

ENVIRONMENTAL LAW—ADMINISTRATIVE HEARINGS: A BILL TO
SUPPLEMENT THE SOLID WASTE MANAGEMENT ACT—N.J. ASSEMBLY
BILL NO. 805, 200th Leg., 1st Sess. (1982).

In 1970, the New Jersey Legislature passed the Solid Waste Management Act (Act).¹ According to the Legislature, collection, disposal, and utilization of solid waste was "a matter of grave concern to all citizens."² Thus, it became necessary to enforce stringent regulations upon the solid waste industry. To that end, the Legislature enacted guidelines so that a uniform statewide management plan could be created. The policy of the Act was to coordinate all solid waste collection, disposal, and utilization activities within the State.³ Each county was designated a solid waste district.⁴ Each district is empowered to implement a solid waste management plan which meets the needs of each municipality within the county.⁵ By requiring public hearings prior to the adoption of solid waste management plans and by creating advisory solid waste councils, the Act provides citizens and municipalities with opportunities to contribute to the development and implementation of such plans.⁶

The New Jersey Department of Environmental Protection (Department) and its Solid Waste Advisory Council (Council) were granted powers to regulate and supervise solid waste collection and disposal facilities.⁷ In addition, the Department must register all persons engaged in the collection or disposal of solid waste.⁸ Finally, the Act gives the Department and Council discretion in evaluating and adopting such plans.⁹

An applicant shall file with the Department a registration statement and an engineering design before he will be permitted to engage in any activity controlled by the Act.¹⁰ The Department has exclusive authority to

¹ 1970 N.J. Laws 39. The Act was expanded in 1975. 1975 N.J. Laws 326, N.J. STAT. ANN. §§ 13:1E-1 to -48 (West Supp. 1982-83).

² N.J. STAT. ANN. § 13:1E-2(a) (West Supp. 1982-83).

³ *Id.* § 13:1E-2.

⁴ *Id.* § 13:1E-2(b)(2). The Hackensack Meadowlands are deemed a separate management district.

Id.

⁵ *Id.* § 13:1E-2(b)(2).

⁶ *Id.* § 13:1E-2(b)(3).

⁷ *Id.* § 13:1E-2(b)(6).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* § 13:1E-5(a).

accept or reject the registration statement and engineering design. Without approval of either application, the facility and/or applicant will not be allowed to operate.¹¹

As the Act now exists, municipalities are not permitted to contest the approval or denial of a registration statement or engineering design through an adversarial hearing.¹² The Administrative Procedure Act does not grant a right to a hearing. The Act only provides the procedure to be followed when the New Jersey Constitution or statutes mandate the same.¹³

According to the New Jersey Administrative Code, a hearing is mandated by the Act if a person is aggrieved by a decision of the Bureau of Solid Waste Management.¹⁴ The hearing shall be conducted by the Department. A municipality, however, is not deemed an aggrieved person within the meaning of the Act. Only an applicant or a registrant may be granted a hearing under this provision.¹⁵

In addition, it has been held that the issuance of a certificate of registration was legislative in nature, and therefore a hearing was not required. The quality of the Act rather than the character of the agency should be dispositive as to the need for procedural due process. The classification of the Act depends on "the controls placed upon the exercise of power in the legislative grant."¹⁶ Therefore, the Department was not acting in a quasi-judicial fashion when it denied a hearing to a municipality.

The need for legislative action to provide New Jersey towns with a means to contribute in this area is essential. The Major Hazardous Waste Facilities Siting Act¹⁷ is procedurally very similar to the Solid Waste

¹¹ *Id.* § 13:1E-5(c).

¹² See *Little Falls Township v. Bardin*, 173 N.J. Super. 397, 414 A.2d 559 (App. Div. 1979). In *Little Falls*, the municipality was denied an administrative hearing with regard to a registration application for a sanitary landfill project at Montclair State College.

See also *In re App. of Modern Indust. Waste Service*, 153 N.J. Super. 232, 379 A.2d 476 (App. Div. 1977).

¹³ *Little Falls Township v. Bardin*, 173 N.J. Super. 397, 404-05, 414 A.2d 559, 562 (App. Div. 1979).

¹⁴ N.J. ADMIN. CODE tit. 7 § 26-5.4(p) (1978).

¹⁵ *Little Falls Township v. Bardin*, 173 N.J. Super. 397, 405, 414 A.2d 559, 563 (App. Div. 1979).

¹⁶ *Id.* at 406, 414 A.2d at 563.

¹⁷ See N.J. STAT. ANN. §§ 13:1E-49 to -91 (West Supp. 1982-83). There is a difference between hazardous waste and solid waste. "Hazardous waste" is any "waste or combination of wastes which pose a present or potential threat to human health, living organisms, or the environment, including

Management Act. In the section of the Major Hazardous Waste Facilities Siting Act dealing with registration statements and engineering designs, municipalities are granted the right to contribute through an administrative hearing.¹⁸

The Legislature has responded to this need by proposing Assembly bill 805.¹⁹ The bill supplements the registration and engineering application section of the Act.²⁰ The amendment changes the manner in which the registration statement and engineering design are approved.²¹ The amendment provides that the approval shall be contingent upon the recommendations of an administrative law judge.²² Such judge shall preside over an adjudicatory hearing. At said hearing, the applicant, as well as the affected municipality, "shall be . . . part[ies] of interest."²³

Upon receipt of the administrative law judge's recommendations, the Department shall, within forty-five days, accept, reject, or modify said recommendations and give final approval or denial to the application.

If the Department modifies or rejects the recommendations, it is required to make a report available which details its reasons for modifying or rejecting the recommendations. All parties concerned would have access to the report.²⁴ In addition, the amendment states that the approval or denial of the application would be considered final agency action for purposes of the Administrative Procedure Act,²⁵ pursuant to the New Jersey Court Rules.

Current Status of A. 805

Since the Major Hazardous Waste Facilities Siting Act already has similar provisions, it is highly likely that bill 805 will become law. On

but not limited to material that is toxic, carcinogenic, corrosive, irritating, sensitizing, biologically infectious, explosive, or inflammable. *Id.* § 13:1E-51(k). The term, "solid waste," refers to "garbage, refuse, and other discarded materials resulting from industrial, domestic, and community activities." *Id.* § 13:1E-3(a).

¹⁸ *Id.* § 13:1E-60.

¹⁹ A. 805, 200th Leg., 1st Sess. (1982).

²⁰ N.J. STAT. ANN. § 13:1E-5 (West Supp. 1982-83).

²¹ The amendment provides that the tentative approval form and a fact sheet containing a description of the facility, the types and quantities of waste, and the conditions for its approval must be sent to the affected municipality prior to the hearing. A. 805 § 1(c).

²² *Id.* § 1(e).

²³ *Id.* § 1(d).

²⁴ *Id.* § 1(f).

²⁵ *Id.*

February 22, 1982, bill 805 was passed in the Assembly with a vote of seventy-two to zero.²⁶ It was received in the Senate and placed in the Energy and Environment Committee on February 25, 1982. On June 4, 1982, the bill was reported with committee amendments, which were technical in nature, to conform with the Administrative Procedure Act.

At present, bill 805 is awaiting vote in the Senate.

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²⁶ LEGISLATIVE INDEX, Vol. 59 No. 23 at A21 (Nov. 15, 1982).