

# SITING HAZARDOUS WASTE FACILITIES IN NEW JERSEY: KEEPING THE DEBATE OPEN

by Frank J. Dodd\*

## I. Introduction

The toxic waste dilemma has seeped its way into the nation's consciousness. Fears about toxic waste continue to grow. Each day more and more communities discover that they are living near sites contaminated by chemicals which once strange names and initials—dioxin, vinyl chloride and PCBs—have now become household words. The hazardous waste problem is worse today than it was five years ago, and its dimensions are overwhelming.

The federal Office of Technology Assessment (OTA) has compiled some staggering statistics on the breadth of the hazardous waste dilemma. The OTA estimates that there are at least 10,000 toxic dump sites nationwide that pose serious threats to human health, and that 378,000 additional sites may require remedial clean-up action.<sup>1</sup> Of these sites, the U.S. Environmental Protection Agency (USEPA) has listed only 809 on its Superfund National Priority List.<sup>2</sup> Unfortunately, New Jersey sites are listed more often than any other state in the nation.<sup>3</sup>

But for all the merit of the Superfund program, cleaning up a dump site does not necessarily eliminate the threat of the toxic waste removed. Often, when a site is cleaned up, its wastes are merely shifted to another locale. In this way, risks are transferred from one community to another and to future generations. Given the great amounts of time and money needed to properly

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\* Frank ("Pat") Dodd is the Chairman of the New Jersey Hazardous Waste Facilities Siting Commission and is a former State Senator from Essex County. The author wishes to thank the staff members of the Commission, Richard J. Gimello, Susan B. Boyle and Peter C. Anderson for their assistance in the preparation of this article.

<sup>1</sup> See *Superfund Strategy* (Apr. 1985) (Office of Technology Assessment).

<sup>2</sup> The National Priority List is provided for in Section 105(8)(b) of The Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("Superfund"), Pub. L. No. 96-510, 94 Stat. 2676 (codified at 42 U.S.C. § 9605(8)(b)).

<sup>3</sup> See *Superfund Strategy*, *supra* note 1.

clean a toxic waste dump, many interim sites may be used to store chemical wastes indefinitely, necessitating that in the future these wastes be picked up and moved once again. The result is a desparate game of chemical "leapfrog".

The New Jersey Legislature recognized that because of the critical shortage of suitable sites to properly handle hazardous waste, there was grave potential that future waste disposal sites would be selected "on an indiscriminant and illegal basis."<sup>4</sup> To assure that chemical wastes would be managed properly, the Legislature enacted the Major Hazardous Waste Facilities Siting Act<sup>5</sup> ("Siting Act" or "Act") in September 1981. The purpose of the Act was to "establish a mechanism for the rational siting of hazardous waste facilities" through the informed participation of citizens, government and industry.<sup>6</sup>

This article analyzes the initial stages of the siting procedure in terms of the recent experiences of the siting authority created by the Act—the Hazardous Waste Facilities Siting Commission<sup>7</sup> ("Siting Commission" or "Commission"). Following a brief discussion of the siting dilemma, the siting process will be examined relative to the requirements of the Act and the participating groups.

## II. *The Siting Dilemma*

The controversy surrounding the siting of hazardous waste facilities, although a relatively recent phenomenon, is not unique. Hazardous waste facilities are merely one category of a growing list of locally unwanted land uses—"LULUs".<sup>8</sup> Proposals for prisons, highways, and even senior citizen centers are meeting adamant public disapproval. Such projects share the common features of being sorely needed on a regional, state or

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<sup>4</sup> N.J. STAT. ANN. § 13:1E-50 (West Supp. 1985) ("Legislative findings and declarations").

<sup>5</sup> N.J. STAT. ANN. §§ 13:1E-49 to -91 (West Supp. 1985). The Siting Act was originally known as Senate Bill 1300 or simply "S.1300". S.1300, 199th Leg., 2nd Sess. (1981). See also Lanard, *The Major Hazardous Waste Facilities Siting Act*, 6 SETON HALL LEGIS. J. 367 (1983); *A Citizen's Guide to the Major Hazardous Waste Facilities Siting Act* (available from the Siting Commission, CN-406, Trenton, NJ 08625).

<sup>6</sup> See supra note 4.

<sup>7</sup> N.J. STAT. ANN. § 13:1E-52 (West Supp. 1985) ("Hazardous waste facilities siting commission").

<sup>8</sup> See Popper, *Siting LULU's*, PLANNING, Apr. 1981, at 12.

national level but of also being objectionable to the "host" communities.

Projects attain LULU status for various reasons. These may include unique community demographics, prior bad experiences with similar proposals, or a general distrust of the government. Perhaps the common denominator is simply *fear*: either fear of change or fear of unknown risks. Whatever the reason, these concerns are legitimate and must be addressed with sensitivity.

The clash between the needs of the state, an "irresistible force," and local prerogatives, an "immovable object," is rarely more apparent than when siting hazardous waste facilities. Indeed, citizen opposition to such proposals is well documented.<sup>9</sup>

Recognizing that New Jersey's effort to site hazardous waste facilities would meet with local opposition, the Legislature wisely chose to involve interested groups and individuals in the siting process as early and as effectively as possible. By so doing, the siting procedure fosters development of desperately needed facilities to manage New Jersey's hazardous waste, while remaining sensitive to legitimate public concerns. By pursuing a policy of education and solicitation of active participation by concerned citizens, government and industry, the siting process may minimize the inevitable collision of state and local interests, and prevents eleventh-hour showdowns which can thwart development of hazardous waste facilities.

### *III. The Siting Process*

The interaction of diverse interest groups is the backbone of the New Jersey siting process. Citizen involvement was sought by the Legislature at the earliest drafting stages of the Siting Act. The language of the Act reflects input from many groups, diverse in their objectives, but all driven by the common goal of siting new, safe hazardous waste management facilities. The most significant result of early public input into the Act is reflected in the composition of the two boards created by the Siting Act: the Siting Commission and the Hazardous Waste Advisory Council

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<sup>9</sup> See, e.g., Centaur Associates, Inc., *Siting of Hazardous Waste Management Facilities and Public Opposition* (1979) (EPA document).

("Advisory Council").<sup>10</sup>

The Siting Commission, although technically within the executive branch of New Jersey government and domiciled within the New Jersey Department of Environmental Protection ("NJDEP"), is independent of NJDEP control. The principal responsibilities of the Commission are to prepare a Hazardous Waste Facilities Plan,<sup>11</sup> propose or adopt site designations<sup>12</sup> and establish a public information program.<sup>13</sup>

The composition of the Commission brings a variety of perspectives to bear on the facility siting issue. Its membership consists of county and municipal officials, industrial representatives and environmental and public interest group representatives.<sup>14</sup> Upon selection of a proposed facility site, two members of the affected community are added to the voting membership of the Siting Commission.<sup>15</sup>

The Act also established the Hazardous Waste Advisory Council, the purpose of which is to give advice and make recommendations to the Commission and the NJDEP.<sup>16</sup> Like the Com-

<sup>10</sup> N.J. STAT. ANN. § 13:1E-54 (West Supp. 1985) ("Hazardous waste advisory council").

<sup>11</sup> N.J. STAT. ANN. § 13:1E-58 (West Supp. 1985) ("Major hazardous waste facilities plan; preparation and adoption; contents; public information program").

<sup>12</sup> N.J. STAT. ANN. § 13:1E-59 (West Supp. 1985) ("Site designations; proposal and adoption").

<sup>13</sup> N.J. STAT. ANN. § 13:1E-58.d. (West Supp. 1985).

<sup>14</sup> The Siting Act provides that:

The commission shall consist of nine members, . . . Three of these members shall be county or municipal elected or appointed officials at the time of their appointment, three shall be employed by an industrial firm, and three shall be representatives of environmental or public interest organizations. Each of these members shall be appointed by the Governor, with the advice and consent of the Senate, for a term of 3 years, provided that of the members of the commission first appointed by the Governor, three shall serve for terms of 1 year, three for terms of 2 years, and three for terms of 3 years, so that one member from each of the three categories of membership shall be appointed to serve for a term of each such duration.

N.J. STAT. ANN. § 13:1E-52.b. (West Supp. 1985).

<sup>15</sup> N.J. STAT. ANN. § 13:1E-52.c. (West Supp. 1985). One of the additional members shall be appointed by the governing body of the county wherein the proposed major hazardous waste facility site is located, and the other shall be appointed by the governing body of the municipality wherein such site is located. *Id.*

<sup>16</sup> See *supra* note 10. The formal responsibilities of the Advisory Council are to:

1. advise the DEP concerning the preparation and adoption of criteria for the siting of new major hazardous waste facilities;

mission, the composition of the Advisory Council is designed to represent a broad range of interests.<sup>17</sup> Unlike the Commission, however, the Advisory Council has no actual siting authority, but it is anticipated that its recommendations could be rather influential.

The Siting Act provides for sequential phases in the development of waste facilities: planning, siting, licensing and regulating. It is required that public input be gathered throughout each of these stages. The avenues for participation include the public information program,<sup>18</sup> public hearings on the siting criteria,<sup>19</sup> the facilities plan,<sup>20</sup> site selection<sup>21</sup> and facility design,<sup>22</sup> and through

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2. advise the Commission concerning the preparation and adoption of the facilities plan, and the proposal and adoption of actual sites; and to
  3. review all matters relating to siting, licensing, construction, operation or closure of major hazardous waste facilities, and to make any recommendations to the Commission and DEP.

N.J. STAT. ANN. § 13:1E-55 (West Supp. 1985) ("Duties").

<sup>17</sup> The Siting Act provides:

There is established in the department a Hazardous Waste Advisory Council which shall consist of 13 members appointed by the Governor with the advice and consent of the Senate. Each of these members shall be appointed for a term of 3 years, provided that of the members of the council first appointed by the Governor, four shall serve for terms of 1 year, five shall serve for terms of 2 years, and four shall serve for terms of 3 years. Of these members, three shall be appointed from persons recommended by recognized environmental or public interest organizations; two from persons recommended by recognized organizations of municipal elected and appointed officials; two from persons recommended by recognized organizations of county elected and appointed officials; one from persons recommended by recognized community organizations; one from persons recommended by recognized organizations of firefighters; one from persons recommended by recognized organizations of industries which utilize on-site facilities for the treatment, storage or disposal of hazardous waste; one from persons recommended by recognized organizations of industries which utilize major hazardous waste facilities for the treatment, storage or disposal of hazardous waste; one from persons recommended by recognized organizations of persons licensed by the department to transport hazardous waste, or by individual licensed hazardous waste transporters; and one from persons recommended by recognized organizations of persons licensed by the department to operate major hazardous waste facilities, or by individual licensed major hazardous waste facility operators. . . .

N.J. STAT. ANN. § 13:1E-54.a. (West Supp. 1985).

<sup>18</sup> See *supra* note 13.

<sup>19</sup> N.J. STAT. ANN. § 13:1E-57.b. (West Supp. 1985).

<sup>20</sup> N.J. STAT. ANN. § 13:1E-58.c. (West Supp. 1985).

<sup>21</sup> N.J. STAT. ANN. § 13:1E-59.a. (West Supp. 1985).

grants provided to host municipalities for site-suitability studies<sup>23</sup> and public monitoring.<sup>24</sup> The scope of this article, however, is limited to an analysis of the initial planning phase.

Since planning constitutes the first step in a complex series of events, its importance cannot be overemphasized. It can literally "make or break" the entire siting process. Although the process may be time consuming, the success of the subsequent phases hinges on the accuracy, objectivity and legitimacy of early planning efforts.

Accordingly, New Jersey's Siting Act is designed to purge arbitrariness from decision-making by incorporating public input in the preliminary stages of the siting process. This unique philosophy of public involvement encourages early, active public participation in siting decisions, rather than after-the-fact considerations of public concerns. Consequently, those situations where agencies have neither the time nor the inclination to incorporate public sentiment into their decisions are avoided. The spirit of public participation is evidenced by the process undertaken to develop the major components of the Act: the facility siting criteria<sup>25</sup> and the facilities plan.<sup>26</sup>

#### A. Facility Siting Criteria

Guided by a legislative mandate to site new hazardous waste facilities, the Advisory Council's first planning task was to develop criteria for reviewing and selecting site locations. The criteria were developed to minimize the risk associated with siting, and to "prevent any significant adverse environmental impact resulting from the location or operation of a major hazardous waste facility."<sup>27</sup>

The NJDEP and the Advisory Council began developing criteria in January 1982, focusing on methods to minimize the short and long-term impacts that new facilities could have on public

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<sup>22</sup> N.J. STAT. ANN. § 13:1E-60.c. (West Supp. 1985).

<sup>23</sup> See N.J. STAT. ANN. § 13:1E-59 (West Supp. 1985).

<sup>24</sup> N.J. STAT. ANN. § 13:1E-64 (West Supp. 1985) ("Weekly inspections by local health board or department; violations; injunction or other relief; disposition of penalties").

<sup>25</sup> N.J. STAT. ANN. § 13:1E-57 (West Supp. 1985) ("Criteria for siting new major hazardous waste facilities; preparation and adoption").

<sup>26</sup> See *supra* note 11.

<sup>27</sup> N.J. STAT. ANN. § 13:1E-57.a. (West Supp. 1985).

health, safety and the environment. After six months of discussion, the Council published the Preliminary Criteria<sup>28</sup> on July 1, 1982. Throughout July 1982, the Advisory Council conducted a series of statewide meetings to present the criteria to the general public for its reaction and comments.

As a result of the public meetings, the Council received relevant and helpful feedback. Many of the comments were incorporated by the NJDEP and the Council in revising the siting criteria. Significant changes to the Preliminary Criteria were made in direct response to the comments received at the meetings, and a second round of formal public hearings was held on the *revised* siting criteria in February and March 1983. A "Response to Comments" document,<sup>29</sup> also published at that time, included the relevant points raised at the initial meetings and the official responses to each. Following these hearings, the final Facility Siting Criteria were adopted by NJDEP in September 1983.<sup>30</sup>

### B. *Facilities Plan*

The second major planning responsibility, undertaken by the Siting Commission, was the preparation and adoption of a hazardous waste facilities plan for the state.<sup>31</sup> The purpose of the plan is to assess the need for new facilities, and to determine the number and types of facilities required to manage waste from abandoned sites and newly generated hazardous waste. The plan is a comprehensive analysis of existing hazardous waste management practices in New Jersey. It is an appraisal of the sufficiency of existing waste facilities, and an assessment of the present and future sources, composition and quantity of hazardous waste to be generated within the state.

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<sup>28</sup> Preliminary Criteria for Siting Major Hazardous Waste Facilities (July 1, 1982). The preliminary criteria was published pursuant to the statutory requirement set forth in N.J. STAT. ANN. § 13:1E-57.b.(1) (West Supp. 1985).

<sup>29</sup> Response to Comments and Questions from Public Meetings to Discuss the Preliminary Criteria for Siting Hazardous Waste Facilities in New Jersey (Jan. 20, 1983).

<sup>30</sup> N.J. ADMIN. CODE tit. 7, §§ 26-13.6 to -13.13 (1983). For a thorough discussion and explanation of the siting criteria development process see Battista, *Basis and Background Document for New Jersey Commercial Hazardous Waste Facility Siting Criteria* (Feb. 1983) (copies available from the Siting Commission, CN-406, Trenton, NJ 08625).

<sup>31</sup> See *supra* note 11.

The plan is vital to the siting process. First, its information provides the legal basis for the Commission's decisions on site locations. Second, the plan establishes long-term policies and programs for issues related to siting such as waste reduction. Third, it outlines a strategy for identifying the most appropriate facility proposals received by the Commission. Finally, and perhaps the most important function of the plan is to delineate New Jersey's hazardous waste problem and inform the public of the *need* for new facilities. It is critical to an effective site designation process that the public acknowledge the need for new hazardous waste facilities. A thorough and accurate delineation of this need is the best way to justify controversial siting decisions.

In September 1984, a draft of the facilities plan was completed by an independent consultant.<sup>32</sup> The Commission distributed the draft to interested persons and held a series of public hearings in October and November 1984. The Commission solicited public comments and made responsive revisions to the proposed plan. In March 1985, the final version of the plan<sup>33</sup> was adopted, and subsequently published with a "Response to Comments" document<sup>34</sup> that addressed the major concerns expressed by the public.

Adoption of the facilities plan did not, however, end public participation in facility planning. Due to the importance of the information and data contained within the plan, and its potential for change, the Siting Act requires the plan to be updated and revised at least once every three years, with ample opportunities for public participation.<sup>35</sup> By monitoring the progress of the New Jersey Environmental Cleanup Responsibility Act<sup>36</sup> (ECRA),

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<sup>32</sup> From the time of its inception, the Commission's efforts were focused primarily on the development of an informational base upon which to make siting decisions. The actual formulation of the plan, however, did not occur until January 1984. The entire plan was prepared under contract by Environmental Resources Management, Inc. (ERM), with assistance by the Commission and the NJDEP.

<sup>33</sup> New Jersey Hazardous Waste Facilities Plan (Mar. 1985) (copies available from the Siting Commission, CN-406, Trenton, NJ 08625).

<sup>34</sup> Response to Comments on "Draft" Hazardous Waste Facilities Plan Issued September 1984 (Mar. 26, 1985) (copies available from the Siting Commission, CN-406, Trenton, NJ 08625).

<sup>35</sup> N.J. STAT. ANN. § 13:1E-58.a. (West Supp. 1985).

<sup>36</sup> N.J. STAT. ANN. §§ 13:1K-6 to -13 (West Supp. 1985). For a detailed analysis of ECRA, see Note, *The Environmental Cleanup Responsibility Act (ECRA): New Accountability for Industrial Landowners in New Jersey*, 8 SETON HALL LEGIS. J. 331 (1985).



Superfund cleanups and the New Jersey hazardous waste cleanup programs, as well as annual reports of existing treatment, storage and disposal facilities, the Commission can revise the facility plan to react to changes in the types and quantity of hazardous waste requiring disposal. Accordingly, the new data will guide the Commission in selecting where and how hazardous waste disposal will occur in the state.

### C. *Group Participation*

Scrutiny of the siting process has come equally from representatives of industry, government, and environmental/public interest organizations. These factions have voiced substantive concerns over both the siting criteria and facilities plan. As the Commission progresses through the siting process, it has found that there are few "umbrella" organizations which sufficiently represent each of these interest groups. In fact, as the Commission moves closer to formally adopting sites, active public participation comes from increasingly smaller factions.

#### 1. Environmental and Public Interest Groups

Of all the groups that participated in the siting process, the faction representing environmental and public interests was composed of the widest variety of distinct groups. In general, the perspective of these interest groups varied with the size of their organization and their geographic focus, either national, statewide or local.

Most groups were strong advocates of an open siting process, expressing satisfaction with the level of public input provided by the Act. In addition, most groups took full advantage of this statutory design by actively participating in the process, attending many public meetings, and presenting valid and helpful comments. Larger national and statewide organizations were given additional opportunities to affect siting decisions by representation within the memberships of the Advisory Council and Commission.<sup>37</sup> However, because the Legislature feared that local groups would be prone to protect their own interests rather than work to achieve a balanced and fair siting process, local po-

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<sup>37</sup> For example, the Sierra Club, the League of Women Voters and the Association of New Jersey Environmental Commissions (ANJEC).

sitions on the Commission are to be assigned only after specific site designations have been announced.<sup>38</sup>

## 2. Government

Participation in the planning and siting process from the government sector emerged from two levels: state government (including various regulatory agencies and state legislators) and local governments (which perceived themselves as potential host communities).

On the state level, the NJDEP played the most significant and integral role in the siting process. The Department's technical and legal assistance was extremely valuable to both the Council and Commission in the drafting of the original siting criteria, as well as in reviewing comments on the criteria and plan. Other state regulatory bodies, including the New Jersey Departments of Health,<sup>39</sup> Agriculture<sup>40</sup> and the Public Advocate,<sup>41</sup> were also helpful in providing comments and advice throughout the process.

Following the Act's passage, input from individual state legislators was minimal. Most were supportive of, and deferential to, the Commission's efforts. There were, however, a few legislators who introduced legislation designed to block all siting efforts within their respective voting districts. Recognizing that these "site-specific" statutes would usurp the authority of the Commission and would set a dangerous precedent damaging the objectivity and political neutrality of the siting process, Governor Kean expressed a commitment to veto any such bill reaching his desk.<sup>42</sup> In addition, the New Jersey Legislative Oversight Committee has stressed the need to restrain legislative intrusion into the siting process.<sup>43</sup>

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<sup>38</sup> See *supra* note 15.

<sup>39</sup> The Department of Health commented on the need for evacuation and emergency response provisions in both the criteria and the facilities plan.

<sup>40</sup> The Department of Agriculture expressed concerns that one criterion should address and require the Siting Commission to yield to present state efforts to preserve agricultural land.

<sup>41</sup> The Public Advocate stressed the need for source reduction and voiced additional public interest concerns.

<sup>42</sup> MANUAL OF THE LEGISLATURE OF NEW JERSEY 496 (E. Mullin ed. 1985) (State-of-the-State Address by Governor Kean (Jan. 8, 1985)).

<sup>43</sup> The Hazardous Waste Siting Process—A Call for Legislative Restraint. Re-

The Commission's planning efforts were largely disrupted by the public, although premature, announcement of potential sites by two separate waste disposal firms.<sup>44</sup> These proposals gave rise to the peremptory legislation mentioned earlier. Thus, public attention was shifted away from the validity of the generic siting criteria and the facilities plan. People became more concerned with whether the siting standards would permit siting of waste facilities within their individual communities. The public hearings, therefore, did not fully serve the intended purpose of rational, constructive forums for citizen participation in the siting program. Despite efforts to promote objective discussion, many meetings degenerated into one-sided debates and litanies of arguments against siting in a particular locale.

### 3. Industry

There are three categories of industrial groups affected by the Hazardous Waste Facilities Siting Act: (1) hazardous waste generators; (2) existing treatment, storage and disposal facility operators; and (3) potential developers of new waste facilities. Each group raised common issues particular to their individual interests.

The hazardous waste generators, those New Jersey industries having an immediate need for new waste management capacity, were represented on the Advisory Council and

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port from the New Jersey General Assembly Legislative Oversight Committee (Apr. 25, 1983).

<sup>44</sup> At-Sea Incineration, Inc. planned to operate the first United States flag incinerator ship to destroy hazardous waste. One of the proposed staging facilities for the ship was Port Newark, New Jersey. The company's intentions were known as early as October 1978, and it submitted application information to the NJDEP in July 1981, shortly before the passage of the Siting Act in September 1981. At-Sea was then advised that the NJDEP would not consider the application until the proposal had been subject to the Siting Act's review process.

Tacoma Boat Building Co., At-Sea's parent company has since decided to consolidate At-Sea into the parent firm following the filing of a Chapter 11 bankruptcy petition on September 23, 1985. *Bankruptcy, lack of terminal pose hurdles to offshore toxic burning*, Star-Ledger (Newark, NJ), Nov. 21, 1985, at 37.

On February 15, 1983, a second firm, Precision Conversion and Recovery, Inc. (PCR) unveiled a plan for hazardous waste treatment and disposal in Perth Amboy, New Jersey. The proposal was announced in the midst of the siting criteria development process. The company is now known as Envirocare International following PCR's partnership with a Dutch waste disposal firm.

Commission by various trade and industry associations.<sup>45</sup> These organizations supported the siting criteria and testified at many hearings in support of siting new facilities in New Jersey. They commented on the content of the facilities plan and expressed concern about the impact of new hazardous waste regulations on existing commercial management capacity.

Many generators feared that facilities now accepting waste would be closed for not meeting the new facility operating standards required by the facilities plan. While recognizing that the closing of existing facilities would benefit the environment, generators were concerned about the economic impacts of such closures. In addition, they expressed concern over the length of the siting process, and argued that the Commission's estimate of the necessary amount of hazardous waste management capacity was low.

Existing treatment, storage and disposal facility operators also represented their concerns to the Commission. Their comments addressed the regulation of these facilities. The Siting Act provides that treatment, storage and disposal plants in existence prior to the effective date of the Siting Act, are exempted from complying with the siting criteria unless these facilities expand waste management capacity by more than fifty percent.<sup>46</sup> Capacity expansions of greater than fifty percent are subject to all of the construction, registration and engineering provisions for new facilities required by the siting criteria.

Existing facilities are also subject to a five percent gross receipts tax.<sup>47</sup> Every existing major hazardous waste facility in New Jersey (and each newly sited facility) is required to pay five percent of its annual gross receipts to the municipality in which it is located.<sup>48</sup> This money is to be used by the municipal governing body to pay costs incurred by the municipality in providing police and fire protection, road construction and repair, local inspection and monitoring programs and any other facility-related

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<sup>45</sup> The Chemical Industry Council of New Jersey, the New Jersey Business and Industry Association, the Neighborhood Cleaners Organization, the New Jersey Chamber of Commerce and the New Jersey Petroleum Council.

<sup>46</sup> The plan reiterates this statutory provision set forth in N.J. STAT. ANN. § 13:1E-87 (West Supp. 1985) ("First date of approval of new facility; increase in capacity; approval").

<sup>47</sup> N.J. STAT. ANN. § 13:1E-80.b. (West Supp. 1985).

<sup>48</sup> *Id.*

expenses incurred by the host municipality.<sup>49</sup>

Waste oil reprocessors expressed their concern about the tax provision, and were successful in obtaining a ruling from the Attorney General exempting them from the gross receipts tax.<sup>50</sup> The Act states that the owner or operator of every major facility must file “. . . a statement, verified by oath, showing the gross receipts from all charges imposed during the preceding calendar year upon any person for the treatment, storage, or disposal of hazardous waste at the facility. . . .”<sup>51</sup> The Attorney General stated that “[T]he plain meaning of this statutory language limits the applicability of the tax to the receipts collected from generators for the treatment, storage, and disposal of hazardous waste; revenues obtained from other activities simply are not taxable under the Act. . . . Revenues obtained from other activities such as the sale of rehabilitated material for use in a manufacturing or other industrial process would generally not be taxable.”<sup>52</sup>

Potential developers of new hazardous waste facilities shared the generators' concern that the planning and siting process would be too time-consuming. Specifically, these potential applicants felt that the extended delays in the process would result in fewer disposal facilities able to handle hazardous waste. This shortfall would occur between the time existing landfills closed and when new facilities opened for operation.

In addition, developers alleged that the Commission's estimate of hazardous waste in need of treatment was low, because of the failure to account for the increased use of new hazardous waste facilities by generators who previously stored their waste on-site. Consequently, it was argued that this oversight would result in the construction of new facilities lacking the necessary capacity to handle the unaccounted-for toxic waste. It was contended further that this shortcoming would raise the cost of operating these facilities and thereby reduce their attractiveness to private investors.

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<sup>49</sup> N.J. STAT. ANN. § 13:1E-80.c. (West Supp. 1985).

<sup>50</sup> Opinion Letter of New Jersey Attorney General Irwin Kimmelman to the author (Jan. 10, 1983).

<sup>51</sup> N.J. STAT. ANN. § 13:1E-80.b. (West Supp. 1985).

<sup>52</sup> Opinion Letter *supra* note 50, at 2, 3.

#### *IV. Conclusion*

The individuals and groups participating in the siting process bring with them a myriad of interests and perspectives. Assuredly, the views and objectives of these participants often conflict. By legislative design, however, the Commission possesses the objectivity necessary to balance competing interests and the authority to make important site designations.

Although extensive public participation may complicate the mechanics of the siting process, the Commission believes it is the best way to address legitimate public concerns. The Commission attempts to manage inevitable conflict by encouraging all parties to participate on equal grounds. This policy allows opposing parties to look beyond parochial interests and to work with each other to achieve sound solutions to New Jersey's hazardous waste dilemma. For the siting process to result in effective decisions, industry and government must recognize the legitimacy of the potential host community's concerns, and citizens must appreciate the urgent need for new disposal options. In order to facilitate this cooperative spirit and to balance competing interests, the Commission will keep the siting debate open to all.

Hazardous waste facility siting is the most critical environmental and public health challenge facing New Jersey. It must command our continued efforts to site facilities that will safely and effectively manage toxic wastes. As new disposal technology develops, New Jersey must have already laid the groundwork for its immediate implementation.

Although New Jersey is committed to making rational and expedient siting decisions, citizens must realize that effective action on toxic waste does not lend itself to simple solutions. There is no way to remedy in a few years what a century of misguided disposal practices has wrought, or to develop the sophisticated technology to properly dispose of the some 60,000 hazardous chemicals now being used in the United States. New Jersey citizens, government and industry must be committed to developing solutions to this pressing problem.