

CHAPTER 632

H.B. No. 2051

AN ACT

relating to the management of municipal solid waste and to local and regional solid waste management plans.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 3(e), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), is amended by adding Paragraphs (3) and (4) to read as follows:

(3) In order to protect the public health and environment, it is the public policy of this state that, in generating, treating, storing, and disposing of municipal solid wastes, not including sludge, preference shall be given to the following methods, to the maximum extent economically and technologically feasible and with consideration given to the appropriateness of the method to the type of solid waste material generated, treated, stored, or disposed of, in the following order:

(A) minimization of waste production;

(B) reuse or recycling of waste;

(C) treatment to destroy or reprocess the waste for the purpose of recovering energy or other beneficial resources if the treatment does not threaten public health, safety, or the environment; or

(D) land disposal.

(4) In order to protect the public health and environment, it is the public policy of this state that, in generating, treating, storing, and disposing of municipal sludge, preference shall be given to the following methods, to the maximum extent economically and technologically feasible and with consideration given to the appropriateness of the method to the type of sludge generated, treated, stored, or disposed of, in the following order:

(A) minimization of sludge production and concentrations of heavy metals and other toxins in sludge;

(B) treatment of sludge to reduce pathogens and recover energy, produce beneficial by-products, or reduce the quantity of sludge;

(C) marketing and distribution of sludge and sludge products if the marketing and distribution does not threaten public health, safety, or the environment;

(D) land application for beneficial use;

(E) land treatment; or

(F) landfilling.

SECTION 2. Sections 4(b) and (c), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes), are amended to read as follows:

(b) The department is authorized to develop a state solid waste plan for all solid waste under its jurisdiction, and the commission is authorized to develop a state solid waste plan for all solid waste under its jurisdiction. The state agencies shall coordinate the solid

waste plans developed. *In the development of a solid waste plan for solid waste under its jurisdiction, the department shall consider the preference of municipal solid waste management methods under Sections 3(e)(3) and 3(e)(4) of this Act.* Before a state agency adopts its solid waste plan or makes any significant amendments to the plan, the Texas Air Control Board shall have the opportunity to comment and make recommendations on the proposed plan or amendments, and shall be given such reasonable time to do so as the state agency may specify.

(c) Each state agency may adopt and promulgate rules consistent with the general intent and purposes of this Act, and establish minimum standards of operation for all aspects of the management and control of the solid waste over which it has jurisdiction under this Act. *In promulgating rules to implement public policy concerning municipal solid waste management, the department shall consider the preference of municipal solid waste management methods under Sections 3(e)(3) and 3(e)(4) of this Act.* In developing rules relating to hazardous waste, each state agency shall consult with the State Soil and Water Conservation Board, the Bureau of Economic Geology of The University of Texas at Austin, and other appropriate state sources. Each state agency shall adopt rules that:

(1) condition issuance of a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste management facility on selection of a facility site that reasonably minimizes possible contamination of surface water and groundwater;

(2) prohibit the issuance of a permit for a new hazardous waste landfill or an areal expansion of such a facility, if the landfill is to be located in the 100-year floodplain existing prior to site development unless the landfill is to be located in areas with flood depths less than three feet;

(3) prohibit the issuance of a permit for a new hazardous waste management unit or an areal expansion of an existing hazardous waste management unit if the hazardous waste management unit is to be located in wetlands, as defined by the state agencies. For the purposes of this paragraph, a "hazardous waste management unit" means a landfill, surface impoundment, land treatment facility, waste pile, or storage or processing facility, used to manage hazardous waste;

(4) prohibit the issuance of a permit for a new hazardous waste landfill, land treatment facility, surface impoundment, or waste pile, or areal expansion of such a facility, if the facility is to be located on the recharge zone of a sole source aquifer;

(5) require applicants for a new hazardous waste landfill, land treatment facility or surface impoundment which is to be located in the apparent recharge zone of a regional aquifer to prepare and file a hydrogeologic report documenting the potential effects, if any, on the regional aquifer in the event of a release from the waste containment system;

(6) prohibit the issuance of a permit for a new hazardous waste landfill or land treatment facility or the areal expansion of such a facility if the boundary of such landfill or land treatment facility is to be located within 1000 feet of an established residence, church, school, or dedicated public park which is in use at the time the notice of intent to file a permit application is filed with the state agency, or if no such notice is filed, at the time the permit application is filed with the state agency;

(7) define the characteristics that make other areas unsuitable for a hazardous waste management facility including, but not limited to, consideration of:

- (A) flood hazards;
- (B) discharge from or recharge to a groundwater aquifer;
- (C) soil conditions;
- (D) areas of direct drainage within one mile of a lake used to supply public drinking water;
- (E) active geological processes;
- (F) coastal high hazard areas, such as areas subject to hurricane storm surge and shoreline erosion; or

- (G) critical habitat of endangered species;
- (8) prohibit issuance of a permit for a new hazardous waste management facility or an areal expansion of an existing hazardous waste management facility if the facility is to be located in an area determined to be unsuitable under rules adopted by the commission pursuant to Paragraph (7) unless the design, construction, and operational features of the facility will prevent adverse effects from unsuitable site characteristics;
- (9) require applicants for a new hazardous waste landfill filed after January 1, 1986, to provide an engineering report evaluating the benefits, if any, associated with the construction of the landfill above existing grade at the proposed site, the costs associated with the above grade construction, and the potential adverse effects, if any, which would be associated with the above grade construction;
- (10) allow local governments to petition the appropriate state agency for a rule which restricts or prohibits the siting of new hazardous waste disposal facilities or other new hazardous waste management facilities in areas including, but not limited to, those meeting one or more of the characteristics delineated in Paragraph (7); provided, however, that no rule adopted by a state agency under this paragraph shall affect the siting of a new hazardous waste disposal facility or other new hazardous waste management facility if an application or a notice of intent to file an application with respect to such facility has been filed with the appropriate state agency prior to the filing of a petition under this paragraph;
- (11) prohibit issuance of a permit for a new hazardous waste landfill or the areal expansion of an existing hazardous waste landfill if there is a practical, economic, and feasible alternative to such a landfill that is reasonably available to manage the types and classes of hazardous waste which might be disposed of at the landfill;
- (12) require persons who generate, transport, process, store, or dispose of Class I industrial solid waste or hazardous waste to provide recordkeeping and use a manifest or other appropriate system to assure that such wastes are transported to a processing, storage, or disposal facility permitted or otherwise authorized for that purpose; and
- (13) prohibit the issuance of a permit for a new hazardous waste management unit if the landfill is in a floodplain of a perennial stream subject to not less than one percent chance of flooding in any year, delineated on a flood map adopted by the Federal Emergency Management Agency after the effective date of this Act as zone A1-99, V0, or V1-30; and this paragraph applies only to units that receive hazardous waste for a fee.

In adopting rules under Paragraphs (1)-(13) of this section, the commission may distinguish between solid waste facilities based on type or hazard of hazardous wastes managed and the type of waste management method used. The minimum standards set by the department of water resources for on-site storage of hazardous waste must be at least the minimum standards set by the manufacturer of the chemical.

SECTION 3. Section 7(a), Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Article 4477-7c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The board shall adopt rules for the implementation of this section, including but not limited to procedures for review of regional and local solid waste management plans and criteria for approval of regional and local solid waste management plans. *The board by rule shall require as a criterion of approval of a regional or local solid waste management plan under this section that the plan reflect due consideration of the preference of municipal solid waste management methods under Sections 3(e)(3) and 3(e)(4), Solid Waste Disposal Act (Article 4477-7, Vernon's Texas Civil Statutes). A regional or local solid waste management plan developed under this Act must:*

(1) include a description and an assessment of current efforts in the geographic area covered by the plan to minimize production of municipal solid wastes, including sludge, and efforts to reuse or recycle wastes;

(2) identify additional opportunities for waste minimization and reuse or recycling of waste; and

(3) make recommendations for encouraging and achieving a greater degree of waste minimization and reuse or recycling of wastes in the geographic area covered by the plan.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 22, 1987, by the following vote: Yeas 148, Nays 0, 1 present, not voting. Passed by the Senate on May 29, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 19, 1987.

Effective June 19, 1987.