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Statutory Authority: 44-96-10 et seq.

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Document No. 3198

**DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL**

CHAPTER 61

Statutory Authority: 1976 Code Sections 44-96-10 et seq.

61-107.17. Solid Waste Management: Demonstration-of-Need

**Synopsis:**

This amendment revises section 61-107.17 of R.61-107, Solid Waste Management, expanding the scope of this regulation section by defining needs determination criteria for certain types of solid waste facilities. This includes adding solid waste processing facilities and air curtain incinerators that burn waste other than wood waste and yard trash (under the definition of solid waste incinerators) to the list of facilities requiring a demonstration-of-need. It revises the size of the planning areas around some solid waste facilities, adds new criteria for determining the disposal rate limit for Class Two and Class Three landfills, and determines when disposal rate increases may be requested. It redefines “non-commercial” and “commercial” solid waste management facilities. These changes will help reduce the number of potential locations for new solid waste facilities and help to reduce and install a cap on the over-all allowable disposal rate in the State while ensuring an adequate number of facilities throughout the State to meet disposal needs.

This amendment updates section 61-107.17 for consistency with the changes approved by the legislature in Document 3113 that amended R.61-107, Solid Waste Management, and took effect by publication in the State Register on May 23, 2008. Document 3113 simultaneously repealed four existing solid waste landfill sections of R.61-107 (107.11; 107.13; 107.16; 107.258) and replaced them with new section 61-107.19, Solid Waste Management: Solid Waste Landfills and Structural Fill. Section 61-107.19 addresses all solid waste landfills and structural fill activities.

**Discussion of Changes Made Pursuant to the Request of**

**the Senate Medical Affairs Committee by Letter dated May 7, 2009:**

Section A.1 was changed to add the word “type”.

A redundancy in Section A.2. was deleted and the section was renumbered.

The definitions section was revised to remove a reference to Section C.4.

Section C.1 was expanded to include language moved from another section. Language was also added that explained what waste generation will be considered in determining allowable increases in annual disposal rates. A reference to paragraph D.2 was corrected to reference Section D.3.

Section C was renumbered.

Section C.6 was added to clarify how determinations that were made prior to the regulation change will be handled.

Section D was modified to change how the Department would determine the allowable location for facilities and how the maximum allowable yearly disposal rates would be determined.

Section D.1.c was modified to clarify how the geographic location of a facility should be determined.

Section D.1.e was reworded for clarity.

Section D.2 was modified, renumbered and sub-sections were moved to the new Section D.3.

Section D.2.a was modified to clarify instances when no new capacity shall be allowed.

Section D.3.a, Section D.3.b and Section D.3.c were revised to change how the Department will calculate yearly disposal rates for Class Three landfills.

Section D.3.a was added to change how the Department will calculate maximum yearly disposal rates for Class Three landfills.

Section D.3.b was added to specify how the Department will calculate maximum yearly disposal rates for Class Two landfills.

Section D.3.c was added to specify when a permitted Class Three landfill may request an increase in their yearly disposal rate and to set a maximum limit on tonnage increases.

Section D.3.d was added to specify when a Class Two Landfill may request an increase in their yearly disposal rate.

Section D.3.d.1 changes how the maximum yearly disposal rate for Class Two Landfills will be determined.

Section D.3.d.2 adds an allowable variance for Class Two Landfills to temporarily exceed their permitted annual disposal rate under specific conditions.

Section D.3.e clarifies the source of data to be used by the Department to determine disposal and generation rates.

Section D.4 was added to specify how the Department would calculate the maximum allowable yearly throughput for solid waste processing facilities.

Section D.5 was added to specify how the Department would calculate the maximum allowable yearly throughput for solid waste incinerators.

Section D.6 was modified for consistency with changes to Section D.2 and to specify variance provisions.

**Discussion of Revisions as Submitted by SCDHEC to the**

**General Assembly for Review on January 13, 2009:**

Statutory Authority. The entire Solid Waste Policy and Management Act replaces specific sections.

Table of Contents. The table was amended pursuant to changes in the text.

Section A. Applicability.

This section was revised to delete outdated names of solid waste facilities and to add new terminology for consistency with section 61-107.19 (State Register Document No. 3113). Also solid waste processing facilities are added to the list of solid waste facilities required to demonstrate need and replaces municipal solid waste and industrial incinerators with solid waste incinerators which includes air curtain incinerators that burn waste other than wood waste and yard trash. Additionally, a requirement was added that any existing facility that requests a change in classification or commercial status is required to demonstrate need. Class Three solid waste landfills permitted to accept only industrial waste, that request approval to accept municipal solid waste, are required to demonstrate need.

Revisions define facilities not regulated under the purview of this regulation.

Names of facilities are changed for consistency with section 61-107.19. The revision states that all facilities other than non-commercial are considered commercial facilities.

Language was added to include air curtain incinerators that receive only wood waste and yard trash to the list of facilities not covered by this regulation.

A new statement was added that facilities other than those listed in Section A.1 are not covered by this regulation.

A new statement was added that processing of waste at source of generation is not covered by this regulation.

A new statement was added that the processing of waste at permitted Class Three solid waste landfills destined for disposal at that landfill do not need demonstration-of-need for the processing portion.

Section A outline was renumbered pursuant to the revisions.

Section B. Definitions.

The name of this section was renamed “Definitions for the Purposes of this Regulation”.

New definitions were added in alphabetical/numerical order for: “Class Two solid waste landfills”, “Class Three solid waste landfills”, “Consistency determination”, “Non-commercial solid waste management facility”, “solid waste incinerators”, and “solid waste processing facility”. The definition for “solid waste disposal facilities” was changed to “solid waste management facilities” and revised as appropriate. The “solid waste incinerator” definition excludes pyrolysis facilities, waste-to-energy facilities burning solid waste used for energy recovery, and air curtain incinerators that burn only wood waste and yard trash. The following definitions were revised: “commercial solid waste management facility”, “Disposal rate”, “Expand”, and “Planning area”. A table of facilities requiring demonstration-of-need under the planning area definition was revised and moved to Section C.4. Stylistic changes were made as appropriate.

Section outline was renumbered appropriately.

Section C. Demonstration of Need Requirements for Solid Waste Disposal Facilities.

Due to numerous revisions, this section was struck and rewritten in its entirety; it was renamed “Demonstration of Need Requirements.”

This section was revised for clarity and to update terminology for consistency with section 61-107.19. Also, a requirement was added that a consistency determination be made prior to issuance of a permit to construct or expand.

A statement that construction cannot begin until a permit is issued was deleted because it is not relevant to this regulation. Terminology in list of facilities needing demonstration-of-need for consistency with section 61-107.19 was revised. Also, the scope was expanded by adding solid waste processing facilities that process waste destined for disposal at Class Three solid waste landfills to the list of facilities requiring demonstration-of-need.

Language addressing solid waste generated in other jurisdictions was clarified with the elimination of a double negative.

A statement that demonstration-of-need will be made prior to a consistency determination was deleted. Text defining the size of the planning areas was moved from the definitions section and revised for consistency with section 61-107.19. The planning area for Class Two solid waste landfills (which includes current C&D landfills) was changed from 10 miles to 20 miles. The scope was expanded to include processing facilities. The terms for “municipal solid waste incinerators” and “industrial incinerators” were combined into new term “solid waste incinerators,” which includes air curtain incinerators that burn waste other than wood waste and yard trash.

New language states that demonstration-of-need requests will be reviewed in the order in which they are received. If consistency request/documentation is not submitted to the Department with the demonstration-of-need request and need is demonstrated, the location for the proposed facility will be reserved for 60 days to allow time for submittal of a consistency determination request.

New language is added that demonstration-of-need determinations made prior to the effective date of regulation will remain valid subject to termination criteria outlined in the regulation.

New text outlines conditions under which the Department can terminate demonstration-of-need determinations. These conditions include: no evidence of diligent pursuit of the appropriate solid waste permit or any related necessary approval within 120 days of the applicants submittal of the demonstration-of-need request, and denial of a permit application. This is added to ensure that an area of the state will not be blocked inappropriately.

Section C outline was renumbered pursuant to the revisions.

D. Determining Need.

This section was struck and rewritten in its entirety; it was renamed “Demonstration-of-Need Application Process”.

Revisions were made for clarity. The list of specific information for the applicant to submit with a demonstration-of-need request was expanded to include the name of the facility, the applicant contact information, the facility type, the host county and the applicant’s signature. The description of allowable methods for submitting site coordinates was also expanded. This section also identifies the center of the property(s) on which the facility is placed as the reference point.

A statement no longer applicable was deleted that disposal facilities that accept only waste generated in the county or region in which the disposal facility is located will not be considered in determining need. A new statement was added that landfills in post-closure will not be considered in determining need.

Criteria for determining maximum yearly disposal rates for Class Three solid waste landfills were changed to reduce the allowable portion to 40 percent of waste generated from counties within the planning radius that host another Class Three solid waste landfill. These criteria are added to help lower the over-all allowable disposal rate in the State.

A reference to “separate ownership” is removed to reduce the possible number of facilities and resulting capacity increase within a planning area.

The clarification was made that in determining the amount of solid waste destined for disposal, the Department would use the figures contained in the previous fiscal year Solid Waste Annual Report.

The Variance section was renumbered and revised as appropriate. Also, the requirement that the applicant must apply for a variance at least five years before exhausting permitted capacity was deleted. This is not practical. The variance conditions for Class Two and Class Three solid waste landfills were specified. Clarification was made that a variance will not be issued if other applicable requirements are not met.

The section outline was renumbered pursuant to revisions.

E. Violations and Penalties were amended for consistency with other regulations.

F. An Appeals section was added that requires appeal of determinations of need or consistency when the determinations are issued and not as part of an appeal of a decision on the permit. This is to maintain consistency with Document No. 3113.

G. The Severability statement was renumbered from Section F. to Section G.

**Instructions**: Replace section 107.17 of R.61-107 in entirety with this amendment.

**Text:**

61-107.17. Solid Waste Management: Demonstration-of-Need.

 (Statutory Authority: 1976 Code Sections 44-96-10 et seq.)

Table of Contents

A. Applicability.

B. Definitions for the Purposes of this Regulation.

C. Demonstration-of-Need Requirements .

D. Demonstration-of-Need Application Process.

E. Violations and Penalties.

F. Appeals.

G. Severability.

A. Applicability.

 1. This regulation establishes the criteria for the demonstration-of-need for the construction of new and the expansion of existing commercial Class Two solid waste landfills, commercial Class Three solid waste landfills, commercial solid waste incinerators, and commercial solid waste processing facilities that process waste destined for disposal at Class Three solid waste landfills. Any solid waste management facility type listed herein that no longer has a valid permit to operate prior to the effective date of this regulation and attempts to reopen after the effective date of this regulation shall be considered a new facility and shall be required to demonstrate need pursuant to this regulation. Any existing facility that requests a change in classification or commercial status shall be considered a new facility and required to demonstrate need pursuant to this regulation. Commercial Class Three solid waste landfills permitted to accept only industrial waste that request approval to accept municipal solid waste shall be considered a new facility and required to demonstrate need pursuant to Sections C and D of this regulation.

 2. This regulation does not apply to:   a. Class Two solid waste landfills, Class Three solid waste landfills, solid waste incinerators, or solid waste processing facilities that accept only waste generated in the course of normal operations on property under the same ownership or control as the solid waste management facility if the facility is classified as a non-commercial solid waste management facility. All other solid waste management facilities for the purpose of demonstrating need shall be considered commercial facilities;

 b. Facilities that handle hazardous waste as defined by the Resource Conservation and Recovery Act (RCRA) and R.61-79, Hazardous Waste Management Regulations, and infectious waste as defined by R.61-105, Infectious Waste Management Regulations;

 c. Air curtain incinerators that receive only wood waste and yard trash;

 d. The processing of waste at the source of generation; and,

 e. The processing of waste at permitted Class Three solid waste landfills destined for disposal at the landfill.

B. Definitions for the Purposes of this Regulation.

 1. “Class Two solid waste landfills” means those landfills as described in Part IV, Section A of Regulation section 61-107.19. Solid Waste Management: Solid Waste Landfills and Structural Fill.

 2. “Class Three solid waste landfills” means those landfills as described in Part V, Subpart A of Regulation section 61-107.19.

 3. “Commercial solid waste management facility” means for the purposes of this regulation, all solid waste management facilities with the exception of non-commercial facilities.

 4. “County or Regional Solid Waste Management Plan” means a solid waste management plan prepared, approved, and submitted by either a single county or a region, i.e., a group of counties, pursuant to the Solid Waste Policy and Management Act, S.C. Code Section 44-96-80 (1976, as amended).

 5. “Consistency determination” means for the purposes of this regulation, a Department decision that a proposed solid waste project is or is not consistent with:

 a. State and County/Region Solid Waste Management Plans;

 b. Local zoning and land-use ordinances and regulations based on due consideration of written documentation from an appropriate local government official verifying that applicable local requirements have been met;

 c. All other applicable local ordinances; and,

 d. Buffer requirements pursuant to the appropriate Department regulation, e.g. Regulation sections 61-107.19, Part IV.B.1.a for Class Two solid waste landfills; 61-107.19, Part V, Subpart B.258.18.a for Class Three solid waste landfills; 61-107.12.E.8 for Solid Waste Incinerators; and 61-107.6.E.8 for Solid Waste Processors.

 6. “Department” means the South Carolina Department of Health and Environmental Control.

 7. “Disposal rate” means the total amount, either by tonnage or volume, of waste received at the solid waste disposal facility on a fiscal year (July 1 – June 30) basis.

 8. “Expand” or “Expansion” means any increase in the permitted volumetric capacity of an existing solid waste management facility.

 9. “Non-commercial solid waste management facility” means a facility that manages only solid waste that is generated in the course of normal operations on property under the same ownership or control as the solid waste management facility.

 10. “Planning area” means the area around a solid waste management facility that is used for determining the need for new and expansions of existing facilities.

     11. "Region" means a group of counties which is planning to or has prepared, approved, and submitted a regional solid waste management plan to the Department pursuant to S.C. Code Section 44-96-80 (1976, as amended).

 12. "Solid waste" means any garbage, refuse, or sludge from a waste treatment plant, water supply plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities. This term does not include solid or dissolved material in domestic sewage, recovered materials, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to NPDES permits under the Federal Water Pollution Control Act, as amended, or the Pollution Control Act of South Carolina, as amended, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1964, as amended. Also excluded from this definition are application of fertilizer and animal manure during normal agricultural operations or refuse as defined and regulated pursuant to the South Carolina Mining Act, including processed mineral waste, which will not have a significant adverse impact on the environment.

 13. "Solid waste incinerators" means any engineered device used in the process of controlled combustion of solid waste for the purpose of reducing the volume, and/or reducing or removing the hazardous potential of the waste charged by destroying combustible matter leaving the noncombustible ashes, material and/or residue. For the purposes of this regulation, solid waste pyrolysis facilities, waste-to-energy facilities burning solid waste used for energy recovery, and air curtain incinerators that burn only wood waste and yard trash are not included in this definition.

 14. “Solid waste management facilities” means Class Two solid waste landfills, Class Three solid waste landfills, solid waste incinerators, and solid waste processing facilities that process waste destined for disposal at Class Three solid waste landfills.

 15. “State Solid Waste Management Plan" means the plan which the Department of Health and Environmental Control is required to submit to the General Assembly and to the Governor pursuant to S.C. Code Section 44-96-60 (1976, as amended).

 16. “Solid waste processing facility” means those facilities as defined in Regulation section 61-107.6, Solid Waste Management: Solid Waste Processing Facilities.

                  4. The initial demonstration-of-need for a new or expanded solid waste disposal facilities shall be made by the Department prior to a consistency determination.

  C. Demonstration-of-Need Requirements.

 1. No permit to construct a new or to expand the volume or capacity of an existing commercial Class Two solid waste landfill, Class Three solid waste landfill, solid waste incinerator, or solid waste processing facility that processes waste destined for disposal at a Class Three solid waste landfill shall be issued until a final demonstration-of-need and a consistency determination are approved by the Department. In determining whether there is a need for new or expanded solid waste management facilities listed in Section C.2, or in determining increases in annual disposal rates, the Department will consider only solid waste generated in jurisdictions subject to the provisions of a county or regional solid waste management plan pursuant to S.C. Code Section 44-96-80. Any increase in the disposal rate shall not require a demonstration-of-need as long as the requested increase in disposal rate is less than the maximum disposal rate as determined by Section D.3.

  2. Need shall be demonstrated for the following commercial solid waste management facilities:

 a. Class Two solid waste landfills;

 b. Class Three solid waste landfills;

 c. Solid waste incinerators; and,

 d. Solid waste processing facilities that process waste destined for disposal at Class Three solid waste landfills.

 3. Planning Area. The following planning areas shall be used by the Department for determining if the demonstration-of-need has been met for commercial facilities pursuant to this regulation:

|  |  |
| --- | --- |
| Commercial Solid WasteManagement Facility | Size of Planning Area AroundSolid Waste Management Facility |
| Class Two solid waste landfills | 20-mile radius |
| Class Three solid waste landfills  | 75-mile radius |
| Solid waste incinerators  | 75-mile radius |
| Solid waste processing facilities | 75-mile radius |

 4. Requests for demonstration-of-need will be reviewed by the Department in the order in which they are received. If a request for demonstration-of-need is not accompanied by a request for a consistency determination pursuant to Section B.5 of this regulation, and need is demonstrated, the location for the proposed facility will be reserved for sixty (60) days. Failure to submit a consistency request within sixty (60) days of submittal of a demonstration-of-need request will result in termination of the reservation of the location for the proposed facility.

 5. Demonstration-of-need determinations issued by the Department may be terminated, upon written notification by the Department, if either of the following occurs:

 a. Failure to show evidence of diligent pursuit of the appropriate solid waste permit or any related necessary approval, including proof of property control, within one hundred twenty (120) days of the applicant’s submittal of the demonstration-of-need request; or,

 b. The Department denies the permit application.

 6. Where, prior to the effective date of this regulation, the Department made determinations required under Part I.D.1.a. of South Carolina Regulation 61-107.19, such determinations shall remain applicable and become the agency’s final determination subject to the appeal provision in Section F of this regulation and any applicable public notice and application requirements. All demonstration of need determinations are subject to termination criteria outlined in Sections C.4 and C.5 of this regulation regardless of when the determination was made.

   D. Demonstration-of-Need Application Process.

 1. Prior to submitting a permit application to the Department for a new or expansion of an existing Class Two solid waste landfill, Class Three solid waste landfill, solid waste incinerator, or solid waste processing facility that processes waste destined for disposal at a Class Three solid waste landfill, the applicant shall submit to the Department a demonstration-of-need request that includes the following information:

 a. The name of the facility. This name will be used in future correspondence to identify the facility;

 b. Applicant contact information to include the following:

 (1) Name of applicant;

 (2) Address;

 (3) Telephone number;

 (4) Fax number; and,

 (5) E-mail address (optional);

 c. The geographical coordinates of the facility using the geographic center of the incinerator or processing facility as the reference point, or the geometric center of the landfill footprint as the reference point, as well as a brief description of the location. For expansions, the reference point shall be the center of the facility as assigned by the Department. Use either latitude/longitude coordinate system in degrees, minutes and seconds (preferred) or the Universal Transverse Mercator (UTM) coordinate system. Describe the method for determining coordinates;

 d. The type facility, i.e., Class Two solid waste landfill, Class Three solid waste landfill, solid waste incinerator, or solid waste processing facility;

 e. The annual disposal rate or throughput, as applicable, in tons/year (specify the desired annual tonnage within the applicable limits);

 f. The name of the host county/region; and,

 g. The applicant’s signature.

 2. In determining if there is a need for a new or expansion of an existing solid waste management facility, the Department will use the following criteria:

 a. Where there are at least two (2) commercial solid waste management facilities of the same type within the planning area, no new capacity shall be allowed. Landfills in post-closure shall not be considered in determining need.

 b. The Department reserves the right to review additional factors in determining need on a case-by-case basis.

 3. In determining the maximum allowable yearly disposal rate for Class Three or Class Two solid waste landfills, the Department will use the following criteria:

 a. Each new Class Three solid waste landfill permitted after the effective date of this regulation shall be initially allowed up to a maximum yearly disposal rate equal to the total amount of solid waste generated in the planning area for disposal in Class Three landfills as follows, unless otherwise provided in section C.6:

(1) 100 percent of the host county; and,

(2) 50 percent of each county, other than the host county, that falls wholly or

partially within the 75-mile radius that does not have a Class Three landfill that accepts municipal solid waste located in that county.

(3) Solid waste generated in counties, other than the host county, that have at least

one Class Three Landfill, is not counted in this calculation.

 b. Each new Class Two solid waste landfill permitted after the effective date of this regulation shall be initially allowed up to a maximum yearly disposal rate equal to the total amount of solid waste generated in the planning area for disposal in Class Two Landfills as follows, unless otherwise provided in section C.6:

(1) 100 percent of the host county; and,

(2) 30 percent of each county, other than the host county, that falls wholly or

partially within the 20-mile planning radius.

 c. An existing Class Three solid waste landfill operating within 20 percent of the permitted yearly disposal rate stated in the current permit, as documented in the most recently published S.C. Solid Waste Management Annual Report when the request is made, may submit a request for an increase in the permitted yearly disposal rate and will be allowed to increase the maximum yearly disposal rate based on the following:

 (1) A Class Three landfill that has a permitted annual disposal rate greater than 30 percent of the total amount of waste generated in all jurisdictions subject to the provisions of a county or regional plan pursuant to S.C. Code Section 44-96-80 that is destined for disposal in Class Three Landfills shall not receive any increase in its yearly annual disposal rate;

 (2) A Class Three Landfill that has a permitted annual disposal rate less than or equal to 30 percent pursuant to Section D.3.c(1) shall receive the lesser of either: (a) 150,000 tons or (b) the increase in waste generated by all jurisdictions that are subject to the provisions of a county or regional plan pursuant to S.C. Code Section 44-96-80 for disposal at Class Three Landfills, since the last increase in the permitted annual disposal rate at said landfill, as reported in the most recently published S.C. Solid Waste Management Annual Report when the request is made.

 d. An existing Class Two solid waste landfill operating within 20 percent of the permitted yearly disposal rate stated in the current permit, as documented in the most recently published S.C. Solid Waste Management Annual Report when the request is made, shall be allowed to increase the maximum yearly disposal rate based on the following:

 (1) The lesser of either: (a) 50,000 tons or (b) the increase in waste generated in the planning area for disposal at Class Two landfills, since the last increase in the permitted annual disposal rate for said landfill, as reported in the most recently published S.C. Solid Waste Management Annual Report when the request is made or,

 (2) A variance to the permitted annual disposal rate may be granted for a specified term, corresponding to the need, in the event of an emergency or documented large project with a specified term, as determined solely by the Department. This temporary increase in annual disposal rate, if granted, is not considered by the Department when determining if a facility is within 20 percent of its permitted annual disposal rate.

 e. In determining the amount of solid waste destined for disposal and solid waste generation amounts, the Department will use figures reflecting the previous fiscal year amount of solid waste as reported in the most recently published S.C. Solid Waste Management Annual Report, when the request is made, for the appropriate waste, (e.g. Class Two, Class Three, etc.). Annual disposal rates for facilities permitted prior to the effective date of this regulation shall not be reduced pursuant to Section D of this regulation.

 4. The maximum allowable yearly throughput of a solid waste processing facility that processes waste destined for disposal at a Class Three solid waste landfill shall be equal to the total amount of solid waste destined for disposal that is generated in the host county and 50 percent of the waste generated in each county other than the host county, that falls wholly or partially within the 75-mile planning radius.

 5. The yearly throughput for a solid waste incinerator shall be based on the manufacturer’s design of the incinerator but shall not exceed 600 tons per day.

 6. Variance in regard to demonstration of need. The Department shall grant a variance to the requirements of D.2 for Class Two and Class Three solid waste landfills according to the following conditions:

 a. An operating Class Two or Class Three landfill shall receive a variance to construct a replacement Class Two or Class Three landfill at its permitted annual rate of disposal provided it meets all of the following conditions:

 (1) For a Class Three landfill only, the primary business of the landfill since it began operation has been the disposal of “household waste” and “commercial waste” as defined in S.C. Regulation section 61-107.19.

 (2) The landfill has a permit issuance date on or before the effective date of this Regulation.

 (3) The landfill exhausts its permitted capacity at its current location (see 6.e below for timing).

 (4) For the purpose of considering the location of a replacement facility under this section, the location for the replacement facility must be within the facility’s existing planning area, provided that, if the planning area includes a portion of a county, the entire county will be considered to be part of the planning area. A Class Two or Class Three landfill, once replaced as provided for in Section D. 6.a., is no longer eligible to receive a variance for replacement under this section.

 b. A Class Two or Class Three landfill shall receive a variance to expand the volume of an existing facility.

 c. A facility receiving a variance under this section must meet the requirements of S.C. Regulation section 61-107.19 prior to receiving a permit.

 d. No variance under this section will be granted to a facility that is under a unilateral administrative order issued by the Department until the issues associated with said order have been resolved.

 e. An eligible facility shall apply to the Department for a variance to replace or expand the volume of an existing facility prior to exhausting: (1) its permitted capacity, or (2) the operational life of the facility. A facility shall not operate under an expansion variance and a replacement variance simultaneously, with the exception of a reasonable transition period as determined by the Department. A reasonable transition period is considered to be approximately one hundred eighty (180) calendar days.

 7. The Department will advise the applicant and the host county or region in writing of its demonstration-of-need determination. Notice of the Department’s demonstration-of-need determination for Class Two and Three landfills must be given in accordance with S.C. Regulation section 61-107.19.

E. Violations and Penalties.

 A violation of this regulation or violation of any permit, order, or standard subjects the person to the issuance of a Department order, or a civil or criminal enforcement action in accordance with S.C. Code Section 44-96-450 (1976, as amended). In addition, the Department may impose reasonable civil penalties not to exceed ten thousand dollars ($10,000.00) for each day of violation of the provisions of this regulation, including violation of any order, permit or standard.

F. Appeals.

 1. A Demonstration-of-need determination may be appealed at the time such determination is issued and may not be raised as part of an appeal of a decision on the permit.

 2. A Department decision involving a demonstration-of-need may be appealed by an affected person with standing pursuant to applicable law, including S.C. Code Title 44, Chapter 1; and Title 1, Chapter 23.

G. Severability.

 Should any section, paragraph, sentence, word, clause or phrase of this regulation be declared unconstitutional or invalid for any reason, the remainder of this regulation shall not be affected thereby.

**Fiscal Impact Statement**:

Staff anticipates there will be no increased costs to the State or its political subdivisions.

**Statement of Need and Reasonableness**:

This Statement of Need and Reasonableness was determined by staff analysis pursuant to S.C. Code Section 1-23-115(C)(1)-(3) and (9)-(11).

DESCRIPTION OF THE REGULATION:

Purpose: This amendment updates, streamlines and clarifies requirements addressing demonstration-of-need and makes this regulation section consistent with the changes in State Register Document No. 3113 that amended R.61-107, Solid Waste Management, effective May 23, 2008. This amendment also revises the size of the planning areas around solid waste facilities, reduces and caps the maximum allowable annual disposal rate, reduces the number of available locations for solid waste disposal facilities, revises certain definitions, and expands the scope of the regulation by defining needs determination criteria for other types of solid waste.

Legal Authority: S.C. Code Sections 44-96-10 et seq.

Plan for Implementation: This amendment will be incorporated into R.61-107, Solid Waste Management, upon approval by the Board of Health and Environmental Control, the General Assembly and publication in the State Register. The amended regulation will be implemented in the same manner in which other regulations are implemented.

DETERMINATION OF NEED AND REASONABLENESS OF THE REGULATION BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFIT:

This amendment is needed for consistency with the changes proposed in State Register Document 3113 that took effect as law on May 23, 2008. Document No. 3113 simultaneously repealed four existing solid waste landfill sections and replaced them with new Section 61-107.19 that addresses all solid waste landfills and structural fill activities. R.61-107.17 must be amended to revised requirements and terminology that coincides with that used in R.61-107.19. This includes requiring appeals on demonstration-of-need in the first phase of the permitting process. This precludes applicants from investing large sums on a project, e.g., drafting plans, until the demonstration-of-need issue is completed. It also allows public notification of a proposed project in the early stages of the permitting process.

This amendment is needed to ensure there are a sufficient number of solid waste management facilities to meet the State’s needs without allowing an over abundance in some areas. There are a number of processing facilities and air curtain incinerators that burn waste other than wood waste and yard trash concentrated in specific areas of the State. Requiring demonstration-of-need for these facilities will ensure these types of facilities are placed in areas of need in the State.

This amendment is needed to help lower and establish a cap on the over-all maximum allowable disposal rate in the State by changing the criteria for demonstrating need for Class Two and Class Three solid waste landfills. When there are two commercial facilities in a planning area that meet the disposal needs for the area, no new capacity is allowed. The existing regulation does not take into account all the tonnage available in the non-commercial landfills, e.g., many county-owned landfills. Making a distinction between commercial and non-commercial landfills and ignoring the non-commercial landfills when determining need results in an excess of disposal capacity that exceeds the needs of the planning area. Revising the regulation to treat all facilities as “commercial”, with the exception of on-site facilities, will help to lower the over-all allowable disposal rate in the State.

This amendment is reasonable because it helps preserve the State’s natural resources by limiting the number of solid waste facilities, and by lowering the over-all maximum allowable disposal rate in Class Two and Class Three solid waste landfills while ensuring the availability of adequate long-term disposal capacity to meet the State’s solid waste disposal needs at a reasonable cost. It gives all commercial facilities the same advantages while lowering the over-all allowable disposal rate in the State.

A workgroup comprised of representatives from the solid waste disposal industry (small and large businesses), Association of Counties, solid waste regions, municipalities, environmental groups, environmental consultants, and Department staff developed the criteria on which the amendment is based. All comments received during the public comments periods and during the public hearing before the Department’s Board were considered.

DETERMINATION OF COSTS AND BENEFITS:

Internal Costs: Implementation of this regulation should not require additional resources.

External Benefits: There will be a benefit to the regulated community by requiring demonstration-of-need and appeals on demonstration-of-need in the first phase of the permitting process, in that applicants will not invest large sums on the project (e.g., drafting plans) until the demonstration-of-need issue is completed. There will be a benefit to the public by requiring public notification of proposed solid waste facilities up front. Counting all solid waste management facilities as commercial, except for on-site facilities, will result in more accurate planning within the county/region.

UNCERTAINTIES OF ESTIMATES:

None.

EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH:

This amendment adds demonstration-of-need requirements for solid waste processing facilities and air curtain incinerators that burn waste other than wood waste and yard trash. Demonstration-of-need and planning areas ensure fewer, better managed solid waste management facilities are placed throughout the State to ensure that each county has the facilities to meet its needs without an over abundance of similar facilities.

The cap on the overall allowable disposal rate in the State will help protect the State’s natural resources. Demonstration-of-need limits the number of solid waste management facilities which normally results in larger, more efficiently operated facilities.

DETRIMENTAL EFFECT ON THE ENVIRONMENT AND PUBLIC HEALTH IF THIS AMENDMENT IS NOT IMPLEMENTED:

There will be a larger overall allowable disposal rate in the State, which may encourage the importation of waste from other states. If solid waste processing facilities and air curtain incinerators that fall under the purview of this amendment are not required to demonstrate need, there may continue to be a concentration of these facilities in the State and other areas in need of these types of facilities.

**Statement of Rationale**:

This amendment updates and clarifies requirements addressing demonstration of need. It includes revision of the size of the planning areas around solid waste facilities, it lowers and caps the overall allowable disposal rate in the State, it reduces the number of possible locations available for solid waste management facilities, it expands the scope of the regulation by defining needs determination criteria for other types of solid waste facilities, and other related changes.

Representatives from the solid waste disposal industry (small and large businesses), Association of Counties, solid waste regions, municipalities, environmental group, and environmental consultants worked with Department staff to define the scope of this proposed amendment and develop reasonable criteria while maintaining protection of the environment and public health. See the Statement of Need and Reasonableness above for more information regarding the factors influencing the decision to revise the regulation.