

RESOURCE RECOVERY AND LANDFILL SITE SELECTION: LOOKING FOR LEADERSHIP FROM STATE GOVERNMENT

*By Raymond Lesniak**

New Jersey has serious solid waste disposal problems. An over-abundance of garbage and a decreasing number of stable landfill sites have served to exacerbate this situation. Recently enacted legislation¹ clearly emphasizes the preference of the New Jersey Legislature for the use of resource recovery as the long-term solution to this waste disposal crisis. This legislation has been rationalized by the widely-held belief that resource recovery incineration is more environmentally acceptable, aesthetically preferable and more economically efficient than landfilling. Nevertheless, the enactment fails to adequately address the *siting* of solid waste, perhaps the primary ingredient necessary for the success of New Jersey's solid waste management program.

This worsening garbage disposal predicament has been aggravated by the Department of Environmental Protection's (DEP) closing of approximately 100 landfills since 1981. Rancorous situations over landfill siting decisions have been created in areas of the state as diverse as suburban Rockaway Township in Morris County and rural South Harrison Township in Gloucester County. In the absence of any consistent state policy, the "Year of the Environment"² has thus far witnessed great folly. Hard-pressed county officials have struggled with the controversy generated by their proposed siting of a landfill expansion in the environmentally sensitive Pinelands area of Winslow Township, Camden County. Beleaguered Rockaway Township officials and

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¹ Solid Waste Disposal—Transition to Resource Recovery Incinerators and Facilities, ch. 38, 1985 N.J. SESS. LAW SERV. 159 (West) (to be codified at N.J. STAT. ANN. §§ 13:1E-136 to -168, 13:1E-20, 23, 40A:4-27.1, 27.2, 45.25, 40A:11-15, 48:13A-5.1, 48:14A-5).

² MANUAL OF THE LEGISLATURE OF NEW JERSEY 496 (E. Mullin ed. 1985) (State-of-the-State Address by Governor Kean (Jan. 8, 1985)).

residents have continued to resist Morris County's decision to site a landfill over a federally designated sole source aquifer.³

Historically, the State's hazardous and solid waste management problems had been compounded by widespread public resistance to the siting of new waste disposal facilities. The enactment of the Major Hazardous Waste Facilities Siting Act,⁴ however, provided a statutory mechanism for the state to select hazardous waste disposal sites. Still, the public's inability to differentiate between hazardous wastes and ordinary household refuse or solid waste has aided in the creation of sophisticated and organized public opposition to any locally proposed landfill sites.

Concomitantly, reports of toxic emissions from resource recovery incinerators have produced fear and trepidation among residents of potential "host municipalities." Thus, the siting of these facilities is being met with the same public opposition—the "not-in-my-backyard" syndrome—that besets the location of new landfills. Public officials, in turn, are left with the burden of proper solid waste disposal. Although the Legislature is responsible for the public's health, safety and welfare, it still must provide for the environmentally sound disposal of waste, something which no community will voluntarily accept in the absence of a clear-cut state mandate.

The 1975 amendments to the Solid Waste Management Act⁵ provided that each county would be responsible for selecting "sufficient suitable sites to treat and dispose of solid waste" generated within its boundaries.⁶ Also established was a "meaningful and responsible role" for the state.⁷ The DEP was required to develop a statewide solid waste management plan which would contain criteria and procedures to assure the orderly develop-

³ 45 FED. REG. 2,946 (1984). A sole source aquifer is an underground water supply that serves as the principal or only source of drinking water for a designated region. Twenty-one such aquifers have been identified by the federal government. See Safe Drinking Water Act, 42 U.S.C. §§ 300f, 300h-3(e) (West 1982); and see *Lautenberg Promises Help to Foes of Dump*, Daily Record (Morristown, N.J.), July 17, 1985.

⁴ N.J. STAT. ANN. §§ 13:1E-49 to -91 (West Supp. 1985).

⁵ N.J. STAT. ANN. §§ 13:1E-1 to -37 (West 1979 and Supp. 1985).

⁶ N.J. STAT. ANN. § 13:1E-2.1.b. (West 1979).

⁷ N.J. STAT. ANN. § 13:1E-2.b.(6) (West 1979).

ment of district plans⁸ and to assist the counties in the development of their own plans in accordance with guidelines, criteria and standards contained in the statewide plan.⁹

In 1982, the DEP identified the major criteria to be considered by a county during the landfill site-selection process,¹⁰ but made no mention of the considerations to be used in the siting of resource recovery facilities. Instead, the counties were advised to formulate and adopt their own appropriate criteria. Consequently, if a county fails to select a suitable landfill or resource recovery site, the DEP commissioner will determine an appropriate location for the facility and require the county to incorporate that site into its district plan.¹¹

This lack of uniform guidelines and standards has understandably caused the county solid waste facility site selection process to be both sensitive to local and political concerns and seldom based on objective environmental criteria. Moreover, when faced with the politically difficult task of choosing a site, county officials have procrastinated, conducted countless studies and chosen the site to which there has been the least public opposition.

Clearly, the decentralized management of solid waste envisioned by the 1975 amendments to the Solid Waste Management Act¹² has not achieved the desired results. While the importance of preserving local control or "home rule" over waste disposal siting decisions may have been perfectly logical a decade ago, experience has demonstrated that there is an overriding practical need for greater state involvement in the solid waste siting process. It has become increasingly evident that local and county officials cannot and should not be required to make siting decisions.

Since the enactment of these amendments, the DEP has adopted a rather passive role with respect to statewide solid waste management planning. Indeed, this very passivity led the

⁸ See N.J. STAT. ANN. § 13:1E-6.a. (West 1979).

⁹ See N.J. STAT. ANN. § 13:1E-6.a., b. (West 1979).

¹⁰ N.J. DEPT. OF ENV'T'L. PROTECTION, GENERAL CRITERIA FOR SITING SOLID WASTE DISPOSAL FACILITIES (Sept. 28, 1982). The criteria include: exclusionary, hydrogeological, geotechnical and final selection criteria.

¹¹ See N.J. STAT. ANN. § 13:1E-21.b. (West 1979).

¹² N.J. STAT. ANN. § 13:1E-1 to -37 (West 1979 and Supp. 1985).

New Jersey Supreme Court in 1982 to direct the DEP to promptly "reduce the statewide plan to an identifiable and manageable document. . . ."¹³ Noting that "the districts should not have to engage in a guessing game in order to ascertain which documents constitute the plan,"¹⁴ the court issued this directive in response to the DEP's "piecemeal submission" of documents.¹⁵ The court further contended that these documents had "only minimal compliance" with statutory requirements.¹⁶ Since the DEP needed to formulate a statewide scheme, it was in this context that the county solid waste management plans were fashioned.

In the absence of meaningful "objectives, criteria, and standards"¹⁷ as envisioned in the Solid Waste Management Act,¹⁸ as well as adequate assistance from the DEP, the products of the counties' planning processes have been substantially less than optimal. The DEP's failure to adopt a strong leadership role has led to difficult planning decisions, frequently based upon political expediency, local self-interest and completely unrelated to sound criteria. This is most apparent in the solid waste facility siting process.

The lack of specific siting criteria has contributed to the recent selection of several highly unacceptable sites for both resource recovery and sanitary landfill facilities and is likely to result in continued arbitrary solid waste decision-making. High technology resource recovery and energy conversion facilities are being planned in many of the state's counties. The promise of needed tax ratables and "host municipality benefits," granted under the recent resource recovery legislation,¹⁹ may have converted several Middlesex County communities from opponents to advocates of siting such plants in their municipalities. Nevertheless, these garbage incineration plans seldom have any regular pattern and more typically have caused public outcry as seen

¹³ A.A. Mastrangelo, Inc. v. Commissioner of the Dept. of Env'tl. Protection, 90 N.J. 666, 680, 449 A.2d 516, 523 (1982).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See N.J. STAT. ANN. § 13:1E-6 (West 1979).

¹⁸ N.J. STAT. ANN. §§ 13:1E-1 to -48 (West 1979 and Supp. 1985).

¹⁹ See *supra* note 1.

in North Trenton, Ridgefield, Bridgewater Township and Rahway.

It is therefore imperative that the DEP formulate clear and precise siting standards and procedures before granting approval for any additional facilities. These statewide siting standards and procedures should be adopted only after public hearing and comment. Presently, it appears that the DEP views the public and the proposed "host" municipality for a solid waste facility as impediments rather than participants. This approach needs to change if public interests are to be more adequately protected.

Accordingly, it is necessary that the DEP establish a uniform statewide procedure for the expedient siting of resource recovery and sanitary landfill facilities that is consistent with meaningful public participation. In order to promote the site selection process, two crucial elements are necessary. First, the public participants should include county and local decision-makers, affected residents and environmental groups. All participants should be encouraged to endorse the planning process as the legitimate means to the end, the selection of a site. Second, and more importantly, the department's site selection methodology should be technically valid. It must specifically address and evaluate all relevant environmental, geological, economic and community impact criteria, as well as the proximity to major highways. The DEP's site selection process must also enable the identification of at least two or more prospective sites to assure maximum flexibility in the decision-making process.

The State Legislature envisioned the potential problems posed by the indiscriminate siting of hazardous waste facilities and enacted the Major Hazardous Waste Facilities Siting Act.²⁰ The provisions of that Act require the formulation and adoption of facility siting criteria prior to, and independent of, any siting decision by the DEP. These provisions are a rational and responsible means of providing both clarity and maximum public involvement with the site selection process. A similar mechanism should be established by the DEP for the siting of solid waste facilities under the authority granted by the Solid Waste Management Act.²¹ If, as is likely, the DEP continues to abdicate its stat-

²⁰ N.J. STAT. ANN. §§ 13:1E-49 to -91 (West Supp. 1985).

²¹ N.J. STAT. ANN. §§ 13:1E-1 to -48 (West 1979 and Supp. 1985).

utory siting responsibilities, the parochialism, procrastination and politically motivated decision-making which has controlled solid waste facility siting in this state for the past decade will, unfortunately, continue unabated.