OHIO LEGISLATIVE SERVICE COMMISSION
Columbus, Ohio

July 1988

# SUMMARY OF ENACTMENTS

September 1987-June 1988

117th General Assembly

1511.01, 1511.02, 1511.06, 1511.07, 1515.08, 1517.12, 1517.13, 1518.20, 1518.21, 1518.22, 1518.23, 1518.24, 1518.25, 1518.26, 1518.27, 1518.99, 1519.01, 1531.01, 1533.01, 1533.92, 1533.93, 1533.94, 1533.95, 1533.96, 1533.97, 1533.99, 1553.01, 1553.03, 1553.04, 1553.05, 1553.06, 1553.10, 2915.02, 4513.31, 5747.113, 5749.02, and 5749.021; Section 7 of Am. Sub. H.B. 361 of the 113th General Assembly and Section 3 of Am. Sub. H.B. 333 of the 117th General Assembly.

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## Am. Sub. H.B. 592

Reps. Deering, Troy, Mechling, Malott, Vukovich, Krupinski, Secrest, Cera, C. Jones, Roberts, Lucas, Boggs, Pringle, Williams, Koziura, Singer, Quilter, Campbell, R.E. Hagan, Conley, Boster, McLin, Verich, Guthrie, R.F. Hagan, Ash, D. Johnson, Healy, Mottl, Whalen, Doyle, P. Jones, W. Thompson, Stinziano, Hinig, Wise, Gerberry, Mallory, Hartley, Schuck, Hickey, Sheerer.

Sens. Burch, Fisher, Butts, Oelslager, Cupp, Watts, Drake, Furney, Boggs, Nettle, Horn, Schafrath, Zimmers, Hobson, Levey, Ray, White, Gillmor.

Expands the Ohio EPA Director's regulatory authority over solid waste facilities and increases license and permit fees for those facilities; levies various fees on the treatment and disposal of hazardous waste and the disposal of solid wastes; requires the Director to prepare a state solid waste management plan; creates the Solid Waste Management Advisory Council to assist in the development of and review the solid waste management plans of the state and county and joint solid waste management districts; provides for the establishment of mandatory solid waste management districts throughout the state and for the adoption of solid waste management plans by those districts; provides for background investigations by the Attorney General of solid, infectious, and hazardous waste permit and license holders and applicants; and makes other changes in the state's waste statutes. (Effective: June 24, 1988; certain provisions vetoed)

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## Administration and enforcement

### Performance standards

Law not affected by the act gives the Director of Environmental Protection (hereafter Director) general authority to adopt rules governing solid waste facilities--sanitary landfills, off-site incinerators, and composting facilities--to ensure that the facilities will be located, maintained, and operated in a sanitary manner. The act requires the Director to adopt solid waste rules under the Administrative Procedure Act applicable to specific subjects that are similar to those now covered by the Director's rules governing hazardous waste facilities, except that no manifest system applies to solid wastes.

Specifically, the act authorizes the Director to adopt rules establishing requirements for corrective actions with respect to the surface or subsurface migration or discharge of explosive gases or leachate, or ground water contamination, beyond the area within a solid waste facility where wastes are or were disposed of. These rules apply during the operation, closure, and post-closure care of solid waste facilities. It requires that the Director's rules establish performance standards governing, among other topics, the location, design, and construction of solid waste facilities and the closure and post-closure care of facilities where solid wastes will no longer be disposed of and requiring the filing of closure and post-closure care financial assurance. Under the act, closure is defined as the time when a solid waste facility will no longer accept solid wastes for treatment, transfer, or disposal or the effective date of an order revoking a facility's license. Closure also includes specified measures performed to protect the public health or safety, prevent air or water pollution, or make the facility suitable for other uses, if any. Post-closure is the period of time during which a solid waste facility is required to be monitored and maintained under the act and rules adopted under it, including, without limitation, the operation and maintenance of methane gas extraction and treatment systems.

The act requires the Director to adopt rules within one year after its effective date establishing engineering design, construction, and operation standards that incorporate the best available technology for solid waste facilities. It stipulates that it does not limit the Director's authority, prior to adoption of those rules, to issue a solid waste facility permit subject to terms and conditions relating to more stringent standards imposed by the Director under other provisions of the act.

### Permits

Under law not affected by the act, persons and governmental entities proposing to construct or modify a solid waste facility

must first submit detail (engineering) plans and specifications and information regarding the facility and its method of operation to the Director and obtain approval of the plans and specifications, and a permit to install, from him. Prior law required the permit application, plans, and specifications to be submitted at least 90 days before beginning operation of the facility. The act changes this period to at least 270 days before beginning operation.

The act expressly authorizes the Director, when finding that standards more stringent than those contained in Ohio Environmental Protection Agency (hereafter Ohio EPA) rules or standards pertaining to subjects not specifically addressed in those rules are necessary to ensure that a solid waste facility will not create a nuisance, cause or contribute to water pollution, or endanger the public health or safety, to issue a permit for the facility with such terms and conditions as he finds necessary to protect the public health and safety and the environment. If the Director issues a permit with such terms and conditions, he must state in the issuing order the findings supporting each of them. These terms and conditions are appealable to the Environmental Board of Review under law not changed by the act.

Grandfathered sites

The act requires owners and operators of grandfathered sites--those existing on the act's effective date that began operation before July 1, 1968, under former law that did not require permits to install--to submit engineering detail plans, specifications, and operating information and a permit application to the Director unless they have been exempted from this requirement under law not affected by the act that governs the obtaining of exemptions from the Ohio EPA's solid waste standards. The plans, specifications, and operating information must provide for compliance with performance standards adopted under the act. The act establishes the following schedule for the submission of permit applications for grandfathered sites: (1) within three months after the act's effective date for facilities located in the city of Garfield Heights or Parma in Cuyahoga County; (2) within six months after the act's effective date for facilities located in Delaware, Greene, Guernsey, Hamilton, Madison, Mahoning, Ottawa, or Vinton County; (3) within nine months after the act's effective date for facilities located in Champaign, Clinton, Columbiana, Huron, Paulding, Stark, or Washington County and those located in the city of Brooklyn or Cuyahoga Heights in Cuyahoga County; (4) within 12 months after the act's effective date for facilities located in Adams, Auglaize, Coshocton, Darke, Harrison, Lorain, Lucas, or Summit County or in Cuyahoga County outside the cities of Garfield Heights, Parma, Brooklyn, and Cuyahoga Heights; (5) within 15 months after the act's effective date for facilities located in Butler, Carroll, Erie, Lake, Portage, Putnam, or Ross County; (6) within 18 months after the act's effective date for

facilities located in counties not listed in (1) through (5), above; and (7) not later than December 31, 1990, if the facility is owned by a generator of solid wastes, exclusively disposes of solid wastes generated at one or more premises owned by the generator, and disposes of more than 100,000 tons of solid wastes per year. The act specifies that such a facility is subject to the provisions discussed below concerning the Director's authority to require the submission of updated plans, specifications, and operating information.

The act also requires the owner or operator of any solid waste facility that obtained a permit between July 1, 1968, and January 1, 1980, to submit a permit application together with engineering detail plans, specifications, and operating information for approval unless he has obtained an exemption. It does not specify when such an application must be submitted.

Additionally, the Director may require, by order, the owner or operator of any solid waste facility, regardless of when it began operating, to submit updated engineering detail plans, specifications, and operating information for the facility for approval for compliance with the performance standards adopted under the act if, in the Director's judgment, conditions at the facility constitute a substantial threat to the public health or safety or are causing or contributing to, or threatening to cause or contribute to, air or water pollution or soil contamination. An owner or operator receiving such an order must comply within 180 days after its effective date.

Under the act, the Director must act on a permit application or plans submitted as described above within 180 days after they are submitted. Within six months after denial of such an application or disapproval of updated plans and specifications, the owner or operator of the facility must submit a plan for closure and post-closure care of the facility to the Director for approval, cease accepting solid wastes for disposal, and commence closure within one year after issuance of the denial or disapproval. The Director may, when issuing a denial or disapproval, extend the closure date if he finds that closure of the facility within the one-year period would result in the unavailability of sufficient disposal facility capacity to meet the needs of the county or joint solid waste management district (see below) in which the facility is located. If the Director postpones closure, he must certify that the postponement will not cause or contribute to environmental damage.

Licenses

Law not changed by the act requires persons proposing to continue operating existing solid waste facilities during the following calendar year to obtain an annual operating license during the preceding December from the board of health of the health district in which the facility is located. The act requires applications for these licenses to be submitted on or

before September 30 of the year preceding the calendar year for which the license is sought. It authorizes boards of health, or, in the instance of health districts without an Ohio EPA-approved solid waste enforcement program, the Director, to include terms and conditions in a license or revision that are consistent with and pertain only to the subjects addressed in the Director's solid waste facility performance standards adopted under the act and specifically authorizes the inclusion of terms and conditions establishing maximum daily waste receipts. The receipts may be specified either in terms of tons or cubic yards of volume based upon a conversion factor of three cubic yards per ton for compacted wastes, generally, or one cubic yard per ton for baled waste. The act prohibits violation of a term or condition of a license.

Under prior law, before a board of health could deny, suspend, or revoke the license for a solid waste facility owned or operated by a political subdivision, it had to provide the political subdivision an opportunity for a hearing and consider the existing taxing power and debt limitations of the subdivision and its other governmental and proprietary financial needs in determining whether or not to deny, suspend, or revoke the license. The board of health could issue a conditional license to the political subdivision authorizing the continued operation of the facility without full compliance with solid waste facility standards and establishing a reasonable period of time to achieve full compliance. The act repeals these provisions.

Permit and license fees

Under prior law, the application fee for a solid waste facility permit or license was $15. The act raises the application fee for a permit to $400 and that for a license to $100. If a permit or license is issued, the application fee is credited toward the permit or license fee. When a license for an existing facility is applied for after the September 30 due date, the act imposes a late filing penalty equivalent to 10% of the application fee for each week the application is submitted after that date. This penalty is in addition to the application fee.

Prior law set the fee for a permit to install or modify a solid waste facility at $500. The act raises the fee for a permit to install a new sanitary landfill or to expand an existing one to $10 per thousand cubic yards of disposal capacity or $1,000, whichever is greater, but limits the total fee to a maximum of $80,000. For new or modified solid waste incineration or composting facilities, and for landfill modifications that do not involve an increase in disposal capacity, the permit fee is $1,000. The act exempts from these fee increases any person who submitted an application for a permit to install a new or modify an existing facility before September 1, 1987.

The act abolishes the differential in solid waste facility license fees based on the number of hours a facility is open that

was established by prior law and eliminates the authority of boards of health to establish license fees within statutorily prescribed minimum and maximum fees. With the exception of captive facilities, license fees for sanitary landfills under the act are determined in accordance with the following schedule:

| Authorized maximum daily waste receipt (tons) | Annual license fee |
|---|---|
| 100 or less | $ 5,000 |
| 101 to 200 | 12,500 |
| 201 to 500 | 30,000 |
| 501 or more | 60,000 |

For incinerators and composting facilities, the annual license fee is one-half the amount determined under the schedule. If the authorized maximum daily waste receipt has not been established for a facility, the act sets the license fee at $60,000 for a landfill and $30,000 for an incinerator or composting facility.

Under the act, the authorized maximum daily waste receipt for determining the license fee is that amount authorized in the facility's permit to install; the facility's annual license or revisions to it; the existing, approved operational plan or report for the facility, for a facility that began operating before permits to install were required; an order issued by the Director; or in updated plans, specifications, and operating information required by an order of the Director.

The act specifies that a municipal corporation, county, or township owning and operating more than one incinerator within its boundaries need pay only one fee for the licenses for all the incinerators. That fee is to be determined on the basis of the aggregate maximum daily waste receipt for all of the entity's incinerators in an amount that is one-half the amount shown in the above schedule.

The act establishes the annual license fee for a captive solid waste facility as described in (1) and (2), below, regardless of authorized maximum daily waste receipts, at a flat $5,000 for: (1) a facility owned by a generator of solid wastes when the facility exclusively disposes of solid wastes generated at one or more premises owned by the generator regardless of whether the facility is located on a premises where the wastes are generated; and (2) a facility that exclusively disposes of solid wastes that are generated from the combustion of coal that is not combined in any way with garbage at one or more premises owned by the generator.

Under the act, license fees must be paid within 30 days after issuance of a license. Fee revenues from a license issued

by a health district with an Ohio EPA-approved solid waste regulatory program are apportioned $2,500 to the district for its regulatory program and the balance to the EPA for deposit in the General Revenue Fund rather than the Solid Waste Facility Fund as under prior law.

Moratoria

The act prohibits the Director from issuing a permit for any new solid waste facility for which an application is pending on the act's effective date, or a permit to modify an existing solid waste facility for which an application was submitted between January 1, 1988, and the act's effective date, for 12 months after that effective date or until an applicable county or joint solid waste management district is formed, whichever is earlier, unless the permit applicant demonstrates, and the Director finds, that an emergency need for disposal capacity exists. It requires the Director, if an emergency need exists, to continue to review during this moratorium any permit application that is pending on the act's effective date to modify an existing landfill by expanding its disposal capacity. A provision that would have limited this review requirement to municipally owned and operated landfills was vetoed.

The act also prohibits the Director from issuing a permit to install or modify a facility for which an application is submitted on or after the act's effective date until an applicable solid waste management plan has been approved unless specified conditions establishing the need for disposal capacity in the district are met.

Finally, unless an emergency need exists, the act prohibits the owner or operator of a facility from disposing of solid wastes in excess of the maximum daily amount specified in its daily logs for March, 1988, for 12 months after the act's effective date or until an applicable district is formed, whichever is earlier. Each such owner or operator must submit to the Director a certified statement as to the date in that month on which the facility received its maximum daily amount of solid wastes during that month, a statement of the total tons received on that date, and certified copies of all daily logs for that date. If the information is not submitted, the Director may establish a daily maximum waste load for the facility.

Captive facilities are exempt from the moratoria just described.

Program administration

Law not changed by the act imposes primary responsibility for licensing and inspecting solid waste facilities and for enforcing the solid waste provisions of the Solid and Hazardous Wastes Law (hereafter SHW Law) and the standards established by the Ohio EPA by rule under that law on local boards of health

maintaining solid waste regulatory programs approved by the Director. The Director has primary responsibility for performing these functions in health districts without Ohio EPA-approved programs. The act retains this basic structure, but broadens the Director's authority to conduct enforcement actions against facilities in health districts having approved programs. In addition to issuing enforcement orders, as authorized by continuing law, to abate violations of the SHW Law, the act authorizes the Director to issue such orders to prevent any threatened violation of either the solid or hazardous waste provisions of the SHW Law or a rule adopted or term or condition of a permit or license issued under it. It also authorizes the Director to deny, suspend, or revoke a solid waste facility license for violation of solid waste statutes or rules in health districts having approved programs. Under prior law, only the board of health in such districts could do so.

The act declares that nothing in the SHW Law limits the Director's authority to use any administrative remedy, or to request the Attorney General or appropriate local legal officer to use any judicial remedy, available under that law to enforce its solid waste provisions, and any rules adopted or terms or conditions of a permit, license, variance, or order issued under those provisions, with respect to any solid waste facility regardless of whether the facility is located in a health district having an approved program. It also authorizes the board of health or the Director to include terms and conditions in a facility's license or revised license that ensure compliance with the Director's standards and authorizes either entity to suspend, revoke, or deny a license for a violation of the solid waste statutes and rules.

The act requires the Director to employ and equip individuals necessary to regularly inspect and monitor operating facilities located off the premises where solid wastes are generated and authorizes him to employ and equip personnel to inspect and monitor operating on-site facilities.

Training program

Under the act, the Director must adopt rules in accordance with the Administrative Procedure Act establishing a training program that employees of local boards of health who are responsible for enforcing solid waste statutes and rules and persons who are responsible for the operation of solid waste facilities must successfully complete. The program must consist of a course on new technologies, enforcement procedures, and rules, must be offered annually, and must be taken triennially by the above persons. Certification of successful completion of the course is required for those persons.

Transfer facilities

"Solid waste transfer facility" is defined by the act as any site, location, tract of land, installation, or building that is used or intended to be used primarily for the purpose of transferring solid wastes that were generated off the premises from vehicles or containers into other vehicles for transportation to a solid waste facility and excludes from the term any facility that consists solely of portable containers having an aggregate volume of 50 cubic yards or less or where legitimate recycling activities are conducted.

The act then prohibits anyone, on and after the effective date of rules governing transfer facilities that must be adopted by the Director within two years after the act's effective date, from opening or modifying a transfer facility without submitting a permit application together with engineering detail plans, specifications, and operating information to and receiving a permit from the Director. It also requires the owner or operator of a transfer facility that began operations, or upon which construction began, on or before the effective date of those rules to submit a permit application together with the above materials not later than 12 months after the effective date of the rules unless that person has obtained an exemption from the requirement. The owner or operator of a transfer facility also must apply for and obtain annual licenses from local boards of health. The permitting and licensing procedures then track those established for other solid waste facilities, except that the permit fee for a transfer facility is $2,500, the annual license fee is $750, and the total amount of the license fee is to be retained by the board of health issuing the license.

The act includes transfer facilities in its planning and background investigation requirements by incorporating appropriate references to the facilities in those requirements.

Infectious wastes

Recently enacted law, which takes effect on August 10, 1988, would have classified infectious wastes as a category of solid wastes that were subject to management standards applicable to solid wastes and to additional standards established under that law. The act, while leaving the recently enacted standards governing generators and transporters of infectious wastes essentially intact, makes those wastes a separate waste category and also creates separate licensing and permitting requirements for infectious waste treatment facilities that, with only a few differences, track the act's solid waste requirements. These differences include elimination of the first and last categories in the schedule for the submission of permit applications for pre-1968, grandfathered facilities; the stipulation that applicants for permits for those facilities need not pay an application or permit fee unless the facilities will be modified; omission of the requirement that owners or operators of

facilities that were issued permits between July 1, 1968, and January 1, 1980, apply for permits under the act; and the establishment of license fees based on average, rather than maximum, daily waste receipts as indicated in a facility's permit or license.

The act includes infectious waste treatment facilities in its enforcement and background investigation provisions, but not in its planning requirements.

Citizen suits

The act extends the citizen suit provisions that formerly applied only to the hazardous waste provisions of the SHW Law to alleged violations of the solid waste and infectious waste provisions of that law and rules adopted and orders, permits, licenses, and variances issued under those provisions. The act also extends to political subdivisions the sovereign immunity granted under those provisions to the state for its clean-up activities at hazardous waste facilities and includes under that sovereign immunity solid waste and infectious waste treatment facilities and regulatory activities at solid waste, infectious waste treatment, and hazardous waste facilities.

Search warrant cost reimbursement

Law unchanged by the act gives boards of health, the Director, or the authorized representative of either a right of entry onto real or personal property to inspect, investigate, obtain samples, or examine and copy records to determine compliance with the SHW Law and express authority to obtain a search warrant to do so. Under the act, if entry for those purposes is refused, hindered, or thwarted and the Director, board, or authorized representative applies for and obtains a search warrant to conduct the inspection or investigation, the owner or operator of the premises is liable to the Director or board for their reasonable costs for the salaries and fringe benefits of persons assigned to make the inspection or investigation; for the salary, fringe benefits, and travel expenses of the Attorney General, the county prosecuting attorney, the city director of law, or an authorized assistant incurred in obtaining the search warrant; and for expenses necessarily incurred for the assistance of local law enforcement officers in executing the warrant. The act establishes procedures for the reimbursement of those costs.

Criminal penalties

Prior law established a criminal penalty of a fine of $250 per day for violation of the solid waste provisions of the SHW Law and for failure by hazardous waste facility owners and operators to collect hazardous waste treatment and disposal fees and forward them to the Ohio EPA. The act subjects violations of both solid waste and infectious waste provisions to the same

criminal penalties that formerly applied only to violations of the hazardous waste provisions of the SHW Law other than failure to collect disposal fees. Thus, reckless violation of any of the solid waste and infectious waste provisions is classified as a felony punishable by a fine of not less than $10,000 nor more than $25,000, or imprisonment for at least two, but not more than four years, or both, for a first offense, and by a fine of at least $20,000, but not more than $50,000, or imprisonment for at least two, but not more than four years, or both, for a second or subsequent offense. The act increases the criminal penalty for failure to collect and forward hazardous waste disposal and treatment fees to a fine of $10,000 and establishes the same fine for failure to collect and forward the state solid waste disposal fees (see below). Under law not affected by the act, each day of violation is a separate offense.

Civil penalties

The act retains the civil penalty of not more than $10,000 for each day of violation that applies to violations of any provision of the SHW Law, but changes the crediting of moneys arising from the penalty when it is imposed as a result of violation of the infectious waste provisions of the act. Recently enacted law would have placed those moneys in the Infectious Wastes Management Fund. The act instead places them in the Hazardous Waste Clean-up Fund.

Treatment and disposal fees

State hazardous waste fees

The act provides that per-ton fees on the treatment and disposal in Ohio of hazardous waste generated outside the state must be the rate that would apply if the waste were treated or disposed of in the state where it was generated. A provision that would have required those fees to be the higher of that rate or $75 per ton was vetoed.

Local hazardous waste fees

The act levies additional fees on the treatment and disposal of hazardous waste at the rate of 10% of the state treatment and disposal fees. Moneys from the new fees are to be used exclusively to pay the costs of municipal corporations and counties for conducting reviews of permit applications for new or modified hazardous waste landfills within their boundaries, emergency response actions with respect to releases of hazardous waste from facilities within municipal or county boundaries, monitoring the operation of the facilities, and local waste management planning programs. The owner or operator of a facility must collect the fees and forward them annually, on the anniversary of the date his permit was issued, to the appropriate official of the municipal corporation or, if the facility is in

an unincorporated area, the county in which the facility is located. A late payment fee equivalent to 10% of the amount of the fee is imposed for each month that payment is late.

State solid waste fees

The following new fees are established by the act for the disposal of solid wastes:

| | In-district | Out-of district, in state | Out-of-state |
|---|---|---|---|
| On act's effective date | 50¢/ton | $1.00/ton | $1.50/ton* |
| 12 mos. after effective date | 60¢/ton | $1.10/ton | $1.60/ton* |
| 24 mos. after effective date | 70¢/ton | $1.20/ton | $1.70/ton* |

*(The Governor vetoed a provision that would have required that this fee be equal to the indicated rate or an amount equal to the fee in the state of generation, whichever was greater.)

A provision that would have levied an additional disposal fee of $75 per ton on solid wastes that, at the time and site of generation, were not subject to the regulatory jurisdiction of this state or one of its political subdivisions was also vetoed.

The owner or operator must collect the fees and remit them monthly to the Director unless a 30-day extension is received. The act imposes a late payment fee equivalent to 50% of the fees due for each month that remittance is late.

The Director must credit half of the fee revenues remitted to him to the Hazardous Waste Facility Management Fund for use in paying the long-term operation and maintenance costs or matching share for actions taken at facilities in the state under the federal Superfund Law. The balance of the revenues must be credited to the Hazardous Waste Clean-up Fund for use in inspecting, investigating, conducting enforcement actions regarding, and performing or assisting in the cleanup of hazardous waste facilities, solid waste facilities where significant quantities of hazardous waste were disposed of, and storage or disposal facilities for polychlorinated biphenyls and substances, equipment, or articles containing or contaminated with them, that endanger the public health or safety or the environment.

District solid waste fees

The act authorizes the solid waste management policy committee of a county or joint solid waste management district to levy fees on the disposal in the district of wastes generated in the district, outside the district, but inside the state, and outside the state. Fees levied under the first tier must always be equal to one-half of the fees levied under the second tier, and fees levied under the third tier, which are in addition to the fees levied under the second tier, must always be equal to the fees levied under the first tier. The solid waste management plan of the district must establish the rates of the fees. However, the policy committee may levy fees prior to the approval of the plan by adopting a resolution establishing the amount of the fees. The fees must then be ratified in much the same way that the district's plan is approved.

The owner or operator of a solid waste facility must collect the fees and forward them to the appropriate official of the district in accordance with rules adopted by the Director. The act authorizes districts to use those moneys for the following purposes: (1) preparation of a district's solid waste management plan, monitoring its implementation, and conducting the periodic review and amendment of the plan required by the act; (2) implementation of the plan; (3) providing financial assistance to boards of health of health districts within a county or joint district in which solid waste facilities are located for enforcement of the Ohio EPA's solid waste facility standards; (4) providing financial assistance to each county within a district to defray the added costs of maintaining roads and other public services and of providing emergency and other public services resulting from the operation of a solid waste facility within the county under the district's plan; (5) under contracts with boards of health within a district in which solid waste facilities are located under the district's plan, for paying the costs incurred by the boards of health for collecting and analyzing samples from public or private water wells on lands adjacent to the facilities; and (6) developing and implementing an inspection program for out-of-state solid wastes disposed of in a district. The act specifies that fees levied by a district on out-of-state solid wastes must be used exclusively for (6).

Host community solid waste fees

Under the act, a municipal corporation or township in which a solid waste disposal facility is located may levy a fee of up to 25¢ per ton on solid wastes disposed of at the facility regardless of where they were generated. The legislative authority of the municipal corporation or township must establish the amount of the fee by ordinance or resolution and must mail a certified copy of the ordinance or resolution to the board of county commissioners, directors, or trustees of the county or joint solid waste management district in which the political subdivision is located, the owner or operator of each solid waste

disposal facility in the political subdivision that is required to collect the fee, and the Director. Moneys from the fee must be used to defray the added costs to the municipal corporation or township of maintaining roads and other public facilities and of providing emergency and other public services, and to compensate the political subdivision for reductions in real property tax revenues resulting from the location and operation of a solid waste disposal facility within the municipal corporation or township.

Exceptions to solid waste fees

The act specifies that the state and district solid waste disposal fees do not apply to sewage sludge generated by a waste water treatment facility holding a national pollution discharge elimination system permit if the sludge is disposed of through incineration, land application, or composting or at another resource or disposal facility that is not a landfill. The second tier of those fees does not apply to wastes generated outside a county or joint district that are subject to an agreement, authorized by the act, between the district where the wastes are disposed of and the district where they were generated for the joint use of solid waste facilities by the two districts.

Under the act, the state, district, and host community fees do not apply to solid wastes disposed of at captive facilities. In the case of solid wastes that are incinerated, those fees apply to the ash resulting after incineration and are to be collected at the time the ash is landfilled. The act requires that when solid wastes are delivered to a transfer facility, those fees are to be levied on the disposal of wastes transported off the premises of the transfer facility for disposal and are to be collected by the owner or operator of the disposal facility.

Studies of solid waste fees

The act requires the Director to monitor collection of the state and district solid waste fees, the revenues produced by them, and the uses made of the revenues and to report on those uses to the legislative leadership within three years after the act's effective date, including recommendations concerning the need for continuation of the fees. It also requires the Ohio EPA, within one year after the act's effective date, to submit to the General Assembly a study discussing the future costs of cleaning up solid waste landfills in Ohio and recommending any additional solid waste disposal fees needed to pay those costs.

Out-of-state waste provisions

Prohibition

The Governor vetoed a provision that would have (1) prohibited anyone from transporting or causing to be transported out-of-state solid wastes for transfer or disposal in Ohio or

from accepting such wastes for disposal or disposing of them in Ohio, except under a contract entered into prior to the act's effective date or a waiver issued by the Governor; and (2) allow the Governor to issue such a waiver on his own initiative or at the request of the solid waste management policy committee of a county or joint solid waste management district or of the owner or operator of a solid waste facility if the Governor believed that its issuance would be in the state's best interests and would not have an adverse effect on the solid waste management planning process provided for under the act.

Within 90 days after the act's effective date, the Governor, President of the Senate, and Speaker of the House of Representatives must jointly request Congress to enact legislation authorizing individual states to regulate the receipt of out-of-state solid wastes at solid waste disposal facilities within their boundaries.

Consent to service

As of January 1, 1989, the act prohibits anyone from transporting or causing to be transported out-of-state solid wastes, infectious wastes, or hazardous waste to a solid waste facility, infectious waste treatment facility, or hazardous waste facility in Ohio unless each of the following persons has first irrevocably consented in writing to the jurisdiction of Ohio's courts and service of process in this state for any civil or criminal proceeding relating to the waste: (1) the person who actually transports the waste; (2) the business concern employing the transporter; (3) the person or persons who have contracted with the transporter for transportation of the waste; and (4) the person or persons who have contracted with the owner or operator of the facility for treatment, transfer, storage, or disposal of the waste. The original consent-to-service document must be filed with the Director, and a copy must be filed with the owner or operator of each facility to which the waste is transported, annually at least seven days prior to the first shipment of the waste into Ohio. The act prohibits any owner, operator, or employee of a solid waste facility, infectious waste treatment facility, or hazardous waste facility from accepting any out-of-state waste for treatment, transfer, storage, or disposal unless a copy of the applicable consent-to-service document is on file at the facility.

The consent-to-service provisions do not apply to the transportation, transfer, or disposal of solid wastes from residential premises located less than 10 miles outside Ohio's boundaries.

State solid waste management plan

The act requires the Director to prepare and adopt a solid waste management plan for the state within one year after the act's effective date with the advice of the Solid Waste

Management Advisory Council created by the act (hereafter Advisory Council). The plan must: (1) reduce reliance on the use of landfills for solid waste management; (2) establish objectives for solid waste reduction, recycling, reuse, and minimization and a schedule for implementing those objectives; (3) establish restrictions on the types of solid wastes disposed of by landfilling for which alternative management methods are available and a schedule for implementing those restrictions; (4) establish revised general criteria for the location of solid waste facilities; (5) examine alternative methods for the disposal of fly ash and bottom ash resulting from the burning of mixed municipal solid wastes; (6) establish a statewide strategy for managing waste tires; (7) establish a strategy containing specific measures for legislative and administrative action promoting markets for recycled materials, generally, and the use of products containing recycled materials by state government; and (8) establish a program for the proper separation and disposal of hazardous waste generated by households. In developing the waste tire strategy under (6), the Director must examine the feasibility of recycling or recovering materials or energy from waste tires and landfilling waste tires in abandoned coal strip mines as well as other methods of managing them. Waste tire site operators, tire manufacturers, tire distributors, and tire dealers must submit recommendations concerning the strategy. The strategy must include an identification of waste tire site locations within the state.

After completing a draft plan, the Director must hold a public hearing on it at five different locations around the state. After making any revisions he considers appropriate based on the comments received, the Director must submit the plan to the Advisory Council for approval and, after that approval, adopt it as the state solid waste management plan. Within one year after adoption of the plan, the Director must adopt rules under the Administrative Procedure Act establishing revised general location criteria for solid waste facilities, performance standards for waste tire monofills, and standards for the disposal of fly ash and bottom ash resulting from burning mixed municipal solid wastes. The Director also must adopt rules establishing objectives, restrictions, and implementation schedules under (2) and (3) in the preceding paragraph as mandatory elements of county or joint solid waste management district plans.

Under the act, the Director, with the advice of the Advisory Council, must triennially review progress under the state plan, may prepare, obtain approval of, and adopt a revised plan based upon the findings of the review, and, if the recycling and waste minimization or landfilling restrictions of the plan change or the schedules for implementing them change, must appropriately amend the rules establishing them as mandatory elements of county and joint district plans.

## Solid Waste Management Advisory Council

The act creates within the Ohio EPA the Solid Waste Management Advisory Council. In addition to advising the Director with respect to preparing, and approving, the state solid waste management plan and periodic revisions to it, the Advisory Council must annually review implementation of the current or revised plan and of the solid waste management plans of county and joint solid waste management districts and report its findings to the Director.

The Advisory Council consists of the Directors of Environmental Protection, Development, and Natural Resources or their designees, one Senate member appointed by the President of the Senate, one House member appointed by the Speaker of the House of Representatives, and 12 members appointed by the Governor with the advice and consent of the Senate for staggered terms of two years. Of the 12 appointed members, one must be an employee of a health district whose duties include enforcement of the solid waste provisions of the SHW Law; two each must represent the interests of counties, municipal corporations and townships; one must represent the public; one each must be from the private recycling and solid waste management industries; one must represent the interests of industrial solid waste generators; and one must be from a statewide environmental advocacy organization. Procedures for appointment of members and filling vacancies on the council follow customary model appointments procedures of Ohio law.

## Solid waste management districts and plans

### Formation of districts

Under prior law, boards of county commissioners were authorized to establish a county garbage and refuse disposal district or participate in establishing a joint district with the board of county commissioners of one or more other counties and to establish district boundaries that could include only a portion of the territory of the county or counties that established a district. A municipal corporation located within a district did not come under the jurisdiction of the district until its legislative authority, by ordinance, authorized participation in the district.

With two exceptions discussed below, the act requires that, within nine months after its effective date, the board of county commissioners of each county either establish a county solid waste management district, renamed by the act, or, with the board of county commissioners of one or more other counties, establish a joint district for the purposes of preparing and implementing a district solid waste management plan and providing for the safe and sanitary management of solid wastes within the district. The district must include all of the incorporated and unincorporated territory within the county or, if a joint district, counties.

The board of county commissioners of a county, or board of directors of a joint, district must mail a copy of the resolution establishing the county district, or agreement to form the joint district, to the Director.

Each county or joint district must have a minimum population of 120,000. However, a county with a population of under 120,000 that has within it one or more solid waste facilities with sufficient capacity to dispose of all solid wastes generated in the county for at least 10 years after the act's effective date, or that has entered into a firm agreement that provides for disposal of all solid wastes generated within it during that period, may apply to the Director for an exemption from that minimum population requirement. Upon the board's certification and demonstration of the availability of or access to the required 10 years of disposal capacity, the Director must, by order, exempt the county from the minimum population requirement.

The second category of exemption from the minimum population requirement applies to any county with a population of less than 120,000 that does not have within the county, or does not have access by contract to, sufficient solid waste management facility capacity to make the required certification and demonstration described above. The board of county commissioners of such a county may submit to the Director a statement of how they will provide for sufficient solid waste facility capacity within the county, or for access to sufficient capacity, to dispose of all wastes generated in the county during the subsequent 10-year period. This statement must be submitted within six months after the act's effective date, must be accompanied by a financial feasibility study of the measures proposed in the statement, and must contain certain other prescribed information. If the Director finds the proposal in the county's statement and feasibility study to be technically and economically feasible, he must, by order, exempt the county from the minimum population requirement. The Director must approve or disapprove such a statement and feasibility study within 60 days after receiving it.

Within 12 months after the act's effective date, the Director is required to issue enforcement orders to boards of county commissioners that failed to establish a district. For counties having a population of at least 120,000 that failed to form a district, the Director must order them to do so. For counties with populations of under 120,000 that either failed to obtain an exemption from the minimum population requirement or to participate with one or more other counties in forming a joint district with a population of at least 120,000, the Director must determine how one or more of those small counties should be combined with one another, or with a county or joint district established in compliance with the act, to form a joint district that meets the minimum population requirement and that will, in the Director's judgment, be most conducive to achievement of the goals of the state plan. After making this determination, the

Director must mail notice of it to the board of county commissioners of each county named in it and hold a public meeting in each of those counties. He must then issue an order to each of those boards of county commissioners directing them to establish a joint solid waste management district within a specified time.

Orders to enforce the act's requirements regarding the formation of districts and joint districts may be issued without holding an adjudication hearing under the Administrative Procedure Act and without first issuing a proposed action under the Environmental Protection Agency Law; however, the orders are appealable to the Environmental Board of Review after issuance.

Policy committee; technical advisory council

The board of county commissioners of a county district or board of directors of a joint district must establish a district solid waste management policy committee within twelve months after the act's effective date. The duties of the policy committee consist of preparing and adopting the district's solid waste management plan, annually reviewing and making recommendations to the board of county commissioners or directors of the district regarding implementation of the approved plan, and conducting the triennial review of the plan and preparation of an amended district plan for submission to the Director for approval.

A county district policy committee consists of (1) the president of the board of county commissioners or his designee; (2) the chief executive officer of the municipal corporation with the largest population within the boundaries of the county district or his designee; (3) a member representing the townships within the county chosen by a majority of the boards of township trustees within the county; (4) the health commissioner of the health district having the largest territorial jurisdiction within the county or his designee; and (5) one public member appointed by the other members who serves for a term of two years. A joint district policy committee consists of the members specified in (1) through (5) from each county constituting the district. If a joint district consists of an even number of counties, the members described above must appoint one additional public member, who serves for a two-year term. To determine the largest municipal corporation of a county within a joint district, only the population within the boundaries of both the county and the joint district is considered.

Under the act, if a body existing in a district on the act's effective date has duties and responsibilities that involve planning for solid waste management within the district or advising the board of county commissioners or directors of the district regarding the district's operation, the board may, prior to the deadline for establishing a policy committee, request the Director to issue a waiver authorizing the existing body to

exercise the duties and responsibilities of the policy committee. The act establishes procedures for requesting and vacating such a waiver.

The act authorizes a policy committee to establish and appoint a technical advisory council to assist it. The advisory council must consist of at least one person representing the solid waste hauling and disposal industries and may consist of any other members the policy committee considers appropriate, including, without limitation, health commissioners of health districts and representatives of political subdivisions within the district not represented on the policy committee and persons representing environmental advocacy organizations, the private recycling industry, and industrial solid waste generators.

The act declares that serving as a member of the solid waste management policy committee or technical advisory council, or of the state Solid Waste Management Advisory Council created by the act, does not constitute holding a public office or position of employment under Ohio law and does not constitute grounds for removal of public officers or employees from their offices or positions of employment.

Under the act, a solid waste management policy committee may request available information on the geology, hydrogeology, and hydrology of the district from the Divisions of Geological Survey and Water in the Department of Natural Resources to assist the committee in performing its functions.

Plan contents

The act requires that county and joint district solid waste management plans provide for compliance with the objectives of the state plan and the Director's rules establishing solid waste reduction, reuse, recycling, and landfilling restrictions under it and provide for, demonstrate, and certify the availability within the district of, or access to, sufficient solid waste management facility capacity to meet the solid waste management needs of the district for at least the 10-year period covered by the plan. District solid waste management plans must contain: (1) an inventory of the sources, composition, and quantities of solid wastes generated in the district during the current year; (2) an inventory, and map indicating the location, of all existing facilities where solid wastes are being disposed of, resource recovery facilities, and recycling activities within the district, including an estimate of each disposal facility's remaining capacity; (3) an inventory of existing solid waste collection systems and routes, transportation systems and routes, and transfer stations within the district and the identities of entities engaging in solid waste collection within the district; (4) an inventory, and map showing the locations, of open dumps, waste tire dumps, and facilities for the disposal of fly ash, foundry sand, and slag within the district; (5) a projection of population changes within the district during the 10-year

planning period; (6) for each year of the planning period, projections of the amounts and composition of solid wastes that will be generated in the district, the amounts of solid wastes originating outside the district that will be brought into it for disposal, the nature of industrial activities within the district, and the impact of newly regulated waste streams, solid waste minimization activities, and solid waste recycling and reuse activities on solid waste generation rates; (7) an identification of the additional facilities and the amount of additional capacity needed to dispose of the quantities of wastes projected in (6), above; (8) a strategy for identifying sites for the facilities and capacity identified in (7), above; (9) an analysis and comparison of the capital and operating costs of solid waste disposal facilities, resource recovery facilities, and solid waste recycling and reuse activities necessary to meet the needs of the district, projected in five- and 10-year increments; and (10) a projection of transfer facilities that will be needed in conjunction with existing solid waste facilities and those projected in (7), above.

The act also requires each plan to include a schedule for implementation that must contain, when applicable: (1) a designation of the solid waste disposal, transfer, and resource recovery facilities and recycling activities contained in the plan where solid wastes generated in or transported into the district will be taken for disposal, transfer, resource recovery, or recycling; (2) a schedule for the closure and expansion of existing solid waste facilities and the establishment of new facilities; (3) a schedule for implementing the solid waste recycling, reuse, and reduction programs needed to meet the objectives for those activities under the state plan and applicable rules; and (4) the methods of financing implementation of the district's plan and a demonstration of the availability of financial resources for that purpose.

A district's plan must also include the schedule of solid waste disposal fees to be levied by the district and provisions for allocation and distribution of the revenues from fees among the authorized uses. In addition, it must incorporate all solid waste recycling activities that were in operation in the district on the plan's effective date.

A district plan may authorize the board of county commissioners or board of directors of the district, after approval of the plan, to adopt rules: (1) prohibiting or limiting the receipt of solid wastes generated outside the district or a prescribed service area at facilities covered by the plan, consistent with the projections discussed above and with the identification of additional facility capacity needed to dispose of such wastes, except that the act authorizes the Director, when certain conditions are met, to issue an order modifying such a rule to allow the disposal in the district of wastes from another district that lacks disposal capacity; (2) governing the maintenance, protection, and use of solid waste

collection, disposal, transfer, recycling, and resource recovery facilities within the district and requiring submission to and approval by the board of county commissioners or directors of the district for compliance with the district's plan of general plans and specifications for those types of facilities; (3) governing the development and implementation of an inspection program for out-of-state solid wastes being disposed of in the district; and (4) exempting solid waste facilities in the district's plan from township or county rural zoning amendments that rezoned or redistricted affected parcels within two years prior to the filing of permit applications for those facilities.

The act specifically exempts captive solid waste facilities from compliance with county or joint district plans and the rules authorized to be adopted under them, but requires that captive facilities be covered in the inventories and projections of district plans under (1), (2), (4), and (6) as described above in the initial discussion of the contents of the plans. It requires that each county and joint district plan provide for the maximum feasible utilization of solid waste facilities existing within the district, or for which the Ohio EPA has issued permits to install on or before the effective date of the plan, if those facilities are in compliance with the Ohio EPA's solid waste facility standards. The act also declares that, when a solid waste facility is financed by general obligation or revenue bonds, or a loan, issued or made by a municipal corporation, a county or joint solid waste management district, or the Ohio Water Development Authority, nothing in the act or the solid waste management plan of a county or joint district prohibits the construction, operation, use, repair, or maintenance of the facility, or the establishment and collection of rates or charges for its use, until the principal and interest on the bonds or loan for the facility have been retired or the owner abandons the facility regardless of whether the facility complies with the district's plan.

Schedule for plan submission

The act requires county and joint solid waste management districts to prepare, ratify, adopt, submit to the Director for review and approval, and implement their solid waste management plans according to the following schedule: (1) within 24 months after the act's effective date for districts with a population of 200,000 or less; (2) within 30 months after its effective date for districts with a population of more than 200,000, but not more than 270,000; and (3) within 42 months after its effective date for districts with a population of more than 270,000. The Director may extend a district's deadline by up to six months under specified conditions.

Plan approval and implementation

Upon completion of a draft solid waste management plan, a copy of the plan must be sent to the Director for review and

comment. Within 45 days after receiving it, the Director must provide the policy committee with a written, nonbinding advisory opinion on the plan and any changes he considers necessary for its approval. The committee may make such revisions based on the Director's opinion as it considers appropriate and must then establish and publicize a comment period of 30 days regarding the plan. The act requires the policy committee to hold a public hearing on the plan 15 days after the comment period ends and to publish notice of the hearing. The policy committee may modify the plan based on the public's comments and must then adopt or reject the plan by a majority vote. After adopting the plan, the policy committee must mail a copy of it to the board of county commissioners of each county forming the district and to the legislative authority of each municipal corporation and township having territory in it.

Within 90 days after receiving its copy, each such board and legislative authority must approve or disapprove the plan and mail a copy of its ordinance or resolution doing so to the committee. Upon determining that the board of county commissioners of each county forming the district and the legislative authorities of a combination of municipal corporations and townships with a combined population within the district of at least 60% of the district's total population have approved the draft plan, the committee must declare it to be ratified as the district's solid waste management plan and submit it to the Director for review and approval. The act specifies that the municipal corporation having the largest population in each county in the district must be included in the municipal corporations and townships approving the draft plan.

The Director must review a district's plan for compliance with the act's requirements and, by order, approve or disapprove it within 90 days after submission. If he disapproves a plan, he must include with the order a statement outlining its deficiencies and directing the policy committee to prepare and submit a revised plan within 90 days after issuance of the order. However, the Director may extend this period for up to 60 days if a district shows good cause for doing so.

The policy committee must follow procedures similar to those outlined above to prepare, obtain ratification of, adopt, and submit a revised plan. However, it need not send a draft plan to the Director for comment or provide a public comment period or hearing on its draft revised plan. Also, the deadlines for the specified actions are shorter. Upon ratification of the revised draft plan, the committee must submit it to the Director for approval.

Under the act, an order approving or disapproving a district plan may be issued as a final order without first holding an adjudication hearing under the Administrative Procedure Act; however, such an order is appealable to the Environmental Board

of Review after issuance. After approval of its plan or revised plan, the district must implement it in compliance with the implementation schedule it contains.

Preparation of plan by the Director

If a county or joint district fails to have its solid waste management plan approved within 18 months after the applicable deadline for submission of the plan, or within 24 months after that date if an extension is granted, the Director must issue an order terminating the district's authority to levy disposal fees under the act and begin to prepare a plan for the district. The plan must contain the required demonstration of availability of or access to sufficient solid waste management facility capacity to meet the district's needs for the 10-year plan period and must exempt captive solid waste facilities from compliance with the plan. A plan prepared by the Director cannot contain provisions for the levy and distribution of revenues from disposal fees by the district nor provisions authorizing the board of county commissioners or board of directors of the district to adopt specified rules. After completing the plan for such a district, the Director must issue an order directing the board of county commissioners or directors of the district to implement the plan in compliance with the implementation schedule it contains and also must issue an enforcement order requiring compliance with that schedule if he finds that the district is not complying with it.

Review and amendment of plan

The act requires each district implementing a solid waste management plan approved by the Director to submit triennially for approval, on or before the anniversary date of the approval of its initial plan, an amended plan and certification of availability of or access to sufficient facility capacity for the subsequent 10-year period. If a district's approved plan was based on a planning period of 15 or more years, the district must submit an amended plan and certification every five years. The amended plan must contain the same types of demonstrations, certifications, and information as the initial plan, may authorize the board of county commissioners or directors to adopt rules under it that they were not authorized to adopt by the plan undergoing revision, and may rescind the board's authority to adopt rules under the current or amended plan.

The act requires a district's solid waste management policy committee to begin preparation of a draft amended plan at least 15 months before the date by which it must be submitted. The same procedures apply to the ratification, approval, disapproval, revision, and resubmission of draft amended plans as to initial plans. If a district does not obtain approval of an amended plan within 18 months after it is required to submit one, the Director must terminate its collection of disposal fees, prepare a plan

for the district, and order the district to implement it in the same manner, and subject to the same limitations on content, as if the district had failed to submit an initial plan.

If a county or joint district is implementing a plan prepared and ordered to be implemented by the Director, he must triennially prepare an amended plan for the district covering the subsequent 10-year period and issue an order requiring the district to implement it. Such a district may triennially, within the 180 days preceding a triennial anniversary of the Director's order requiring it to implement the initial plan, submit its own plan to replace the plan prepared by the Director. The district must proceed to prepare, adopt, ratify and obtain approval of its replacement plan in the same manner as the act requires for an initial district plan. Upon approval of a district's replacement plan, the Director must revoke his order requiring the district to implement the initial or amended plan prepared by him.

Powers and duties of districts

The act does not alter many of the powers and duties county and joint solid waste management districts (formerly garbage and refuse disposal districts) could exercise under prior law although it allows boards of county commissioners or directors of the districts to exercise those powers and duties in incorporated as well as unincorporated territory within the districts. Following is a discussion of the powers and duties that are changed under the act:

Rulemaking. The act significantly alters the scope of the rulemaking powers of the board of county commissioners of a county district or board of directors of a joint district. Under prior law, those boards possessed discretionary authority to adopt rules on their own initiative. Under the act, the boards are authorized to adopt rules regarding only those subjects authorized by the act, generally, and authorized specifically in their district's approved solid waste management plan or amended plan.

Prior law authorized districts to adopt rules governing the construction, maintenance, protection, and use of solid waste disposal, recycling, and resource recovery facilities and collection systems within the district. The act eliminates the authority to adopt rules governing the construction of solid waste facilities, adds transfer facilities to those that are subject to the districts' rules, prohibits districts from adopting design standards for solid waste facilities, and requires rules governing the maintenance, protection, and use of facilities to be consistent with the Ohio EPA's solid waste management standards. Prior law prohibited a person from constructing a solid waste facility outside a municipal corporation until plans and specifications for the facility were approved by the board of county commissioners or directors of the

district, but did not specify criteria on which the approval was to be based. The act instead allows a district to adopt rules, if authorized by its approved solid waste management plan or amended plan, requiring persons and political subdivisions to submit general plans and specifications for a proposed facility or the enlargement or modification of an existing facility to the board for approval as complying with the plan or amended plan (for a discussion of other rules that may be authorized by a plan, see pp. 164-165).

Flow control. Under the act, a district's approved plan has to designate facilities within the district where solid wastes must be taken for disposal, recycling, or resource recovery. The act prohibits any person or political subdivision from delivering or causing the delivery of wastes generated within the district to any facility other than the one designated in the plan or amended plan, except as described below. A municipal corporation or township may request approval from the board of county commissioners or board of directors of a district to transfer or dispose of all or a portion of the wastes generated within its boundaries at a facility other than the one designated in the district's plan. Such a request may be approved by the board if it finds that delivery of the wastes to another facility is not inconsistent with the projections of waste flows and facility capacities in the district's plan and will not adversely affect implementation and financing of the plan under its implementation schedule.

Joint use agreements. The act authorizes a board of county commissioners or directors of a county or joint district to enter into an agreement with the board of another district for the joint use of solid waste facilities within the two districts under such terms and conditions as the boards consider appropriate, when consistent with the solid waste management plans or amended plans of both districts.

Bond issuing authority. The act designates boards of directors of joint solid waste management districts as taxing and bond issuing authorities under the Uniform Bond Law and authorizes the boards to issue bonds and bond anticipation notes of the district to pay the cost of preparing general and detailed plans for the construction of solid waste facilities of the joint district. It also gives boards authority to propose and issue voter approved general obligation bonds, payable from property taxes, to finance solid waste facilities or collection systems of the joint district and permits pledging of net revenues of the facility or collection system for payment of the bonds. General obligation bonds of a county or joint district issued for those purposes are exempted from being counted toward the debt ceiling of the county, or counties within a joint district, under the Uniform Bond Law.

Enforcement and penalties. Under prior law, violations of the rules of a county or joint district and other requirements of

the County Garbage and Refuse Disposal Law were punishable by a fine of $100. The act raises the penalty to $5,000 for each day of each violation. It also authorizes a district to seek and obtain a temporary restraining order or preliminary or permanent injunction to abate violations, or threatened violations, of its rules or the flow control requirements of the act or of the district's plan.

Transition. The act specifies that prior to the time the solid waste management plan of a county or joint district takes effect, the district may exercise only the powers and duties of a district that pertain to the preparation, adoption, approval, and submission of a plan to the Ohio EPA and to the levy and expenditure of the solid waste disposal fees authorized by the act. Prior to approval of its plan or being ordered to implement a plan prepared by the Ohio EPA, a district formed under prior law retains its jurisdiction and powers and duties under that law. The rules of a district formed under prior law also remain in effect within the district's boundaries until superseded by rules adopted under the approved plan of the new district formed under the act or until the new district is ordered to implement a plan prepared by the Director.

Regional solid waste management authority

Under the act, the board of county commissioners of a county or board of directors of a joint solid waste management district may, upon its own initiative or at the request of the legislative authority of any municipal corporation or township in the district, adopt a resolution proposing the formation of a regional solid waste management authority to execute the board's duties and responsibilities under the County Garbage and Refuse Disposal Law and the act. If the legislative authorities of a combination of municipal corporations and townships having a combined population of at least 60% of the total population of the district, including the largest municipal corporation of each county in the district, then approve the proposal, the board must declare it to be adopted and must enter into an agreement with the legislative authorities of the municipal corporations and townships in the district to form the authority. The agreement must establish the composition and include procedures for the appointment of a board of trustees of the authority. The board must include the same members as solid waste management policy committees and any additional members set forth in the agreement. The agreement forming the regional authority must be adopted in the same manner as the initial proposal to form the regional authority and the board of trustees must mail a copy of the agreement to the Director.

The act vests in the board of trustees of a regional authority all the duties and responsibilities imposed on or granted to a board of county commissioners or board of directors of a county or joint district under law not changed by the act and by the act for the management of a county or joint solid

waste management district and all the duties and responsibilities imposed on or granted to solid waste management policy committees under the act. The board of trustees of a regional authority is thus responsible for both solid waste planning and implementation in its district. The act also grants the board additional powers necessary for the operation of the regional authority.

Background investigations

Definitions

Three definitions contained in the act are crucial to understanding its investigatory provisions. First, it defines "business concern" as any corporation, association, firm, partnership, trust, or other form of commercial organization.

Second, a "key employee" is defined as any individual who is employed by an applicant for or the holder of a permit or license in a supervisory capacity or who is empowered to make discretionary decisions with respect to the solid, infectious, or hazardous waste operations of the business concern. It specifically exempts from the definition of key employee public officers and employees who are required to file statements of financial holdings under the Ethics Law, thereby exempting elected and appointed officials of municipal corporations and counties owning or operating solid waste facilities from undergoing background investigations under it. However, if an applicant for or holder of a waste facility permit or license contracts with another person to operate the facility, the act includes in its definition of a key employee those employees of the contractor who act in a supervisory capacity or are empowered to make discretionary decisions about the facility's operation.

Third, the act defines an "off-site facility" as a facility that is located off the premises where solid wastes, infectious wastes, or hazardous waste is generated and stipulates that the term does not include a facility that exclusively disposes of wastes that are generated from the combustion of coal that is not combined in any way with garbage or that is owned and operated by the generator of the waste and that exclusively disposes of or transfers solid wastes, exclusively treats infectious wastes, or exclusively disposes of hazardous waste generated at one or more premises owned by the generator.

Disclosure statements and investigation procedures

Under the act, an applicant for an off-site solid, infectious, or hazardous waste facility permit or license must file a disclosure statement with the Attorney General and the Director at the same time he files the permit or license application with the Director. The disclosure statement must include: (1) the full name, business address, and social security number of the applicant or, if the applicant is a business concern, of all officers, directors, partners, or key

employees and all individuals or business concerns holding any equity in or debt liability of the business concern and, if any such business concern is a publicly traded corporation, the names, addresses, and social security numbers of all individuals or business concerns holding more than 5% of the equity in or debt liability of the business concern; (2) with respect to any business concern identified in the statement, the information in (1), above, for each such business concern and all persons that hold equity in or debt liability of the business concern; (3) the full name and business address of any company in which the applicant holds an equity interest and that collects, transfers, transports, treats, stores, or disposes of solid wastes or hazardous waste; (4) a description of the experience and credentials, including any past or present permits or licenses, for the collection, transfer, transportation, treatment, storage, or disposal of solid wastes, infectious wastes, or hazardous waste possessed by the applicant, or, if the applicant is a business concern, by the officers, directors, partners, or key employees of the applicant; (5) a listing and explanation of any civil or criminal prosecution by government agencies, administrative enforcement actions resulting in the imposition of sanctions, or license revocations or denials issued by any state or federal authority in the 10 years immediately preceding the filing of the application, that are pending or have resulted in a finding or settlement of a violation of any law or rule relating to solid, infectious, or hazardous waste or any other environmental protection statute by the applicant or, if the applicant is a business concern, by officers, directors, partners, or key employees of the applicant, excluding violations that apply to the transportation of commodities that are not wastes; (6) a listing and explanation of any judgment of liability or conviction under any state or federal law or local ordinance resulting in the imposition of a sanction against the applicant or any officer, director, partner, or key employee of the applicant; (7) a listing of any agency outside the state having regulatory responsibility in connection with the applicant's collection, transfer, transportation, treatment, storage, or disposal of solid wastes, infectious wastes, or hazardous waste; and (8) any other information relating to the competency, reliability, or good character of the applicant that the Director or Attorney General requires.

Within 180 days after receiving an applicant's disclosure statement, unless that period is extended for good cause by the Director or Attorney General, the Attorney General must prepare and transmit to the Director an investigative report on the applicant that is based upon the disclosure statement and the results of an investigation by the Attorney General. The Attorney General may request and receive criminal history information from the FBI and any other law enforcement agencies or organizations and may, as a condition of receiving the information, provide the same degree of confidentiality regarding that information as the agency providing the information is required to afford to it.

The act directs applicants for and holders of solid waste facility or infectious waste treatment facility permits or licenses and hazardous waste facility permits to provide any assistance or information requested by the Director or Attorney General, to cooperate in any inquiry or investigation conducted by either of them or by the Hazardous Waste Facility Board, and to cooperate in any hearing before the Director or Board. If an applicant, permit or license holder, officer, director, or partner of a business concern, or key employee of an applicant or permit or license holder refuses to comply with a formal request to answer any inquiry or to produce information, evidence, or testimony, the Director or Board may deny or revoke the applicant's or holder's permit. The act also requires applicants for or holders of permits or licenses to provide to the Attorney General and Director any new or changed information pertinent to the disclosure statement that becomes available after its submission; failure to do so constitutes grounds for revocation or denial of a solid, infectious, or hazardous waste facility permit or license or renewal.

Under the act, the Attorney General may charge applicants and permittees such fees as are necessary to cover the costs of administering and enforcing the act's investigative procedures. The moneys collected must be credited to the Solid and Hazardous Waste Background Investigations Fund, which the act creates, and used solely to pay those costs.

The act authorizes the Attorney General or his designated representative to issue and serve upon an individual or business concern an investigative demand for the above purposes that requires the individual or business concern to do any or all of the following: (1) produce specified documentary material for inspection and copying; (2) answer under oath written interrogatories; and (3) appear and testify under oath. An investigative demand may be served upon any individual or business concern that the Attorney General has reasonable cause to believe may be in possession, custody, or control of any documentary material or may have knowledge of any fact relevant to any investigation of an applicant or permit or license holder under the act. An investigative demand cannot contain a requirement that, if contained in a grand jury subpoena or subpoena duces tecum, would be unreasonable nor require any information or material to be provided that, if demanded in such a subpoena, would be privileged from disclosure unless transactional immunity is granted under the act. The act establishes procedures under which the Attorney General may obtain an order from an appropriate court of common pleas compelling the recipient of an investigative demand to comply with it and for the recipient of such a demand to request an appropriate court of common pleas to modify it or set it aside. If the Attorney General seeks an order compelling compliance with an investigative demand by an individual or business concern that bases his or its refusal to do so on the individual's privilege against self-incrimination, the court, in its order, must grant

the individual transactional immunity under which the individual cannot be prosecuted for, or on account of, any transaction or matter concerning which he gave testimony, answers, or material in compliance with the order.

The procedure under the act for the taking of oral testimony, answering of written interrogatories, and production of materials in compliance with an investigative demand is governed by the discovery provisions of the Rules of Civil Procedure to the extent that they are applicable. The Attorney General is responsible for the custody, use, and necessary preservation of any materials obtained through the demand. All material and information obtained through an investigative demand are confidential and not subject to disclosure to the public, generally, and, unless otherwise ordered by a court of common pleas, are not available for examination or copying by, or disclosure to, any individual except an authorized representative of the Attorney General or an individual who has the consent of the person supplying the information or material. However, the information or material may be used in a grand jury investigation or in the conduct of any case or other official proceeding involving issuance of a permit or license under, or an alleged violation of, the SHW Law.

The act declares that nothing in its investigative provisions impairs the authority of the Attorney General to file a complaint alleging violation of the SHW Law that is not described in an investigative demand issued under it, prevents the use of any evidence obtained under its investigative provisions or otherwise, or impairs the authority of the Attorney General to present any evidence obtained under its investigative provisions or otherwise before a grand jury, to invoke the power of the courts to compel the production of any evidence before a grand jury, to institute a proceeding to enforce any order or process issued by or for a grand jury, or to punish disobedience by any person of any order or process issued by or for a grand jury.

It prohibits employees of the Attorney General from purposely making available for examination or copying, or disclosing the contents of, any material or information provided pursuant to an investigative demand, except for the purposes described above. It also prohibits any individual or business concern, with intent to avoid, evade, prevent, or obstruct compliance with an investigative demand, from removing from any place, concealing, withholding, destroying, mutilating, altering, or by any other means falsifying any material or information that is the subject of such a demand. Penalties applicable under the act to other violations of the SHW Law also apply to these violations.

Causes for disqualification of applicants

The act prohibits the Director, Hazardous Waste Facility Board, or a board of health, as appropriate, from issuing or renewing a solid, infectious, or hazardous waste facility permit or license: (1) unless the Director or appropriate board finds that the applicant, in any prior performance record in the transportation, transfer, treatment, storage, or disposal of solid wastes, infectious wastes, or hazardous waste, has exhibited sufficient reliability, expertise, and competency to operate the facility or, if no prior record exists in those areas, that the applicant is likely to exhibit that reliability, expertise, and competence; (2) if any individual or business concern listed in the disclosure statement or shown to have a beneficial interest in the business of the applicant, other than a debt liability or equity interest, has ever been convicted under Ohio law or equivalent laws of another jurisdiction of murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use, or transfer of firearms; unlawful possession or use of destructive devices or explosives; the drug-related offenses of trafficking in drugs, drug abuse, trafficking in harmful intoxicants, offenses involving counterfeit controlled substances, or violations of the Pharmacy Law, other than possession of less than 100 grams of marijuana or specified amounts of marijuana resin or a liquid concentrate, extract, or distillate form of marijuana resin; corrupt activities under the Ohio Corrupt Activities Law; violation of the criminal provisions of the Ohio Monopolies Law; violation of the criminal provisions of any federal or state environmental protection laws or rules that was knowingly or recklessly committed; violation of the Arson and Related Offenses Law; or conviction of any offense specified in the Offenses Against Justice and Public Administration Law, which includes the offenses of bribery, intimidation, intimidation of a crime victim or witness, perjury, tampering with evidence, falsification, failure to report a crime or death, failure to aid a law enforcement officer, disclosure of confidential information, disclosure of a peace officer's home address, obstructing official business, obstructing justice, resisting arrest, escape, aiding escape or resistance to authority, theft in office, unlawful interest in a public contract, soliciting or receiving improper compensation, soliciting improper contributions, dereliction of duty, interfering with civil rights, and impersonating a peace officer or private policeman; (3) unless the Director, Hazardous Waste Facility Board, or board of health finds that the applicant has a history of compliance with environmental laws in Ohio and other jurisdictions and is presently in substantial compliance with those laws or is on a legally enforceable schedule for achieving compliance with them; and (4) with respect to approval of a permit, if there are current prosecutions or pending charges against any individual or

business concern listed in the disclosure statement or shown to have a beneficial interest, other than a debt liability or equity interest, in the business of the applicant for any of the offenses listed in (2), above, except that the Director, Hazardous Waste Facility Board, or board of health must postpone decision on a permit or license application while any such charges are pending if requested by the applicant or the individual or business concern charged.

Requalification by showing rehabilitation

Under the act, an applicant for a permit or license who is disqualified for any of the reasons described in (2), above, can reestablish eligibility by affirmatively demonstrating rehabilitation to the Director, Hazardous Waste Facility Board, or board of health by clear and convincing evidence. However, if any individual or business concern listed on the applicant's disclosure statement was convicted of any of the enumerated felonies, a permit must be denied unless, in the case of an individual, five years have elapsed since the individual was fully discharged from imprisonment, probation, and parole for the offense. The Governor vetoed a provision that would have required that such an individual demonstrate his rehabilitation.

The Director or appropriate board must request the recommendation of the Attorney General when determining whether an applicant has affirmatively demonstrated rehabilitation. The act enumerates a series of factors that must be considered in determining whether rehabilitation has been demonstrated that include information about the circumstances surrounding commission of the offense and the conduct of, and counseling and academic or vocational training obtained by, the individual since the offense. An applicant or permit or license holder that is a business concern may, in addition, present evidence that it has either implemented formal management controls to minimize and prevent the occurrence of violations and activities that may or will result in permit or license denial or revocation or has formalized those controls as a result of a denial or revocation of a permit or license. The act gives as examples of such management controls environmental auditing programs and antitrust compliance auditing programs.

Grounds for license or permit revocation

The act authorizes the Director or a board of health to revoke a solid waste facility or infectious waste treatment facility permit or license or hazardous waste facility permit for any of the following causes, in addition to violation of the SHW Law and requirements under it: (1) any cause that would disqualify an applicant from receiving a permit or license as described above; (2) fraud, deceit, or misrepresentation in securing the permit or in the conduct of the permitted or licensed activity; (3) offering, conferring, or agreeing to confer any benefit to induce any other individual or business

- concern to violate the SHW Law, a rule adopted under it, or any other law relating to the transportation, transfer, treatment, storage, or disposal of solid, infectious, or hazardous waste; (4) coercion of a customer by violence or economic reprisal, or threats thereof, to use the services of any permittee; or (5) without authorization from the Director, preventing any individual or business concern from transferring or disposing of solid or hazardous waste at a facility holding a permit other than a facility owned or operated by the applicant or permit or license holder or from treating infectious wastes at a licensed infectious waste treatment facility other than a facility owned and operated by the applicant or licensee.

Existing facilities

Under the act, permit and license holders who are not otherwise required to file a disclosure statement within five years after its effective date must file one according to a schedule developed by the Attorney General. As in the case of a permit or license application, the Attorney General must prepare and forward to the Director an investigative report based on the disclosure statement and findings of an investigation. If the Director finds that the report contains information that would require denial of an application for a new permit or license, he may revoke the existing permit or license for the facility. If the investigation of an existing facility coincides with renewal of a permit or license, he must deny the renewal under those circumstances. Under the act, if renewal of a solid waste facility license is being performed by a board of health, the Director must inform the board of health of any findings in an investigative report that would require denial of an application.

Changes in ownership

The act defines "change in ownership" as any change in the names listed in an owner's disclosure statement other than changes in officers, directors, partners, or key employees. It then provides that at least 180 days before a proposed change in ownership of an off-site solid waste, infectious waste, or hazardous waste facility, the prospective owner must file a disclosure statement with the Attorney General and the Director. As in the case of a permit application, the Attorney General must prepare and forward to the Director an investigative report on the prospective owner. If the Director determines that the disclosure statement or investigative report contains information that would require denial of a permit application, he must disapprove the change in ownership.

The act does not preclude the parties to a change in ownership from proceeding with the change prior to receiving the Director's approval; however, it requires all contracts or other documents reflecting the change in ownership that are prepared prior to that approval to include language making the change in ownership subject to the Director's approval and expressly voiding the change if the Director disapproves it.

Temporary permits or licenses; severing affiliation

Under the act, if a license or permit applicant or holder is disqualified from receiving or obtaining renewal of a permit or license because an individual or business concern listed in its disclosure statement was found to have committed an offense or engaged in conduct requiring disqualification, the Director, the Hazardous Waste Facility Board, or a board of health may issue or renew a permit or license if the applicant or holder severs the interest of or affiliation with that individual or business concern, or may issue or renew a permit or license for up to six months after determining that the issuance or renewal is necessitated by the public interest.

Litter prevention and recycling grants

The act requires the Director to notify the Chief of Litter Prevention and Recycling in the Department of Natural Resources, upon determining that all counties within the state have become subject to a solid waste management plan of a county or joint solid waste management district. After receiving that notice, the Chief must ensure that at least 50% of the moneys distributed as litter prevention and recycling grants be made to political subdivisions, including county and joint districts, for recycling programs and to community recycling centers, consistent with the solid waste management plan of the district in which the program or recycling center is located. Applicants for recycling grants must notify by certified mail all existing recycling centers and private industries engaged in recycling in the applicant's geographic area of the grant application, must also publish notice of the application, and must hold a public hearing on it.

The act allows litter grant moneys to be used for grants to foster cooperative research and development regarding recycling or the cooperative establishment or expansion of private recycling facilities or programs. An Ohio enterprise that maintains or proposes to maintain a relevant research and development or recycling facility or program or a state agency must provide at least a matching grant. A grant cannot be made under these provisions if the recipient's activities will duplicate or adversely affect existing activities.

Restrictions on employment of former public officials

The act prohibits former public officials and employees who exercised substantial administrative discretion in administering or enforcing the County Garbage and Refuse Disposal Law or the SHW Law from representing anyone who is an applicant for or holder of a permit or license under the latter law before any state or local board, commission, or agency for 24 months after the end of their public service.

Appropriations

The act appropriates $4,000,000 to the Ohio EPA for fiscal year 1989 from the moneys collected under the state solid waste disposal fee levied under the act for the cleanup of hazardous waste facilities. It also transfers $125,000 from those moneys to the Attorney General's Office to pay the costs of conducting background investigations under the act. The act appropriates $3,675,038 to the Ohio EPA from the General Revenue Fund to pay the costs of the agency's solid waste program in fiscal year 1989; of that amount $80,000 must be used to hire four planners in the Division of Solid and Hazardous Waste Management.

Secs. 102.03, 133.01, 133.05, 133.06, 343.01, 343.011, 343.02, 343.03, 343.04, 343.05, 343.06, 343.07, 343.08, 343.99, 505.12, 505.27, 1502.04, 1502.05, 3707.39, 3707.40, 3707.42, 3734.01, 3734.02, 3734.021, 3734.022, 3734.04, 3734.05, 3734.06, 3734.07, 3734.08, 3734.09, 3734.10, 3734.101, 3734.11, 3734.12, 3734.13, 3734.131, 3734.18, 3734.31, 3734.40, 3734.41, 3734.42, 3734.43, 3734.44, 3734.45, 3734.46, 3734.47, 3734.50, 3734.51, 3734.52, 3734.53, 3734.54, 3734.55, 3734.56, 3734.57, 3734.99, and 3745.11; Sections 13 and 36 of Am. Sub. H.B. 171 of the 117th General Assembly.

Sub. H.B. 662

Reps. Quilter, Ash, Pottenger, Stozich, Deering, D. Johnson, Colonna, R.F. Hagan, Lucas, Guthrie, Skeen, Peterson, Troy, Wise, Petro, Hartley, McLin, Singer, Czarcinski, C. Jones, Suster, Cera, Bara, Malott, Guerra, Whalen, Pringle, Campbell, Koziura, Thomas, Tansey, Fox, Byers.

Sens. Burch, Furney, Nettle, Boggs, Pfeifer, Horn, Gillmor, Oelslager.

Gives the Director of Natural Resources four additional grounds for denying a permit to divert water from the Lake Erie and Ohio River drainage basins; requires the Director to notify the governors of the other Great Lakes states and the premiers of the Great Lakes Canadian provinces whenever he receives an application for a permit for any large-scale diversion or consumptive use of water in the Lake Erie drainage basin; establishes a permit program to be administered by the Director for the consumptive use of water resources that results in the loss of an average of more than two million gallons a day and establishes exceptions for major utility facilities and public water systems; establishes a registry of facilities that have the capacity to withdraw more than 100,000 gallons of water per day from all sources; and requires the Chief of the Division of Water to develop and maintain a water resources inventory and to prepare a long-term water resources plan for the protection, conservation, and management of the Lake Erie drainage basin. (Effective: June 29, 1988)

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