CHAPTER 93

Infectious Waste Management

**SECTION 44‑93‑10.** Short title.

This chapter may be cited as the “South Carolina Infectious Waste Management Act”.

HISTORY: 1989 Act No. 134, Section 1.

CROSS REFERENCES

Environmental electronic reporting requirements, see S.C. Code of Regulations R. 61‑115.

Hazardous Waste Management Act, see Sections 44‑56‑10 et seq.

Inapplicability of the South Carolina Solid Waste Policy and Management Act to infectious waste regulated by this act, see Section 44‑96‑30.

Infectious waste management regulations, see S.C. Code of Regulations R. 61‑105.

Attorney General’s Opinions

While the Pollution Control Act contains no specific authority for DHEC to consider environmental compliance histories and records of applicants when they apply for permits, the Infectious Waste Management Act allows DHEC to consider prior criminal convictions or contempt of court adjudications. Similarly, the Solid Waste Policy and Management Act allows DHEC to consider a continuing history of criminal convictions or violations of environmental laws. S.C. Op.Atty.Gen. (May 3, 1994) 1994 WL 267892.

**SECTION 44‑93‑20.** Definitions.

(A) “Infectious waste” or “waste” means:

(1) sharps;

(2) cultures and stocks of infectious agents and associated biologicals;

(3) human blood and blood products;

(4) pathological waste;

(5) contaminated animal carcasses, body parts, and bedding of animals intentionally exposed to pathogens; and

(6) isolation waste pursuant to the “Guidelines for Isolation Precautions in Hospitals”, Centers for Disease Control.

Nothing in this chapter prohibits a generator of infectious wastes from designating and managing wastes in addition to those listed above as infectious wastes.

(B) “Infectious waste management” means the systematic control of the collection, source separation, storage, transportation, treatment, and disposal of infectious wastes.

(C) “Board” means the South Carolina Board of Health and Environmental Control which is charged with responsibility for implementation of the Infectious Waste Management Act.

(D) “Director” means the director of the department or his authorized agent.

(E) “Containment” means the packaging of infectious waste or the containers in which infectious waste is placed.

(F) “Department” means the Department of Health and Environmental Control, including personnel of the department authorized by the board to act on behalf of the department or board.

(G) “Dispose” means to discharge, deposit, inject, dump, spill, leak, or place any infectious waste into or on any land or water including groundwater so that the substance may enter the environment or be emitted into the air or discharged into any waters, including groundwater.

(H) “Facility” means a location or site within which infectious waste is treated, stored, or disposed of.

(I) “Generator” means the person producing infectious waste except waste produced in a private residence.

(J) “Generator facility” means a facility that treats infectious waste that is owned or operated by a combination or association of generators, a nonprofit professional association representing generators or a nonprofit corporation controlled by generators, nonprofit foundation of hospitals, or nonprofit corporations wholly owned by hospitals, if the waste is generated in this State and treatment is provided on a nonprofit basis.

(K) “Person” means an individual, partnership, co‑partnership, cooperative, firm, company, public or private corporation, political subdivision, agency of the State, county, or local government, trust, estate, joint structure company, or any other legal entity or its legal representative, agent, or assigns.

(L) “Storage” means the actual or intended holding of infectious wastes, either on a temporary basis or for a period of time, in the manner as not to constitute disposing of the wastes.

(M) “Transport” means the movement of infectious waste from the generation site to a facility or site for intermediate storage.

(N) “Treatment” means a method, technique, or process designed to change the physical, chemical, or biological character or composition of infectious waste so as to sufficiently reduce or eliminate the infectious nature of the waste.

(O) “Expand” means an increase in the capacity of the facility or an increase in the quantity of infectious waste received by a facility that exceeds a permit condition.

HISTORY: 1989 Act No. 134, Section 1; 1993 Act No. 181, Section 1148.

CROSS REFERENCES

Definition of “infectious waste” set forth in this section as applicable to Solid Waste Policy and Management Act, see Section 44‑96‑40.

Department and Board of Health and Environmental Control, see Section 44‑1‑20.

Attorney General’s Opinions

Discussion of the procedure required before infectious waste incinerator facilities can expand or construct new facilities. S.C. Op.Atty.Gen. (February 23, 1990) 1990 WL 482410.

**SECTION 44‑93‑30.** Regulations, procedures, and standards.

The department shall promulgate regulations, procedures, or standards necessary to carry out the provisions of this chapter and to protect the health and safety of the public, the health of living organisms and the environment from the effects of improper, inadequate, or unsound infectious waste management. The regulations must address, without limitation, criteria for determining whether waste is within the definition of infectious waste, standards for containment, storage, and treatment of infectious waste, report and recordkeeping requirements, procedures and requirements for registration as generators, facilities, and transporters of infectious waste, and for conditions and issuance of permits.

HISTORY: 1989 Act No. 134, Section 1.

CROSS REFERENCES

Environmental electronic reporting requirements, see S.C. Code of Regulations R. 61‑115.

Unlawful to fail to comply with statute or regulations following promulgation of regulations pursuant to this section, see Section 44‑93‑140.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

Imposition of higher fee on commercial treatment of waste generated out‑of‑state clearly discriminates on its face and thus statute violates commerce clause. Chambers Medical Technologies of South Carolina, Inc. v. Jarrett, 1994, 841 F.Supp. 1402, affirmed in part, remanded in part 52 F.3d 1252.

Provision which imposes permit fee for facilities but exempts those which prove that more than 75% of waste stored, treated or disposed of is generated on‑site, discriminates against interstate commerce. Since a less discriminatory method is available to achieve state’s legitimate purpose, the provision is unconstitutional. Chambers Medical Technologies of South Carolina, Inc. v. Jarrett, 1994, 841 F.Supp. 1402, affirmed in part, remanded in part 52 F.3d 1252.

Inevitable effect of provision imposing fee on interstate transportation of infectious waste was to threaten free movement of commerce by placing financial barrier around state. State’s legitimate concern can be achieved by less discriminatory alternative. Chambers Medical Technologies of South Carolina, Inc. v. Jarrett, 1994, 841 F.Supp. 1402, affirmed in part, remanded in part 52 F.3d 1252.

**SECTION 44‑93‑40.** Department administrative and public health emergency infectious waste management powers.

(A) To carry out the provisions and purposes of this chapter, the department may establish and collect registration and permit fees in connection with the provisions of this chapter; conduct inspections, investigations, obtain samples, and conduct research with respect to the operation and maintenance of a site or facility in which infectious waste is generated or managed; and issue, deny, revoke, suspend, or modify registration, permits, or orders under such conditions as it may prescribe for the operation of infectious waste treatment facilities or sites. No permit or registration may be revoked without first providing an opportunity for a hearing as provided pursuant to Article 3, Chapter 23 of Title 1, the Administrative Procedures Act.

(B) After the declaration of a public health emergency, as defined in Section 44‑4‑130, the department may exercise, for such period as the state of public health emergency exists, the following powers, in addition to any existing powers it has, for the safe disposal of infectious waste:

(1) to adopt and enforce measures to provide for the safe disposal of infectious waste as may be reasonable and necessary for emergency response. These measures may include, but are not limited to, the collection, storage, handling, destruction, treatment, transportation, and disposal of infectious waste;

(2) to require any business or facility authorized to collect, store, handle, destroy, treat, transport, and dispose of infectious waste under the laws of this State, and any landfill business or other such property, to accept infectious waste or provide services or the use of the business, facility, or emergency. When necessary during the state of the public health emergency, the business or facility must coordinate with the department on the management or supervision of the business or facility; and

(3) to procure, by order or otherwise, any business or facility authorized to collect, store, handle, destroy, treat, transport, and dispose of infectious waste under the laws of this State and any landfill business or other such property as may be reasonable and necessary for emergency response, with the right to take immediate possession thereof.

HISTORY: 1989 Act No. 134, Section 1; 2002 Act No. 339, Section 26, eff July 2, 2002.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

**SECTION 44‑93‑50.** Powers of commissioner.

The director, upon receipt of information that an aspect of infectious waste management, within a publicly or privately‑owned property, may present an imminent or substantial hazard to the health of persons or to the environment, may take such action as he determines necessary to protect the health of persons or the environment. The action the director may take may include, but is not limited to:

(1) entering the premises at any time where the infectious waste is located in order to assess what actions may be necessary;

(2) issuing or modifying an order directing the person responsible for the waste to take the steps necessary to prevent the act or eliminate the practice which constitutes the hazard;

(3) commencing an action enjoining the acts or practices. Upon a showing by the department that a person has engaged in the acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted;

(4) inspecting and obtaining samples from a person of any wastes, including samples from a vehicle in which wastes are being transported, as well as samples of a container or label. If available, upon request, the department shall provide a sample of equal volume or weight to the owner, operator, or agent in charge of the waste. The department also shall provide the owner, operator, or agent in charge with a copy of the results of an analysis of the samples once the results have been evaluated properly by the department to determine their validity.

HISTORY: 1989 Act No. 134, Section 1; 1993 Act No. 181, Section 1149.

Library References

Environmental Law 402.

Westlaw Topic No. 149E.

**SECTION 44‑93‑60.** Storage of infectious waste.

(A) Storage of infectious waste must be in such a manner and location which affords protection from animals and weather conditions and which minimize exposure to the public.

(B) Infectious waste must be segregated from other waste at the point of origin and maintained in separate containers until it is treated.

(C) Infectious waste must be contained in approved disposable or reusable containers that are appropriate for the type and quantity of waste, must withstand handling, transfer, and transportation without impairing the integrity of the container, must be closed tightly and secured, and are compatible with selected storage and treatment processes.

(D) Sharps must be contained in rigid, puncture‑resistant containers which are secured tightly to preclude loss of the contents.

(E) Containers of infectious waste must be labeled properly, clearly identifiable as infectious waste, and readily distinguishable from other waste.

(F) Infectious waste must be stored under conditions and for periods of time as provided pursuant to regulations.

HISTORY: 1989 Act No. 134, Section 1.

Library References

Environmental Law 430.

Westlaw Topic No. 149E.

**SECTION 44‑93‑70.** Transportation of infectious waste.

(A) Infectious waste must be transported in such a manner that the integrity of the waste containers is maintained and that occupational hazards are minimized.

(B) No infectious waste may be received for transportation or transported into or within this State if it is not properly contained, identified, labeled, and manifested pursuant to department regulations.

HISTORY: 1989 Act No. 134, Section 1.

Library References

Environmental Law 431.

Westlaw Topic No. 149E.

**SECTION 44‑93‑80.** Treatment and disposal of infectious waste.

(A) Infectious waste treated must be treated at a facility meeting the requirements of Section 44‑93‑120.

(B) Infectious waste must be treated as soon as practicable by one of the following treatment methods in accordance with the regulations promulgated under this chapter and any other applicable state or federal law and regulations:

(1) incineration;

(2) steam sterilization;

(3) chemical disinfectant; or

(4) any other department‑approved treatment method.

(C) After treatment, the waste may be disposed of as any other waste if it is not subject to any other state or federal regulation.

(D) The following infectious waste may be disposed of pursuant to regulation before treatment:

(1) an approved liquid or semi‑liquid waste may be discharged directly into a department‑approved wastewater disposal system; and

(2) recognizable human anatomical remains may be disposed of by interment.

HISTORY: 1989 Act No. 134, Section 1.

Library References

Environmental Law 430.

Westlaw Topic No. 149E.

**SECTION 44‑93‑90.** Registration of infectious waste generators; identification of generator on waste labels and containers.

(A) All in‑state generators of infectious waste shall register with the department within ninety days after regulations are promulgated by the department.

(B) Pursuant to regulations, all generators of infectious waste shall place proper, clearly legible, generator identification on all labels and containers of infectious waste before transfer or transportation.

HISTORY: 1989 Act No. 134, Section 1.

Library References

Environmental Law 428.

Westlaw Topic No. 149E.

**SECTION 44‑93‑100.** Generators exempt from provisions of chapter.

All in‑state generators that produce less than fifty pounds of infectious waste a month are exempt from the provisions of this chapter except they shall comply with:

(1) the provisions of Section 44‑93‑90(A) of this chapter; and

(2) the management of the following infectious waste:

(a) sharps must be managed pursuant to this chapter and any regulations promulgated under this chapter;

(b) cultures and human blood and blood products must be managed pursuant to this chapter and any regulations promulgated under this chapter;

(c) products of conception, meaning fetal tissues and embryonic tissues resulting from implantation in the uterus, must be managed in accordance with requirements for pathological waste pursuant to this chapter and any regulations promulgated under this chapter;

(d) all other infectious waste may be disposed of as other solid waste.

HISTORY: 1989 Act No. 134, Section 1; 1995 Act No. 1, Section 4; 2002 Act No. 351, Section 1, eff July 20, 2002.

Library References

Environmental Law 428.

Westlaw Topic No. 149E.

**SECTION 44‑93‑110.** Waste treatment, storage, or disposal facility prohibited from accepting certain infectious waste.

It is unlawful for a person who owns or operates a waste treatment, storage, or disposal facility within this State to accept any infectious waste generated in a jurisdiction which prohibits by law the treatment, storage, or disposal of that infectious waste within that jurisdiction.

HISTORY: 1989 Act No. 134, Section 1.

Library References

Environmental Law 430.

Westlaw Topic No. 149E.

NOTES OF DECISIONS

Constitutional issues 1

Justiciability 2

1. Constitutional issues

Section 44‑93‑110 directly discriminates on its face against interstate commerce; it does not distinguish on the basis of type of waste or degree of dangerousness, but solely on the basis of the state of generation. Blacklisting provision is protectionist measure, not based adequately on legitimate local concern, and is therefore unconstitutional. Chambers Medical Technologies of South Carolina, Inc. v. Jarrett, 1994, 841 F.Supp. 1402, affirmed in part, remanded in part 52 F.3d 1252.

2. Justiciability

Owner of facility that incinerated medical waste had standing to challenge blacklisting provision of Infectious Waste Management Act, Section 44‑93‑110, in light of Section 44‑93‑150 which authorizes imposition of a fine for any violation of Act. Chambers Medical Technologies of South Carolina, Inc. v. Jarrett, 1994, 841 F.Supp. 1402, affirmed in part, remanded in part 52 F.3d 1252.

**SECTION 44‑93‑120.** Permit requirements.

Upon promulgation of regulations as specified in Section 44‑93‑30, no person may operate an infectious waste treatment or disposal facility or generator facility without first obtaining a permit as required by department regulations.

HISTORY: 1989 Act No. 134, Section 1.

CROSS REFERENCES

Treatment and disposal of infectious waste, see Section 44‑93‑80.

Library References

Environmental Law 430.

Westlaw Topic No. 149E.

**SECTION 44‑93‑125.** Permit to expand or construct facility; exceptions.

No person may expand or construct a new facility without a permit issued by the department. To obtain a permit, the applicant shall demonstrate the need for a facility or expansion. To determine if there is a need, infectious waste generated out‑of‑state may not be considered without department approval.

This section does not apply to:

(1) facilities owned by counties, municipalities, or public service districts which accept only infectious waste generated in this State;

(2) facilities that are owned or operated by the generator of the waste and this waste is generated in this State;

(3) generator facilities; or

(4) facilities currently operating under permits issued by the department, or to the renewal of existing permits issued by the department if there is no expansion of the capacity as prescribed in the conditions of the permit.

HISTORY: 1989 Act No. 134, Section 1.

Library References

Environmental Law 432.

Westlaw Topic No. 149E.

Attorney General’s Opinions

Discussion of the procedure required before infectious waste incinerator facilities can expand or construct new facilities. S.C. Op.Atty.Gen. (February 23, 1990) 1990 WL 482410.

NOTES OF DECISIONS

Justiciability 1

1. Justiciability

Owner of facility that incinerated medical waste lacked standing to challenge demonstration of need provision of Infectious Waste Management Act, Section 44‑93‑125, because to assume that plaintiff has applied for a permit to expand and to further assume that DHEC has not allowed plaintiff to include out‑of‑state waste in determining need is to engage in mere speculation. Chambers Medical Technologies of South Carolina, Inc. v. Jarrett, 1994, 841 F.Supp. 1402, affirmed in part, remanded in part 52 F.3d 1252. Environmental Law 656

**SECTION 44‑93‑130.** Refusal to issue or renew registration to transport, or permit to operate; rehabilitation.

(A) The director may refuse to issue or renew a registration to transport infectious waste or a permit to operate a facility if he finds that within five years of the application for a registration or permit, the applicant has been:

(1) convicted of a crime involving moral turpitude by a court of law and all appeals have been exhausted;

(2) convicted pursuant to a violation of this chapter or any other laws of this State pertaining to solid or hazardous waste punishable as a felony; or

(3) adjudicated in contempt of a court order pertaining to the enforcement of a provision of this chapter or any other state or federal laws governing hazardous waste.

(B) The director may issue a registration or permit if the person has affirmatively demonstrated rehabilitation. The director, in making this determination, shall consider whether:

(1) the person has established formal controls and environmental auditing programs which would enhance compliance and prevent the occurrence of future violations; and

(2) the personal conduct of the person after the conviction or adjudication as it relates to the provisions and purposes of this chapter and any subsequent recommendations of other persons since rehabilitation.

HISTORY: 1989 Act No. 134, Section 1; 1993 Act No. 181, Section 1150.

Library References

Environmental Law 432.

Westlaw Topic No. 149E.

Attorney General’s Opinions

While the Pollution Control Act contains no specific authority for DHEC to consider environmental compliance histories and records of applicants when they apply for permits, the Infectious Waste Management Act allows DHEC to consider prior criminal convictions or contempt of court adjudications. Similarly, the Solid Waste Policy and Management Act allows DHEC to consider a continuing history of criminal convictions or violations of environmental laws. 1994 Op.Atty.Gen. No. 94‑29, p. 71 (May 3, 1994) 1994 WL 267892.

**SECTION 44‑93‑140.** Unlawful to fail to comply with statute or regulations.

Following the promulgation of the regulations required pursuant to Section 44‑93‑30, it is unlawful for a person to fail to comply with this chapter or with a procedure or requirement set forth in the regulations.

HISTORY: 1989 Act No. 134, Section 1.

Library References

Environmental Law 747.

Westlaw Topic No. 149E.

**SECTION 44‑93‑150.** Enforcement; penalties.

(A) Whenever the department finds that a person is in violation of a permit, regulation, standard, or requirement under this chapter, the department may issue an order requiring the person to comply with the permit, regulation, standard, or requirement or the department may bring civil action for injunctive relief in the appropriate court; or, the department may request that the Attorney General bring civil or criminal enforcement action under subsection (B) or (C) of this section. Violation of a court order issued pursuant to this section is contempt of the issuing court and punishable as provided by law. The department also may invoke civil penalties as provided in this section for violations of the provisions of this chapter, including an order, permit, regulation, or standard. After exhaustion of administrative remedies, a person against whom a civil penalty is invoked by the department may appeal the decision of the department or board to the Court of Common Pleas.

(B) A person who violates a provision of Section 44‑93‑140 is liable for a civil penalty not to exceed ten thousand dollars a day of violation.

(C) A person who wilfully violates a provision of Section 44‑93‑140 is guilty of a misdemeanor and, upon conviction, must be fined not more than ten thousand dollars for each day of violation or imprisoned for not more than one year, or both. If the conviction is for a second or subsequent offense, the punishment must be by a fine not to exceed twenty‑five thousand dollars for each day of violation or imprisonment not to exceed two years, or both.

(D) Each day of noncompliance with an order issued pursuant to this chapter or noncompliance with a permit, regulation, standard, or requirement pursuant to this chapter constitutes a separate offense.

HISTORY: 1989 Act No. 134, Section 1.

Library References

Environmental Law 457.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 147.

NOTES OF DECISIONS

Justiciability 1

1. Justiciability

Owner of facility that incinerated medical waste had standing to challenge blacklisting provision of Infectious Waste Management Act, Section 44‑93‑110, in light of Section 44‑93‑150 which authorizes imposition of a fine for any violation of Act. Chambers Medical Technologies of South Carolina, Inc. v. Jarrett, 1994, 841 F.Supp. 1402, affirmed in part, remanded in part 52 F.3d 1252.

**SECTION 44‑93‑160.** Fees on commercial treatment of infectious waste; reports; penalties.

(A) There is a fee on the treatment of infectious waste in this State equal to thirty dollars a ton for the first one thousand five hundred tons in a month and eight dollars a ton in excess of one thousand five hundred tons a month on the pretreatment weight of infectious waste to be imposed upon facilities required to be permitted pursuant to this chapter.

(B) The owner or operator of a facility required to be permitted pursuant to this chapter treating infectious waste shall submit, not later than the tenth day of each month, to the Department of Health and Environmental Control:

(1) a report detailing the total weight of infectious waste received for treatment during the preceding month and its point of origin;

(2) a check made payable to the department for the fee due for the preceding month;

(3) in case of failure to file a return on or before the date prescribed by law or failure to pay a fee on or before the date prescribed by law, there must be added a penalty of twenty‑five percent of the amount of fee due. The department may revoke a permit to operate for failure to pay any fees, penalties, or interest required by law. Upon payment the department may reinstate the permit to an operator of a permitted treatment facility treating infectious waste in this State. The penalty provided by this item may be reduced or waived by the department for reasonable cause.

(C) A person treating infectious waste who fails to remit the fee or penalty as provided by law must be charged interest at the rate of one percent a month. Interest must be calculated on the full amount of the fee or portion of it, exclusive of penalties, from the time the fee or penalty was due and paid in its entirety.

HISTORY: 1989 Act No. 134, Section 1; 1990 Act No. 612, Part II, Section 6A; 1994 Act No. 497, Part II, Section 30B; 1997 Act No. 155, Part II, Section 78A.

Library References

Environmental Law 434.

Westlaw Topic No. 149E.

**SECTION 44‑93‑165.** Infectious Waste Program Fund; establishment; funding.

The department shall establish an Infectious Waste Program Fund to ensure the availability of funds to carry out the department’s responsibilities under this chapter. This fund must be financed by the fees imposed pursuant to Section 44‑93‑160. From the revenue derived from the fees on infectious waste, an amount equal to eight dollars a ton for the first one thousand five hundred tons in a month must be deposited into the Infectious Waste Program Fund.

HISTORY: 1994 Act No. 497, Part II, Section 30A; 1997 Act No. 155, Part II, Section 78B.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑93‑170.** Infectious Waste Contingency Fund.

The department shall establish an Infectious Waste Contingency Fund to ensure the availability of funds for response actions necessary at permitted infectious waste treatment facilities and necessary from accidents in the transportation of infectious waste and to defray the cost of governmental response actions associated with infectious waste. After funding of the Infectious Waste Program Fund, as provided for in Section 44‑93‑165, the Infectious Waste Contingency Fund must be financed by the remaining fees imposed pursuant to Section 44‑93‑160. The fees credited to the Infectious Waste Contingency Fund must be allocated as follows: an amount equal to two‑thirds of the fees must be deposited into the fund and an amount equal to one‑third of the fees must be held in a separate and distinct account within the fund for the purpose of being returned to each county in which the fee imposed by Section 44‑93‑160 is collected. When the amount of fees held in the Infectious Waste Contingency Fund meets or exceeds three hundred fifty thousand dollars, all fees remaining after funding the Infectious Waste Program Fund must be placed in the account established for counties and distributed as provided for in this section. When the balance in the Infectious Waste Contingency Fund reaches $250,000 or less, all fees remaining after funding the Infectious Waste Program Fund must be retained by the contingency fund until the fund reaches $350,000. Interest earned by the funds must be credited to the general fund of the State. Proceeds of the county account returned to a county pursuant to this section must be released by the State Treasurer upon the written request of a majority of the legislative delegation of the recipient county.

HISTORY: 1989 Act No. 134, Section 1; 1990 Act No. 612, Part II, Section 6B; 1992 Act No. 501, Part II Section 20A; 1994 Act No. 497, Part II, Section 30C; 1996 Act No. 458, Part II, Section 103.

CROSS REFERENCES

Increase of fee where infectious waste tonnage limitations are exceeded, see Section 44‑93‑240.

Library References

States 127.

Westlaw Topic No. 360.

C.J.S. States Sections 400 to 401.

**SECTION 44‑93‑180.** Inspection of treatment facilities; fees.

The department shall assign as may be necessary a health inspector to serve at a commercial infectious waste treatment facility located in South Carolina for the purpose of assuring the protection of the health and safety of the public by monitoring the receipt, handling, treatment, and disposal of infectious waste at these sites. The department shall establish a fee schedule to cover the costs of implementing this inspection program. The fee must be collected from the commercial infectious waste facilities based upon the amount of infectious waste received.

HISTORY: 1989 Act No. 134, Section 1.

Library References

Environmental Law 434.

Westlaw Topic No. 149E.

**SECTION 44‑93‑190.** Chapter inapplicable to treatment or disposal of hazardous waste.

This chapter does not apply to the treatment or disposal of hazardous waste regulated under the South Carolina Hazardous Waste Management Act.

HISTORY: 1989 Act No. 134, Section 1.

CROSS REFERENCES

Definition of hazardous waste, see Section 44‑56‑20.

Hazardous Waste Management Act, see Sections 44‑56‑10 et seq.

Library References

Environmental Law 430.

Westlaw Topic No. 149E.

**SECTION 44‑93‑210.** Annual estimate of amount of infectious waste; infectious waste treatment facilities.

(A) Annually the department shall estimate and publish the amount of infectious waste it expects to be generated within this State during the succeeding calendar year. No permitted infectious waste treatment facility may treat more than the amount the department allows it to treat by permit.

(B) For purposes of this section, a permitted infectious waste treatment facility means a site where infectious waste is incinerated regardless of the number of incinerator units or the ownership of the units.

HISTORY: 1990 Act No. 612, Part II, Section 6C; 1996 Act No. 307, Section 1; 1997 Act No. 155, Part II, Section 78C.

Library References

Environmental Law 430.

Westlaw Topic No. 149E.

NOTES OF DECISIONS

Constitutional issues 1

1. Constitutional issues

The fluctuating treatment cap provision is not unconstitutional on its face, and the burden on interstate commerce is not clearly excessive in relation to putative local benefit. However, a district court should consider whether the legislation was enacted for a discriminatory purpose, since the fluctuating treatment cap could not be held constitutional under the more stringent Commerce Clause test applied to state regulation that discriminates in its underlying purpose. Chambers Medical Technologies of South Carolina, Inc. v. Bryant (C.A.4 (S.C.) 1995) 52 F.3d 1252.

The fluctuating treatment cap provision is rationally related to a legitimate state interest and, therefore, does not violate the Equal Protection Clause. Chambers Medical Technologies of South Carolina, Inc. v. Bryant (C.A.4 (S.C.) 1995) 52 F.3d 1252.

Fluctuating treatment cap provision, Section 44‑93‑210, does not discriminate on its face against out‑of‑state waste and is constitutional. Decreasing the sheer volume of waste is legitimate state interest and the local benefits clearly exceed any indirect effects on interstate commerce. Chambers Medical Technologies of South Carolina, Inc. v. Jarrett, 1994, 841 F.Supp. 1402, affirmed in part, remanded in part 52 F.3d 1252.

Fluctuating treatment cap provision, Section 44‑93‑210, does not violate equal protection clause and is constitutional; Reducing the amount of waste the commercial incinerators burn is a rational way to reduce problems complained of, such as disruption in traffic flow caused by tractor trailer trucks in line on the highway leading to the facility, some of which were leaking blood. Chambers Medical Technologies of South Carolina, Inc. v. Jarrett, 1994, 841 F.Supp. 1402, affirmed in part, remanded in part 52 F.3d 1252.

**SECTION 44‑93‑220.** Monthly incineration limits for infectious waste from July through December, 1990.

From July through December, 1990, no more than fifteen hundred tons of infectious waste may be burned in any one month by a permitted commercial infectious waste incinerator facility in this State.

HISTORY: 1990 Act No. 612, Section 6D, Part II.

Library References

Environmental Law 430.

Westlaw Topic No. 149E.

**SECTION 44‑93‑230.** Construction of infectious waste provisions.

The provisions of Sections 44‑93‑210 and 44‑93‑220 must be construed as separate provisions. If a provision is judged to be invalid by a court of law of this State, the court’s decree shall apply only to the provision and action specified and shall have no effect on any other provision unless stated in the court’s decree. The invalidity does not affect other provisions or applications of Sections 44‑93‑210 and 44‑93‑220 which may be given effect without the invalid provision or application and, pursuant to this requirement, the provisions of this section are severable.

HISTORY: 1990 Act No. 612, Part II, Section 6E.

Library References

Environmental Law 407.

Westlaw Topic No. 149E.

**SECTION 44‑93‑240.** Fines for exceeding infectious waste incineration limits; disposition of money collected.

In the event the infectious waste tonnage limitations in any month are unlawfully exceeded, at a commercial waste incinerator facility, a five dollar per ton increase in the fees imposed pursuant to Section 44‑93‑160(A) is imposed retroactively on the excess tonnage burned in that month. The funds received from this fee increase must also be deposited in the Infectious Waste Contingency Fund established in Section 44‑93‑170. The fee increase imposed by this section is in addition to any other civil or criminal penalties which may be imposed by law for the tonnage violation.

HISTORY: 1990 Act No. 612, Part II, Section 6F.

Library References

Environmental Law 457.

Westlaw Topic No. 149E.

C.J.S. Health and Environment Section 147.