

N.D.A.G. Letter to Schwindt (Dec. 18, 1991)

December 18, 1991

Mr. Francis J. Schwindt, Chief
Environmental Health Section
N.D. State Dept. of Health and
Consolidated Laboratories
P.O. Box 5520
Bismarck, ND 58502-5520

Dear Mr. Schwindt:

Thank you for your October 28, 1991, letter regarding the formation of regional solid waste management districts. To answer your questions I have reviewed N.D.C.C. ch. 23-29 and the legislative history of House Bill 1060 which established the solid waste management district concept. You are correct that N.D.C.C. § 23-29-06(3) provides for the organization of solid waste management districts:

3. The governing board of each solid waste management district must include a representative of each county within the district, one representative from cities within each county within the district, a representative of the licensed disposal facilities within the district, and a representative of the waste haulers within the district. Members representing political subdivisions must be appointed by the subdivisions involved. The members representing licensed disposal facilities and waste haulers must be selected by the members appointed by the political subdivisions from a list of candidates submitted by each of those groups. The members of the board may be the members of the regional planning councils appointed under subdivision a of subsection 1 of section 54-40.1-03.

Your first question involves the formation of the district solid waste management board and the relationship of that board to the regional planning council. The district solid waste management board is a separate entity from the regional planning council and must be organized as such. However, legislative history indicates that, for purposes of convenience, the legislature established the same boundaries for solid waste management district boundaries as those of the regional planning councils and provided that members of the district solid waste management board could also be members of the regional planning council. In this way, meetings of district solid waste management boards and regional planning councils could be held on the same day and, through agreement, individual solid waste management districts could utilize the staff of the regional planning council to accomplish some of the districts' purposes. However, certain of the members of the district solid waste management governing board are distinct from members of the regional planning council. N.D.C.C. § 23-29-06(3) indicates that the governing board of

the solid waste management district is a legal entity separate from the regional planning council.

Your second question involves the number of city representatives per county on each district solid waste management board and the method for choosing the city representative. The legislature anticipated that there would be one voting member representing the cities within each county on the district solid waste management board. It did not limit the number of other non-voting representatives to attend district solid waste management board meetings. The best method for choosing the city representative to the district solid waste management board is through mutual agreement of the governing bodies of the cities within each county. Members of your department indicate that there has been no controversy among any cities within the state on choosing the city representative for each individual county. If any controversy arises, our office is willing to assist you in resolving the selection process.

Your third question involves the ability of the waste hauler representative or the licensed disposal facility representative to represent either privately-owned or publicly-owned facilities. A reading of N.D.C.C. § 23-29-06(3), coupled with a review of the legislative history of that section, indicates that the legislature did not impose any restriction on who the waste hauler representative or the licensed disposal facility representative may represent. Therefore, those members of the district solid waste management board may be representatives of either privately-owned or publicly-owned facilities.

Your fourth question involves the ability of a waste hauler representative to serve on more than one district solid waste management board in accordance with N.D.C.C. § 23-29-06(3). Again, a review N.D.C.C. § 23-29-06(3) and its legislative history indicates that the legislature did not restrict any member from serving on more than one district solid waste management board. However, the district bylaws should address conflict of interest procedures involved when the action of a solid waste management district board directly affects the concerns of one or more of its members.

A member of my staff will continue to assist your department and the solid waste management districts in establishing bylaws to assist the districts in establishing governing boards and developing regional solid waste management plans. If you have any further concerns, please contact me.

Sincerely,

Nicholas J. Spaeth

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