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ASSEMBLY BILL 259 TESTIMONY
Senate Committee on Economic Development, Housing, and Government Operations – 3/9/00

Good morning Chairperson Wirch and members of Economic Development, Housing, and Government Operations Committee. Thank you for the opportunity to testify in favor of Assembly Bill 259, which relates to local regulation of certain solid waste facilities.

Under current law, landfills and other solid waste facilities are generally subject to licensing and regulation by the Department of Natural Resources. The DNR can also exempt a solid waste disposal facility from the licensing and regulation requirements if the facility accepts only low-hazard waste. Also known as clean fill, low-hazard waste includes items such as clean soil, bricks, building stone, concrete, reinforced concrete, broken pavement, and unpainted or untreated wood.

In 1996, the Wisconsin Supreme Court ruled in *DeRosso Landfill Company v. City of Oak Creek* that local governments do not have the statutory authority to regulate low-hazard solid waste facilities. This decision means that these landfills could be completely unlicensed and unregulated at either the state or local level.

At this time, municipalities are uncertain whether the DeRosso decision prevents all communities from any regulation of clean fill sites, or whether the decision is limited to the specific circumstances surrounding this one particular case. Rather than force communities to resort to additional litigation, I believe that a statutory change to clarify the role of municipalities in clean fill site regulation would be the best remedy.

Assembly Bill 259 allows local communities to regulate the location and operation of solid waste facilities that are exempt from DNR licensing and regulation, under certain conditions.

- The municipality cannot completely prohibit all low-hazard sites from being located within its borders. This provision would ensure that the statutory authority was not used to create a complete city-wide ban on clean fill sites.

- The regulations have to be part of a general ordinance regarding zoning, land use, storm water, or planning. This would prevent a community from singling out these sites without making such requirements part of a comprehensive land use ordinance.

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- Any requirements regarding nuisance and aesthetic conditions or locations must be at least as stringent as DNR rules. Thus, a local government could be more restrictive than the DNR, but could not authorize locations or operating conditions that would not be permitted under minimal DNR rules.

- Municipal regulations cannot conflict with any order, grant of exemption, or plan approval issued by the DNR with respect to a specific landfill site.

Local communities certainly have valid reasons to regulate low-hazard sites through local ordinances. These concerns include adherence to general zoning and land use planning requirements, the nuisance conditions that might arise from such operations, and the possible negative impact of such sites on stormwater management plans. Local regulations might add specific locational criteria to those that might be thought appropriate by the department. Even if the DNR might share these local concerns, it is unclear whether the agency has the budget to monitor these issues with the interest and intensity that local governments could bring to bear.

I believe DNR recognizes that local communities do have a reasonable interest in how clean fill sites might impact stormwater, zoning, and land use ordinances, as well as the quality of life for nearby residents. If these sites are not covered under DNR rules, it seems eminently reasonable to allow for some local regulation. No landfill, even one that only accepts low-hazard waste should be completely unregulated.