

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 01-1013.02 Jery Payne

SENATE BILL 01-227

SENATE SPONSORSHIP

Thiebaut

HOUSE SPONSORSHIP

Lawrence

Senate Committees

Govt, Veterans & Military Relations, & Trans

House Committees

A BILL FOR AN ACT

101 **CONCERNING LOCAL REGULATION OF HAZARDOUS WASTE SITES, AND,**
102 **IN CONNECTION THEREWITH, EXPANDING THE "STATE**
103 **HAZARDOUS WASTE INCINERATOR SITING ACT" TO INCLUDE**
104 **ALL HAZARDOUS WASTE PROCESSORS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Expands the "State Hazardous Waste Incinerator Siting Act" to include hazardous waste processors. Exempts hazardous waste processors that were in operation by July 1, 2000, from the provisions of this act. Authorizes local governments to issue certificates of designation to hazardous waste processors. On the list of concerns a local government

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

SENATE
Amended 3rd Reading
May 3, 2001

SENATE
Amended 2nd Reading
May 2, 2001

shall consider prior to issuing a certificate, adds the quality and quantity of public and private infrastructure the site needs.

Changes the standard for a court to overturn a local government decision on judicial review from whether there is "no error" to whether the local government acted reasonably and in accordance with the "State Hazardous Waste Incinerator or Processor Siting Act".

Authorizes local governments to promulgate rules and collect impact fees on hazardous waste processors. Raises the cap on the fee to apply for certification from \$50,000 to \$100,000. Changes impact fees from 2% of revenues to the greater of 2% of revenues or operating costs.

Defines relevant terms, including "hazardous waste processing". Makes conforming amendments.

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

2 **SECTION 1.** 25-15-501, Colorado Revised Statutes, is amended
3 to read:

4 **25-15-501. Short title.** This part 5 shall be known and may be
5 cited as the "State Hazardous Waste Incinerator OR PROCESSOR Siting
6 Act".

7 **SECTION 2.** 25-15-502 (2), Colorado Revised Statutes, is
8 amended, and the said 25-15-502 is further amended BY THE
9 ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

10 **25-15-502. Definitions.** As used in this part 5, unless the context
11 otherwise requires:

12 (1.5) "EXISTING HAZARDOUS WASTE PROCESSOR" MEANS A
13 HAZARDOUS WASTE PROCESSING FACILITY THAT WAS IN ACTIVE
14 OPERATION, AS AUTHORIZED BY APPLICABLE FEDERAL AND STATE LAWS
15 AND REGULATIONS, ON OR BEFORE JULY 1, 2000.

16 (2) "Governing body having jurisdiction" means the board of
17 county commissioners if a hazardous waste incinerator OR PROCESSOR site
18 is located in any unincorporated portion of a county and means the
19 governing body of the appropriate municipality if a hazardous waste

1 incinerator OR PROCESSOR site is located within an incorporated area.

2 (4) (a) "HAZARDOUS WASTE PROCESSING" MEANS:

3 (I) ANY TREATMENT METHOD, TECHNIQUE, OR PROCESS DESIGNED
4 TO CHANGE THE PHYSICAL, CHEMICAL, OR BIOLOGICAL CHARACTER OR
5 COMPOSITION OF ACUTE HAZARDOUS WASTE, AS DEFINED IN RULES OF THE
6 COMMISSION PROMULGATED PURSUANT TO PART 3 OF THIS ARTICLE, IN
7 ORDER TO NEUTRALIZE SUCH WASTE, REDUCE THE VOLUME OF SUCH WASTE,
8 OR RENDER SUCH WASTE LESS HAZARDOUS, SAFER FOR TRANSPORT,
9 AMENABLE FOR RECOVERY OR USE, OR AMENABLE FOR STORAGE; OR

10 (II) ANY ACUTE HAZARDOUS WASTE PROCESSING, AS DEFINED IN
11 RULES OF THE COMMISSION PROMULGATED PURSUANT TO SECTION
12 25-15-302.

13 (b) "HAZARDOUS WASTE PROCESSING" DOES NOT INCLUDE:

14 (I) THE TREATMENT OF LESS THAN ONE THOUSAND KILOGRAMS OF
15 ACUTE HAZARDOUS WASTE PER YEAR;

16 (II) THE TREATMENT, STORAGE, OR DISPOSAL OF HAZARDOUS
17 WASTE OR ACUTE HAZARDOUS WASTE PURSUANT TO A CERTIFICATE OF
18 DESIGNATION ISSUED PURSUANT TO, OR OTHERWISE REGULATED BY, PART
19 2 OF THIS ARTICLE;

20 (III) THE PROCESSING OF HAZARDOUS WASTE THAT IS NOT LISTED
21 AS ACUTE HAZARDOUS WASTE IN RULES OF THE COMMISSION PROMULGATED
22 PURSUANT TO PART 3 OF THIS ARTICLE;

23 (IV) THE PROCESSING OF ANY HAZARDOUS WASTE OR ACUTE
24 HAZARDOUS WASTE PURSUANT TO ANY RECORD OF DECISION, CONSENT
25 DECREE, OR ADMINISTRATIVE ORDER _____ AUTHORIZED BY OR MADE
26 PURSUANT TO APPLICABLE FEDERAL OR STATE LAWS AND RULES, AS
27 AMENDED OR REVISED, OR ANY RECORD OF DECISION ISSUED PURSUANT TO

1 A PERIODIC REVISION OF A RECORD OF DECISION, MADE ON OR BEFORE JULY
2 1, 2000;

3 (V) THE PERFORMANCE OF ON-SITE PROCESSING OR TREATMENT OF
4 HAZARDOUS WASTE ASSOCIATED WITH EFFORTS TO CLEAN UP
5 CONTAMINATED SOIL, GROUNDWATER, OR SURFACE WATER PURSUANT TO
6 FEDERAL OR STATE ENVIRONMENTAL LAWS;

7 (VI) THE PROCESSING OF HAZARDOUS WASTE INCIDENTAL TO
8 COMMERCIAL MANUFACTURING;

9 (VII) THE TREATMENT, STORAGE, MANAGEMENT, OR PROCESSING
10 OF SOLID WASTE PURSUANT TO A CERTIFICATE OF DESIGNATION ISSUED
11 PURSUANT TO ARTICLE 20 OF TITLE 30, C.R.S.;

12 (VIII) THE CONDUCT OF ANY ACTIVITIES PURSUANT TO AN
13 APPROVED RECLAMATION PLAN CONTAINED IN A PERMIT ISSUED PURSUANT
14 TO, OR OTHERWISE REGULATED BY, ARTICLE 32 OR 33 OF TITLE 34, C.R.S.;
15 OR

16 (IX) THE CONDUCT OF ANY ACTIVITIES REGULATED PURSUANT TO
17 ARTICLE 60 OF TITLE 34, C.R.S.

18 (5) "HAZARDOUS WASTE PROCESSOR" MEANS A FACILITY THAT
19 ENGAGES IN HAZARDOUS WASTE PROCESSING SUBJECT TO THE
20 REQUIREMENT FOR A PART B PERMIT OR INTERIM STATUS UNDER RULES OF
21 THE COMMISSION PROMULGATED PURSUANT TO SECTION 25-15-302.

22 (6) "HAZARDOUS WASTE PROCESSOR SITE" MEANS A LOCATION
23 WHERE HAZARDOUS WASTE IS:

24 (a) PROCESSED; OR

25 (b) GENERATED OR STORED BY THE OWNER OF A HAZARDOUS
26 WASTE PROCESSOR OR BY AN AFFILIATE OR CUSTOMER THEREOF.

27 **SECTION 3.** 25-15-503, Colorado Revised Statutes, is amended

1 to read:

2 **25-15-503. Certificate required - incineration or processing of**
3 **hazardous waste prohibited - exceptions.** (1) Any person desiring to
4 own or operate a hazardous waste incinerator OR PROCESSOR shall first
5 obtain a certificate of designation from the governing body having
6 jurisdiction over the area in which such proposed hazardous waste
7 incinerator OR PROCESSOR site is located.

8 (2) Hazardous waste incineration OR PROCESSING by any person
9 is prohibited except on or at a hazardous waste incinerator OR PROCESSOR
10 site for which a certificate of designation has been obtained as provided
11 in this part 5.

12 (3) Notwithstanding the provisions of subsections (1) and (2) of
13 this section, any existing hazardous waste incinerator OR PROCESSOR shall
14 be an approved activity for which obtaining a certificate of designation
15 under the provisions of this part 5 shall be unnecessary.

16 **SECTION 4.** 25-15-504, Colorado Revised Statutes, is amended
17 to read:

18 **25-15-504. Application for certificate - review by governing**
19 **body.** (1) Any person desiring to own or operate a hazardous waste
20 incinerator OR PROCESSOR shall make application to the governing body
21 having jurisdiction over the area in which such incinerator, ~~or~~ incinerator
22 site, PROCESSOR, OR PROCESSOR SITE is or is proposed to be located for a
23 certificate of designation.

24 (2) An application made pursuant to the provisions of subsection
25 (1) of this section shall be accompanied by a fee to be established by the
26 governing body having jurisdiction, which shall be based on the
27 reasonable anticipated costs that may be incurred by such governing body

1 in the application review and approval process. Such fee shall be for the
2 reasonable costs necessary in the hearing process and shall not exceed
3 ~~fifty~~ ONE HUNDRED thousand dollars and may be refunded in whole or in
4 part.

5 (3) An application made pursuant to the provisions of subsection
6 (1) of this section shall set forth the location of the ~~incineration~~
7 INCINERATOR OR PROCESSOR site and incinerator OR PROCESSOR, the types
8 of hazardous waste to be accepted or rejected, the types of incinerator OR
9 PROCESSOR by-product disposal, the method of supervision, the
10 anticipated access routes in the county in which the site is located, and
11 such other information as may be required by the governing body having
12 jurisdiction.

13 (4) The clerk of the governing body having jurisdiction shall
14 promptly notify the county commissioners and the governing body of any
15 other county or municipality within twenty miles of a proposed hazardous
16 waste incinerator ~~of~~ OR PROCESSOR UPON the filing of any application for
17 a certificate of designation ~~therefor~~ FOR SUCH INCINERATOR, PROCESSOR,
18 OR SITE.

19 **SECTION 5.** 25-15-505, Colorado Revised Statutes, is amended
20 to read:

21 **25-15-505. Grounds for approval.** (1) A governing body having
22 jurisdiction shall approve or disapprove an application for a hazardous
23 waste incinerator OR PROCESSOR site certificate of designation within one
24 hundred eighty days after receiving such application. Such governing
25 body having jurisdiction may approve an application for a certificate of
26 designation upon a finding of all of the following factors:

27 (a) That the proposed hazardous waste incinerator OR PROCESSOR

1 site would not pose a significant threat to the health or safety of the public
2 or the environment, taking into consideration:

3 (I) The density of population in the areas neighboring such
4 proposed site;

5 (II) The density of population in the areas ~~which~~ THAT are adjacent
6 to any portion of delivery roads to such proposed site and ~~which~~ THAT lie
7 within a fifty-mile radius of such proposed site; and

8 (III) The risk of accidents occurring during the transportation of
9 waste to or at the proposed site;

10 (b) That the applicant has documented such applicant's financial
11 ability to operate the proposed HAZARDOUS WASTE incinerator OR
12 PROCESSOR;

13 (c) That the applicant, taking into account such applicant's prior
14 performance records, if any, in the treatment, storage, disposal,
15 PROCESSING, or incineration of hazardous waste, has documented
16 sufficient reliability, expertise, and competency to operate and manage the
17 proposed hazardous waste incinerator OR PROCESSOR; and

18 (d) That the proposed site conforms to the comprehensive land use
19 plans and relevant land use regulations of the governing body having
20 jurisdiction; except that, to the extent the commission has promulgated a
21 regulation imposing a condition on incinerator OR PROCESSOR operation
22 pursuant to section 25-15-302, such comprehensive land use plans and
23 regulations shall not impose a condition more stringent than that contained
24 in such state regulation.

25 (2) In considering an application for a proposed hazardous waste
26 incinerator OR PROCESSOR, the governing body having jurisdiction shall
27 take into account the effect that such hazardous waste incinerator OR

1 PROCESSOR will have on the surrounding property, taking into
2 consideration the types of processing to be used, and wind and climatic
3 conditions, AND BOTH THE QUALITY AND QUANTITY OF PUBLIC AND
4 PRIVATE INFRASTRUCTURE NECESSARY TO FACILITATE THE CONSTRUCTION
5 AND SUBSEQUENT OPERATION OF SUCH INCINERATOR, PROCESSOR, OR SITE.

6 (3) (a) Prior to the issuance of a certificate of designation for a
7 hazardous waste incinerator OR PROCESSOR, the application,
8 comprehensive land use plans, any relevant zoning ordinances, and any
9 other pertinent information shall be presented to the governing body
10 having jurisdiction at a public hearing to be held after notice. Such notice
11 shall contain the date, time, and location of the hearing and shall state that
12 the matter to be considered at such hearing is the applicant's application
13 for a hazardous waste incinerator OR PROCESSOR. Such notice shall be
14 published in a newspaper having general circulation in the county or
15 municipality in which the proposed hazardous waste incinerator OR
16 PROCESSOR site is located at least ten days but no more than thirty days
17 prior to the date of such hearing. Any such notice shall be printed
18 prominently in at least ten-point, ~~boldface~~ BOLD-FACED type. Such notice
19 shall be posted at the proposed hazardous waste incinerator OR PROCESSOR
20 site for a period beginning at least thirty days before such public hearing
21 and continuing through the date of such hearing.

22 (b) At any public hearing held pursuant to the provisions of
23 paragraph (a) of this subsection (3), the governing body having
24 jurisdiction shall hear or receive any written or oral testimony presented
25 by the applicant and by governmental entities and residents or any
26 interested party concerning such proposed incinerator OR PROCESSOR site.
27 All such testimony shall be considered by the governing body having

1 jurisdiction in making a decision concerning such application.

2 (4) The governing body having jurisdiction shall notify the
3 department of the approval or disapproval of any application for a
4 hazardous waste incinerator OR PROCESSOR certificate of designation
5 within five days after such approval or disapproval.

6 (5) THE GOVERNING BODY HAVING JURISDICTION OVER A
7 HAZARDOUS WASTE INCINERATOR OR PROCESSOR MAY ENACT LOCAL
8 PROCEDURAL RULES IN ORDER TO IMPLEMENT THE PROVISIONS OF THIS
9 PART 5. IF A LOCAL PROCEDURAL RULE CONFLICTS WITH ANY OF THE
10 PROVISIONS OF THIS ARTICLE, THE PROVISIONS OF THIS ARTICLE SHALL
11 CONTROL.

12 **SECTION 6.** 25-15-506 (1) and (2), Colorado Revised Statutes,
13 are amended to read:

14 **25-15-506. Certificate.** (1) A certificate of designation for a
15 hazardous waste incinerator OR PROCESSOR site shall identify the general
16 types of waste ~~which~~ THAT shall be PROCESSED AND THE TYPES OF WASTE
17 THAT SHALL BE rejected by such hazardous waste incinerator OR
18 PROCESSOR site, subject to a more specific statement of waste to be
19 rejected in the hazardous waste permit issued pursuant to part 3 of this
20 article or the federal act.

21 (2) Such certificate of designation shall be displayed in a
22 prominent place at the hazardous waste incinerator OR PROCESSOR site.

23 **SECTION 7.** 25-15-507 (1), Colorado Revised Statutes, is
24 amended to read:

25 **25-15-507. Substantial change in ownership, design, or**
26 **operation.** (1) Any substantial change in the ownership of a hazardous
27 waste incinerator OR PROCESSOR, including but not limited to an

1 assignment or a transfer of the certificate of designation, ~~therefor~~, or in the
2 design or operation of a hazardous waste incinerator, ~~or~~ incinerator site,
3 PROCESSOR, OR PROCESSOR SITE shall be submitted to the governing body
4 having jurisdiction for its approval. Approval by the governing body
5 having jurisdiction shall be required before such a substantial change may
6 become effective. For the purposes of this section, "substantial change"
7 shall have such meaning as is provided for such term in the ~~regulations~~
8 RULES of the commission promulgated pursuant to section 25-15-510.

9 **SECTION 8.** 25-15-508, Colorado Revised Statutes, is amended
10 to read:

11 **25-15-508. Revocation or suspension of certificate.** (1) A
12 governing body having jurisdiction ~~which~~ AND THAT has granted a
13 certificate of designation for a hazardous waste incinerator OR PROCESSOR
14 may revoke or suspend such certificate of designation if such governing
15 body having jurisdiction finds that:

16 (a) There was a material misrepresentation or misstatement of fact
17 in the application for such certificate of designation;

18 (b) Such hazardous waste incinerator OR PROCESSOR is not being
19 operated in substantial compliance with any term, condition, or limitation
20 of its certificate of designation or any applicable regulation adopted
21 pursuant to this part 5; or

22 (c) The owner or operator of such hazardous waste incinerator OR
23 PROCESSOR has failed to pay the annual fee to the governing body having
24 jurisdiction as required by the provisions of section 25-15-515 (1).

25 (2) The revocation or suspension of a certificate of designation
26 shall not relieve the owner or operator of the hazardous waste incinerator
27 OR PROCESSOR from any legal liability.

1 **SECTION 9.** 25-15-509, Colorado Revised Statutes, is amended
2 to read:

3 **25-15-509. Judicial review.** The award, denial, revocation, or
4 suspension of a certificate of designation by the governing body having
5 jurisdiction shall be subject to judicial review in the district court for the
6 judicial district in which the hazardous waste incinerator OR PROCESSOR
7 is located or is proposed to be located. Any request for such judicial
8 review shall be made within thirty days after such award, denial,
9 revocation, or suspension. If the court finds ~~no error~~ THAT THE
10 GOVERNING BODY HAVING JURISDICTION HAS ACTED REASONABLY AND IN
11 ACCORDANCE WITH THE PROCEDURES AND PROCEDURAL LIMITATIONS OF
12 THIS PART 5, the court shall affirm the action of the governing body having
13 jurisdiction. If the court finds that the action is arbitrary and capricious,
14 not in accord with the procedures or procedural limitations of this part 5,
15 unsupported by substantial evidence when the record is considered as a
16 whole, or otherwise contrary to law, then the court shall hold unlawful
17 and set aside the action and shall remand the case to the governing body
18 having jurisdiction for further proceedings as appropriate.

19 **SECTION 10.** 25-15-510 (1), Colorado Revised Statutes, is
20 amended to read:

21 **25-15-510. Rules - limitations.** (1) The commission may
22 promulgate ~~regulations~~ RULES establishing what constitutes a substantial
23 change in ownership, design, or operation of a hazardous waste
24 incinerator OR PROCESSOR under the provisions of section 25-15-507.

25 **SECTION 11.** 25-15-511, Colorado Revised Statutes, is amended
26 to read:

27 **25-15-511. List of hazardous wastes - final inventory.** The

1 operator of any hazardous waste incinerator OR PROCESSOR site shall
2 maintain a list of the hazardous wastes accepted for incineration OR
3 PROCESSING at such site. Such list shall indicate the types of hazardous
4 waste accepted for incineration OR PROCESSING at such hazardous waste
5 incinerator OR PROCESSOR and the location of such waste. A copy of such
6 list shall be provided to any person upon request and upon payment of a
7 reasonable charge for the costs of the reproduction of such list. Upon the
8 closure of a hazardous waste incinerator OR PROCESSOR site, a final
9 inventory of hazardous wastes shall be prepared and filed with the
10 department. The department shall make any such final inventory available
11 for public inspection and copying at reasonable cost.

12 **SECTION 12.** 25-15-512, Colorado Revised Statutes, is amended
13 to read:

14 **25-15-512. Inspections of hazardous waste incinerator or**
15 **processor sites.** (1) Each hazardous waste incinerator OR PROCESSOR site
16 shall be physically and structurally accessible at all times for inspection
17 by the department. The department shall conduct inspections of each
18 hazardous waste incinerator OR PROCESSOR site at intervals determined by
19 ~~regulations~~ RULES of the commission based upon the volume and toxicity
20 of the wastes being received at such site. Such inspections shall include,
21 but are not limited to, inspections conducted during the reception of
22 hazardous wastes, during the incineration of hazardous wastes, DURING
23 THE PROCESSING OF HAZARDOUS WASTES, and during the shipment of
24 incineration OR PROCESSING by-products. The department shall be
25 permitted reasonable access to all operations at any hazardous waste
26 incinerator OR PROCESSOR site for the purpose of monitoring and
27 inspecting such operations.

1 (2) The governing body having jurisdiction over any hazardous
2 waste incinerator OR PROCESSOR site or the governing body of any other
3 county or municipality having jurisdiction over such site pursuant to an
4 intergovernmental agreement shall have physical and structural access to
5 such site during the operating hours of such site for the purpose of
6 periodic inspections by the agents of such governing body.

7 **SECTION 13.** 25-15-515, Colorado Revised Statutes, is amended
8 to read:

9 **25-15-515. Annual fees - commercial hazardous waste**
10 **incinerator or processor funds.** (1) (a) The owner or operator of any
11 hazardous waste incinerator OR PROCESSOR for which a certificate of
12 designation has been issued shall be required, contingent upon the
13 issuance of a federal or state permit, to pay to the governing body having
14 jurisdiction an annual fee for the purpose of offsetting the estimated direct
15 costs necessitated by such hazardous waste incinerator OR PROCESSOR.
16 Such increased services may include but are not limited to the
17 improvement and maintenance of roads and bridges, fire protection, law
18 enforcement, monitoring by county or municipal health officials pursuant
19 to the requirements of state law, regulations, and the certificate of
20 designation, and emergency preparation and response. The amount of
21 such fee shall be no more than THE GREATER OF two percent of the annual
22 estimated OPERATING COST OF OR THE ANNUAL ESTIMATED gross revenue
23 received for the incineration OR PROCESSING of hazardous wastes by the
24 hazardous waste incinerator OR PROCESSOR. The governing body having
25 jurisdiction may provide reimbursement out of such fee moneys to other
26 governmental units for the reasonable direct costs to such governmental
27 units of increased services necessitated by such hazardous waste

1 incinerator OR PROCESSOR.

2 (b) IN LIEU OF THE ANNUAL FEES IMPOSED UNDER PARAGRAPH (a)
3 OF THIS SUBSECTION (1), THE GOVERNING BODY MAY REQUIRE THE OWNER
4 OR OPERATOR OF ANY HAZARDOUS WASTE INCINERATOR OR PROCESSOR
5 SITE TO MAKE A LUMP-SUM PAYMENT COVERING THE TOTAL AMOUNT OF
6 FEES IMPOSED UNDER THIS SECTION.

7 (2) In the event that the owner or operator of a hazardous waste
8 incinerator OR PROCESSOR site fails to pay the annual fee imposed
9 pursuant to the provisions of subsection (1) of this section, the governing
10 body having jurisdiction may suspend the certificate of designation for
11 such site until such annual fee has been paid.

12 (3) Any governing body having jurisdiction is authorized to
13 establish a ~~commercial~~ hazardous waste incinerator OR PROCESSOR fund.
14 All fees collected pursuant to subsection (1) of this section shall be
15 deposited to the credit of said fund and appropriated by the governing
16 body for the purposes for which such fees are collected.

17 **SECTION 14. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.