

Recommendations to Improve Solid Waste Management in Vermont

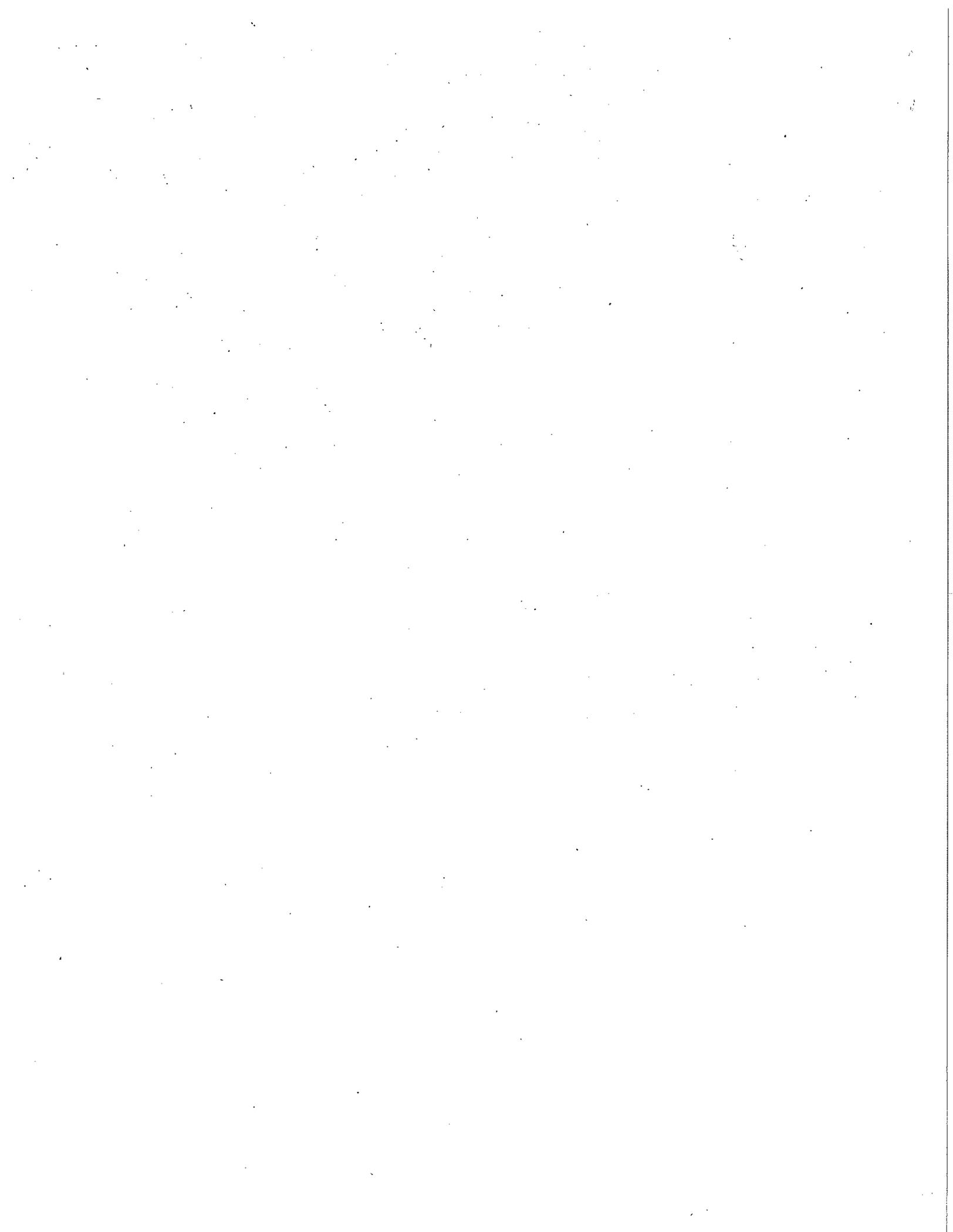
A Report to the Legislature

prepared by the

Act 78 Study Committee

in response to a mandate
from the Legislature

January 1997





State of Vermont

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Chair, Senate Natural Resources & Energy Committee
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Chair, Senate Government Operations Committee
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Chair, Senate Institutions Committee
Chair, House Institutions Committee

Dear Legislators:

In accordance with Sec. 38 of the 1996 Capital Bill, I am submitting to you the final report of the Solid Waste Study Committee who was charged with the task of reviewing the organization of the solid waste industry in Vermont. The report is comprehensive in that it responds to the legislature's mandates, assesses the accomplishments in solid waste management since the passage of Act 78 in 1987, provides an overview of the current solid waste management situation, and recommends actions beneficial to the future management of solid waste.

All of the committee members were interested in creating an equitable, environmentally minded, and efficient solid waste management structure for Vermont. The recommendations in the report follow from these and other guiding principles outlined on page 8. Many of the committee recommendations are legislative in nature but others are rules, policy, and operations related. Legislative Counsel staff participated in many of the Committee meetings and has drafted legislation, which the committee reviewed, that would make the legislative changes needed to implement the recommendations of the report. The Committee plans to meet again to review and revise the proposed legislation. It is our hope that we will be able to provide the legislature with a comprehensive package of legislation which all members of the committee can support. We anticipate that this will be complete in late January, 1997.

The Committee members appreciated the opportunity to work through problem areas and to come to mutually agreed upon solutions. The use of an outside facilitator was especially productive and Barry Lawson & Associates did an outstanding job. The experience was valuable to all of us and we believe the report meets the Legislature's expectations. Please contact any of the committee members listed in Appendix A if you have any questions. The Committee members agreed to come together again at the legislature's request to review draft legislation for consistency with the report recommendations.

Sincerely yours on behalf of the Solid Waste Study Committee,

Gary Schultz, alternate for William C. Brierley, Department of Environmental Conservation

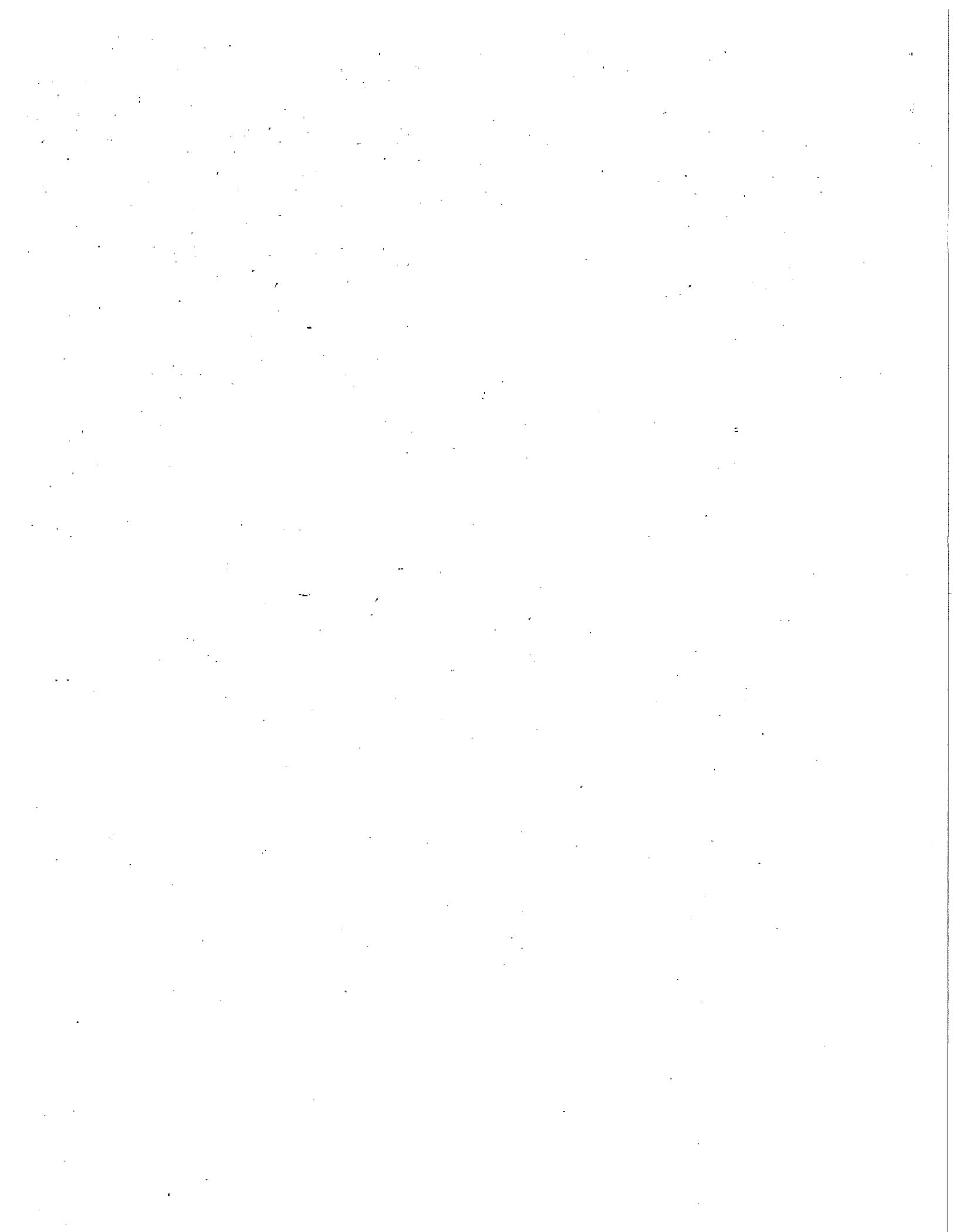


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Introduction

In the summer of 1996, the Vermont Legislature created a Study Committee to address several issues related to Vermont Act 78, the State's legislation governing solid waste management. Recognizing that the environmental, political, and institutional context within which solid waste management occurs has been evolving since the Act was passed in 1987, the Legislature felt that a thorough review of the means by which the State's solid waste goals are achieved was needed. In particular the Legislature mandated consideration of four items: (1) consolidation of the state's solid waste management districts; (2) the assurance that public indebtedness would be covered should there be a reduction in the number of districts; (3) a model organization for solid waste management in Vermont; and (4) the state Capital Construction Grants program.

A Study Committee was formed and met throughout the Fall of 1996. The voting members included representatives from waste management districts, municipalities, private solid waste service providers, state agencies, industrial associations, and public interest and non-profit groups. Non-voting members included three members each from the House and Senate of the Legislature. William Brierley, Commissioner of the Department of Environmental Conservation, was elected Chairman.

This report presents the Act 78 Study Committee's recommendations to the Legislature. It reflects the discussion, debate and agreements that evolved during four months, 16 day-long meetings, facilitated by a professional facilitator/mediator. This review included discussion by voting and non-voting members of the Committee, alternates to members, as well as observers at each of the sessions. The recommendations represent consensus among the eleven voting members of the Study Committee. The strength of these consensus agreements lies in the fact that they represent the result of considerable debate and collaboration among Committee members to find common ground. The recommendations in this report, therefore, are ones supported by all voting members of the Committee.

The report has been prepared by the Act 78 Study Committee's facilitator/mediator, Barry Lawson, and is drawn largely from notes prepared by Dr. Lawson at the end of each session. It has been revised by the Committee based on each member's perspective and comments received from members' constituents. Special thanks go to Andrea Cohen and Kathy Perkins for assisting the Committee and the facilitator/mediator throughout the project.

Accomplishments Since the Passage of Act 78 and Things That Should Continue

A starting point for the Study Committee was to recognize accomplishments and positive trends that have resulted from Act 78 and the maturation of the solid waste field since passage of the Act in 1987. These successes provided the basis for further improvements as recommended by the Committee. Members concluded that some changes in the law are necessary, but that current and future market conditions and the increased professionalism in the field are, by themselves, providing many of the adjustments appropriate for more cost effective solid waste management in Vermont.

The Study Committee identified and agreed on several achievements of recent years, trends that should be encouraged for the future.

1. Recycling, reuse and source reduction are increasing (diversion of waste has gone from 19% in 1988 to an estimated 35% in 1994).
2. Future costs (including social and environmental costs) are being increasingly incorporated into present costs, as intended by Act 78.
3. All unlined municipal solid waste landfills, except for four smaller ones each receiving less than 1000 tons per year, have stopped receiving trash.
4. Landfills are being designed, constructed and operated with better technology with the goal of reducing future costs of pollution.
5. Environmental standards are being enforced as part of the certification process.
6. Unit-based (by weight or by bag) pricing of services is increasing.
7. The system of 'user-pays' (rather than property taxpayer pays) has helped people realize the implications of the volumes and toxicity of waste generated and has helped drive many successful programs.
8. The changing field of solid waste management has led to lower costs, the successful introduction of alternative technologies, and has helped open regional markets for recyclables, waste material processing and waste disposal.
9. Many jobs have been created in Vermont solid waste/resource conservation management, and many small businesses and cost-effective volunteer efforts have been spawned.

10. The degree of professionalism in resource conservation and solid waste management has increased, accompanied by greater cost awareness and cost accountability, in both the private and public sectors.
11. A variety of options and models for solid waste management have evolved, reflecting different constraints and opportunities around the State.
13. With the passage of Act 78 and imposition of federal regulations, the costs for services rose rapidly, but have been stable or decreasing during the past three years.
14. Solid waste management has evolved into a commodity market in that now more than ever laws of economics govern the handling of waste materials. More ways are now being found to use what once was treated as waste, waste being a raw material in the commodity market.
15. Progress has been made in education in schools and public awareness of solid waste issues and concerns. Vermonters now know more about how solid waste is and should be managed. Education about solid waste has raised awareness of other environmental and political issues as well.
16. Heightened public awareness and access to collection and diversion programs have contributed to significant achievements in the reduction of unregulated hazardous waste.

How the Committee Determined Which Issues to Address

During its first meetings, the Study Committee members exchanged their individual views of the solid waste situation in Vermont. Although sometimes widely divergent (reflecting their positions in the private, public and non-profit sectors), these perspectives helped to determine boundaries for the issues the Committee chose to address beyond those specifically mandated by the Legislature in creating the Act 78 review process. These perspectives could be grouped into those related to the changing role of the public sector, the increased role of the private sector, and factors that heavily influence solid waste management/resource conservation.

The Committee also recognized that the Vermont Legislative Council's report, "Solid Waste Management in Vermont, A Program Evaluation - December 1992" was a relevant point of departure. They agreed that the goals explicitly stated in Act 78 regarding the hierarchy of reduction/reuse/recycling are still relevant and appropriate. An additional goal, minimizing the release of toxics to the environment, needs increasing attention. Public and private

solid waste managers should focus on how these goals should continue to be achieved. A large part of this effort, as reflected in the Committee's recommendations, centers on finding and encouraging a proper balance between the public and private sectors.

The Study Committee realized that in addition to some needed changes to current state law, Committee guidance for the redrafting of the state solid waste plan was also appropriate.

Goals of the Act 78 Study Committee

The Committee agreed upon goals for its deliberations. These are presented below.

Goals of the Act 78 Study Committee

1. Identify the problems that currently and in the future are likely to confront public and private solid waste managers in Vermont.
2. Identify the criteria and/or principles upon which the solutions to problems should be based.
3. Consider the appropriate roles of and forms of interaction between the public and private sectors in solid waste management.
4. Develop solutions to the identified problems.
5. Design a model organization for solid waste management in Vermont.
6. Prepare recommendations to the Legislature regarding appropriate roles for public and private entities, solid waste planning, state grants, rule-making, any regional solid waste district consolidation, and the management of any resulting indebtedness.
7. Offer guidance for a new State Plan that provides direction to both the public and private sectors.
8. Prepare an outline of proposed legislation.
9. Prepare proposed legislation, if time allowed.

Objectives to Be Met

The Study Committee realized that certain basic objectives for solid waste management in the State could serve as criteria against which to judge the suitability of the full range of recommendations agreed upon by its members. The objectives presented here are reflected in the solutions recommended by the Committee and are not offered in any particular order of priority. Compromising one objective to meet another was avoided whenever possible.

Objectives to be Met In Study Committee Recommendations

1. Protect the environment by reducing toxicity, reducing waste volumes, and encouraging sustainable resource management (preserving and conserving). Public health, safety and the environment must continue to be principal concerns of all solid waste managers.
2. Provide a predictable, stable framework for waste disposal.
3. Strive for public/private cooperation and consistency in educating the public to reduce wastes and toxicity.
4. Be fair and consistent in establishing and enforcing regulations.
5. Continue to permit municipalities full flexibility to determine how solid waste is managed with standards set by law and rule, including continuing without disruption services that have been approved by the public and that are now working well.
6. Ensure that current and future benefits of programs and regulations exceed current and future costs; social and environmental costs and values must be a part of all such calculations.
7. Recognize and reduce future costs (including environmental costs) by incorporating them in present costs.
8. Make available a minimum (or standard) level of services to all Vermonters where possible.
9. Encourage the use of 'unit-based' pricing of disposal services and commodities where appropriate.
10. Employ the principle of 'user pays' wherever practical.
11. Encourage private sector participation in the solid waste marketplace by a variety of measures including, but not limited to, eliminating any barriers to entry or operation, unfair regulatory practices, or any discriminatory surcharge systems.
12. Accelerate and streamline the permitting and certification processes, insuring predictability, consistency and thoroughness consistent with full participation by communities and individuals who stand to be affected. Emphasis should be on rigorous and thorough analysis of major projects to provide better protection of the public and the environment.
13. Encourage the public and private sectors to assure the availability of services desired by the public and necessary for environmental protection, which are not otherwise being provided, and to undertake innovative or experimental solutions where appropriate.
14. Encourage the Legislature and other public sector entities to set policy and help assure a competitive public/private marketplace for the provision of solid waste services.
15. Seek equal opportunity for all market participants.
16. Use full-cost accounting in determining the price of services in the public sector.
17. Promote the stabilization of the recycling commodities market.
18. Balance all actions (services and programs) with an appropriate recognition of associated costs, including environmental costs.
19. Enable consumers (and taxpayers) to know how their public sector dollars are being spent.

Guiding Principles

The Committee also identified several principles and criteria to guide discussions and subsequent agreements.

Guiding Principles

- A. A standard level of solid waste services should be available to all Vermonters, where appropriate.
- B. Each municipality (through its voters) should determine how waste management services are provided in that municipality.
- C. The private sector should be encouraged to provide as many services as possible, at the lowest reasonable prices, consistent with environmentally sound handling practices and community goals and preferences.
- D. Environmental protection, avoiding future costs in cash and environmental impact, should be a priority for any system or policy.
- E. Public and private entities should work cooperatively to provide school and public education to reduce toxicity and the volumes in the solid waste stream.
- F. The organization of public and private solid waste management should result in reducing waste volumes and waste toxicity.
- G. Local government should have the ability to be a provider of services when it is in the public interest to do so.
- H. Vermont has established the integrated solid waste management hierarchy (reduce, reuse, recycle) as an underlying premise for developing and permitting facilities. Some government participation to achieve this is required.
- I. Both sectors need to be accountable to the environment, customers, taxpayers, and those charged with monitoring performance.
- J. The state should encourage the use of independent third parties, mediation and other alternative dispute resolution techniques to promote collaborative solid waste management.

Outline of This Report

Section I presents one of the mandates of the Legislature, namely, a model state organization for solid waste management. This "model" was interpreted by the Committee to include (a) a preamble or context for solid waste management in Vermont as it is evolving in the late 1990s, (b) definition of the various roles and responsibilities (functions) of public and private entities, and (c) the plans, regulations and other requirements that establish, in large part, the relationships among these entities.

The organizational issues are, in part, about who is or should be doing what; more significantly, however, they reflect a changing paradigm driven by the fact that much of what society once thought of as trash is now a marketable commodity, and what was once thought of as a liability (called waste management) is now a market-driven, competitive system. This may be the single most significant factor, or force, driving solid waste management in

Vermont and the country today. This factor has resulted in changing roles for both the private and public sectors and in trends that have many positive aspects. Not the least of these is an impressive increase in the amount of waste diverted from disposal and a competitive marketplace that is encouraging private entrepreneurs to provide waste management services previously provided by the public sector. The public sector will continue to have evolving public interest roles: setting societal goals, guiding the development of the marketplace and providing services in the public interest.

Section II provides the Committee's recommendations regarding three specific mandates of the Legislature (district consolidation, resulting stranded public indebtedness, state grant program). Considerable discussion focused on the changing role of solid waste management districts. While the Committee foresees that many of the services once provided by the districts may in the future be provided by the private sector (sometimes under contract to the districts), other districts are likely to continue to fulfill functions for some municipalities who choose the organizational benefits provided by a regional approach. The Committee also saw the need for state financial grants to public and private entities for pilot, demonstration and other limited programs to help achieve specific goals, potentially including assistance for hazardous waste programs to communities where low population and sparse settlement makes provision of a minimum level of solid waste services difficult.

Section III of the report consists of a compilation of agreements and recommendations forged by the Committee in a variety of problem areas. Not limiting itself to the principal mandates from the Legislature, the Committee addressed issues related to environmental protection, cost control, regulation, municipal government and regional cooperation, federal/state concerns, and education. Some of these recommendations call for changes in Act 78; others provide guidance and suggestions for the preparation of the revised State Plan. The problems and recommended solutions are supported with, in many cases, a discussion of factors raised during deliberations.

Appendix A includes background on the Study Committee Act 78 review process, its participants, procedures and logistical arrangements. Appendix B provides a list of references used by the Committee during its deliberations. Appendix C provides a first draft of proposed legislation to address the recommendations made by the Study Committee and prepared by the Legislative Council in consultation with the Committee.

Public Review Process

The Committee determined that its members would assume responsibility for circulating a draft version of this report to constituents and interested parties for comment. This review included meetings for discussion and explanation organized independently by each member, two public information sessions in Montpelier and comments from interested parties. Comments resulting from this review were considered by the Committee and this report contains those accepted and approved by the Committee for submission to the Legislature.

Note on Categorization of Recommendations

Most of the draft recommendations of the Study Committee fall into one or more of four categories, designated as follows in the report:

- [L] - requiring Legislative action
- [P] - relevant for the revised solid waste implementation Plan, or process
- [F] - requiring reallocation of Funding
- [R] - requiring modifications to state solid waste Regulations

Section I Model State Organization

The Committee recognized that the manner in which solid waste services are planned for and provided is evolving and will continue to evolve. Solid waste activities and their provision are quite different from what they were when Act 78 was passed. The elements portrayed in this section represent the organization for solid waste management in Vermont and should be reflected in the State Plan. It is a dynamic organization, continually changing in response to market conditions.

On one hand, the role of the public sector is evolving into primarily a steering or guiding role. The public sector will continue to set goals, to use its tools to guide and help shape the market and market conditions, to ensure competition, to provide the atmosphere for cost effective and environmentally sensitive resource conservation, to provide services where appropriate, to enforce environmental laws and regulations, and to ensure that the best interests of the public are served by overseeing and managing where necessary the marketplace.

The private sector, on the other hand, is increasing its share of the commodities market, providing waste management services within the guidelines established by state goals, local and regional plans, and in compliance with laws, rules and regulations. The role of the private sector is to be an important service provider, utilizing private capital, a competitive market and its understanding of the evolving commodity markets to offer services consistent with state goals and consumer expectations.

These changing functions are at the core of the organization of solid waste/resource conservation services in Vermont.

Who Should Do What

The chart on the following page portrays many of the basic solid waste management functions to be served in Vermont, and who should fulfill them. At the regional level, there are three roles: solid waste management districts, regional planning commissions (RPCs), and cooperating regional associations of municipalities unaligned with waste management districts. The reader should note that this table stands alone and presents, without discussion, the functions the Committee agreed were basic to each role. Some of these roles are required by law; others are possible roles.

Following the chart the text describes other functions of the various entities.

Who Has a Role in Basic Solid Waste Management Functions

Basic Functions of Solid Waste Management	Role						
	Fed'l	State	Municipal	District	RPC	Reg'l Ass'n	Private Service **
Prepare plan (solid waste implementation)		✓	✓*	✓	✓	✓	✓
Prepare plan (municipal, regional land use)			✓		✓		
Conduct research	✓	✓	✓	✓			✓
Fund pilot, demonstration projects	✓	✓	✓	✓		✓	✓
Other financial assistance	✓	✓					
Technical assistance		✓		✓	✓	✓	✓
Set goals, standards		✓	✓	✓	✓	✓	
Write rules, regulations, permits	✓	✓	✓	✓			
Enforce rules, regulations	✓	✓	✓	✓			
Support waste reduction, recycling	✓	✓	✓	✓	✓	✓	✓
Monitor local programs		✓	✓	✓	✓	✓	
Resolve interstate issues (share information)	✓	✓					✓
Resolve international issues	✓						
Certify facilities		✓					
Collect surcharges, franchise taxes		✓	✓	✓			✓
Design and site facilities			✓	✓			✓
Operate facilities			✓	✓		✓	✓
Manage liability for facilities		✓	✓	✓		✓	✓
Finance infrastructure		✓	✓	✓		✓	✓
Set a good example	✓	✓	✓	✓	✓	✓	✓
Provide educational opportunities	✓	✓	✓	✓	✓	✓	✓
Report to taxpayers		✓	✓	✓	✓	✓	
Delegate responsibilities		✓	✓				
Accept responsibility for stranded debt		✓	✓	✓		✓	✓
Collect, process, and dispose of trash			✓	✓		✓	✓

* If a municipality does not prepare a plan it must meet performance criteria established by the state.

** It is assumed that for many of these functions, partnerships between private and public entities will be encouraged. For example, municipal plans can be drafted by private solid waste companies for municipal adoption.

Federal Government

It was assumed that the Federal Government can delegate authority to state programs and provide financial assistance, so long as this assistance does not stifle new ideas not federally supported. On the international scene and as a result of the North American Free Trade Agreement (NAFTA), Canada may be a part of the regional solid waste market, and this situation may provide challenges and opportunities to the industry in Vermont. The Federal Government will undoubtedly play a role as international trade in commodities increases.

The Committee also recognizes that the Federal Government plays legislative and judicial as well as executive roles. Supreme Court decisions, for example, have and may continue to exert influence on the manner in which solid waste is managed in Vermont and other states. Existing rules of the U.S. Department of Treasury currently prohibit the sale of any individual public facility funded through obligation tax free bonds used to finance a group of facilities unless the entire group of facilities is offered for sale. These same Internal Revenue Service (IRS) rules limit the contract term for a private contractor to only 5 years during which the contract may be canceled without penalty after three years. Possible changes in these rules could frustrate or accelerate the conversion of many facilities from public to private hands. The potential for unnecessary duplicate facilities and higher than necessary costs is real.

State Government

Current solid waste law outlines many responsibilities/roles for the state and these roles should continue. These include preparation of the state solid waste plan; state solid waste rules making and solid waste policy; environmental regulation of solid waste facilities; technical review; inspection; and enforcement of other provisions of solid waste law. Other state government functions include monitoring local programs and providing or funding public educational opportunities.

The state should explore delegating monitoring compliance to municipalities or districts (when so requested by the potentially delegated party). Such delegation should occur with conditions (e.g., appropriate municipal competency exists; if the delegated party fails to perform, the state can take back that function; no conflict of interest; and maintaining uniformity, consistency, and effectiveness in compliance monitoring). The state should consider methods to allow the revenues collected from enforcement to be used to cover the costs of such enforcement. [L][P]

Municipal Government

One cannot easily generalize about the way solid waste services and programs are provided around the state. Nor is it easy or wise, according to the Committee, to dictate how municipalities should organize for their services. As a result, the Committee has emphasized the need to retain and respect flexibility for municipalities to determine the manner in which waste management services are provided in their jurisdictions. Each is different in its population, existing facilities, preferences, and ability to pay. The Committee agrees that leaving the decision of what services to contract out or delegate to the private sector, what functions to assume itself -- and which services and programs to delegate to a district, regional planning commission or other cooperative association -- is the best insurance that the responsibilities that ultimately reside with local government are dispatched as efficiently and cost effectively as possible, consistent with state and federal goals and regulations. [P]

The Committee reaffirms that municipal government is responsible for ensuring, and may provide for a full range of, waste reduction, reuse, recycling, composting education, collection, processing, disposal and other solid waste services (including hazardous waste), either directly or through private companies with conditions, some of which are spelled out in more detail later in this report. It may also conduct pilot and demonstration projects on new technologies and strategies.

As is now the case, the basic municipal functions may be delegated to a regional organization (i.e., solid waste district, regional plan commission, or other regional association) as deemed appropriate by the municipalities. During the maturation of the solid waste management field in the past eight years, a sorting out of functions for regional organizations has resulted in some municipalities shifting in or out of solid waste districts and regional associations in parts of the state. Many continue to participate collaboratively in the eleven solid waste management districts for services because they think the districts are doing something useful, and doing it in a way that the towns want it to be done.

Other communities have chosen to go it alone, many of them depending almost entirely on the private sector to provide services. A few municipalities choose to provide services or facilities in order to have full control over quality and price of service. Still others are finding some advantage in working cooperatively with other municipalities outside of formal district charters. Many of these cooperatives purchase selected services from nearby districts. The pattern of municipal service provision is indeed varied.

Private Sector Roles

The growth in the stature of the private sector has been a major factor changing the structure of the solid waste industry in the past eight years. Private companies have responded to the opportunities presented by the marketability of recyclables as commodities, a U.S. Supreme Court decision eliminating municipal waste flow control, and the potential for vertical integration engendered, in part, by the consolidation of the industry into a smaller number of larger companies. While the private sector was expected to play a role in solid waste management when Act 78 was first enacted, the expansion of the services offered by this sector has far exceeded what was anticipated in the late 1980s.

The Committee acknowledges this growth and increasing professionalism of waste management companies which now provide a wide range of waste management services. This growth is expected to continue, relieving some communities and districts of many of the functions they traditionally held.

In addition to the private service functions identified in the role chart, others should be mentioned. For instance, the evolving market provides excellent opportunities for the private collector-processor-hauler to provide, in addition to solid waste services, demonstrations to test new technology and equipment and to offer waste reduction incentives (which is now easier for a vertically integrated company). Significantly, new investments need not necessarily be provided at taxpayer expense as they can be provided through private infrastructure capital paid back over time through consumer fees. These companies now also provide services to help municipalities with their responsibilities mandated by statute (e.g., planning, regulatory compliance, training and consumer education). In the spirit of promoting public-private partnerships, advisory or other participatory roles for the private sector should be considered by district boards. As with the public sector, meeting state goals, attaining efficient service provision, and doing so at a reasonable cost are basic objectives. A competitive marketplace is necessary for these efficiencies to be realized.

The growth and consolidation of the private sector led the Committee to foresee the need for assurance that there will always be fair and real competition in the marketplace. There have been cases where public entities have competed to provide services with private companies and have used or have the potential to use regulations solely to make public services more competitive or to limit the entry of private firms into some aspects of the waste/resource market. The potential also exists for little or no competition in a market area. Both situations could lead to higher than necessary costs to the consumer or taxpayer and work against the public good. Promoting fair competition, be it among private firms or between public and private sectors,

is a strategy that can lead to higher quality services and reasonable costs to consumers and taxpayers.

State grants for pilot programs which have in the past been reserved for public entities should also be opened to private companies. Surcharges on waste imposed by both municipalities and districts should also continue to be available to support existing programs (please see Section II).

Because there are residual public investments whose remaining debt must be paid off and state waste management functions to be paid for, private entities will continue to pay state franchise taxes on the tonnage of waste hauled and collect surcharges imposed by municipalities and districts.

Manufacturers of Consumer Products

Although private manufacturers were not specifically addressed in the Committee deliberations, they are an important element of the waste management, resource conservation effort in Vermont. Some of the functions that the Committee has identified for these manufacturers are to:

- respond to customer needs/wants for the design of and environmental information about, products and packaging;
- ensure that manufacturing wastes are managed effectively;
- adopt source reduction and pollution prevention methods;
- institute in-house recycling;
- buy products made from recovered materials, where appropriate;
- use some recovered materials in the manufacturing process, where appropriate;
- reduce toxic substances in releases/discharges beyond the manufacturing site, whether in the form of manufacturing wastes and by-products, or in the form of products or in the form of wastes produced by the operation of products;
- design products to facilitate reuse and recycling (e.g., reusable containers and single material packaging, and products that last), where appropriate; and
- other requirements to respond to government initiatives (e.g., take-back or buy-back programs), where appropriate.

Consumers

Commercial and residential consumers are lead actors in solid waste management/resource conservation. Most of the programs developed in the private and public sectors are designed to influence the consumer to participate actively in achieving state resource conservation objectives. Reducing the costs of these services is a major objective, but so, too, is increasing the quality and convenience of the services offered. The ultimate costs of the overall program fall on the consumer/taxpayer, so it is in their interests that public and private initiatives are directed. Functions of these consumers are to:

- reduce the amount of waste generated;
- participate in solid waste collection and management programs;
- pay for services used, including taxes;
- educate themselves on environmentally sound waste management practices;
- buy recycled products;
- separate materials for recycling; and
- properly dispose of wastes.

Key Relationships Among These Roles

The interrelationships among these roles help to ensure that statewide and regional goals are pursued in an environmentally sound manner. In some cases, this involves avoiding duplication where feasible, assuring conformance, and keeping costs as low as possible while meeting overriding standards. In other cases the mutually consistent goals can be achieved by implementing plans prepared at state and local (or regional) levels; by promulgating regulations under which all entities must operate in an environmentally acceptable manner; and by negotiating contracts under which entities purchase services from one another. Each of these three elements is addressed in the Committee's recommendations. (Please see Section III.)

Charters

When each solid waste district was established, a charter describing the relationship among municipalities within the district and specifying the rules and procedures of the district organization were approved by the voters of each municipality and ratified by the Legislature. The charter, among other items, specifies the manner in which municipalities can join or leave districts. Changes in charters or the relationships between municipalities should be left to the voters of the municipalities affected.

Solid Waste Implementation Plans

Plans consist of state, regional and local implementation plans that specify solid waste facilities and programs as well as the goals, standards, and conditions under which statewide (and local) objectives are achieved. The centerpiece of the planning structure is the State Plan which must be revised and adopted in compliance with Act 78. The law requires an update of this plan every five years, and a revised plan was due in 1994. The Committee recommends immediate action to revise this plan consistent with the Act's mandates and with the recommendations and guidance emanating from this report and/or resulting legislative action. In the recommendations that follow (see Section III), specific guidance for this plan revision is offered. [P]

Local and district implementation plans, where they are developed, must be consistent with the State Plan and with land use plans of the relevant regional planning commission. In the past, considerable time and money has gone into developing these local implementation plans in keeping with decisions made, programs established, and facilities built over the past ten years. The Study Committee recommends that these plans be much simpler in the future. Detailed requirements for these plans exist in statute and statutory changes may be necessary to implement these recommendations. Therefore, the next round of these plans should be produced in line with the recommendations adopted by the Legislature and the guidance provided in the State Plan. The plans should provide for maximum flexibility to meet changing realities of the solid waste industry over time, in keeping with the increased privatization encouraged throughout the state and building on recent experience. [P]

Solid waste facilities of any size need to be consistent with local land use plans. For facilities above a minimum size, state certification is also required and entails, among other items, consistency with applicable local and regional solid waste and land use plans. For some facilities, the State's Act 250 process is also triggered, with its own requirements for consistency. While solid waste plans are not intended to be long, complex or costly, their principal purpose is to ensure that an acceptable level of consistency and public

accountability exists before public and certain private investments are made or inappropriately duplicated. [P]

Regulations

When accompanied by compliance and enforcement, regulations ensure that minimum standards of environmental protection and other social goals are achieved. State regulations cover waste facility design, siting and management, financial responsibility, and other solid waste management activity including reporting and compliance. Effective enforcement depends upon making adequate funds, staff, and other resources available to the Agency of Natural Resources. When possible, efforts should be made to cover the costs of enforcement by fining those who do not comply voluntarily. Monitoring and enforcement must be regarded as part of the full costs of waste disposal.

Regulatory enforcement resides principally with the state government, but some regulations are enforceable at the local, district and even federal levels. Possible loopholes in the law and the perceived unfairness with which regulations are enforced have been bones of contention. Existing loopholes in the solid waste law must be eliminated and enforcement must be consistent between public and private sectors, between small and large waste management companies, and between rural and urban areas.

Contracts

Contracts among private and public entities, and between service providers and customers set forth the expectations and conditions for service. Providing equal opportunities for service providers to compete fairly in this field has been a concern of the Committee.

Within the context of this statewide organization, the Committee's recommendations are offered. Other mandates of the Legislature to the Study Committee are addressed in the next section.

current laws prescribing public notice and that the decisionmaking process used in each district should be advertised and should continue to be decided upon by the electorate of that district.

Fair Competition Between Sectors/Surcharges

Another concern for the Committee was creating and maintaining a fair, competitive marketplace for private and public sector providers. The difference in amount of surcharges among districts has sometimes adversely affected competition between market participants (See chart below). This is particularly evident when the surcharges collected from private entities have been used to subsidize public services that compete with the same private entities from whom the tax is collected.

Selected District Surcharge/Tax Rates Per Ton For Municipal Solid Waste (MSW) and Construction and Demolition (C&D) Wastes, By District, 1996

District	Surcharge
Addison	\$29.87
Chittenden	\$17.61
Central Vermont	\$12.00
Northwest	\$15.00
Rutland	\$11.97
Greater Upper Valley	\$15.00
Northeast Kingdom	\$14.12
Lamoille	\$17.00 MSW
	\$12.00 C&D

To overcome the problem of districts competing against private entities that they regulate, the Committee recommends that:

- (1) the revised state solid waste plan discourage districts from using regulations to compete unfairly with the private sector unless there is a determination of public interest by a public entity; [L][P]
- (2) districts or other municipal groupings, in their plans, should demonstrate how unfair competition will be avoided and the public interest promoted. An independent body established or designated by the Secretary of the Agency of Natural Resources shall, upon request, review the stated "public interest" and any charges of unfair competition. This body shall make a final determination in a short, relatively informal and inexpensive manner; and [L] [P]

Section II

Committee's Response to Specific Questions Posed by the Legislature

A number of issues were raised by the Legislature for specific consideration by the Study Committee. The results of the Committee's deliberations on each of these items follows.

Consolidating or Disbanding Solid Waste Districts

The Study Committee directly addressed the future of the state's solid waste districts. The districts, established by the voters of each member municipality and later ratified by the Legislature, have served important functions. In the intervening years the solid waste management field has changed dramatically, particularly with private enterprise assuming a much larger role. Some have suggested that perhaps the time has come to do away with or consolidate the districts. The Committee considered this option and concluded, however, that the districts (and regional cooperative groups) still have a viable role, should not be disbanded, and the functions of each district should continue to be determined by its member municipalities.

Committee members agreed that municipalities should have a wide range of options available for fulfilling their responsibilities, including the flexibility to join/not to join regional organizations, to address solid waste issues and/or provide services in common; contract with waste management companies; or leave the decision for waste collection to generators.

With regard to possible district consolidation, the Committee determined that if municipalities and districts saw an advantage to consolidation, or to consolidating services, they are, and should be, free to do so, just as they are free to leave districts as conditioned by their charters.

Public Input in Decisionmaking

The Committee realized, however, that there were several perceived problems associated with districts that called for attention. There is a perception that decisions made by districts are too far removed from taxpayer control or accountability. It was noted that all budgets of districts are open to public hearings and in some cases must be approved by voters or selectboards/city councils. In every case and through its approved charter, the most appropriate level of public input in each district has been decided by popular vote of the residents of that district. Yet, because of perceptions to the contrary, the Committee agreed that the public should be informed of the

- (3) districts or municipalities that want to offer a major new service or program (especially one that could be offered by another provider), or a significant expansion of an existing service or program, must first prepare and publicly disclose an analysis of the public need for doing so. [L][P]
- (4) such an "analysis of public need" should include a statement of what needs to be done and why (the public interest served), an estimate of the full costs of the public action proposed (including subsidies, start-up or development costs, and associated administrative costs), an analysis of the availability of the service from other providers, the rationale for not using another provider, and disclosure of this information to a warned public forum. [L][P]

With respect to surcharges sometimes stifling competition, the Committee agreed that local surcharges should be used to cover past and current indebtedness; to finance public and private programs in order to ease the burden on consumers; to pay for education, enforcement and administration; and to cover costs for other solid waste services. Before a public service to be paid for through a surcharge is offered, the Committee suggests that, if the private sector offers a comparable service, the service first be open to competitive bids. A district or municipality shall not be required to award to the lowest bidder nor shall it be precluded from providing the service directly. There must be a statement of the basis for the decision either to award a bid or to provide the service directly. [P]

In some cases, enforcement of the collection of surcharges has been lax. Concerning the lack of enforcement on the collection of surcharges, the Committee agreed that clear authority must be given to districts and municipalities to enforce ordinances on collecting surcharges. This authority must include the right of both districts and municipalities:

- to adopt ordinances to impose surcharges;
- to require waste management companies and facility operators and haulers operating within the state of Vermont to provide access to records in a non-public manner to shield proprietary information; and
- to institute civil or criminal proceedings through an agent or grand juror to enforce ordinances. [L][P]

A neutral third party (for example, an auditor, certified public accountant or other qualified independent body) must be used by districts and municipalities to acquire needed information from private haulers to ensure that (1) appropriate surcharges are being collected and (2) districts or

municipalities do not use such data to compete unfairly with the haulers collecting these surcharges. [L][P]

A related problem is that, for some private companies, the competitive bid process often seems unfair. Addressing this issue, the Committee agreed to the following goal: Requests for Bids and Proposals (RFBs and RFPs) should be encouraged for long-term contracts and contracts with significant public costs. All market participants should have equal access to the bid process. The process should be flexible, allow for consideration of alternatives, and allow for negotiation between a municipality and bidders. Bid specifications should not be used to exclude potential bidders. [P]

Collection and Allocation of State Franchise Taxes

Some private haulers are not paying the state franchise tax, and collection enforcement has been weak. Occasionally state solid waste franchise tax revenues have been used to cover purchases and staff only indirectly related to solid waste programs. These two facts significantly reduce the revenues the Agency of Natural Resources has to carry out its mandated functions.

Moneys should be appropriated to ensure satisfactory enforcement of franchise tax collection, and the Agency of Natural Resources should annually report sources of revenues and actual disbursements to programs and services. [F]

The Legislature is advised to consider other possible revenue sources besides the state franchise tax, recognizing, however, that one attractive feature of this current tax (as well as of surcharge taxes) is that it is tied directly to amounts of waste handled.

Stranded Investments

The Legislature specifically requested the Committee to address the possibility of stranded investments and public indebtedness that might result from districts disbanding or consolidating. Before developing recommendations, the Committee found it useful to define "stranded" investment as:

- (a) indebtedness on past investments made through general obligation bonds or loans;
- (b) in the public sector where an investment is adversely affected by recommendations emanating from the Study Committee and adopted by the Legislature (or other actions taken by the Legislature), and where the only option for paying off the debt is to go back to the taxpayer; and

(c) in the private sector, where public policy changes will cause bankruptcy.

Potentially 'stranded' investments in both the private and public sectors need to be identified and properly managed. The Committee became concerned with the amount of investment, or debt, that potentially could be stranded if districts were disbanded even though it was not recommending that districts be disbanded. The Committee differentiated between that debt that would be stranded ("definite"), and that for which there is a small chance that it would be stranded ("possible").

In the private sector, no definite stranded investment could be predicted, but the potential for same was acknowledged in cases in which a municipality or district decided to take over a service exclusively, or franchise all or a segment of the market to one or more private contractors, leaving no business for, say, small local haulers. With discussions in some communities now focusing on the possibility of franchising, this could represent a threat to haulers operating in the area to be franchised.

Significantly, no public investments fell into the definite category either, but approximately \$9.43 million worth of debt would fall into the "possible" category, if districts were to be disbanded. Projects possibly having stranded debt, by district, include:

Chittenden	\$5.800 million
Rutland	\$2.300 million
Addison	\$0.500 million
Greater Upper Valley	\$0.500 million
Northwest	\$0.275 million
Northeast	\$0.220 million
Lamoille	\$0.330 million

All of this debt could fall into a "definite" category were districts to be abolished by state action.

Solutions to "Stranded Investments"

The Committee agreed on the following possible solutions for public investments that became stranded according to the above definition. They include, not necessarily in this order:

- Pay for debt charges through a user fee;
- Sell off or lease the assets, even if they will be used for another purpose (including a non-solid waste purpose);
- Use existing fund balances in districts to pay off the debt;
- Use the surcharge to raise funds to pay off the debt; and/or
- Employ an independent third party as bond counsel for selling off assets now constrained by IRS rules. [P]

The last option, employing an independent third party, surfaced after it was determined that some current debt in some districts includes investments in multiple facilities as one package funded through general obligation bonds. The IRS currently prohibits individual portions of such a package to be sold privately. Unless and until this rule is changed, the process of selling off the debt will require legal or accounting solutions beyond those currently known or available to Vermont districts.

With regard to the use of surcharges to pay off debt, the Committee delineated several constraints to their use:

- (1) surcharges may be used to prevent an investment from becoming stranded;
- (2) surcharges may be used to pay off the debt of a closed facility;
- (3) surcharges may be used for any new costs for a facility that is closed but requires additional closure work (e.g., a closed landfill requiring capping);
- (4) surcharges should be considered only after other means, where appropriate; and
- (5) districts should do everything necessary to avoid having the burden of indebtedness placed on local property taxes. [L]

It is not expected that recommendations of this Committee would lead to any stranded investments.

State Capital Grants

The Committee recognized that state and federal capital grants have sometimes contributed to creating a bias against fair competition between

private and public solid waste service providers as well as to the duplication of facilities. For these reasons, the Committee agreed that no new funds should be expended, except for already legislatively appropriated capital grants during a short transition period. The Committee recommends that the results or technology derived from the use of state grants be made available equally to both the private and public sectors. [L][P]

Section III Other Committee Recommendations

Several other issues beyond the legislative mandates were addressed and recommendations made by the Act 78 Study Committee. Some of these arose within the context of the legislatively mandated areas of deliberations discussed in Sections I and II. Others addressed refinements that the Committee agreed were required to eliminate barriers to a more efficient and cost effective solid waste management system and to achieve state goals. These problems fell into six general areas: environmental protection, cost control, regulation, education, federal/state concerns, and municipal government and regional cooperation.

In each general area, each problem is presented with Committee recommendations. Where appropriate, a discussion is also presented.

Environmental Protection Problems

Problem 1: A lack of full-cost accounting, especially of environmental and other societal costs, skews the market and pricing structures for solid waste programs and services.

Recommendation: The individual elements of solid waste programs and services and their costs should be identified on public books through full-cost accounting. The U.S. Environmental Protection Agency's Full Cost Accounting for Municipal Solid Waste Management: A Handbook can help solid waste managers in Vermont to identify all appropriate costs and use full-cost accounting. These costs should include liability coverage, where appropriate. In addition, costs identified should reflect the full value of assets. [L] [P]

Discussion: Full-cost accounting would ensure that all costs required to provide a certain program are listed and open, are subject to audit, and can be related back to revenues.

The Committee foresaw the need to 'unbundle' costs -- to separate, rather than aggregate, costs of specific services or programs. The Committee also observed that in the past, grants (state and/or federal) have not been included in 'costs', distorting the perception of actual costs. Such grants need to be identified and incorporated in full-cost accounting.

Some members suggested that such accounting include social costs even if not in dollar terms. The Committee agreed that environmental and other social costs do not easily translate into dollar terms. Efforts should be made by municipal and district program planners to express these costs and provide them to municipalities and districts (or other regional cooperative groups) so that the groups may reflect these costs in their program analyses and selections. The state should provide guidance on full-cost accounting that is usable by all Vermont towns. [P]

Problem 2: Some costs of regulations exceed the benefits they are supposed to provide. Citizens are unaware of the costs of environmental protection or of the potential costs due to non-protection.

Recommendations: The expected effectiveness of a new regulation should be made before it is adopted consistent with 3 V.S.A. § 838; the Committee recommends that, on petition, this analysis should be repeated after the regulation has been in force for some time. [L][P]

The Committee concluded that where a poor regulation or rule exists, it should be amended or eliminated consistent with 3 V.S.A. § 834, and, if necessary, replaced by performance-based standards where appropriate. This is preferable to either creating an emergency rule or applying to the air/solid waste variance board for a variance. [P]

Problem 3: Vermont needs to reduce the volume and toxicity of waste generated. Also, in certain areas of the state infrastructure does not exist to manage unregulated hazardous waste properly.

Recommendation: Overall waste prevention should be a priority. The State Plan for solid waste, when revised, should have a diversion goal of 50% by the year 2004. Problem wastes should be specifically addressed. This goal is a state-wide goal and would not be enforced against any community. The goals of the plan should also include reducing the amount and toxicity of unregulated hazardous waste generated, managing special problem wastes, and stimulating the market for recyclables. Current statewide initiatives to promote waste prevention should continue for both the public and private sectors. [P][R]

It is also recommended that public and private sectors should cooperate to ensure ready statewide access to facilities for handling all hard-to-manage wastes including oil, antifreeze, tires, paint and pesticides.

Discussion: A goal, while it is not the only factor that drives recycling efforts, is symbolic, sets an example and a direction, particularly if it is credible, attainable and is easily understandable. In addition, it provides a criterion for measuring success.

Waste prevention is Act 78's top priority. Through waste reduction the costs of the collection, transportation and processing system could be reduced. Source reduction and reuse activity may not occur naturally in the marketplace and therefore are deserving of some public support.

There are a number of programs in the state to support and encourage public and private waste prevention efforts.

Cost Control Problems

Problem 4: There is a lack of enforcement of the collection of district surcharges.

Recommendation: The Committee agreed that:

- (1) Clear authority should be given to districts to enforce ordinances on collecting surcharges. [L]
- (2) A neutral third party should be used by districts to collect information to ensure that (a) accurate and fair charges are collected and (b) districts do not use this information to compete unfairly with the haulers collecting these surcharges. [L][P]
- (3) Municipalities that are not members of districts should be given the authority to assess, set and collect surcharges, enforce these ordinances, and to use third parties to collect data needed to ensure accuracy and fairness in the collection of surcharges. [P]
- (4) The State should appropriate \$50,000 per year to provide financial assistance to municipalities (including districts) in their collection of taxes on waste. All audit information collected should be made available to the State Tax Department. [F]

Problem 5: The fact that surcharges vary among districts may adversely affect competition. Also, their collection by private companies and use to subsidize public facilities may cause unfair competition with private haulers and facilities.

Recommendation: The Committee agreed that:

(1) Besides surcharges, other possible revenue sources should be considered, but local control on disbursements of such revenues should be maintained. [L][P]

(2) A partial solution rests in considering upfront charges (at the point of purchase or manufacture of products) for unregulated wastes and toxics. If pursued by state officials, this would eventually require coordinated action with other states besides Vermont to be most effective. [L][P]

(3) As mentioned earlier, surcharges should be used to cover past and current indebtedness, to finance very expensive public and private programs to ease the burden on consumers, to pay for education, enforcement and administration, and to cover costs for other waste-related services. [L][P]

Problem 6: Costs of services could rise unnecessarily if increasing market concentration effectively results in the absence of competition for the provision of services in a municipality or region of the state.

Recommendation: A competitive marketplace should be a major element of a healthy solid waste industry in Vermont. The Committee agreed that several tools are available to deal with price rises related to extreme market concentration or predatory pricing. These include:

- franchising services in a competitive mode (recognizing that this could affect competition by displacing some haulers);
- municipalizing services or providing services through regional or district organizations;
- filing an anti-trust complaint with the U.S. Department of Justice (which oversees consolidation actions if such action would affect competition);

- filing a consumer protection complaint with the Vermont Attorney General;
- in the case of predatory pricing, appealing to the courts; and
- creating or enhancing a private "right of action" to permit aggrieved private parties (including municipalities and districts) to commence legal actions (court action) to prove and obtain relief from anti-trust activities. [L] [P]

It is also recommended that the Agency of Natural Resources should, upon request, analyze the current state of competitiveness in the marketplace and be prepared to recommend/take action that could remedy any adverse situation related to costs or quality of services that could result from market concentration. [P]

It is recommended that the Legislature appropriate a sum of \$50,000 and authorize one staff position to implement this recommendation. [F]

Discussion: With the vertical integration now occurring in the private sector of the industry and the trend toward consolidation of firms, some fear that a possible result is a lack of, rather than increase in, competition. With vertical integration, there is also the possibility that small haulers, not owning their own landfills, would be unable to compete effectively with a hauler owning a landfill. This would happen where the hauler with the landfill sets a higher disposal rate for the competing small hauler than the rate effectively paid by the vertically integrated hauler and where there was no other disposal option for the small hauler. In such a scenario, there is also a concern that rising prices may result in unreasonable costs to the consumer (waste generator).

Regulatory Problems

Problem 7: State solid waste regulations for municipalities and private companies are not enforced adequately within the state.

The lack of financial resources available to enforcers and the significant constraints imposed by limited staffs affect state and local enforcement priorities. All of these imbalances artificially affect the marketplace by sending the wrong signals. Illegal dumping (particularly of household wastes, construction and

demolition and other commercial wastes) and parties operating without permits, still occur in some parts of Vermont.

Recommendation: The State should continue to encourage all municipalities and districts to establish ordinances against burning and illegal dumping. The burden of proof for municipalities on illegal dumping should be simplified. [L][P]

It is recommended that the Legislature appropriate funds to implement this recommendation. [F]

Problem 8: The current certification process requires a facility to be included in the state solid waste implementation plan (24 V.S.A. §2202a). The current recertification process requires that a facility be in conformance with the relevant municipal and regional plan even though this is not a requirement for the original certification (24 Ch. 117).

Recommendation: The Committee recommends that in new certifications, the language be modified so that a facility shall be in conformance with the applicable solid waste implementation plan and with the applicable municipal and regional land use plans. For recertification, if there is no change in the facility or its operation, the facility must only be in conformance with the applicable solid waste implementation plan. [P][L]

Discussion: If a facility has not changed, but the municipal and/or regional plan has changed since certification, the facility should not be penalized. If a facility (or its operation) does change between certification and recertification, for it to be recertified, it must be in conformance with current municipal and regional plans.

Problem 9: The state recertification of solid waste facilities involves cumbersome paperwork and a complex review process for some facilities that are relatively environmentally benign. There is currently no database to alert reviewers as to whether a problem exists at a facility prior to the recertification process. In addition, field inspection staff is limited and there is some redundancy of the filings required. A periodic public review of facilities is appropriate, however, if something is wrong with the facility or its operation.

Recommendation: The Committee agreed that the recertification system should be changed to eliminate the need for refiling documents that were filed as part of the original certification. Documents which change must be refiled and the applicant shall certify as part of the recertification application that the remaining filings are still currently accurate. All documents filed as part of the original process or any changes in those documents shall be filed in the town clerk's office of the town where the facility is located. Ownership disclosure filings under the "bad actor" law are confidential to the same extent as they are confidential at the Agency for Natural Resources. [R]

Recommended rules would be:

Projects with relatively minor health or environmental impacts (low impacts to be refined in the rule making process) will have a relatively simple review process unless a more thorough process is requested by a noticed party (the host town, the Secretary of the Agency of Natural Resources) or by petition of ten (10) residents or taxpayers from the host municipality. Both major and minor recertification applications shall at a minimum include notice to the host town and that notice shall be publicly posted. In addition, notice will be given to the lesser of the closest one hundred (100) people to the facility or the people living with 1/2 mile of the facility. [R]

Discussion: Through this action the Committee believes that staff previously involved with recertification should become available to conduct more field inspections, analyze environmental monitoring data and enforcement of environmental regulations, and/or to maintain a database of each facility that can be referred to for problem identification prior to recertification. The Solid Waste Division of the Agency of Natural Resources should achieve its goal of visiting each landfill quarterly and other facilities as time allows.

Problem 10: Local plan approval of solid waste facilities, by name (e.g., certification of need), is inappropriate.

Recommendation: Recognizing that districts and municipalities have the authority to establish solid waste policies, strategies and technologies, the Committee concluded that there should be no changes in current provisions for plan conformance except that:

(1) such district approval may not be used to prevent or prohibit a private facility comparable to one provided (or operated) by a

public entity but only establish reasonable conditions for its operation consistent with a solid waste implementation plan; [L][P]

(2) a neutral party (e.g., entity designated by the Secretary of the Agency of Natural Resources) should be consulted to hear appeals of approval or disapproval of facilities' conformance with the solid waste implementation plan. [L]

Problem 11: Junkyards potentially represent a public safety and health hazard. Currently they are under municipal authority as well as under the jurisdiction of the Agency of Transportation, which has no active enforcement program to address this problem.

Recommendation: The state should regulate junkyards. By July 1, 1998, this responsibility should be shifted from the Agency of Transportation to the Agency of Natural Resources with the funding essential for carrying out this waste management responsibility. This shift should not diminish, but enhance, the capacity of municipalities to control junkyards as well. [L][F]

The first step in fiscal year 1997-98, would be to assess the environmental impact of junkyards and the financial implications of state action. The state should use moneys from the state transportation fund for this purpose. [L][F]

It is recommended that the Legislature appropriate a sum of \$75,000 and authorize one new limited staff position to implement this recommendation. [F]

In addition, as the distinction between junkyards and materials processing facilities may be blurred, consideration should be given to applying and enforcing the same regulations for junkyards that are now in force for materials processing facilities. [L][R]

Education Problems

Problem 12: Educational efforts to promote understanding of the following items are currently inadequate:

- (a) Much of what was once considered solid waste is now a commodity;
- (b) The field of solid waste management has changed dramatically (including changes in technology, market conditions, and the relative functions of participants);
- (c) State and municipal solid waste plans have new requirements;
- (d) There should be more opportunities for public input into state, municipal and district solid waste decisionmaking;
- (e) The public is unaware of the costs and benefits related to environmental protection and, alternatively, to lack of environmental protection; and
- (f) Only a small percentage of the conditionally exempt small quantity waste hazardous generators (CESQGs) have been reached with education programs.

Recommendations: To address the educational needs of the public, municipal officials and school children, several steps should be taken, including:

- (1) Provide more focused educational programs, identifying the appropriate audience and recognizing that it is in everyone's interest to educate school children and the general public on resource management and solid waste in the larger resource context.
- (2) Waste haulers should inform customers about the market for commodities, and, in general, there should be greater coordination between private and public sectors in the educational materials and programs offered to the public.
- (3) Offer educational workshop packages for teachers to use in classrooms. Programs available through VINS, Montshire Museum, Association of Vermont Recyclers and religious institutions were among those recommended.

- (4) Municipalities or districts shall address in implementation plans specific waste diversion programs that are available to schools, towns and other public institutions. [P]
- (5) Shift the focus for the direct provision of educational services from the state to districts and municipalities.
- (6) Encourage public agencies to buy products that support reuse/reduce/recycle programs.
- (7) Use the State Plan to inform and educate municipal officials on what they need to know to fulfill their solid waste management responsibilities, and require districts and municipalities to show in their implementation plans how they will respond to state solid waste management educational objectives.
- (8) Explore funding sources for specific or targeted educational programs (e.g., the unclaimed bottle bill deposits are used in part for this purpose in Massachusetts). [L][P][F]
- (9) Support, improve and extend outreach strategies to CESQGs (including business, government institutions and farms) regarding collection and handling measures.

Problem 13: Private and public sectors do not sufficiently work hand-in-hand to educate and inform current and future customers/taxpayers/users satisfactorily.

Recommendation: It is in the interest of waste generators to have waste management companies inform them about the markets for commodities. In general, greater cooperation is needed between private and public sectors in the educational materials and programs they each offer. [P]

Discussion: Additional points made by the Committee were that:

- (1) educational approaches must be sensitive to the audiences they are trying to reach;
- (2) public- and private-sponsored programs should not contain conflicting messages;

- (3) educational programs should be easy to use;
- (4) initiatives for innovative solid waste curricula can evolve from the individual or cooperative efforts of the State Department of Education, supervisory unions, public and private solid waste entities, non-profit groups as well as municipalities; and
- (5) many materials are now available and should be tapped before new ones are created.

Federal/State Problems

Problem 14: Landfill capacity in the state may become insufficient, despite the existence of a regional multi-state market and more than sufficient current capacity.

Recommendation: New and expanded landfill capacity, if needed in the future, should be developed by the private sector, districts and municipalities, with appropriate analysis of need and public input. [P]

The revised State Plan should inventory existing and planned landfill capacity and recommend a long-term strategy to ensure no interruption in disposal service.

Problem 15: State planning requirements are outmoded, and state solid waste legislation is scattered among various sections of the law.

Recommendation: The State Plan for solid waste management should be revised with the recommendations of this Committee and the Legislature. Facilities shall be consistent with the local or district implementation plans but need not be identified specifically in such plans. Facilities should implement policies that have been established in local, regional or state plans or be consistent with performance criteria. [P]

Regarding possible state review of a regional or district plan, the state should either (1) assume that there is district consistency with the State Plan unless the district plan is challenged through the waste facilities panel, or (2) conduct the review for consistency as expeditiously as possible. [L][R]

The Committee also recommends that the Legislature consider a unified reorganization of the state's solid waste legislation and that the State Plan include a summary of the major elements of this legislation. [L][P]

Problem 16: The state has insufficient staff resources for, and lacks efficiency in, its solid waste data collection, analysis and reporting processes. Some facilities are not submitting the required data and the state does not have the resources to obtain compliance with the submittal requirements. Furthermore, some data now being collected is not being used and state agency staff could use training in order to use this resource more fully.

Recommendation: The state should give greater emphasis to its data collection system, recognizing two different data sets -- planning data (e.g., how much trash is going where) and compliance or monitoring data (e.g., facility information required for recertification and tax collection). [P]

Financial resources for data management and enforcement should be provided. It is recommended that the Legislature appropriate funds to implement this recommendation. [F]

Discussion: Both solid waste disposal and recycling data collection and management should be improved. Also, since surcharges are tied into this reporting process, compliance and enforcement of data collection requirements, as well as tax collection enforcement, are important.

Problem 17: The costs of waste management show up only at the time of disposal and, hence, typically become the burden of municipalities.

Recommendation: The federal government or a number of states should consider shifting the burden of waste management to the points of purchase or of manufacture (although some voluntary efforts have been taken by some industries, e.g., batteries). Vermont is advised to solicit federal and multi-state cooperation in working toward reducing the waste management problem. [L][P]

Problem 18: The private sector is required to pay facility permit fees to the state at the time of permit application, while public sector facilities are exempt from such fees.

Recommendation: The costs to the state of permitting facilities should be determined and paid for through an annual permitting fee on waste facilities in Vermont on a per ton basis of waste going through those facilities. This fee should be paid equally by both the private and public sectors. State-provided services should not be paid by both franchise taxes and permit fees, nor should fees collected be diverted to other divisions of the Agency of Natural Resources that do not meet the funding restrictions set forth in statutes.

Discussion: This recommendation is intended to end a practice that discriminates against private solid waste providers. In addition to being more equitable than current practice, the Committee emphasizes that the permit fees levied should raise just enough money to support the state permitting process, and provide for supplemental fees for extraordinarily complicated applications. The fee structure should be set through consultation among the state, public and private sector providers. It is recognized that permitting requires one portion of the fee to cover the costs of processing a permit and another portion to cover the costs of maintenance (i.e., inspection and post-closure maintenance).

Annual payments, based on actual throughput, are to be made by all facilities rather than through the upfront payment required currently only on private applications. Firms that have already paid upfront fees may be eligible for pro rata rebates.

Municipal Government and Regional Cooperation Problems

Problem 19: Municipal initiatives to franchise trash collection services may drive some private companies out of business.

Recommendation: The Committee recognized that franchising is an important issue that can affect existing and future competition and the number of waste haulers/solid waste providers. It was agreed that the economic and public policy considerations related to franchising should be closely analyzed. [P]

Discussion: The question of whether there are public votes on issues such as franchising was discussed and it was acknowledged that procedures for

adopting ordinances include the possibility for a disapproval petition and vote. Other options, such as extending the time periods for disapproval petitions and for delaying ordinance effective dates, were considered. The complexity of the issue led the Committee to suggest that before franchising is undertaken, economic factors related to franchising should be understood and the effects franchising may have on achieving public policy goals should be explored.

Problem 20: The opportunities for a minimum level of cost effective solid waste services throughout Vermont are unequal. In addition, many communities that transport waste out of state are not charging surcharges on that waste, placing greater financial burden on those communities that do. In essence, some towns are fulfilling their responsibilities under Act 78; others are not meeting their responsibilities.

Recommendation: All municipalities should be required to prepare a solid waste implementation plan or meet performance criteria, regardless of the municipality's trash disposal facility or landfill location. If a municipality chooses to prepare a local implementation plan, the plan will be judged for conformance with the State Plan. The State Plan should be simplified; clearly describe municipal requirements (separating requirements from recommendations); delineate options to meet requirements if appropriate; and allow for differences based on differing political, economic, and/or geographical conditions. Municipalities without State-approved plans must meet performance criteria imposed by law and demonstrate compliance with those criteria [currently codified at 10 V.S.A. § 6605(b)(3)]. Enforcement of the municipal responsibility should lie with the State, and considering the financial limitations on enforcement activities, the State might include a simple reporting requirement on municipalities to ensure compliance with all basic requirements of their plan or of uniform performance criteria, whichever is applicable. [L][P]

Discussion: Simplifying municipal implementation plan requirements (reflecting the Committee's recommendations and consistent with Act 78 and the revised State Plan) and eliminating the composting requirements in rural areas should ease the burden on many communities. [L][P]

Whatever specific requirements are imposed, the State must apply them equally and enforce them uniformly on all Vermont municipalities.

Problem 21: The changing field of solid waste management in the state is a real challenge to some municipal officials, both in terms of available staff resources and practical ways to address these changes.

Recommendation: Education solutions offered previously by the Committee may help, but other recommendations include simplifying municipal plan requirements; preparing a sample municipal plan; and offering meaningful technical assistance from such sources as ANR's Waste Management Division, the Vermont League of Cities and Towns, districts, regional associations and waste management companies. [P]

Problem 22: Some municipal and district programs and private firms may not have the financial capability to test new approaches or projects or carry out programs that are not self-supporting yet valuable to achieving state goals.

Recommendation: The existing state solid waste assistance fund should provide funding for research and development (including pilot and demonstration projects), selected education programs and household hazardous waste programs. The fund could be financed by the existing state franchise tax, unclaimed bottle bill deposits, and where appropriate, state appropriations. It is recommended that funds be appropriated annually to fund this program. Some discipline in ensuring that funds are available for the purposes identified is necessary to avoid their being used for other purposes.

Grants and loans (including revolving loans) may also be given for on-going proven projects. Preference should go to projects that represent private-public partnerships. Cost share (in cash or in kind) is encouraged, with preference also going to projects with larger applicant shares, where appropriate to meet state goals. [L][P][F]

Discussion: Two purposes of this recommendation are to encourage the eventual commercialization of promising technologies and to provide help to communities that have limited financial resources. The sources for the fund could include the existing state franchise tax (but with no increase in the current rate of the tax). The Committee noted several successes from grants provided by the state for innovative projects and felt that, in the absence of

the capital grants program, a limited fund could be a key element in achieving state goals.

Problem 23: Residents of properties or significant features of the natural environment (e.g., rivers known for fine fishing) adjoining facilities are sometimes victimized by pollution; remediation can be delayed for long periods while liability is litigated. Municipalities risk liability for problems at their facilities or at the facilities to which their waste is transported.

Recommendation: A special study group should be convened to analyze municipal responsibility and liability and to investigate the establishment of a liability pool for self insurance by municipalities. The group should determine if there is current statutory authority for such a pool, with possibilities for state contributions to that pool, and with consideration of liability caps. [L][P]

The study group should also examine creation or revitalization of the state Solid Waste Contingency Fund to provide timely remediation to innocent third party neighbors when threats to public health are a realistic possibility (this is part of the true full cost of waste disposal). The state should subsequently seek to recover any such remediation costs from responsible parties when possible.

Discussion: An analysis and a legal opinion on municipal responsibility / liability is necessary. However, the state should consider the potential long-term liability in Vermont, and potential risk information should be made available to both the public and private sectors. Moreover, a 'risk pool' to cover liabilities, available to injured third parties as well as to public and private parties, should be considered. [L]

The existence of a risk pool could provide for speedy response in emergency situations, would be above and beyond post-closure costs, and would represent catastrophic insurance. This pool should not be used to cover personal negligence nor to shield the assets of either public or private service providers. Efforts should be taken to shield the pool from being used for purposes other than for what it is intended. [L][P]

There may be measures that municipalities can take to reduce their risks. Statutes permitting the establishment of a pool now exist, but liability insurance coverage is expensive. The discussion of the liability issue also included consideration of surcharge and/or franchise taxes to help fund the

pool, liability coverage only for those who pay into the fund, coverage for municipality liability at private landfills, provision for voluntary contributions, the possibility for private entities to contribute to and benefit from the pool, and assurance that the coverage include that for immediate response for injured third parties as well as cleanup costs.

Problem 24: In the current state legislation, 24 V.S.A. § 2203a and § 2203b are out-of-date and inconsistent with both the manner in which solid waste management occurs in Vermont and with the recommendations emanating from the Study Committee.

Recommendation: The Legislature should reconsider the wording of § 2203 in light of the recommendations of the Committee and to make it consistent with the changing political, legal, and economic conditions in Vermont. [L]

Specifically, the Committee recommends that amended language for § 2203a and § 2203b such as appears in Appendix C, Sections 9 and 10 of this report should be considered by the Legislature. These proposed amendments read:

"§ 2203a. MUNICIPAL DISPOSAL

Each town and city may provide for the operations and maintenance of any of the following: sanitary landfills, incinerators, recycling centers, intermediate processing facilities, composting plants or resource recovery facilities or a combination thereof as a means for disposal of solid waste, as defined in 10 V.S.A. § 6602, subject to the rules and guidelines promulgated by the Secretary of the Agency of Natural Resources."

"§ 2203b. UNIFORM, NEUTRAL REQUIREMENTS, PUBLIC NEEDS ANALYSIS

(a) Whether or not a municipality provides for the operations and maintenance of a recycling center or intermediate processing facility pursuant to § 2203a of this title, the municipality may establish uniform, neutral requirements for the management of such a center or facility, that shall apply equally to public and private sector facilities and operators.

(b) Before any municipality may offer a major new solid waste management service or program, it shall prepare a public needs

analysis and present it to a duly warned special or annual municipal meeting of the voters. The public needs analysis shall include the following: a statement of what needs to be done and why, an estimate of the full costs of the public action proposed (including any subsidies, start-up or development costs, and associated administrative costs), an analysis of the availability of the service from other providers, and the rationale for not using another provider."

Discussion: Changes are required in both § 2203a and § 2203b because they are interrelated. Moreover, the revised language must not be inconsistent with the recommendations of this Study Committee.

Appendix A

Act 78 Study Committee Process

Committee Membership

With the establishment of the Act 78 Study Committee, the Legislature set in motion a process for a review of specific issues related to the future of solid waste management in Vermont. It was determined that the voting membership of the Study Committee should be comprised of eleven representatives from a variety of perspectives in the state, from municipalities and solid waste districts, public interest groups, the Department of Environmental Conservation, and industrial groups, to solid waste companies. In addition, six members of the Legislature were selected to serve as non-voting members. Three of these six were from the House and three from the Senate. William Brierley, Commissioner of the Department of Environmental Conservation, and a member of the Committee, was elected Chairman. The list of members and their affiliations are presented on the next page.

The Facilitated Meeting Process

The Legislature determined that the review process should be professionally facilitated and, where appropriate, mediated, seeking consensus to the degree possible among the various interests. A neutral facilitator/mediator was selected by the Study Committee through a competitive search. Barry R. Lawson of Barry Lawson Associates in Peacham was chosen. Lawson directed the Study Committee through sixteen day-long meetings (over a four-month period), helping to forge tentative agreements on everything from meeting procedures to substantive recommendations. At the end of the process, the tentative agreements were transformed into final agreements.

The facilitator/mediator's contract for these services was administered through the Agency of Natural Resources, represented by Andrea Cohen, Director of the Solid Waste Division.

The facilitator/mediator had a number of agreed-upon roles in the Study Committee process, including the following:

- Managing the meeting process – suggesting and employing Committee rules, procedures, and agendas, preparing meeting notes, monitoring overall participation;
- Controlling meeting dynamics and the balance of participation, serving as a catalyst for discussion, and ensuring that all points of view were respected and considered;

- Clarifying issues and statements, and identifying common threads in discussions ;
- Seeking and forging agreements among Committee members;
- Recording important points on flip charts during meetings and summarizing the progress and results in meeting notes and reports after meetings; and
- Meeting with other interested parties to discuss the issues under consideration, and answering questions for the media.

William Humm of Environmental Settlements in Concord, New Hampshire was prepared to serve as back-up facilitator to Mr. Lawson had the need arisen. Lynne Newman Lawson of Barry Lawson Associates served as report editor.

Member and Alternates of the Act 78 Study Committee

Members (voting)	Alternates
William C. Brierley Commissioner, VT DEC, Chair	Gary Schultz VT DEC
Jenny Carter VPIRG	Joseph Bivins Post Mills
John Casella Casella Waste Management, Inc.	Joseph Fusco Casella Waste Management, Inc.
John Hall Town Mgr.; St. Johnsbury	Joel Schwartz Town of St. Johnsbury
Kerrick Johnson Associated Industries of Vermont	Curtis Carpenter Associated Industries of Vermont
Sean Kelley Kelco Disposal	Allison Crowley Vermont Haulers Association
Barry Lampke Association of Vermont Recyclers	James Young Ribbon Recyclers
Fred Moody Greater Upper Valley SWMD	Michael Ewell Northwest Vermont SWD
Thomas Moreau Chittenden SWD	William Leach Chittenden SWD
Michael Samson Rutland County SWMD	Steven Maier Addison County SWD
Joseph Winters AllCycle, Inc.	John Ponsetto Gravel and Shea

Legislative Members (non-voting)	
Senate	House
William Doyle	David Deen
Vincent Illuzzi	Ben Rose
Matt Krauss	John Tracy

Attendance at Study Committee Meetings

The average percentage of voting members attending meetings was 75%. The average percentage of voting members or their alternates was 93%. One-half of the non-voting legislative members attended meetings, on average. Often both a member and his/her alternate would be in attendance. In addition to the Committee members and alternates, observers were invited to attend and participate in deliberations. Often as many as twenty-five observers were in attendance.

The members also held occasional meetings with their "constituents" regarding the issues considered by the Committee. The facilitator/mediator was also invited to speak to informal constituent groups around the state to explain the Committee process and describe the issues being addressed.

Meeting Procedures

Several agreements on meeting procedures and rules were reached by the Committee members early in the process. These included:

Rules and Procedures for the Study Committee Process

- Only one member at a time will speak during meetings.
- Each member shall endeavor to listen, respect and acknowledge other interests, even if he/she doesn't agree.
- Each member will try to stay on the topic being discussed rather than starting a new line of thought.
- The facilitator will recognize speakers through the raising of hands, and speakers will be taken in order so long as speakers stay on designated topic.
- Members will not repeat what others have said, but will simply say "I agree."
- Members will distinguish, to the degree possible, between fact and perception where there is a difference.
- When appropriate, members shall explain why they believe something to be a fact.
- There will be no extraneous talking in the meeting room during deliberations, and foot traffic in-and-out of meeting room shall be minimized.
- Observer input will be encouraged by facilitator at designated times.
- Straw voting may be used to establish the leanings of the Committee and others, or to develop Committee consensus or majority and minority points of view.
- All agreements will be considered tentative; while members will be encouraged to stick to agreements, changing of minds is allowed. No

agreement is final until the final agreements are developed by consensus or majority vote.

- Recesses and caucuses may be called by the facilitator for members to discuss issues with other members or with other participants. Such periods should be as short as possible.
- Members are encouraged to meet with and/or discuss issues on the next meeting's agenda with their constituents prior to meetings.

Roles for Alternates to Committee Members

- To the degree possible, members are encouraged to attend every session.
- One alternate per member may be designated, in writing, by the Secretary of the Agency of Natural Resources following a recommendation from that member.
- Alternates should be briefed on a regular basis by members.
- Alternates will have one vote only if substituting for a member.
- No alternates are designated for legislative members, who themselves have no formal vote.

Non-Committee Participants

It was anticipated that public interest in the Study Committee review process would be significant and that provision should be made for observers to attend Committee meetings. These observers were invited by the facilitator to share insights and suggestions with the Committee. Specific rules for non-committee participants were established by the Study Committee.

- Study Committee members encourage input from meeting observers and others unable to attend meetings.
- In general, the facilitator will seek non-member input after members have deliberated on a topic and before a final agreement is reached on that topic.
- Who is recognized to speak, and when, will be determined by the facilitator alone.
- The Committee may request Agency staff and others having specific information relevant for the Committee to be available at meetings.
- Members are encouraged to use Committee meetings as the principal forum for discussion of the issues facing the Committee.
- A non-Committee participant cannot directly revisit an old issue or raise it for committee reconsideration. Such issues must be raised by a Committee member or the facilitator.
- These general non-committee participant provisions apply also to media representatives.

Other Administrative Matters

- It is desirable to have input on some discussions from small waste management companies, people from the southern half of the state and from municipalities not represented on the Committee. The Committee reserves the right to hold occasional evening meetings, to hold meetings in other locations besides Montpelier, and to sponsor "listening" sessions at times and locations more convenient to these interests.
- It is suggested that these evening meetings be held at the end of the first day of two-day meetings; if two or more meetings on a topic are scheduled, at least one of these meetings should be held in the southern part of the state.

Meeting Locations, Dates, and Times

- Meetings will be held on the following dates: September 4, 5, 18, 19; October 2, 3, 16, 17, 30, 31; November 21, 22; December 5, 6, 19, 20; and, if necessary, January 8, 9.
- Members are open to the possibility of regional meetings later in their deliberations.
- Interactive television is also a possible mechanism for getting public input.
- Committee meetings will begin at 9:10 AM, run until 12 noon, and then run from 1 to 4 PM (or later if necessary).
- Until further notice, meetings will be held in Conference Room 10 of the State House.

It was decided that a list of interested parties should regularly receive meeting notes prepared by the facilitator. These notes took the form of eight- to ten-page summaries of each two-day session and, for the last four sets of meetings, an additional one- or two-page summary prepared immediately after the session for rapid distribution to interested parties.

Appendix B List of References for Solid Waste Study Committee

A. Background Materials Packet, April 1966

Contents:

1. Chronology of Act 78
 2. Act 78 Statutes
 3. Act 78 Statute Supplements
 4. State Solid Waste Plan (February 1, 1989)
 5. Legislative Council Solid Waste Evaluation (December 1992)
 6. List of towns and districts with approved solid waste plans (1996)
 7. List of towns and districts with mandatory recycling ordinances (11/95)
 8. Report on Amount of Solid Waste Disposed (1988-1995)
 9. Report on Number of Operating Solid Waste Landfills (1988-1996)
 10. Report on Status of Landfill Capacity
 11. Draft Report re: Diversion of Solid Waste in 1994, "40% by the Year 2000, Where Are We?"
 12. Reports on Vermont HHW/CESQG Collection (1984-1995)
 13. Report on Number of Operating Solid Waste Transfer Stations (1987-May 1996)
- B. Environmental Contingency Fund Status Report, January 15, 1996
- C. Memo from Eric Blatt to Ann Burcroff re: Annual Solid Waste Grant Awards - May 10, 1996
- D. Memo from George Desch to Andrea Cohen re: Costs Associated with Solid Waste Landfills in Superfund - September 18, 1996
- E. Memo from Andrea Cohen to Study Committee re: Update to Appendix C, page 3 of 12/92 *Legislative Council Solid Waste Evaluation*
- F. Solid Waste Paper #1 - The Role of Government, Industry and Consumers in Municipal Solid Waste Management. Report for the NCSL Environmental Partners Project, National Conference of State Legislators, 1996

- G. Editorial: "Will the Competition be Fair?" SWANA Solutions Newsletter of the Solid Waste Association of North America, March 1996
- H. Making Solid Waste Systems Decisions With Full Cost Accounting, USEPA, June 1966
- I. Analysis of Solid Waste Systems Costs for the State of Vermont (excerpts). Tellus Institute and Wehren Engineering, July 1990
- J. Vermont's Solid Waste Diversion in 1994. "40% by the Year 2000, Where Are We?", Agency of Natural Resources, August 1996
- K. Funding Options For State Solid Waste Programs. North Carolina Office of Waste Reduction. June 1996
- L. Chapter 64. Delaware Statutes re: Delaware Solid Waste Authority
- M. Article 3 49520. California Statutes re: Continuation of Service; exclusive franchise
- N. Chapter 211. Tennessee Code Annotated re: Solid Waste Disposal

Appendix C Outline of Legislative Actions Recommended

The following draft of proposed legislation incorporating many of the Study Committee's recommendations has been prepared by the Legislative Council in consultation with the Committee. While the Committee has not had sufficient time to review in detail all elements of the proposed legislation, its members agree that it represents a solid starting point for legislative action.

The Committee acknowledges and appreciates the efforts of Al Boright of the Legislative Council in preparing this draft.

1 Introduced by Representative Deen of Westminster

2 Referred to Committee on

3 Date:

4 Subject: Conservation; solid waste; beverage container deposits; competition

5 Statement of purpose: This bill proposes to require that municipalities no longer be exempt
6 from fees assessed for certification of solid waste treatment or disposal facilities, and to
7 require that fees assessed for certification shall be payable quarterly, instead of at the time of
8 application for certification. The bill proposes to recapture abandoned beverage container
9 deposits and deposit them into the solid waste management assistance account. The bill
10 proposes to authorize the secretary of natural resources to delegate to municipalities the ability
11 to enforce solid waste laws. It proposes that new solid waste facilities be in conformance
12 with any implementation plan (but no longer "included in" such a plan) and be in
13 conformance with any regional and municipal plan. It proposes to require the state to monitor
14 competition, costs, prices and the availability of solid waste management services, and to
15 resolve allegations that municipal solid waste management providers are competing unfairly
16 with private sector providers. It proposes to require the secretary of natural resources to
17 present an annual statement that explains and compares appropriations and actual
18 disbursements from the waste management assistance fund, and it proposes to establish
19 preferential uses under that fund. It proposes to decrease the level of proof needed by a
20 municipality to prevail in an enforcement action before the traffic and municipal ordinance
21 bureau. It proposes to prohibit municipalities from adopting rules solely to enable the
22 municipality to compete unfairly with the private sector, to require that the individual

1 elements of solid waste programs be identified on public books through full cost accounting,
2 and to allow all municipalities to assess and collect surcharges. It proposes to allow a
3 municipality to implement an approved plan or to implement specified performance standards
4 with respect to solid waste management services that must be available. It proposes to repeal
5 flow control limitations and to replace them with provisions that require municipalities to
6 establish uniform, neutral requirements that apply equally to private or publicly owned
7 facilities, and with other provisions that require a municipality to issue a public needs analysis
8 before offering a major new solid waste management service or program. The bill proposes
9 to appropriate funds: to assess the impacts of transferring the regulation of junkyards to the
10 agency of natural resources; to assure the proper collection of the solid waste franchise tax;
11 and for development of data for purposes of planning, monitoring compliance and monitoring
12 competition and resolving complaints about unfair competition on the part of municipalities.
13 Finally, it proposes to create a study committee to consider municipal liability pools and
14 whether to extend coverage under those pools to private entities.

15 AN ACT RELATING TO COMPREHENSIVE AMENDMENTS TO THE SOLID
16 WASTE LAW

17 It is hereby enacted by the General Assembly of the State of Vermont:

18 Sec. 1. 3 V.S.A. § 2822(i) is amended to read:

19 (i) Fees established by law or rule required for permits or licenses under subsection (h) of
20 this section in effect on July 1, 1991, shall remain in effect until amended or repealed by act

1 of the general assembly. Annually, on or before January 15, the secretary shall submit to the
2 general assembly recommendations for the adjustment of any fees so set, and such
3 recommendations for adjustment shall be reasonably related to the costs associated with
4 administering the permit programs of the department of environmental conservation. The
5 secretary shall not process an application for which the fee has not been paid. Municipalities
6 shall be required to pay only the fees prescribed in subdivisions (h)(1), (h)(3), (h)(10),
7 (h)(11), ~~(h)(12)~~, (h)(19) and (h)(20) for which a municipality may recover its costs by
8 charging a user fee to those who use the permitted services.

9 Sec. 2. 3 V.S.A. § 2822(j)(6) is amended to read:

10 (6) For approval of solid waste treatment or disposal facilities issued under 10 V.S.A.
11 chapter 159, \$0.75 per ton per year, payable quarterly.

12 Sec. 3. 10 V.S.A. § 1522(e) and (f) are added to read:

13 (e) The minimum deposit established by subsection (a) of this section is the property of
14 the consumer who purchases a beverage container. The deposit is held in trust by the
15 manufacturer or distributor for the consumer or for the state if the deposit is abandoned by
16 the consumer.

17 (f) Each distributor and manufacturer shall maintain an escrow account, known as the
18 deposit transaction account, for the collection and distribution of beverage container deposits
19 collected pursuant to subsection (a) of this section. Funds deposited in the deposit transaction
20 account may not be used for any purpose not expressly authorized by this chapter.

21 Sec. 4. 10 V.S.A. § 1528 is added to read:

22 § 1528. ABANDONED BEVERAGE CONTAINER DEPOSITS; REPORTS AND

1 authority to and remove authority from a municipality to enforce state solid waste
2 management laws, including the administration of the enforcement provisions of chapter 201
3 of this title. This delegation shall include appropriate conditions with respect to matters
4 including the following: the existence of appropriate municipal enforcement capabilities;
5 conflicts of interest; state termination of delegation in appropriate instances; the assessment
6 and collection of fees sufficient to support actions taken under a delegation; the maintenance
7 of enforcement uniformity, consistency and effectiveness on a statewide basis; and the
8 allocation of revenue from fines and settlements. Appeals from actions taken pursuant to
9 delegations under this subdivision shall be taken to the environmental court.

1 Sec. 6. 10 V.S.A. § 6605(c) is amended to read:

2 (c) The secretary shall not issue a certification for a new facility, ~~except for a sludge or~~
3 ~~septage land application project~~ unless it is ~~included in an~~ in conformance with any
4 implementation plan adopted pursuant to 24 V.S.A. § 2202a, and in conformance with any
5 municipal or regional plan adopted in accordance with 24 V.S.A. chapter 117, for the area in
6 which the facility is located. The implementation plan must be consistent with the state plan
7 and in conformance with any municipal or regional plan adopted in accordance with 24
8 V.S.A. chapter 117. ~~After July 1, 1990, the~~ The secretary shall not recertify a facility except
9 ~~for a sludge or septage land application project unless it is included in an~~ in conformance with
10 any implementation plan adopted pursuant to 24 V.S.A. § 2202a, for the area in which the
11 facility is located. The implementation plan must be consistent with the state plan, unless the
12 secretary determines that recertification promotes the public interest, considering the policies
13 and priorities established in this chapter. After July 1, 1990, the secretary shall not recertify
14 a facility, unless it is in conformance with any municipal or regional plan adopted in
15 accordance with 24 V.S.A. chapter 117.

16 Sec. 7. 10 V.S.A. § 6605g is added to read:

17 § 6605g. COMPETITION IN SOLID WASTE MANAGEMENT

18 (a) The secretary shall monitor competition, costs, prices, and the availability of solid
19 waste management services, and shall take action or recommend action the secretary deems
20 necessary to remedy any adverse effects of market concentration on the costs and quality of
21 solid waste management services.

22 (b) The secretary, on request, shall convene discussions with interested parties to resolve

1 allegations that solid waste management districts, or other municipalities, or both, are
2 competing unfairly with private sector solid waste management service providers.

3 Sec. 8. 10 V.S.A. § 6618 is amended to read:

4 § 6618. WASTE MANAGEMENT ASSISTANCE FUND

5 (a) There is hereby created in the state treasury a fund to be known as the waste
6 management assistance fund, to be expended by the secretary of the agency of natural
7 resources. The fund shall have two accounts: one for solid waste management assistance and
8 one for hazardous waste management assistance. The hazardous waste management assistance
9 account shall consist of any increase after January 1, 1990 in the tax on generators of
10 hazardous waste under the provisions of 32 V.S.A. chapter 237, whether the increase is in the
11 rates of tax or the scope of activities covered by the tax, and appropriations of the general
12 assembly. The solid waste management assistance account shall consist of the franchise tax
13 on waste facilities assessed under the provisions of 32 V.S.A. chapter 151, subchapter 13,
14 collections from the abandoned beverage container law established under section 1528 of this
15 title, and appropriations of the general assembly. All balances in the fund accounts at the end
16 of any fiscal year shall be carried forward and remain a part of the fund accounts. Interest
17 earned by the fund shall be deposited into the appropriate fund account. Disbursements from
18 the fund accounts shall be made by the state treasurer on warrants drawn by the commissioner
19 of finance and management. Annually, the secretary shall prepare a statement that explains
20 and compares appropriations and actual disbursements from the fund during the preceding
21 fiscal year, and shall present that statement to the legislative committees on appropriations and
22 on natural resources and energy.

1 (b) The secretary may authorize disbursements from the solid waste management
2 assistance account for the purpose of enhancing solid waste management in the state in
3 accordance with the adopted waste management plan. This includes:

4 (1) the costs of implementation planning, design, obtaining permits, construction and
5 operation of state or regional facilities for the processing of recyclable materials and of waste
6 materials that because of their nature or composition create particular or unique
7 environmental, health, safety or management problems at treatment or disposal facilities;

8 (2) the costs of assessing existing landfills, and eligible costs for closure and any
9 necessary steps to protect public health at landfills certified or operating after December 31,
10 1979 and before January 1, 1987, provided those costs are the responsibility of the
11 municipality or solid waste management district requesting assistance;

12 (3) the costs of preparing the state waste management plan;

13 (4) hazardous waste pilot projects consistent with this chapter;

14 (5) the costs of developing markets for recyclable material; and

15 (6) the costs of the agency of natural resources in administering solid waste
16 management functions that may be supported by the fund established in subsection (a) of this
17 section;

18 (7) the costs of administering the waste facility panel established under subchapter 5 of
19 chapter 151 of this title;

20 (8) the costs, not related directly to capital construction projects, that are incurred by a
21 district, or a municipality that is not a member of a district, in the design and permitting of
22 implementation programs included in the adopted solid waste implementation plan of the

1 district or of the municipality that is not a member of a district. These disbursements shall be
2 issued in the form of advances requiring repayment. These advances shall bear interest at an
3 annual rate equal to the interest rate which the state pays on its bonds. These advances shall
4 be repaid in full by the grantee no later than 24 months after the advance is awarded.

5 * * *

6 (d) The secretary shall annually allocate from the fund accounts the amounts to be
7 disbursed for each of the functions described in subsections (b) and (c) of this section. The
8 secretary, in conformance with the priorities established in this chapter, shall establish a
9 system of priorities within each function when the allocation is insufficient to provide funding
10 for all eligible applicants. In setting these priorities with respect to the solid waste
11 management assistance account, the secretary shall give preference to projects that represent
12 public-private partnerships; to projects in which the applicant provides a larger proportion of
13 the funding; to projects in which there is a cost share borne by the recipient (either in cash or
14 in kind); and to projects operated by small communities that need additional funding in order
15 to supplant ongoing projects that are consistent with the goals of this chapter.

16 Sec. 9. 24 V.S.A. § 1979(b) is amended to read:

17 (b) The hearing shall be held before a hearing officer and conducted in an impartial
18 manner. The hearing officer may, by subpoena, compel the attendance and testimony of
19 witnesses and the production of books and records. All witnesses shall be sworn. The
20 burden of proof shall be on the municipality to prove the allegations by ~~clear and convincing a~~
21 preponderance of the evidence. ~~As used in this section, "clear and convincing evidence"~~
22 ~~means evidence which establishes that the truth of the facts asserted is highly probable.~~

1 Sec. 10. 24 V.S.A. § 2202a is amended to read:

2 § 2202a. MUNICIPALITIES -- RESPONSIBILITIES FOR SOLID WASTE

3 (a) Municipalities are responsible for the management and regulation of the storage,
4 collection, processing and disposal of solid wastes within their jurisdiction in conformance
5 with the state solid waste management plan authorized under chapter 159 of Title 10.
6 Municipalities may issue local franchises and may make, amend or repeal rules necessary to
7 manage the storage, collection, processing, and disposal of solid waste materials within their
8 limits and impose penalties for violations thereof, provided that the rules are consistent with
9 the state plan and rules promulgated by the secretary of the agency of natural resources under
10 chapter 159, and provided further that the rules are not adopted solely to enable the
11 municipality to compete unfairly with the private sector. The individual elements of solid
12 waste programs and services and their costs shall be identified on public books through full
13 cost accounting. Municipalities may assess, set and collect surcharges, and enforce
14 ordinances that establish surcharges, whether or not they are members of solid waste
15 management districts, and in the case of solid waste management districts, regardless of
16 charter provisions to the contrary. Municipalities may institute criminal or civil enforcement
17 proceedings through a municipal grand juror, or may name a special agent to institute these
18 proceedings on the municipality's behalf. If a municipality establishes a surcharge, it shall be
19 entitled to assure compliance with surcharge requirements by contracting with an independent
20 accounting firm which may be empowered by the municipality to obtain access to financial
21 records of waste management entities, but in a nonpublic manner designed to shield
22 proprietary information. Except to the extent it may be necessary in assessing surcharges, an

1 accounting firm providing these services on behalf of a municipality shall be prohibited from
2 divulging specific information relating to rates charged, and specific customers served. A fine
3 may not exceed \$1,000.00 for each violation. This section shall not be construed to permit
4 the existence of a nuisance.

5 (b) Municipalities may satisfy the requirements of the state solid waste management plan,
6 and the rules of the secretary of the agency of natural resources, and the requirements of this
7 section through agreement between any other unit of government or any operator having a
8 permit from the secretary, as the case may be.

9 ~~(e)(1) No later than July 1, 1988 each municipality, as defined in 24 V.S.A. § 4303(4),~~
10 ~~shall join or participate in a solid waste management district organized pursuant to 24 V.S.A.~~
11 ~~chapter 121 no later than January 1, 1988 or participate in a regional planning commission's~~
12 ~~planning effort for purposes of solid waste implementation planning, as implementation~~
13 ~~planning is defined in 10 V.S.A. § 6602.~~

14 ~~(2) No later than July 1, 1990 each regional planning commission shall work on a~~
15 ~~cooperative basis with municipalities within the region to prepare a solid waste~~
16 ~~implementation plan for adoption by all of the municipalities within the region which are not~~
17 ~~members of a solid waste district, that conforms to the state waste management plan and~~
18 ~~describes in detail how the region will achieve the priorities established by 10 V.S.A.~~
19 ~~§ 6604(a)(1). A solid waste implementation plan adopted by a municipality that is not a~~
20 ~~member of a district shall not in any way require the approval of a district. No later than~~
21 ~~July 1, 1990 each solid waste district shall adopt a solid waste implementation plan that~~
22 ~~conforms to the state waste management plan, describes in detail how the district will achieve~~

1 ~~the priorities established by 10 V.S.A. § 6604(a)(1), and is in conformance with any regional~~
2 ~~plan adopted pursuant to 24 V.S.A. chapter 117. Municipalities or solid waste management~~
3 ~~districts that have contracts in existence as of January 1, 1987, which contracts are~~
4 ~~inconsistent with the state solid waste plan and the priorities established in 10 V.S.A.~~
5 ~~§ 6604(a)(1), shall not be required to breach those contracts, provided they make good faith~~
6 ~~efforts to renegotiate those contracts in order to comply. The secretary may extend the~~
7 ~~deadline for completion of a plan upon finding that despite good faith efforts to comply, a~~
8 ~~regional planning commission or solid waste management district has been unable to comply,~~
9 ~~due to the unavailability of planning assistance funds under 10 V.S.A. § 6603b(a) or delays in~~
10 ~~completion of a landfill evaluation under 10 V.S.A.~~

11 ~~§ 6605a.~~

12 ~~(3) A municipality that does not join or participate as provided in this subsection shall~~
13 ~~not be eligible for state funds to plan and construct solid waste facilities, nor can it use~~
14 ~~facilities certified for use by the region or by the solid waste management district.~~

15 ~~(4) By no later than July 1, 1992, a regional plan or a solid waste implementation plan~~
16 ~~shall include a component for the management of nonregulated hazardous wastes.~~

17 ~~(A) At the outset of the planning process for the management of nonregulated~~
18 ~~hazardous wastes and throughout the process, solid waste management districts or regional~~
19 ~~planning commissions, with respect to areas not served by solid waste management districts,~~
20 ~~shall solicit the participation of owners of solid waste management facilities that receive mixed~~
21 ~~solid wastes, local citizens, businesses and organizations by holding informal working sessions~~
22 ~~that suit the needs of local people. At a minimum, an advisory committee composed of~~

1 ~~citizens and business persons shall be established to provide guidance on both the development~~
2 ~~and implementation of the nonregulated hazardous waste management plan component.~~

3 ~~(B) The regional planning commission or solid waste management district shall hold~~
4 ~~at least two public hearings within the region or district after public notice on the proposed~~
5 ~~plan component or amendment.~~

6 ~~(C) The plan component shall be based upon the following priorities, in descending~~
7 ~~order:~~

8 ~~(i) The elimination or reduction, whenever feasible, in the use of hazardous,~~
9 ~~particularly toxic, substances.~~

10 ~~(ii) Reduction in the generation of hazardous waste.~~

11 ~~(iii) Proper management of household and exempt small quantity generator~~
12 ~~hazardous waste.~~

13 ~~(iv) Reduction in the toxicity of the solid waste stream, to the maximum extent~~
14 ~~feasible in accordance with the priorities of 10 V.S.A. § 6604(a)(1).~~

15 ~~(D) At a minimum, this plan component shall include the following:~~

16 ~~(i) An analysis of preferred management strategies that identifies advantages and~~
17 ~~disadvantages of each option.~~

18 ~~(ii) An ongoing educational program for schools and households, promoting the~~
19 ~~priorities of this subsection.~~

20 ~~(iii) An educational and technical assistance program for exempt small quantity~~
21 ~~generators that provides information on the following: use and waste reduction; preferred~~
22 ~~management strategies for specific waste streams; and collection, management and disposal~~

1 ~~options currently or potentially available.~~

2 ~~(iv) A management program for household hazardous waste.~~

3 ~~(v) A priority management program for unregulated hazardous waste streams~~
4 ~~that present the greatest risks.~~

5 ~~(vi) A waste diversion program element, that is coordinated with any owners of~~
6 ~~solid waste management facilities and is designed to remove unregulated hazardous waste~~
7 ~~from the waste stream entering solid waste facilities and otherwise to properly manage~~
8 ~~unregulated hazardous waste.~~

9 ~~(vii) A waste management system established for all the waste streams banned from~~
10 ~~landfills under 10 V.S.A. § 6621a.~~

11 ~~(E) For the purposes of this subsection, nonregulated hazardous wastes include~~
12 ~~hazardous wastes generated by households and exempt small quantity generators as~~

1 ~~defined in the hazardous waste management regulations adopted under 10 V.S.A. chapter 159.~~

2 (c)(1) By no later than January 1, 1998, each municipality as defined in subdivision
3 4303(4) of this title shall implement a solid waste management strategy. A solid waste
4 management strategy is either of the following:

5 (A) the development and implementation of an approved solid waste management
6 plan, or

7 (B) the implementation of specified performance standards.

8 (2) A municipality must develop and implement an approved solid waste management
9 plan in order to be eligible for any state funds to plan and construct solid waste facilities.

10 (3) Under the plan implementation alternative, the municipality, acting through a solid
11 waste district or regional planning commission or on its own, shall adopt a solid waste
12 implementation plan that conforms to the state's waste management plan and conforms to any
13 regional plan adopted under chapter 117 of this title. The plan adoption or amendment
14 process shall include at least two public hearings within the municipality, region or district
15 after public notice on the proposed plan adoption or amendment. An adopted implementation
16 plan shall be presumed to conform to the state plan, but may be challenged by petition of 10
17 citizens filed with the secretary and may be selected for in-depth review by the secretary, on
18 the secretary's own motion. In case of such a challenge or selection for in-depth review, the
19 secretary shall conduct a review in an expeditious manner and shall issue a decision with
20 respect to whether or not the implementation plan conforms to the state plan. A solid waste
21 implementation plan must include all of the following:

22 (A) A detailed description of how the municipality will achieve the priorities

1 established by 10 V.S.A. § 6604(a)(1) and by the state solid waste management plan,
2 including the requirement that there be a reduction in the quantity and toxicity of the solid
3 waste stream to the maximum extent feasible.

4 (B) A waste diversion program element for removing recyclable materials and
5 unregulated hazardous waste from the waste stream entering solid waste facilities and for
6 otherwise properly managing unregulated hazardous waste.

7 (C) A specifically identified waste management system for all the waste streams
8 banned from landfills under 10 V.S.A. § 6621a.

9 (4) Under the performance standard alternative, which shall apply to all municipalities
10 that have not adopted and implemented an approved implementation plan by January 1, 1998,
11 a municipality shall assure the provision of the following facilities and programs to its
12 residents:

13 (A) Recycling facilities. Each municipality shall provide for recycling drop-off
14 facilities for recyclable materials specified in 10 V.S.A. § 6622, and for waste tires,
15 appliances, oil, and lead-acid batteries. The facilities shall be reasonably available to the
16 general public, in terms of hours of operation and location, as reasonably available is
17 determined according to procedures developed by the secretary of natural resources. Curbside
18 collection programs may be substituted for drop-off facilities, if approved by the secretary.

19 (B) Mandatory source separation ordinance. Each municipality shall enact a
20 mandatory source separation ordinance which meets the standards of 10 V.S.A. § 6622, and
21 which requires source separation of hazardous waste generated by households and by
22 small quantity generators, and source separation of waste materials specified in 10 V.S.A. §

1 6621a.

2 (C) Yard waste management area. Each municipality shall establish a management
3 area for collection and composting of yard waste. The facility must be open to the public for
4 a substantial period of time during at least one weekend day each week from May 1 to
5 November 1 of each year. The secretary may waive this requirement for any municipality
6 which the secretary determines to be sufficiently rural as to make the yard waste management
7 areas unnecessary.

8 (D) Hazardous waste collection facility. Each municipality shall provide for either
9 a permanent or a mobile unregulated hazardous waste collection program which provides for
10 regular collection of hazardous waste from households and hazardous waste generated by
11 small quantity generators. Regular collection is defined as citizens having access to the
12 facility at least four times a year if the municipality has a population of 4,000 or more, or at
13 least two times per year with respect to municipalities with a population of less than 4,000.
14 Hazardous waste from households shall be collected without charge to the generators at the
15 point of drop off. Programs under this subdivision shall be reasonably available to the
16 general public, in terms of hours of operation and location,
17 as reasonably available is determined according to procedures developed by the secretary of
18 natural resources.

19 (E) Public information program. At least once each year, each municipality shall
20 inform the public about materials to be separated from the waste stream, the principal
21 requirements of the source separation ordinance, and the location of all facilities. Each
22 municipality shall inform the public of a telephone number to call to obtain additional

1 information.

2 (5) A municipality which, by January 1, 1998, has not implemented a solid waste
3 management strategy shall not dispose of, or cause to be disposed of, any waste originating
4 from that municipality in any facility certified by the secretary, unless the waste meets the
5 standards of 10 V.S.A. § 6605(b)(3)(B). Additionally, violation of the requirements of this
6 section shall be treated as a violation of 10 V.S.A. chapter 159, for purposes of enforcement
7 under 10 V.S.A. chapter 201.

8 Sec. 11. 24 V.S.A. § 2203a is amended to read:

9 § 2203a. MUNICIPAL DISPOSAL

10 Each town and city shall may provide for the operation and maintenance of any of the
11 following: sanitary landfills, incinerators, recycling centers, intermediate processing facilities,
12 composting plants or resource recovery facilities or a combination thereof as ~~the exclusive a~~
13 means for disposal of solid waste, as defined in 10 V.S.A. § 6602, subject to the rules and
14 guidelines promulgated by the secretary of the agency of natural resources.

15 Sec. 12. 24 V.S.A. § 2203b is amended to read:

16 § 2203b. ~~FLOW CONTROL UNIFORM, NEUTRAL REQUIREMENTS; PUBLIC~~

17 NEEDS ANALYSIS

18 (a) ~~When~~ Whether or not a municipality provides for the operation and maintenance of a
19 recycling center or intermediate processing facility pursuant to section 2203a of this title, the
20 municipality may ~~exercise control over the solid wastes to be recycled, if such control does~~
21 ~~not adversely affect a private recycling center or intermediate processing facility that pre-~~
22 ~~existed the municipal operation~~ establish uniform, neutral requirements for the management of

1 such a center or facility, that shall apply equally to public and private sector facilities and
2 operators.

3 ~~(b) When a municipality does not provide for the operation and maintenance of a~~
4 ~~recycling center or intermediate processing facility pursuant to section 2203a of this title, but~~
5 ~~a private recycling center or intermediate processing facility exists, the municipality shall not~~
6 ~~exercise control over solid waste beyond the extent that control adversely affects an existing~~
7 ~~private recycling center or intermediate processing facility. If a municipality had, prior to the~~
8 ~~effective date of this section, a contract for the delivery of solid waste, it may exercise control~~
9 ~~over such portion of solid waste as may be necessary to meet its contractual commitment.~~

10 Before any municipality may offer a major new solid waste management service or program,
11 it shall prepare a public needs analysis and present it to a duly warned special or annual
12 municipal meeting of the voters. The public needs analysis shall include the following: a
13 statement of what needs to be done and why, an estimate of the full costs of the public action
14 proposed (including any subsidies, start-up or development costs, and associated
15 administrative costs), an analysis of the availability of the service from other providers, and
16 the rationale for not using another provider.

17 (c) For the purposes of this section, recycling means the process of utilizing solid waste
18 for the production of raw materials or products, but shall not include processing solid waste to
19 produce energy or fuel products.

20 (d) The provisions of this section shall not apply to hazardous waste.

21 Sec. 13. APPROPRIATIONS

22 (a) The secretary of natural resources shall procure or assign a person in a limited service

1 position to assess the environmental impact and regulatory status of junkyards regulated by the
2 agency of transportation under 24 V.S.A. chapter 61, subchapter 10, to assist junkyard
3 owners in identifying immediate steps that should be taken to minimize environmental
4 degradation, and to recommend regulatory and staffing changes and financing requirements
5 that would be necessary in order to alleviate adverse environmental and land use effects of the
6 junkyards, and to facilitate the development of an effective municipal regulatory presence on
7 junkyard issues. The establishment of one new limited service position is authorized in fiscal
8 year 1998, to be assigned functions specified in this section. The sum of \$75,000.00 is
9 appropriated from the transportation fund to the secretary of natural resources in fiscal year
10 1998 to accomplish the purposes of this section.

11 (b) The sum of \$50,000.00 is appropriated from the general fund to the agency of natural
12 resources in fiscal year 1998, to be used by the agency to assure the proper collection of the
13 solid waste franchise tax.

14 (c) The sum of \$100,000.00 is appropriated from the general fund to the agency of
15 natural resources in fiscal year 1998, to be used by the agency in developing accurate solid
16 waste data for purposes of planning, monitoring compliance, and monitoring competition, and
17 to be used by the agency in resolving complaints of unfair municipal competition raised under
18 10 V.S.A. § 6605g.

19 (d) The sum of \$100,000.00 is appropriated from the solid waste management assistance
20 account to the agency of natural resources in fiscal year 1998, to be used by the agency for
21 pilot projects, demonstration projects, education about proper solid waste management, and
22 education regarding hazardous household waste programs.

1 Sec. 14. STUDY COMMITTEE ON LIABILITY POOLS

2 (a) There is created a study committee to determine whether municipalities are adequately
3 equipped under existing law to manage any liability that may flow from their solid waste
4 management responsibilities. The committee shall consist of three persons appointed by the
5 Speaker of the House and three persons appointed by the Committee on Committees.
6 Questions to be addressed may include the following: Can municipalities create adequate
7 liability pools under 24 V.S.A. § 4942? Should there be state contributions to such a pool?
8 Should coverage under the pool be extended to include private parties who voluntarily
9 contribute to the pool and earn the ability to recover from the pool? Is there adequate
10 coverage under existing environmental contingency funds for quick response for injured third
11 parties, as well as coverage for overall cleanup costs? Should the state create liability caps in
12 some instances, to apply to solid waste management facilities?

13 (b) The members of the committee shall be entitled to reimbursement of expenses and
14 compensation for services as provided in 2 V.S.A. § 406 for five meetings and shall have the
15 assistance of the staff of the legislative council, the joint fiscal office, and any state agency
16 requested by the committee to offer assistance.

17 Sec. 15. IMPLEMENTATION

18 Persons that have paid fees for certification of solid waste treatment or disposal facilities,
19 under 3 V.S.A. § 2822(j)(6), and have paid those fees for one or more years for which
20 payment is not yet due under this act, shall receive pro rata rebates, and thereafter shall pay
21 amounts due under this fee assessment on a quarterly basis.