are not technologically feasible, retrievable above-ground storage is sometimes preferable to other means of disposal of some types of waste until appropriate methods for recycling or detoxification of the stored wastes are found. Landfilling shall be used only when it is clearly appropriate.

"§ 143B-216.11. Definitions. — Unless the context otherwise requires, the following definitions shall apply to this Part:

- (1) 'Hazardous Waste Facility' means a facility as defined in G.S. 130-166.16(5).
- (2) 'Hazardous Waste Landfill Facility' means a facility as defined in G.S. 130-166.16(5a).
- (3) 'Hazardous Waste Management' has the same meaning as defined in G.S. 130-166.16(7).
- (4) 'Hazardous Waste' has the same meaning as in G.S. 130-166.16(4).
- (5) 'Low-Level Radioactive Waste Facility' means a facility as defined in G.S. 104E-5(9b).
- (6) 'Low-Level Radioactive Waste Landfill Facility' means a facility as defined in G.S. 104E-5(9c).
- (7) '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.
- (8) 'Low-Level Radioactive Waste' has the same meaning as in G.S. 104E-5(9a).
- (9) 'Board' means the Governor's Waste Management Board.

"§ 143B-216.12. Creation and membership. — (a) There is hereby created the Governor's Waste Management Board to be located in the Department of Human Resources. The composition of the board shall be as follows:

- (1) Five members from State government: The Secretary or Commissioner of Human Resources, Natural Resources and Community Development, Commerce, Agriculture, and Crime Control and Public Safety. At the request of such Secretary or Commissioner, the Governor may appoint another official from the same department to serve in his stead.
- (2) Eight members appointed by the Governor from the following categories: one from county government, one from municipal government, two from private industry, two from the field of higher education, research or technology, and two from the public at large interested in environmental matters.
- (3) Two members from the General Assembly, one of whom shall be appointed by the Speaker of the House from the House of Representatives and one of whom shall be appointed by the Lieutenant Governor from the Senate.

(b) The members appointed by the Governor shall serve three-year terms until they are reappointed or replaced, except that two of the original members shall serve terms of one year, three of the original members shall serve terms of two years and three of the original members shall serve terms of three years. The members appointed from the General Assembly shall serve during the terms which they are serving when appointed to the board and until their successors are appointed or until they cease to be members of the General Assembly, whichever occurs first.

(c) The initial members appointed by the Governor shall be appointed as soon as possible after passage of this act and shall serve terms as set forth in subsection (b).

(d) The chairperson of the board shall be appointed by and serve at the pleasure of the Governor.

(e) Any appointment to fill a vacancy on the board created by resignation, dismissal, death, disability or any other cause shall be for the balance of the unexpired term.

(f) Any member of the board may be removed by the Governor for misfeasance, malfeasance, or nonfeasance, except that the members from the House of Representatives and the Senate may be removed for such reasons only by the Speaker of the House and the Lieutenant Governor respectively.

(g) Members of the board who are State employees shall receive travel expenses as set forth in G.S. 138-6. Board members who are legislators shall receive travel and subsistence allowances as set forth in G.S. 120-3.1. The other board members shall receive per diem and travel expenses as set forth in G.S. 138-5.

(h) A majority of the board shall constitute a quorum for the transaction of business.

"§ 143B-216.13. Functions and powers of the 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 above-ground storage facilities if existing or planned facilities are deemed inadequate or unavailable.

- (7) The board shall prepare and file jointly with 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. 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.
- (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 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) The board shall, in accordance with the procedures set forth in G.S. 130-166.17B and G.S. 104E-6.2, make requisite findings and submit its recommendation to the Governor concerning the exercise of the State's preemptive powers.
- (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, above-ground storage facilities for hazardous wastes.

"§ 143B-216.14. Functions and powers of the Department of Human Resources. — The Department of Human Resources is authorized:

- (1) To enter upon any lands and structures upon lands to make surveys, borings, soundings and examinations as may be necessary to determine the suitability of a site for a hazardous waste facility, hazardous waste landfill facility, low-level radioactive waste facility or low-level radioactive landfill facility. The Department shall give 30 days' notice of the intended entry authorized by this section in the manner prescribed for service of process by G.S. 1A-1, Rule 4. Entry under this section shall not be deemed a trespass or taking;

provided however that the Department shall make reimbursement for any damage to such land or structures caused by such activities;

(2) To provide necessary clerical, technical, and administrative assistance to the board, and to employ the necessary personnel for the accomplishment of the purposes of this Part.

(3) To enforce any rules adopted by the board pursuant to this Part in the manner provided for by G.S. 130-166.21E and G.S. 104E-24.

§ 143B-216.15. Reporting procedures. — The Governor's Waste Management Board shall report directly to the Governor except as otherwise expressly provided."

Sec. 4. Amendments to Solid Waste Management Act. G.S. 130-166.16 as it now appears in Volume 3B of the North Carolina General Statutes is hereby amended by:

(1) adding a new subdivision (5a) to read as follows:

"(5a) 'Hazardous Waste Landfill Facility' means any facility or any portion of a facility for disposal of hazardous waste on or in land in accordance with rules promulgated under this Article."

(2) adding in subdivision (10a) after the word "government" on line 2 the words "State agency, federal agency."

(3) by making the following changes in subdivision (16):

Adding in b.3. after the word "Commission" the words "except that any sludges that meet the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (PL 94-580) as amended, shall also be a solid waste for the purposes of this Article"; by adding in c. after the word "Statutes" the words "except that any such oils or other liquid hydrocarbons that meet the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (PL 94-580) as amended, shall also be a solid waste for the purposes of this Article"; and by adding in e. after the parenthesis in line 3 the words "except that any specific mining waste that meets the criteria for hazardous waste under the Federal Resource Conservation and Recovery Act (PL 94-580) as amended, shall also be a solid waste for the purposes of this Article."

Sec. 5. Article 13B of Chapter 130 of the General Statutes as it now appears in Volume 3B is hereby amended by:

(1) adding a new section 130-166.17A to read as follows:

§ 130-166.17A. Conveyance of hazardous waste landfill facility to the State. — (a) No land may be used for a commercial hazardous waste landfill facility until fee simple title to the land has been conveyed to the State of North Carolina. In consideration for such 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. Such 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 facility. Such 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 G.S. Chapter 130, Article 13B. 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 regulations. 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, which consent will not be unreasonably withheld. In the case of such 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 regulations. If the lessee or any successor in interest fails in any material respect to comply

with any applicable law, regulation, 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, regulation, permit conditions or the lease for the permanent closure of the site until the site has either been permanently closed or until a substitute operator has been secured and has assumed the obligations of the lessee.

(c) In the event of changes in laws or regulations 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; provided, that the lessor shall have no obligation to secure a substitute lessee or operator and may require the lessee to permanently close the facility."

(2) adding a new section 130-166.17B to read as follows:

"§ 130-166.17B. Limited State preemption. — (a) Notwithstanding any authority heretofore granted to counties, municipalities, or other local authorities to adopt local ordinances, including those regulating land use, any local ordinance which prohibits or has the effect of prohibiting the establishment or operation of a hazardous waste facility or a hazardous waste landfill facility which the Governor's Waste Management Board and the Governor have approved pursuant to the procedures in subsections (b) and (c) of this section, shall be invalid from the effective date of this amendment, but only to the extent necessary to effectuate the purposes of this Article. For the purpose of this section, the Governor's Waste Management Board shall include, in addition to the members enumerated in G.S. 143B-216.12(a), two members appointed by the local governing body (1) of the city in which the proposed site is located, or (2) of the county in which the proposed site is located (if the proposed site is outside city limits), as the case may be. The terms of the members appointed by the local governing body shall end upon the final determination made by the Governor under 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 developer or operator of the facility may petition the Governor's Waste Management 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 recommend to the Governor that he either approve or disapprove the establishment and operation of the facility. After receiving a written recommendation from the board, if the Governor makes the four findings set forth in subsection (c) of this section he shall approve the establishment or operation of the facility. If the Governor does not make all of the four findings set forth in subsection (c) of this section he shall disapprove the establishment or operation of the facility. The Governor shall affirm or disaffirm the findings of the board and may make additional findings. The decision of the Governor shall be final unless a party to the action shall, pursuant to G.S. 7A-29, file a written appeal within 30 days of the date of such decision. The record on appeal shall include all materials and information submitted to or considered by the Governor in accordance with subsection (c) of this section. The scope of judicial review shall be limited to questions of abuse of discretion.

(c) When a petition as described in subsection (b) of this section has been filed with the Governor's Waste Management Board, the board shall hold a public hearing to consider the

petition. Such hearing shall be held in the affected locality in accordance with G.S. 150A, Article 2, within a reasonable time after receipt of the petition by the board. The board shall publish notice of the hearing twice a week for two successive weeks in a newspaper of general circulation in the county where the proposed site is located. The final notice shall appear at least 15 days but not more than 25 days before the hearing date. Any interested 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 material to the board for its consideration. No later than 60 days after the hearing, the board shall present its written recommendation to the Governor to approve or disapprove the facility. Before recommending that the Governor approve the facility, the board must make the following findings:

- (1) That the proposed facility is needed in order to establish adequate capability for the management of hazardous waste generated in North Carolina and therefore serves the interests of the citizens of the State as a whole;
- (2) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies;
- (3) That local citizens and elected officials have had adequate opportunity to participate in the siting process;
- (4) 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 developer or operator 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 ordinance(s).

The board's written recommendation shall include a complete transcript of the hearing, all written material presented to the board regarding the site location and the specific findings required in this subsection and any minority positions on the recommendation and the specific findings required in this subsection. The Governor shall issue his decision within a reasonable time following receipt of the recommendation from the board and may consider any additional information he deems relevant. The Governor's decision shall be in writing and shall identify the material submitted to him by the board plus any additional materials used in arriving at his decision.

The provisions of this section shall not apply to the siting of a hazardous waste landfill facility until the rules, regulations and standards for the operation of such facilities have been adopted by the appropriate State agencies."

Sec. 6. G.S. 130-166.18 as it now appears in Volume 3B of the North Carolina General Statutes is amended by:

- (1) deleting paragraph (a)(3) and substituting the following in lieu thereof:

"Develop and promulgate standards for qualification as a waste 'recycling, reduction or resource recovering facility' or as waste 'recycling, reduction or resource recovering equipment' for the purpose of special tax classifications or treatment, and to certify as qualifying those applicants which meet the established standards. The standards shall be so developed as to qualify only those facilities and equipment exclusively used in the actual waste recycling, reduction or resource recovering process and shall exclude any incidental or supportive facilities and equipment;" and

- (2) adding a new paragraph (a)(6) to read as follows:

"The Department is authorized to charge and collect fees from operators of hazardous waste landfill facilities. Such 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 or regulations to remain responsible for post-closure monitoring and care. In establishing any such fees, consideration shall be given to the size of the facility, the nature of the hazardous waste and the projected life of the facility."

(3) deleting the second sentence in subsection (c) and substituting the following in lieu thereof:

"Such rules shall establish a complete and integrated regulatory scheme in the area of hazardous waste management and shall provide for;"

(4) substituting a comma for the word "and" in paragraph (c)(1) line 1, and inserting the words "and listing particular hazardous waste" following the word "waste" in line 2.

(5) by adding after the word "responsibility" in line 3 of paragraph (c)(10) the words "(including requirements for sufficient availability of funds for facility closure and post-closure monitoring and corrective measures)."

(6) by adding before the first sentence in subsection (f) the following sentence:

"Within five 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 the Board of County Commissioners or, if the facility is located within a city, the City Clerk where the facility is proposed to be located."

(7) by rewriting the last sentence in subsection (f) to read as follows:

"Notice and public hearings shall be in accordance with the appropriate federal regulations pursuant to the Resource Conservation and Recovery Act PL 94-580 as amended, and with G.S. 150A. Where the provisions of the federal regulations and G.S. 150A are inconsistent, the federal regulations shall apply."

Sec. 7. Article 13B of Chapter 130 (G.S. 130-166.16 through G.S. 130-166.21F) as it now appears in Volume 3B of the North Carolina General Statutes is hereby amended by (1) adding a new G.S. 130-166.18A to read as follows:

"§ 130-166.18A. Additional requirements for hazardous waste facilities. — An applicant for a permit for a hazardous waste facility shall satisfy the Department that:

(1) Any hazardous waste facility heretofore 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 and regulations; and

(2) The applicant (or any parent or subsidiary corporation if the applicant is a corporation) is financially qualified to operate the subject hazardous waste facility."

(2) adding a new G.S. 130-166.19A to read as follows:

"§ 130-166. 19A. Hazardous Waste Fund. — There is hereby established under the control and direction of the Department of Human Resources a nonreverting Hazardous Waste Fund which shall be available to defray the cost to the State for monitoring and care of hazardous waste landfill facilities after the termination of the period during which the facility operator is required by applicable State and federal statutes 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. 130-166.18(a)(6)."

(3) amending G.S. 130-166.21B as it now appears in Volume 3B of the North Carolina General Statutes by:

(a) adding the words "or the environment" following the word "health" in subsection (a); and

(b) adding the words "or the environment" after the word "health" in subsection (b).

(4) amending G.S. 130-166. 21E as it now appears in Volume 3B of the North Carolina General Statutes by:

(a) deleting the words "five thousand dollars (\$5,000)" as they appear in lines 3 and 4 of subsection (b) and substituting the words "ten thousand dollars (\$10,000)" in lieu thereof; and

(b) adding a new subsection (g) to read as follows:

"Any person who willfully violates any provisions of this Article or the rules promulgated hereunder pertaining to the management of hazardous waste shall be guilty of a misdemeanor."

Sec. 8. Amendments to Radiation Protection Act. G.S. 104E-5 as it now appears in Volume 2D of the North Carolina General Statutes is hereby amended by adding three new subdivisions to read as follows:

- (9a) 'Low-Level Radioactive Waste' means radioactive waste not classified as high-level radioactive waste or spent nuclear fuel as defined by the U.S. Nuclear Regulatory Commission, transuranic waste, or byproduct material as defined in Section 11(e)(2) of the Atomic Energy Act of 1954, as amended.
- (9b) 'Low-Level Radioactive Waste Facility' means a facility for the storage, collection, processing, treatment, recycling, recovery or disposal of low-level radioactive waste.
- (9c) 'Low Level Radioactive Waste Landfill Facility' means any facility or any portion of a facility for disposal of low-level radioactive waste on or in land in accordance with rules promulgated under this Chapter.
- (9d) 'Transuranic Waste' means waste containing more than 10 nanoCuries of radioactive materials with atomic numbers of 93 or higher per gram of waste."

Sec. 9. G.S. Chapter 104E as it now appears in Volume 2D of the North Carolina General Statutes is amended by (1) adding a new G.S. 104E-6.1 to read as follows:

§ 104E-6.1. Conveyance of low-level radioactive waste landfill facility to the State. — (a) No land may be used as a low-level radioactive waste landfill facility until fee simple title to the land has been conveyed to the State of North Carolina. In consideration for such 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. Such 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 low-level radioactive waste landfill facility. Such lease agreement shall provide that the lessor or any person authorized by the lessor shall have at all times 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 G.S. Chapter 104E. 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 regulations. 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, which consent will not be unreasonably withheld. In the case of such 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 regulations. If the lessee or any successor in interest fails in any material respect to comply with any applicable law, regulation, 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, regulation, permit conditions or the lease for the permanent closure of the site until the site has either been permanently closed or until a substitute operator has been secured and assumed the obligations of the lessee.

(c) In the event of changes in laws or regulations 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; provided, that the lessor shall have no obligation to secure a substitute lessee or operator and may require the lessee to permanently close the facility.

(2) adding a new G.S. 104E-6.2 to read as follows:

"§ 104E-6.2. Limited State preemption. — (a) Notwithstanding any authority heretofore granted to counties, municipalities, or other local authorities to adopt local ordinances, including those regulating land use, any local ordinance which prohibits or has the effect of prohibiting the establishment or operation of a low-level radioactive waste facility or a low-level radioactive waste landfill facility which the Governor's Waste Management Board and the Governor have approved pursuant to the procedures in subsections (b) and (c), shall be invalid from the effective date of this amendment, but only to the extent necessary to effectuate the purposes of this Article. For the purpose of this section, the Governor's Waste Management Board shall include, in addition to the members enumerated in G.S. 143B-216.12(a), two members appointed by the local governing body (1) of the city in which the proposed site is located, or (2) of the county in which the proposed site is located (if the proposed site is outside city limits), as the case may be. The terms of the members appointed by the local governing body shall end upon the final determination made by the Governor under 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 developer or operator of the facility may petition the Governor's Waste Management Board to review the matter. After receipt of a petition, the board shall hold a hearing in accordance with the procedures in subsection (c) and shall recommend to the Governor that he either approve or disapprove the establishment and operation of the facility.

After receiving a written recommendation from the board, if the Governor makes the four findings set forth in subsection (c) of this section he shall approve the establishment or operation of the facility. If the Governor does not make all of the four findings set forth in subsection (c) of this section he shall disapprove the establishment or operation of the facility. The Governor shall affirm or disaffirm the findings of the board and may make additional findings. The decision of the Governor shall be final unless a party to the action shall, pursuant to G.S. 7A-29, file a written appeal within 30 days of the date of such decision. The record on appeal shall include all materials and information submitted to or considered by the Governor in accordance with subsection (c) of this section. The scope of judicial review shall be limited to questions of abuse of discretion.

(c) When a petition as described in subsection (b) of this section has been filed with the Governor's Waste Management Board, the board shall hold a public hearing to consider the petition. Such hearing shall be held in the affected locality in accordance with G.S. 150A, Article 2, within a reasonable time after receipt of the petition by the board. The board shall publish notice of the hearing twice a week for two successive weeks in a newspaper of general circulation in the county where the proposed site is located. The final notice shall appear at least 15 days but not more than 25 days before the hearing date. Any interested 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 material to the board for its consideration. No later than 60 days after the hearing, the board shall present its written recommendation to the

Governor to approve or disapprove the facility. Before recommending that the Governor approve the facility, the board must make the following findings:

- (1) That the proposed facility is needed in order to establish adequate capability for the management of low-level radioactive waste generated in North Carolina and therefore serves the interest of the citizens of the State as a whole;
- (2) That all legally required State and federal permits or approvals have been issued by the appropriate State and federal agencies;
- (3) That local citizens and elected officials have had adequate opportunity to participate in the siting process;
- (4) 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 developer or operator 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 ordinances.

The board's written recommendation shall include a complete transcript of the hearing, all written material presented to the board regarding the site location and the specific findings required in this subsection and any minority positions on the recommendation and the specific findings required in this subsection. The Governor shall issue his decision within a reasonable time following receipt of the recommendation from the board and may consider any additional information he deems relevant. The Governor's decision shall be in writing and shall identify the material submitted to him by the board plus any additional materials used in arriving at his decision."

Sec. 10. G.S. 104E-7, as it now appears in Volume 2D of the North Carolina General Statutes, is hereby amended by adding a new subdivision to read as follows:

- "(9) to adopt regulations establishing financial responsibility requirements for maintenance, operation and long-term care of low-level radioactive waste facilities, including insurance during the operation of the facility and adequate assurance of availability of funds for facility closure and post-closure monitoring and corrective measures."

Sec. 10.1. Chapter 104E-9 as it now appears in Volume 2D of the North Carolina General Statutes is amended by adding a new subdivision (8) to read as follows:

- "(8) To establish annual fees for activities under this Chapter based on actual administrative costs to be applied to training, enforcement, and inspection pursuant to the provisions of this Chapter and to charge and collect fees from operators of low-level radioactive waste landfill facilities pursuant to the provisions of this Chapter."

Sec. 11. Chapter 104E, as it now appears in Volume 2D of the North Carolina General Statutes, is amended by adding a new G.S. 104E-9(a) to read as follows:

"§ 104E-9(a). Additional requirements for low-level radioactive waste facilities. — (a) An applicant for a permit for a low-level radioactive facility shall satisfy the department that:

- (1) Any low-level radioactive waste facility heretofore 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 and regulations; and
- (2) The applicant (or any parent or subsidiary corporation if the applicant is a corporation) is financially qualified to operate the subject low-level radioactive waste facility."

Sec. 11.1. G.S. 104E-10(d) as it now appears in Volume 2D of North Carolina General Statutes is hereby amended by adding before the first sentence the following sentence:

"Within five days of receiving an application for a license or an amendment to a license to operate a low-level radioactive waste facility, the Department shall notify the clerk to the Board of County Commissioners or, if the facility is located within a city, the City Clerk where the facility is proposed to be located."

Sec. 11.2. G.S. 104E-16 as it now appears in Volume 2D of the North Carolina General Statutes is hereby amended by adding an (a) before the first paragraph and by adding the word "nonreverting" between the words "(a)" and "Radiation", and by adding a new subsection (b) to read as follows:

"(b) All moneys collected from low-level radioactive waste landfills according to the provisions of G.S. 104E-19(b) shall be paid to the fund. Such moneys shall be separately accounted for and shall be available to defray the costs to the State for monitoring and care of low-level radioactive waste landfill facilities after the termination of the period during which the facility operator is required by applicable State and federal statutes and 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 other persons for damages caused by the facility. The fund shall be maintained by fees collected pursuant to the provisions of G.S. 104E-19(b)."

Sec. 12. G.S. 104E-18, as it now appears in Volume 2D of the North Carolina General Statutes, is hereby amended by deleting "or" in the second sentence and by inserting after "possess" in the same sentence the words "or dispose of".

Sec. 13. G.S. 104E-19, as it now appears in Volume 2D of the North Carolina General Statutes, is amended by adding an "(a)" before the first paragraph, deleting in line 5 the word "Commission" and substituting the word "it", and adding the following new subsection (b):

"(b) The Department is authorized to charge and collect fees from operators of low-level radioactive waste landfill facilities. Such 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 or regulations to remain responsible for post-closure monitoring and care. In establishing any such fees, consideration shall be given to the size of the facility, the nature of the low-level radioactive waste and the projected life of the facility."

Sec. 14. Chapter 104E, as it now appears in Volume 2D of the North Carolina General Statutes, is amended by adding a new G.S. 104E-24 to read as follows:

"§ 104E-24. Administrative penalties. — (a) The Department may impose an administrative penalty on any person:

- (1) who fails to comply with this Chapter, any order issued hereunder, or any rules adopted pursuant to this Chapter;
- (2) who refuses to allow an authorized representative of the Radiation Protection Commission or the Department of Human Resources a right of entry as provided for in G.S. 104E-11 or impounding materials as provided for in G.S. 104E-14.

(b) Each day of a continuing violation shall constitute a separate violation. Such penalty shall not exceed ten thousand dollars (\$10,000) per day. In determining the amount of the penalty, the Department shall consider the degree and extent of the harm caused by the violation. Any person assessed a penalty shall be notified of the assessment by registered or certified mail, and the notice shall specify the reasons for the assessment.

(c) Any person wishing to contest a penalty or order issued under this section shall be entitled to an administrative hearing and judicial review in accordance with the procedures outlined in G.S. 150A-23 through 150A-52.

(d) The Secretary may bring a civil action in the Superior Court of the county in which such violation is alleged to have occurred to recover the amount of administrative penalty whenever a person:

- (1) Who has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of such penalty, or
- (2) Who has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the decision as provided in G.S. 150A-36."

Sec. 15. Privilege License Tax. G.S. 160A-211 as it now appears in Volume 3D of the North Carolina General Statutes is amended by adding a new G.S. 160A-211.1 to read as follows:

"§ 160A-211.1. Low-Level Radioactive and Hazardous Wastes Facilities. — (a) Cities in which hazardous waste facilities as defined in G.S. 130-166.16(5) or low-level radioactive waste facilities as defined in 104E-7(9b) are located may levy an annual privilege license tax on persons or firms operating such facilities only in accordance with this section.

(b) The rate or rates of a tax levied under authority of this section shall be in an amount calculated to compensate the city for the additional costs incurred by it from having a hazardous waste facility or a low-level radioactive waste facility located in its jurisdiction, which costs may include the loss of ad valorem property tax revenues from the property on which a facility is located, the cost of providing any additional emergency services, the cost of monitoring air, surface water, ground water, and other environmental media to the extent other monitoring data is not available, and other costs the municipality established as being associated with the facilities and for which it is not otherwise compensated.

(c) Any person or firm taxed pursuant to this section may appeal the tax rate to the board, but shall pay the tax when due, subject to a refund when the appeal is resolved by the board or in the courts."

Sec. 16. G.S. Chapter 153A as it now appears in Volume 3C of the North Carolina General Statutes is amended by adding a new G.S. 153A-152.1 as follows:

"§ 153A-152.1. Low-Level Radioactive and Hazardous Wastes Facilities. — (a) Counties in which hazardous waste facilities as defined in G.S. 130-166.16(5) or low-level radioactive waste facilities as defined in 104E-7(9b) are located may levy an annual privilege license tax on persons or firms operating such facilities only in accordance with this section.

(b) The rate or rates of a tax levied under authority of this section shall be in an amount calculated to compensate the county for the additional costs incurred by it from having a hazardous waste facility or a low-level radioactive waste facility located in its jurisdiction, which costs may include the loss of ad valorem property tax revenues from the property on which a facility is located, the cost of providing any additional emergency services, the cost of monitoring air, surface water, ground water, and other environmental media to the extent other monitoring data is not available, and other costs the county establishes as being associated with the facilities and for which it is not otherwise compensated.

(c) Any person or firm taxed pursuant to this section may appeal the tax rate to the board, but shall pay the tax when due, subject to a refund when the appeal is resolved by the board or in the courts."

Sec. 17. Tax Incentive Amendments. G.S. 105-147(13)b, as it now appears in Volume 2D of the North Carolina General Statutes is hereby amended by adding after the word "waste" at the end of the first sentence the following phrase:

", or for the purpose of reducing the volume of hazardous waste generated."

Sec. 18. G.S. 105-122(b) as it now appears in Volume 2D of the North Carolina General Statutes is hereby amended by adding after the word "waste" on line 29 the following phrase:

"or for the purpose of reducing the volume of hazardous waste generated."

Sec. 19. G.S. 105-130.10(2) as it now appears in Volume 2D of the North Carolina General Statutes is hereby amended by adding after the word "waste" at the end of the first sentence the following phrase:

"", or for the purpose of reducing the volume of hazardous waste generated."

Sec. 20. G.S. 105-130.5(b)(6) as it now appears in Volume 2D of the North Carolina General Statutes is rewritten to read as follows:

"Amortization in excess of depreciation allowed for federal income tax purposes on the cost of any sewage or waste treatment plant, and facilities or equipment used for purposes of recycling or resource recovery of or from solid waste, or for purposes of reducing the volume of hazardous waste generated as provided in G.S. 105-130.10."

Sec. 21. Amendment to Utilities Commission Authority Related to Hazardous Waste. G.S. 62-281 as it now appears in Volume 2B of the North Carolina General Statutes is hereby amended by:

(1) adding the following at the end of subsection (a):

"It is the intent of the General Assembly that regulations governing the transportation of hazardous waste and radioactive waste conform as nearly as possible to federal regulations established for the same purposes."

(2) adding a new subsection (b) to read as follows:

"The Utilities Commission is hereby authorized to promulgate highway safety rules and regulations for all private motor carriers engaged in the transportation of hazardous waste and radioactive waste in interstate and intrastate commerce over the highways of North Carolina. It is the intent of the General Assembly that such regulations conform as nearly as possible to federal regulations established for the same purposes."

Sec. 22. Industrial Revenue Bond Amendments. G.S. 159C-7, as it now appears in Volume 3D of the North Carolina General Statutes, is amended by:

(1) denominating the current subdivision (3) as subdivision (4) and inserting a new subdivision (3) to read as follows:

"In the case of a hazardous waste facility or low-level radioactive waste facility which is used as a reduction, recovery or recycling facility, that such project will further the waste management goals of North Carolina and will not have an adverse effect upon public health or a significant adverse effect on the environment."

(2) inserting the following sentence after the first sentence of the third unnumbered paragraph:

"In no case shall the Secretary of Commerce make the findings required by subdivision (3) unless he shall have first received a certification from the Department of Human Resources that the proposed project is environmentally sound, will not have an adverse effect on public health and will further the waste management goals of North Carolina."

Sec. 23. State Acquisition of Land. G.S. 146-22.1, as it now appears in Volume 3C of the North Carolina General Statutes, is hereby amended by adding a new subdivision to read as follows:

"(14) Lands necessary for the construction of hazardous waste facilities as defined in G.S. 130-166.16(5) and lands necessary for the construction of low-level radioactive waste facilities as defined in G.S. 104E-5(9b)."

Sec. 24. G.S. 130-166.16 as it now appears in the General Statutes is hereby amended by adding a new G.S. 130-166.18B to read as follows:

§ 130-166.18B. It is the intent of the General Assembly to prescribe a uniform system for the management of hazardous waste and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of hazardous waste by means of special, local, or private acts or resolutions, ordinances, property restrictions, zoning regulations, or otherwise, as provided in G.S. 143B-216.10(b)."

Sec. 25. G.S. 104E-21 as it now appears in Volume 2D of the North Carolina General Statutes is hereby amended by adding an (a) before the first paragraph and by adding a new subsection (b) to read as follows:

"(b) It is the intent of the General Assembly to prescribe a uniform system for the management of low-level radioactive waste and to place limitations upon the exercise by all units of local government in North Carolina of the power to regulate the management of low-level radioactive waste by special, local or private acts or resolutions as provided in G.S. 143B-216.10(b)."

Sec. 26. This act shall be liberally construed to carry out the policies set forth in the act.

Sec. 27. If any provision of this act or the application thereof to any person or circumstances is held to be invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application and to this end the provisions of this act are severable.

Sec. 28. G.S. 7A-29 is amended on line 5 by inserting after "G.S. 58-9.4" and before the "," the following:

"or from the Governor pursuant to the Waste Management Act of 1981, G.S. 130-166.17B and G.S. 104E-6.2".

Sec. 28.1. G.S. 130-166.21D(b) is amended to read:

"(b) The solid waste management program concerning hazardous waste maintained by the State under this Article shall be no more comprehensive than the hazardous waste program prescribed under the federal act. The rules and standards concerning hazardous waste promulgated under this Article shall be no more stringent than those rules, regulations and standards promulgated under the federal act; provided, that in establishing acceptable water table levels, location in relation to water supplies and population centers and appropriate buffer zones, the rules and standards promulgated under this Article shall be at least as comprehensive and may be more comprehensive than the hazardous waste program prescribed under the federal act."

Sec. 29. This act is effective upon ratification.

In the General Assembly read three times and ratified, this the 26th day of June, 1981.