

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

324.11120 Notification of member, county, and municipality; selection of members to serve on board; creation of board; timetable; duties of board; comment and input; listing issues; negotiation process; identification of affected parties; appointment of mediator; final best offer or negotiated settlement; hearings; impact; considerations; concerns and objections; modifications; integration of local ordinances, permits, or requirements; seeking advice; decision; approval or rejection of application; extension; preparation of draft construction permit; initiation of public participation process; duties of department; direction of board; duties of board upon rejection of application.

Sec. 11120. (1) The department shall notify those members appointed by the governor who will serve on the board within 75 days after receipt of a construction permit application, if the department has not notified the applicant of the intent to deny the application, or at the time the department refers an application to the board, or at the time an application is automatically referred to the board pursuant to section 11119(4), whichever is earlier. At that time the department also shall notify the county and the municipality in which the proposed treatment, storage, or disposal facility is to be located and request the appointment of the members of the board as provided in section 11117(2)(b). The notification shall include a notice of intent to issue all departmental permits required for the construction, pending recommendations of the board and approval by the department. Within 45 days after the notification, the county and the municipality shall select the members to serve on the board. The board shall be created at that time and notification of the creation of the board shall be made to the chairperson.

(2) Within 30 days after creation of a board, the board shall meet to review and establish a timetable for the consideration of an application for a proposed treatment, storage, or disposal facility.

(3) The board shall do all of the following:

(a) Set a date and arrange for publication of notice of a public hearing in a newspaper having major circulation in the vicinity of the proposed site, at its first meeting. The public notice shall do both of the following:

(i) Contain a map indicating the location of the proposed treatment, storage, or disposal facility, a description of the proposed action, and the location where the application for a construction permit may be reviewed and where copies may be obtained.

(ii) Identify the time, place, and location for the public hearing held to receive public comment and input on the application for a construction permit.

(b) Hold a public hearing within 45 days of the first board meeting.

(c) Publish the notice not less than 30 days before the date of the public hearing.

(4) Comment and input on the proposed treatment, storage, or disposal facility may be presented orally or in writing at the public hearing, and shall continue to be accepted in writing by the board for 15 days after the public hearing date.

(5) After the public hearing comment period has been closed, the board shall list the issues that are to be addressed through a negotiation process and list the issues to be evaluated by the board through its deliberations.

(6) A negotiation process shall take place between the applicant and the affected parties, who shall be identified by the board. A representative of the municipality and a representative of the county in which the facility is proposed to be located shall each be considered an affected party. If requested by any affected party or the applicant, the board shall appoint a mediator to assist during negotiations. The negotiation process shall:

(a) Proceed concurrently with the board's hearings process.

(b) Address the list of issues referred by the board and any other issues unanimously agreed to be considered by the applicant and all affected parties.

(c) Be completed within 150 days after the first meeting of the board unless the applicant and 1 or more affected parties involved in the negotiation process jointly request an extension of not more than 60 days and the extension is approved by the board. The board shall not grant extensions in excess of 60 days. An extension granted under this subdivision may extend the time period in which the board either approves or rejects the construction permit application as specified in subsection (15).

(7) On each negotiation issue which has not reached a negotiated settlement, the board shall select between final best offers presented by affected parties. The final best offer or the negotiated settlement shall not be less stringent than the requirements of the law or pertinent decisions of the board, whichever is the most stringent.

(8) The board shall conduct formal or informal hearings to receive evidence on the disputed issues not subject to the negotiation process described in subsections (6) and (7).

(9) The formal hearings process shall be conducted by the board to receive information from technical experts on disputed issues. Any affected party may request permission by the board to participate in the board's formal hearings within 15 days after the board's public hearing. The board shall determine which affected parties shall participate in the board's formal hearing. If the board denies the request of an affected party to participate in the board's formal hearing, the board shall give the affected party notice of the board's decision and the reasons for the decision. A representative of the municipality and a representative of the county in which the facility is proposed to be located shall each be automatically entitled to participate. During the board's formal hearings process, the board shall:

- (a) Receive sworn testimony.
- (b) Cross-examine witnesses.
- (c) Allow representatives of affected parties to cross-examine witnesses.
- (d) Request participation as needed.

(10) Comments made at informal hearings shall not be made under oath and no cross-examination shall occur.

(11) The board shall deliberate on the impact of the proposed treatment, storage, or disposal facility on the municipality in which it is to be located and make a final determination as to its recommendation to the department regarding the construction permit application.

(12) The board shall consider, at a minimum, all of the following:

- (a) The risk and impact of accident during the transportation of hazardous waste.
- (b) The risk and impact of contamination of ground and surface water by leaching and runoff from the proposed treatment, storage, or disposal facility.

(c) The risk of fires or explosions from improper treatment, storage, and disposal methods.

(d) The impact on the municipality where the proposed treatment, storage, or disposal facility is to be located in terms of health, safety, cost, and consistency with local planning and existing development. The board also shall consider local ordinances, permits, or other requirements and their potential relationship to the proposed treatment, storage, or disposal facility.

(e) The nature of the probable environmental impact, including the specification of the predictable adverse effects on the following:

- (i) The natural environment and ecology.
- (ii) Public health and safety.
- (iii) Scenic, historic, cultural, and recreational value.
- (iv) Water and air quality and wildlife.
- (f) An evaluation of measures to mitigate adverse effects.

(g) The board shall consider the information contained in the construction permit application disclosure statement.

(13) The board also shall consider the concerns and objections submitted by the public. The board shall facilitate efforts to provide that the concerns and objections are mitigated by establishing additional stipulations specifically applicable to the treatment, storage, or disposal facility and operation at that site. Through deliberations, the board may modify the construction permit application in response to its findings. To the fullest extent practicable, the board also shall integrate by stipulation the provisions of the local ordinances, permits, or requirements.

(14) The board may seek the advice of any person in order to render a decision to issue its recommendation to the department to approve or deny the construction permit application.

(15) Within 180 days after the first meeting of the board, the board shall make a decision on the negotiated agreement and the final best offer from each party on each issue and shall recommend to the department that the department either approve or reject the construction permit application. The 180-day time period may be extended as provided in subdivision (6)(c). However, an extension shall not exceed 60 days.

(16) If the board recommends to the department the approval of the construction permit application and the department follows the recommendation, the department shall prepare a draft construction permit and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act. Upon completion of the public participation process, the department shall review all comments made during that process and shall issue or revise and issue the construction permit or reconvene the board to consider issues specified by the department that were raised during the public participation process. Within 30 days after having been reconvened under this subsection, the board shall recommend to the department the rejection of the application or recommend the revision and issuance of the construction permit, or recommend that the department revise the draft construction permit

and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act or regulations promulgated under that act.

(17) If the board recommends the rejection of the construction permit application, the board shall do all of the following:

(a) State its reasons in writing and indicate the necessary changes to make the application acceptable if a new application is made.

(b) Recommend that the department deny the construction permit and initiate a public participation process equivalent to that required by the applicable provisions of the solid waste disposal act, or regulations promulgated under that act.

History: 1994, Act 451, Eff. Mar. 30, 1995;—Am. 1995, Act 61, Imd. Eff. May 24, 1995.

Popular name: Act 451

Popular name: Hazardous Waste Act

Popular name: NREPA