

ZONING GUIDELINES
FOR
HAZARDOUS WASTE
TREATMENT
AND STORAGE FACILITIES

July 1987

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ZONING
GUIDELINES
FOR
HAZARDOUS WASTE TREATMENT
AND STORAGE FACILITIES

DEPARTMENT OF ECOLOGY
SOLID AND HAZARDOUS WASTE PROGRAM
MAIL STOP PV-11
OLYMPIA, WA 98504-8711

(206) 459-6308
SCAN 585-6308

November 1989

ZONING GUIDELINES
FOR HAZARDOUS WASTE TREATMENT AND STORAGE FACILITIES

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List of Revisions Based on Passage of
House Bill 1182 (Hazardous Waste Zoning)
May 1989

The following is a list of the changes in requirements which need to be reflected in the text of these zoning guidelines.

Please note these changes as you use the guideline. The section and paragraph affected are listed with the required change underlined. The changes reflect legislative amendments which extend the deadline for submitting your zone designation to Ecology and allows flexibility for continuing the local designation process after the deadline.

If you have questions, please call the Information and Planning Section, Solid and Hazardous Waste Program, at (206) 459-6308 (SCAN 585-6308).

ACKNOWLEDGEMENTS

The Department of Ecology wishes to acknowledge the assistance of several individuals and organizations who made significant contributions to these guidelines:

STATE SOLID WASTE ADVISORY COMMITTEE
SUBCOMMITTEE ON HAZARDOUS WASTE PLANNING AND SITING

Jim Whiteside, Chair	County Government (Yakima County)
Doug Baker	Association of Washington Cities
Toni Cramer	City Government (Bellevue)
Mark Follett	Washington Environmental Council
Fred Knostman	County Government (Thurston County)
Ken Murphy	Washington Farm Bureau
Nancy Pearson	Washington Citizens for Recycling
Betty Tabbutt	League of Women Voters
Stan Vendetti	Environmental Health Directors
Roger Von Gohren	Association of Washington Business
Ron West/Mike Keller	Chemical Processing Industry
Jan Wiley-Gee	Washington Retail Council
Jim Williams	Washington Association of Counties

Page, Section, Title,
and Paragraph Affected:

Required Change:

1, I. Authority, 1

Add: In addition, an amendment to 70.105 RCW was passed February 1, 1989, extending timelines and changing zone designation requirements for local governments. The legislation (House Bill No. 1182) is contained in Appendix D.

3, V. How To Meet Zone
Designation Requirements, 1, 3

Delete the date, June 30, 1988 and add the date November 31, 1991.

In the last sentence, change telephone reference to (206) 459-6308 or SCAN 585-6308.

4, V. (B) (1) and (4)

In both paragraphs, change the date to November 31, 1991.

7, V. (F)

In the last paragraph, change date to November 31, 1991.

7, V. (G)

In the last paragraph, change date to November 31, 1991.

8, VI. Role of the Department, B

Delete paragraph.

8, VI. C (4)

Delete: June 30, 1988.
Add: November 31, 1991.

9, VI. C (4), 1st paragraph

Change paragraph to read: "However, it shall be Department policy not to invoke preemption in cases where proposed zone designations have been submitted to the Department by local governments by November 31, 1991, or when local governments complete the zone designation process. House Bill 1182 allows the process to continue after the November 31, 1991 deadline."

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and Paragraph Affected:

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I. AUTHORITY

The 1985 the Washington Legislature passed Engrossed Second Substitute House Bill 975 as amendments to Chapter 70.105 RCW, the State Hazardous Waste Management Act. The 1985 amendments shall be referred to as the Act throughout this document and are codified as RCW 70.105.200 through 70.105.270.

These guidelines fulfill a requirement of the Act that the Department of Ecology, hereinafter called the Department, prepare guidelines to assist local government in zoning for hazardous waste storage and treatment facilities. The Act requires that each local government (city or county) or combination of contiguous local governments, designate land use zones in which hazardous waste treatment and storage facilities will be allowed as permitted uses. Zone designations must be submitted to the Department for approval by June 30, 1988 (RCW 70.105.225).

The 1987 Legislature appropriated funds to the Department for grants to local government for making zone designations. This makes the legislative requirements mandatory, and local government must submit letters of intent to the Department by October 31, 1987 to complete zone designations by June 30, 1987.

II. PURPOSE AND SCOPE

The purpose of these guidelines is to provide direction to local government about designating land use zones in which hazardous waste treatment and storage facilities are allowed as permitted uses. The Act requires all cities and counties to review their zoning codes for need of possible amendment to allow such facilities as permitted uses. An overriding principle of the Act is that hazardous waste treatment and storage facilities must be allowed in zones in which the handling and processing of hazardous substances is not prohibited, except residential zones.

Hazardous waste facilities are an integral part of the industrial or commercial base of most communities. These facilities are designed and managed as necessary adjuncts to a wide variety of industrial, manufacturing, and commercial operations. They are as much a part of the local scene as are the hazardous substances used, produced, or sold throughout the community. Properly managed hazardous wastes pose no greater risk to public health and the environment than does the handling or processing of hazardous substances.

Accordingly, all cities and counties must assess their zoning codes to assure that hazardous waste treatment and storage facilities are allowed in zones in which the processing or handling of hazardous substances is not prohibited. In certain instances, a local government can request exemption from the zone designation requirements. Jurisdictions without zoning codes must designate eligible geographic areas where hazardous waste treatment and storage facilities can be located.

Zone designations made by local government must be consistent with the Act, the state siting criteria, and these guidelines.

III. WHAT IS FACILITY ZONE DESIGNATION

Facility zone designation is the process of amending local zoning codes to allow hazardous waste treatment and storage facilities as permitted uses (interpreted as principal use, conditional use, or accessory use). Once designated, such zones become designated facility zones.

Hazardous waste treatment and storage facilities are facilities that require an interim or final status permit from the Department under the Dangerous Waste Regulations, Chapter 173-303 WAC. However, the land use permitting process rests with local government.

Treatment and storage facilities include hazardous waste handling through such means as containers (barrels, drums), above ground and underground tanks, and waste piles and surface impoundments that will be cleaned up and not closed as landfills. Hazardous waste generators that do not accumulate their wastes onsite are not treatment and storage facilities, nor are hazardous waste incineration and land disposal facilities which are state preempted facilities (RCW 70.105.240).

Under the Dangerous Waste Regulations, Chapter 173-303 WAC, a storage or treatment permit is required of a generator when, for generators of over 2200 pounds of waste per month or per batch, wastes are accumulated onsite for over 90 days. For 220-2200 pound generators, the accumulation cutoff is 180 days.

ONCE THE ZONE DESIGNATION PROCESS IS COMPLETED, NO LOCAL ORDINANCE, PERMIT REQUIREMENT, OR OTHER REQUIREMENT OR DECISION SHALL PROHIBIT ON THE BASIS OF LAND USE CONSIDERATIONS THE CONSTRUCTION OF A HAZARDOUS WASTE MANAGEMENT FACILITY WITHIN ANY DESIGNATED ZONE, PROVIDED IT IS CONSISTENT WITH THE STATE SITING CRITERIA (RCW 70.105.005[8]).

IV. WHO MUST DESIGNATE ZONES

The Act requires that each local government (city or county), or combination of contiguous local governments, do one of the following (RCW 70.105.225[1]):

1. Demonstrate to the satisfaction of the Department that existing zoning allows hazardous waste treatment and storage facilities as permitted uses; or
2. Designate land use zones in which designated zone facilities are permitted uses. The zone designations must be consistent with the state siting criteria adopted in accordance with RCW 70.105.210.

To be approvable under these guidelines, existing zoning must be substantially equivalent with the guidelines.

Local governments without land use zoning must designate eligible geographic areas within their jurisdiction. The area designations shall be subject to the same requirements as if they were zone designations (RCW 70.105.225[5]).

A local government may apply to the Department for exemption from the zone designation requirements if they can document that no hazardous waste has been generated in the previous two calendar years, and that no significant portion of land within the jurisdiction meets the state siting criteria.

V. HOW TO MEET THE ZONE DESIGNATION REQUIREMENTS

A. Local Government Deadlines

The following deadlines must be met by local government. Details on complying with these deadlines follow this section.

- October 31, 1987 - Letters of Intent
 - Request for Waiver of Zone Designation Requirements
 - Request for Approval of Existing Zoning
- June 30, 1988 - Submittal of Zone Designations to the Department for Approval
 - Submittal of Eligible Geographic Area Designations

All submittals for meeting these deadlines should be directed to:

Department of Ecology
Solid & Hazardous Waste Program
Mail Stop PV-11
Olympia, WA 98504-8711

Telephone inquiries should be directed to (206) 459-6322 or SCAN 585-6322.

B. Letter of Intent Requirements

Local government or combinations of contiguous local governments must submit a letter(s) of intent to the Department by October 31, 1987. Letters of intent must be signed by the chairman of the board of county commissioners, the mayor, or other appropriate elected or appointed public official.

Letters of intent for facility zone designations may be combined with letters of intent for local hazardous planning as allowed by RCW 70.105.230. Letters of intent must include one of the following:

1. Intent to Designate Zones

Letters must indicate that the jurisdiction intends to designate eligible zones for treatment and storage facilities no later than June 30, 1988, and whether or not the zone designation process will be carried out independently or through a coordinated planning effort with other contiguous local governments. See page 9 for details.

2. Intent to Seek Approval of Existing Zoning

Letters must indicate that the jurisdiction intends to demonstrate to the satisfaction of the Department that existing zoning allows treatment and storage facilities as permitted uses. See page 6 for details; or

3. Intent to Seek Exemption

Letters must indicate that the jurisdiction is requesting exemption from the zone designation requirements. Such requests must be accompanied by documentation that no regulated quantities of hazardous waste have been generated within the jurisdiction during the two preceding calendar years, and that no significant portion of land within the jurisdiction can meet the siting criteria. See page 7 for details; or

4. Intent to Designate Eligible Geographic Areas

Letters must indicate that the jurisdiction has no land use zoning and will designate eligible geographic areas in which treatment and storage facilities can be located no later than June 30, 1988. See page 7 for details.

C. Zone Designation Requirements

The guiding principles outlined below provide the broad parameters within which zones must be designated for hazardous waste treatment and storage facilities. Specific requirements follow these guiding principles.

- ° Hazardous waste treatment and storage facilities must be allowed as permitted uses in zones that permit the handling or processing of hazardous substances.
- ° Handling or processing of hazardous substances does not include residential zones; it also does not include zones that permit land uses involving individually packaged household consumer products or quantities of hazardous substances of less than five gallons in volume per container.
- ° In most jurisdictions, zones that must be designated will include some or all commercial zones, and manufacturing and industrial zones.

- Permitted use is interpreted in the broad sense, and includes outright permitted use, conditional use, accessory use, or other similar term consistent with the terms describing types of uses in individual zoning ordinances.
- With the exception of the state siting criteria, which apply only to hazardous waste treatment and storage facilities, zoning ordinance requirements must be consistently applied to both hazardous substances and hazardous waste uses.
- Zoning ordinances may place conditions on hazardous waste treatment and storage facilities in addition to the state siting criteria as long as such conditions are also placed on hazardous substances handling or processing uses in the same zone.
- Once zone designations are completed, no local ordinance, permit requirement, other requirement, or decision shall prohibit on the basis of land use considerations the construction of a hazardous waste treatment and/or storage facility, provided that the proposed site for the facility is consistent with the state siting criteria.

Within the parameters of the guiding principles listed above, zoning ordinances must be amended to include or otherwise be consistent with the following specific requirements:

1. Use Regulations

Hazardous waste treatment and storage facilities must be allowed as permitted uses, with a distinction drawn between onsite and offsite facilities, as follows:

a. Onsite Treatment and Storage Facilities

Onsite facilities treat and store hazardous wastes generated on the same property. Onsite treatment and storage facilities must be allowed as permitted uses in all zones, except residential, that allow the processing or handling of hazardous substances.

b. Offsite Treatment and Storage Facilities

Offsite facilities treat and store hazardous wastes from generators on properties other than those on which the offsite facilities are located.

Offsite treatment and storage facilities must be allowed as permitted uses in all zones that allow industrial and manufacturing uses that process or handle hazardous substances; they may also be allowed as permitted uses in other zones that allow the processing or handling of hazardous substances.

2. Performance Standards

The state siting criteria are to be applied on a case-by-case basis, and must be included as performance standards for onsite and offsite hazardous waste treatment and storage facilities in all designated zones. See Appendix A, State Siting Criteria.

3. Definitions of Terms

Depending on the language in individual ordinances, there may be terms that will need defining, such as onsite, offsite, and hazardous waste. Any new terms added to the text of the ordinance should be defined in the appropriate section of the ordinance.

4. Consistency with the Act

The zoning ordinance must be consistent with Chapter 70.105 RCW, specifically sections .005(8), .010, .225, and .230.

5. Consistency with the Zone Designation Guidelines

Zone designations must be consistent with these guidelines.

D. Zone Designation Submittal Requirements

Zone designations must be submitted to the Department by June 30, 1988 in the form of local certification that the zone designation process has been completed as required by RCW 70.105.225 and these guidelines. Such certification will be approved by the Department as required by RCW 70.105.225(6), in lieu of any other documentation by local government.

The Department recommends, but will not require, that draft zone designations be submitted for Department review and comment before local adoption and submittal of the certification of compliance.

See Appendix B, Zone Designation Compliance Certification, for specific requirements for content of local certifications. All points listed in Appendix B must be included in local compliance certifications to be approvable by the Department.

E. Approval of Existing Zoning Requirements

Local governments that determine that existing zoning complies with the zone designation requirements of RCW 70.105.225 and these guidelines may request approval of the existing ordinance. Requests for approval of existing zoning may be made using the same Appendix B compliance certification format as described in (D) above.

F. Exemption from Zone Designation Requirements

Local government may request exemption from the zone designation requirements if it can be demonstrated to the satisfaction of the Department that both of the following situations exist (RCW 70.105.225[7]):

1. No regulated hazardous wastes have been generated within the jurisdiction during the two calendar years immediately preceding the calendar year during which the exemption is requested (the Department will provide this information upon request); and
2. No significant portion of land within the jurisdiction can meet the siting criteria.

If an exemption is not approved by the Department, the local government requesting the exemption must proceed with zone designations, submit them to the Department by June 30, 1988, and otherwise meet the requirements of these guidelines.

G. Eligible Geographic Area Requirements

Local governments without land use zoning provisions shall designate eligible geographic areas within their jurisdiction, based on the state siting criteria. The area designations shall be subject to the same requirements as if they were zone designations (RCW 70.105.225[5]).

Eligible geographic areas must be established by ordinance. The ordinance must identify areas within the jurisdiction in which hazardous waste treatment and storage facilities can be located. Then the siting criteria must be applied on a case by case basis through the local permitting process.

Submittal of proposed eligible geographic area ordinances must be made to the Department by June 30, 1988, prior to local adoption. The Department will provide written comments and recommendations that should be considered by local government prior to adoption. The Department will provide final approval after review of the adopted ordinance.

VI. ROLE OF THE DEPARTMENT

The Department's role in the zone designation process is primarily informational, financial, and procedural, as follows:

A. Informational

The Department will provide, upon request, technical and procedural assistance to local government in interpreting and implementing the Act, these guidelines, and the state siting criteria.

B. Financial

The 1987 Legislature appropriated funds to the Department for grants to local government. The Department has grant guidelines available to assist local government in applying for grants. Under those guidelines, local government may apply for up to 75 percent state grants for undertaking the zone designation process.

C. Procedural

There are three principal procedural matters with which the Department will be involved in zone designations:

1. Acceptance of letters of intent.

The Department will not acknowledge receipt of letters of intent. However, if a letter does not meet these requirements, the reason it does not, and appropriate suggested changes, will be communicated back to the appropriate official.

2. Review and approval of requests for exemptions from the zone designation requirements.

The Department will approve or disapprove exemption requests within 90 days of submission by local government. If disapproved, the Department will state the facts upon which that decision is based and will transmit those facts back to the local government.

3. Approval of zone designations.

Zone designations will be approved by the Department based on local certification that the zone designation process has been completed as required by RCW 70.105.225 and these guidelines. See Appendix B, Zone Designation Compliance Certification, for specific requirements for content of local certifications. All points listed in Appendix B must be included in local compliance certifications to be approvable by the Department.

4. Preemption of local zone designation authority.

Effective July 1, 1988, or if a local government fails to designate zones in accordance with these guidelines, then that government's authority to approve, deny, or otherwise regulate any proposed designated zone facility is preempted and placed with the Department. Under such circumstances the Department becomes the sole decision-making authority with respect to permitting and regulating such facilities. Permits issued for treatment and storage facilities by the Department shall be in lieu of any and all permits, approvals, certifications, or conditions of any other state, regional, or local governmental authority that would otherwise apply (RCW 70.105.240).

However, it shall be Department policy not to invoke preemption in cases where proposed zone designations have been submitted to the Department by local government by June 30, 1988, and the review and adoption processes are proceeding on schedule as confirmed by the Department, but in no case later than 180 days.

VII. OTHER PROVISIONS

Coordinated Local Zoning

Coordinated zoning between local governments is encouraged, particularly in regard to zoning for offsite facilities. When such coordination clearly demonstrates that local needs for offsite treatment and storage facilities in one jurisdiction are being met by zone designations in other jurisdictions, there is no requirement that zones be designated for such facilities in both jurisdictions, provided that the coordinated zoning is documented by signed agreements between all affected jurisdictions.

Relationship to Local Hazardous Waste Planning

The requirement to designate eligible zones shall not be considered part of the local hazardous waste planning requirements (RCW 70.105.220[1][e]). Zone designations shall be carried out as part of the land use planning and regulatory process. The zone designations must be described in local hazardous waste plans, but only for purposes of information.

Zone Designation Amendments

Amendments to zoning ordinances that affect zone designations approved under these guidelines must be submitted to the Department with recertification that the amendments are consistent with Chapter 70.105 RCW and these guidelines.

State Environmental Policy Act (SEPA)

Facility zone designations must comply with SEPA.

Relationship to Comprehensive Land Use Plans

In the interest of forestalling procedural challenges of the siting of designated zone facilities, comprehensive plans and facility zone designations should be reviewed for mutual consistency.

VIII. DEFINITIONS

ACCESSORY USE means a use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building on the same lot with such principal use (guideline definition).

BATCH means any waste that is generated less frequently than once a month.

DANGEROUS WASTE means those solid wastes designated in WAC 173-303-070 through 173-303-103 as dangerous or extremely hazardous waste (WAC 173-303-040).

DEPARTMENT means the Washington Department of Ecology.

DESIGNATED FACILITY ZONE means a land use zone in which hazardous waste treatment and storage facilities are permitted uses, subject to the state siting criteria (guideline definition).

GENERATOR means any person, by site, whose act or process produces dangerous waste or whose act first causes a dangerous waste to become subject to regulation under the Dangerous Waste Regulations, Chapter 173-303 WAC (WAC 173-303-040).

HAZARDOUS SUBSTANCE means any liquid, solid, gas, sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste (RCW 70.105.010).

HAZARDOUS WASTE means and includes all dangerous and extremely hazardous waste (RCW 70.105.010).

INTERIM STATUS PERMIT means a temporary permit given to treatment, storage, and disposal facilities which qualify under WAC 173-303-805 (WAC 173-303-040).

ONSITE means the same, geographically contiguous, or bordering property. Onsite hazardous waste treatment and storage facilities treat and store wastes generated on the same property (guideline definition).

OFFSITE means hazardous waste treatment and storage facilities that treat and store waste from generators on properties other than those on which the offsite facilities are located (guideline definition).

PERMITTED USE means any use allowed in a zoning district and subject to the restrictions applicable to that zoning district (guideline definition).

PROCESSING OR HANDLING of hazardous substances means the use, storage, manufacture, production, or other land use activity involving hazardous substances. Hazardous substances processing and handling activities are normally found in commercial, manufacturing, and industrial zones. It does not include individually packaged household consumer products or quantities of hazardous substances of less than 5 gallons in volume per container (guideline definition).

PERFORMANCE STANDARD means, for purposes of these guidelines, the state siting criteria.

STORAGE means the holding of dangerous waste for a temporary period. Accumulation of dangerous waste by the generator on the site of generation is not storage as long as the generator complies with the applicable requirements of WAC 173-303-200 and 173-303-201.

SURFACE IMPOUNDMENT means a facility or part of a facility which is a natural topographic depression, manmade excavation, or diked area formed primarily of earthen materials (although it may be lined with manmade materials), and which is designed to hold an accumulation of liquid dangerous wastes or dangerous wastes containing free liquids. This term includes holding, storage, settling, and aeration pits, ponds, or lagoons (WAC 173-303-040).

TREATMENT means the physical, chemical, or biological processing of dangerous waste to make such wastes nondangerous or less dangerous, safer for transport, amenable for energy or material resource recovery, amenable for storage, or reduced in volume.

WASTE PILE means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage (WAC 173-303-040).

APPENDIX A

STATE SITING CRITERIA

It is a requirement of RCW 70.105.225(1) that zone designations shall be consistent with the state siting criteria. Accordingly, the state siting criteria must be included as performance standards for hazardous waste treatment and storage facilities in all designated zones. The criteria are to be applied on a case-by-case basis through the local permitting process.

The siting criteria represent the initial screen in the local and state permitting processes. Proposed designated zone facilities that do not meet setback distances or are prohibited by one or more criteria must be rejected by local government through their land use decision-making process. Those proposed facilities that meet the setbacks and are not prohibited from siting, move to the permit mitigative and condition setting phase. A facility permit application can be denied at any point in this process if it is determined that a problem exists with the site that cannot be satisfactorily mitigated to protect the public health and the environment.

Note: The state siting criteria have not been adopted by the Department as regulations to date. Those local agencies that choose to designate zones before the siting criteria are adopted by the Department should temporarily use the criteria described on the next page.

DRAFT
 STATE SITING CRITERIA
 FOR TREATMENT AND STORAGE FACILITIES

<u>CRITERIA*</u>	<u>TREATMENT AND STORAGE</u>	<u>SURFACE AND IMPOUNDMENT</u>	<u>WASTE AND PILE</u>
STRUCTURAL STABILITY			
Unstable Slopes	M		X
Coastal Flooding	X		X
SURFACE WATER QUALITY PROTECTION			
Proximity to Nearest Surface Water	M		1/4 mile
Flood Protection	M		X
Shorelines of Statewide Significance	M		1/2 mile
PROTECTION OF DOMESTIC WATER			
Watersheds	1/2 mile		1/2 mile
Distance to Ground Water Intake	1/4 mile		1/2 mile
AIR QUALITY PROTECTION			
Ambient Air Quality	M		M
SENSITIVE AREA PROTECTION			
Threatened and Endangered Species	X		X
Wetlands	X		1/4 mile
State Shorelines	M		X
Parks & Recreational Areas	X		1/4 mile
Archeological & Historic Areas & Natl Monuments	X		1/4 mile
TRANSPORTATION ROUTES			
Traffic Flow & Capacity	M		M
Safety Standards for Transport Routes	M		M
ADJACENT LAND USE CONSIDERATIONS			
Buffer Zone	M		200 feet
Minimum Distance from Residential Zones/Residences	100 feet/100 feet		1/2 mile/500 feet
Minimum Distance from Occupied Structures	100 feet		1/2 mile
Agricultural Lands	M		M
HOST COMMUNITY CONSIDERATIONS			
Utilities & Public Services	M		M
Costs for Emergency Services	M		M

X - A proposed facility is prohibited from siting under this criterion.

M - Mitigative measures required to site in this area.

* - See definitions on next page.

DEFINITIONS
STATE SITING CRITERIA

STRUCTURAL STABILITY - Intent. To prevent the release of hazardous waste into the environment because of structural damage to management facilities subject to the hazards identified below. The applicant shall provide supportive geologic, geotechnical, soils, and flood hazard information.

Unstable Slopes

To prevent structural damage due to unstable slopes, all surface impoundments and waste piles are prohibited from locating in an area where unstable slopes may impact the waste management unit.

Treatment or storage facilities locating in an area of unstable slopes must be designed, constructed, and maintained to withstand any impacts due to unstable slopes during the life of the facility.

"Unstable slopes" means any area where the mass movement of earth materials called landslides, rockfalls, mud slides, slumps, earth flows, or debris flows are likely to occur.

Coastal Flooding

To prevent structural damage due to coastal flooding, all facilities are prohibited from locating in areas subject to coastal flooding, including tsunamis or storm surges, consistent with the regulations and, where available, maps of the National Flood Insurance Program of the Federal Emergency Management Agency.

SURFACE WATER QUALITY PROTECTION - Intent. To maintain the water quality standards of the state's surface waters and to protect them from contamination due to hazardous waste management.

Surface Water

To prevent contamination of the surface waters of the state and related beneficial uses, all surface impoundment and waste pile facilities are prohibited from locating such that the facility buffer zone is within one-quarter (1/4) mile, measured horizontally, of the ordinary high water mark of any perennial surface water body. This restriction also applies to intermittent streams or rivers providing salmonid habitat as determined by the Department of Fisheries.

Treatment or storage facilities may locate such that the facility boundary is within one-quarter (1/4) mile of a surface water body except as noted under the 100-year flood plain criterion. These facilities must be designed, constructed, operated, and maintained to prevent surface water contamination due to worst case accidental spills, contaminated runoff or other discharges. A treatment or storage facility proposed for location within the jurisdiction of the Shoreline Management Act may be sited when consistent with a state approved shoreline master program.

"Perennial surface water bodies" are normally continuous with natural flows throughout the year or annually recurring bodies of water including lakes, rivers, ponds, irrigation canals, streams, reservoirs, inland waters, saltwaters and all other waters of the state (not to include manmade lagoons or impoundments for waste treatment or storage) within the jurisdiction of the state of Washington as defined by Chapter 90.48 RCW Water Pollution Control Act.

Shorelines of Statewide Significance

All surface impoundment and waste pile facilities are prohibited from locating within one-half mile of a shoreline of statewide significance as defined in Chapter 90.58 RCW, the Shoreline Management Act.

Treatment and storage facilities may locate within one-half mile of a shoreline of statewide significance.

Flood Protection

To prevent hazardous waste from contaminating surface waters and to ensure structural stability during flooding, all surface impoundment and waste pile facilities are prohibited from locating in a 100-year flood plain. Treatment or storage facilities may locate in a 100-year flood plain if they are engineered for flood proofing to protect against a washout of any waste by the 100-year flood plus three feet.

A contingency plan for the removal of wastes offsite in the event of a flood will not be considered to be engineered flood proofing.

"100-year flood" means a flood that has a one percent chance of being equalled or exceeded in any given year.

PROTECTION OF DOMESTIC WATER - Intent. To ensure safe domestic water supplies for the people of the state.

Public Water Supply Watersheds

No facility of any type shall locate within one mile of a designated municipal watershed for public water systems utilizing surface water as governed by Chapter 248-54-225 WAC, Watershed Control.

Ground Water Intake

For all surface impoundment and waste pile facilities there must be a minimum of one-half (1/2) mile, measured horizontally, from the facility buffer zone to the nearest ground water intake for domestic water.

For treatment and storage facilities there must be a minimum of one-quarter (1/4) mile, measured horizontally, from the facility boundary to the nearest ground water intake for domestic water.

"Domestic water" means any water used for human consumption, other domestic activities or livestock watering for which a water right has been granted.

AIR QUALITY PROTECTION - Intent. For the purpose of maintaining the ambient air quality standards of the state.

Ambient Air Quality

All facilities will comply with the applicable state or local air quality standards and regulations. On a case-by-case basis, an evaluation of the air quality impacts shall be conducted for each hazardous waste management facility application. The evaluation shall be conducted in accordance with Chapter 173-400 WAC, General Regulations for Air Pollution Sources and Chapter 173-403 WAC, Implementation of Regulations for Air Contaminant Sources.

The maximum ambient air concentration for toxic air contaminant emissions at or beyond the facility property boundaries, as estimated by dispersion modeling, shall not exceed an acceptable ambient level to be determined by the Department using health data as the basis for determination.

SENSITIVE AREA PROTECTION - Intent. To protect and preserve environmentally sensitive areas and recreational resources of the state.

Threatened or Endangered Species

All facilities are prohibited from locating in an area that would result in the taking of species or the direct elimination of critical habitat for federal or state listed threatened or endangered species.

"Critical habitat" is as defined by the Endangered Species Act of 1973 (Public Law 93-205).

Wetlands

All surface impoundment and waste pile facilities are prohibited from locating within one-quarter (1/4) mile of a wetland as defined by the U.S. Fish and Wildlife Service (Cowardin, et al, 1979).

Treatment and storage facilities are prohibited from locating in an area designated as a wetland.

Shorelines

All surface impoundment and waste pile facilities are prohibited from locating in an area designated as a shoreline of the state under the jurisdiction of the Shoreline Management Act.

Treatment, storage, and incineration facilities may site in a shoreline area when authorized as a conditional use as provided under a state approved shoreline master program.

Treatment and storage facilities associated with mining activities allowed in wildlife refuges will be permitted to locate in a wildlife refuge.

Parks, Recreational Areas and Natural Area Preserves

All surface impoundment, and waste pile facilities are prohibited from locating within one-half (1/2) mile of an area with city, county, state or federal designation as a park or recreational area or any area provided for under the Natural Area Preserve Act of 1972, Chapter 79.70 RCW.

Treatment and storage facilities are prohibited from locating in an area designated as a park, recreation area or natural area preserve.

Archaeological and Historic Areas and National Monuments

All surface impoundment and waste pile facilities are prohibited from locating within one-quarter (1/4) mile of an area with city, county, state or federal designation as an archaeological or historic area or a national monument.

TRANSPORTATION ROUTES - Intent. To ensure the safe transportation of hazardous waste to management facilities and minimize public exposure to hazardous waste transport vehicles.

Traffic Flow and Capacity

To minimize impacts to traffic flow and capacity, existing or proposed roadways in the immediate area leading to a facility will be of design and construction to accommodate the projected increase in traffic (truck and auto) due to the facility. Peak hour impacts at intersections and traffic control points may require mitigative measures.

Safety Standards for Transport Routes

To reduce accident risks during transport of hazardous waste, both major and minor roadways and railways leading to the facility site will be constructed and/or maintained to be free of obstructions and meet minimum sight distance requirements. All roadways must be capable of handling the increase in truck traffic due to the facility, maintain safety standards, and access to the facility must not traverse zoned residential neighborhoods.

ADJACENT LAND USE CONSIDERATIONS - Intent. To protect the population of the state from significant adverse impact due to hazardous waste management.

Buffer Zone

To provide added protection to adjacent land uses or resources of beneficial use, all surface impoundment and waste pile facilities must maintain at least a 200 foot buffer zone between the facility boundary and the nearest point of the facility property line.

Treatment and storage facilities must maintain a 50 foot buffer zone between the facility boundary and the nearest point of the facility property line or mitigative measures must be provided where the buffer zone is less than 50 feet.

Residences

To minimize the exposure of the people of the state to hazardous wastes, all surface impoundment and waste pile facilities are prohibited from locating such that the facility buffer zone is within one-half (1/2) mile of a residential zone. These facilities are also prohibited from locating such that the facility buffer zone is within 500 feet of a residence not located in a residential zone.

Treatment and storage facilities are prohibited from locations such that the facility property line is within 100 feet of the property line of a residence. Those facilities which treat or store reactive wastes must provide protection through mitigative measures equivalent with the Uniform Fire Code's "American Table of Distances for Storage of Explosives," Table 77-201, 1985 Edition.

Occupied Structures

To protect the people of the state in public gathering places from exposure to hazardous waste, all surface impoundment and waste pile facilities are prohibited from locating such that the facility buffer zone is within one-half (1/2) mile of an occupied structure.

Treatment and storage facilities are prohibited from locating such that the facility property line is within 100 feet of an occupied structure.

Any facility owned by and located within the property line of a school, college, or university is exempt from this standard with regard to that school, college, or university.

Agricultural Lands

To provide protection for food crops or food production activities, all facilities locating in or near agricultural use areas must eliminate or mitigate potential adverse impacts to agricultural activities due to waste management facilities, including but not limited to the effects of fumes or other emissions into the atmosphere.

HOST COMMUNITY CONSIDERATIONS - Intent. For the purpose of providing consideration of the impacts of hazardous waste management facilities on the public services of the host community.

Utilities and Public Services

The availability of utilities and public services must be considered when siting a facility, and if an extension or upgrade of any public service or utility system is necessitated for facility use, that cost will be incurred by the facility proponent.

Costs for Emergency Services

An increase in the need for host community emergency services (e.g., fire and hospital) created by the siting of a facility will be provided for by the facility proponent.

APPENDIX B

ZONE DESIGNATION COMPLIANCE CERTIFICATION

Zone designations must be submitted to the Department by June 30, 1988 in the form of local certification that the zone designation process has been completed as required by RCW 70.105.225 and these guidelines. Such certification will be approved by the Department as required by RCW 70.105.225(6), in lieu of any other documentation by local government.

Certifications must be signed by the highest executive official in the jurisdiction and must include a reasonable facsimile of all of the following:

I, name , the duly elected/appointed title of city/county , hereby certify that the city/county of name of jurisdiction has fully complied with the facility zone designation requirements of Chapter 70.105 RCW and the Department of Ecology's Facility Zone Designation Guidelines. I further certify that the name of jurisdiction zoning ordinance complies with all of the following:

1. The ordinance does not discriminate between hazardous waste treatment and storage uses and hazardous substances processing or handling uses; and
2. With the exception of the state siting criteria, which apply only to hazardous waste treatment and storage facilities, zoning ordinance requirements and conditions are the same for hazardous waste uses as for hazardous substances handling or processing uses in the same zone; and
3. Onsite hazardous waste treatment and storage facilities are allowed as permitted uses (use appropriate ordinance language) in all zones, except residential, that allow the processing or handling of hazardous substances; and
4. Offsite hazardous waste treatment and storage facilities are allowed as permitted uses (use appropriate ordinance language) in all zones that allow industrial and manufacturing uses that process or handle hazardous substances; and
5. The state siting criteria are included as performance standards for onsite and offsite hazardous waste treatment and storage facilities in all zones in which such facilities are permitted uses; and
6. All zone designation related terms are defined in the appropriate section of the ordinance; and

7. The zone designations, including all amendments required to implement the six points listed above in this certification, have been adopted in accordance with state law and established local administrative procedures.

Signature _____
Title _____
Date _____

Chapter 70.105 RCW

HAZARDOUS WASTE MANAGEMENT

Sections			
70.105.005	Legislative declaration.	70.105.250	Appeals to pollution control hearings board.
70.105.007	Purpose.	70.105.255	Department to provide technical assistance with local plans.
70.105.010	Definitions.	70.105.260	Department to assist conflict resolution activities related to siting facilities—Agreements may constitute conditions for permit.
70.105.020	Standards and regulations—Adoption—Notice and hearing—Consultation with other agencies.	70.105.270	Requirements of RCW 70.105.200 through 70.105.230 and 70.105.240(4) not mandatory without legislative appropriation.
70.105.030	List and information to be furnished by depositor of hazardous waste—Rules and regulations.	70.105.900	Short title—1985 c 448.
70.105.040	Disposal site or facility—Acquisition—Disposal fee schedule.		Hazardous materials incidents, handling and liability: RCW 70.136.010 through 70.136.070.
70.105.050	Disposal at other than approved site prohibited—Exception.		Hazardous waste fees: Chapter 70.105A RCW.
70.105.060	Review of rules, regulations, criteria and fee schedules.		Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.
70.105.070	Criteria for receiving waste at disposal site.		Transport of hazardous materials state patrol authority over: Chapter 46.48 RCW.
70.105.080	Violations—Civil penalties—Enforcement—Procedure.		
70.105.090	Violations—Gross misdemeanor.		
70.105.095	Issuance of order requiring compliance—Penalty for noncompliance—Hearing—Appeal to pollution control hearings board.		
70.105.097	Action for damages resulting from violation—Attorneys' fees.		
70.105.100	Powers and duties of department.		
70.105.105	Duty of department to regulate PCB waste.		
70.105.110	Application of chapter to radioactive waste—Regulation of dangerous wastes associated with energy facilities.		
70.105.120	Authority of attorney general.		
70.105.130	Department's powers as designated agency under federal act.		
70.105.135	Copies of notification forms or annual reports to officials responsible for fire protection.		
70.105.140	Rules implemented under RCW 70.105.130—Review.		
70.105.145	Department's authority to participate in and administer federal act.		
70.105.150	Declaration—Management of hazardous waste—Priorities—Definitions.		
70.105.160	Waste management study—Public hearings—Adoption or modification of rules—Recommendations to legislature.		
70.105.165	Disposal of dangerous wastes at commercial off-site land disposal facilities—Limitations.		
70.105.170	Waste management—Consultative services—Technical assistance—Confidentiality.		
70.105.180	Disposition of fines and penalties—Earnings.		
70.105.200	Hazardous waste management plan.		
70.105.210	Department to develop criteria for siting of hazardous waste management facilities.		
70.105.215	Department to adopt rules for permits for hazardous substances treatment facilities.		
70.105.220	Local governments to prepare local hazardous waste plans—Basis—Elements required.		
70.105.225	Local governments to designate zones—Departmental guidelines—Approval of local government zone designations or amendments—Exemption.		
70.105.230	Local governments to submit letter of intent to identify or designate zones and submit management plans—Department to prepare plan in event of failure to act.		
70.105.235	Grants to local governments for plan preparation, implementation, and designation of zones—Matching funds—Qualifications.		
70.105.240	State preemption—Department sole authority—Local requirements superseded—State authority over designated zone facilities.		
70.105.245	Department may require notice of intent for management facility permit.		

RCW 70.105.005 Legislative declaration. The legislature hereby finds and declares:

(1) The health and welfare of the people of the state depend on clean and pure environmental resources unaffected by hazardous waste contamination. At the same time, the quality of life of the people of the state is in part based upon a large variety of goods produced by the economy of the state. The complex industrial processes that produce these goods also generate waste byproducts, some of which are hazardous to the public health and the environment if improperly managed.

(2) Safe and responsible management of hazardous waste is necessary to prevent adverse effects on the environment and to protect public health and safety.

(3) The availability of safe, effective, economical, and environmentally sound facilities for the management of hazardous waste is essential to protect public health and the environment and to preserve the economic strength of the state.

(4) Strong and effective enforcement of federal and state hazardous waste laws and regulations is essential to protect the public health and the environment and to meet the public's concerns regarding the acceptance of needed new hazardous waste management facilities.

(5) Negotiation, mediation, and similar conflict resolution techniques are useful in resolving concerns over the local impacts of siting hazardous waste management facilities.

(6) Safe and responsible management of hazardous waste requires an effective planning process that involves local and state governments, the public, and industry.

(7) Public acceptance and successful siting of needed new hazardous waste management facilities depends on several factors, including:

(a) Public confidence in the safety of the facilities;

(b) Assurance that the hazardous waste management priorities established in this chapter are being carried out to the maximum degree practical;

(c) Recognition that all state citizens benefit from certain products whose manufacture results in the generation of hazardous byproducts, and that all state citizens must, therefore, share in the responsibility for finding safe and effective means to manage this hazardous waste; and

(d) Provision of adequate opportunities for citizens to meet with facility operators and resolve concerns about local hazardous waste management facilities

(8) Due to the controversial and regional nature of facilities for the disposal and incineration of hazardous waste, the facilities have had difficulty in obtaining necessary local approvals. The legislature finds that there is a state-wide interest in assuring that such facilities can be sited.

It is therefore the intent of the legislature to preempt local government's authority to approve, deny, or otherwise regulate disposal and incineration facilities, and to vest in the department of ecology the sole authority among state, regional, and local agencies to approve, deny, and regulate preempted facilities, as defined in this chapter.

In addition, it is the intent of the legislature that such complete preemptive authority also be vested in the department for treatment and storage facilities, in addition to disposal and incineration facilities, if a local government fails to carry out its responsibilities established in RCW 70.105.225.

It is further the intent of the legislature that no local ordinance, permit requirement, other requirement, or decision shall prohibit on the basis of land use considerations the construction of a hazardous waste management facility within any zone designated and approved in accordance with this chapter, provided that the proposed site for the facility is consistent with applicable state siting criteria.

(9) With the exception of the disposal site authorized for acquisition under this chapter, the private sector has had the primary role in providing hazardous waste management facilities and services in the state. It is the intent of the legislature that this role be encouraged and continue into the future to the extent feasible. Whether privately or publicly owned and operated, hazardous waste management facilities and services should be subject to strict governmental regulation as provided under this chapter.

(10) Wastes that are exempt or excluded from full regulation under this chapter due to their small quantity or household origin have the potential to pose significant risk to public health and the environment if not properly managed. It is the intent of the legislature that the specific risks posed by such waste be investigated and assessed and that programs be carried out as necessary to manage the waste appropriately. In addition, the legislature finds that, because local conditions vary substantially in regard to the quantities, risks, and management opportunities available for such wastes, local government is the appropriate level of government to plan for and carry out programs to manage moderate-risk waste, with assistance and coordination provided by the department. [1985 c 448 § 2.]

Severability—1985 c 448: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 448 § 19.]

RCW 70.105.007 Purpose. The purpose of this chapter is to establish a comprehensive state-wide framework for the planning, regulation, control, and management of hazardous waste which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of the state. To this end it is the purpose of this chapter:

(1) To provide broad powers of regulation to the department of ecology relating to management of hazardous wastes and releases of hazardous substances;

(2) To promote waste reduction and to encourage other improvements in waste management practices;

(3) To promote cooperation between state and local governments by assigning responsibilities for planning for hazardous wastes to the state and planning for moderate-risk waste to local government;

(4) To provide for prevention of problems related to improper management of hazardous substances before such problems occur; and

(5) To assure that needed hazardous waste management facilities may be sited in the state, and to ensure the safe operation of the facilities. [1985 c 448 § 3.]

Severability—1985 c 448: See note following RCW 70.105.005.

RCW 70.105.010 Definitions. The words and phrases defined in this section shall have the meanings indicated when used in this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or his designee.

(3) "Disposal site" means a geographical site in or upon which hazardous wastes are disposed of in accordance with the provisions of this chapter.

(4) "Dispose or disposal" means the discarding or abandoning of hazardous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned.

(5) "Dangerous wastes" means any discarded, useless, unwanted, or abandoned nonradioactive substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

(a) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(b) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

(6) "Extremely hazardous waste" means any dangerous waste which

(a) will persist in a hazardous form for several years or more at a disposal site and which in its persistent form

(i) presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of man or wildlife, and

(ii) is highly toxic to man or wildlife

(b) if disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment.

(7) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

(8) "Pesticide" shall have the meaning of the term as defined in RCW 15.58.030 as now or hereafter amended.

(9) "Solid waste advisory committee" means the same advisory committee as per RCW 70.95.040 through 70.95.070.

(10) "Designated zone facility" means any facility that requires an interim or final status permit under rules adopted under this chapter and that is not a preempted facility as defined in this section.

(11) "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for recycling, storing, treating, incinerating, or disposing of hazardous waste.

(12) "Preempted facility" means any facility that includes as a significant part of its activities any of the following operations: (a) Landfill, (b) incineration, (c) land treatment, (d) surface impoundment to be closed as a landfill, or (e) waste pile to be closed as a landfill.

(13) "Hazardous household substances" means those substances identified by the department as hazardous household substances in the guidelines developed under RCW 70.105.220.

(14) "Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as described in rules adopted under this chapter.

(15) "Hazardous waste" means and includes all dangerous and extremely hazardous waste.

(16) "Local government" means a city, town, or county.

(17) "Moderate-risk waste" means (a) any waste that exhibits any of the properties of hazardous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation, and (b) any household wastes which are generated from the disposal of substances identified by the department as hazardous household substances. [1985 c 448 § 1; 1975-'76 2nd ex. s. c 101 § 1.]

Severability—1985 c 448: See note following RCW 70.105.005.

Appropriation—1975-'76 2nd ex. s. c 101 § 12: "There is appropriated to the department of ecology from the state and local improvements revolving account of the general fund out of the proceeds of the sale of bonds or notes as authorized in chapter 43.83A RCW (Referendum 26) the sum of one million three hundred fifty-three thousand dollars, or as much thereof as may be necessary, for the following purposes:

(1) The sum of one hundred fifty-three thousand dollars for the department to develop a comprehensive plan for the adequate treatment of extremely hazardous wastes being generated in the state, and the techniques and requirements necessary for adequately disposing of such wastes and for securing and monitoring disposal sites. The objective of such a comprehensive plan shall be to determine the statewide facility requirements for the adequate disposal of extremely hazardous wastes being generated in the state and for those expected to be generated in the future.

(2) The sum of one million two hundred thousand dollars for the purchase of real property on the Hanford Reservation by the department for the construction of a disposal site for extremely hazardous wastes and for the construction of facilities necessary for the operation of the disposal site including, but not limited to, security and monitoring facilities." [1975-'76 2nd ex. s. c 101 § 12.]

RCW 70.105.020 Standards and regulations—Adoption—Notice and hearing—Consultation with other agencies. The department after notice and public hearing shall:

(1) Adopt regulations designating as extremely hazardous wastes subject to the provisions of this chapter those substances which exhibit characteristics consistent with the definition provided in RCW 70.105.010(6);

(2) Adopt and may revise when appropriate, minimum standards and regulations for disposal of extremely hazardous wastes to protect against hazards to the public, and to the environment. Before adoption of such standards and regulations, the department shall consult with appropriate agencies of interested local governments and secure technical assistance from the department of agriculture, the department of social and health services, the department of game, the department of natural resources, the department of fisheries, the department of labor and industries, and the department of community development, through the director of fire protection. [1986 c 266 § 119; 1975-'76 2nd ex. s. c 101 § 2.]

Severability—1986 c 266: See note following RCW 38.52.005.

RCW 70.105.030 List and information to be furnished by depositor of hazardous waste—Rules and regulations. (1) After the effective date of the regulations adopted by the department designating extremely hazardous wastes, any person planning to dispose of extremely hazardous waste as designated by the department shall provide the operator of the disposal site with a list setting forth the extremely hazardous wastes for disposal, the amount of such wastes, the general chemical and mineral composition of such waste listed by approximate maximum and minimum percentages, and the origin of any such waste. Such list, when appropriate, shall include information on antidotes, first aid, or safety measures to be taken in case of accidental contact with the particular extremely hazardous waste being disposed.

(2) The department shall adopt and enforce all rules and regulations including the form and content of the list, necessary and appropriate to accomplish the purposes of subsection (1) of this section. [1975-'76 2nd ex. s. c 101 § 3.]

RCW 70.105.040 Disposal site or facility—Acquisition—Disposal fee schedule. (1) The department through the department of general administration, is

authorized to acquire interests in real property from the federal government on the Hanford Reservation by gift, purchase, lease, or other means, to be used for the purpose of developing, operating, and maintaining an extremely hazardous waste disposal site or facility by the department, either directly or by agreement with public or private persons or entities: *Provided*, That lands acquired under this section shall not be inconsistent with a local comprehensive plan approved prior to January 1, 1976: *And provided further*, That no lands acquired under this section shall be subject to land use regulation by a local government.

(2) The department may establish an appropriate fee schedule for use of such disposal facilities to offset the cost of administration of this chapter and the cost of development, operation, maintenance, and perpetual management of the disposal site. If operated by a private entity, the disposal fee may be such as to provide a reasonable profit. [1975-'76 2nd ex.s. c 101 § 4]

RCW 70.105.050 Disposal at other than approved site prohibited—Exception. No person shall dispose of designated extremely hazardous wastes at any disposal site in the state other than the disposal site established and approved for such purpose under provisions of this chapter, except when such wastes are going to a processing facility which will result in the waste being reclaimed, treated, detoxified, neutralized, or otherwise processed to remove its harmful properties or characteristics. [1975-'76 2nd ex.s. c 101 § 5.]

RCW 70.105.060 Review of rules, regulations, criteria and fee schedules. All rules, regulations, criteria, and fee schedules adopted by the department to implement the provisions of this chapter shall be reviewed by the solid waste advisory committee for the purpose of recommending revisions, additions, or modifications thereto as provided for the review of solid waste regulations and standards pursuant to chapter 70.95 RCW. [1975-'76 2nd ex.s. c 101 § 6.]

RCW 70.105.070 Criteria for receiving waste at disposal site. The department may elect to receive dangerous waste at the site provided under this chapter, provided

(1) it is upon request of the owner, producer, or person having custody of the waste, and

(2) upon the payment of a fee to cover disposal

(3) it can be reasonably demonstrated that there is no other disposal sites in the state that will handle such dangerous waste, and

(4) the site is designed to handle such a request or can be modified to the extent necessary to adequately dispose of the waste, or

(5) if a demonstrable emergency and potential threat to the public health and safety exists. [1975-'76 2nd ex.s. c 101 § 7.]

RCW 70.105.080 Violations—Civil penalties—Enforcement—Procedure. (1) Every person who fails to comply with any provision of this chapter or of the

rules adopted thereunder shall be subjected to a penalty in an amount of not more than ten thousand dollars per day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department, describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, giving consideration to the degree of hazard associated with the violation, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department of ecology shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper. Any penalty imposed by the provisions of this section shall be subject to review by the pollution control hearings board in accordance with chapter 43.21B RCW.

(3) Any penalty imposed by this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or petition for review by the hearings board is filed. When such an application for remission or mitigation is made, any penalty incurred pursuant to this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application. Any penalty resulting from a decision of the hearings board shall become due and payable thirty days after receipt of the notice setting forth the decision.

(4) If the amount of any penalty is not paid to the department of ecology within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. [1983 c 172 § 2; 1975-'76 2nd ex.s. c 101 § 8.]

Severability—1983 c 172: See note following RCW 70.105.097.

RCW 70.105.090 Violations—Gross misdemeanor. In addition to the penalties imposed pursuant to RCW 70.105.080, any person who violates any provisions of this chapter, or of the rules implementing this chapter, and any person who knowingly aids or abets another in conducting any violation of any provisions of

this chapter, or of the rules implementing this chapter, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than ten thousand dollars, and/or by imprisonment in the county jail for not more than one year, for each separate violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct offense. [1984 c 237 § 1; 1983 c 172 § 3; 1975-'76 2nd ex.s. c 101 § 9]

Severability—1983 c 172: See note following RCW 70.105.097.

RCW 70.105.095 Issuance of order requiring compliance—Penalty for noncompliance—Hearing—Appeal to pollution control hearings board. (1) Whenever on the basis on any information the department determines that a person has violated or is about to violate any provision of this chapter, the department may issue an order requiring compliance either immediately or within a specified period of time. The order shall be delivered by registered mail or personally to the person against whom the order is directed.

(2) Any person who fails to take corrective action as specified in a compliance order shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance. In addition, the department may suspend or revoke any permits and/or certificates issued under the provisions of this chapter to a person who fails to comply with an order directed against him.

(3) Any order shall become final unless, no later than thirty days after the order is served, the person or persons named in the order request a public hearing. The request shall be delivered either by registered mail or personally to the department. Upon receiving a request for a hearing, the department shall promptly conduct a public hearing to consider testimony and new information regarding the order. The department may, at its discretion, either modify the order or maintain it unchanged. The order shall become effective immediately after the department reaches a final decision, unless the department modifies the order to specify another compliance date.

(4) Any person directly affected by a compliance order or by any decision of the department regarding a compliance order may appeal the order or decision to the pollution control hearings board in accordance with chapter 43.21B RCW. [1983 c 172 § 4.]

Severability—1983 c 172: See note following RCW 70.105.097.

RCW 70.105.097 Action for damages resulting from violation—Attorneys' fees. A person injured as a result of a violation of this chapter or the rules adopted thereunder may bring an action in superior court for the recovery of the damages. A conviction or imposition of a penalty under this chapter is not a prerequisite to an action under this section.

The court may award reasonable attorneys' fees to a prevailing injured party in an action under this section. [1983 c 172 § 1.]

Severability—1983 c 172: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 172 § 5]

RCW 70.105.100 Powers and duties of department. The department in performing its duties under this chapter may:

(1) Conduct studies and coordinate research programs pertaining to extremely hazardous waste management;

(2) Render technical assistance to generators of dangerous and extremely hazardous wastes and to state and local agencies in the planning and operation of hazardous waste programs;

(3) Encourage and provide technical assistance to waste generators to form and operate a "waste exchange" for the purpose of finding users for dangerous and extremely hazardous wastes that would otherwise be disposed of: *Provided*, That such technical assistance shall not violate the confidentiality of manufacturing processes; and

(4) Provide for appropriate surveillance and monitoring of extremely hazardous waste disposal practices in the state. [1975-'76 2nd ex.s. c 101 § 10.]

RCW 70.105.105 Duty of department to regulate PCB waste. The department of ecology shall regulate under chapter 70.105 RCW, wastes generated from the salvaging, rebuilding, or discarding of transformers or capacitors that have been sold or otherwise transferred for salvage or disposal after the completion or termination of their useful lives and which contain polychlorinated biphenyls (PCB's) and whose disposal is not regulated under 40 CFR part 761. Nothing in this section shall prohibit such wastes from being incinerated or disposed of at facilities permitted to manage PCB wastes under 40 CFR part 761. [1985 c 65 § 1.]

RCW 70.105.110 Application of chapter to radioactive waste—Regulation of dangerous wastes associated with energy facilities. (1) With the exception of subsection (2), nothing in this chapter shall apply to any radioactive waste or radioactive material.

(2) Nothing in this chapter shall alter, amend, or supersede the provisions of chapter 80.50 RCW, except that, notwithstanding any provision of chapter 80.50 RCW, regulation of dangerous wastes associated with energy facilities from generation to disposal shall be solely by the department pursuant to chapter 70.105 RCW. In the implementation of said section, the department shall consult and cooperate with the energy facility site evaluation council and, in order to reduce duplication of effort and to provide necessary coordination of monitoring and on-site inspection programs at energy facility sites, any on-site inspection by the department that may be required for the purposes of this chapter shall be performed pursuant to an interagency coordination agreement with the council.

(3) To facilitate the implementation of this chapter, the energy facility site evaluation council may require certificate holders to remove from their energy facility sites any dangerous wastes, controlled by this chapter, within ninety days of their generation. [1984 c 237 § 3; 1975-'76 2nd ex s. c 101 § 11]

RCW 70.105.120 Authority of attorney general. At the request of the department, the attorney general is authorized to bring such injunctive, declaratory, or other actions to enforce any requirement of this chapter. [1980 c 144 § 2]

RCW 70.105.130 Department's powers as designated agency under federal act. (1) The department is designated as the state agency for implementing the federal resource conservation and recovery act (42 U.S.C. Sec. 6901 et seq.).

(2) The power granted to the department by this section is the authority to:

(a) Establish a permit system for owners or operators of facilities which treat, store, or dispose of dangerous wastes: *Provided*, That spent containers of pesticides or herbicides which have been used in normal farm operations and which are not extremely hazardous wastes, shall not be subject to the permit system;

(b) Establish standards for the safe transport, treatment, storage, and disposal of dangerous wastes as may be necessary to protect human health and the environment;

(c) Establish, to implement this section:

(i) A manifest system to track dangerous wastes;

(ii) Reporting, monitoring, recordkeeping, labeling, sampling requirements; and

(iii) Owner, operator, and transporter responsibility;

(d) Enter at reasonable times establishments regulated under this section for the purposes of inspection, monitoring, and sampling; and

(e) Adopt rules necessary to implement this section. [1980 c 144 § 1.]

RCW 70.105.135 Copies of notification forms or annual reports to officials responsible for fire protection. Any person who generates, treats, stores, disposes, or otherwise handles dangerous or extremely hazardous wastes shall provide copies of any notification forms, or annual reports that are required pursuant to RCW 70.105.130 to the fire departments or fire districts that service the areas in which the wastes are handled upon the request of the fire departments or fire districts. In areas that are not serviced by a fire department or fire district, the forms or reports shall be provided to the sheriff or other county official designated pursuant to RCW 48.48.060 upon the request of the sheriff or other county official. This section shall not apply to the transportation of hazardous wastes. [1986 c 82 § 1.]

RCW 70.105.140 Rules implemented under RCW 70.105.130—Review. Rules implementing RCW 70.105.130 shall be submitted to the house and senate committees on ecology for review prior to being adopted

in accordance with chapter 34.04 RCW. [1980 c 144 § 3.]

RCW 70.105.145 Department's authority to participate in and administer federal act. Notwithstanding any other provision of chapter 70.105 RCW, the department of ecology is empowered to participate fully in and is empowered to administer all aspects of the programs of the federal Resource Conservation and Recovery Act, as it exists on June 7, 1984, (42 U.S.C. Sec. 6901 et seq.), contemplated for participation and administration by a state under that act. [1984 c 237 § 2; 1983 c 270 § 2]

Severability—1983 c 270: See note following RCW 90.48.260.

RCW 70.105.150 Declaration—Management of hazardous waste—Priorities—Definitions. The legislature hereby declares that:

(1) The health and welfare of the people of the state depend on clean and pure environmental resources unaffected by hazardous waste contamination. Management and regulation of hazardous waste disposal should encourage practices which result in the least amount of waste being produced. Towards that end, the legislature finds that the following priorities in the management of hazardous waste are necessary and should be followed in order of descending priority as applicable:

(a) Waste reduction;

(b) Waste recycling;

(c) Physical, chemical, and biological treatment;

(d) Incineration;

(e) Solidification/stabilization treatment;

(f) Landfill.

(2) As used in this section:

(a) "Waste reduction" means reducing waste so that hazardous byproducts are not produced;

(b) "Waste recycling" means reusing waste materials and extracting valuable materials from a waste stream;

(c) "Physical, chemical, and biological treatment" means processing the waste to render it completely innocuous, produce a recyclable byproduct, reduce toxicity, or substantially reduce the volume of material requiring disposal;

(d) "Incineration" means reducing the volume or toxicity of wastes by use of an enclosed device using controlled flame combustion;

(e) "Solidification/stabilization treatment" means the use of encapsulation techniques to solidify wastes and make them less permeable or leachable; and

(f) "Landfill" means a disposal facility, or part of a facility, at which waste is placed in or on land and which is not a land treatment facility, surface impoundment, or injection well. [1983 1st ex s. c 70 § 1.]

RCW 70.105.160 Waste management study—Public hearings—Adoption or modification of rules—Recommendations to legislature. The department shall conduct a study to determine the best management practices for categories of waste for the priority waste management methods established in RCW 70.105.150, with due consideration in the course of the study to sound environmental management and available

technology. As an element of the study, the department shall review methods that will help achieve the priority of RCW 70.105.150(1)(a), waste reduction. Before issuing any proposed regulations, the department shall conduct public hearings regarding the best management practices for the various waste categories studied by the department. After conducting the study, the department shall prepare new rules or modify existing rules as appropriate to promote implementation of the priorities established in RCW 70.105.150 for management practices which assure use of sound environmental management techniques and available technology. The preliminary study shall be completed by July 1, 1986, and the rules shall be adopted by July 1, 1987. The solid waste advisory committee shall review the studies and the new or modified rules and submit recommendations to the legislature by January 1, 1988, regarding policy options (such as fee incentives, disposal bans, etc.) that will be used to reduce the production of dangerous and extremely hazardous waste in Washington state.

The studies shall be updated at least once every five years. The funding for these studies shall be from the hazardous waste control and elimination account, subject to legislative appropriation. [1984 c 254 § 2; 1983 1st ex s. c 70 § 2]

Severability—1984 c 254: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 254 § 3]

RCW 70.105.165 Disposal of dangerous wastes at commercial off-site land disposal facilities—**Limitations.** (1) Independent of the processing or issuance of any or all federal, state, and local permits for disposal of dangerous wastes, no disposal of dangerous wastes at a commercial off-site land disposal facility may be undertaken prior to July 1, 1986, unless:

(a) The disposal results from actions taken under RCW 70.105A.060 (2) and (3), or results from other emergency situations; or

(b) Studies undertaken by the department under RCW 70.105.160 to determine the best management practices for various waste categories under the priority waste management methods established in RCW 70.105.150 are completed for the particular wastes or waste categories to be disposed of and any regulatory revisions deemed necessary by the department are proposed and do not prohibit land disposal of such wastes; or

(c) Final regulations have been adopted by the department that allow for such disposal.

(2) Construction of facilities used solely for the purpose of disposal of wastes that have not met the requirements of subsection (1) of this section shall not be undertaken by any developer of a dangerous waste disposal facility.

(3) The department shall prioritize the studies of waste categories undertaken under RCW 70.105.160 to provide initial consideration of those categories most likely to be suitable for land disposal. Any regulatory changes deemed necessary by the department shall be

proposed and subjected to the rule-making process by category as the study of each waste category is completed. All of the study shall be completed, and implementing regulations proposed, by July 1, 1986.

(4) Any final permit issued by the department before the adoption of rules promulgated as a result of the study conducted under RCW 70.105.160 shall be modified as necessary to be consistent with such rules. [1984 c 254 § 1.]

Severability—1984 c 254: See note following RCW 70.105.160.

RCW 70.105.170 Waste management—**Consultative services**—**Technical assistance**—**Confidentiality.** Consistent with the purposes of RCW 70.105.150 and 70.105.160, the department is authorized to promote the priority waste management methods listed in RCW 70.105.150 by establishing or assisting in the establishment of: (1) Consultative services which, in conjunction with any business or industry requesting such service, study and recommend alternative waste management practices; and (2) technical assistance, such as a toll-free telephone service, to persons interested in waste management alternatives. Any person receiving such service or assistance may, in accordance with state law, request confidential treatment of information about their manufacturing or business practices. [1983 1st ex s. c 70 § 3]

RCW 70.105.180 Disposition of fines and penalties—**Earnings.** All fines and penalties collected under this chapter shall be deposited in the hazardous waste control and elimination account, which is hereby created in the state treasury. Moneys in the account collected from fines and penalties shall be expended exclusively by the department of ecology for the purposes of *this act, subject to legislative appropriation. Other sources of funds deposited in this account may also be used for the purposes of *this act. All earnings of investments of balances in the hazardous waste control and elimination account shall be credited to the general fund. [1985 c 57 § 70; 1983 1st ex s. c 70 § 4.]

*Reviser's note: *This act* [1983 1st ex s. c 70] consists of RCW 70.105.150, 70.105.160, 70.105.170 and 70.105.180.

Effective date—1985 c 57: See note following RCW 15.52.320.

RCW 70.105.200 Hazardous waste management plan. (1) The department shall develop, and shall update at least once every five years, a state hazardous waste management plan. The plan shall include, but shall not be limited to, the following elements:

(a) A state inventory and assessment of the capacity of existing facilities to treat, store, dispose, or otherwise manage hazardous waste;

(b) A forecast of future hazardous waste generation;

(c) A description of the plan or program required by RCW 70.105.160 to promote the waste management priorities established in RCW 70.105.150;

(d) Siting criteria as appropriate for hazardous waste management facilities, including such criteria as may be appropriate for the designation of eligible zones for designated zone facilities. However, these criteria shall not

prevent the continued operation, at or below the present level of waste management activity, of existing facilities on the basis of their location in areas other than those designated as eligible zones pursuant to RCW 70.105.225;

(e) Siting policies as deemed appropriate by the department; and

(f) A plan or program to provide appropriate public information and education relating to hazardous waste management. The department shall ensure to the maximum degree practical that these plans or programs are coordinated with public education programs carried out by local government under RCW 70.105.220.

(2) The department shall seek, encourage, and assist participation in the development, revision, and implementation of the state hazardous waste management plan by interested citizens, local government, business and industry, environmental groups, and other entities as appropriate.

(3) Siting criteria shall be completed by December 31, 1986. Other plan components listed in subsection (1) of this section shall be completed by June 30, 1987.

(4) The department shall incorporate into the state hazardous waste management plan those elements of the local hazardous waste management plans that it deems necessary to assure effective and coordinated programs throughout the state. [1985 c 448 § 4.]

Severability—1985 c 448: See note following RCW 70.105.005.

RCW 70.105.210 Department to develop criteria for siting of hazardous waste management facilities. By December 31, 1986, the department shall develop and adopt criteria for the siting of hazardous waste management facilities. These criteria will be part of the state hazardous waste management plan as described in RCW 70.105.200. To the extent practical, these criteria shall be designed to minimize the short-term and long-term risks and costs that may result from hazardous waste management facilities. These criteria may vary by type of facilities and may consider natural site characteristics and engineered protection. Criteria may be established for:

- (1) Geology;
 - (2) Surface and groundwater hydrology;
 - (3) Soils;
 - (4) Flooding;
 - (5) Climatic factors;
 - (6) Unique or endangered flora and fauna;
 - (7) Transportation routes;
 - (8) Site access;
 - (9) Buffer zones;
 - (10) Availability of utilities and public services;
 - (11) Compatibility with existing uses of land;
 - (12) Shorelines and wetlands;
 - (13) Sole-source aquifers;
 - (14) Natural hazards; and
 - (15) Other factors as determined by the department.
- [1985 c 448 § 5.]

Severability—1985 c 448: See note following RCW 70.105.005.

RCW 70.105.215 Department to adopt rules for permits for hazardous substances treatment facilities. The legislature recognizes the need for new, modified, or expanded facilities to treat, incinerate, or otherwise process or dispose of hazardous substances safely. In order to encourage the development of such facilities, the department shall adopt rules as necessary regarding the permitting of such facilities to ensure the most expeditious permit processing possible consistent with the substantive requirements of applicable law. If owners and operators are not the same entity, the operator shall be the permit applicant and responsible for the development of the permit application and all accompanying materials, as long as the owner also signs the application and certifies its ownership of the real property described in the application, and acknowledges its awareness of the contents of the application and receipt of a copy thereof. [1986 c 210 § 3.]

RCW 70.105.220 Local governments to prepare local hazardous waste plans—Basis—Elements required. (1) Each local government, or combination of contiguous local governments, is directed to prepare a local hazardous waste plan which shall be based on state guidelines and include the following elements:

(a) A plan or program to manage moderate-risk wastes that are generated or otherwise present within the jurisdiction. This element shall include an assessment of the quantities, types, generators, and fate of moderate-risk wastes in the jurisdiction. The purpose of this element is to develop a system of managing moderate-risk waste, appropriate to each local area, to ensure protection of the environment and public health;

(b) A plan or program to provide for ongoing public involvement and public education in regard to the management of moderate-risk waste. This element shall provide information regarding:

(i) The potential hazards to human health and the environment resulting from improper use and disposal of the waste; and

(ii) Proper methods of handling, reducing, recycling, and disposing of the waste;

(c) An inventory of all existing generators of hazardous waste and facilities managing hazardous waste within the jurisdiction. This inventory shall be based on data provided by the department;

(d) A description of the public involvement process used in developing the plan;

(e) A description of the eligible zones designated in accordance with RCW 70.105.225. However, the requirement to designate eligible zones shall not be considered part of the local hazardous waste planning requirements; and

(f) Other elements as deemed appropriate by local government.

(2) To the maximum extent practicable, the local hazardous waste plan shall be coordinated with other hazardous materials-related plans and policies in the jurisdiction.

(3) In recognition of the role of the private sector in providing hazardous and moderate-risk waste management facilities and transportation services, and in addition to other public involvement activities that may be required, local governments shall coordinate with those persons involved in providing such facilities and services.

(4) (a) The department shall prepare guidelines for the development of local hazardous waste plans. The guidelines shall be prepared in consultation with local governments and shall be completed by December 31, 1986. The guidelines shall include a list of substances identified as hazardous household substances.

(b) In preparing the guidelines under (a) of this subsection, the department shall review and assess information on pilot projects that have been conducted for moderate-risk waste management. The department shall encourage additional pilot projects as needed to provide information to improve and update the guidelines.

(5) The department shall consult with retailers, trade associations, public interest groups, and appropriate units of local government to encourage the development of voluntary public education programs on the proper handling of hazardous household substances.

(6) Local hazardous waste plans shall be completed and submitted to the department no later than June 30, 1990. Local governments may from time to time amend the local plan.

(7) Each local government, or combination of contiguous local governments, shall submit its local hazardous waste plan or amendments thereto to the department. The department shall approve or disapprove local hazardous waste plans or amendments by December 31, 1990, or within ninety days of submission, whichever is later. The department shall approve a local hazardous waste plan if it determines that the plan is consistent with this chapter and the guidelines under subsection (4) of this section. If approval is denied, the department shall submit its objections to the local government within ninety days of submission. However, for plans submitted between January 1, 1990, and June 30, 1990, the department shall have one hundred eighty days to submit its objections. No local government is eligible for grants under RCW 70.105.235 for implementing a local hazardous waste plan unless the plan for that jurisdiction has been approved by the department.

(8) Each local government, or combination of contiguous local governments, shall implement the local hazardous waste plan for its jurisdiction by December 31, 1991.

(9) The department may waive the specific requirements of this section for any local government if such local government demonstrates to the satisfaction of the department that the objectives of the planning requirements have been met. [1986 c 210 § 1; 1985 c 448 § 6.]

Severability—1985 c 448: See note following RCW 70.105.005.

RCW 70.105.225 Local governments to designate zones—Departmental guidelines—Approval of local government zone designations or amendments—Exemption. (1) Each local government, or combination of

contiguous local governments, is directed to: (a) Demonstrate to the satisfaction of the department that existing zoning allows designated zone facilities as permitted uses; or (b) designate land use zones within its jurisdiction in which designated zone facilities are permitted uses. The zone designations shall be consistent with the state siting criteria adopted in accordance with RCW 70.105.210, except as may be approved by the department in accordance with subsection (6) of this section.

(2) Local governments shall not prohibit the processing or handling of hazardous waste in zones in which the processing or handling of hazardous substances is not prohibited. This subsection does not apply in residential zones.

(3) The department shall prepare guidelines, as appropriate, for the designation of zones under this section. The guidelines shall be prepared in consultation with local governments and shall be completed by December 31, 1986.

(4) The initial designation of zones shall be completed and submitted to the department by June 30, 1988. Local governments may from time to time amend their designated zones.

(5) Local governments without land use zoning provisions shall designate eligible geographic areas within their jurisdiction, based on siting criteria adopted in accordance with RCW 70.105.210. The area designation shall be subject to the same requirements as if they were zone designations.

(6) Each local government, or combination of contiguous local governments, shall submit its designation of zones or amendments thereto to the department. The department shall approve or disapprove zone designations or amendments within ninety days of submission. The department shall approve eligible zone designations if it determines that the proposed zone designations are consistent with this chapter, the applicable siting criteria, and guidelines for developing designated zones: *Provided*, That the department shall consider local zoning in place as of January 1, 1985, or other special situations or conditions which may exist in the jurisdiction. If approval is denied, the department shall state within ninety days from the date of submission the facts upon which that decision is based and shall submit the statement to the local government together with any other comments or recommendations it deems appropriate. The local government shall have ninety days after it receives the statement from the department to make modifications designed to eliminate the inconsistencies and resubmit the designation to the department for approval. Any designations shall take effect when approved by the department.

(7) The department may exempt a local government from the requirements of this section if:

(a) Regulated quantities of hazardous waste have not been generated within the jurisdiction during the two calendar years immediately preceding the calendar year during which the exemption is requested; and

(b) The local government can demonstrate to the satisfaction of the department that no significant portion of land within the jurisdiction can meet the siting criteria

adopted in accordance with RCW 70.105.210. [1985 c 448 § 7.]

Severability—1985 c 448: See note following RCW 70.105.005.

RCW 70.105.230 Local governments to submit letter of intent to identify or designate zones and submit management plans—Department to prepare plan in event of failure to act. (1) Each local government is directed to submit to the director of the department by October 31, 1987, a letter of intent stating that it intends to (a) identify, or designate if necessary, eligible zones for designated zone facilities no later than June 30, 1988, and (b) submit a complete local hazardous waste management plan to the department no later than June 30, 1990. The letters shall also indicate whether these requirements will be completed in conjunction with other local governments.

(2) If any local government fails to submit a letter as provided in subsection (1)(b) of this section, or fails to adopt a local hazardous waste plan for its jurisdiction in accordance with the time schedule provided in this chapter, or fails to secure approval from the department for its local hazardous waste plan in accordance with the time schedule provided in this chapter, the department shall prepare a hazardous waste plan for the local jurisdiction. [1985 c 448 § 8.]

Severability—1985 c 448: See note following RCW 70.105.005.

RCW 70.105.235 Grants to local governments for plan preparation, implementation, and designation of zones—Matching funds—Qualifications. (1) Subject to legislative appropriations, the department may make and administer grants to local governments for (a) preparing and updating local hazardous waste plans, (b) implementing approved local hazardous waste plans, and (c) designating eligible zones for designated zone facilities as required under this chapter.

(2) Local governments shall match the funds provided by the department for planning or designating zones with an amount not less than twenty-five percent of the estimated cost of the work to be performed. Local governments may meet their share of costs with cash or contributed services. Local governments, or combination of contiguous local governments, conducting pilot projects pursuant to RCW 70.105.220(4) may subtract the cost of those pilot projects conducted for hazardous household substances from their share of the cost. If a pilot project has been conducted for all moderate-risk wastes, only the portion of the cost that applies to hazardous household substances shall be subtracted. The matching funds requirement under this subsection shall be waived for local governments, or combination of contiguous local governments, that complete and submit their local hazardous waste plans under RCW 70.105.220(6) prior to June 30, 1988.

(3) Recipients of grants shall meet such qualifications and follow such procedures in applying for and using grants as may be established by the department. [1986 c 210 § 2; 1985 c 448 § 9.]

Severability—1985 c 448: See note following RCW 70.105.005.

RCW 70.105.240 State preemption—Department sole authority—Local requirements superseded—State authority over designated zone facilities. (1) As of July 28, 1985, the state preempts the field of state, regional, or local permitting and regulating of all preempted facilities as defined in this chapter. The department of ecology is designated the sole decision-making authority with respect to permitting and regulating such facilities and no other state agency, department, division, bureau, commission, or board, or any local or regional political subdivision of the state, shall have any permitting or regulatory authority with respect to such facilities including, but not limited to, the location, construction, and operation of such facilities. Permits issued by the department shall be in lieu of any and all permits, approvals, certifications, or conditions of any other state, regional, or local governmental authority which would otherwise apply.

(2) The department shall ensure that any permits issued under this chapter invoking the preemption authority of this section meet the substantive requirements of existing state laws and regulations to the extent such laws and regulations are not inconsistent or in conflict with any of the provisions of this chapter. In the event that any of the provisions of this chapter, or any of the regulations promulgated hereunder, are in conflict with any other state law or regulations, such other law or regulations shall be deemed superseded for purposes of this chapter.

(3) As of July 28, 1985, any ordinances, regulations, requirements, or restrictions of regional or local governmental authorities regarding the location, construction, or operation of preempted facilities shall be deemed superseded. However, in issuing permits under this section, the department shall consider local fire and building codes and condition such permits as appropriate in compliance therewith.

(4) Effective July 1, 1988, the department shall have the same preemptive authority as defined in subsections (1) through (3) of this section in regard to any designated zone facility that may be proposed in any jurisdiction where the designation of eligible zones pursuant to RCW 70.105.225 has not been completed and approved by the department. Unless otherwise preempted by this subsection, designated zone facilities shall be subject to all applicable state and local laws, regulations, plans, and other requirements. [1985 c 448 § 10.]

Severability—1985 c 448: See note following RCW 70.105.005.

RCW 70.105.245 Department may require notice of intent for management facility permit. The department may adopt rules to require any person who intends to file an application for a permit for a hazardous waste management facility to file a notice of intent with the department prior to submitting the application. [1985 c 448 § 11.]

Severability—1985 c 448: See note following RCW 70.105.005.

RCW 70.105.250 Appeals to pollution control hearings board. Any disputes between the department and

the governing bodies of local governments in regard to the local planning requirements under RCW 70.105.220 and the designation of zones under RCW 70.105.225 may be appealed by the department or the governing body of the local government to the pollution control hearings board established under chapter 43.21B RCW. [1985 c 448 § 12.]

Severability—1985 c 448: See note following RCW 70.105.005

RCW 70.105.255 Department to provide technical assistance with local plans. The department shall provide technical assistance to local governments in the preparation, review, revision, and implementation of local hazardous waste plans. [1985 c 448 § 13.]

Severability—1985 c 448: See note following RCW 70.105.005

RCW 70.105.260 Department to assist conflict resolution activities related to siting facilities—Agreements may constitute conditions for permit. (1) In order to promote identification, discussion, negotiation, and resolution of issues related to siting of hazardous waste management facilities, the department:

(a) Shall compile and maintain information on the use and availability of conflict resolution techniques and make this information available to industries, state and local government officials, and other citizens;

(b) Shall encourage and assist in facilitating conflict resolution activities, as appropriate, between facility proponents, host communities, and other interested persons;

(c) May adopt rules specifying procedures for facility proponents, host communities, and citizens to follow in providing opportunities for conflict resolution activities, including the use of dispute resolution centers established pursuant to chapter 7.75 RCW; and

(d) May expend funds to support such conflict resolution activities, and may adopt rules as appropriate to govern the support.

(2) Any agreements reached under the processes described in subsection (1) of this section and deemed valid by the department may be written as conditions binding on a permit issued under this chapter. [1985 c 448 § 14.]

Severability—1985 c 448: See note following RCW 70.105.005

RCW 70.105.270 Requirements of RCW 70.105.200 through 70.105.230 and 70.105.240(4) not mandatory without legislative appropriation. The requirements of RCW 70.105.200 through 70.105.230 and 70.105.240(4) shall not become mandatory until funding is appropriated by the legislature. [1985 c 448 § 15.]

Severability—1985 c 448: See note following RCW 70.105.005

RCW 70.105.900 Short title—1985 c 448. This chapter shall be known and may be cited as the hazardous waste management act. [1985 c 448 § 16.]

Severability—1985 c 448: See note following RCW 70.105.005

APPENDIX D

ENGROSSED HOUSE BILL NO. 1182

State of Washington 51st Legislature 1989 Regular Session
by Representatives Rust, D. Sommers, G. Fisher, Fraser and Phillips;
by request of Director of Ecology

Read first time 1/18/89 and referred to Committee on Environmental
Affairs.

1 AN ACT Relating to local government roles in hazardous waste
2 siting; and amending RCW 70.105.225 and 70.105.210.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 Sec. 1. Section 7, chapter 448, Laws of 1985 and RCW 70.105.225;
5 are each amended to read as follows:

6 (1) Each local government, or combination of contiguous local
7 governments, is directed to: (a) Demonstrate to the satisfaction of
8 the department that existing zoning allows designated zone facilities;
9 as permitted uses; or (b) designate land use zones within its
10 jurisdiction in which designated zone facilities are permitted uses
11 The zone designations shall be consistent with the state siting
12 criteria adopted in accordance with RCW 70.105.210, except as may be
13 approved by the department in accordance with subsection (6) of this
14 section.
15 (2) Local governments shall not prohibit the processing of
16 handling of hazardous waste in zones in which the processing of
17 handling of hazardous substances is not prohibited. This subsection
18 does not apply in residential zones.

19 (3) The department shall prepare guidelines, as appropriate, for
20 the designation of zones under this section. The guidelines shall be
21 prepared in consultation with local governments and shall be
22 completed by December 31, 1986.

23 (4) The initial designation of zones shall be completed on
24 revised, and submitted to the department ((By June 30, 1988)) within
25 eighteen months after the enactment of siting criteria in accordance
26 with RCW 70.105.210. Local governments that do not comply with this
27 submittal deadline shall be subject to the preemptive provisions of
28 RCW 70.105.240(4) until such time as zone designations are complete
29 and approved by the department. Local governments may from time to

1 time amend their designated zones.

2 (5) Local governments without land use zoning provisions shall
3 designate eligible geographic areas within their jurisdiction, based
4 on siting criteria adopted in accordance with RCW 70.105.210. The
5 area designation shall be subject to the same requirements as if they
6 were zone designations.

7 (6) Each local government, or combination of contiguous local
8 governments, shall submit its designation of zones or amendments
9 thereto to the department. The department shall approve or
10 disapprove zone designations or amendments within ninety days of
11 submission. The department shall approve eligible zone designations
12 if it determines that the proposed zone designations are consistent
13 with this chapter, the applicable siting criteria, and guidelines for
14 developing designated zones: PROVIDED, That the department shall
15 consider local zoning in place as of January 1, 1985, or other
16 special situations or conditions which may exist in the jurisdiction.
17 If approval is denied, the department shall state within ninety days
18 from the date of submission the facts upon which that decision is
19 based and shall submit the statement to the local government together
20 with any other comments or recommendations it deems appropriate. The
21 local government shall have ninety days after it receives the
22 statement from the department to make modifications designed to
23 eliminate the inconsistencies and resubmit the designation to the
24 department for approval. Any designations shall take effect when
25 approved by the department.

26 (7) The department may exempt a local government from the
27 requirements of this section if:

28 (a) Regulated quantities of hazardous waste have not been
29 generated within the jurisdiction during the two calendar years
30 immediately preceding the calendar year during which the exemption is
31 requested; and

32 (b) The local government can demonstrate to the satisfaction of
33 the department that no significant portion of land within the
34 jurisdiction can meet the siting criteria adopted in accordance with
35 RCW 70.105.210.

36 Sec. 2. Section 5, chapter 448, Laws of 1985 and RCW 70.105.210

1 are each amended to read as follows:

2 By ~~((December 21, 1986))~~ May 31, 1990, the department shall
3 develop and adopt criteria for the siting of hazardous waste
4 management facilities. These criteria will be part of the state
5 hazardous waste management plan as described in RCW 70.105.200. To
6 the extent practical, these criteria shall be designed to minimize
7 the short-term and long-term risks and costs that may result from
8 hazardous waste management facilities. These criteria may vary by
9 type of facilities and may consider natural site characteristics and
10 engineered protection. Criteria may be established for:

- 11 (1) Geology;
- 12 (2) Surface and groundwater hydrology;
- 13 (3) Soils;
- 14 (4) Flooding;
- 15 (5) Climatic factors;
- 16 (6) Unique or endangered flora and fauna;
- 17 (7) Transportation routes;
- 18 (8) Site access;
- 19 (9) Buffer zones;
- 20 (10) Availability of utilities and public services;
- 21 (11) Compatibility with existing uses of land;
- 22 (12) Shorelines and wetlands;
- 23 (13) Sole-source aquifers;
- 24 (14) Natural hazards; and
- 25 (15) Other factors as determined by the department.