An Act

SENATE BILL 00-177

BY SENATORS Anderson, Hernandez, and Tebedo;
also REPRESENTATIVES Mitchell, Fairbank, Webster, S. Williams, and Young.

CONCERNING CHANGES IN THE OPERATION OF THE STATE HAZARDOUS WASTE CONTROL PROGRAM, AND, IN CONNECTION THEREWITH, ADJUSTING THE FUNDING FOR SUCH PROGRAM AND PROVIDING STATUTORY GOALS FOR THE OPERATION OF THE PROGRAM.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 25-15-103, Colorado Revised Statutes, is amended to read:

25-15-103. Technical assistance. The department may upon request provide technical advice to hazardous waste generators, to owners or operators of treatment plants, storage facilities, or disposal sites, and to counties and municipalities in which such facilities may be located in order to assure that appropriate measures are taken to protect the public health, safety, and welfare and the environment. THE DEPARTMENT MAY CHARGE ITS ACTUAL COSTS OF PROVIDING COMPLIANCE ASSISTANCE; EXCEPT THAT, FOR COMPANY-SPECIFIC COMPLIANCE ASSISTANCE, THE DEPARTMENT SHALL NOT CHARGE FEES FOR THE FIRST TWO HOURS IN ANY GIVEN FISCAL YEAR.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. Part 3 of article 15 of title 25, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

25-15-301.5. Additional powers of the department - legislative declaration - report. (1) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT THE HAZARDOUS WASTE CONTROL PROGRAM SHALL BE IMPLEMENTED TO PROTECT HUMAN HEALTH AND THE ENVIRONMENT IN A MANNER THAT:

(a) MAINTAINS PROGRAM AUTHORIZATION BY THE FEDERAL GOVERNMENT;

(b) PROMOTES A COMMUNITY ETHIC TO REDUCE OR ELIMINATE WASTE PROBLEMS;

(c) IS CREDIBLE AND ACCOUNTABLE TO INDUSTRY AND THE PUBLIC;

(d) IS INNOVATIVE AND COST-EFFECTIVE; AND

(e) PROTECTS THE ENVIRONMENTAL QUALITY OF LIFE FOR IMPACTED RESIDENTS AS REQUIRED BY OTHER PROVISIONS OF THIS PART 3 AND RULES PROMULGATED IN CONNECTION THEREWITH.

(2) THE DEPARTMENT SHALL DEVELOP, IMPLEMENT, AND CONTINUOUSLY IMPROVE POLICIES AND PROCEDURES FOR CARRYING OUT ITS STATUTORY RESPONSIBILITIES AT THE LOWEST POSSIBLE COST WITHOUT JEOPARDIZING THE INTENT STATED IN SUBSECTION (1) OF THIS SECTION. AT A MINIMUM, THESE POLICIES AND PROCEDURES SHALL, TO THE EXTENT PRACTICABLE, INCLUDE THE FOLLOWING:

(a) ESTABLISH COST-EFFECTIVE LEVEL-OF-EFFORT GUIDELINES FOR REVIEWING SUBMITTALS INCLUDING, BUT NOT LIMITED TO, PERMIT APPLICATIONS AND CORRECTIVE ACTION PLANS, TO ASSURE CONFORMITY WITH REGULATORY REQUIREMENTS, TAKING INTO CONSIDERATION THE DEGREE OF RISK ADDRESSED AND THE COMPLEXITY OF THE ISSUES RAISED;

(b) ESTABLISH COST-EFFECTIVE LEVEL-OF-EFFORT GUIDELINES FOR PERFORMING INSPECTIONS THAT FOCUS ON MAJOR VIOLATIONS OF REGULATORY REQUIREMENTS THAT POSE AN IMMEDIATE AND SIGNIFICANT THREAT TO HUMAN HEALTH AND THE ENVIRONMENT;

(c) STREAMLINE THE CORRECTIVE ACTION PROCESS WITH FEATURES THAT INCLUDE, WITHOUT LIMITATION, THE FOLLOWING:

(I) COST-EFFECTIVE LEVEL-OF-EFFORT GUIDELINES FOR SITE INVESTIGATIONS AND REMEDIATION THAT FOCUS ON RESULT-BASED OUTCOMES AND PERFORMANCE-BASED OVERSIGHT BY THE DEPARTMENT;

(II) COST-EFFECTIVE LEVEL-OF-EFFORT GUIDELINES FOR REVIEWING SITE INVESTIGATION REPORTS AND CORRECTIVE ACTION PLANS;

(III) THE USE OF ENFORCEABLE INSTITUTIONAL CONTROLS TO AVOID UNNECESSARY CLEANUP COSTS; AND

(IV) REALISTIC CLEANUP STANDARDS THAT ADDRESS ACTUAL RISK TO HUMAN HEALTH AND THE ENVIRONMENT ON A SITE- SPECIFIC BASIS AND THAT TAKE INTO ACCOUNT ANY APPLICABLE INSTITUTIONAL CONTROLS.

(d) ESTABLISH COST-EFFECTIVE LEVEL-OF-EFFORT GUIDELINES FOR ENFORCEMENT ACTIVITIES;

(e) ESTABLISH SCHEDULES FOR TIMELY COMPLETION OF DEPARTMENT ACTIVITIES INCLUDING, BUT NOT LIMITED TO, SUBMITTAL REVIEWS, INSPECTIONS AND INSPECTION REPORTS, AND CORRECTIVE ACTION ACTIVITIES;

(f) ESTABLISH A PRIORITIZATION METHODOLOGY FOR COMPLETING ACTIVITIES THAT FOCUSES ON ACTUAL RISK TO HUMAN HEALTH AND THE ENVIRONMENT;

(g) ESTABLISH A PREFERENCE FOR COMPLIANCE ASSISTANCE WITH AT LEAST TEN PERCENT OF THE ANNUAL BUDGET AMOUNT BEING ALLOCATED TO COMPLIANCE ASSISTANCE EFFORTS;

(h) ESTABLISH A PREFERENCE FOR ALTERNATIVE DISPUTE RESOLUTION MECHANISMS TO TIMELY RESOLVE DISPUTED ISSUES; AND

(i) ESTABLISH A MECHANISM THAT CONTINUALLY VALUES AND PROVIDES INCENTIVES FOR FURTHER IMPROVEMENTS IN THE POLICIES AND PROCEDURES OF THE DEPARTMENT.

(3) THE DEPARTMENT IS DIRECTED TO SUBMIT A REPORT TO THE GENERAL ASSEMBLY ON OR BEFORE FEBRUARY 1, 2002, AND ANNUALLY ON OR BEFORE EACH FEBRUARY 1 THEREAFTER THAT DESCRIBES THE STATUS OF THE HAZARDOUS WASTE CONTROL PROGRAM AND THE DEPARTMENT'S EFFORTS TO CARRY OUT ITS STATUTORY RESPONSIBILITIES AT THE LOWEST POSSIBLE COST WITHOUT JEOPARDIZING THE INTENT STATED IN SUBSECTION (1) OF THIS SECTION.

SECTION 3. 25-15-302 (4) (a) and (4) (c), Colorado Revised Statutes, are amended, and the said 25-15-302 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

25-15-302. Hazardous waste commission - creation - membership - rules - administration. (3.5) THE COMMISSION SHALL PROMULGATE RULES PERTAINING TO THE ASSESSMENT OF FEES TO OFFSET PROGRAM COSTS FROM FACILITIES THAT TREAT, STORE, OR DISPOSE OF HAZARDOUS WASTE PURSUANT TO A PERMIT OR INTERIM STATUS AND FROM GENERATORS OF HAZARDOUS WASTE IN ACCORDANCE WITH THE FOLLOWING:

(a) ON OR AFTER JULY 1, 2000, TO JULY 1, 2002, THE FEES SHALL BE AS FOLLOWS:

(I) THE ANNUAL FEES FOR FACILITIES THAT TREAT, STORE, OR DISPOSE OF HAZARDOUS WASTE PURSUANT TO A PERMIT OR INTERIM STATUS SHALL BE AS SET FORTH IN 6 CCR 1007-3, SECTION 100.31;

(II) THE ANNUAL FEE SHALL BE ONE THOUSAND NINE HUNDRED DOLLARS FOR GENERATORS OF HAZARDOUS WASTE WHO ARE SUBJECT TO REGULATION UNDER THIS PART 3 DURING ANY CALENDAR MONTH OF THE YEAR FOR WHICH THE ANNUAL FEE IS BEING ASSESSED AND WHO GENERATE IN EACH OF ANY FOUR CALENDAR MONTHS IN THAT YEAR AN AMOUNT GREATER THAN ONE THOUSAND KILOGRAMS OF HAZARDOUS WASTES, ONE KILOGRAM OF ACUTE HAZARDOUS WASTES, OR ONE HUNDRED KILOGRAMS OF ANY RESIDUE, CONTAMINATED SOIL, WASTE, OR DEBRIS RESULTING FROM THE CLEAN-UP OF A SPILL, INTO OR ON ANY LAND OR WATER, OF ANY ACUTE HAZARDOUS WASTES;

(III) THE ANNUAL FEE SHALL BE THREE HUNDRED DOLLARS FOR ALL OTHER GENERATORS OF HAZARDOUS WASTE WHAT ARE SUBJECT TO THIS PART 3 DURING ANY CALENDAR MONTH OF THE YEAR FOR WHICH THE

ANNUAL FEE IS BEING ASSESSED; EXCEPT THAT NO ANNUAL FEE SHALL BE ASSESSED AGAINST THOSE GENERATORS OF HAZARDOUS WASTE WHO GENERATE IN EVERY MONTH OF THAT YEAR NO MORE THAN ONE HUNDRED KILOGRAMS OF HAZARDOUS WASTES, ONE KILOGRAM OF ACUTE HAZARDOUS WASTES, OR ONE HUNDRED KILOGRAMS OF ANY RESIDUE, CONTAMINATED SOIL, WASTE, OR DEBRIS RESULTING FROM THE CLEAN-UP OF A SPILL, INTO OR ON ANY LAND OR WATER, OF ANY ACUTE HAZARDOUS WASTES;

(IV) THE DOCUMENT REVIEW AND ACTIVITY FEE CHARGED BY THE DEPARTMENT SHALL BE IN ACCORDANCE WITH 6 CCR 1007-3, SECTION 100.32; EXCEPT THAT THE HOURLY CHARGE SHALL BE INCREASED FROM EIGHTY-FIVE DOLLARS TO ONE HUNDRED DOLLARS;

(V) THE DOCUMENT REVIEW AND ACTIVITY FEE CEILING SHALL BE IN ACCORDANCE WITH 6 CCR 1007-3, SECTION 100.32; EXCEPT THAT THE DEPARTMENT MAY, ON A CASE-BY-CASE BASIS AND UPON DEMONSTRATION OF NEED CONSISTENT WITH SECTION 25-15-301.5, REQUEST A WAIVER OF THE CEILING FROM A FACILITY SUBJECT TO THE DOCUMENT REVIEW AND ACTIVITY FEE.

(b) ON OR AFTER JULY 1, 2002, THE COMMISSION MAY ADJUST THE FEES THEN IN EFFECT IF THE DEPARTMENT HAS DEMONSTRATED THAT IT HAS DEVELOPED, IMPLEMENTED, AND IS CONTINUING TO IMPROVE POLICIES AND PROCEDURES FOR CARRYING OUT ITS STATUTORY RESPONSIBILITIES AT THE LOWEST POSSIBLE COST WITHOUT JEOPARDIZING THE INTENT SET OUT IN SECTION 25-15-301.5 (1), AND THAT, DESPITE THESE EFFORTS OR AS A RESULT OF THESE EFFORTS, THE FEE ADJUSTMENTS ARE NECESSARY; EXCEPT THAT THE ADJUSTED FEES SHALL BE SUBJECT TO THE FOLLOWING LIMITATIONS:

(I) ANNUAL FEES FOR FACILITIES THAT TREAT, STORE, OR DISPOSE OF HAZARDOUS WASTE PURSUANT TO A PERMIT OR INTERIM STATUS SHALL BE ESTABLISHED TO GENERATE NO MORE THAN THIRTY PERCENT OF THE ACTUAL REASONABLE PROGRAM COSTS ATTRIBUTABLE TO SUCH FACILITIES. SUCH ANNUAL FEES SHALL TAKE INTO ACCOUNT EQUITABLE FACTORS INCLUDING, WITHOUT LIMITATION, THE QUANTITY AND DEGREE OF HAZARD OF THE HAZARDOUS WASTE INVOLVED, AND WHETHER THE HAZARDOUS WASTE IS TO BE DISPOSED OF, STORED, OR TREATED.

(II) ANNUAL FEES FOR GENERATORS OF HAZARDOUS WASTE WHO ARE SUBJECT TO REGULATION UNDER THIS PART 3 DURING ANY CALENDAR MONTH

OF THE YEAR FOR WHICH THE ANNUAL FEE IS BEING ASSESSED SHALL BE ESTABLISHED TO GENERATE NO MORE THAN FIFTY PERCENT OF THE ACTUAL REASONABLE PROGRAM COSTS ATTRIBUTABLE TO GENERATORS WITH AN APPROPRIATE DIFFERENTIATION BETWEEN GENERATORS DESCRIBED IN SUBPARAGRAPHS (II) AND (III) OF PARAGRAPH (a) OF THIS SUBSECTION (3.5);

(III) THE HOURLY CHARGE FOR THE DOCUMENT REVIEW AND ACTIVITY FEES SHALL BE ESTABLISHED AT A RATE COMPARABLE TO INDUSTRY RATES FOR PERFORMING SIMILAR TASKS WITH MAXIMUM LEVELS ON DOCUMENT REVIEW AND ACTIVITY FEES THAT REFLECT TIMELY AND COST-EFFECTIVE REVIEWS; AND

(IV) THE OVERALL FEE STRUCTURE SHALL BE CONSISTENT WITH THE TREND IN HAZARDOUS WASTE GENERATION, TREATMENT, STORAGE, DISPOSAL, AND CORRECTIVE ACTION IN THE STATE AND WITH THE AUTHORIZED FUNDING FOR THE PROGRAM.

(c) IN ADDITION TO ANY OTHER REVIEW PROVIDED IN LAW, ANY RULE ADOPTED, OR FEE MODIFIED, BY THE COMMISSION PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (3.5) MAY BE REVIEWED BY THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY UPON ITS OWN MOTION OR UPON WRITTEN REQUEST SUBMITTED WITHIN THIRTY DAYS AFTER THE ADOPTION OF THE RULE BY THE COMMISSION. THE JOINT BUDGET COMMITTEE SHALL REVIEW SUCH RULE FOR ACCURACY AND COMPLIANCE WITH THE STATUTORY PROVISION SET FORTH IN THIS SUBSECTION (3.5). REQUEST MAY BE MADE BY ANY PERSON REGULATED UNDER THIS PART 3. ANY REVIEW BY THE JOINT BUDGET COMMITTEE SHALL BE COMPLETED WITHIN NINETY DAYS AFTER THE DATE REQUESTED. SUCH RULE SHALL NOT BECOME EFFECTIVE UNTIL APPROVED BY THE JOINT BUDGET COMMITTEE OR UPON THE FAILURE OF THE JOINT BUDGET COMMITTEE TO TAKE ACTION WITHIN NINETY DAYS AFTER THE DAY OF THE REQUEST FOR REVIEW. SUCH RULE MAY NOT RESULT IN A LEVEL OF FUNDING FOR THE PROGRAM THAT EXCEEDS AMOUNTS APPROPRIATED OR THAT WILL BE APPROPRIATED BY THE GENERAL ASSEMBLY.

(d) THE DEPARTMENT SHALL PROVIDE A RECEIPT FOR THE FEES PAID PURSUANT TO THIS SUBSECTION (3.5) AND SHALL TRANSMIT SUCH PAYMENTS TO THE STATE TREASURER AND TAKE THE TREASURER'S RECEIPT THEREFOR. THE STATE TREASURER SHALL CREDIT ALL FEES RECEIVED TO THE HAZARDOUS WASTE SERVICE FUND AS PROVIDED IN SECTION 25-15-304.

(3.7) IF THE DEPARTMENT DETERMINES THAT A FACILITY IS, AND HAS

BEEN, TREATING, STORING, OR DISPOSING OF HAZARDOUS WASTES WITHOUT A PERMIT OR INTERIM STATUS, AND THAT FACILITY LEGALLY SHOULD HAVE BEEN OPERATING PURSUANT TO A PERMIT OR INTERIM STATUS, THEN, IN ADDITION TO ANY OTHER REMEDIES THE DEPARTMENT MAY HAVE, THE DEPARTMENT MAY ASSESS A FEE TO OFFSET PROGRAM COSTS FROM THAT FACILITY THAT IS EQUIVALENT TO THE ESTIMATED ANNUAL FEES, WITHOUT INTEREST, THAT SUCH FACILITY SHOULD HAVE PAID THE DEPARTMENT IF THE FACILITY HAD BEEN OPERATING PURSUANT TO A PERMIT OR INTERIM STATUS; EXCEPT THAT SUCH FEE SHALL NOT BE ASSESSED UNDER ANY ONE THE FOLLOWING CIRCUMSTANCES:

(a) THE ONLY HAZARDOUS WASTE BEING TREATED, STORED, OR DISPOSED OF IS IN-PLACE CONTAMINATED MEDIA OR DEBRIS, OR CONTAMINATED STRUCTURES;

(b) THE TREATMENT, STORAGE, AND DISPOSAL IS PART OF A CORRECTIVE ACTION PLAN APPROVED BY THE DEPARTMENT; OR

(c) THE FACILITY MODIFIED THE FACILITY'S OPERATIONS WITHIN ONE MONTH AFTER BEING NOTIFIED IN WRITING THAT THE FACILITY SHOULD BE OPERATING PURSUANT TO A PERMIT OR INTERIM STATUS SO THAT ANY TREATMENT, STORAGE, OR DISPOSAL OF HAZARDOUS WASTES AT THE FACILITY IS NO LONGER SUBJECT TO A PERMIT OR INTERIM STATUS.

(4) (a) Except as provided in ~~paragraphs (b) and (c)~~ PARAGRAPH(b) of this subsection (4), the rules promulgated by the commission pursuant to the provisions of this part 3 may be more stringent than the corresponding rules of the federal environmental protection agency promulgated pursuant to the federal act; however, more stringent rules INCLUDING, WITHOUT LIMITATION, RULES THAT LIST OR DEFINE AS A HAZARDOUS WASTE ANY WASTE OR OTHER MATERIAL EXEMPTED OR OTHERWISE NOT REGULATED AS A HAZARDOUS WASTE UNDER THE FEDERAL ACT may only be adopted ~~with the affirmative vote of at least five members of the commission~~ IF THE COMMISSION MAKES A WRITTEN FINDING, AFTER A PUBLIC HEARING AND BASED UPON SUBSTANTIAL EVIDENCE IN THE RECORD THAT SUCH RULES ARE NECESSARY TO PROTECT THE PUBLIC HEALTH AND THE ENVIRONMENT OF THE STATE, AND SUCH FINDINGS AND RULES ARE APPROVED BY AN AFFIRMATIVE VOTE OF AT LEAST SIX MEMBERS OF THE COMMISSION. SUCH FINDINGS AND RULES SHALL BE ACCOMPANIED BY A COMMISSION OPINION REFERRING TO AND EVALUATING THE PUBLIC HEALTH AND ENVIRONMENTAL INFORMATION AND STUDIES CONTAINED IN THE RECORD THAT FORM THE BASIS FOR SUCH

FINDINGS AND RULES.

(c) ~~The rules promulgated by the commission pursuant to the provisions of this part 3 may not list or define as a hazardous waste any waste or other material exempted or otherwise not regulated as a hazardous waste under the federal act unless the commission makes a written finding after a public hearing and based upon substantial evidence in the record that such rules are necessary to protect the public health and the environment of the state and such findings and rules are approved by a vote of at least six members of the commission. Such findings and rules shall be accompanied by a commission opinion referring to and evaluating the public health and environmental information and studies contained in the record that form the basis for such findings and rules.~~

SECTION 4. Repeal. 25-15-303 (5), Colorado Revised Statutes, is repealed as follows:

25-15-303. Requirements for hazardous waste treatment, storage, and disposal sites and facilities - permits. (5) ~~(a) Any permit for the operation of facilities and sites for the storage, treatment, or disposal of hazardous waste shall provide for the payment to the department of a fee to offset actual reasonable program costs for such facilities. The fee shall be established by rules and regulations developed and promulgated in accordance with section 25-15-302. The amount of the fee shall take into consideration the quantity and degree of hazard of the hazardous waste involved and whether it is to be treated, stored, or disposed of at the location. The commission may establish maximum levels for such fees as the commission deems necessary.~~

~~(b) The fee shall be paid to the department in accordance with schedules established by rules and regulations developed and promulgated in accordance with section 25-15-302. The department shall receipt for the same and shall transmit such payments to the state treasurer and take his receipt therefor. The state treasurer shall credit all fees received to the hazardous waste service fund as provided for in section 25-15-304.~~

SECTION 5. 25-15-304, Colorado Revised Statutes, is amended to read:

25-15-304. Hazardous waste service fund created. There is

created in the state treasury a hazardous waste service fund, which shall consist of fees collected pursuant to section ~~25-15-303 (5)~~ 25-15-302 (3.5) to reimburse the state for its annual program expenses incurred in the maintenance, monitoring, and other supervision of the lands and facilities used for the storage, treatment, and disposal of hazardous waste. Such moneys shall be appropriated annually to the department by the general assembly which shall review such expenditures to assure that they are used to accomplish the purposes of this section. All unappropriated balances in the hazardous waste service fund shall remain therein and shall not revert to the general fund.

SECTION 6. Effective date. This act shall take effect July 1, 2000.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Ray Powers	Russell George
PRESIDENT OF	SPEAKER OF THE HOUSE
THE SENATE	OF REPRESENTATIVES

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Patricia K. Dicks	Judith M. Rodrigue
SECRETARY OF	CHIEF CLERK OF THE HOUSE
THE SENATE	OF REPRESENTATIVES

APPROVED_____

_____
Bill Owens
GOVERNOR OF THE STATE OF COLORADO