

## CHAPTER 115A

### WASTE MANAGEMENT

115A.03	Definitions.	115A.25	Environmental review procedures.
115A.05	Board membership.	115A.26	Agencies; report on permit conditions and application requirements.
115A.06	Powers of the board.	115A.27	Hearings.
115A.08	Duties of the board; hazardous waste management reports.	115A.28	Final decision.
115A.10	Duties of the board; hazardous waste facilities; encouragement of private enterprise.	115A.291	Permits.
115A.11	Hazardous waste management plan.	115A.30	Judicial review.
115A.201	Bedrock disposal.	115A.34	Waste processing facilities.
115A.21	Candidate sites.	115A.38	Minnesota state waste management bonds.
115A.22	Participation by affected localities.	115A.67	Organization of district.
115A.23	Repealed.	115A.69	Powers.
115A.24	Certification of need.	115A.70	Designation of resource recovery facilities; required use.
115A.241	Participation by facility developers and operators.		

#### 115A.03 DEFINITIONS.

*[For text of subds 1 to 9, see M.S.1982]*

Subd. 10. "Disposal facility" means a waste facility permitted by the agency that is designed or operated for the purpose of disposing of waste on or in the land, together with any appurtenant facilities needed to process waste for disposal or transfer to another waste facility.

*[For text of subds 11 to 28, see M.S.1982]*

Subd. 28a. "Retrievable storage" means a method of disposal whereby wastes are placed in a facility established pursuant to sections 115A.18 to 115A.30 for an indeterminate period in a manner designed to allow the removal of the waste at a later time.

*[For text of subds 29 to 36, see M.S.1982]*

**History:** 1983 c 373 s 5,6

#### 115A.05 BOARD MEMBERSHIP.

*[For text of subd 1, see M.S.1982]*

Subd. 2. **Permanent members.** Eight of the permanent members of the board shall be appointed by the governor, with the advice and consent of the senate, to represent diverse areas and interests within the state. One member shall be appointed from each congressional district in accordance with boundaries existing on January 1, 1980. The term of office and compensation of the eight members thus appointed, and the manner of removal and filling of vacancies, shall be as provided in section 15.0575, except that the initial term of all members shall extend until 90 days after the board makes the decisions required by section 115A.28 and the rate of compensation shall be \$50 per day spent on board activities. The ninth permanent member of the board shall be the chairperson who shall be appointed by the governor with the advice and consent of the senate. Senate confirmation of the permanent members of the board shall be as provided by section 15.066. The chairperson shall serve at the pleasure of the governor for a term coterminous with that of the governor, except that the initial term of the chairperson shall extend until 90 days after the board makes the decisions required by section 115A.28. The chairperson shall be the executive and operating officer of the board and shall determine the time and place of meetings, preside at

meetings, appoint all board officers and hire and supervise all employees subject to the approval of the board, carry out the policy decisions of the board, and perform all other duties and functions assigned to him by the board or by law. No permanent member of the board shall hold other elected or appointed public office.

Subd. 3. **Temporary members.** Local representatives shall be added to the board as temporary voting members, as provided in sections 115A.201; 115A.22, subdivision 4; and 115A.34. The provisions of section 15.0575, subdivisions 3 and 4 relating to compensation, removal, and vacancy shall apply to temporary members except that the rate of compensation shall be \$50 per day spent on board activities and that appointments by the governor to fill vacancies shall take effect in the same manner as the original appointment.

**History:** 1983 c 305 s 15; 1983 c 373 s 7,8

#### 115A.06 POWERS OF THE BOARD.

*[For text of subs 1 to 3, see M.S.1982]*

Subd. 4. **Acquisition of sites for hazardous waste facilities.** The board may direct the commissioner of administration to acquire by purchase, lease, condemnation, gift, or grant, any permanent or temporary right, title, and interest in and to real property, including positive and negative easements and water, air, and development rights, for sites and buffer areas surrounding sites for hazardous waste facilities approved by the board pursuant to sections 115A.18 to 115A.30 and 115A.32 to 115A.39. The board may also direct the commissioner of administration to acquire by purchase, lease, gift, or grant, development rights for sites and buffer areas surrounding sites for all or part of the period that the development limitations imposed by section 115A.21, subdivision 3, are in effect. Money for the acquisition of any real property and interest in real property pursuant to this subdivision shall come from the issuance of state waste management bonds in accordance with sections 115A.57 to 115A.59. The property shall be leased in accordance with terms determined by the board to the owner and operator of the hazardous waste facility located thereon at a rate sufficient to pay debt service on the bonds which provided funds used to acquire the property and to evaluate the eligibility of the property for inclusion in the inventory under section 115A.09 or candidacy under sections 115A.18 to 115A.30. Any local government unit and the commissioners of transportation, natural resources, and administration may convey or allow the use of any property for such sites and areas, subject to the rights of the holders of any bonds issued with respect thereto, with or without compensation and without an election or approval by any other government agency. Land owned by the state may be exchanged for land not owned by the state for the purpose of providing a site and buffer area for a commercial hazardous waste facility, in accordance with the provisions of section 94.341 to 94.347 and other law. The commissioner of administration may hold the property for the purposes for which it was acquired, and may lease, rent, or dispose of the property so far as not needed for such purposes, upon the terms and in the manner the commissioner deems advisable. The right to acquire lands and property rights by condemnation shall be exercised in accordance with chapter 117. The commissioner of administration may take possession of any property for which condemnation proceedings have been commenced at any time after the issuance of a court order appointing commissioners for its condemnation. Where the property is acquired through eminent domain proceedings, the land owner's compensation shall be the fair market value of the property. Where the property

is acquired by means other than through eminent domain proceedings, as by direct purchase or gift, the land owner's compensation shall be determined by the agreement of the parties involved. An award of compensation in a condemnation proceeding shall not be increased or decreased by reason of any increase or decrease in the value of the property caused by its designation in the inventory of preferred areas under section 115A.09 or as a candidate site under sections 115A.18 to 115A.30 or its selection as a site or buffer area.

*[For text of subds 5 to 13, see M.S.1982]*

**History:** 1983 c 373 s 9

## **115A.08 DUTIES OF THE BOARD; HAZARDOUS WASTE MANAGEMENT REPORTS.**

*[For text of subds 1 to 3, see M.S.1982]*

**Subd. 4. Report on hazardous waste management.** By November 1, 1983, the board through its chairperson shall issue a report on hazardous waste management. The report shall include at least:

- (a) an evaluation of alternative disposal facilities, disposal facility technologies, and disposal facility design and operating specifications;
- (b) an evaluation of prospects, strategies, and methods for developing commercial hazardous waste disposal facilities of various types, sizes, and functions;
- (c) an evaluation of all feasible and prudent alternatives to disposal, including waste reduction, separation, pretreatment, processing, and resource recovery, and the potential of the alternatives to reduce the need for and practice of disposal;
- (d) an evaluation of feasible and prudent disposal abatement objectives, along with a description of hazardous waste management methods and technologies, private and government actions, facilities and services, development schedules, revenue-raising measures, and levels of public and private expenditure and effort necessary to the achievement of those objectives;
- (e) an evaluation of implementation strategies, including at least:
  - (1) waste reduction, on-site processing, and off-site management by generators;
  - (2) changes and improvements in regulation, licensing, permitting, and enforcement;
  - (3) government tax and financing programs to encourage proper waste management;
  - (4) institutional alternatives, such as generator associations, cooperatives, franchises, public ownership, and flow control districts;
  - (5) promotion of private investment;
  - (6) interstate cooperation;
  - (f) an evaluation of the possibilities for negotiating long-term contracts with other states or with facilities in other states for disposal or processing of hazardous waste from Minnesota.

The report shall analyze the environmental, social, and economic effects of the alternatives and methods by which unavoidable adverse effects could be mitigated.

**Subd. 5. Report on mitigation of local effects of hazardous waste facilities.** With the report required by subdivision 4, the board through its chairperson shall issue a report and make recommendations on methods of mitigating and compen-

sating for the local risks, costs, and other adverse effects of various types of hazardous waste facilities and on methods of financing mitigation and compensation measures. The methods of mitigating and compensating to be considered shall include but not be limited to the following: payment outside of levy limitations in lieu of taxes for all property taken off the tax rolls; preference in reviews of applications for federal funds conducted by the metropolitan council and regional development commissions; payment of all costs to service the facilities including the cost of roads, monitoring, inspection, enforcement, police and fire, and litter clean up costs; payment for buffer zone amenities and improvement; local control over buffer zone design; a guarantee against any and all liability that may occur.

**Subd. 5a. Report on assurance of security of hazardous waste facilities.** With the report required by subdivision 5, the board through its chairperson shall issue a report and make recommendations on methods of assuring the security of commercial hazardous waste facilities. The report and recommendations shall be based on the need to assure: effective monitoring and enforcement during operation; effective containment, control, and corrective action in any emergency situation; financial responsibility of the owner and operator throughout the operating life of the facility, using performance bonds, insurance, escrow accounts, or other means; proper closure; financial responsibility after closure; and perpetual post-closure monitoring and maintenance. The report shall include recommendations on the source of funds, including operator contributions, fee surcharges, taxes, and other sources; the amount of funds; effective protection and guarantee of funds; administration; regulatory and permit requirements; the role of local authorities; and other similar matters.

**Subd. 6. Preparation of hazardous waste reports; procedures; public involvement.** By January 1, 1981, the board through its chairperson shall submit a proposed scope of work and work program for the hazardous waste reports required by subdivisions 4 and 5 to the legislative commission for review. During the preparation of the proposed scope of work and work plan and the reports, the board and the chairperson on behalf of the board shall encourage public debate and discussion of the issues relating to the reports. Representatives of the board, including at least one permanent member, shall meet with local officials and sponsor at least one public meeting in areas of the state affected by the inventory of preferred processing facility areas prepared pursuant to section 115A.09. The board and the chairperson on behalf of the board shall follow the procedures set out in section 115A.22, for consulting with citizens in areas affected by the selection of candidate sites for disposal facilities. To assist it in preparing the reports, the plan, and the certification of need required by subdivisions 4 to 5a and sections 115A.11 and 115A.24, the board through its chairperson shall make grants to each local project review committee established for a candidate site for disposal identified under sections 115A.18 to 115A.30. The grants may be used by the committee to employ staff, pay administrative expenses, or contract with affected units of government or qualified consultants. The board and the chairperson on behalf of the board shall request recommendations from the private waste management industry, the board's advisory councils, affected regional development commissions, and the metropolitan council and shall consult with them on the board's intended disposition of the recommendations. The reports of the board shall summarize the comments received and the board's response to the comments. Copies of the reports must be submitted to the legislative commission on waste management.

**History:** 1983 c 373 s 10-13

**115A.10 DUTIES OF THE BOARD; HAZARDOUS WASTE FACILITIES; ENCOURAGEMENT OF PRIVATE ENTERPRISE.**

The board and the chairperson on behalf of the board shall encourage the development and operation of hazardous waste facilities by private enterprise to the extent practicable and consistent with the purposes of sections 115A.01 to 115A.72 and the board's hazardous waste management plan adopted pursuant to section 115A.11. In preparing the reports under section 115A.08 and the inventory of processing facility sites under section 115A.09, in adopting the management plan, and in its actions and decisions under sections 115A.18 to 115A.30 and 115A.32 to 115A.39, the board and the chairperson on behalf of the board shall solicit the active participation of private waste management firms and shall so conduct its activities as to encourage private permit applications for facilities needed in the state. The board shall promulgate rules for accepting and evaluating applications for permits for the construction and operation of facilities at sites preferred by the board pursuant to section 115A.09. The rules shall include standards and procedures for making determinations on the minimum qualifications, including technical competence and financial capability, of permit applicants.

**History:** 1983 c 373 s 14

**115A.11 HAZARDOUS WASTE MANAGEMENT PLAN.**

**Subdivision 1. Contents.** The board shall adopt a hazardous waste management plan. In developing and implementing the plan, the highest priority of the board shall be placed upon alternatives to land disposal of hazardous wastes including: technologies to modify industrial processes or introduce new processes which will reduce or eliminate hazardous waste generation; recycling, re-use, and recovery methods to reduce or eliminate hazardous waste disposal; and conversion and treatment technologies to reduce the degree of environmental risk from hazardous waste. The board shall also consider technologies for retrievable storage of hazardous wastes for later recycling, re-use, recovery, conversion, or treatment.

The plan shall include at least the following elements:

(a) an estimate of the types and volumes of hazardous waste which will be generated in the state through the year 2000;

(b) specific and quantifiable objectives for reducing to the greatest feasible and prudent extent the need for and practice of disposal, through waste reduction, pretreatment, retrievable storage, processing, and resource recovery;

(c) a description of the minimum disposal capacity and capability needed to be developed within the state for use through the year 2000, based on the achievement of the objectives under clause (b);

(d) a description of implementation strategies required to develop the needed disposal capacity under clause (c) and to achieve the objectives under clause (b), including: the necessary private and government actions; development schedules for facilities, services, and regulations; revenue-raising and financing measures; levels of public and private effort and expenditure; legal and institutional changes; and other similar matters.

The plan shall provide for the orderly development of hazardous waste management sites and facilities to protect the health and safety of rural and urban communities. In preparing the plan the board shall consider its impact upon agriculture and natural resources.

The plan shall require the establishment in the state of at least one commercial retrievable storage or disposal facility and shall recommend and encourage methods and procedures that will insure the establishment of at least one facility for the recycling, re-use, recovery, conversion, treatment, destruction, transfer, or storage of hazardous waste. The board may make the implementation of elements of the plan contingent on actions of the legislature which have been recommended in the draft plan and certification of need and considered in the reports submitted pursuant to section 115A.08.

**Subd. 2. Procedure.** The plan shall be based upon the reports prepared pursuant to section 115A.08. The plan, the certificate of need issued under section 115A.24, and the procedures for hearings on the draft plan and draft certificate of need, shall not be subject to the rule-making or contested case provisions of chapter 14. By July 1, 1983, the chairman of the board shall report to the legislative commission on waste management about the hearing to be held pursuant to this subdivision. The chairman shall describe the board's plans and procedures for the hearing, the provisions for encouraging public participation in the hearing, and the board's plans for preparing the required report to the legislature fully and accurately summarizing the results of the hearing, the objections raised to the board's draft plan and certification, and the board's response to the testimony received. The legislative commission shall hold a hearing to receive public comment on the board's proposed hearing procedures and thereafter shall make any recommendations it deems appropriate for changes in the board's procedures. By November 1, 1983, the board through its chairperson shall issue a draft hazardous waste management plan proposed for adoption pursuant to this section, and a draft certificate or certificates of need proposed for issuance under section 115A.24. The draft plan and certificates must include an explanation of the basis of the findings, conclusions, and recommendations contained therein. The board shall hold a public hearing on the draft plan and draft certificate or certificates of need within 30 days of their issuance. Notices of the draft plan and the draft certificate or certificates and notice of the hearing shall be published in the state register and newspapers of general circulation in the state. The notices must indicate how copies of the draft plan and draft certificate or certificates of need may be obtained. The board shall make the draft plan and draft certificate or certificates of need available for public review and comment at least 21 days before the hearing. The hearing shall be ordered by the chairperson of the board and shall be conducted by the state office of administrative hearings in a manner consistent with the completion of the proceedings in the time allowed by this section. The hearing officer shall not issue a report but shall preside at the hearing to ensure that the hearing is conducted in a fair, orderly, and expeditious manner and in accordance with the hearing procedures of the board. A majority of the permanent members of the board shall attend the hearing. In connection with the hearing, the chairperson of the board shall provide copies of the studies and reports on which the draft plan and certification of need are based and shall present an explanation of the basis of the findings, conclusions, and recommendations in the draft plan and certification of need.

Within 15 days following the hearing the director of the agency shall issue a hazardous waste pollution control report. The report must be submitted to the legislative commission. The report must be based on existing and proposed federal and state pollution control rules and available information and expertise on the character, nature, and degree of hazard of the types and categories of hazardous waste identified in the plan. The report must:

(a) assess the pollution control problems and risks associated with each type and category of hazardous waste identified by the draft certification of need as eligible for disposal, before or after pretreatment, at a facility or facilities of the type and design selected by the board, and identify design and pretreatment alternatives or other methods for dealing with those problems and risks;

(b) identify at least one specific alternative technology for dealing with each waste which the report recommends should not be certified for disposal, and assess the pollution control problems and risks associated with the alternatives;

(c) assess the pollution control problems and risks associated with each standard and criteria contained in the plan and certification for determining the eligibility or ineligibility of waste for disposal;

(d) assess the pollution control programs and risks associated with the processing and other alternatives to disposal which are recommended in the plan for specific types or categories of hazardous waste, and identify methods for dealing with those problems and risks.

Within 30 days following the hearing, the board shall revise the draft plan and the draft certificate or certificates of need as it deems appropriate, shall make a written response to the testimony received at the hearing and to the agency's report explaining its disposition of any recommendations made with respect to the plan and certification, and shall submit to the legislative commission the revised draft plan and certification of need, together with a report on the testimony received, the board's response, and the results of the hearing process.

**History:** 1983 c 373 s 15,16

#### **115A.201 BEDROCK DISPOSAL.**

**Subdivision 1. Evaluation of technology; study areas.** The board shall evaluate the feasibility of bedrock disposal of hazardous waste. If the board determines that bedrock disposal is or may be a feasible disposal technology, the board shall identify bedrock study areas of up to four square miles in size for further evaluation.

**Subd. 2. Participation by affected localities.** A plan review committee shall be established for each study area and a temporary board member shall be appointed as provided in this subdivision, to participate in the preparation of the draft plan and certification of need to be issued under section 115A.11 and adopted under sections 115A.11 and 115A.24. Within 30 days following the identification of a bedrock study area by the board, the governor shall appoint the chair and members of a plan review committee, ensuring a balanced representation of all parties with a legitimate and direct interest in the review of the plan and certification of need. The plan review committee shall be eligible for technical assistance and grants pursuant to section 115A.08, subdivision 6, to assist it in participating in the plan and certification of need. Within 30 days following the appointment of a plan review committee, the committee shall select a temporary board member to be added to the board. Temporary board members may be members of the local plan review committee, and they shall be residents of the county in which the study area is primarily located. Temporary board members shall serve for terms lasting so long as the location the member represents is a study area. Temporary board members shall not participate or vote in decisions affecting the selection and certification of sites under this section and section 115A.21.

**Subd. 3. Candidate sites.** If the board determines that candidate sites are to be selected in the bedrock study areas, the candidate sites must be proposed and selected as provided in section 115A.21, subdivisions 1 and 2a.

**History:** 1983 c 373 s 17

### 115A.21 CANDIDATE SITES.

**Subdivision 1. Selection.** The board shall select at least four locations in the state, no more than one site per county, as candidate sites for commercial disposal facilities for hazardous waste. Candidate sites selected by the board before February 1, 1983, and additional candidate sites selected pursuant to this section, must be reviewed pursuant to sections 115A.22 to 115A.30. No location shall be selected as a candidate site unless the agency certifies its intrinsic suitability for the use intended pursuant to subdivision 2a.

**Subd. 2. Search procedure.** The board shall consult with the agency and the private waste management industry in selecting candidate sites. Any sites proposed in applications for permits for disposal facilities being reviewed by the agency may be included by the board as candidate sites, provided the agency certifies the intrinsic suitability of the sites. The agency shall suspend its review of any permit application being reviewed by the board for inclusion as a candidate site until the site is eliminated from consideration as a candidate site.

As soon as practicable, the board through its chairperson shall publish a request soliciting proposals and permit applications for hazardous waste disposal facilities from potential developers and operators of such facilities. Notice of the request shall be published in the state register and newspapers of general circulation in the state and shall be transmitted to all regional development commissions, the metropolitan council, and all counties in the state. The board may select conceptual design and operating specifications for a variety of hazardous waste disposal facilities in sufficient detail and extent in the judgment of the board to assist the evaluation of sites and the selection of candidate sites. By November 1, 1980, the board through its chairperson shall notify each regional development commission, or the metropolitan council, and each local government unit within whose jurisdiction the board intends to search for candidate sites. The notification shall explain the selection of the jurisdiction as a search area; shall summarize any conceptual specifications and the evaluation factors, criteria, standards, and procedures the board intends to use in selecting candidate sites; and shall describe the relationship of the candidate site selection process to the other review procedures under sections 115A.18 to 115A.30 and the hazardous waste reports and plans required under sections 115A.04 to 115A.15. The notification shall request recommendations and suggestions from each such commission, the metropolitan council, and local government unit on the criteria, standards, and procedures the board should use in selecting candidate sites within the time allowed. The board through its chairperson shall make a written response to any recommendations, explaining its disposition of the recommendations. No action of the board may be held invalid by reason of the board's failure to notify any of the entities listed in this subdivision.

**Subd. 2a. Intrinsic suitability certification.** The board shall provide to the agency data relating to the intrinsic suitability of a site to be proposed as a candidate site as soon as available. The director of the agency shall issue notice indicating whether the director recommends that the proposed sites should be certified as intrinsically suitable. The board through its chairperson and the director shall publish notice of hearings on the board's proposal and the director's



recommendations. Notice shall be published in the state register and newspapers of general circulation in the state and shall be sent by mail to all regional development commissions, or the metropolitan council, and to local government units containing a proposed candidate site. The hearings shall be conducted by the state office of administrative hearings in a manner consistent with the completion of the proceedings and the hearing examiner's report to the agency and board in the time allowed by this section. The hearing shall afford all interested persons an opportunity to testify and present evidence on the subject of the hearing. The subject of the hearing shall be limited to information submitted by the board and additional information on the proposed sites which is relevant to the board's decision on candidate sites and the agency's decision on intrinsic suitability. The rulemaking and contested case procedures of chapter 14 shall not apply to this hearing. The hearing examiner may consolidate hearings. The report of the hearing examiner shall contain findings of fact, conclusions, and recommendations on the subject of the hearing. The agency shall make a final determination as to the intrinsic suitability of each proposed site and shall certify sites accordingly. No action of the board or agency may be held invalid by reason of the board's or agency's failure to notify any of the entities listed in this subdivision.

**Subd. 3. Development limitations.** In order to permit the comparative evaluation of sites and buffer areas and the participation of affected localities in decisions about the use of sites and buffer areas, development in each candidate site and in a buffer area identified by the board surrounding and at least equal in area to the site shall be limited to development consistent with the development plans, land use classifications, and zoning and other official controls applying to the property on February 1, 1983. No development inconsistent with the plans, use classification, controls, and zoning requirements; no transfers or change of use of public land; and no conditional uses may be permitted. The development limitations shall extend until six months following final action of the board pursuant to section 115A.28. No plan, land use classification, official control, or zoning of any political subdivision shall permit or be amended to permit development inconsistent with the requirements of this section, nor shall any political subdivision sanction or approve any subdivision, permit, license, or other authorization which would allow development inconsistent with the requirements of this section.

**History:** 1983 c 373 s 18

## **115A.22 PARTICIPATION BY AFFECTED LOCALITIES.**

**Subdivision 1. General.** In order systematically to involve those who would be affected most directly by disposal facilities in all decisions leading to their establishment, the board's decisions on reports referred to in subdivision 7, the plan adopted under section 115A.11, and the certification of need required under section 115A.24 shall not be made until after the establishment of local project review committees for each candidate site, with representation on the board, pursuant to this section.

*[For text of subd 2, see M.S.1982]*

**Subd. 3. Membership on local committees.** Within 60 days following the selection of a candidate site under section 115A.21, the governor shall appoint the chairperson and members of the local project review committee, ensuring a balanced representation of all parties with a legitimate and direct interest in the outcome of the project review. The governor shall consult particularly with

affected local units of government before selecting members. Members may be added to the local committee from time to time by the governor.

**Subd. 4. Appointment of temporary board members.** Within 30 days following the appointment of a local project review committee, the local committee shall select a temporary board member to be added to the board for the purposes of the reports to be issued under section 115A.08, the plan to be adopted under section 115A.11, and the need certifications and review of candidate sites conducted under sections 115A.18 to 115A.30. Temporary board members shall not participate or vote in decisions affecting the selection and certification of sites under sections 115A.201 and 115A.21. If a local committee fails to appoint a temporary board member within the time permitted by this subdivision, the governor shall appoint a temporary board member to represent the committee on the board. Temporary board members may be members of the local project review committee, and they shall be residents of the county where the candidate site is located. Temporary board members shall serve for terms lasting as long as the location the member represents is a candidate site or, in the case of members representing the site or sites finally chosen for the facility, until the commencement of the operation of the facility at that site.

*[For text of subd 5, see M.S.1982]*

**Subd. 6. Technical assistance; grants.** To assist local project review committees to participate in the preparation of environmental impact statements and permit applications, the board through its chairperson shall make grants to the committees to be used to employ staff, pay administrative expenses, or contract with affected units of government or qualified consultants. The board through its chairperson shall ensure the delivery to the committees of technical information and assistance by appropriate state agencies.

**Subd. 7. Hazardous waste management reports.** The chairperson and the board shall prepare and submit the hazardous waste management reports required by section 115A.08, subdivisions 4 to 5a, in consultation with the local project review committees. The chairperson and the board shall request recommendations from the local committees and shall consult with the committees on the board's intended disposition of the recommendations. The reports of the board shall summarize the recommendations of the committees and the board's response to the recommendations. Before submitting the reports, the board shall hold at least one public meeting in each county in which a candidate site is located. A majority of the permanent members shall be present at each meeting. Notice of the meeting shall be published in a newspaper or newspapers of general circulation in the area for two successive weeks ending at least 15 days before the date of the meeting. The notice shall describe the proposed facilities, the proposed location, the purpose of the board's report to the legislature, and the subsequent and related activities of the board.

**History:** 1983 c 373 s 19-23

**115A.23** [Repealed, 1983 c 373 s 72]

## **115A.24 CERTIFICATION OF NEED.**

**Subdivision 1. Certificate.** On the basis of and consistent with its hazardous waste management plan adopted under section 115A.11, the board shall issue a certificate or certificates of need for disposal facilities for hazardous wastes in the state. The certificate or certificates shall indicate the types and volumes of waste for which disposal facilities are and will be needed through the year 2000 and the

number, types, capacity, and function or use of the disposal facilities needed in the state. Before finally adopting the certificate of need the board shall submit it to the agency for a revision of the hazardous waste pollution control report required under section 115A.11, subdivision 2. The board shall certify need only to the extent that the board has determined that there are no feasible and prudent alternatives including waste reduction, separation, pretreatment, processing, and resource recovery which would minimize adverse impact upon air, water, land and all other natural resources, provided that the board shall require the establishment of at least one commercial disposal facility in the state. Economic considerations alone shall not justify certification nor the rejection of alternatives. Alternatives that are speculative and conjectural shall not be deemed to be feasible and prudent. The board shall consider all technologies being developed in other countries as well as in the United States when it considers the alternatives to hazardous waste disposal. The certificate or certificates shall not be subject to the provisions of chapter 14 but shall be the final determination required on the matters decided by the certificate or certificates and shall have the force and effect of law. The certificate or certificates shall not be amended for five years except as provided in section 115A.291. In reviewing and selecting sites, completing and determining the adequacy of environmental impact statements, and issuing approvals and permits for waste disposal facilities described in the certificate or certificates of need, matters determined in the certification shall not be reconsidered except as otherwise provided in section 115A.291. The board and the permitting agencies shall be required to make a final decision approving the establishment of facilities consistent with the certification except as otherwise provided in section 115A.291.

Subd. 2. [Repealed, 1983 c 121 s 33]

*[For text of subd 3, see M.S.1982]*

**History:** 1983 c 121 s 26; 1983 c 373 s 24

#### **115A.241 PARTICIPATION BY FACILITY DEVELOPERS AND OPERATORS.**

The board shall solicit the participation of private developers and operators of waste facilities in the evaluation of hazardous waste disposal sites and facility specifications. To qualify for consideration as a developer or operator, a person shall submit a letter of intent to the board within 90 days following the publication of the board's draft plan pursuant to section 115A.08, subdivision 4. To qualify for selection as a developer or operator, a person shall submit operability reports to the board at least 60 days before the board's hearings under section 115A.27. The letters of intent and reports shall be in the form and contain the information deemed appropriate by the board.

**History:** 1983 c 373 s 25

#### **115A.25 ENVIRONMENTAL REVIEW PROCEDURES.**

Subdivision 1. **Environmental impact statement.** A phased environmental impact statement shall be completed by the board and the agency. The statement must be prepared and reviewed in accordance with chapter 116D and the rules issued pursuant thereto, except as otherwise required by this section and sections 115A.11, 115A.24, 115A.28, and 115A.30. The board and agency shall follow the procedures in subdivisions 2 and 3 in lieu of the scoping requirements of chapter

116D and rules issued pursuant thereto. The statement shall be completed in two phases as provided in subdivisions 1a and 1b.

**Subd. 1a. Phase I.** Phase I of the statement shall be completed by the board on the environmental effects of the board's decision on sites and facility specifications under section 115A.28. Phase I of the statement shall not address or reconsider alternative sites or facility numbers, types, capacity, function, and use which have been eliminated from consideration by the board's decisions under sections 115A.21 and 115A.24. The determination of the adequacy of phase I of the statement is exclusively the authority of the board. The governor shall establish an interagency advisory group to comment on the scope of phase I of the statement, to review drafts, and to provide technical assistance in the preparation and review of phase I of the statement. The advisory group shall include representatives of the agency, the departments of natural resources, health, agriculture, energy, planning and development, and transportation, and the Minnesota geological survey. In order to obtain the staff assistance necessary to prepare the statement, the chairperson of the board may request reassignment of personnel pursuant to section 16.21 and may arrange to have other agencies prepare parts of the statement pursuant to section 16.135.

**Subd. 1b. Phase II.** Phase II of the statement shall be completed by the agency as a supplement to phase I specifically for the purpose of examining the environmental effects of the permitting decisions required to be made by the permitting agencies under section 115A.291. In preparing, reviewing, and determining the adequacy of phase II of the statement, the agency shall not repeat or duplicate the research and analysis contained in phase I of the statement, unless the agency determines that the information available is not adequate or that additional information is necessary to examine the environmental effects of the permitting decisions. Phase II of the statement shall not address or reconsider alternative sites and facility numbers, types, capacity, function, and use which have been eliminated from consideration by the board's decisions under sections 115A.21, 115A.24, and 115A.28. The determination of adequacy of phase II of the statement must be made by the agency within 180 days following submission of the preliminary permit application or applications under section 115A.291. The determination of the adequacy of phase II of the statement is exclusively the authority of the agency.

**Subd. 2. Public disclosure.** Before commencing preparation of a phase of the environmental impact statement, the board or agency shall issue a document summarizing and making full disclosure of the intended objectives and contents of the environmental impact statement and the environmental review. Announcement of the disclosure shall be published in the state register, the environmental quality board monitor, and appropriate newspapers of general distribution. The disclosure shall:

- (a) identify the candidate sites;
- (b) summarize facility specifications and indicate where and when the specifications are available for inspection;
- (c) describe as fully as possible the object of the review, including the significant actions, issues, alternatives, types of impacts, and compensation and mitigation measures expected to be addressed in the statement; the depth of the analysis expected; and subjects which the statement will not address in depth because they have been disposed of previously or because they are believed to be insignificant or remote and speculative;
- (d) identify, by reference and brief summary, any related planning activities and environmental reviews which have been, are being, or will be conducted, and

the substantive, chronological, and procedural relationship between the proposed review and the other activities and reviews;

(e) identify the membership and address of the local project review committees and the names of the local representatives on the board;

(f) summarize the comments and suggestions received from the public pursuant to subdivision 3 and the board's or agency's response.

**Subd. 3. Public participation procedures.** The public disclosure document shall be issued following diligent effort to involve the public in determining the objective and contents of the environmental impact statement. At least one public meeting shall be held in each county with a candidate site. The advice of the board, facility developers, state agencies, the local project review committees, and local units of government shall be actively solicited. The board or agency may engage the state hearing examiner to conduct meetings and make recommendations concerning the review. Each local project review committee shall present to the board or agency a written report summarizing local concerns and attitudes about the proposed action and the specific issues which the local communities and residents wish to see addressed in the environmental review.

**History:** 1983 c 373 s 26-30

#### **115A.26 AGENCIES; REPORT ON PERMIT CONDITIONS AND APPLICATION REQUIREMENTS.**

Within 30 days following the board's determination of the adequacy of phase I of the environmental impact statement, and after consulting with the board, facility developers, affected local government units, and the local project review committees, the chief executive officer of each permitting state agency shall issue to the board draft reports on permit conditions and permit application requirements at each candidate site. The reports must indicate, to the extent possible based on existing information, the probable terms, conditions, and requirements of permits, including the types and categories of waste eligible for disposal with or without pretreatment, and the probable supplementary documentation that will be required for phase II of the environmental impact statement under section 115A.25 and for permit applications under section 115A.291. The reports may be revised following the hearings under section 115A.27 as the chief executive officer deems necessary. The reports must be consistent with the establishment of facilities in accordance with the certification of need.

**History:** 1983 c 373 s 31

#### **115A.27 HEARINGS.**

**Subd. 1.** [Repealed, 1983 c 373 s 72]

**Subd. 2. Board hearings.** Within 120 days following the board's determination of the adequacy of phase I of the environmental impact statement under section 115A.25, the board shall conduct a hearing in each county containing a candidate site, for the purpose of receiving testimony on the decisions required under section 115A.28. The hearings shall be ordered by the chairperson of the board. The subject of the board hearing shall not extend to matters previously decided in the board's decision on sites under section 115A.21 and the certificate of need issued under section 115A.24. The hearing shall be conducted for the board by the state office of administrative hearings in a manner consistent with the completion of the proceedings in the time allowed. The proceedings and the hearing procedures are not subject to the rule-making or contested case provisions

of chapter 14. The hearing officer shall not issue a report but shall preside at the hearings to ensure that the hearings are conducted in a fair, orderly, and expeditious manner and in accordance with the hearing procedures of the board. A majority of the permanent members of the board shall be present at the hearing.

**History:** 1983 c 373 s 32

### 115A.28 FINAL DECISION.

**Subdivision 1. Decision of board.** Within 60 days following the conclusion of the hearings under section 115A.27, subdivision 2, and after consulting with private facility developers, the permitting agencies, affected local government units, and the local project review committees, the board shall finally select the site or sites for the facilities and the developer and operator of the facility and shall prescribe further specifications on the number, type, capacity, function, and use of the facilities as the board deems appropriate, consistent with the board's certification of need issued under section 115A.24. If the chairperson of the board determines that an agency report on permit conditions and application requirements has been substantially revised following hearings held pursuant to section 115A.27, subdivision 2, the chairperson may delay the decision for 30 days and may order a public hearing to receive further testimony on the sites and facilities to be established. The proceeding shall be conducted as provided in section 115A.27, subdivision 2, except that hearings shall not be separately held in the affected counties and the issues relating to all agency reports shall be considered at one hearing. The board's decision shall provide for the establishment of facilities consistent with the board's certification of need.

**Subd. 2. Board's decision paramount.** The board's decision under subdivision 1 shall be final and shall supersede and preempt requirements of state agencies and political subdivisions and the requirements of sections 473H.02 to 473H.17; except that a facility established pursuant to the decision shall be subject to terms, conditions, and requirements in permits of state or federal permitting agencies, the terms of lease determined by the board under section 115A.06, subdivision 4, and any requirements imposed pursuant to subdivision 3. Except as otherwise provided in this section, no charter provision, ordinance, regulation, permit, or other requirement of any state agency or political subdivision shall prevent or restrict the establishment, operation, expansion, continuance, or closure of a facility in accordance with the final decision and leases of the board and permits issued by state or federal permitting agencies.

**Subd. 3. Local requirements.** A political subdivision may impose reasonable requirements respecting the construction, inspection, operation, monitoring, and maintenance of a facility. Any such requirements shall be subject to review by the board to determine their reasonableness and consistency with the establishment and use of a facility in accordance with the final decision and lease of the board and by the agency to determine their reasonableness and consistency with permits of state and federal permitting agencies. The board or agency may approve, disapprove, suspend, modify, or reverse any such requirements. The decision of the board or agency shall be final.

**History:** 1983 c 373 s 33-35

### 115A.291 PERMITS.

Research and analysis necessary to the permit applications and permit decisions required under this chapter, and the supporting environmental study, must commence immediately following the board's decision under section

115A.28. Within 180 days following its final decision under section 115A.28, the board shall submit or cause to be submitted a preliminary application for permits for a facility or facilities consistent with its decision under section 115A.28. Following review by the permitting agencies and within 60 days following the agency's determination of the adequacy of phase II of the environmental impact statement, the board shall revise the application, or cause it to be revised, in accordance with the recommendations of the permitting agencies. In preparing its revised permit application, the board may amend its certification of need issued under section 115A.24 or its facility specifications under section 115A.28, if the board finds and determines, based upon the recommendations of the permitting agencies, that: (a) the amendments are necessary to secure permits for the construction and operation of the proposed facility at the proposed site, and (b) the recommendations and amendments are the result of new information or rules produced after the board's decisions under sections 115A.24 and 115A.28. Within 210 days following the submission of the revised permit application, the permitting agencies shall issue the necessary permits unless the pollution control agency determines that the facility or facilities proposed for permitting present environmental problems which cannot be addressed through the imposition of permit conditions.

**History:** 1983 c 373 s 36

#### **115A.30 JUDICIAL REVIEW.**

Any civil action maintained by or against the agency or board under sections 115A.18 to 115A.30 shall be brought in the county where the board is located and shall take precedence over all other matters of a civil nature and be expedited to the maximum extent possible. Any person aggrieved by a decision of the board or an agency under sections 115A.18 to 115A.30 may appeal therefrom within 30 days following all final decisions on the issuance of permits. Any appeal shall be conducted as a review of the administrative record as provided in sections 14.63 to 14.70. No civil action shall be maintained pursuant to section 116B.03 with respect to conduct taken by a person pursuant to any environmental quality standard, limitation, regulation, rule, order, license, stipulation agreement or permit issued by the board under sections 115A.18 to 115A.30. Notwithstanding any provision of chapter 116B to the contrary, in any action brought under that chapter with respect to any decision or conduct undertaken by any person or the board or agency pursuant to sections 115A.18 to 115A.30 after the period for appeal under this section has lapsed, the plaintiff shall have the burden of proving that the evidence required under section 116B.10 was not reasonably available within the time provided for appeal. The trial court shall, upon motion of any prevailing non-governmental party, award costs, disbursements, reasonable attorney's fees, and reasonable expert witness fees, if the court finds the action hereunder was commenced or defended in bad faith or was frivolous.

**History:** 1983 c 373 s 37

#### **115A.54 WASTE PROCESSING FACILITIES.**

*[For text of subd 1, see M.S.1982]*

**Subd. 2. Administration; assurance of funds.** The board shall provide technical and financial assistance for the acquisition and betterment of the facilities and transfer stations from revenues derived from the issuance of bonds authorized by section 115A.58. Facilities for the incineration of solid waste without resource

recovery are not eligible for assistance. Of money appropriated for the purposes of the demonstration program, at least 70 percent shall be distributed as loans, and the remainder shall be distributed as grants. An individual project may receive assistance totaling up to 100 percent of the capital cost of the project and grants up to 50 percent of the capital cost of the project. No grant or loan shall be disbursed to any recipient until the board has determined the total estimated capital cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

*[For text of subd 3, see M.S.1982]*

**History:** 1983 c 373 s 38

## **115A.58 MINNESOTA STATE WASTE MANAGEMENT BONDS.**

*[For text of subd 1, see M.S.1982]*

**Subd. 2. Issuance of bonds.** Upon request by the board and upon authorization as provided in subdivision 1, the commissioner of finance shall sell Minnesota state waste management bonds. The bonds shall be in the aggregate amount requested, and sold upon sealed bids upon the notice, at the price in the form and denominations, bearing interest at the rate or rates, maturing in the amounts and on the dates (with or without option of prepayment upon notice and at specified times and prices), payable at a bank or banks within or outside the state (with provisions, if any, for registration, conversion, and exchange and for the issuance of temporary bonds or notes in anticipation of the sale or delivery of definitive bonds), and in accordance with further provisions as the commissioner of finance shall determine, subject to the approval of the attorney general, but not subject to the provisions of sections 14.02, 14.04 to 14.36, 14.38, 14.44 to 14.45, and 14.57 to 14.62. The bonds shall be executed by the commissioner of finance and attested by the state treasurer under their official seals. The signatures of the officers on the bonds and any interest coupons and their seals may be printed, lithographed, engraved, stamped, or otherwise reproduced thereon, except that each bond shall be authenticated by the manual signature on its face of one of the officers or of an authorized representative of a bank designated by the commissioner of finance as registrar or other authenticating agent. The commissioner of finance shall ascertain and certify to the purchasers of the bonds the performance and existence of all acts, conditions, and things necessary to make them valid and binding general obligations of the state of Minnesota, subject to the approval of the attorney general.

*[For text of subds 3 to 6, see M.S.1982]*

**History:** 1983 c 301 s 110

## **115A.67 ORGANIZATION OF DISTRICT.**

The governing body of each county wholly or partly within the district shall appoint two persons to serve on the first board of directors of the district, except that in the case of a district having territory within only two counties each county may appoint three persons. At least one person appointed by each county shall be an elected official of a local government unit having territory within the district. The first chairperson of the board of directors shall be appointed from outside the



first board of directors by the chairperson of the waste management board. The first chairperson shall serve for a term of two years. Thereafter the chairperson shall be elected from outside the board of directors by majority vote of the board of directors. Members of the board of directors shall be residents of the district. The first meeting of the board of directors shall be held at the call of the chairperson, after notice, for the purpose of proposing the bylaws, electing officers and for any other business that comes before the meeting. The bylaws of the district, and amendments thereto, shall be adopted by a majority vote of the board of directors unless the certificate of incorporation requires a greater vote. The bylaws shall state:

(a) the manner and time of calling regular meetings of the representatives and the board of directors, not less than once annually;

(b) the title, manner of selection, and term of office of officers of the district;

(c) the term of office of members of the board of directors, the manner of their removal, and the manner of filling vacancies on the board of directors;

(d) the powers and duties of the board of directors consistent with the order and articles of incorporation establishing the district;

(e) the definition of a quorum for meetings of the board of directors, which shall be not less than a majority of the members;

(f) the compensation and reimbursement for expenses for members of the board of directors, which shall not exceed that provided for in section 15.0575, subdivision 3; and

(g) such other provisions for regulating the affairs of the district as the board of directors shall determine to be necessary.

**History:** 1983 c 373 s 39

## **115A.69 POWERS.**

*[For text of subds 1 to 5, see M.S.1982]*

Subd. 6. **Property exempt from taxation.** Any real or personal property owned, used, or occupied by the district for any authorized purpose is declared to be acquired, owned, used and occupied for public and governmental purposes, and shall be exempted from taxation by the state or any political subdivision of the state, provided that those properties shall be subject to special assessments levied by a political subdivision for a local improvement in amounts proportionate to and not exceeding the special benefit received by the properties from the improvement. No possible use of the properties in any manner different from their use for solid waste management at the time shall be considered in determining the special benefit received by the properties.

*[For text of subds 7 to 16, see M.S.1982]*

**History:** 1983 c 213 s 3

## **115A.70 DESIGNATION OF RESOURCE RECOVERY FACILITIES; REQUIRED USE.**

*[For text of subds 1 and 2, see M.S.1982]*

Subd. 3. **Exemption.** The designation may not apply to or include:

(a) materials which are separated from solid waste and recovered for reuse in their original form or for use in manufacturing processes; or

(b) materials other than those described in clause (a) which are being used at another resource recovery facility unless the district finds and determines that the required use is consistent with criteria and standards concerning displacement of existing facilities and with the evaluation of resource recovery designation which are required in the solid waste management plan of the district.

*[For text of subds 4 to 6, see M.S.1982]*

**Subd. 7. Relationship to county designation procedures.** A district need not repeat the designation procedures set out in subdivision 4 to the extent that these procedures have been completed by each county having territory in the district or by a joint powers board composed of each county having territory in the district. A district need not submit the designation for review pursuant to subdivision 2 if the designation has already been approved under section 115A.071 following submission by each county having territory in the district or by a joint powers board composed of each county having territory in the district.

**History:** 1983 c 373 s 40,41