

CHAPTER 36

HEALTH AND ENVIRONMENT

SENATE BILL 02-041

BY SENATOR(S) Thiebaut, Chlouber, Entz, Hernandez, and Nichol;
also REPRESENTATIVE(S) Lawrence, Chavez, Clapp, Coleman, Groff, Miller, Romanoff, Sanchez, Scott, Snook, Tapia,
Tochtrop, Vigil, and Williams S.

AN ACT

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

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

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

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

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

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

(1.5) "EXISTING HAZARDOUS WASTE PROCESSOR" MEANS A HAZARDOUS WASTE PROCESSING FACILITY THAT WAS IN ACTIVE OPERATION, REGARDLESS OF THE AMOUNT OF HAZARDOUS WASTE TREATED ANNUALLY, AS AUTHORIZED BY APPLICABLE FEDERAL AND STATE LAWS AND RULES, ON OR BEFORE THE EFFECTIVE DATE OF SENATE BILL 02-041, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY.

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

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

municipality if a hazardous waste incinerator OR PROCESSOR site is located within an incorporated area.

(4) (a) "HAZARDOUS WASTE PROCESSING" MEANS BOTH OF THE FOLLOWING, EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (4):

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

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

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

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

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

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

(IV) THE PROCESSING OF ANY HAZARDOUS WASTE PURSUANT TO ANY RECORD OF DECISION, CONSENT DECREE, OR ADMINISTRATIVE ORDER AUTHORIZED BY OR MADE PURSUANT TO APPLICABLE FEDERAL OR STATE LAWS AND RULES, AS AMENDED OR REVISED, OR ANY RECORD OF DECISION ISSUED PURSUANT TO A PERIODIC REVISION OF A RECORD OF DECISION THAT WAS MADE ON OR BEFORE THE EFFECTIVE DATE OF SENATE BILL 02-041, AS ENACTED AT THE SECOND REGULAR SESSION OF THE SIXTY-THIRD GENERAL ASSEMBLY;

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

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

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

(VIII) THE CONDUCT OF ANY ACTIVITIES PURSUANT TO AN APPROVED

RECLAMATION PLAN CONTAINED IN A PERMIT ISSUED UNDER, OR OTHERWISE REGULATED BY, ARTICLE 32 OR 33 OF TITLE 34, C.R.S.; OR

(IX) THE CONDUCT OF ANY ACTIVITIES REGULATED UNDER ARTICLE 60 OF TITLE 34, C.R.S.

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

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

(a) PROCESSED; OR

(b) GENERATED OR STORED BY THE OWNER OF A HAZARDOUS WASTE PROCESSOR OR BY AN AFFILIATE OR CUSTOMER OF A HAZARDOUS WASTE PROCESSOR WHO PRODUCES HAZARDOUS WASTE.

SECTION 3. 25-15-503, Colorado Revised Statutes, is amended to read:

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

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

(3) Notwithstanding the provisions of subsections (1) and (2) of this section AND SECTION 25-15-507, any existing hazardous waste incinerator OR PROCESSOR shall be an approved activity for which obtaining a certificate of designation under the provisions of this part 5 shall be unnecessary.

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

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

(2) An application made pursuant to the provisions of subsection (1) of this section shall be accompanied by a fee to be established by the governing body having jurisdiction. ~~which~~ SUCH FEE shall be based on the reasonable anticipated costs that may be incurred by such governing body in the application review and approval process IMPOSED BY THIS ARTICLE. Such fee shall be for the reasonable costs necessary in the APPLICATION REVIEW AND hearing process IMPOSED BY THIS ARTICLE

and shall not exceed fifty ONE HUNDRED thousand dollars. ~~and may be refunded in whole or in part.~~ THE LOCAL GOVERNING BODY HAVING JURISDICTION SHALL PROVIDE AN ACCOUNTING OF THE ACTUAL COSTS INCURRED BY SUCH BODY IN THE APPLICATION REVIEW AND HEARING PROCESS AND SHALL REFUND ANY PAYMENT IN EXCESS OF SUCH COSTS WITHIN NINETY DAYS AFTER COMPLETION OF THE CERTIFICATION PROCESS.

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

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

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

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

(a) That the proposed hazardous waste incinerator OR PROCESSOR site would not pose a significant threat to the health or safety of the public or the environment, taking into consideration:

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

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

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

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

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

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

(2) In considering an application for a proposed hazardous waste incinerator OR PROCESSOR, the governing body having jurisdiction shall take into account the effect that such hazardous waste incinerator OR PROCESSOR will have on the surrounding property, taking into consideration the types of processing to be used, ~~and~~ wind and climatic conditions, AND BOTH THE QUALITY AND QUANTITY OF PUBLIC AND PRIVATE INFRASTRUCTURE NECESSARY TO FACILITATE THE CONSTRUCTION AND SUBSEQUENT OPERATION OF SUCH INCINERATOR, PROCESSOR, OR SITE.

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

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

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

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

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

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

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

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

25-15-507. Substantial change in ownership, design, or operation. (1) Any substantial change in the ownership of a hazardous waste incinerator OR PROCESSOR, including but not limited to an assignment or a transfer of the certificate of designation, ~~therefor~~, or in the design or operation of a hazardous waste incinerator, ~~or~~ incinerator site, PROCESSOR, OR PROCESSOR SITE shall be submitted to the governing body having jurisdiction for its approval. Approval by the governing body having jurisdiction shall be required before such a substantial change may become effective. For the purposes of this section, "substantial change" shall have such meaning as is provided for such term in the ~~regulations~~ RULES of the commission promulgated pursuant to section 25-15-510.

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

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

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

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

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

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

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

25-15-509. Judicial review. The award, denial, revocation, or suspension of a certificate of designation by the governing body having jurisdiction shall be subject to judicial review in the district court for the judicial district in which the hazardous waste incinerator OR PROCESSOR is located or is proposed to be located. Any request

for such judicial review shall be made within thirty days after such award, denial, revocation, or suspension. If the court finds ~~no error~~ THAT THE GOVERNING BODY HAVING JURISDICTION HAS ACTED REASONABLY AND IN ACCORDANCE WITH THE PROCEDURES AND PROCEDURAL LIMITATIONS OF THIS PART 5, the court shall affirm the action of the governing body having jurisdiction. If the court finds that the action is arbitrary and capricious, not in accord with the procedures or procedural limitations of this part 5, unsupported by substantial evidence when the record is considered as a whole, or otherwise contrary to law, then the court shall hold unlawful and set aside the action and shall remand the case to the governing body having jurisdiction for further proceedings as appropriate.

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

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

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

25-15-511. List of hazardous wastes - final inventory. The operator of any hazardous waste incinerator OR PROCESSOR site shall maintain a list of the hazardous wastes accepted for incineration OR PROCESSING at such site. Such list shall indicate the types of hazardous waste accepted for incineration OR PROCESSING at such hazardous waste incinerator OR PROCESSOR and the location of such waste. A copy of such list shall be provided to any person upon request and upon payment of a reasonable charge for the costs of the reproduction of such list. Upon the closure of a hazardous waste incinerator OR PROCESSOR site, a final inventory of hazardous wastes shall be prepared and filed with the department. The department shall make any such final inventory available for public inspection and copying at reasonable cost.

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

25-15-512. Inspections of hazardous waste incinerator or processor sites. (1) ~~Each hazardous waste incinerator site shall be physically and structurally accessible at all times for inspection by the department.~~ The department shall conduct inspections of each hazardous waste incinerator OR PROCESSOR site at intervals determined by ~~regulations~~ RULES of the commission based upon the volume and toxicity of the wastes being received at such site. Such inspections shall include, but are not limited to, inspections conducted during the reception of hazardous wastes, during the incineration of hazardous wastes, DURING THE PROCESSING OF HAZARDOUS WASTES, and during the shipment of incineration OR PROCESSING by-products. The department shall be permitted reasonable access to all operations at any hazardous waste incinerator OR PROCESSOR site for the purpose of monitoring and inspecting such operations. UNLESS AN EMERGENCY EXISTS AT SUCH SITE, OR UNLESS THE DEPARTMENT HAS REASON TO BELIEVE THAT UNLAWFUL ACTIVITY IS BEING CONDUCTED OR WILL BE CONDUCTED AT SUCH SITE, THE DEPARTMENT SHALL PROVIDE PRIOR NOTIFICATION OF THE INSPECTION AND SHALL CONDUCT SUCH INSPECTION DURING NORMAL BUSINESS HOURS.

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

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

25-15-515. Annual fees - commercial hazardous waste incinerator or processor funds. (1) (a) The owner or operator of any hazardous waste incinerator OR PROCESSOR for which a certificate of designation has been issued PURSUANT TO THIS ARTICLE shall be required, contingent upon the issuance of a federal or state ~~permit~~ PERMITS, to pay to the governing body having jurisdiction an annual fee for the purpose of offsetting the estimated direct costs necessitated by such hazardous waste incinerator OR PROCESSOR. THE GOVERNING BODY HAVING JURISDICTION SHALL PROVIDE THE OWNER OR OPERATOR OF SUCH HAZARDOUS WASTE INCINERATOR OR PROCESSOR WITH AN ACCOUNTING OF THE BASIS OF SUCH FEES. Such ~~increased services~~ COSTS may include but are not limited to the improvement and maintenance of roads and bridges; fire protection; law enforcement; monitoring by county or municipal health officials pursuant to the requirements of state law, ~~regulations~~ RULES, and the certificate of designation; and emergency preparation and response. The amount of such fee shall be no more than THE GREATER OF two percent of the annual estimated OPERATING COST OF OR THE ANNUAL ESTIMATED gross revenue received for the incineration OR PROCESSING of hazardous wastes by the hazardous waste incinerator OR PROCESSOR. The governing body having jurisdiction may provide reimbursement out of such fee moneys to other governmental units for the reasonable direct costs to such governmental units of increased services necessitated by such hazardous waste incinerator OR PROCESSOR.

(b) IN LIEU OF THE ANNUAL FEES IMPOSED UNDER PARAGRAPH (a) OF THIS SUBSECTION (1), THE GOVERNING BODY MAY REQUEST THAT THE OWNER OR OPERATOR OF ANY HAZARDOUS WASTE INCINERATOR OR PROCESSOR SITE TO MAKE A LUMP-SUM PAYMENT COVERING THE TOTAL AMOUNT OF FEES IMPOSED UNDER THIS SECTION. SUCH LUMP SUM PAYMENT SHALL NOT BE MADE UNLESS THE GOVERNING BODY HAVING JURISDICTION AND THE OWNER OR OPERATOR OF A HAZARDOUS WASTE INCINERATOR OR PROCESSOR AGREE TO SUCH PAYMENT.

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

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

SECTION 14. Effective date - applicability. This act shall take effect upon passage and shall apply to sites for which an application for a certificate of designation was filed on or after said date.

SECTION 15. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 22, 2002